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A CRITICAL LOOK

Montana's NEW Constitution

By

Gerald J.
Neely

THE NEW MONTANA CONSTITUTION:

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ABOUT THE AUTHOR

Gerald J. Neely is a Billings lawyer. He has taught business law, political science, insurance and investments at the college level and has had material published on the Constitutional Convention.

While at Rocky Mountain College in Billings, he directed a federally-funded program that investigated the Montana legislature. A video tape of the legislature in action and a booklet on the legislative process have been distributed throughout Montana and the United States as a result of the program.

During the Montana Constitutional Convention, he edited a statewide newsletter called the "Con Con Newsletter" that covered the issues and the events at Helena. The nationally-prominent Citizens Conference on State Legislatures called the newsletter "...one of the best publications we have ever seen."

In covering a large portion of the Convention proceedings, he worked as a United Press International wire service reporter.

INTRODUCTION

Since the "birth" of the new document, most of the news media and most of the delegates to the convention have had a congenital inability to discuss the weak points of the document. The public relations arm of the Convention cannot be relied upon to point out any imperfections. The choice before the voter as to whether the good points outweigh the bad points will accordingly be difficult. This is compounded by the choice of the Convention to bring the matter to a vote about one month after voters have received a copy of the new Constitution.

This author feels that the good points do outweigh the bad points. However, one person's good points may be another person's bad points. Someone has the obligation of taking the role of "devil's advocate" and stimulating true debate. This is necessary to that voters will not be "sold" a package without knowing its contents, or so they will not refuse to "buy" because they are aware that certain points are being glossed over in the rush.

The delegates--short on time and money--worked hard at their efforts, but this does not eliminate the need for a critical look at what they have done, nor does it eliminate the necessity of putting the burden on proponents of the new document of showing that Montana will be best served by passing it.

Gerald J. Neely
PO Box 1643, Billings, Montana

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WHEN WOULD A NEW CONSTITUTION
GO INTO EFFECT, AND WHAT HAPPENS
BETWEEN THE VOTE AND THEN?

If approved by the voters, most of the new Constitution would go into effect on July 1, 1973, at which point our current Constitution would be abolished.

The annual legislative session and single member district provision for legislative races would not become effective until January 1, 1973. The change in the size of the legislature would not occur until the date the first redistricting and reapportionment plan became law.

All elected officials would serve the terms for which they were elected or appointed before the effective date of the document.

All statutes, ordinances and regulations would remain in effect except to the extent they would be inconsistent with the new constitution. Those conflicting would be unconstitutional and would either have to be repealed by the legislature or called unconstitutional by the courts.

The validity of bonds, debts, contracts, lawsuits and rights to lawsuits as of the effective date will not be affected.

Any rights created by the bill of rights sections will not be retroactive, and will only apply to situations occurring after July 1, 1973.

WHAT WILL BE ON THE BALLOT?

On June 6, 1972, the voters will have the opportunity to vote on the proposed constitution and three special side issues.

You will have four choices to make. The ballot is simple, but deceptive. Your first choice will be whether you are "for" or "against" the "proposed Constitution." By May, 1972 you will have received a copy of the proposed document from the Secretary of State if you are a registered voter. A request and a dollar to him in Helena will also provide you with a copy of the current Constitution for purposes of comparison.

Your next three choices involve the side issues of the death penalty, gambling and the choice between a one or two house legislature. The choices look simple on the ballot. But what your vote means is a different thing. A tricky feature of the ballot is that for a side issue to have any effect at all, a majority of those voting on the main issue--whether to have a new document--must vote on a particular side of a side issue for that side to be effective. In that case, whatever happens to be in the main document on the issue goes into effect.

WHAT WILL BE ON THE BALLOT? (Cont)

For example, if 100 people vote on the main issue, 51 of those will have to vote on the prevailing side of a side issue for it to be effective. Thus if 50 people voted against the death penalty and 49 voted for it, the proposition against it would not pass and whatever was already in the main body of the document would be in effect. The net effect is that the failure to vote on a side issue is a vote for whatever the main document says.

THE SIDE ISSUE OF THE DEATH PENALTY

One side issue is whether you are "for" or "against" the "death penalty." It looks simple when you see it that way on the ballot, but there is more than meets the eye.

If the main vote favors the new constitution and if a majority of those voting cast their ballot against capital punishment or the death penalty, this language will be added to Article II, section 28 of the Bill of Rights: "Death shall not be prescribed as a penalty for any crime against the state."

Well, the reverse must be true. If the vote in favor of the death penalty prevails, language must be added that ensures that there will be a death penalty. Wrong. Through inadvertence, oversight, or perhaps insight, there is no language added to the constitution if the vote for the death penalty prevails.

At most, all that has happened is that the matter is left to the legislature to provide for a death penalty by statute or not. The voters could overwhelmingly vote to keep the death penalty and the legislature could turn around and abolish it.

What happens if the side issue doesn't have the required number of voters voting for each the "for" side or the "against" side? Well, then the wording of the new document controls. And this is where the matter gets complicated.

Section 24 for Article III of the current Constitution provides:

"Laws for the punishment of crime shall be founded on the principles of reformation and prevention, but this shall not affect the power of the legislative assembly to provide for punishing offenses by death."

The new constitution (Art. II, section 28) eliminates the underlined portion. This may have the effect of abolishing the death penalty by interpretation. The death penalty can hardly be said to be founded on the principle of reformation of the criminal to which it is applied. And without the underlined language, the recent California case abolishing the death penalty in that state on the grounds that it is cruel and unusual might apply here.

THE SIDE ISSUE OF
GAMBLING

The side issue of gambling is on the ballot. You will have the opportunity of voting "for" or "against" allowing "the people or the legislature to authorize gambling."

The current constitution provides:

"The legislative assembly shall have no power to authorize lotteries, or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state." (Art XIX, sec. 2)

This is a less restrictive provision than current Montana statutes which extend to all forms of gambling.

The proposed constitution contains this language:

"All forms of gambling, lotteries, and gift enterprises are prohibited."

(Art. III, sec. 9)

The language suggested by the Convention is clearly more restrictive of gambling than the current provision. The above wording will be in effect if: (1) a majority of the voters vote "against" the proposal on the ballot, or (2) a majority of the voters voting on the main issue do not "for" or "against" the side issue, it thus having no effect and the wording in the main body controlling.

