

1 HOUSE BILL NO. 570

2 INTRODUCED BY D. SKEES

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING INFRINGEMENT OF THE STATE OF MONTANA'S
5 CONSTITUTIONAL RIGHT TO NULLIFICATION OF ANY FEDERAL STATUTE, MANDATE, OR EXECUTIVE
6 ORDER CONSIDERED UNCONSTITUTIONAL BY THE STATE; ENACTING THE LEGISLATIVE
7 CONSTITUTIONAL REVIEW COMMITTEE ACT; PROVIDING FOR AN INTERIM LEGISLATIVE COMMITTEE
8 WITH DUTIES AND RESPONSIBILITIES CONCERNING THE RECOMMENDATIONS FOR NULLIFICATION
9 OF AN UNCONSTITUTIONAL FEDERAL LAW, MANDATE, OR ORDER; PROVIDING FOR A LEGISLATIVE
10 POLLING PROCESS; ALLOWING CERTAIN LAWS TO BE NULLIFIED BY A POLL OF THE LEGISLATURE;
11 AMENDING SECTIONS 5-5-202 AND 5-5-211, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY
12 DATE."
13

14 WHEREAS, the State of Montana has a compelling interest as a sovereign state of the United States of
15 America in the proper implementation of protection and justice within its borders; and

16 WHEREAS, the 10th Amendment to the United States Constitution guarantees and reserves to the
17 states or their people all powers not specifically granted to the federal government elsewhere in the Constitution
18 as they were publicly understood at the time that the amendment was ratified on December 15, 1791, subject
19 only to modification by duly ratified subsequent amendments to the United States Constitution. The guarantee
20 of those powers is a matter of compact between the State and people of Montana and the United States as of
21 the time that Montana was admitted to statehood in 1889; and

22 WHEREAS, as a matter of compact between the State and people of Montana and the United States
23 as of the time that Montana was admitted to statehood in 1889, the 10th Amendment to the United States
24 Constitution guarantees to the State and people of Montana that other than the enumerated powers expressly
25 granted to the United States under Article I, section 8, of the United States Constitution, Congress and the
26 federal government will not exercise any purported additional control over or commandeer rights belonging to
27 the State of Montana or its people; and

28 WHEREAS, at the time the United States Constitution was ratified on June 21, 1788, the sole and

1 sovereign power to regulate the state business and affairs rested in the state legislature and has always been a
2 compelling state concern and central to state sovereignty. Accordingly, the foregoing public meaning and
3 understanding of Article I, section 8, the Establishment Clause of the 1st Amendment, and the 10th Amendment
4 of the United States Constitution is a matter of compact between the State and people of Montana and the
5 United States as of the time that Montana was admitted to statehood in 1889. Further, the power to regulate
6 commerce among the several states as delegated to Congress in Article I, section 8, clause 3, of the United
7 States Constitution, as understood at the time of the founding, was meant to empower Congress to regulate the
8 buying and selling of products made by others and sometimes land, associated finance and financial
9 instruments, and navigation and other carriage across state jurisdictional lines. This power to regulate
10 "commerce" does not include agriculture, manufacturing, mining, major crimes, or land use, nor does it include
11 activities that merely "substantially affect" commerce; and

12 WHEREAS, at the time the United States Constitution was ratified on June 21, 1788, the Commerce
13 Clause was not meant or understood to authorize Congress or the federal judiciary to regulate the state courts
14 in the matter of state substantive law or state judicial procedure. This meaning and understanding of Article I,
15 section 8, the Establishment Clause of the 1st Amendment, and the 10th Amendment of the United States
16 Constitution, as they pertain to the validity of religious, sectarian, or foreign law as being controlling or influential
17 precedent, has never been modified by any duly ratified amendment to the United States Constitution.
18 Accordingly, the foregoing public meaning and understanding of Article I, section 8, and the 10th Amendment of
19 the United States Constitution is a matter of compact between the State and people of Montana and the United
20 States as of the time that Montana was admitted to statehood in 1889; and

