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# *Montana Constitutional Convention Occasional Papers*



*Prepared By:  
Montana  
Constitutional  
Convention  
Commission*

*Comparison of  
the Montana  
Constitution  
with the  
Constitutions  
of Selected  
Other States*



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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

COMPARISON OF THE MONTANA CONSTITUTION WITH THE  
CONSTITUTIONS OF SELECTED OTHER STATES

CONSTITUTIONAL CONVENTION OCCASIONAL PAPER NO. 5

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. 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 under the general title of Constitutional Convention Studies. In addition to the series of research reports the Commission has authorized the reprinting of certain documents for the use of Convention delegates.

The document herein republished is a comparison of the Montana Constitution with the constitutions of Alaska, Hawaii, Michigan, New Jersey, Puerto Rico, and the Model State Constitution of the National Municipal League.

The comparison was prepared by the Legislative Council Subcommittee on the Constitution in 1967 as a working paper for their study of the Montana Constitution. The Subcommittee stated:

Some of these constitutions were chosen based upon the general opinion of authorities that they represent the better state constitutions, others because they are comparatively new documents. The Model State Constitution was used because this is the only document of its kind known to exist.

The Alaska Constitution was drafted by a Constitutional Convention in 1955-56, and adopted in 1956. The Hawaii Constitution was adopted when Hawaii became a state, and was amended by a constitutional convention in 1968. The amendments were approved in 1968. The new Jersey Constitution was adopted by a convention and approved by the people in 1947. The Puerto Rico Constitution was adopted by a convention in 1951-52, and was approved by the people in 1952.

The sixth edition of the Model State Constitution of the National Municipal League was published in 1963, and revised in 1968. The first edition of the Model State Constitution was published in 1921. All editions have been the collective efforts of many scholars and practitioners of government, involving extensive consultation with virtually every American political scientist who has demonstrated any substantial interest and competence in state government. At one stage or

another, scholars, public officials or civic leaders in all 50 states were consulted either personally or by correspondence.

In addition to using the six constitutions for comparative purposes, preliminary comments were prepared by the Committee on each section. These comments include a comparison of present provisions with those of the 1884 Montana Constitution, pertinent explanatory information from the Proceedings of the 1889 Convention, when the Montana Constitution was drafted, background information extracted from an unpublished thesis prepared by Dr. John Welling Smurr on the 1889 Constitutional Convention and proposed amendments and amendments made to individual sections since 1889.

The Legislative Council Subcommittee on the Constitution originally utilized this working document in their review of the "adequacy" of the Montana Constitution. The Subcommittee's conclusions were published as Report No. 25 of the Legislative Council in October, 1968, which has been republished for the Constitutional Convention as Constitutional Convention Occasional Paper No. 6: The Legislative Council Report on the Montana Constitution.

This reprinting of the Legislative Council working paper is respectfully submitted to the people of Montana and their delegates to the 1971-1972 Constitutional Convention.

ALEXANDER BLEWETT

CHAIRMAN

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P R E A M B L E

COMPARISON OF  
PREAMBLE OF THE MONTANA CONSTITUTION  
WITH PREAMBLES IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

PREAMBLE

We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do, in accordance with the provisions of the enabling act of congress, approved the twenty-second of February, A. D. 1889, ordain and establish this constitution.

COMMENT: All state constitutions, except Vermont and West Virginia, have preambles. Although the preamble is not an operative part of the constitution, it may serve as an aid to the interpretation of the rest of the document if it contains an adequate statement of the purposes of the document and of the guiding intention of the constituent assembly. The Montana Constitution of 1884 contained the following preamble:

The object of the institution, maintenance, and administration of government, is to secure the existence of the body-politic, to protect it, and to furnish the individuals who compose it, with the power of enjoying in safety and tranquility their natural rights and the blessings of life; and whenever these great objects are not obtained, the people have a right to alter or change their form of government, and to take measures necessary for their safety, prosperity, and happiness.

The body politic is formed by a voluntary association of individuals; it is a social compact by which the whole people covenant with each citizen and each citizen with the whole people, that all should be governed by certain laws for the common good.