Only if a majority of the voters voting on the main issue vote "for" the ballot proposal will the following language be added to Article III, section 9 above:

"....unless authorized by acts of the legislature or by the people through initiative or referendum."

THE SIDE ISSUE OF ONE
HOUSE OR TWO

The final side issue is whether the voter is "for" a one house (unicameral) legislature or "for" a two house (bicameral) legislature.

The proposed constitution includes a bicameral legislature. That will control unless a majority of those voting in the election vote for a unicameral legislature. Thus if a majority of those voting vote for a bicameral or if less than a majority vote for either, it will be bicameral. Unlike the other options, this is specifically noted on the ballot.

THE BILL OF RIGHTS

Article II of the new constitution--in thirty-five sections--is designed to replace Article III of the old constitution--in thirty four sections.

The current provisions establish the rights of citizens in relation to government; the new provisions set out the rights of the Montana citizen as against other persons, corporations, labor unions, or institutions of any kind. In a significant departure the bill of rights sections and other related provisions direct themselves to the duties of citizens also.

Eight of the proposed provisions are entirely new; twelve remain the same; four current sections have been entirely deleted in the proposed version, a portion of one--concerning water rights--having been placed in another part of the proposed document; fifteen sections in the proposed document are altered versions of the old. The major changes--and their implications--are outlined here.

BAIL. Bail In criminal cases, bail is currently available except in certain instances related to the death penalty. The proposed version will allow bail for all crimes if the death penalty is eliminated. (Current: Art. III, sec. 19; Proposed: Art. II, sec. 21)

EX-CONVICTS. Under a new proposal, persons convicted of crimes have all civil and political rights restored after termination of state supervision. (Art. II, sec. 28) The current constitution requires action by the Governor, conditional upon approval of the Board of Pardons. (Art. XII, sec. 2; Art. VII, sec. 9)

Under Article VI of the proposed document, the Board of Pardons is abolished as a constitutional board. Under Article IV, on suffrage and elections, a person who otherwise qualifies is, under the new document, automatically restored to full voting rights when he finishes serving his sentence. Upon completion of state supervision, he would be entitled to hold public office and enter occupations which require state licenising, such as the medical and legal professions.

HABEAS CORPUS. The right to a writ of habeas corpus is the right to be brought before a court to test the legitimacy of one's detention in jail. The proposed section (Art. II, sec. 19) eliminates from the current provision (Art. III, sec. 21) the power of the state to suspend the writ in times of rebellion or invasion, even if the public safety requires it.

PRIVACY. A new provision in the proposed constitution (Art. II, sec. 10) provides that the privacy of the individual is not to be infringed without the showing of a compelling state interest.

THE BILL OF RIGHTS
(cont.)

RIGHTS OF MINORS. A new provision (Art. II, sec. 14) states that persons eighteen years and over are adults for all purposes. Another provision that is new (Art. II, sec. 15) states that those under eighteen have the rights that all others have "unless specifically precluded by laws which enhance the protection of such persons."

The effect of the provisions will eventually be felt in three basic areas: public office, criminal law, and school supervision. Literally hundreds of current statutes will be tested in court to determine whether they do enhance that protection. Some of the possible ramifications are outlined below.

With regard to public office, the eighteen year old will not be able to run for the following offices: which require a person to be twenty five (Art. VI, sec. 3(1)): governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor. No age restriction is placed on running for Supreme court justice or district court judge, but the person must be admitted to the practice of law in Montana for at least five years prior to appointment or election. (Art. VII, sec. 9(1)).

Current school regulations concerning dress codes, hair length, and the freedom to publish critical opinions of school administrators would be clearly unconstitutional unless specific legislation were passed by the legislature in these areas.

Juvenile courts have theoretically been designed to be a more flexible and lenient system of justice than that applicable to adults. Juvenile law is based on the assumption that minors need special treatment with respect to the courts. Accordingly, the public confrontation of lawyers, a trial, and punishment for the guilty is often different. This will only continue if specific laws denying minors certain rights--such as a jury trial--are passed.

An example of the potential problem areas that will face the legislature is this: under current Montana statute, an unborn child is deemed to be an existing person "so far as may be necessary for its interests in the event of its subsequent birth." If unborn children are deemed to be existing persons, and all existing persons have the constitutional rights of all others, is it arguable that Montana, with passage of the rights of minors provision would have an anti-abortion statute already on the books?

TRIAL BY JURY. A new provision allows a defendant to waive a jury trial in felony cases as well as civil and misdemeanor cases. The current bill of rights does not allow waiver of a jury trial in felony cases. (Old: Art. III, sec. 23; New: Art. II, sec. 26)

The old provision provides that only a two-thirds jury verdict is necessary for conviction in a misdemeanor case. New wording requires an unanimous verdict.

Abolished is a provision that says that justice court juries cannot consist of more than six persons.

THE BILL OF RIGHTS
(cont.)

STATE IMMUNITY FROM SUIT. Under current law, suits for injury to persons or property against the state or its subdivisions are generally only allowable to the extent of insurance coverage that the particular agency has, if any. A new provision (Art. II, sec. 18) eliminates this immunity from suit, and allows the state, cities, towns and other governmental entities to be subject to suit in the same manner as individuals. Insurance will be a necessity for virtually all government activity.

PUBLIC PARTICIPATION AND

THE RIGHT TO KNOW. Under a new provision the public has a right to expect agencies of government to afford all reasonable opportunities provided by law for "citizen participation in the operation of agencies prior to the final decision..." (Art. II, sec. 8).

Another new provision (Art. II, sec. 9) forbids deprivation of the right to examine documents or to observe the deliberation of public bodies except in cases where the demand of individual privacy clearly exceeds the merits of public disclosure.

Directed at the problem of bureaucratic authority insulated from public scrutiny and participation, the provisions have already been the subject of lively debate, with the newspapers being concerned about the exception.

The Montana legislature might be able to strengthen the sections by placing the burden of proof on an agency withholding information, and providing that officers responsible for improper withholding and noncompliance could be punished for contempt.

The provisions will undoubtedly have ramifications in the area of environmental decisions by branches of state and local government, whereby citizens can gain access to administrative decisions which will in turn trigger the judicial enforcement mechanism of the constitutional and statutory law.

INALIENABLE RIGHTS. New inalienable rights are added under a new provision (Art. II, sec. 3) that were not present in the old provision (Art. III, sec. 3): the rights to: (1) a clean and healthful environment; (2) pursue life's basic necessities; (3) seek health.