21 WHEREAS, Article I, section 8, clause 18, of the United States Constitution, the Necessary and Proper
22 Clause, is not a blank check that empowers the federal government to do anything it deems is necessary or
23 proper. It is instead a limitation of power under the common-law doctrine of "principals and incidents," which
24 allows Congress to exercise incidental powers. There are two main conditions required for something to be
25 incidental and therefore "necessary and proper". The law or power exercised must be: (1) directly applicable to
26 the main, enumerated power--some would say that without it, the enumerated power would be impossible to
27 exercise in current, common understanding; and (2) "lesser" than the main power; and

28 WHEREAS, at the time the United States Constitution was ratified on June 21, 1788, Article I, section

1 8, clause 1, the General Welfare Clause, did not empower the federal government with the ability to do anything
2 it deems good. It is instead a general introduction explaining the exercise of the enumerated powers of
3 Congress that are set forth in Article I, section 8, of the United States Constitution. When James Madison was
4 asked if this clause were a grant of power, he replied with "If not only the means but the objects are unlimited,
5 the parchment [the Constitution] should be thrown into the fire at once." Thus, this clause is a limitation on the
6 power of the federal government to act in the welfare of all when passing laws in pursuance of the powers
7 delegated to the United States. And the Commerce Clause was not meant or understood to authorize Congress
8 or the federal judiciary to establish religious, sectarian, or foreign statute or case law as controlling or influential
9 precedent. This meaning and understanding of Article I, section 8, the Establishment Clause of the 1st
10 Amendment, and the 10th Amendment of the United States Constitution, as they pertain to controlling or
11 influential legal authority, has never been modified by any duly ratified amendment to the United States
12 Constitution. Accordingly, the foregoing public meaning and understanding of Article I, section 8, the
13 Establishment Clause of the 1st Amendment, and the 10th Amendment of the United States Constitution is a
14 matter of compact between the State and people of Montana and the United States as of the time that Montana
15 was admitted to statehood in 1889; and

16 WHEREAS, accordingly, the Legislature knows and affirms that neither the Commerce Clause, the
17 General Welfare Clause, nor the Necessary and Proper Clause of the United States Constitution has ever been
18 expanded, modified, or amended, and therefore the Legislature specifically rejects and denies any expanded
19 authority that the federal government may attempt to enforce; and

20 WHEREAS, Congress and the federal government are denied the power to establish laws within the
21 state that are repugnant and obtrusive to state law and to the people within the state and are restrained and
22 confined in authority by the 18 clauses set forth in Article I, section 8, of the United States Constitution; and

23 WHEREAS, Congress and the federal government are denied the power to bind the states under
24 foreign statute or case law other than those provisions duly ratified by Congress as a treaty, so long as the
25 treaty does not violate a state constitution or the United States Constitution; and

26 WHEREAS, no authority has ever been given to the Legislative Branch, the Executive Branch, or the
27 Judicial Branch of the federal government to preempt state legislation; and

28 WHEREAS, this act serves as a notice and demand to the federal government to cease and desist all

1 activities outside the scope of the federal government's constitutionally designated powers.

2

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4

5 NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Legislative
6 Constitutional Review Committee Act".

7

8 NEW SECTION. **Section 2. Legislative constitutional review committee -- purpose -- procedure.**

9 (1) The legislative constitutional review committee is charged to recommend, propose, and call for an up or
10 down vote of simple majority to nullify in its entirety a specific federal law or regulation that is outside the scope
11 of the powers delegated by the people to the federal government in the United States constitution.

12 (2) The legislative constitutional review committee may take up and review all existing federal
13 statutes, mandates, and executive orders for the purpose of determining the constitutionality of the statute,
14 mandate, or order. The legislative constitutional review committee may recommend for nullification any existing
15 federal statute, mandate, or executive order enacted prior to [the effective date of this act].

