

HOUSE BILL NO. 787

INTRODUCED BY L. SHELDON-GALLOWAY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REVIEW OF FEDERAL LAWS'
 CONFORMITY WITH THE UNITED STATES CONSTITUTION AND THE PRINCIPLES OF FEDERALISM;
 CREATING A FEDERALISM COMMISSION WITHIN THE LEGISLATIVE BRANCH; PROVIDING FOR
 MEETINGS OF THE FEDERALISM COMMISSION AND SUPPORT BY THE LEGISLATIVE SERVICES
 DIVISION; ESTABLISHING THE DUTIES OF THE FEDERALISM COMMISSION; PROVIDING FOR
 STANDARDS BY WHICH THE FEDERALISM COMMISSION SHALL EVALUATE FEDERAL LAW;
 REQUIRING STATE EMPLOYEE TRAINING ON FEDERALISM; ESTABLISHING DUTIES FOR THE
 FEDERALISM COMMISSION RELATED TO FEDERAL LANDS; PROVIDING RULEMAKING AUTHORITY;
 AND ESTABLISHING REPORTING REQUIREMENTS.

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

NEW SECTION. Section 1. Creation of federalism commission -- composition of commission. A

federalism commission is hereby created and is comprised of the following nine members:

- (1) the president of the senate or the president of the senate's designee who shall serve as copresiding officer of the commission;
- (2) two other members of the senate, appointed by the president of the senate;
- (3) the speaker of the house of representatives or the speaker of the house of representatives' designee who shall serve as copresiding officer of the commission;
- (4) three other members of the house of representatives, appointed by the speaker of the house of representatives;
- (5) the minority leader of the senate or the minority leader of the senate's designee; and
- (6) the minority leader of the house of representatives or the minority leader of the house of representatives' designee.

1 **NEW SECTION. Section 2. Federalism commission meetings -- supported by legislative**
 2 **services division.** (1) A majority of the membership constitutes a quorum to do business. A favorable vote of
 3 at least a majority of the members in attendance at a meeting at which a quorum is present is required to adopt
 4 any resolution, motion, or other decision.

5 (2) The commission is attached for administrative purposes to the legislative services division, and
 6 the legislative services division shall provide sufficient and appropriate support to the commission in order that it
 7 may carry out its statutory duties within the limitations of legislative appropriations.

8 (3) The commission is staffed by the legislative services division.

9
 10 **NEW SECTION. Section 3. Federalism commission duties.** (1) In accordance with [section 4], the
 11 federalism commission may evaluate a federal law as agreed to by a majority of the commission.

12 (2) The commission may request information regarding a federal law under evaluation from a
 13 United States senator or representative elected from the state.

14 (3) If the commission finds that a federal law is not authorized by the United States constitution or
 15 that it violates the principle of federalism as described in [section 4], a commission copresiding officer or the
 16 commission may:

- 17 (a) request from a United States senator or representative elected from the state:
 - 18 (i) information about the federal law; or
 - 19 (ii) assistance in communicating with a federal government entity regarding the federal law;
- 20 (b) (i) give written notice of an evaluation made under subsection (1) to the federal government
 - 21 entity responsible for adopting or administering the federal law; and
 - 22 (ii) request a response by a specific date to the evaluation from the federal government entity;
- 23 (c) request a meeting, conducted in person or by electronic means, with the federal government
 - 24 entity, a representative from another state, or a United States senator or representative elected from the state
 - 25 to discuss the evaluation of federal law and any possible remedy; or
- 26 (d) give written notice of an evaluation and the conclusion of the commission to any other relevant
 - 27 entity.

28 (4) The commission may recommend to the governor that the governor call a special session of

1 the legislature to give the legislature an opportunity to respond to the commission's evaluation of a federal law.

2 (5) A commission copresiding officer may coordinate the evaluation of and response to federal law
3 with another state by corresponding with the presiding officer of the legislative branch of another state or an
4 entity of another state that has powers and duties that are similar to the commission.