It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well for

an impartial interpretation and a faithful execution of them, that every man may at all times find his safety in them. We, therefore, the people of Montana, acknowledging with grateful hearts the goodness of the Great Legislator of the Universe, in affording us, in the course of His Providence, an opportunity, deliberately and peaceably, without fraud, violence or intimidation, of entering into an original, explicit, and solemn compact with each other, and of forming a constitution of civil government for ourselves and our posterity; and devoutly imploring His direction in so grand and interesting a design, do agree upon, ordain, and establish the following declaration of rights and form of government as the Constitution of the State of Montana.

ALASKA: We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska.

HAWAII: We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples of the earth do hereby ordain and establish this constitution for the State of Hawaii.

MICHIGAN: We, the people of the state of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

NEW JERSEY: We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

PUERTO RICO: We, the people of Puerto Rico, in order to organize ourselves politically on a fully democratic basis, to promote the general welfare, and to secure for ourselves and our posterity the complete enjoyment of human rights, placing our trust in almighty God, do ordain and establish this Constitution for the commonwealth which, in the exercise of our natural rights, we now create within our union with the United States of America.

In so doing, we declare:

The democratic system is fundamental to the life of the Puerto Rican community;

We understand that the democratic system of government is one in which the will of the people is the source of public power, the political order is subordinate to the rights of man, and the free participation of the citizen in collective decisions is assured;

We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges; our loyalty to the principles of the Federal Constitution; the coexistence in Puerto Rico of the two great cultures of the American Hemisphere; our fervor for education; our faith in justice; our devotion to the courageous, industrious, and peaceful way of life; our fidelity to individual human values above and beyond social position, racial differences, and economic, interest; and our hope for a better world based on these principles.

MODEL STATE CONSTITUTION: We, the people of the state of \_\_\_\_\_, recognizing the rights and duties of this state as a part of the federal system of government, reaffirm our adherence to the Constitution of the United States of America; and in order to assure the state government power to act for the good order of the state and the liberty, health, safety and welfare of the people, we do ordain and establish this constitution.

A R T I C L E      I

COMPARISON OF  
ARTICLE I OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLES IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. The boundaries of the state of Montana shall be as follows, to-wit: Beginning at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude, thence due west on the forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington, thence due south along the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky mountains, thence following the crest of the Rocky mountains northward to its intersection with the Bitter Root mountains; thence northward along the crest of the Bitter Root mountains, to its intersection with the thirty-ninth degree of longitude west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along that boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along the twenty-seventh degree of longitude to the place of beginning.

COMMENT: This article of the Montana Constitution contains a single section attempting to describe the boundaries of the state as they were described in the Organic Act which created Montana Territory on March 2, 1867. However, the section incorrectly quotes from the Organic Act. The language from the Organic Act is set out below. The material deleted in Section 1 of Article I of the Montana Constitution is indicated by underlining.

That all that part of the territory of the United States included within the limits, to-wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence due west along said forty-fourth degree and

thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky mountains; thence following the crest of the Rocky mountains northward till its intersection with the Bitter Root mountains; thence northward along the crest of said Bitter Root mountains to its intersection with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along said boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along said twenty-seventh degree of longitude to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the territory of Montana... (Section 1, Organic Act of the Territory Montana, 14 U.S. Stat. 426).

Twenty-four state constitutions define state boundaries. The new Illinois, Michigan and Virginia Constitutions deleted boundary descriptions. The Hawaii and the Alaska Constitutions simply refer to the territory constituting the territory prior to statehood.

The Enabling Act of February 22, 1889, which authorized Montana to become a state, provided that the boundaries of Dakota, Montana, and Washington territories should be the state boundaries, and also made provision to divide Dakota Territory into the state of North and South Dakota. The state boundaries are, therefore, fixed by federal law (both the Organic Act and the Enabling Act) which cannot be affected by state action.

**ALASKA:** The State of Alaska shall consist of all the territory together with the territorial waters appurtenant thereto, included in the Territory of Alaska upon the date of ratification of this constitution by the people of Alaska (Section 1, Article XII).