The immediate question is whether the new provision creates the right for all such necessities of life and health to be provided by the public treasury. The provision is clearly aimed at elevating public assistance benefits from the level of privilege to that of right, and to provide for standards of procedural fairness in their denial. Recent Supreme Court decisions and the Bill of Rights Committee's own analyst feel that a provision that is merely a statement of principle with no apparent operative effect might not be inoperative.

THE BILL OF RIGHTS
(cont.)

DISCRIMINATION. Under a new provision (Art. II, sec.4) the state, a person, corporation, union or any institution cannot discriminate against a person on the basis of: (1) race; (2) color; (3) sex; (4) culture; (5) social origin; (6) social condition; (7) political ideas; (8) or religious ideas.

The provision goes far beyond current state or federal laws in the types of discrimination involved and with respect to who it applies to.

The US bill of rights only applies to discrimination by the government on the basis of race, creed, or color. With certain reasonable exception, federal civil rights acts--statutes--prohibit private discrimination based on race, creed, color, sex, or national origin.

Current Montana statutes forbid discrimination in employment or public accommodations on the basis of race, creed, color, sex, or national origin by state government, its subdivisions, individuals, groups, or corporations.

Under the 1964 Civil Rights Act, it is not unlawful to discriminate on the basis of religion, sex, or national origin where that is a bona fide occupational qualification necessary to the normal operation of the business.

Under civil rights acts of Congress, it is not unlawful to discriminate against a person for being a member of the Republican, Democrat, or Communist Party.

Exempt from open housing federal acts are private clubs not in fact open to the public, and religious organizations and their non-profit affiliates.

These exceptions do not appear available in Montana under the proposal. The new Illinois Constitution exemplifies the better type of provision in providing that the legislature may establish reasonable exemptions relating to the right to be free from certain types of discrimination.

Some of the more interesting ramifications involved quickly come to mind. A Jaycee Club could not ban women, nor could the YWCA ban men. A Miss Montana Pageant could not ban married women or men. A landlord could not refuse to rent to someone because he wears a crewcut and a narrow tie, nor could a person seeking property refuse to sell to a Republican, assuming each of these were the prevailing reason.

A Young Republican Club could not bar Young Democrats from running for their presidency. A Catholic college could not refuse to hire a Mormon for its presidency solely because of religion.

Sex, as usual, provides the more interesting aspects and possible ramifications: If unable to discriminate on basis of sex ---abolishes a state statute denying to a married woman the right to make a will which deprives the husband of more than 2/3 of her estate.

---abolish statute exempting married women from criminal prosecutions in certain cases when acting under threat of husband ---affect participation in sports, maternity leave at work, and automatic right of women to children, child support and alimony.

THE LEGISLATURE

Article V of both the proposed and the current Constitution contain the bulk of the legislative provisions. Below are the major changes, discussed in terms of bicameral or unicameral where applicable, and in terms of the current and proposed document.

Size of Legislative Body:

Current: No limitation, set by legislature (Art V, sec. 4)

Proposed:

Bicameral: limits House to between 80-100 members, Senate to between 40-50 members (Art. V, sec. 2)

Unicameral: Limits body, called the Senate, to between 90-105 members (Art. V, sec. 2)

Term of Legislators:

Current: Senate, 4 years; House, 2 years (Art. V, sec. 2)

Proposed: (lots drawn to determine 4 year staggered terms, Senate)

Bicameral: No change (Art. V, sec. 3)

Unicameral: 4 year Senate (Art. V, sec. 3)

Qualifications of Legislators:

Current: US citizen, resident of county or district for one year prior to general election; age 21 for House; age 25 for Senate (Art. V, sec. 3)

Proposed: Resident of state for one year prior to general election with a residency requirement of six months before the general election: of county if it contains one or more districts, or of the district if it contains all or parts of more than one county. (Art V., sec. 4). Thus, a person from a county but not a resident of a district can run for a legislative seat in that district if the county has more than one district and the district does not overlap into another county.

One need only be 18 years old to run for the House or the Senate, or the Senate in a unicameral legislature.

Compensation of Legislators: Currently set by legislature (Art V., sec. 5), but no legislature may set its own compensation (Art V., sec. 8). There is no change in the proposed document. (Art. V, sec. 5).

Sessions:

Start of: First Monday in January under current constitution (Art V., sec. 6), but no day certain is fixed in the proposed one.

Frequency:

Current: Every two years in odd numbered years (Art. V, sec. 6) with special sessions at the call of the governor only, the legislature having no power to legislate on any subject other than that allowed by the Governor. (Art V, sec. 6; Art. VII, sec.11)

Proposed: Annual sessions, with special sessions at the call of the governor or the written request of a majority of members. (Art. V., sec. 6).

THE LEGISLATURE
(cont)

Sessions: (Cont.)

Length:

Current: 60 calendar days, e.g. ends 60 days after first Monday in January. (Art. V, sec. 5).

Proposed: A continuous body for two-year periods beginning when newly elected members take office (to allow committees to legally act between times the body is in session).

No restriction in Constitution on the length of a session except the first session under the new Constitution, which is limited to 60 legislative days, e.g. can meet for a number of days, recess for a number, meet, etc., so long as the total meeting time in that first one year period does not exceed 60 days.

After the first session, each session thereafter is allowed to increase the limit on the length of any subsequent session without constitutional restriction. (Art. V, sec. 6). Any business pending at the time of adjournment of session carries over with same status to any other session of the legislature during the two year period.

Vacancies:

Current: left to law, which currently provides for county commissioners to fill.

Proposed: special election for unexpired terms unless otherwise provided by law. (Art. V, sec. 7)

Organization and Procedure:

Lt. Governor: Currently the president of the Senate (Art. VII, sec. 15), but under the proposed constitution, eliminated from a legislative role.

Secrecy: Currently, proceedings open unless business is such as requires secrecy, as determined by the legislature (Art. V, sec. 13), but under the proposed version, sessions and all committee meetings are open. (Art. V, sec. 10(3)).

Voting: Currently, a recorded vote is required only on final passage (Art. V, sec. 24) and when requested by any two legislators (Art. V, sec. 12). Under the proposed version, there will be a recorded and public vote on every vote on a substantive question, committee or otherwise. (Art. V, sec. 11(2)).

