

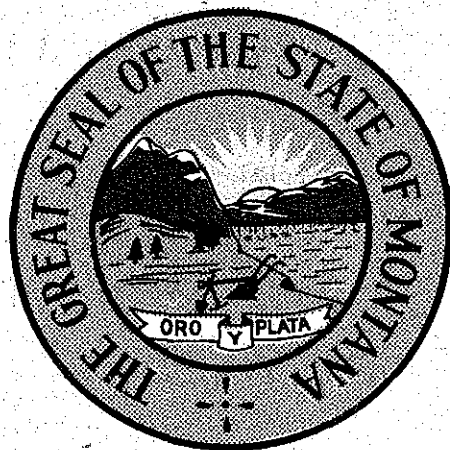
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THE PROPOSED

# 1972 Constitution

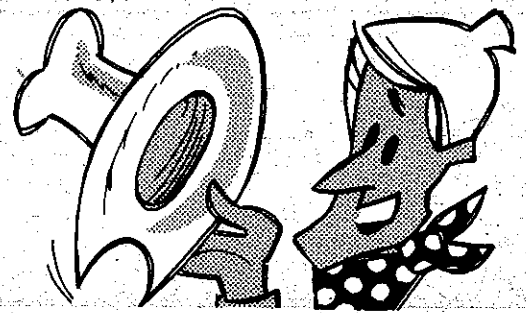
FOR THE

# State OF Montana



VOTE JUNE 6

# Introduction



A comparison of the 1889 and 1972 constitutions shows that they reflect the ages in which they were written. Like an old house be-decked with scroll work and bric-a-brac the 1889 Constitution is full of details. But they were intended to be more than ornaments. The details were designed to force us to be thrifty and honest. Clearly, detailed restrictions on such matters as taxation and debt limitations have not prevented an expansion of government, and we have examples in our history which demonstrate that constitutional commandments will not successfully force men into honesty if they are bent on being dishonest. While these same details have not always achieved their intended purposes, they have sometimes had the unintended effect of hamstringing effective state government. Montana's voters demonstrated their recognition of the outdated condition of our 1889 Constitution in November, 1970 when they gave such a wide margin of endorsement to the calling of a Constitutional Convention.

Like a modern house, the 1972 Constitution is lacking many of the details of the old one. It is much shorter, fewer than 12,000 words as compared to 28,000. It is also more compact and more clearly organized, while in the old one subjects are sometimes scattered and difficult to find. For example, the governor's veto powers appears in four different parts of the 1889 Constitution, but the 1972 Constitution fully describes it in one section.

Of course there may be some citizens who will insist that the 1972 document proposes too many changes, that the Constitutional Convention has asked the citizens of Montana to place too much trust in the judgment of themselves and their legislators. On the other hand, there are those who think the convention did not go far enough in proposing changes. During the Constitutional Convention some newspapers were sharply critical of delegates for being too conservative and too unwilling to entertain changes. Others were critical of the Convention's putting statutory details into the document.

That the 1972 Constitution should be caught in a crossfire of charges of "too much" and "too little" is understandable because it is the product of compromise, the only way decisions could be reached on numerous questions. The decisions were made by a body which was truly representative of Montana's citizenry. A writer for the Los Angeles Times called the delegates an "unusual mix of people." Included among them were business men, farmers, lawyers, ranchers, school teachers, clergymen, housewives, and civic workers. They ranged in age from 24 to 73, with a clear majority of the delegates (60) in their 40's and 50's. Since the electorate chose the delegates from the same districts as will be used for election of the House of Representatives in November, 1972, they also represented all parts of the state.

The convention arrived at its decisions through an orderly and studied process. Although procedures of a legislature and the Convention are not exactly comparable, in legislative terms the final language survived the equivalent of five readings of a bill. Initially the work was done by ten substantive committees. President Graybill referred the articles of the 1889 Constitution and all citizen suggestions and delegate proposals to the appropriate committees for study. Most of the committees had the benefit of one or more research reports secured for it or written especially for it by the Constitution Convention Commission and its staff. Each committee also had a research analyst and one or more college interns to assist it with fact-gathering and the running down of sources of information.

At every stage of deliberation committee work was open to the public and the press. In addition to reading reports and comparing Montana's constitution with recently adopted ones in other states, committee members heard a stream of witnesses both in informal meetings in the committee rooms or at the highly publicized "Romney" hearings in Convention Hall. These hearings were named after Miles Romney, the delegate who proposed them. Citizens, representatives of corporations and organized groups, state employees, and elected public officials presented testimony on delegate proposals, parts of the 1889 Constitution, and on their own suggestions. The number of witnesses varied from the fifty-three who appeared before the Executive Committee to the 138 who testified before the Bill of Rights Committee. In somewhat unusual proceedings, the General Government Committee, Bill of Rights Committee, and

Natural Resources Committee heard numerous witnesses by telephone during radio broadcasts of hearings.

After approximately a month of deliberation the committees reported to the full convention in the form of written reports. These reports had to be on the delegates' desks for forty-eight hours before they could be debated by the Convention as a whole. The reports included proposed constitutional language on the topics assigned the committees. In arriving at their language committees incorporated ideas and wording from various sources. In the process they either retained the language of the 1889 Constitution, re-wrote it, discarded it, or wrote completely new language.

In any case, all proposals (most committee reports also included minority proposals) were accompanied by a section-by-section commentary to explain what the committee (or the minority) was trying to do with its proposal and why. The reports also included a complete record of how each member voted in committee on each question so that the Convention could know how the committee's membership lined up on every section of its report.

In no instance did the convention rubber stamp a committee report. The convention as a whole read and debated each committee report section by section. As it went through each section, the convention accepted, rejected, or adopted it as revised or re-written on the floor. As the convention completed debating and amending committee reports, they were sent on to the Committee on Style, Drafting and Transition. This committee went over the reports word for word to make the language clearer and shorter and consistent with other parts of the Constitution.

The Style Committee returned each report back to the full convention in such a form that each delegate could see what changes the committee had made in the wording. The convention as a whole again went through each report section by section for acceptance or revision of the Style Committee's alterations. Each report then went back again to the Style Committee for incorporation of any further changes made on the floor. When this was done, the Style Committee made a final report to the convention on each committee report. The convention read each report by section and passed each one by a roll call vote.

After the convention had completed consideration of all reports, it again turned them over to the Style Committee which incorporated all the individually-approved pieces into one complete and consistent document. The convention then accepted the completed document on a roll call vote.

Complicated as this process was, decision-making was not easy, as was indicated by the fact that the convention reconsidered its decisions on some issues. For example, the convention changed its mind several times on the question of the size of the legislature. Unwilling to leave this to future legislative determination, the convention had trouble making up its own mind. This is hardly surprising since Montanans recognize the importance of the issue, especially those in rural areas who fear that too great a reduction in size will leave them with very inadequate representation.

Differences of opinion over what was statutory and what was fundamental law was a factor in some reconsiderations. Novelty was also a cause of some indecision. Such was the case with the proposal that the state finance the election campaigns of judges as a means of avoiding the possibility of a judge having to decide a case involving someone who had contributed to his campaign. The convention rejected the idea, accepted it in a modified form, and then rejected it completely. Some delegates felt the proposal had potential merit; but because it was untried elsewhere, they rejected it on the grounds that they could not foresee how it would actually work.

Since the proposed constitution was derived from a process that mediated among a hundred different minds, the document is not what any one delegate would have produced. It is hardly surprising, therefore, that many delegates have reservations about parts of the document. But it is a tribute to the 1972 Constitution that not a single delegate refused to sign it on March 24.

The main thrust of the proposed Constitution is toward openness and flexibility. Under the present Constitution it is difficult for the average citizen to know what is happening in Helena. In a sixty day biennial legislative session so many bills are handled so quickly that they are disposed of before the average citizen has a chance to size up the situation. It is even difficult to evaluate what has hap-

pened after the fact. Because the 1889 Constitution requires a recorded vote only on the final reading of a bill, the historical record is very incomplete. Also, the record frequently fails to reveal how representatives stand on various issues since they can take one stand in the security of the committee room while taking a completely different position publicly by "voting for the record" on the third reading of a bill.

By contrast the 1972 Constitution is intended to open legislative behavior to scrutiny. In the first place, single member districts will make it much easier for the citizen to watch how his representative is performing. Annual legislative sessions will also give citizens as well as legislators more time to identify and study the issues. Since the legislature will be a "continuous" body for two years, bills will remain alive by being carried over from the first to the second session and cannot be so readily given a quiet burial in committee. Finally, the 1972 Constitution would eliminate "voting for the record" by requiring legislators to reveal their position by public votes at all the stages which move a bill along the legislative process.

In its quest for openness the Constitutional Convention has tried to throw light upon more than just the legislative process. Two new items in Article II, the Declaration of Rights, are intended to provide citizens with information on how the administrative machinery of government is running. These items, sections 8 and 9, are the right of the citizen to participate in the operation of government and the citizen's right to know how it is being run. It is the intent of these two items to open the day-to-day operation of government to public view. Whether they will achieve this end is not known because just how they will be applied in practice cannot be foreseen at this point. Some newspapers have expressed concern that the language in the right-to-know section might actually be used to cut off information by diminishing the effect of the present open meeting law. Whether the procedures citizens and public officials and employees evolve under these new rights follow the intent will largely depend upon the vigilance of press and public. No language, no matter how carefully drawn, can be a substitute for vigilance.

The 1972 Constitution also offers flexibility. It achieves this by leaving many matters to future legislative determination. Some may regard the prospect of reliance on the legislature with fear. The fact of the matter is that ultimately there is no alternative. Also, such reliance is both necessary and democratic. It is necessary because constitutional language cannot be made to provide for all the unseen eventualities of the future. Consequently, constitutional details often do not work as intended. On the contrary, they sometimes hamper good government and result in costly litigation.

Reliance on the legislature is also one of the key elements of our democratic system. The legislative halls provide the primary arena where the political desires and needs of citizens are reflected. Of course needs and desires will be conflicting ones, but it is in our legislatures that conflicts are resolved by the kind of verbal hand-to-hand combat which is our American substitute for violence. Hopefully, dependence on the legislature — rather than the illusory safety of detailed constitutional language — will help to make our political system more issue oriented, and perhaps it will also tend to focus the spotlight on the places where the decisions are made which vitally affect the public welfare.

If the 1972 Constitution is adopted, the legislature will occupy a position of front and center on our political stage. Probably most delegates would agree that of all the changes they are offering the people those in the legislative article are of paramount importance. These reforms are the hub of all the other changes in the 1972 Constitution. Most delegates would also agree that the changes in the legislative article will enable our legislature to become a truly deliberative body.

Citizens should understand that no one can offer the 1972 Constitution as a panacea — as a cure-all for our sundry political ills. The proposed Constitution holds out only possibilities for the future. But it cannot automatically guarantee their fulfillment. Whether the possibilities become the reality of a better governmental system for Montana depends on the future effort, vigilance, and wisdom of her citizens. In a democratic system there can be no alternative to dependence on the people.

## Article by Article Analysis

### COMPACT WITH THE UNITED STATES—Article I

This statement is included to make it clear that the adoption of the proposed constitution in no way affects the validity of agreements between Montana and the federal government made when Montana became a state.