16 (3) If the legislative constitutional review committee recommends nullification of a federal statute,
17 mandate, or executive order, the committee shall send its recommendation to the secretary of state.

18 (4) Within 60 days of receiving a recommendation from the legislative constitutional review
19 committee, the secretary of state shall poll the members of the legislature by mail and shall send each member
20 a copy of the recommendation. The appropriate documentation reflecting the vote must be documented in the
21 official records of the acts of the legislature maintained by the secretary of state.

22 (5) During the time between the recommendation for nullification and the legislative vote on
23 nullification, the issue in question remains out of force or effect until the legislative vote can be taken.

24

25 NEW SECTION. **Section 3. Effect of nullification.** If the legislature votes by simple majority to nullify
26 a federal statute, mandate, or executive order on the grounds of constitutionality, the state and its citizens may
27 not recognize or be obligated to obey the nullified statute, mandate, or executive order.

28

1 **NEW SECTION. Section 4. Prevention of enforcement of nullified federal laws -- duty of**
2 **legislature -- jurisdiction.** (1) The legislature shall enact all measures necessary to prevent the enforcement
3 of federal laws or regulations nullified within the boundaries of this state.

4 (2) In a cause of action between this state and the federal government regarding nullification of
5 federal legislation, a judicial mandate, or an executive order, the proper jurisdiction for these issues lies with the
6 supreme court of the United States alone, as stated in Article III, section 2, of the United States constitution.

7
8 **NEW SECTION. Section 5. Reservations of state's rights and powers.** (1) Under the 10th
9 amendment to the United States constitution, the people and state of Montana retain their exclusive power to
10 regulate the state subject only to the 14th amendment's guarantee that the people and the state of Montana
11 may exercise sovereign power in accordance with each citizen's lawful privileges or immunities and in
12 compliance with the requirements of due process and equal protection of the law.

13 (2) The ninth amendment to the United States constitution secures and reserves to the people of
14 Montana as against the federal government their natural rights to life, liberty, and property as entailed by the
15 traditional Anglo-American conception of ordered liberty and as secured by state law, including but not limited
16 to their rights as they were understood and secured by the law at the time that the amendment was ratified on
17 December 15, 1791, as well as their rights as they were understood and secured by the law in the state at the
18 time the Montana constitution was adopted in 1889. The guarantee of those rights is a matter of compact
19 between the state and people of Montana and the United States at the time that Montana was admitted to
20 statehood in 1889.

21
22 **NEW SECTION. Section 6. Legislative constitutional review committee.** (1) There is a legislative
23 constitutional review committee as provided in [section 1].

24 (2) The committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214.

25 (3) The committee consists of 20 members, including:

26 (a) 10 members of the house of representatives; and

27 (b) 10 members of the senate.

28 (3) Members must be appointed by the appointing authorities provided for in 5-5-211.

1 (4) (a) Each appointing authority shall appoint members proportionally to the number of members in
2 the majority and minority parties in a chamber.

3 (b) The number of members to be appointed proportionally from each party must be determined by
4 dividing the number of members of each party by the number of members in a chamber and multiplying by the
5 number of members to be appointed from that chamber and rounding to the nearest whole number.

6

7 **Section 7.** Section 5-5-202, MCA, is amended to read:

8 **"5-5-202. Interim committees.** (1) During an interim when the legislature is not in session, the
9 committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as
10 committees and may act in their respective areas of responsibility. The functions of the legislative council,
11 legislative audit committee, legislative finance committee, environmental quality council, state-tribal relations
12 committee, ~~and~~ local government committee, and legislative constitutional review committee are provided for in
13 the statutes governing those committees.

14 (2) The following are the interim committees of the legislature:

15 (a) economic affairs committee;

16 (b) education committee;

17 (c) children, families, health, and human services committee;

18 (d) law and justice committee;

19 (e) energy and telecommunications committee;

20 (f) revenue committee;

21 (g) state administration and veterans' affairs committee;

22 (h) transportation committee; and

23 (i) water policy committee.