Appropriations: A current provision prohibits appropriations for religious, charitable, industrial, educational, or benevolent purposes to, among other groups, communities. (Art. V, sec. 35). Under a new version, the ban with regard to communities receiving such appropriations is lifted. (Art. V, sec. 35).

Impeachment of State Officials: Under the current provisions, the power to bring charges requires a majority vote of the House of Representatives and a judgment of impeachment, tried by the Senate, removes the person from office and disqualifies him from holding further state office. (Art. V, sec. 16,17). Under a new provision, a 2/3 vote is required by the body bringing charges and only removes the guilty officer from office. He is not barred from future office. (Art. V, sec. 13).

THE LEGISLATURE
(Cont.)

Districting and Apportionment:

Current: The legislature is required to be apportioned on the basis of population by the legislature after the federal census. There is a requirement that when a legislative district is composed of two or more counties, it is to be "compact." and there is no requirement as to single member districts. (Art. VI, sec. 2,3).

Proposed: Single member districts are required, e.g. one legislator only from a district. Each Senate District, under the bicameral plan would consist of two adjoining house districts.

It is required that each district consist of "compact and contiguous territory" and be "as nearly equal in population as is practicable." (Art. V, sec. 14(1)).

Each apportionment would be prepared by a five member commission whose chairman shall be a commission member selected by the other four commissioners who would be selected by the majority and minority leaders of the legislature.

The commission plan would be submitted to the legislature at its first session after its appointment or after federal census figures become available. The legislature, within thirty days, returns the plan with "suggestions" and within thirty days thereafter, it is filed in final form by the commission and becomes law. (Art. V, sec. 14(2),(3)).

Miscellaneous: Eliminated from the proposed document are a variety of procedural limitations on the legislative process:

---requirement of unanimous consent on certain appropriation bills within 10 days of close of session. (Art. V, sec. 21)

---requirement that revisions or amendments of laws be published and that no such action be done by reference to the title of the bill alone. (Art. V, sec. 25)

---provision that forbids members of state offices from having an interest in state contracts. (Art. V, sec. 30)

---provision forbidding the legislature to increase or diminish the salaries of public officials after their election or appointment. (Art. V, sec. 31).

---provision requiring revenue bills to originate in the House. (Art. V, sec. 32)

---provision forbidding the legislature from authorizing the investment of trust funds by executors, guardians or trustees in the bonds or stocks of private corporations. (Art. V, sec. 37)

---provisions relating to bribery of legislators, and the requirement that a legislator who has a private interest in legislation shall disclose such, and shall not vote on the legislation. (Art. V, sec. 41-3).

THE LEGISLATURE
(cont.)

GENERAL PROVISIONS. Under Article XIII of the proposed document are a variety of general provisions, most of which are directives to the legislature. These direct the legislature to:

- provide protection and education for people against harmful and unfair practices of corporations, individuals or associations.
- pass no ex post facto laws. (XIII, sec. 1(3))
- provide an office of consumer counsel to represent the public before the public service commission, the funding to be by a special tax on net income or gross revenues of regulated companies. (XIII, sec2)
- create a salary commission to recommend compensation for judges and elected members of the legislative and executive branches. (XIII, sec. 3)
- provide a legislative code of ethics prohibiting conflict between public duty and private interests, as well as such a code for all state and local officers and employees (XIII, sec. 4)
- enact liberal homestead and exemption laws. (XIII, sec. 5)

SUFFRAGE AND ELECTIONS

Article IV of the proposed Constitution has its counter-part in Article IX of the current Constitution and deals with voting, elections, and qualifications for public office.

A secret ballot is given constitutional protection for the first time. (Art. IV, sec. 1).

The proposed article gives the legislature the major burden for establishing explicit registration, residence, and administrative requirements, as well as being selected to guard against election abuses.

In a new provision, the legislature is specifically given the discretion of providing a system of poll booth registration, a power they already had under the old document because they were not forbidden to enact such a measure.

In conformance with the 26th amendment to the US Constitution, 18 is the voting age under the new document. Persons determined to be of unsound mind by a court, or serving a felony sentence are disqualified. In the latter instance, a pardon is no longer required to entitle the felon to vote or hold public office.

All qualified electors are entitled to hold public office, except as limited by the new document.

The proposed article deletes several minor provisions contained in the present Constitution: Article IX, sections 3,5,6,7,10, and 12. The general government committee of the convention contended that these had been superseded by judicial review or federal action or do not have enough redeeming value to be left in the Constitution.

ENVIRONMENT AND NATURAL RESOURCES

PROTECTION AND IMPROVEMENT. The state, each person, and all legal entities must--under the new document--"maintain and enhance" Montana's environment with the legislature to administer and enforce this "duty." (Art. IX, sec. 1(1), (2)). Rejected by the Convention was the controversial "public trust" doctrine whereby the state would hold in trust all land for the benefit of the people.

Under the proposal, the legislature must provide "adequate remedies" to protect the environment--air, water, land, natural resources--from degradation and "unreasonable" depletion. (Art. IX, sec. 1(3)).

The provision permits the legislature to determine whether the resource is being unreasonably depleted and requires preventive remedies. If that includes class actions by individuals without the necessity of showing direct damage to the individuals, the legislature would have to so provide.

The proposal is the strongest environmental section of any existing state constitution. See section 3, Bill of Rights.

RECLAMATION. The new document provides that the legislature must pass laws for the reclamation of lands disturbed by the taking of natural resources, and states that such lands "shall be reclaimed." (Art. IX, sec. 2).

WATER RIGHTS. Existing rights to the use of water are guaranteed by the new document. This includes water rights for which notice of appropriations have been filed and rights by use for which no filing is on record. (Art. IX, sec. 3(1).)

A new provision establishes ownership of all water in Montana subject to use by the people under past, present or future rights to appropriate water for beneficial uses. (Art. IX, sec. 3(3)).

It provides the state a right to claim water for Montanans where other states or the federal government are involved.

The legislature is directed in a new provision to provide for regulation of water rights and to establish a new system of centralized records without affecting existing local records (Art. IX, sec. 3(4)) or the local control of adjudicated waters by water commissioners appointed by the District Court having jurisdiction.

Retained is a provision that states that the appropriation and use of waters--and collecting reservoirs--for certain purposes is a public use. (Old: Art. III, sec. 15; New: Art. IX, sec. 3(2))

ENVIRONMENT
(cont.)

Thus, the appropriator of water need not be an owner of or in possession of land to make a valid apprpriation, but must use it with some regards of the rights of the public.

