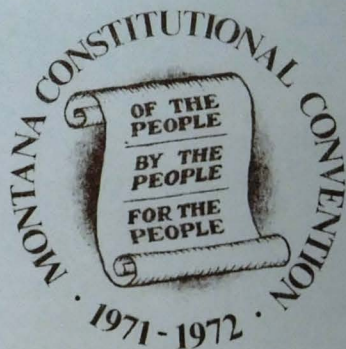


Montana. Constitutional Convention

RULES

MONTANA CONSTITUTIONAL CONVENTION

1971 - 1972



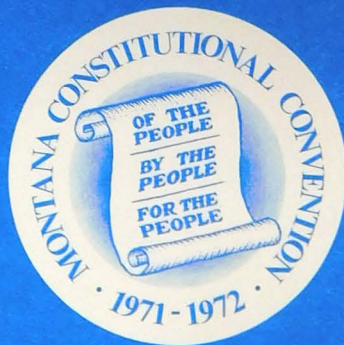
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Montana Constitutional Convention Studies



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***New State
Constitutions***

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

NEW STATE CONSTITUTIONS

CONSTITUTIONAL CONVENTION STUDIES NO. 6

Prepared by

MONTANA CONSTITUTIONAL CONVENTION COMMISSION

PREFACE

The delegates to the 1971-1972 Montana Constitutional Convention will need historical, legal and comparative information about the Montana Constitution in addition to information on the organization and operation of constitutional conventions. Recognizing this need, the 1971 Legislative Assembly created the Constitutional Convention Commission and directed it to prepare and assemble essential information for the Convention. To fulfill this responsibility, the Constitutional Convention Commission is preparing a series of research reports.

In addition to the series of research reports, the Commission has authorized the reprinting of certain documents for the use of Convention delegates. This report republishes 5 of the 12 new state constitutions that have been adopted since 1945, and 2 of the 7 constitutions that have been rejected when submitted to the voters and a summary of constitutions proposed by constitutional study commissions.

CONSTITUTIONS ADOPTED BY THE PEOPLE SINCE 1945

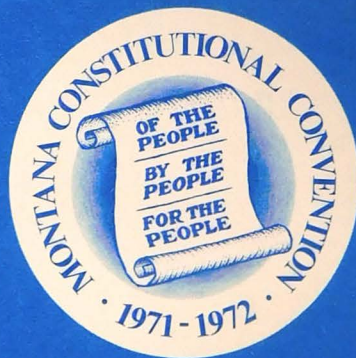
Alaska	Missouri
Connecticut	New Hampshire
Florida	New Jersey
Georgia	Pennsylvania
Hawaii	Puerto Rico
Illinois	Michigan
Virginia	

CONSTITUTIONS PROPOSED TO PEOPLE, BUT NOT ADOPTED

Arkansas	New York
Idaho	Oregon
Maryland	Rhode Island
New Mexico	

The Constitutional Convention Library, which is being assembled by the Constitutional Convention Commission, will contain the constitutions of all 50 states in addition to a voluminous collection of official and non-official studies of state constitutions and constitutional problems. Many studies contain proposed constitutions.

Montana Constitutional Convention Studies



***Prepared By:
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***Constitutional
Convention
Enabling Act***

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

CONSTITUTIONAL CONVENTION ENABLING ACT

CONSTITUTIONAL CONVENTION STUDY NO. 1

PREPARED BY

MONTANA CONSTITUTIONAL CONVENTION COMMISSION

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PREFACE

The delegates to the 1971-1972 Montana Constitutional Convention will need historical, legal and comparative information about the Montana Constitution in addition to information on the organization and operation of constitutional conventions. Recognizing this need, the 1971 Legislative Assembly created the Constitutional Convention Commission and directed it to assemble and prepare essential information for the Convention. To fulfill this responsibility, the Constitutional Convention Commission is preparing a series of research reports.