### DECLARATION OF RIGHTS—Article II

The Declaration of Rights in the proposed Constitution includes all the rights protected in the 1889 Constitution and adds a few more to the list. In putting together a new declaration of rights, the Convention took 27 of its 35 sections from the 1889 Constitution. Eleven of these were taken without change, nine of them were given only minor revision, such as changes in punctuation, or changes in wording. Seven sections were extensively revised and there are eight new sections.

Of the new sections, sections 8 and 9, the Right of Participation and the Right to Know, elicited the most discussion and debate in the Convention. A principle vital to a democratic society is the belief that activities of government at all levels should be opened to public examination. Those who supported the adoption of these two sections in the Convention believed that they are important in opening government to greater public scrutiny and that they could be vehicles for producing a new openness into our political system. Those who opposed the adoption of these two new sections did so largely on the ground that they could not see how they were going to work out in practice. The fact of the matter is that we will probably need considerable judicial guidelines before we know exactly how

these provisions will be applied in the future.

Of the other new sections, section 18 which removes the doctrine of sovereign immunity will probably be of considerable interest. This is an old legal notion which is used to protect the state from suits by private individuals. The 1889 Constitution neither provides for nor prohibits sovereign immunity. However, courts in Montana have consistently held that the state cannot be sued without its consent, even though a Montana Supreme Court Justice acknowledged the doctrine as "out-moded, harsh and unjust." Since passage of Ch. 254, Laws of 1959, the state can be sued under certain circumstances, but the courts still invoke sovereign immunity for the state. This deeply embedded doctrine can be totally abrogated only by action of the legislature or the Convention. Delegates who favored doing away with sovereign immunity contend that the state should help administer justice against itself as well as it does between private individuals. They also maintained that just as the state is required to pay for property it takes from individuals it should also be expected to compensate when its activities result in injury. In abandoning this old doctrine that the king can do no wrong, Montana is following a national trend.

Of the five other new sections, number 35 directs the legislature to show special consideration to military personnel and to veterans. Section 4 incorporates language from the 14th amendment to the Federal Constitution and prohibits private and public discrimination against individuals on the basis of sex, color or religion. This particular section will probably need support in the form of legislative enactments to be of any considerable force.

Section 10 establishes a right of privacy. The courts in Montana have recognized the existence of a right of privacy. But at a time when opportunities for invasion of privacy are increasing in number and sophistication, section 10 emphasizes that this right is essential for the preservation of a free society.

Section 14 declares that 18 is the age of adulthood for all purposes. Section 15 attempts to extend to those under 18 the procedural safeguards and rights extended adults. It stresses that when society proceeds on the assumption that minors need special treatment in the legal process it must also be careful not to abridge other rights.

Of the 7 revised sections from the 1889 Constitution, section 3 is amended by expanding the list of inalienable rights to include a right to a healthful environment, to pursue life's basic necessities, and to health. In addition to stating new rights this section also stipulates that the individual recognizes corresponding responsibilities.

Section 29 on eminent domain is amended to guarantee the citizen greater protection against the powers of the state. At present the costs of eminent domain actions sometimes fall where they do not belong, namely on the person whose property is being condemned. This section guarantees that a property owner who rejects a state offer, goes to court and succeeds in being awarded more than the state offered will be reimbursed by the state for the necessary expenses of the law suit, such as attorney fees.

Section 5 on freedom of religion amends the 1889 provision by substituting the language of the Federal Constitution for the language of the old Constitution. In doing so it eliminates language





which reflected an anti-Mormon bias.

By dropping language from the old provision on habeas corpus the Convention, in section 19, is proposing that the right of habeas corpus can never be suspended by the government under any circumstances.

Section 28 on the rights of the convicted has a new provision which automatically restores an ex-convict's rights upon the termination of state supervision over him. At present an ex-convict has to secure a governor's pardon or full restoration of citizens' rights. The Convention felt that this system is a kind of perpetual punishment which is not in harmony with the idea of punishment for the purpose of rehabilitation.

Most of the revisions did not elicit much difference of opinion in the Convention. One exception to this is the new portion of section 16. A new sentence restores the workman's compensation law to what it was before passage of Chapter 49, Laws of 1965 as interpreted by the state Supreme Court. Those who opposed inclusion of this sentence maintained that it was statutory in nature and should have been left to the legislature. Supporters of its inclusion felt that the worker's right to pursue adequate compensation for industrial accidents is a basic right which should be recognized in the Constitution.

One of the sections taken intact from the old Constitution also elicited debate. This was section 12, the right to bear arms. There were some who wanted the Convention to amend the 1889 provision by adding a prohibition against any future registration of guns by the state. A majority of the Convention rejected the amendment on several grounds. Those who opposed the amendment insisted that no other state constitution contains a stronger guarantee of the right to bear arms. They also expressed their belief that there is no likelihood of a movement for state registration of guns in Montana. The push for gun registration is coming from the federal level, and no language in the state Constitution can limit federal action on this subject.

#### GENERAL GOVERNMENT—Article III

The matters dealt with under General Government appear in Articles IV, V, X, and XIX of the 1889 constitution. The changes in sections 1, 3, 6, and 7 amount to very minor stylistic changes. Section 2, Continuity of Government, eliminates obsolete language from several sections of Article X in the 1889 Constitution on the location of the capitol and revises language of section 45 of Article V.

There are, however, some important changes in section 4 and 5 on the initiative and referendum. The purpose of these changes is to make it easier for the people to use these devices of direct participation in government. In the initiative process the percentage of signatures required for initiative petitions is reduced from 8 per cent to 5 per cent, and the number of representative districts in which this minimum number of signatures must be secured is reduced from 2/5 to 1/3. The amount of time required for the petitions to be in the hands of the Secretary of State is reduced from 4 months to 3 months. In the sections dealing with both the initiative and referendum the word "counties" is replaced by the phrase "representation districts" because counties are no longer necessarily the same as representative districts. The referendum process is liberalized slightly by a reduction of the number of representative districts from which the minimum number of signatures must be secured from 2/5 to 1/3. The prohibition of the governor's veto power over initiative and referendum measures is moved to the executive article.

Another important change in this article is removal of the old prohibition against initiating constitutional amendments. Using procedures established in article XIV of the proposed Constitution, citizens will be able to initiate constitutional amendments. Section 8 is necessary to distinguish the process of initiating laws from initiating constitutional amendments.

The proposed article does not include a description of boundaries which appears in the 1889 Constitution. The Convention decided a statement on boundaries is not necessary since federal law will prevail in this area.

The Convention considered including a recall provision to enable citizens to remove an office holder prior to the next election for his office. Proponents of the recall felt that it was an important source of citizen control over his government. A majority felt that the recall could be used for the purpose of harassing public officials and that it was not really a necessary device in view of the fact that elections will be held frequently. The omission of the recall will not effect existing statutory provisions for recall of municipal officers. However, the omission probably means that the legislature cannot establish statutory provisions for recall of constitutionally elective officers.

Section 9, the final provision in the General Government Article, revises the language that presently appears in Article XIX, section 2 of the Constitution by adding the word "gambling." If item 3B on the ballot carries in the election this language will remain in the Constitution. On the other hand, if 3A carries this particular section will be stricken from the Constitution.

#### SUFFRAGE AND ELECTIONS—Article IV

This section covers the subject matters dealt with in Article IX of the 1889 Constitution. The proposed article eliminates sections 3, 5, 6, 10, and 12. These sections are either obsolete, purely statutory in nature, or have been superseded by federal action on the subject.

The first section of Article IV is a very simple amendment of the first section of Article IX of the 1889 Constitution. The amendment adds the word "secret." It will come as a surprise to many people that the 1889 Constitution does not guarantee a secret ballot.

Section 2, of this article revises the second section of Article IX of the present Constitution in several important particulars. It lowers the voting age from 19 to 18 to accord with the 26th amendment of the Federal Constitution, eliminates language that the United States Supreme Court has declared unconstitutional, and deletes the one-year residency requirement for voting. It also eliminates the current provision that deprives a convicted felon of the right to vote unless pardoned or restored to citizenship by the governor.

Section 3, Elections, revises the old language by allowing the legislature to schedule elections and to establish residency and other requirements. It also includes a new reference to the establishment of poll booth registration. This particular language reflects the feeling of the Convention that residency requirements which sufficed in the past have become too restrictive in a mobile society. Some delegates wanted the Convention to include a mandatory requirement that citizens be allowed the right of poll booth registration such as exists in North Dakota by statute. Other delegates felt that this particular subject should be left to legislative determination since it is statutory in nature. The language that appears in section 3 is a compromise which does not require the legislature to establish a poll booth registration system but urges it to do so.

Section 4 combines revised language from several different sections of Article IX of the present Constitution. This section allows the legislature to impose special qualifications for certain offices, such as requiring the Attorney General to be a licensed attorney. The last clause pertaining to felons was added in order to make this section consistent with section 28 of the Bill of Rights. It does this and at the same time makes it clear that a convict cannot hold office while serving a penalty.

Sections 5 and 6 of this article are taken from the 1889 Constitution with some minor stylistic changes.

#### THE LEGISLATURE—Article V

While some of the comments which follow apply only to the bicameral Legislative Article which appears in the body of the Constitution, most of the sections in the bicameral and unicameral alternatives are identical. The basic differences between the two appear in the first three sections of each article. These differences will be noted below.

The proposed Legislative Article is much shorter than the legislative article in the 1889 Constitution—some 14 sections compared to 44 effective sections. This brevity is achieved by the omission of 19 sections and the relocation of some provisions to other articles of the Constitution. Most of the sections that have been omitted deal with procedural matters which can be covered by legislative rules or statutes. Several long sections in the 1889 Constitution which deal with questions of ethics and conflict of interests are replaced in the proposed Constitution by Article XIII, section 4 which requires the legislature to establish a code of ethics for legislators and other public officials.

Unlike the 1889 Constitution which is silent on the subject, the proposed Legislative Article sets limits on the size of the legislature. The Senate will be no larger than 50 nor smaller than 40. The House will be no larger than 100 nor smaller than 80.

The proposed article deletes the requirement that the legislature shall meet on the first Monday in January. This will enable the legislature to determine its own calendar. Age qualifications for the House and Senate are deleted since eligibility for public office is covered in section 4, Article IV. The required one-year residency in the state is retained but residency in the county or district is reduced to six months. One interesting new twist in the area of residency requirements is that in those counties which contain more than one representation district a candidate for the legislature need not necessarily be a resident of the district for which he is running.

New provisions appear in section 6 dealing with sessions of the legislature. The legislature will meet annually rather than biennially in sessions of sixty legislative days rather than sixty calendar days. The legislature may increase the limit on the length of a subsequent session of the legislature. Also new is the provision that the legislature, as well as the governor, can call itself into special session by a majority vote of its members. New language also states that the legislature will be a "continuous body" for a two year period. The intention of "continuous" is not that the legislature will sit without interruption for two years but that it will continue to have legal existence even when not in session. This will make it possible to keep a bill alive from the first session of a biennium to the second session, thereby reducing the opportunity of giving bills a quiet burial in committee.