5 (6) The commission shall keep a current list on the legislature's website of:

6 (a) a federal law that the commission evaluates under subsection (1);

7 (b) an action taken by a copresiding officer of the commission or the commission under subsection
8 (3);

9 (c) any coordination undertaken with another state under subsection (5); and

10 (d) any response received from a federal government entity that was requested under subsection
11 (3).

12 (7) The commission shall develop curriculum for a seminar on the principles of federalism. The
13 curriculum must be available to the public and include:

14 (a) fundamental principles on federalism;

15 (b) the sovereignty, supremacy, and jurisdiction of the individual states, including their police
16 powers;

17 (c) the history and practical implementation of the 10th amendment to the United States
18 constitution;

19 (d) the authority and limits on the authority of the federal government as found in the United States
20 constitution;

21 (e) the relationship between the state and federal government;

22 (f) methods of evaluating a federal law in the context of the principles of federalism;

23 (g) how and when challenges must be made to a federal law or regulation on the basis of
24 federalism;

25 (h) the separate and independent powers of the state that serve as a check on the federal
26 government;

27 (i) first amendment rights and freedoms contained within; and

28 (j) any other issues relating to federalism that the commission considers necessary.

1 (8) The commission may apply for and receive grants and receive private donations to assist in
2 funding the creation, enhancement, and dissemination of the curriculum.

3 (9) The commission shall submit a report on or before November 30 of each year to the law and
4 justice interim committee that:

5 (a) describes any action taken by the commission; and

6 (b) includes any proposed legislation the commission recommends.

7

8 NEW SECTION. Section 4. Standard of evaluation of federal law. (1) The federalism commission
9 shall determine whether a federal law evaluated under [section 3] is authorized by:

10 (a) Article I, section 2, of the United States constitution to provide for the decennial census;

11 (b) Article I, section 4, of the United States constitution to override state laws regulating the times,
12 places, and manner of congressional elections, other than the place of senatorial elections;

13 (c) Article I, section 7, of the United States constitution to veto bills, orders, and resolutions by the
14 United States congress;

15 (d) Article I, section 8, of the United States constitution to:

16 (i) lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common
17 defense and general welfare of the United States, but all duties, imposts, and excises must be uniform
18 throughout the United States;

19 (ii) borrow money on the credit of the United States;

20 (iii) regulate commerce with foreign nations, among the several states, and with the Indian tribes;

21 (iv) establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies
22 throughout the United States;

23 (v) coin money, regulate the value of coin money and of foreign coin, and fix the standard of
24 weights and measures;

25 (vi) provide for the punishment of counterfeiting the securities and current coin of the United
26 States;

27 (vii) establish post offices and post roads;

28 (viii) promote the progress of science and useful arts by securing for limited times to authors and

- 1 investors the exclusive right to their respective writings and discoveries;
- 2 (ix) constitute tribunals inferior to the supreme court;
- 3 (x) define and punish piracies and felonies committed on the high seas and offenses against the
4 law of nations;
- 5 (xi) declare war, grant letters of marque and reprisal, and make rules concerning captures on land
6 and water;
- 7 (xii) raise and support armies, but no appropriation of money to that use may be for a longer term
8 than 2 years;
- 9 (xiii) provide and maintain a navy;
- 10 (xiv) make rules for the government and regulation of the land and naval forces;
- 11 (xv) provide for calling forth the militia to execute the laws of the union, suppress insurrections, and
12 repel invasions;
- 13 (xvi) provide for organizing, arming, and disciplining the militia, and for governing the part of the
14 militia that may be employed in the service of the United States, reserving to the states respectively the
15 appointment of the officers and the authority of training the militia according to the discipline prescribed by the
16 United States congress;
- 17 (xvii) exercise exclusive legislation in all cases whatsoever over the district, which may not exceed
18 10 square miles, as may, by cession of particular states and the acceptance of the United States congress,
19 become the seat of the government of the United States, and to exercise like authority over all places
20 purchased by the consent of the legislature of the state in which the place must be for the erection of forts,
21 magazines, arsenals, dockyards, and other needful buildings; or
- 22 (xviii) make all laws that must be necessary and proper for carrying into execution the powers listed
23 in this section, and all other powers vested by the United States constitution in the government of the United
24 States or in any department or officer of the United States;
- 25 (e) Article I, section 9, of the United States constitution to authorize a federal officer to receive
26 benefits from a foreign nation;
- 27 (f) Article I, section 10, of the United States constitution to fix the pay of the members of congress
28 and of federal officers;

