SENATE BILL NO. 211

INTRODUCED BY T. MCGILLVRAY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR APPOINTMENT, LIMITATIONS, INSTRUCTION, AND PENALTIES FOR COMMISSIONERS REPRESENTING THE STATE OF MONTANA AT AN ARTICLE V CONVENTION CALLED BY THE UNITED STATES CONGRESS TO PROPOSE AMENDMENTS TO THE UNITED STATES CONSTITUTION; PROVIDING PENALTIES; AND PROVIDING DEFINITIONS."

WHEREAS, Article V of the United States Constitution obligates Congress to call a convention for proposing amendments on the application of two-thirds of the several states; and

WHEREAS, the momentum for an Article V convention is growing to address fiscal excesses and jurisdictional encroachments by the federal government on state-reserved powers; and

WHEREAS, the voters of the State of Montana have made their preference for federal term limits known through the passage of Constitutional Initiative Measure No. 64 in 1992 with 67% approval; and

WHEREAS, the courts have struck down term limits for federal officials and an Article V convention to propose a term limit amendment is gaining momentum with the people.

THEREFORE, the Legislature of the State of Montana finds that it is appropriate to prepare for an eventual, if not imminent, Article V convention by providing for the appointment, limitations, instructions, and penalties for commissioners representing this state at an Article V convention.

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Article V application" means a joint resolution adopted by the legislature on the same subject or subjects as two-thirds of the other states requiring the United States congress to call an Article V convention.

(2) "Article V convention" means a convention for proposing amendments to the United States

constitution as provided in Article V of the United States constitution.

(3) "Commissioner" means a person appointed as provided in [section 2] to represent the state at an Article V convention.

(4) "Delegation" means the group of commissioners appointed under [section 2].

(5) "Legislative instructions" means instructions given to the delegation before or during an Article V convention by the appointing authorities under [section 2(2)] or by the appointing authorities' agent designated for that purpose.

(6) "Unauthorized proposed amendment" means a proposed amendment that is outside the subject matter of the Article V application, outside the subject matter of the narrowest application relied on by the United States congress in calling the convention if the legislature did not make the application, or contrary to legislative instructions.

NEW SECTION. **Section 2. Appointment of commissioners -- vacancies.** (1) On a call by the United States congress for an Article V convention, ~~five~~ seven commissioners must be appointed to represent the state at the convention as provided in this section.

(2) The commissioners are appointed as follows:

(a) two commissioners by the speaker of the house of representatives~~.~~; and

(b) one commissioner each by the house majority leader, the president of the senate, ~~and~~ the senate majority leader ~~shall each appoint one commissioner~~, the house minority leader, and the senate minority leader. ~~The four appointed commissioners shall appoint the fifth commissioner by majority vote.~~

(3) (a) Each commissioner appointed pursuant to subsection (2) must be approved by a majority vote of each house of the legislature. If a commissioner fails to receive a majority vote in both houses, a new commissioner must be appointed in the same manner as the original appointment.

(b) If the legislature is not in session during the appointment process the secretary of state shall poll the members of the legislature by mail for approval of the commissioners.

(4) A vacancy in the delegation due to death, resignation, ineligibility, recall, or any other reason must be filled in the same manner as the original appointment.

(5) The vote of the delegation on a proposed amendment at an Article V convention must be agreed by a majority vote of the commissioners.

NEW SECTION. **Section 3. Prohibition on unauthorized proposed amendments.** (1) A commissioner may not vote to allow consideration of or vote to approve an unauthorized proposed amendment to the United States constitution.

(2) A commissioner casting a vote to allow consideration or approval of an unauthorized proposed amendment must be immediately recalled by the appointing authority or the speaker of the house of representatives.

(3) A commissioner who is recalled is not entitled to compensation or expenses as provided in [section 9].

NEW SECTION. **Section 4. Qualifications.** Commissioners must be current or former state legislators.

NEW SECTION. **Section 5. Oath.** On approval by a majority vote of both the house of representatives and the senate, each commissioner shall be required to take the following oath: "I do solemnly swear or affirm that to the best of my abilities, I will, as a commissioner of the state of Montana to an Article V convention, uphold the constitution and laws of the United States and the state of Montana. I will not propose or vote to allow consideration of or approve any unauthorized proposed amendment to the United States constitution. I will vote for convention rules that provide that each state have one vote."

NEW SECTION. **Section 6. Penalty.** A commissioner who violates the oath or affirmation provided in [section 5] shall be fined an amount not less than $500 or more than $5,000 to be levied by the secretary of state and deposited in the state general fund.

NEW SECTION. **Section 7. Convention rules.** (1) Each commissioner shall support a rule that gives

each state one equal vote at the Article V convention.

(2) Each commissioner shall support a rule prohibiting a state or commissioner from proposing an amendment that is outside the subject matter of the approved call of the convention.

(3) Each commissioner shall oppose a rule that would allow the rules under subsections (1) and (2) to be suspended by a majority or supermajority vote.

NEW SECTION. **Section 8. Certification.** The secretary of state shall certify in writing to the Article V convention the appointment of commissioners, the recall of commissioners, the filling of a vacancy in the delegation, and the nullification of a vote cast by a commissioner in violation of [sections 1 through 10].

NEW SECTION. **Section 9.** ~~**Expenses**~~**Compensation -- expenses.** After an Article V convention is called by the United States congress, the state shall provide for the reasonable compensation and expenses of the delegation for planning meetings, the Article V convention, and up to ~~three~~ four staff members or advisors of the delegation's choosing.

NEW SECTION. **Section 10. Term.** Except on the resignation, death, ineligibility, recall, or other vacation of office by a commissioner, the term of each commissioner must be for the duration of the Article V convention for which the commissioner was appointed, and the delegation must be dissolved and disbanded on the adjournment sine die of the Article V convention.

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 10] are intended to be codified as a new ~~chapter~~ part in Title 5, chapter 5, and the provisions of Title 5, chapter 5, apply to [sections 1 through 10].

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

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AMEND