Many of the provisions of the Legislative Article are taken over with stylistic changes and revisions from the 1889 Constitution. This is the case on such subjects as the power and structure of the legislature, the terms of office for legislators, compensation, vacancies, immunity, disqualification, organization, procedure of the legislature, and regulations pertaining to bills.

However, in a few of these areas there are some important changes which are designed to provide a greater opportunity for the public to scrutinize legislative behavior. The Convention felt that the public's right to information on what the legislature is doing outweighs any need for secrecy. Accordingly, the proposed Legislative Article omits language in the present Constitution which allows the legislature to hold secret sessions. Further, section 10, subsection 3, stipulates that all committee meetings, hearings, and sessions of the legislature must be open to the public.

Paralleling these two changes is a new provision in section 11, subsection 2, which requires a recorded vote on bills in committee and committee of the whole. Under the 1889 Constitution a recorded roll call vote is required only on the final reading of a bill. The purpose of this change is to prevent the practice of "voting for the record." As it is now a legislator can take a position on the final roll call vote different from the position he took on a bill in committee.

Section 10, subsection 4 acknowledges the legislature's right to establish a legislative council and a legislative post-audit committee. This particular provision was put in the Constitution to overcome any doubt that may remain about the legislature's constitutional authority to maintain interim committees between sessions of the legislature. The legislative post audit committee is recognized in order to make it clear that retention of the State Auditor as a con-

stitutionally elective office was not intended to curtail the State Auditor's power to conduct legislative post audit investigations.

Another important innovation is section 14 which creates a Reapportionment Commission to assist the legislature in legislative reapportionment. This five-member citizen commission is set up to be bipartisan and to function whenever the federal government provides new census data on the distribution of population within the state. In creating the commission the Convention recognized that the problem of reapportionment has been very difficult for the legislature to deal with because of the important political ramifications of apportionment. The apportionment commission will cease to function after the adoption of each apportionment plan.

The Legislative Article also embodies minor changes in several other areas. In the first place, vacancies in the legislature will be filled by special election unless otherwise provided by law. The Convention felt that with single member districts in use, special elections would not be too difficult or too costly. On the other hand, if the practice of special elections fails to work out as intended, the legislature can still provide for a method of appointment. There are also several proposed changes in the area of impeachment. The legislature would be allowed to select a body other than the Senate as a tribunal for hearing impeachment proceedings. Another change requires a 2/3 vote of the House of Representatives to begin impeachment proceedings rather than the simple majority vote at present.

The basic differences between the unicameral and bicameral legislative articles appear in the first three sections of each article. Obviously, in the case of the unicameral legislature there would be one chamber instead of two. If the electorate adopts the unicameral option the legislature will be no smaller than 90 nor larger than 105. Legislators under the unicameral article would be called Senators and they would all have four-year terms. However, their terms would be staggered—half the members would be elected every two years.

The unicameral article has a fifteenth section which stipulates that if the voters adopt the unicameral option they will be doing so only for a six-year trial period. This section requires a referendum vote in 1980 on the question "shall the unicameral legislature form be continued?" If the electorate in 1980 were to vote yes, then, of course, nothing would change. On the other hand, if the voters voted no the bicameral legislative article will be plugged into the Constitution.



#### THE EXECUTIVE—Article VI

The proposed Executive Article deletes some language from the 1889 Constitution. It eliminates unnecessary directives to the legislature on matters pertaining to the militia in Article XIV and obsolete language about military reservations in Article II. Of greater significance, it also omits some matters in the present Article VII, the Executive Article. The proposed Article eliminates the Board of Examiners, the Board of Pardons and Board of Prison Commissioners, State Examiner and State Treasurer. Two of these boards, the Board of Prison Commissioners and the Board of Examiners, are ex officio boards. The former has no duties assigned to it by law and the latter meets infrequently and has few duties left to it. A Board of Pardons exists by statute and presumably will continue to do so. The State Treasurer will remain an elective office until such time as the legislature chooses otherwise. The State Examiner's office will also continue by statute. Most of the rest of the omitted language has had no great significance. For example, the dropping of section 18 of Article VII removes an unnecessary directive on the use of the state seal.

Most of the provisions in the 1889 Constitution on executive officers, their duties and election, are retained in revised form. Language has been shortened and clarified. Some of the minor changes pertain to qualifications for office. The required age for Governor, Lieutenant Governor, Superintendent of Public Instruction and Attorney General is reduced from 30 to 25. As an additional requirement the Attorney General must have been admitted to law practice in Montana and have had five years experience practicing law. The proposed Article also makes it clear that the legislature may provide additional qualifications for the office of Superintendent of Public Instruction.

Some of the more important changes pertain to the Lieutenant Governor. The proposal conceives of the Lieutenant Governor's off-

as a full time job in the executive branch. In keeping with this idea, the Lieutenant Governor would no longer be the presiding officer of the Senate. Instead, the Governor can assign the Lieutenant Governor non-constitutional executive duties, and the legislature can also assign other duties to him. To insure compatibility the proposal requires candidates for Governor and Lieutenant Governor to run as a team.

Another change consistent with the idea of the Governor and Lieutenant Governor working closely together allows the Governor to appoint a successor for the remainder of the term if the Lieutenant Governor's office becomes vacant. However, in the case of other constitutionally elective offices, a gubernatorial appointee holds office only until the next general election when the office is filled by a vote of the people.

The proposed Executive Article attempts to improve upon the 1889 Constitution in the area of succession and disability in the Governor's office. If the Governor-elect were to die or become disqualified and fail to take office, the Lieutenant Governor elect would become the Governor. The Convention included this provision because courts in some states have ruled that the incumbent governor continues in office.

New material on the determination of disability of the Governor is based largely on the 25th amendment to the United States Constitution. The present Constitution is very vague on what happens when the Governor is disabled. The new material attempts to spell out the procedures for determining when a Governor is disabled and when his disability has ended. It provides that the Lieutenant Governor will be the acting Governor when the Governor is disabled.

Another change deletes the requirement that the Lieutenant Governor becomes the acting Governor as soon as the Governor leaves the state. The Convention felt that with modern communications it was not necessary for this to be the case. However, the Governor may ask the Lieutenant Governor to become acting Governor and if the Governor is absent from the state for more than 45 consecutive days the Lieutenant Governor automatically becomes acting Governor.

The proposed Article includes several changes in the Governor's veto power. It removes his veto power from proposed amendments to the Federal and State Constitution and resolutions of the legislature. Since constitutional changes require a 2/3 vote of the legislature, there seems to be little need for a check in the form of a veto. Since resolutions merely express the sentiments of the legislative body, it seems inappropriate to allow the governor to veto such matters.

The section on the veto eliminates the pocket veto and increases from 15 to 25 the number of days the Governor has to consider bills left with him by the legislature when it adjourns.

The proposal gives the Governor a new power of amendatory veto. Under the present system, he can either sign a bill or veto it. The amendatory veto gives him a third alternative. Vetoes bills are seldom overridden, yet governors have had to veto meritorious bills on technical grounds. The amendatory veto is designed to meet this situation. If the governor thinks a bill has merit but he has minor or technical objections to it, he can send it back to the legislature so that it can consider incorporating the Governor's suggested changes.

Subsection 2 of Section 5 removes an ambiguity from the present Constitution by making it clear that an executive officer may run for some other public office during his term. But it also deletes the prohibition against increasing the salary of an executive officer during his term of office. The Convention felt that during times of inflation this provision can result in some injustice and that the legislature can be trusted not to set executive salaries too high. (Article XIII, section 3 contains an additional provision on salaries.)

The proposed Executive Article makes several changes in the section on the militia. One specifically allows the governor to call out the militia in the event of extreme natural disaster for the purpose of protecting life and property. Another change omits any reference to age and sex qualifications. This enables the legislature to determine what citizens are members of the militia and it would also allow the enlistment of women.

#### THE JUDICIARY—Article VII

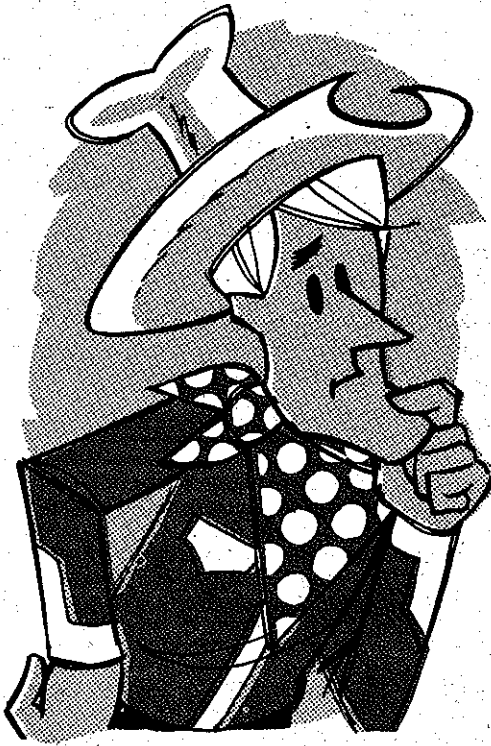
A comparison of the 1889 Judicial Article with the proposed Judicial Article reveals that the latter is much briefer—11 sections compared to 37. The Convention achieved this brevity by eliminating obsolete language which was needed for transition to statehood, archaic wording, description of judicial districts and references to such things as "calendars."

The Article is also shorter because some provisions are omitted. For example, the requirement in the 1889 Constitution that supreme court judges be paid quarterly is eliminated. Also omitted are all references to the Clerk of the Supreme Court, County Attorney and Clerk of the District Court. Though it would no longer be a constitutional office, the office of Clerk of the Supreme Court would continue under the statutes. Both the offices of County Attorney and Clerk of the District Court are covered in section 3, subsection 2, Article XI of the proposed Constitution.

Some of the material retained from the 1889 Constitution is amended. For example, the legislature will be able to increase the size of the court from the present five to seven if an increase in work load warrants it. The Supreme Court's control over admission to the bar and over the conduct of the members of the bar is made explicit. Another provision gives the legislature the power to review rules of procedure as prescribed by the Supreme Court. Another requires all Supreme Court decisions to be in writing. Terms of office at all three levels of our judicial system will be increased by two years. Supreme court justices will go from six to eight, district court judges from four to six and Justices of the Peace from two to four.

Qualifications for judicial office are altered somewhat. As is presently the case for supreme court justices, candidates for district court judge must be a resident of the state for two years. The age requirement for both supreme court justices and district court judges is dropped. But the addition of five years of experience in legal practice as a requirement for both positions imposes a practical age requirement. Judges will be allowed travel expenses incurred in the course of their work. The present provision that absence from the state for more than 60 consecutive days results in forfeiture of office is retained and to it is added the provision that a judge who files for any other public office automatically forfeits his office.

There are several changes with respect to Justices of the Peace. Election of justices of the peace by township is eliminated. Each county will elect at least one justice of the peace. The legislature is



explicitly given the power to provide for the election of additional justices of the peace in each county. The section on justice courts states that the legislature may provide for training and qualifications for the office. And it also directs the legislature to provide proper facilities so that justices can perform their duties in dignified surroundings.