This first report, an analysis of the Constitutional Convention Enabling Act, was prepared under the supervision of the Commission's Convention Arrangements Committee consisting of William Sternhagen, Chairman; Clyde Hawks; Leonard A. Schulz; and Charles A. Bovey.

This report contains the enabling act for the Constitutional Convention adopted by the 1971 Legislative Assembly, a summary of the act, a calendar of convention dates and a section-by-section analysis of the enabling act.

The Constitutional Convention Enabling Act was originally drafted by the Montana Constitution Revision Commission and introduced into the 1971 Legislative Assembly by Representative James E. Murphy, vice chairman of the commission. The draft as amended was approved by the 1971 Legislature.

It is appropriate in this first Commission report to note the significant contributions of the 1967-1968 Legislative Council Committee on the Montana Constitution and of the 1969-1970 Montana Constitution Revision Commission to the process of constitutional change in Montana. The dedicated work of these individuals led to the calling of the Constitutional Convention by vote of the people in November, 1970.

This report is respectfully submitted to the people of Montana and their delegates to the 1971-1972 Constitutional Convention.

ALEXANDER BLEWETT

CHAIRMAN

ANALYSIS OF ENABLING ACT

(2) The president and vice-president of the convention shall be paid the same per diem, and expenses as the president of the senate and speaker of the house of representatives as provided in section 43-311, R.C.M. 1947.

(3) Members and officers shall be entitled to mileage for three (3) trips to and from their residences and Helena by the nearest traveled route at the rate provided for the legislative assembly in section 43-310, R.C.M. 1947.

(4) Officers and employees of the state and its political subdivisions who are not prohibited by the Montana Constitution or laws of Montana from serving as delegates and who are elected and serve as delegates to the convention shall have leave, without pay, from their employment during the time the convention is in session, and they shall be entitled to the per diem, expenses and mileage for delegates as provided in this section.

Article XIX, Section 8 of the Constitution provides in part: "The legislative assembly shall in the act calling the convention...fix the pay of its members and officers, and provide for the payment of same...."

For each day of the session, members and officers of the Convention will be paid the same per diem (\$20 a day) and expenses (\$25 a day) as provided by law for members and officers of the Legislative Assembly. Members and officers will be entitled to mileage for three trips to and from their residences and Helena at the rate provided for the Legislative Assembly (9¢ a mile). Current statutes for legislative per diem, expenses and mileage are set forth in Appendix J.

Officers and employees of the state and its political subdivisions who are not prohibited by the Montana Constitution or state laws from serving as delegates and who are elected and serve as delegates to the Convention will be granted leave without pay from their employment during the time the Convention is in session. They will be entitled to the same per diem, expenses and mileage as other delegates.

RATIFICATION ELECTION

Section 17. (1) The revision or alteration of, or the amendments to the constitution, adopted by the convention, shall be submitted to the electors of this state for ratification or rejection, at an election appointed by the convention for that purpose, not less than two (2) months nor more than six (6) months after the adjournment of the convention.

(2) The convention may submit proposals to the electorate for ratification in any of the following forms:

(a) submitted as a unit in the form of a new constitution;

(b) submitted as a unit with the exception of separate proposals to be voted upon individually, or

(c) submitted in the form of a series of separate amendments.

(3) The proposals adopted by the convention shall be certified by the president and secretary of the convention to the secretary of state.

(4) Each proposed revision, alteration, or amendment, together with appropriate information explaining each revision, alteration, or amendment, shall be published in full and disseminated to the electors upon adjournment of the convention but not later than thirty (30) days preceding the election and in such manner as the convention prescribes.

(5) The convention shall also publish a report to the people explaining its proposals.

(6) Notice of the election shall be given in the manner and form prescribed by the convention.

(7) The convention shall prescribe the manner and form of voting at such election.

(8) The votes cast at such election shall be tabulated, returned and canvassed in such manner as may be directed by the convention.

(9) If a majority of the electors voting at the special election shall vote for the proposals of the convention the governor shall by his proclamation declare the proposals to have been adopted by the people of Montana. The new constitutional provisions shall take effect as provided therein, or as provided in a schedule of transitional provisions attached thereto.