**HAWAII:** The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act; except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said

State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (offshore for Johnston Island), or Kingman Reef, together with their appurtenant reefs and Territorial waters (Section 1, Article XIII).

MICHIGAN: No comparable section.

NEW JERSEY: No comparable section.

PUERTO RICO: The political authority of the Commonwealth of Puerto Rico shall extend to the Island of Puerto Rico and to the adjacent island within its jurisdiction (Section 3, Article I).

MODEL STATE CONSTITUTION: No comparable section.

A R T I C L E II



COMPARISON OF  
ARTICLE II OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. Authority is hereby granted to and acknowledged in the United States to exercise exclusive legislation, as provided by the constitution of the United States, over the military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula, and Fort Shaw, as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the state of Montana; and the legislative assembly is authorized and directed to enact any law necessary or proper to give effect to this article.

Provided, that there be and is hereby reserved to the state the right to serve all legal process of the state, both civil and criminal, upon persons and property found within any of said reservations, in all cases where the United States has not exclusive jurisdiction.

COMMENT: There was no comparable section in the 1884 Montana Constitution. With few changes and the addition of the second paragraph, this article was adopted after little debate by the 1889 convention. The article was not proposed by the members of the 1889 convention; it came in the form of a letter from the U.S. Department of War requesting that the convention consider inserting this clause (Proceedings, pp. 487-488). There is no reference to military reservations in the Enabling Act. Other states included in the Enabling Act are North Dakota, South Dakota, and Washington. The Constitutions of North and South Dakota have no similar provision. Article XXV, Section 1, of the Washington Constitution states in part that, "The consent of the State of Washington is hereby given to the exercise, by the congress of the United States, of exclusive legislation in all cases whatsoever over such tract or parcels of land as are now held or reserved by the government of the United States for the purpose of erecting or maintaining thereon forts, magazines, arsenals, dockyards, lighthouses and other needful buildings, in accordance with the provisions of the seventeenth paragraph of the eighth section of the first article of the Constitution of the United States, . . ." Following is the present status of the military reservations:

Fort Assinaboine, near Havre, was abandoned as a military post in 1911. Congress gave the buildings and one section of land to Montana. The state purchased an additional 2,000 acres at \$2.50 per acre. The major part of the post (30,000 acres), was set aside for the Rocky Boy Indian Reservation. Today

the old fort is used by the State of Montana for an agriculture experiment station known as North Montana Branch Experiment Station, a branch of the Montana State University Experiment Station system.

Fort Custer, formerly located near the conjunction of the Little Big Horn and Big Horn Rivers, is now Big Horn County Airport.

Fort Keogh, near Miles City, was transferred to the U.S. Department of Agriculture in 1924. From that date, it has been used as an agriculture experiment station known as the U.S. Range Livestock Experiment Station. In 1954, the Department of the Air Force obtained 50.26 acres of the land under a revocable permit and has since used it for the 902nd Radar Squadron.

Fort Maginnis is no longer a military reservation. The land is now owned by Montana and leased out for farming and grazing purposes. The revenue is used to operate a home for the aged at Lewistown.

Fort Missoula was abandoned as a military post in the early 1900's. Part of the land was given to the University of Montana; the remainder is presently used by the National Guard.

Fort Shaw, west of Great Falls on the Sun River, is no longer a military post. The major portion of the land is owned by School District 82. The rest of the land, a very small portion, is owned by the federal government.

ALASKA: No comparable Article.

HAWAII: No comparable Article.

MICHIGAN: No comparable Article.

NEW JERSEY: No comparable Article.

PUERTO RICO: No comparable Article

MODEL STATE CONSTITUTION: No comparable Article.