New provisions for filling vacancies in the courts and for the election of judges will probably interest many people. The new provisions not only retain the right of citizen choice but actually enhance that choice by making it more effective. That we elect our judges under our present system is only partly true. The fact of the matter is that most of the incumbent supreme court and district court judges originally received their positions through gubernatorial appointment. Once appointed, judges more often than not have retained their positions through uncontested elections. To some extent this system makes an illusion of the elective system.

Under the proposed Judicial Article the Governor's choice of men to fill vacancies will be limited. He will have to designate his nominee from a list of nominees selected by a process to be prescribed by law. Unlike the present system, the Governor's choice is then subject to confirmation by the Senate. This method of filling vacancies is a modified type of merit selection.

The election process for judges is also changed. Under the present system an incumbent judge who runs unopposed is automatically elected. Under the proposed system if no one files against an incumbent judge, his name will be put on the ballot in such a way that citizens will be given the opportunity to indicate whether they wish to retain him or not. If the judge is rejected by the people, the office will be vacant and will be filled in the manner provided for filling vacancies. This retention or rejection of the judge is a modification of the merit retention system.

If someone files against an incumbent judge an election will be held as is presently done. If an incumbent judge chooses not to run the seat will be filled by election as at present.

One other totally new provision in the Judicial Article is the establishment of a Judicial Standards Commission. Under the present Constitution, the only method of removing a judge is by impeachment—a difficult process and one that has seldom been employed. The purpose of a Judicial Standards Commission is to provide an alternative method of removing a judge whose work is substandard. The commission will be a five member body representing bar, bench and lay citizens. It will investigate any complaints made against a judge. After investigation the commission will report to the Supreme Court. If the decision is that a judge's behavior is below judicial standards the Supreme Court will have several options. If the judge cannot carry out his work satisfactorily because of disability the court will be able to retire the judge. Otherwise, the court may censure a judge or remove him from office.

#### REVENUE AND FINANCE—Article VIII

Probably in no part of its proposal has the Constitutional Convention more clearly revealed its faith in our democratic system than in the Revenue and Finance Article. The essence of that democratic faith is a belief in the capacity of the people to choose legislators who will have the ability to deal satisfactorily, fairly, and honestly with problems. Detailed constitutional restrictions, especially in the area of revenue and finance, reveal a lack of faith in the democratic process. Moreover, such limitations on the legislature's discretion seldom work very long as they were intended, because we overcome constitutional obstacles with subterfuges. Thus, the Article on Revenue and Finance reflects a faith in the democratic process by what it leaves out as well as what is in the proposal.

What will most likely first strike the faint-hearted is the absence of specific debt limitations for state, counties and other local units of government as they appear in Article XIII of the 1889 Constitution. Specific dollar debt limits have not restricted our spending because the amounts are no longer realistic. We get around the limits by resorting to revenue bonds which, in the long run, increase the cost of incurring indebtedness.

The proposed Constitution omits any specific dollar limit because the Convention felt it could not possibly foresee future needs and, accordingly, could not realistically set a dollar limit. In place of any specific dollar amounts section 8 of the proposed Article stipulates that no state debt can be incurred unless authorized by 2/3 vote of the legislature or a vote of a majority of the people themselves.

The detailed restrictions on indebtedness of local units of government are replaced by section 10 of the proposed Article. This section requires the legislature to determine debt limits for all local units of government by statute. The proposed Article also omits sec-

tion 4 of Article XIII of the 1889 Constitution which forbids the state from becoming involved with local indebtedness. This restriction increases the cost of local government indebtedness by raising interest rates. Removal of this provision will allow the legislature to work out procedures for backing bonds of local governments with the full faith and credit of the state. This will result in significant savings through lower interest rates.

The proposed Article omits the 2-mill statewide limit on property tax. At present, and in recent years, property taxes have provided a very small proportion of state revenue sources. It is not the intention of this omission to suggest that the state should turn to property taxation for revenue for state purposes.

The 2 mill levy is omitted in anticipation of future needs in the area of school financing. On August 30, 1971 the California Supreme Court announced its decision in *Serrano vs. Priest*—a decision which has far reaching implications. This case involved the problem of gross inequalities in local financing of schools. While the doctrine embodied in *Serrano vs. Priest* is not yet the law of the land, it has received application in Texas, Minnesota and New Jersey. Some studies indicate that school financing inequities in Montana are as great as some of those where the *Serrano* doctrine has been applied. It is, therefore, very likely that in the not too distant future, Montana will have to re-examine its entire school financing situation. Among the possible solutions to problems raised by the *Serrano* decision is the substitution of statewide mill levies for local levies in the financing of schools. Omission of the 2 mill levy opens this option in school financing in Montana.

While the state does not rely heavily on property taxation for its own purposes it is very much involved in the administration of the property tax. Despite the fact that the 1889 Constitution contains extensive details on state administration of property taxation and commands that we shall have property tax equalization within and among counties, the present system has not achieved property tax equalization. In fact, the existing system has built-in pressures for competitive underassessment among counties.

At a time when the *Serrano* decision has brought into sharper focus the need for achieving property tax equalization, the proposed Article opens the door to equalization by leaving the details of administration to future legislative determination. For the time being the present system of county boards of equalization and the State Board of Equalization will continue by statute. But the deletion of details provides flexibility for meeting future needs. Hopefully the legislature can improve methods of property tax administration.

Another important change appears in section 7 which calls for the creation of a new tax appeals system substantially different from the present one. Under the present system, an aggrieved taxpayer can appeal to the county board of equalization and then to the State Board of Equalization. Both boards have to be involved in approving the initial assessment. This means that an administrative body sits in judgment of its own acts, a procedure which does violence to American notions of justice and fairness. Section 7 requires the legislature to establish an independent appeals system at both the local and state level.

Other important changes are made in the 1956 Antidiversion Amendment which earmarks gasoline taxes for highway construction. Automobile registration fees are omitted from the list of earmarked revenue sources. Other changes allow monies to be spent on roads and street systems of local units of government and for programs of highway safety and driver education. A significant change allows diversion of the earmarked highway funds to other purposes by 3/5 vote of the legislature. Delegates who opposed this change maintained that the legislature, being hard pressed for funds, will be tempted to divert monies from highway construction to other purposes. Since agencies with earmarked funds tend to develop a high degree of independence, a majority of delegates insisted that this change is needed to make the highway department more responsible to the legislature.

Some other significant changes appear in section 5 on property tax exemptions. Subsection 1 retains property tax exemptions pretty much as they are in the present Constitution. But a new clause makes it clear that any private interest in exempted property may be taxed separately. This closes a loophole in the present Constitution. Another new clause permits assessments on exempt property for the cost of services and special improvements when the exempted property benefits from them.

Section 5 also authorizes the legislature to exempt other properties. The present Constitution requires that all property must be assessed for tax purposes. This provision is very difficult to enforce and encourages dishonesty because it is difficult to get certain kinds of property on the assessment rolls. Section 5 will permit the legislature to exempt certain kinds of property and employ other forms of taxation when the only alternative is evasion of the law.

Section 13 of the proposed Article is a substitute for Article XXI of the present Constitution—the Trust and Legacy Fund. Although this Article clearly intended to establish a unified investments program for the state such a program was not established until 1972 under the Executive Reorganization Act. Article XXI is long, confusing and full of obsolete provisions which have never been implemented. Proposed section 13, by contrast, is a simple substitute. It too calls for a unified investments program for public funds including state help in investing funds of local units of government. The monies of various retirement systems and the funds derived from Federal Land Grants for education are clearly differentiated from investment purposes. Under the proposal it will be possible to invest some retirement monies in corporate securities. On the other hand, monies of the public school fund and the university system will continue to be invested in securities of the United States, the State and its subdivisions, or other securities that bear a fixed rate of interest and are approved by the legislature.

While guaranteeing that taxes will never be used for any purpose other than a public one, sections 1 and 2 of the proposed article allow the legislature freedom to establish the state's tax structure by not mentioning specific kinds of taxes. Although the state has an inherent power to tax, enumeration of specific taxes in the Constitution can be interpreted as a prohibition on the use of taxes other than those listed. Deletion of specific taxes provides flexibility for the future and makes it possible to adopt kinds of taxes which are now only dimly perceived or unforeseen. It also recognizes the probability that we will not be forever wedded to the existing family of taxes.

The remainder of the proposed Revenue and Finance Article carries over many principles and ideas from the 1889 Constitution. For example, the last sentence in section 8 and all of section 9 indicate the Convention's desire to retain the principle of a balanced budget. Similarly, the language in sections 4, 11, 12 and 14 indicate a determination to adhere to a prudent use of money. Finally, the provision for special livestock assessments is retained but is relocated in subsection 2, section 1, Article XII.



**ENVIRONMENT AND NATURAL RESOURCES—Article IX**

Most of the material in this Article is new. Sections 1 and 2 reflect a concern with and a determination to protect Montana's environment. They direct the legislature to take necessary steps to preserve the environment and to conserve the state's natural resources by preventing a headlong waste of them. The Convention, of course, recognizes that Montana's non-renewable resources must be used for man's benefit but it showed particular concern about the methods which will be used to mine Eastern Montana's tremendous coal reserves. Section 2 reflects a determination to prevent that portion of the state from being turned into a wasteland of stripping banks.

Section 3 deals with water rights. Employing language which cannot be more emphatic, subsection 1 recognizes all existing water rights. Subsection 2 is taken over from Article III, section 15 of the present Constitution with only slight changes in wording. Subsection 3 recognizes the existing fact of state ownership of all water. Recognition of state ownership is not new and in no way does it affect past, present, or future appropriations of water for beneficial uses. This section is included to establish Montana's claim to its waters in order to protect the state from appropriation of its water by the Federal Government or downstream states. The last subsection on water is a new provision which requires the state to establish a centralized record system on water rights. It will in no way effect the existing system of local records.

Section 4 is a new section which reflects the concern of a growing number of Montana citizens with the destruction of historical sites, particularly ghost towns and archeological sites. As tourism increases in volume, the prospect is a faster rate of devastation. This section reflects a desire to prevent heedless ruin of our historical sites and monuments.

Some delegates wanted the Constitution to recognize the environment as a public trust but a majority felt that the idea of a public trust was too vague to be embodied in the Constitution. A minority also wanted to extend to Montana's citizens the right to sue on environmental matters. Under existing law an individual has to show injury before he can begin legal proceedings. A majority of the Convention felt that Montana's present statute providing for class action provides ample avenues for legal action.

**EDUCATION AND PUBLIC LANDS—Article X**

Although the material in this article is largely taken from the 1889 Constitution with revisions in style and wording, there is a significant change in the area of administering education. The 1889 Constitution provides for a single board of education to oversee public education. Sitting as a board of regents the same group supervises the university system. Under this proposal there will be two distinct boards—a Board of Public Education to supervise public education and a Board of Regents for the university system.

The Convention felt that the responsibility of administering both public and higher education was a heavier load than one agency could handle adequately. With separate boards each will have more time to supervise education in its area. Also, problems at the two levels of education are sufficiently different to warrant separation. This circumstance is recognized by the fact that all but two states have separate boards.