Eliminated (From Art. III, sec. 15) is a constitutional directive that the necessity for, and the damages occasioned by, the opening of private roads shall be first determined by a jury. The matter would now be left to the legislature.

CULTURAL RESOURCES. A new section provides that the legislature must provide for the identification, acquisition, restoration, enhancement and preservation of scenic, historic, archeologic, scientific, cultural and reareational areas, sites, and objects, and their use and enjoyment by the people. (Art. IX, sec. 4)

The effect of this provision is to further extend the protection of the environment to include cultural and aesthetic considerations.

LOCAL GOVERNMENT

Proposed Article XI conains the matters pertaining to "local governmental units", the term used to describe cities, towns, counties, and other units--such as special districts--that the legislature has the power to establish. (Art. XI, sec. 1).

COUNTY CONSOLIDATION: Like the current constitution (Art. XVI, secs. 1,2,8) the new document provides for changes in county boundaries and county seats. (Art. XI, sec. 2)

The current document, however, requires the approval of a majority of the qualified electors for any change, while the new document makes such changes easier by only requiring a majority of those voting. Thus, if there are 500 qualified electors, and 100 people vote, 251 votes under the old and 51 votes under the new constitution would be necessary for the change. In cases of county consolidation, a majority would be needed in each county to approve such a move.

The local government committee report (p. 9) claims that this is the only change in this area. Wrong. Eliminated is a provision that restricts votes on the removal of county seats to once every four years. (Art. XV I, sec. 2)

Deleted also were matters concerning indebtedness of new counties, county commissioner districts and county office locations, these matters being left to the legislature. (Art. XVI, sec. 3; Art. XIX, sec. 6).

LOCAL GOVERNMENT

Thus, counties can be allowed to share offices (such as a county attorney), set up branch offices, or have certain county offices at places other than the county seat.

Under other provisions--described below--a variety of options short of county consolidations is available. In fact, counties could join with cities to provide more efficient and economical government.

ALTERNATE FORMS OF GOVERNMENT.

Non-Self Government (No Home Rule.) Currently the legislature has the power to provide "any plan, kind, manner or form" of local government. (Art. XVI, sec. 7)

Under the new document, the legislature is directed to offer alternate choices of governmental structures to be "adopted, amended" or rejected by a majority of those voting (Art. XI, sec. 3(1)) with the requirement that one of those options must be the traditional form of county government of county commissioners and the current elected officials. (Art. XI, sec. 3(2)).

The intent is clear if one reads the committee reports, and their suggested version, but the final draft has become garbled:

"The legislature shall provide by law for optional or alternative forms of government for each unit or combination of units to enable a unit or a combination of units to adopt, amend or abandon an optional or alternative form by a majority of those voting on the question." Committee version

"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." Final Draft version

The provisions, in any event, are designed to allow a wide range of choice in governmental forms.

Statutes currently allow three forms of city government (commissioner-manager; commissioner; and mayor-council), two forms of county government (traditional and county manager), and one form of city-county consolidation. City-wise, county-wise, and consolidation-wise the choices would be broadened.

LOCAL GOVERNMENT
(cont)

Because of the ability of the voters to "amend" an option, the legislature could offer a mayor-council form, but leave to the voters the choice of which officials to elect or appoint, in addition to other possible choices.

Eliminated from the traditional option of county government are provisions as to overlapping terms, procedures for county office consolidation, and methods of filling county office vacancies.

Under the proposal, county commissioners are authorized to provide for a multi county office, and omitted is the prohibition against county treasurers succeeding themselves.

There is one serious defect in guaranteeing the option of the traditional form of county government. If a county opts for one form, not the traditional, the legislature could later provide a third form and the traditional form as the only two options, thus forcing the voters to select one other than what they currently had.

The legislature is also directed to provide procedures for incorporating, classifying, merging, consolidating and dissolving local units of government. (Art.XI, sec. 3(1)).

POWERS OF LOCAL GOVERNMENT NOT UNDER
A SELF-GOVERNMENT CHARTER (NON-HOME RULE)

The new document creates two levels of power. (Art. XI, sec. 4, 5, and 6). The distinction is between self-governed(home rule) and other non-self government units, the latter being similar to current practices in some respects, the former--both by voter option --quite different.

Under the non self government variety, no broad grant of power is intended. Cities and counties would have powers as provided by law, including legislative and administrative powers, and cities would have the powers of municipal corporations. Plus, in cases of doubt as to whether powers were held, the benefit of the doubt would be given to the local unit having such powers and not to the lack of the powers as is currently the case under court decisions.

A major shift in power would occur with respect to counties. Currently the legislature must not only tell the counties that they may act in a particular area (which is all that is necessary with cities now) but also must spell out in what manner they may act, e.g. the counties doe not currently have legislative or discretionary powers. The counties, under the new document, would be given the additional power. (Art. XI, sec. 4(1)(b)).

LOCAL GOVERNMENT
(cont.)

ALTERNATE FORMS OF GOVERNMENT:
SELF-GOVERNMENT (HOME RULE)

The new document allows the people--by a majority vote of those voting--to frame their own form of government by a self-government charter. (Art. XI, sec. 5). That power currently lies just with the legislature.

The legislature or local governmental body in charge would not have veto power over the charter (Art. XI, sec. 5(1)) and state law would be overridden where inconsistent with the charter. (Art. XI, sec. 5(3)).

Failure of the legislature to establish procedures in relation to votes on charters by July, 1975 would allow the people through petition (initiative) or the local body, to establish such provisions. (Art. XI, sec. 5(2)).

SELF-GOVERNMENT POWERS. Those cities and counties adopting "home rule" or self-government charters would have all powers not prohibited by the charter, the legislature, or the new constitution, (Art. XI, sec. 6) as contrasted to having only those powers granted by the legislature in the case of the non-charter local government, and with the presumption against having those powers in the latter case when there is doubt, under the old document.

Thus, for example, unless so prohibited, cities and counties would have the power to tax.

VOTER REVIEW. Montana voters, under the new document, would be forced to make a choice in a "voter review" of local government which must take place within four years of ratification of the constitution and every ten years thereafter. (Art. XI, sec. 9)

INTERGOVERNMENTAL COOPERATION. Section 7 of the proposed article is a grant of authority to local governments to cooperate in the exercise of powers and functions, share the services of officers and transfer functions and responsibilities to other units.