- 1 (g) Article II, section 1, of the United States constitution to:
- 2 (i) set the time for choosing electors; or
- 3 (ii) establish who succeeded to the presidency after the vice president;
- 4 (h) Article II, section 2, of the United States constitution to:
- 5 (i) serve as commander in chief of the armed forces;
- 6 (ii) require the written opinions of executive officers;
- 7 (iii) grant reprieves and pardons;
- 8 (iv) make vacancy appointments;
- 9 (v) make treaties subject to the advice and consent of the United States senate;
- 10 (vi) appoint foreign affairs officers subject to the advice and consent of the United States senate;
- 11 (vii) appoint domestic affairs officers subject either to the advice and consent of the United States
- 12 senate or pursuant to law;
- 13 (viii) appoint judges subject to the advice and consent of the United States senate; or
- 14 (ix) authorize the president to fill designated inferior offices without senatorial consent;
- 15 (i) Article II, section 3, of the United States constitution to:
- 16 (i) receive representatives of foreign powers;
- 17 (ii) execute the laws;
- 18 (iii) commission United States officers;
- 19 (iv) give congress information;
- 20 (v) make recommendations to congress;
- 21 (vi) convene congress on extraordinary occasions; or
- 22 (vii) adjourn congress if it cannot agree on a time;
- 23 (j) Article III, section 1, of the United States constitution to:
- 24 (i) create exceptions to the supreme court's appellate jurisdiction;
- 25 (ii) fix the jurisdiction of federal courts inferior to the supreme court; or
- 26 (iii) declare the punishment for treason;
- 27 (k) Article IV, section 1, of the United States constitution to establish the rules by which the records
- 28 and judgments of states are proved in other states;

- 1 (l) Article IV, section 3, of the United States constitution to:
- 2 (i) manage federal property;
- 3 (ii) dispose of federal property;
- 4 (iii) govern the federal territories; or
- 5 (iv) consent to the admission of new states or the combination of existing states;
- 6 (m) Article IV, section 4, of the United States constitution to defend states from invasion,
- 7 insurrection, and nonrepublican forms of government;
- 8 (n) Article V, section 1, of the United States constitution to propose constitutional amendments;
- 9 (o) Article VI, section 1, of the United States constitution to prescribe the oath for federal officers;
- 10 (p) the 13th amendment to the United States constitution to abolish slavery;
- 11 (q) the 14th amendment to the United States constitution to guard people from certain state
- 12 abuses;
- 13 (r) the 16th amendment to the United States constitution to impose taxes on income from any
- 14 source without having to apportion the total dollar amount of tax collected from each state according to each
- 15 state's population in relation to the total national population;
- 16 (s) the 20th amendment to the United States constitution to revise the manner of presidential
- 17 succession;
- 18 (t) the 15th, 19th, 23rd, or 24th amendments to the United States constitution to extend and
- 19 protect the right to vote; or
- 20 (u) the 17th amendment to the United States constitution to grant a pay raise to a sitting congress.
- 21 (2) The federalism commission shall evaluate whether a federal law evaluated under [section 3]
- 22 violates the principle of federalism by:
- 23 (a) affecting the distribution of power and responsibility among the state and national government;
- 24 (b) limiting the policymaking discretion of the state;
- 25 (c) impacting a power or right reserved to the state or its citizens by the 9th or 10th amendments of
- 26 the United States constitution; or
- 27 (d) impacting the sovereignty rights and interests of the state or a political subdivision to provide
- 28 for the health, safety, and welfare and promote the prosperity of the state's or political subdivision's inhabitants.