Both boards will be made up of seven members appointed by the Governor and confirmed by the Senate. All will serve overlapping terms as provided by law. There are several changes in the makeup of the boards. The Attorney General will no longer be an ex officio member of the boards. The Governor and Superintendent of Public Instruction will be ex officio non voting members of both boards. Another change is the establishment of the office of Commissioner of Higher Education. The exact nature of this office will depend on how the regents define his duties and powers, but he will also be an ex officio non voting member of the Board of Public Education.

The two boards will sit together as a single state Board of Education for coordinating education at all levels and for determining budget requests.

Section 1 recognizes, for the first time in our fundamental law, the special position of the American Indian and his contribution to our cultural heritage. It recognizes equality of educational opportunities as a basic right and at the same time emphasizes that such opportunities shall be of a high quality. It commits the state to the responsibility of achieving these two goals of quality and equality.

Sections 4, 5 and 11 dealing with public school lands and the public school fund contain some revisions. Membership on the state Board of Land Commissioners will be increased from four to five with the addition of the state Auditor. The board is clearly given the power to exchange state lands for other lands when it is to the state's advantage. The proposed Article also omits the land classification system specified in the present Constitution and leaves the manner of classification up to the legislature.

There are also several changes in the method of distributing interest and income monies from school land and from investment of the public school fund. The requirement that interest and income monies shall be "equitably apportioned" replaces the present distribution of the monies on the basis of the number of children between 6 and 21 in each school district. This change will save between \$53,000 and \$55,000 each year by eliminating the need for a special school census. A second change includes high schools among the beneficiaries of the monies.

Section 6 of the proposed Article contains the prohibition in the 1889 Constitution against state aid to sectarian schools with only minor style revisions. Subsection 2 of section 6 is a new provision which was added to make it clear that while the state itself will not provide any funds for sectarian schools it can act as an agent for the distribution of federal funds to non-public schools. This change recognizes existing practice but removes any doubt about its constitutionality.

Section 8 is a new provision which guarantees local control of school districts. The present Constitution does not contain such a guarantee. This section also omits language in the present Constitution which requires special elections for school district officers. This change will make it possible to save considerable sums of money by holding school elections in conjunction with other elections.

**LOCAL GOVERNMENT—Article XI**

This Article offers flexibility, accountability, and economy. If citizens wish to alter the structure of their local government, the proposed article offers flexibility by providing broad options so that local government structures may be tailored to fit local needs. Accountability is assured by the fact that no future changes in any local government can be made without the approval of the voters. The article also offers economy. In availing themselves of opportunities for restructuring local governments, citizens are given the chance to economize by ending needless duplication of offices and services.

Like the 1889 Constitution the proposed article guarantees existing county boundaries and location of county seats. On this subject the proposed article differs from the 1889 Constitution in one respect. At present the people can alter county boundaries or change the location of county seats by a vote of a majority of the qualified electors. The proposal makes it easier to make changes by requiring a majority of those voting rather than a majority of qualified electors.

Section 3 of the proposed article is a replacement for section 7, Article XVI of the 1889 Constitution with a very decided shift in emphasis. The provision in the present Constitution clearly indicates that local governments are creatures of the legislature. Subject to a vote of the people, the legislature can create, alter, or abolish local governments as it wishes. The emphasis of this new section is to have the legislature provide as many options as possible for structuring local government so the people can decide locally the kind of government they wish to have. Section 3 guarantees that one of the options the legislature must provide for county government is the traditional one with the present list of county officers. This section retains from the present Constitution the power of the county commissioners to consolidate county offices and adds a new provision which allows commissioners of two or more counties to combine offices by establishing elective offices for a multi-county area.

Section 4 contains new provisions which are intended to expand the powers of those local governments which choose to retain their traditional forms. In construing the powers of local governments, courts generally will deny a questionable power if there is any doubt in the court's mind about the existence of the power. Courts in Montana have been particularly restrictive in their interpretation of the powers of county governments. This section attempts to alter this situation by specifically extending legislative power to counties and by urging that the powers of all local units of government be liberally construed.

Sections 5 and 6 provide citizens who wish to depart from traditional forms of local government the chance to do so through self government charters. Section 5 directs the legislature to establish procedures for local governments to adopt charters. If the legislature fails to provide such procedures, citizens will still be able to adopt charters through initiative or by special elections set up by local officials. No self government charter can go into effect unless it is approved by a majority of those voting on the question.

Section 6 provides that local government units which adopt self governing charters will have all powers not specifically denied by the constitution, state law, or their own charters. This reverses the present situation of local governments having only those powers specifically granted to them. This is the concept of shared powers that is used in Alaska, South Dakota, Missouri, Massachusetts and Pennsylvania. It does not leave the local unit free from state control but it does grant those powers which have not been denied by the Constitution, the law, or its own charter.

Section 7 is a broad authorization to all local units of government to cooperate in the exercise of power and in the sharing of public officials and physical facilities unless they are prohibited from doing so by law or by their own charters. It also specifically allows people to secure cooperation among local governments through initiative process in the event that local officials fail to take action.

Section 8 provides a constitutional guarantee for direct legislation at the local level through the initiative and referendum. The actual operation of the initiative and referendum will be left to statutory law.

The most unique feature of the Local Government Article is section 9—a new provision which requires the legislature to establish procedures for citizens periodically to re-examine the structure of their local governments and to have the opportunity to vote on at least one alternative form of government. The first review of local governments will occur four years after the ratification of the Constitution. Thereafter, there will be a review every ten years. This will familiarize citizens with the numerous options of local government available to them and provide them an opportunity to fashion local governments to meet their particular needs.

**DEPARTMENTS AND INSTITUTIONS—Article XII**

Most of the provisions in this Article are revisions of material in the present Constitution. Sections 1 and 2 guarantee that among the 20 departments listed in the Executive Article there will be departments of Labor and Agriculture. The section on agriculture amends

the present Constitution in several particulars. Omission of any reference to a Commissioner of Agriculture frees the legislature to head up the Department of Agriculture as it sees fit. The provision in the present Constitution for special livestock levies is retained but the limitation of 4 mills is omitted. The amended provision will allow special levies on agricultural commodities as well as livestock.

Section 2 retains the 8-hour day provision of the present Constitution in a revised form which will enable the legislature to recognize special situations such as the need for longer working days in the construction industry during good weather.

Section 3 on institutions and assistance revises the present Constitution by omitting reference to the specific kinds of institutions the state will maintain and by deleting reference to "several counties". The omission of reference to counties leaves to the legislature the determination of the amount of public assistance and the means by which it will be supplied.

Subsection 2 of section 3 is a new provision which declares that a citizen who is admitted to a state institution retains all his rights that are compatible with being in the institution. It also stipulates that upon release from state supervision the citizen receives an automatic restoration of all rights without any expensive or humiliating legal proceedings.

**GENERAL PROVISIONS—Article XIII**

Subsection 1 of section 1 retains from the 1889 Constitution the legislature's power to pass laws affecting corporations as long as the laws are general in their application. Subsection 2 is a new provision which directs the legislature to pass new laws for protection of consumers. Subsection 3 is a new provision which is intended to protect the sanctity of contractual obligations.

Section 2 is a new section which requires the legislature to create the office of Consumer Counsel to represent customers of public utilities. The Public Service Commission acts as a referee between utility companies and their customers at rate hearings. The customer's interests are not adequately represented if they are unable to hire their own counsel and experts. With this provision the state guarantees that the customer's side is represented. The cost of supporting this new office will be defrayed by a special tax on utility companies whose rates are set by the Public Service Commission.

Another new provision appears in section 3 which directs the legislature to create a Salary Commission to help the legislature determine the salaries of elected public officials. Because it fears being regarded as a spendthrift body, the legislature is reluctant to increase salaries. Consequently, Montana's officials are sometimes paid less than officials in comparable states. The Salary Commission will inform the legislature of prevailing salaries and help retain public confidence in the legislature when it acts on salary matters.

Section 4 is a new section which replaces four sections of the present Constitution which define bribery, corrupt solicitation and conflict of interest. This section directs the legislature to pass laws to define ethical and unethical conduct and to define conflict of interests for legislators, elected officials, and public employees.

Section 5 and 6 are taken verbatim from the present Constitution.

**CONSTITUTIONAL REVISION—Article XIV**

This Article retains a revised form of the provisions in the present Constitution on constitutional amendments and constitutional conventions. It also includes some new provisions on both subjects. The revisions and the new language are designed to make it easier for the people to secure constitutional change.

The present provisions for submission of constitutional amendments to the people through the legislative process is retained with two changes. The 1889 Constitution allows the legislature to put only three proposed amendments on the ballot at each general election. The proposed article omits any specific limit on the number of amendments that may be submitted at an election. If more than one amendment is submitted the only requirement is that each one be clearly designated on the ballot so that they can be voted on separately.

It should prove easier for the legislature to put amendments on the ballot under the proposed article. The present Constitution requires a 2/3 vote of members of each house of the legislature for submission of constitutional amendments to the people. The proposal changes this to a 2/3 vote of the total number of legislators rather than the 2/3 vote of members of each house.

Citizens will have an alternative to members of legislative submission. A new provision allows the people to secure constitutional amendments through the initiative process by directing the Secretary of State to put a constitutional amendment on the ballot if initiative petitions include the necessary and sufficient signatures.

Similarly, another new provision enables the people to initiate a referendum vote on the question of calling a constitutional convention. The process of using the initiative for securing constitutional changes either through amendment or by convention is more difficult than initiating statutory law. Petition signatures must represent 10% rather than 5% of the electors in 2/5 rather than 1/3 of all legislative districts.

The legislature will retain its power to call a constitutional convention and it will be able to do so by a 2/3 vote of all legislators rather than a 2/3 vote of each house, as at present. But the legislature will not be able to restrict the purpose of any future constitutional convention it calls because inclusion of the word "unlimited" in section 1 of the proposed article makes it clear that the legislature cannot confine the work of a convention to a limited purpose.

Another change allows the legislature to decide whether delegates to a future constitutional convention will be elected on a partisan or non partisan basis. As interpreted by the Montana Supreme Court, the 1889 Constitution requires partisan elections.

In its revision of the present Constitution, section 7 of the proposed article permits more freedom in setting up the calendar for constitutional change by the convention method by omitting the present requirement that a constitutional convention must meet within three months after election of delegates and that the convention must submit its proposals to the people no later than six months after adjournment. The first change gives the legislature greater freedom in setting the meeting date of a future convention and the second gives the convention greater freedom in determining when to hold an election on its proposals.

To guarantee that the people have ample opportunity to pass on the question of the need for constitutional change another new provision requires that at least every 20 years the people be given a chance of voting on the question of holding a constitutional convention.