Local residents, thru petition, could force their local governments to cooperate, with both local residents and the legislature able to prohibit certain forms of cooperation. (Art. XI, sec. 7(2)).

LOCAL INITIATIVE AND REFERENDUM. Local bodies could refer legislation to voters and voters could by petition initiate legislation under the new document--a new feature--and the legislature is directed to extend such power to the localities. (Art. XI, sec. 8).

THE EXECUTIVE

Article VI of the new document--an entirely rewritten article on the executive branch--replaces Article VIII, the current executive article, and includes a modified version of Article XIV, on the militia.

The major changes in the executive article:

- eliminates the constitutionally guaranteed status of the state treasurer, state examiner, board of pardons, board of examiners, and board of prison commissioners. These remain statutory offices until changed by the legislature. The justification advanced for the change is that their functions are changing under the recently adopted reorganization plan and that their future position should not be frozen.
- authorized a full-time lieutenant governor to assist the governor in non-constitutional duties, the two to be nominated and elected as a team. The Lt. governor succeeds to the governorship, with the legislature setting other roles of succession. The Lt. Governor does not assume the powers of the governor until he is absent from the state for 45 days (currently done immediately) or unless authorized by the governor in writing to act prior to that time.
- sets at 25 years of age to run for governor, lt. governor, secretary of state, attorney general(if in practice for five years as an active lawyer), superintendent of public instruction and the auditor.
- salaries of elected officials may be increased but not decreased during their term, the current document permitting decreases but not increases during the term.
- elected officials of the executive branch cannot hold two public offices at the same time, but can seek another office without resigning.
- makes the governor the true executive power of the state by eliminating the restricting powers on the executive via constitutional boards.
- places the appointive and removal power of the 20 executive departments in the hands of the governor, the appointive power being subject to confirmation by the senate, with the added ability of the senate to oversee reappointment of rejected nominees.
- gives constitutional recognition to an executive budget.
- removes the governor from the process of amending the state and federal constitutions and from vetoing initiative or referendum measures.
- eliminates the "pocket veto" of the governor by requiring that the governor sign or veto all bills presented to him within five(5) days (if the legislature is in session) or within 25 days (15 in old document) if the legislature is adjourned, or it becomes law. The legislature is authorized to reconvene to reconsider post-session vetoes.

THE EXECUTIVE
(cont)

---allows an "amendatory" veto but not a reduction of appropriations veto. If recommended amendments are accepted by the legislature, the bill is returned to the governor for reconsideration. The amendatory veto extends to appropriation bills.
---allows the governor to order special legislative sessions when he considers it in the public interest.
---sets procedures for determining the disability of the governor similar to the 25th amendment to the US Constitution.
---allows the governor to require written information under oath from the executive branch and is given authority to appoint investigative committees and require reports from state officials.
---provides for a state militia of which the governor is commander in chief, and removes the limitation under the current document which only makes males a part of the militia.

DEPARTMENTS AND INSTITUTIONS

Agriculture, labor and industry and institutions generally are dealt with in Article XII of the proposed constitution.

AGRICULTURE. The department of agriculture is kept as a constitutional department, (Old: XVIII, sec. 1; new: XII, sec. 1(1)) and added is the obligation of the legislature to "protect, enhance, and develop all agriculture."

In making specific constitutional mention of a livestock mill levy, the constitution authorizes that levy, adds agricultural commodities as an area upon which levies can be made, and eliminates the four mill ceiling on the levy. (Old: XII, sec. 9; new: XII, sec. 1(2)). In 1970 10.5 mills were levied for the livestock commission, the livestock sanitary board and bounty payments. An attorney general's opinion has held that up to 4 mills could be levied on the assessed value of livestock rather than on taxable value, which means that currently up to 12 mills may be levied for the purpose of stock inspection, protection and indemnity and for bounties.

LABOR AND INDUSTRY. Proposed Article XII, sec. 2(1) retains an abbreviated provision on labor and industry (old: XVIII, sec. 1), retaining a constitutional department of labor and industry but deleting the requirement that it be located at the capitol. It retains the requirement that the commissioner be confirmed by the Senate.

Some sections were deleted as being legislative material, e.g. it is now left to the legislature, such as that it shall be unlawful to employ children under 16 in underground mines. (XVIII, sec. 3). Eight hours is set as a regular days work in all areas of employment except agriculture and stock raising (XII, sec. 2(2)), which may be changed by the legislature. Under the old document (XVIII, sec. 4) the legislature had no authority to increase it above 8 hours.

DEPARTMENTS AND INSTITUTIONS
(cont.)

INSTITUTIONS AND PUBLIC ASSISTANCE. The legislature is directed to support and establish institutions that the public good may require, including veterans' homes under the new document. (Art. XII, sec. 3(1)). Deleted is specific reference to educational, penal, and homes for the insane, the existence of which is left to the legislature. (old: Art. X, sec. 1).

Only those rights suspended as a condition of commitment are suspended, and are restored upon termination of the state's responsibility, under this new section. (Art. XII, sec. 3(2)).

Economic assistance and social and rehabilitative services for the disadvantaged are to be provided by the legislature under the new provision. (XII, sec. 3(3)).

Under the current section (Art. X, sec. 5) the burden is on the individual county. The legislature could thus equalize the tax burden by distributing it on a state wide basis. Currently, the more highly populated areas pay a large proportion of the welfare costs.

NON-MUNICIPAL CORPORATIONS

Under the heading of "General Provisions" in Article XIII of the new document, a general grant of legislative power for corporate charter granting is provided. (Art. XIII, sec. 1(1)).

The new section provides for a prohibition against chartering corporations by special law and expresses the intent that corporate bodies are subject to dissolution if their principle activity is contrary to the general welfare. It differs from the document we currently have (Art. XV, sec. 2) in that special laws could be passed for educational, penal or reformatory corporations under control of the state.

Business practices harmful to the people are protected by the new document in a provision that is shorter and more clear. (Art. XIII, sec. 1(2)).

In the area of corporations, a variety of prohibited business practices by corporations against persons will probably be set by the legislature: laws concerning arbitrary rate and service discrimination in transportation; price fixing and regulation of production in a manner harmful to the state economy; and laws pertaining to other acts not conducive to efficiently allocating scarce resources. (Old: Art. XV, sections 7,9).