24 (3) An interim committee, the local government committee, or the environmental quality council may
25 refer an issue to another committee that the referring committee determines to be more appropriate for the
26 consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider
27 the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines
28 to accept the issue, the original committee retains jurisdiction.

1 (4) If there is a dispute between committees as to which committee has proper jurisdiction over a
2 subject, the legislative council shall determine the most appropriate committee and assign the subject to that
3 committee. If there is an entity that is attached to an agency for administrative purposes under the jurisdiction of
4 an interim committee and another interim committee has a justification to seek jurisdiction and petitions the
5 legislative council, the legislative council may assign that entity to the interim committee seeking jurisdiction
6 unless otherwise provided by law."

7

8 **Section 8.** Section 5-5-211, MCA, is amended to read:

9 **"5-5-211. Appointment and composition of interim committees.** (1) Senate interim committee
10 members must be appointed by the committee on committees.

11 (2) House interim committee members must be appointed by the speaker of the house.

12 (3) Appointments to interim committees must be made by the time of adjournment of the legislative
13 session.

14 (4) A legislator may not serve on more than two interim committees unless no other legislator is
15 available or is willing to serve.

16 (5) (a) Subject to 5-5-234 and ~~subsection~~ subsections (5)(b) and (5)(c) of this section, the
17 composition of each interim committee must be as follows:

18 (i) four members of the house, two from the majority party and two from the minority party; and

19 (ii) four members of the senate, two from the majority party and two from the minority party.

20 (b) If the committee workload requires, the legislative council may request the appointing authority to
21 appoint one or two additional interim committee members from the majority party and the minority party.

22 (c) The composition of the legislative constitutional review committee must be as provided in [section
23 6].

24 (6) The membership of the interim committees must be provided for by legislative rules. The rules
25 must identify the committees from which members are selected, and the appointing authority shall attempt to
26 select not less than 50% of the members from the standing committees that consider issues within the
27 jurisdiction of the interim committee and at least one member from the joint subcommittee that considers the
28 related agency budgets. In making the appointments, the appointing authority shall take into account term limits

1 of members so that committee members will be available to follow through on committee activities and
2 recommendations in the next legislative session.

3 (7) An interim committee or the environmental quality council may create subcommittees.
4 Nonlegislative members may serve on a subcommittee. Unless the person is a full-time salaried officer or
5 employee of the state or a political subdivision of the state, a nonlegislative member appointed to a
6 subcommittee is entitled to salary and expenses to the same extent as a legislative member. If the appointee is
7 a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is
8 entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503."
9

10 NEW SECTION. Section 9. Communication with states. (1) To ensure that this state continues in
11 the same esteem and friendship as currently exists, the legislative constitutional review committee shall
12 communicate to the legislatures of the several states the intentions of [this act] and the intention that this state
13 considers union for specific national purposes, and particularly those enumerated in the United States
14 constitution, to be friendly to the peace, happiness, and prosperity of all the states.

15 (2) A certified copy of [this act] must be sent to the president of the United States, the president and
16 the secretary of the United States senate, the speaker and the clerk of the United States house of
17 representatives, and each member of Montana's congressional delegation along with the request that [this act]
18 be officially entered into the congressional record.
19

20 NEW SECTION. Section 10. Codification instruction. (1) [Sections 1 through 5] are intended to be
21 codified as an integral part of Title 2, chapter 1, and the provisions of Title 2, chapter 1, apply to [sections 1
22 through 5].

23 (2) [Section 6] is intended to be codified as an integral part of Title 5, chapter 5, part 2, and the
24 provisions of Title 5, chapter 5, part 2, apply to [section 6].
25

26 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are
27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
28 the part remains in effect in all valid applications that are severable from the invalid applications.