## Preamble

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

## Article I

### COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

## Article II

### DECLARATION OF RIGHTS

Section 1. **POPULAR SOVEREIGNTY.** All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. **SELF-GOVERNMENT.** The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Section 3. **INALIENABLE RIGHTS.** All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. **INDIVIDUAL DIGNITY.** The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. **FREEDOM OF RELIGION.** The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 6. **FREEDOM OF ASSEMBLY.** The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Section 7. **FREEDOM OF SPEECH, EXPRESSION, AND PRESS.** No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. **RIGHT OF PARTICIPATION.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. **RIGHT TO KNOW.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. **RIGHT OF PRIVACY.** The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. **SEARCHES AND SEIZURES.** The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Section 12. **RIGHT TO BEAR ARMS.** The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. **RIGHT OF SUFFRAGE.** All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. **ADULT RIGHTS.** A person 18 years of age or older is an adult for all purposes.

Section 15. **RIGHTS OF PERSONS NOT ADULTS.** The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this article unless specifically precluded by laws which enhance the protection of such persons.

Section 16. **THE ADMINISTRATION OF JUSTICE.** Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. **DUE PROCESS OF LAW.** No person shall be deprived of life, liberty, or property without due process of law.

Section 18. **STATE SUBJECT TO SUIT.** The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

Section 19. **HABEAS CORPUS.** The privilege of the writ of habeas corpus shall never be suspended.

Section 20. **INITIATION OF PROCEEDINGS.** (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Section 21. **BAIL.** All persons shall be bailable by sufficient sur-

eties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. **EXCESSIVE SANCTIONS.** Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. **DETENTION.** No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Section 24. **RIGHTS OF THE ACCUSED.** In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. **SELF-INCRIMINATION AND DOUBLE JEOPARDY.** No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. **TRIAL BY JURY.** The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. **IMPRISONMENT FOR DEBT.** No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. **RIGHTS OF THE CONVICTED.** Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Section 29. **EMINENT DOMAIN.** Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. **TREASON AND DESCENT OF ESTATES.** Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. **EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES.** No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. **CIVILIAN CONTROL OF THE MILITARY.** The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. **IMPORTATION OF ARMED PERSONS.** No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. **UNENUMERATED RIGHTS.** The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. **SERVICEMEN, SERVICEWOMEN, AND VETERANS.** The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

## Article III

### GENERAL GOVERNMENT

Section 1. **SEPARATION OF POWERS.** The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Section 2. **CONTINUITY OF GOVERNMENT.** The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. **OATH OF OFFICE.** Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. **INITIATIVE.** (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five per cent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five per cent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Section 5. **REFERENDUM.** (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five per cent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five per cent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature in which the act is contained.

(2) An act referred to the people shall be suspended until the petitions signed by at least one per cent of the qualified electors in a majority of the legislative representative districts are submitted. The act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. **ELECTIONS.** The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Section 7. **NUMBER OF ELECTORS.** The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 8. **PROHIBITION.** The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

Section 9. **GAMBLING.** All forms of gambling, lotteries, and other enterprises are prohibited.

Section 10. **UNIFORM ELECTIONS.** The people shall vote by secret ballot.

Section 2. **QUALIFIED ELECTOR.** Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Section 3. **ELECTIONS.** The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Section 4. **ELIGIBILITY FOR PUBLIC OFFICE.** Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Section 5. **RESULT OF ELECTIONS.** In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Section 6. **PRIVILEGE FROM ARREST.** A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

## Article IV

### THE LEGISLATURE

Section 1. **POWER AND STRUCTURE.** The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Section 2. **SIZE.** The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Section 3. **ELECTION AND TERMS.** A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. **QUALIFICATIONS.** A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. **COMPENSATION.** Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Section 6. **SESSIONS.** The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. **VACANCIES.** A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. **IMMUNITY.** A member of the legislature is privileged from arrest during attendance at session of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. **DISQUALIFICATION.** No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. **ORGANIZATION AND PROCEDURE.** (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative



post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. **BILLS.** (1) A law shall be passed by bill which shall not be so altered or amended in its passage through the legislature as to change its original purpose. No bill shall become law except by the vote of a majority of the members of each house present and voting.

(2) Every vote of each member of the legislature on each substantial question shall be taken in a committee, or in committee of the whole, and the vote shall be taken by yeas and nays and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject clearly expressed in its title. If any subject is embraced in the title and is not expressed in the title, only so much of the act not embraced in the title shall be valid.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, association, or private corporation not under control of the state.

(6) A law shall be invalid on the ground of non-compliance with this section if within two years after its effective date it has not been passed in compliance with this section.

Section 13. **IMPEACHMENT.** (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. **DISTRICTING AND APPORTIONMENT.** (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

## Article VI

### THE EXECUTIVE

Section 1. **OFFICERS.** (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Section 2. **ELECTION.** (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Section 3. **QUALIFICATIONS.** (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Section 4. **DUTIES.** (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall

have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Section 5. **COMPENSATION.** (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. **VACANCY IN OFFICE.** (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Section 7. **20 DEPARTMENTS.** All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. **APPOINTING POWER.** (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. **BUDGET AND MESSAGES.** The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. **VETO POWER.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Section 11. **SPECIAL SESSION.** Whenever the governor considers it in the public interest, he may convene the legislature.

Section 12. **PARDONS.** The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Section 13. **MILITIA.** (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Section 14. **SUCCESSION.** (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor elect is able to assume office or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able

to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Section 15. **INFORMATION FOR GOVERNOR.** (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

## Article VII

### THE JUDICIARY

Section 1. **JUDICIAL POWER.** The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. **SUPREME COURT JURISDICTION.** (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. **SUPREME COURT ORGANIZATION.** (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. **DISTRICT COURT JURISDICTION.** (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. **JUSTICES OF THE PEACE.** (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Section 6. **JUDICIAL DISTRICTS.** (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. **TERMS AND PAY.** (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Section 8. **SELECTION.** (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for

the office.

Section 9. **QUALIFICATIONS.** (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. **FORFEITURE OF JUDICIAL POSITION.** Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. **REMOVAL AND DISCIPLINE.** (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

## Article VIII

### REVENUE AND FINANCE

Section 1. **TAX PURPOSES.** Taxes shall be levied by general laws for public purposes.

Section 2. **TAX POWER INALIENABLE.** The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. **PROPERTY TAX ADMINISTRATION.** The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Section 4. **EQUAL VALUATION.** All taxing jurisdictions shall use the assessed valuation of property established by the state.

Section 5. **PROPERTY TAX EXEMPTIONS.** (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. **HIGHWAY REVENUE NON-DIVERSION.** (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Section 7. **TAX APPEALS.** The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section 8. **STATE DEBT.** No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section 9. **BALANCED BUDGET.** Appropriations by the legislature shall not exceed anticipated revenue.

Section 10. **LOCAL GOVERNMENT DEBT.** The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Section 11. **USE OF LOAN PROCEEDS.** All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 12. **STRICT ACCOUNTABILITY.** The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 13. **INVESTMENT OF PUBLIC FUNDS.** (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

Section 14. **PROHIBITED PAYMENTS.** Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

## Article IX

### ENVIRONMENT AND NATURAL RESOURCES

Section 1. **PROTECTION AND IMPROVEMENT.** (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. **RECLAMATION.** All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

Section 3. **WATER RIGHTS.** (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. **CULTURAL RESOURCES.** The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

## Article X

### EDUCATION AND PUBLIC LANDS

Section 1. **EDUCATIONAL GOALS AND DUTIES.** (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. **PUBLIC SCHOOL FUND.** The public school fund of the state shall consist of: (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. **PUBLIC SCHOOL FUND INVIOLE.** The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. **BOARD OF LAND COMMISSIONERS.** The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. **PUBLIC SCHOOL FUND REVENUE.** (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. **AID PROHIBITED TO SECTARIAN SCHOOLS.** (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. **NON-DISCRIMINATION IN EDUCATION.** No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. **SCHOOL DISTRICT TRUSTEES.** The supervision and control of schools in each school district shall be vested in a

board of trustees to be elected as provided by law.

Section 9. **BOARDS OF EDUCATION.** (1) There is a state board of education composed of the board of regents of higher education and the board of public education.

It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex-officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. **STATE UNIVERSITY FUNDS.** The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Section 11. **PUBLIC LAND TRUST, DISPOSITION.** (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

## Article XI

### LOCAL GOVERNMENT

Section 1. **DEFINITION.** The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. **COUNTIES.** The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. **FORMS OF GOVERNMENT.** (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such offices in those counties.

Section 4. **GENERAL POWERS.** (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. **SELF-GOVERNMENT CHARTERS.** (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. **SELF-GOVERNMENT POWERS.** A local govern-



ment unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. INTERGOVERNMENTAL COOPERATION. (1) Unless prohibited by law or charter, a local government unit may (a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with, (c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Section 9. VOTER REVIEW OF LOCAL GOVERNMENT. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

## Article XII

### DEPARTMENTS AND INSTITUTIONS

Section 1. AGRICULTURE. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Section 2. LABOR. (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Section 3. INSTITUTIONS AND ASSISTANCE. (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

## Article XIII

### GENERAL PROVISIONS

Section 1. NON-MUNICIPAL CORPORATIONS. (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Section 2. CONSUMER COUNSEL. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

Section 3. SALARY COMMISSION. The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

Section 4. CODE OF ETHICS. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Section 5. EXEMPTION LAWS. The legislature shall enact liberal homestead and exemption laws.

Section 6. PERPETUITIES. No perpetuities shall be allowed except for charitable purposes.

## Article XIV

### CONSTITUTIONAL REVISION

Section 1. CONSTITUTIONAL CONVENTION. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

Section 2. INITIATIVE FOR CONSTITUTIONAL CONVENTION. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Section 3. PERIODIC SUBMISSION. If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Section 4. CALL OF CONVENTION. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts as are the mem-

bers of the legislative body determining the number of delegates.

Section 5. CONVENTION EXPENSES. The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

Section 6. OATH, VACANCIES. Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Section 7. CONVENTION DUTIES. The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Section 8. AMENDMENT BY LEGISLATIVE REFERENDUM. Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. AMENDMENT BY INITIATIVE. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. PETITION SIGNERS. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. SUBMISSION. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

### ADOPTION SCHEDULE

These Schedule provisions are part of this Constitution only for the limited purposes of determining whether this Constitution has been adopted, determining what changes result from the vote on each of the separately submitted issues, and establishing the general effective date of this Constitution. No provision of this Schedule shall be published unless it becomes part of the Constitution as the result of the adoption of a separately submitted provision.

Section 1. This Constitution, if approved by a majority of those voting at the election as provided by the Constitution of 1889, shall take effect on July 1, 1972, except as otherwise provided in sections 1 and 2 of the Transition Schedule. The Constitution of 1889, as amended, shall thereafter be of no effect.

Section 2. (1) If separate issue 2A concerning the unicameral form of the legislature is approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then:

(a) ARTICLE V, THE LEGISLATURE, shall be deleted and the following substituted therefor:

### ARTICLE V THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature of one chamber whose members are designated senators. The people reserve to themselves the powers of initiative and referendum.

Section 2. SIZE. The number of senators shall be provided by law, but it shall not be smaller than 90 nor larger than 105.

Section 3. ELECTION AND TERMS. A senator shall be elected for a term of four years to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. QUALIFICATIONS. A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. COMPENSATION. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Section 6. SESSIONS. The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. VACANCIES. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. DISQUALIFICATION. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. ORGANIZATION AND PROCEDURE. (1) The legislature shall judge the election and qualifications of senators. It may by law vest in the courts the power to try and determine contested elections. It shall choose its officers from among its members, keep a journal, and make rules for its proceedings. It may expel or punish a senator for good cause shown with the concurrence of two-thirds of all the senators.