A variety of provisions affecting non-municipal corporations and stockholders were deleted, being left to the legislature. Some of the more important:

---deletion of cumulative voting for shareholders (Art. XV, sec. 4)
---deletion of prohibition of corporations issuing watered stock.
(Art. XV, sec. 10)

REVENUE AND FINANCE

Article VIII--in 14 sections--of the proposed constitution is intended to replace 42 sections of Article XII of the current document. Numerous other fiscal provisions are scattered throughout the legislative and executive articles. Probably the most important provisions, they are also the most complex.

TAX PURPOSES, ADMINISTRATION

AND VALUATION. Broad language is used in the new document by stating, that, under the new constitution, the legislature shall decide what property to tax and how to tax it. (Art. VIII, sec. 1). The current document specifies particular kinds of revenue measures and requires that all property be taxed. (Art. XII, sec. 1).

Currently the Montana Constitution establishes a basis for legislative taxation in the area of property taxes (XII, sec. 1), license taxes (XII, sec. 1), income taxes, (XII, sec. 1a) and mining and mining claim taxes (XII, sec. 3). The legislature, may, of course, impose other types of taxes. The current document also limits the rate of property taxation that may be imposed for state purposes. (XII, sec. 9). Mining, through the net proceeds tax, is the only class of property protected by such special constitutional enactment.

The new constitution changes this by saying that taxes shall be levied by general laws for public purposes (Art. VIII, sec. 1) and that this power to tax shall never be surrendered. (Art. VIII, sec. 2).

Under the new document taxed property has to be appraised, assessed and equalized by the state in a manner to be provided by the legislature. (Art. VIII, sec. 3)

The current method of a two-tier system of assessment, equalization and review, would be replaced by a state-level system of appraisal, assessment and equalization.

An independent appeals procedure is provided for in the new document for taxpayer grievances, with the legislature commanded to provide for a review procedure at the local level. (Art. VIII, sec. 7). Under the current document, the same bodies that establish policies sit in judgment on implementation of the policies.

Under the new document, property will be taxed at the same assessment for state, county, or school district purposes, using the valuation established by the state. (VIII, sec. 4).

TAX EXEMPTIONS. Tax exemptions differ under the new document. Most of the present property exemptions are retained. Exemptions as to property used for agricultural and horticultural societies and debt secured by mortgages, however, are deleted. (Art. VIII, sec. 5(1)). The legislature, however, may, under the new document, add to the list of exemptions. Currently the list in the constitution is exclusive. The proposed section permits taxation of private interests in government-owned property, which is not currently permissible.

TAXATION AND FINANCE
(cont.)

HIGHWAY REVENUES. Under a new provision that modifies the law in the old document, (Art. VIII, sec. 6) the legislature is allowed to divert certain highway funds.

Registration fees and fees on the sale of new cars are no longer earmarked by the Constitution for the fund. The use of the funds has been expanded to include local government roads, highway safety programs and driver education programs. The proposed section permits diversion of the earmarked funds to other purposes than highways and the additional categories, if each house of the legislature (if there are two) by a three-fifths majority approves such expenditure. The Convention, in the face of strong opposition, felt that the time might come when highway funds are no longer needed, at least not at the level of current programs, and at that point felt that gasoline and fuel taxes which go into the earmarked fund should be allowed to diminish. Political considerations, however, could well play a role in tapping the fund for needed revenues, to the detriment of the highway program.

STATE DEBT. A revised section on debt (VIII, sec. 8) replaces the old section (Art. XIII, sec. 2) which had a \$100,000 debt limit for the state, with additional indebtedness as authorized by the voters.

The new section eliminates any upper level and leaves the matter to the legislature, requiring a 3/5 vote to create debt, or to the people by a majority vote. The legislature is prevented from creating debt to balance the budget.

The decisions about debt limitations are obviously policy questions. There are difficulties with the section as proposed. Like many provisions in the constitution as proposed, the legislature may not act prudently. Also, a fixed dollar limitation at least brings into action specific debate for excess debt.

The difficulty is with the problem of finding some other formula. The debt limit, could, however, be computed by relating it to the revenues of the state. There is authority for bringing all nonguaranteed borrowing, including revenue bonds, under constitutional debt control, mostly on the basis of cost.

BALANCED BUDGET. In a manner similar to the old constitution (Art. XII, sec. 12) the legislature cannot appropriate money in excess of anticipated revenues during any budget period. (Art. VIII, sec. 9).

LOCAL DEBT. A proposed section (Art. VIII, sec. 10) requires the legislature to enact limits of indebtedness on local government, leaving the limits on that indebtedness to the legislature, and allowing it to pledge the credit of local governments to back indebtedness.

Because of the removal of the limitation on the state assuming the debts of local governments (Art. XIII, sec. 4 of old document) the state will be permitted to back local government bonds with the states' credit.

TAXATION AND FINANCE
(cont.)

LOCAL DEBT (CONT.)

Eliminated from the current document is a provision limiting county indebtedness, as well as city and school district indebtedness, to 5% of the value of the taxable property, and eliminated is a limitation of \$10,000 on single purpose indebtedness without prior voter approval of the counties. (Art. XIII, sec. 5,6, old document). Under the current document, the legislature could allow municipalities, with voter approval, to exceed the 5% limitation to construct a sewer system or procure a water supply.

There are some obvious difficulties with the elimination on all restrictions and leaving it in the hands of the legislature. Government borrowing and debt have a "time horizon" that some feel requires constitutional control. Future taxpayers cannot always be assumed to be promised adequate representation through year to year political decisions of politicians, nor are the election processes always sufficient. Will the long view get attention?

The same problem of whether the legislature can be trusted runs throughout the entire document that is proposed. For example, in the balanced budget section just discussed, there is no guarantee that estimated revenue actually will equal appropriations authorized by the legislature, nor are state agencies required to reduce spending from authorized appropriations when actual revenues are less than that anticipated by the legislature.

As with the entire constitution the question boils down to: to what extent are we willing to trust the legislature?

AID TO LOCAL GOVERNMENT. Eliminated is Article XII, 1a which has been suggested as prohibiting the use of income tax revenue for state aid to local governments unless that aid is for a state purpose. Aid to local governments from the state would thus be available.

ELIMINATED PROVISIONS. A wide variety of provisions were eliminated, some of the more important being:

---eliminated a provision allowing cities to levy taxes. (Art. XII, sec. 5)

---eliminated a provision which forbids the legislature to take private property for corporate debts, (Art. XI, sec. 8) which is already guaranteed under the US Constitution.