(10) The election laws of the state of Montana shall apply in all other respects to the election conducted under this section.

ANALYSIS OF ENABLING ACT

Article XIX, Section 8 of the Montana Constitution provides in part that the revisions, alterations or amendments proposed by the Convention "...shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two (2) nor more than six (6) months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect."

The Convention will probably provide for a special ratification election in conjunction with the November 7, 1972 general election. If the Convention chooses this course of action, it must adjourn permanently not earlier than May 7, 1972 nor later than September 7, 1972. The Convention need not meet in continuous session until May 7, 1972, but may recess from time to time between January 17 and May 7, 1972.

A special election on the same day as the general election would minimize additional election expenses and increase voter participation. Since 25 per cent of the voters at general elections commonly do not vote on constitutional questions, Convention proposals placed on the general election ballot almost certainly would not receive the vote of a majority of the persons voting at the election, as is required by the Constitution. This problem can be avoided by conducting a special election on the proposed constitution on the same day as the general election but not as part of the general election.

After the Convention has adjourned, it will be necessary to acquaint the public with the Convention proposals. There should be adequate time for the Convention to inform the electorate about the proposed constitution.

The Convention may submit proposals for ratification in any of the following forms: (1) as a unit in the form of a new constitution, (2) as a unit with the exception of separate proposals to be voted upon individually, or (3) in the form of a series of separate amendments. The manner in which the proposals are submitted should be designed to determine the public will as completely and conveniently as possible. The rejection by the voters of New York, Rhode Island and Maryland of proposed new constitutions presented in a single package supports the conclusion that success is more likely if highly controversial issues are submitted separately. As the Advisory Commission on Intergovernmental Relations pointed out in its annual report for 1968:

ANALYSIS OF ENABLING ACT

voter reaction may have indicated that the electorate is more favorably disposed when it can say "yes" or "no" to the separate component parts of a new constitution rather than having to accept or reject an entire new basic charter on a "take it or leave it" basis.¹⁰

This view was borne out during 1968, 1969 and 1970 by success in Pennsylvania, Florida, Hawaii and Illinois, where proposals were offered in a series of separate propositions, and by failures of single packages in New Mexico, Oregon, Idaho and Arkansas. Submission in a single package consolidates and strengthens the effect of opposition to particular parts of a proposed document. Permitting highly controversial issues to be voted on individually allows them to be decided on their own merits.

Section 17 of the enabling act also provides for the publication and distribution of the Convention's proposals to the voters. The Convention is authorized to prescribe the manner and form of voting on the proposals, the manner and form of notice of the election and the manner of tabulating, returning and canvassing the votes cast at the election.

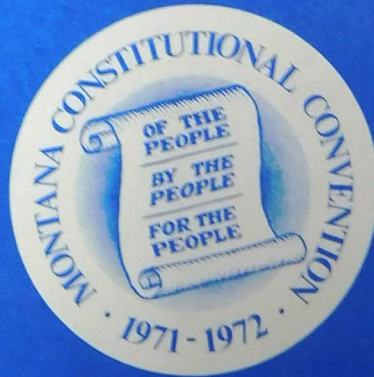
If the proposals of the Convention are approved by a majority of the electors voting at the special election, the Governor shall declare them adopted. However, the proposals take effect only as provided in the schedule adopted by the convention.

QUALIFIED ELECTORS

Section 18. Every person who, at the time of holding of the elections provided for in this act, is a qualified voter under the constitution and laws of this state shall be entitled to vote in such election.

This section declares that all qualified voters are entitled to vote in elections conducted under this bill. The ratification by two-thirds of the states of the 26th Amendment to the United States Constitution, has lowered the legal voting age to 18 for all elections.