(2) A majority of the senators constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the

whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

Section 11. BILLS. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and shall provide for a tribunal.

(3) Impeachment can be brought only by a two-thirds vote of the legislature. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are senators and each district shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each select two commissioners. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Section 15. REFERENDUM OF UNICAMERAL LEGISLATURE. (1) In 1980 the secretary of state shall place upon the ballot at the general election the question: "Shall the unicameral legislature form be continued?"

(2) If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be of no further effect.

(3) If a majority of the qualified electors voting on the question answer in the negative, Article V of this constitution is amended by deleting sections 1, 2, 3, 10, 13, and 14, and inserting in lieu thereof the following:

(a) "Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves those powers of initiative and referendum."

(b) "Section 2. SIZE. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members."

(c) "Section 3. ELECTION AND TERMS. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years, each to begin on a date provided by law. One-half of the senators shall be elected every two years."

(d) "Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members."

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting."

(e) "Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law."

(2) The legislature shall provide for the manner, procedure and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members."

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law."

(f) "Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable."

(2) In the legislative session following this amendment and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the

state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

(4) The members of the unicameral legislature shall remain in office and their authority to act shall continue until the members of a bicameral body are elected and qualified.

(5) The Senate chamber existing upon the date of adoption of this Article shall remain intact until the election provided for in this section has determined whether the unicameral legislature is to continue.

(6) When the provisions of this section have been carried out, it shall be of no further effect.

(b) The words "of each house" are deleted from subsection (2) of section 6 and from section 8, ARTICLE VIII, REVENUE AND FINANCE.

(c) The word "legislature" is substituted for "senate" in subsections (1), (2), and (4) of section 8, ARTICLE VI, THE EXECUTIVE, in subsections (1) and (2) of section 8, ARTICLE VII, THE JUDICIARY, and in subsection (1) of section 2, ARTICLE XII, DEPARTMENTS AND INSTITUTIONS.

(2) If separate issue 2A concerning the unicameral form of the legislature is not approved by the electors and if the proposed Constitution is approved by the electors, then ARTICLE V, THE LEGISLATURE, shall be retained.

Section 3. (1) If separate issue 3A is not approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then section 9 of ARTICLE III, GENERAL GOVERNMENT shall be retained.

(2) If separate issue 3A is approved by the electors and if the proposed Constitution is approved by the electors, then section 9 shall be deleted from ARTICLE III, GENERAL GOVERNMENT and the following substituted therefor: "Section 9. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum."

Section 4. If separate issue 4B is approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then there shall be added to section 28, ARTICLE II, DECLARATION OF RIGHTS, the following sentence: "Death shall not be prescribed as a penalty for any crime against the state." And there shall be deleted from section 21 of the same ARTICLE the following: "except for capital offenses, when the proof is evident or the presumption great."

#### TRANSITION SCHEDULE

The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date

Section 2. Delayed Effective Date

Section 3. Prospective Operation of Declaration of Rights

Section 4. Terms of Judiciary

Section 5. Terms of Legislators

Section 6. General Transition

Section 1. ACCELERATED EFFECTIVE DATE. Section 6 (SESSIONS) and section 14 (DISTRICTING AND APPORTIONMENT) of Article V, THE LEGISLATURE, shall be effective January 1, 1973.

Section 2. DELAYED EFFECTIVE DATE. The provisions of sections 1, 2, and 3 of ARTICLE V, LEGISLATURE, shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Section 3. PROSPECTIVE OPERATION OF DECLARATION OF RIGHTS. Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Section 4. TERMS OF JUDICIARY. Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed.

Section 5. TERMS OF LEGISLATORS. (1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number.

Section 6. GENERAL TRANSITION. (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) All officers filling any office by election or appointment shall continue the duties thereof, until the end of the terms to which they were appointed or elected, and until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.



## Frequently asked Questions

What happens if the voters reject the proposed constitution?

Nothing changes. We proceed under the 1889 Constitution as we are doing now.

Why is the election on the constitution being held so soon after the convention adjourned?

To save money. One alternative to June 6 was the November general election. However, delegates felt that the issue of ratification of the constitution would be overshadowed by the presidential race and the contests for congressional seats and for state offices. The only alternative was a special election sometime between June and November. The convention rejected this alternative because a special election would have cost, perhaps, \$300,000—some people estimate as much as \$500,000. A large sum of money is saved by combining the special election with the June primaries.

Why do we vote on separate paper ballots?

Because the ratification election is a special election being held at the same time and place as the primaries.

Is the convention passing the buck by putting controversial questions on the ballot as separate items?

Recent experience in other states indicates that the electorate wants to have the opportunity to vote on separate items. Where constitutions have been submitted as single packages, such as in New Mexico, Oregon, Idaho and Arkansas, the voters have rejected them. However, in Pennsylvania, Florida, Hawaii and Illinois where separate proposals were offered, the constitutions were adopted.

Why can't we vote on more separate issues? Why can't we vote on the proposal article by article?

The convention had to strike a medium between a manageable and understandable ballot and a ballot so long it would be confusing. An article by article ballot would have contained at least 14 separate items and would have necessitated a most complicated adoption schedule. There is also a special consideration peculiar to the Montana situation. Article XIX, Section 8 of the 1889 Constitution requires that any item the convention submits to the people can be adopted only by a majority of the electors voting at the election. We know that as they go down the ballot voters fail to vote in increasing numbers on each subsequent item. Consequently, the likelihood of a proposition failing for the lack of a majority of those voting in the election increases with the addition of each item on the ballot.

Will we have wide open gambling if "for gambling" (item 3A on the ballot) is adopted?

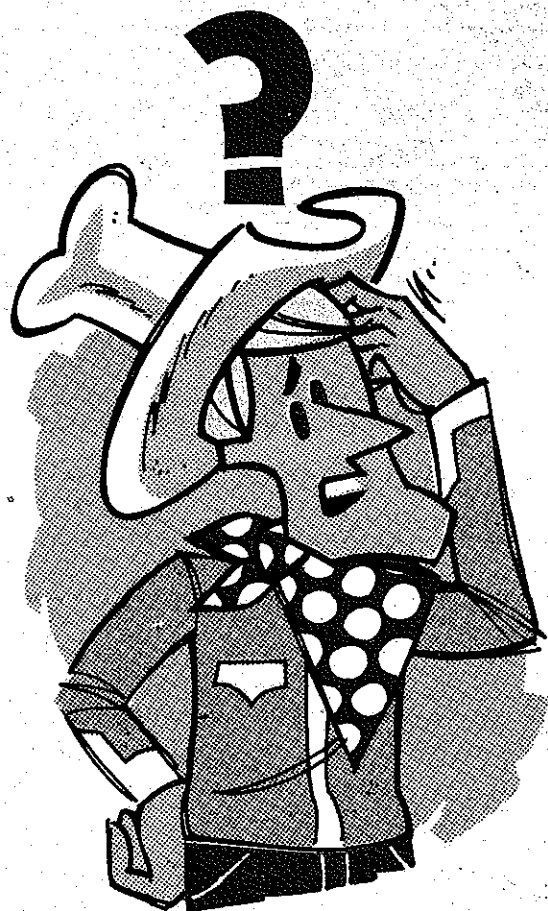
Not necessarily. Gambling would be subject to legislative regulation. The legislature could prohibit all forms of gambling or it could allow certain types of gambling. If item 3A fails to receive a majority of those voting in the election, section 9 of Article III, the prohibition on all forms of gambling, will remain in the constitution and the legislature will not be allowed to permit any form of gambling.

What was the purpose of dropping the 2 mill levy limit on property taxation for state purposes?

The property tax now forms a very small portion of revenue for state purposes. It was not the intention of the convention to change that situation. The purpose of removing the 2 mill levy was to open additional options in financing public schools. The issue of inequities in school financing has been raised in other states and it is almost certain to come up in Montana because we have inequities equal to those that exist where equalization of school financing has become an issue. One possibility of equalizing school financing is through state-wide application of mill levies for educational purposes as a replacement for local levies. The removal of the 2 mill limit would not require this kind of solution, but removal would allow it.

Will farm property be assessed at full market value?

The present Constitution requires that all property be assessed for property tax purposes, and Montana's statutes require that all taxable property be assessed at its "full cash value." The proposed constitution does not require that all property be assessed for taxation purposes and it says nothing about market value or cash value. This allows the legislature to determine what property will be taxed and how it will be assessed.



Why was the 1956 antidiversion amendment changed to allow the legislature by a 3/5 vote to use gas taxes for purposes other than highways?

This provision is a compromise between those who wanted to retain the antidiversion amendment in its present form and those who wanted to remove it in its entirety. A majority of delegates recognized that earmarking revenues generally has the unwanted consequence of freeing a state agency from public control through the legislature. The purpose of the compromise was to try to make the highway department more accountable to the legislature.

Will assessing be done at the state level? Why was the State Board of Equalization removed from the constitution?

The State Board of Equalization will continue as a statutory agency. Administrative details generally should be omitted from constitutions. Omission of the State Board of Equalization will free the legislature to alter tax administration as experience dictates. At least for the time being the system of assessments will probably remain much as it is at present. In fact, the present Constitution now requires a considerable degree of centralization of assessments when it dictates that "The state board of equalization shall adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual tax payers; supervise and review the acts of the county assessors and county boards of equalization; change, increase, or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual tax payers."

In what ways will our taxation system be changed?

The constitution does not establish any particular kind of tax structure. The kinds of taxes and the amounts that will be used to finance state government will be determined by the legislature.

Why were debt limits on state and local governments removed?

The proposed constitution does not remove debt restrictions. State indebtedness cannot be incurred without a 2/3 vote of the members of each house of the legislature or a majority of the electors themselves. The constitution requires the legislature to establish debt limits for local units of government. It is true that the proposed constitution drops the specific dollar debt limitations because these dollar limits are no longer realistic, and we have not paid attention to them for many years. We get around the excessively restrictive dollar limits by resorting to revenue bonds. The upshot of this is to increase the cost of incurring indebtedness at all levels of government because revenue bonds carry a higher rate of interest than general obligation bonds.

Why is so much left up to the legislature? What check do we have on the legislature?

Much is left to the legislature because that is the democratic process. There is also no alternative. Attempts to exercise control by putting statutory details in the constitution end up depriving the people of efficient and effective government. Detailed constitutional restrictions work in unintended ways and are surmounted by subterfuges. That is why constitutions should deal with broad grants of power, leaving statutory matters to determination by the legislature. Legislators are the state officials closest to the people. The



people's primary check on legislators is the power to elect them. It is up to the people to exercise vigilance in watching what they do, to inform legislators of their own ideas and needs, and to turn them out of office.

Would adoption of the proposed constitution jeopardize any existing water rights?

No. The proposed constitution emphatically confirms all existing water rights. The declaration of state ownership of all water simply reflects the present situation. This declaration was included not to cast any doubt about water rights within the state, but to establish Montana's claim to its own waters against diversion by the Federal Government or downstream states. The purpose of the declaration of state ownership is to claim Montana's water for Montanans.