---eliminated a provision earmarking income tax revenues for education and the general fund, (XII, 1a) 25% being presently so dedicated by statute.

---eliminated the two-mill limitation (without a vote of the people) on state property taxes (Art. XII, sec. 9). The reasoning for this is that a statewide levy on property taxes for education may be necessary because of recent court decisions.

---eliminated a definition of "property" (Art. XIII, sec. 17) as not necessary, because that determination is left to the legislators.

INVESTMENT OF PUBLIC FUNDS. In a new section (VIII, sec 13(1)), an annually-audited "unified investment program is required, with the separate identity of funds, except retirement, required.

EDUCATION AND PUBLIC LANDS

Article X of the new constitution is intended to replace the education, public lands and trust and legacy fund articles of the current constitution (XI, XVII, and XXI, respectively).

EDUCATION. Revisions were made in the basic aims of the educational system, with the deletion of age and school term restrictions, and the new document reflects a revised administrative structure for the public schools and colleges. Local school boards retain local control over elementary and secondary schools.

Broad goals of an educational system which will develop the full "educational potential" and guarantee "equality of educational opportunity" are stated as express purposes. (Art. X, sec. 1(1)).

Recognition is given to the "distinct and unique cultural heritage" of Indians and the commitment in education to preservation of their "cultural integrity." (Art. X, sec. 1 (2)).

A basic system of "free quality public elementary and secondary" schools is required, other institutions being left to the legislature's discretion. (Art. X, sec. 1(3)), the state's share of the cost to be distributed in an "equitable" manner.

Some of the major changes with respect to education in the new document are:

- many investment restrictions removed
- high schools, in addition to elementary schools, to receive the benefit of interest and income of school lands
- broadened provisions prohibiting discrimination in admission to public educational institutions.
- leaves to legislature the decision as to whether to segregate school elections from partisan elections.
- narrowed prohibition of aid to religious schools by exempting federal funds distributed to the state.
- creates two distinct boards of education (public education and regents of higher education) with these making up a state board of education responsible for long range planning and coordination of the state's educational system, which will cause a unified budget request for both boards.
- provides for appointment of a commissioner of higher education.

PUBLIC LANDS. Public lands (trust lands held by the state) and the disposition of funds therefrom are provided for in Article X, sec. 11 of the proposed document. Some of the major changes in this article are:

- deletion of the constitutional specification of land classes so as to allow designation as multiple use.
- addition of provision allowing lands of equal value to be exchanged if they are nearly equal in size.

JUDICIARY

Article VII of the new document deals with the courts and replaces Article VIII of the current document.

The major changes in the article are:

- allows intermediate appellate courts to be created, but retains all current constitutional courts.
- legislature given the power to increase the number of Supreme Court justices from four to xi.
- terms of office of judges increased: Supreme Court, 6 to 8 years; District Court, four to six years; Justice of the Peace, two to four years.
- deletion of clerk of Supreme Court as a Constitutional office.
- no age requirement for selection as supreme court judge or district court judge, but must have been admitted to practice of law for five years, qualifications of other courts to be set by law.
- selection of justice's of peace: qualifications, training, and salary to be provided by law, and shall be provided for with facilities that are in "dignified surroundings".
- election of JP's, at least one per county rather than the current requirement that there be at least two per township.
- The Constitutional Convention document entitled Highlights of Proposed Constitution incorrectly says that the number of justices of the peace is restricted to one per county.
- deleted requirement that there be at least three terms of the Supreme Court per year.
- only when an incumbent does not run for the supreme court or the district court will there be an election. In all other cases, the incumbent's name will be placed on the ballot to approve or reject him. If rejected--or if a vacancy occurs--a nomination by the governor in a manner to be provided by the legislature takes place, but must be confirmed by the Senate.
- new provision for removal and discipline of judges by the supreme court upon recommendation of a judicial standards commission.

CONSTITUTIONAL REVISION

Article XIV of the proposed constitution provides for constitutional revision. Under Article XIX, section 8 of the current constitution are similar provisions.

The new provisions allow either the legislature or the people, by initiative, to submit the question of whether there shall be "an unlimited convention to revise, alter, or amend," the Constitution. (Art. XIV, sec.1,2)

This differs from the current constitution in two respects. First, the new provision, by referring only to "unlimited" constitutional conventions precludes a constitutional convention limited to certain topics, as is allowed under the current document, or a revision proposed by a Commission directly to the people. Secondly, the people of Montana do not now have the power to call a Constitutional Convention by initiative.

CONSTITUTIONAL REVISION
(cont.)

Under the initiative approach, the petitioners must have petitions signed by at least 10% of the electors, which must include at least 10% of the electors in each of two-fifths of the legislative districts.

Delegates would run in legislative districts and under the same qualifications of the largest legislative body in the state, with eighteen year olds able to run.

Overruling a recent Montana Supreme Court case, the provision says that the legislature shall determine whether the delegates may be nominated on a partisan or non-partisan basis. (Art. XIV, sec. 4).

The current constitution requires a convention to meet within three months after the election of delegates. No such requirement is placed in the proposal.

A new provision (Art. XIV, sec. 3) calls for the consideration of a constitutional convention at least once every 20 years.

The current constitution requires submission of a proposed document not less than two nor more than six months after adjournment of the convention. Under the proposed version no time limit is provided within which the proposed constitution must be submitted to the voters. They could wait five years.

Amendments may be initiated by the people--a new power for Montanans--or by 2/3 of all the members of the legislature. (Art. XIV, sec. 8,9). Under the current constitution, and eliminated from the proposal, is a restriction limiting the number of amendments that may be submitted to voters at an election to three. (Art. XIX, sec. 9).

GENERAL GOVERNMENT

Article III of the proposed document retains the separation of powers of the state in dividing the government into three distinct branches of government. (Old: Art. IV; new: Art. III, sec. 1)

A proposed section (Art. III, sec. 2) allows the legislature to enact laws to provide for the continuity of government under any situation that may arise.

Initiation of legislation by the people thru petition and the power of the people to approve or disapprove of legislative acts by referendum are retained in the new constitution (Art. III, sec. 4,5), the only change being in the number of qualified electors necessary to sign the petitions.

Recall of public officials has not been provided for in the new constitution.

Deleted from the proposed document were Article I (defining the state boundaries) and Article II (dealt with now abandoned military posts).