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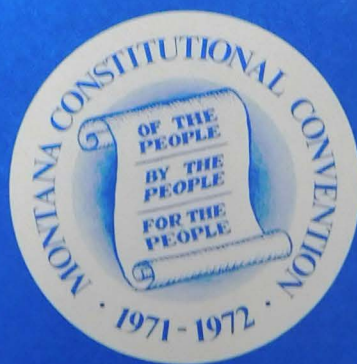
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on State
Constitutions,
Their Nature
and Purpose***

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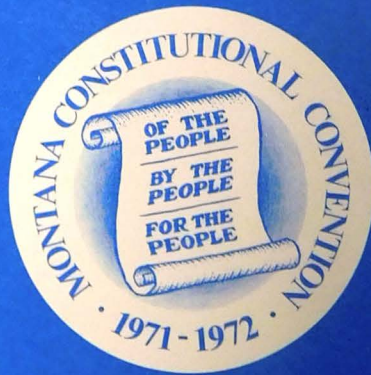
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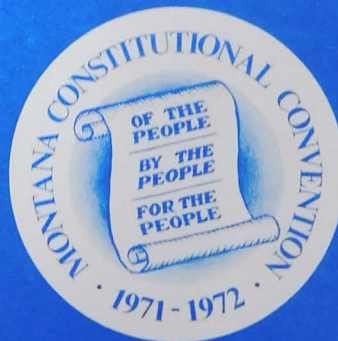
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Bill of Rights

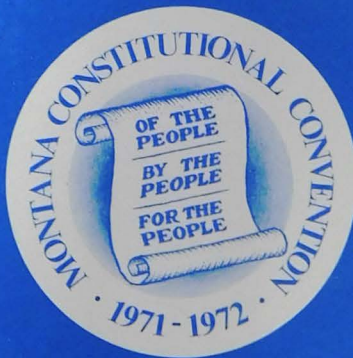
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**Suffrage
and
Elections**

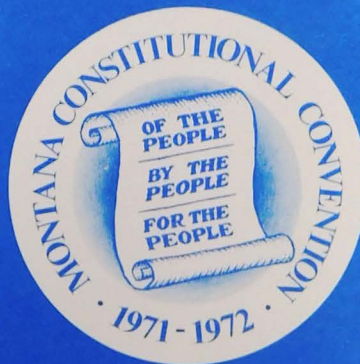
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The Legislature

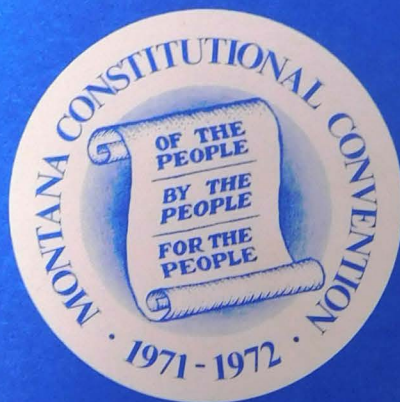
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The Judiciary

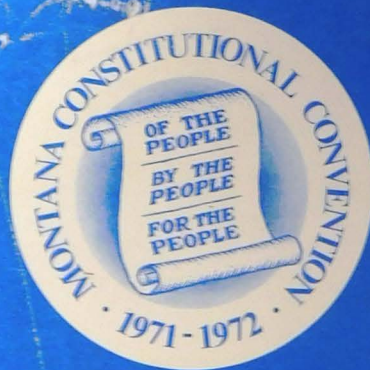
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***Local
Government***

LEVELS, NUMBERS AND BOUNDARIES OF LOCAL GOVERNMENT UNITS

those urbanized areas spread across county boundaries. Such intercounty urban areas also appear highly possible in other areas of the state, particularly west and south from the Missoula urban area and south from the Helena urban area.

Constitutional Language

What should a new constitution say about the number and boundaries of counties? Should Montana's fixty-six counties continue to be practically frozen into existence through constitutional provision? Or, at the other extreme, should the constitution attempt to force the consolidation of counties? Should some "middle approach" be taken, whereby the constitution would provide that counties may be consolidated, either by legislative action or by action of the affected voters?