Will there be only one Justice of the Peace in each county?

No. The proposed constitution requires that there shall be at least one justice of the peace in each county. It will be up to the legislature to adjust the number and distribution of justice courts and small claims courts as the need requires.

Will judges continue to be elected?

Yes. There will be a contested election whenever a qualified candidate files against an incumbent judge. If no one files against an incumbent judge, the incumbent's name will be put on the ballot in such a way as to afford voters the opportunity to indicate whether or not they wish to retain him. If voters reject the judge, the position will be vacant and will be filled in the manner provided for filling vacancies.

What is the significance of the "right to know"? Isn't the right to know contradictory to the "right to privacy"?

They are not contradictory. The right to know is intended to guarantee the citizen opportunity for access to information about the operation of the government. The right of privacy is intended to protect the citizen from Government invasion of his privacy.

Will the university system be unaccountable?

Government and control of the university system is vested in the Board of Regents. The university system will continue to be subject to the audit and accounting procedures the legislature dictates. The legislature will also have control over the university system through its power of appropriation of monies.

Why are there two Boards of Education?

There is a State Board of Education for the purpose of coordinating education at all levels. Half the members of this state board of education will sit as a board of regents for the purpose of governing the university system and the other half will sit as a board of public education to supervise public education. The division of labor will enable each board to concentrate its attention on its field of education.

What are the pros and cons of the bicameral and unicameral legislatures?

Proponents of the unicameral legislature maintain that it is less costly, more visible and accountable to the public, more difficult for lobbyists to control, and more efficient. Proponents of the bicameral legislature insist that a second house is necessary to secure more carefully written laws and as a check against hasty legislation.

How will the boundaries of single member districts be drawn?

The legislature will be assisted in districting and apportioning by a temporary reapportionment commission which will be established after each federal census. The commission will be bipartisan and will cease to function when its work is completed.

Why will we have annual sessions of the legislature?

Because the work load is too heavy to be dealt with in sixty day biennial sessions. The number and complexity of the problems legislators have to deal with justify annual sessions. In 1948 only six states held annual sessions. By 1971 this had increased to 33 states. Annual sessions do not mean that the citizen legislator will be a thing of the past. For the present and for the foreseeable future, Montana will not have professional legislators.

Will the establishment of a new Board of Public Education threaten local control of schools?

No. The proposed Constitution, unlike the 1889 Constitution, contains a guarantee of local control of schools.

What happens in eminent domain proceedings if a citizen rejects the state's offer?

If the citizen wins his case against the state, the state will have to pay, not only the increased award, but also any additional costs such as attorney's fees.

Why was the office of State Treasurer eliminated from the proposed constitution?

The treasurer will continue as a statutory office. The removal of the treasurer from the constitution was the convention's effort at shortening the ballot. Many citizens want to know why more officers were not removed. The treasurer handles very little cash, and accounting for receipt and disbursement of state funds is carried on in the Department of Administration.

Can there be city-county consolidation?

Yes. But not without a vote of the people concerned. Local units of government will not be required to consolidate. There are a large number of options under the proposed constitution for drawing up local governments to suit local needs and to share officers and facilities both within and among counties.

Why is voter review of local governments made mandatory?

To have the people periodically evaluate the efficiency of their local units of government and to educate them to the options available to them.

What does the proposed constitution say about environment?

One section of the Declaration of Rights states that among the inalienable rights is a right to a clean and healthful environment. The Environment and Natural Resources Article also stipulates that the state shall maintain a clean and healthful environment and requires that all lands disturbed by the taking of natural resources must be reclaimed.

Why is welfare being shifted to the state level?

The categorical assistance programs are now financed and administered by the federal and state governments. Counties take care of general assistance welfare. The proposed constitution amends the provision on welfare because federal courts have stricken residence requirements under the general assistance program. Removal of the residence requirements concentrates welfare problems in the more urbanized counties. Welfare recipients tend to congregate in urban areas because they seek job opportunities and better facilities for their care. This situation will continue whether the constitution is adopted or not.

Can 18 year olds hold any public office?

No, not all. Candidates for governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor must be 25 years of age. Candidates for supreme court and district court judgeships have to have been admitted to the practice of law in Montana for five years prior to the election. This imposes a practical age limit. Eighteen year olds can run for other offices.

Does the proposed Constitution remove the prohibition against state aid to sectarian schools?

No. The proposed Constitution retains the prohibition against state aid to sectarian schools, but it does allow the state to act as an agent for the distribution of federal funds to parochial schools. This clarifies existing practice. Also, there is increasing likelihood of further federal aid to parochial schools. The upshot of prohibiting the state from being the financial agent for the distribution of federal funds could be to deprive parochial school children of opportunity for equal education.

Does the Constitution remove the system of local tax appeal so that we have to go directly to Helena on tax appeals?

No. The proposed Constitution requires the legislature to establish a tax appeals system at the local level. Under the new system aggrieved taxpayers will not have to appeal to the same agency that approved or made the assessment in the first place.

Would adoption of the Constitution threaten or impair any existing legal right?

No. This matter is dealt with in section 6 of the transition schedule. Among other things, this section says "The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place."

What is meant by the removal of the state's sovereign immunity and will its removal make public employees liable to suits?

Sovereign immunity is a doctrine which the state has used to protect itself and its local units from suit by private individuals. Since 1959, Montana has allowed itself and its local units to be sued in certain instances and up to certain amounts. The removal of sovereign immunity will mean that the state and its local units will be subject to suit under any circumstances in which a private individual would be subject to suit. Removal of sovereign immunity will actually grant public employees additional protection. Although sovereign immunity exists public employees are not now immune to suit for actions they commit as agents of the state. With the removal of sovereign immunity it is not very likely a citizen would sue a public employee when he can sue the state.

What are the procedures for amending the proposed constitution?

It will be easier to amend the proposed constitution than it is to amend the present constitution because the limit of 3 amendments every biennium is removed. The legislature will be able to propose constitutional amendments by 2/3 vote of all legislators rather than a 2/3 vote of each house as at present. Also, the people will have the right to initiate constitutional amendments—a right they do not have under the present constitution.

What are the differences in representation between the unicameral and bicameral legislatures?

Under the unicameral legislature the citizen will vote for a single senator who will serve a four year term. Under the bicameral legislature the citizen will vote for a representative and a senator. Senatorial districts will be made up of 2 contiguous representative districts. Representatives will serve a two year term and senators a four year term. Under both alternatives the terms of senators will be staggered so that half are elected every 2 years.

What will the Lieutenant Governor do as a full time official if he doesn't preside over the senate?

What the Lieutenant Governor does will be up to the Governor and the legislature. The legislature is authorized to prescribe duties for the lieutenant governor, and the governor is authorized to assign non-constitutional executive functions to the lieutenant governor.

What happens to the terms of elected officials who are elected this fall?

The constitution will go into effect July 1, 1973. Elected officials, except for legislators, will fill out the terms for which they were elected this fall. Annual sessions of the legislature will begin in January, 1973. The next legislature will set up the reapportionment commission. If a reapportionment plan is adopted the terms of legislators elected this fall will end December 31, 1973. Legislators under the new constitution will be elected in the fall of 1973 and take office in 1974.

Isn't there a danger that legislatures will call special sessions since there is no time limit on them?

Since legislators will continue to be citizen legislators there is little reason to think that they will call special sessions for frivolous reasons. They will be all the more unlikely to call special sessions if they are paid annual salaries since there could be nothing to gain by staying in Helena. If legislators call special sessions without good reason, it will be up to the voter to turn them out of office.

What is the office of Commissioner of Higher Education?

What this office amounts to will depend entirely on the Board of Regents since the Regents will appoint the officer and establish his term and duties.

Why was the bicameral legislature rather than the unicameral legislature put in the body of the proposed constitution?

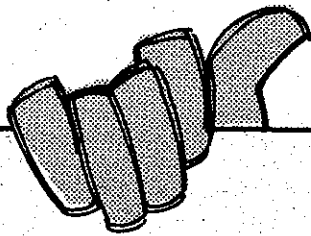
The bicameral legislature was put in the body of the constitution because the convention thought that citizens would be more likely to vote for the constitution if it contained a bicameral rather than a unicameral legislature. The legislature will be unicameral only if a majority of those voting in the election vote for item 2A on the ballot.

*"... no organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate, nor any document of reasonable length contain express provisions for all possible questions."*

Abraham Lincoln—First Inaugural Address, 4 March 1861

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# EXPLANATION of the BALLOT



## OFFICIAL BALLOT

Instructions to voters: Place an "X" in the box which express your preferences. The full text of the proposed Constitution and the separate propositions is available for inspection at your polling place. If the proposed constitution fails to receive a majority of the votes cast, alternate is also available.

**SAMPLE**

PLEASE VOTE ON ALL FOUR ISSUES

1.

(Vote for One)

- ☐ **FOR** the proposed Constitution.
- ☐ **AGAINST** the proposed Constitution.

THE PROPOSED CONSTITUTION WILL INCLUDE A BICAMERAL (2 Houses) LEGISLATURE UNLESS A MAJORITY OF THOSE VOTING IN THIS ELECTION VOTE FOR A UNICAMERAL (1 House) LEGISLATURE IN ISSUE 2.

2.

(Vote for One)

- ☐ **2A. FOR** a unicameral (1 house) legislature.
- ☐ **2B. FOR** a bicameral (2 houses) legislature.

3.

(Vote for One)

- ☐ **3A. FOR** allowing the people or the legislature to authorize gambling.
- ☐ **3B. AGAINST** allowing the people or the legislature to authorize gambling.

4.

(Vote for One)

- ☐ **4A. FOR** the death penalty.
- ☐ **4B. AGAINST** the death penalty.



### THE BALLOT

Montana's citizens will vote on the Constitutional Convention's proposals on June 6. Because of wording in both the 1889 Constitution and the Convention Enabling Act, this will be a special election held at the same time as the primary elections. Voters will need to sign special registration books, and they will use a separate paper ballot which will look pretty much like the one Con Con Monty is holding on this page.

It is essential that the voter understand several important points about this ballot. If you vote for the proposed Constitution, you will be voting for a constitution with a bicameral (2 houses) legislature. However, if a majority of those voting in the election vote for a unicameral house in item No. 2 on the ballot, the unicameral article will automatically be substituted for the bicameral article in the new Constitution.

If the proposed Constitution fails, your vote on the other measures — the make-up of the legislature, gambling, and the death penalty — will not count because they automatically fail if the proposed Constitution is rejected. Second, your vote on these three questions will not count unless each is decided by a majority of those voting in the election. If you fail to vote on any item, you will aid in its defeat.

If the proposed Constitution carries and the issue of gambling is not decided because neither those for nor those opposed get a majority of those voting in the election, then the same restrictions against gambling in Section 9, Article III of the proposed Constitution will be retained. Similarly, if the issue of capital punishment is not decided because neither those for nor those against get a majority of those voting in the election, then the situation will be as it is now: the new Constitution would leave the future of the death penalty in the hands of the legislature where it presently lies.

