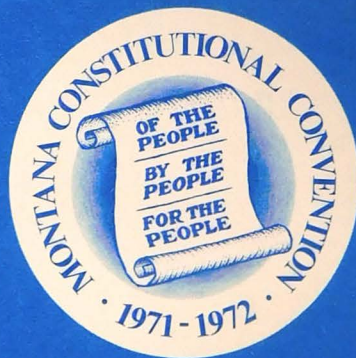


Montana Constitutional Convention Studies



***Prepared By:
Montana
Constitutional
Convention
Commission***

***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.

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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:

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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.