As noted earlier, the present Montana Constitution makes it nearly impossible to consolidate counties because it requires a majority of the "duly qualified electors" in each county affected must approve the merger. Several other constitutions have similar provions; Idaho, for example, requires a two-thirds majority of those voting in each affected county [Art. XVIII, Sec. 4A]. North Dakota requires an extraordinary majority of 55 percent in areas to be affected by proposed consolidation [Art. X, Sec. 167].

Theoretically, it also would be possible for a new constitution to force consolidation of counties, either by spelling out newly formed county boundaries or, more likely, by directing the legislature to divide the state into no more than a certain number of counties. No instances of such county consolidation by constitutional mandate could be found, however.

Another possibility would be to constitutionally require that once a county dipped below a certain level--either in population, taxable valuation or some other measure--it would be consolidated with an adjacent county. Again, however, such a provision apparently would be plowing new ground.

Many recent state constitutions leave the matter of county boundaries and county consolidation up to the legislature, often subject to ordinary majority approval in the affected area. The Hawaii Constitution, for example, simply provides

LEVELS, NUMBERS AND BOUNDARIES OF LOCAL GOVERNMENT UNITS

that the legislature shall provide by law "for the formation, consolidation, merger, division, and dissolution of counties, and for the transfer of territory between counties" but adds that no such change can be effective until approved by the voters [Art. VII, Sec. 2]. The Michigan Constitution requires approval of a majority "of the electors voting on the question" in each affected county [Art. VII, Sec. 13]. The proposed Idaho Constitution, rejected in 1970, contained a similar provision [Art. XII, Sec. 2].

The Model State Constitution suggests granting the legislature broad power in terms of consolidation, with no requirement for local approval:

The legislature shall provide by general law for the government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries²²

The League, in explaining the proposal, states that "the maze of civil divisions found in most states must be rationalized." The explanatory note continues:

Freedom from excessive constitutional strictures would permit the legislature and the localities, working together, to reorganize counties, consolidate local governments and create federated communities if such action can best serve urban age needs.²³

The state that probably has gone the farthest in constitutionally giving the legislature control over local boundaries is Alaska. In providing for boroughs (roughly similar to counties), the Alaska Constitution states:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law. [Alaska Const. Art. X, Sec. 3].

LEVELS, NUMBERS AND BOUNDARIES OF LOCAL GOVERNMENT UNITS

The Alaska document re-enforces that section by also providing for a state-level agency with the power over any proposed local government boundary changes [Art. X, Sec. 12].

Unorganized Counties

The Alaska Constitution also is of special interest in its provision for unorganized boroughs. The Constitution provides that the legislature will provide "for the performance of services it deems necessary or advisable" in such boroughs, "allowing for maximum local participation and responsibility" [Art. X, Sec. 6].

Thomas A. Morehouse and Victor Fischer of the University of Alaska give this description of the unorganized borough:

Unlike the organized borough, legally a municipal corporation, unorganized boroughs were regarded as instrumentalities of the state. They would serve as vehicles for decentralizing and regionalizing state services and for fostering local participation in the administration of state programs within regions not ready or suited for corporate municipal status.

Since the unorganized borough was not regarded as a self-governing unit, the legislature was given authority to exercise within such boroughs the same powers that assemblies (the borough governing bodies) would have in organized boroughs

It was believed that the principle of local participation should apply not only in the broad formulation of state policy for the unorganized borough, but also in the implementation of policies and plans. The purposes were to ensure that functions and services were responsive to the needs and the conditions of the particular region, and to encourage at least partial self-government and local participation in the performance of services.²⁴

As of 1970, only ten organized boroughs had been formed in Alaska, comprising 61,424 square miles and 228,800 residents.

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MONTANA CONSTITUTIONAL CONVENTION
1971-1972

THE EXECUTIVE

By KAREN D. BECK

CONSTITUTIONAL CONVENTION STUDY NO. 13

PREPARED BY

MONTANA CONSTITUTIONAL CONVENTION COMMISSION

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