- 1 (3) In the evaluation of a federal law, the commission:
- 2 (a) shall rely on:
- 3 (i) the text of the United States constitution, as amended;
- 4 (ii) the meaning of the text of the United States constitution, as amended, at the time of its drafting
- 5 and ratification; and
- 6 (iii) a primary source document that is:
- 7 (A) directly relevant to the drafting, adoption, ratification, or initial implementation of the United
- 8 States constitution, as amended; or
- 9 (B) created by a person directly involved in the drafting, adoption, ratification, or initial
- 10 implementation of the United States constitution, as amended;
- 11 (b) may rely on other relevant sources, including federal court decisions; and
- 12 (c) is not bound by a holding by a federal court.
- 13 (4) If the commission determines that a federal law is not authorized as described in this section or
- 14 otherwise violates the principles of federalism, the commission may recommend appropriate action, including:
- 15 (a) no action;
- 16 (b) correspondence with relevant federal agencies or leaders;
- 17 (c) initiating or coordinating public education efforts;
- 18 (d) initiating or joining multistate coordinating;
- 19 (e) outreach and coordination with state and local government officers and agencies;
- 20 (f) outreach or coordination with the state's congressional delegation and the United States
- 21 congress as a whole;
- 22 (g) lobbying the state's congressional delegation and the United States congress as a whole;
- 23 (h) legal challenges of the federal action;
- 24 (i) enacting state laws to assert, defend, and preserve the constitutional allocation and balance of
- 25 governing powers between the federal government and the state; or
- 26 (j) other actions within the constitutional powers of the state.

27

28 NEW SECTION. Section 5. Training on federalism required. (1) This section applies to:

- 1 (a) all political subdivisions of the state;
- 2 (b) all agencies of the state;
- 3 (c) the attorney general's office; and
- 4 (d) the legislative services division.

5 (2) An employee listed in subsection (1) shall appoint at least one designee to which all questions
6 and inquiries regarding federalism must be directed. The designee must be required to attend a seminar in
7 person or online on the principles of federalism developed pursuant to [section 3] at least once in every 2-year
8 period.

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10 NEW SECTION. **Section 6. Commission duties relating to federal lands.** The commission shall:

- 11 (1) review and make recommendations on the transfer of federally controlled public lands to the
12 state;
- 13 (2) review and make recommendations regarding the state's sovereign right to protect the health,
14 safety, and welfare of its citizens as it relates to public lands;
- 15 (3) coordinate with and report on the efforts of the executive branch, the counties and political
16 subdivisions of the state, the state congressional delegation, western governors, other states, and other
17 stakeholders concerning the transfer of federally controlled public lands to the state including convening
18 working groups, such as a working group composed of the members of the Montana association of counties;
- 19 (4) study and make recommendations regarding the appropriate designation of public lands
20 transferred to the state, including stewardship of the land and appropriate uses of the land;
- 21 (5) study and make recommendations regarding the use of funds received by the state from the
22 public lands transferred to the state; and
- 23 (6) receive reports from and make recommendations to the attorney general, the legislature, and
24 other stakeholders involved in litigation on behalf of the state's interest in the transfer of public lands to the
25 state, regarding:
 - 26 (a) preparation for potential litigation;
 - 27 (b) selection of outside legal counsel;
 - 28 (c) ongoing legal strategy for the transfer of public lands; and

1 (d) use of money appropriated by the legislature for the purpose of securing the transfer of public
2 land to the state.

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4 NEW SECTION. Section 7. Codification instruction. [Sections 1 through 6] are intended to be
5 codified as a new chapter in Title 5, and the provisions of Title 5 apply to [sections 1 through 6].

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