A R T I C L E   III



COMPARISON OF  
ARTICLE I, OF THE MONTANA CONSTITUTION,  
WITH SIMILAR ARTICLE I, THE  
CONSTITUTIONS OF SELECTED OTHER STATES

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

COMMENT: Except for deleting the word "that" at the beginning of the first two phrases, this section is exactly the same as Section 1, Article I of the 1884 Constitution. In the Proceedings, Mr. Walter Pickford of Missoula stated during the debate on this section that the committee which considered the language had examined nearly all of the preambles and bills of rights of the different states of the union. Smurr notes that "Section one recognized the political primacy of the people. Except for phraseology, the committee of the whole passed over it without comment" (Smurr, p. 66). This section is identical to Section 1, Article II of the Colorado Constitution.

ALASKA: All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole (Section 2, Article I).

HAWAII: All political power of this state is inherent in the people: and the responsibility for the exercise thereof rests with the people. All government is founded on this authority (Section 1, Article I).

MICHIGAN: All political power is inherent in the people. Government is instituted for their equal benefit, security and protection (Section 1, Article I).

NEW JERSEY: All political power is inherent in the people (First sentence of Section 2, Article I).

PUERTO RICO: The Commonwealth of Puerto Rico is hereby constituted. Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America (Section 1, Article I).

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 2. The people of the state have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state, and to alter and abolish their constitution and form of government, whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the constitution of the United States.

COMMENT: This section is exactly the same as Section 2, Article I of the 1884 Constitution except for the deletion of "that" as the first word of the section. Smurr comments that "Section two exposed the philosophical ignorance of the delegates, who adopted without comment a statement identifying Montana as a 'free, sovereign, and independent State.' In common with their historic predecessors and successors, they had only the vaguest notions of what sovereignty involved," (Smurr, pp. 66-67). No amendments nor comments were made during the 1889 convention. Except for one word ("the" rather than "this"), this section is identical to Section 2, Article II of the Colorado Constitution.

ALASKA: No comparable section.

HAWAII: No comparable section.

MICHIGAN: No comparable section.

NEW JERSEY: . . . Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same whenever the public good may require it (Second sentence of Section 2, Article I).

PuERTO RICO: The government of the Commonwealth of Puerto Rico shall be republican in form and its legislative, judicial and executive branches as established by this Constitution shall be equally subordinate to the sovereignty of the people of Puerto Rico (Section 2, Article I).

MODEL STATE CONSTITUTION: No comparable section.

Section 3. All persons are born equally free, and have certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties, of acquiring, possessing, and protecting property, and of seeking and obtaining their safety and happiness in all lawful ways.

COMMENT: Except for deletion of the word "that" which appeared twice in the section previously, this section is the same as it appeared in the 1884 Constitution. Smurr states that "Section three was a reworded federal clause identifying the general rights of mankind. It also passed without comment" (Smurr, p. 67). Except for the words "are born equally free, and," this section is identical to Section 3, Article II of the Colorado Constitution.

ALASKA: This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the state.

HAWAII: All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty, and the pursuit of happiness, and the acquiring and possessing of property. These rights cannot endure unless the people recognize their corresponding obligations and responsibilities (Section 2, Article I).

MICHIGAN: No comparable provisions.

NEW JERSEY: All persons are by nature free and independent, and have certain natural and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness (Section 1, Article I).

PUERTO RICO: The right of life, liberty and the enjoyment of property is recognized as a fundamental right of man (First sentence of Section 7, Article I).

MODEL STATE CONSTITUTION: No comparable provisions.

Section 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the state, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect, or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

COMMENT: Except for deletion of the word "that" at the beginning of the section and the words "or capacity" following the word "privilege" on line 4 above, this section is exactly as it appeared in the 1884 Constitution. Smurr notes that "The power of this provision is in the last sentence, which gives the individual citizen a veto on measures calling for the public support of religious institutions which he may not like (Smurr, p. 67). There was no debate on the section at the 1889 convention. Except for slight changes, including reference to bigamous and polygamous marriage, this section is the same as Section 4, Article II of the Colorado Constitution.

ALASKA. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof (Section 4, Article I).

HAWAII: No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof, . . . (First clause of Section 3, Article I).

MICHIGAN: Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief (Section 4, Article I).

NEW JERSEY: No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily enraged to perform (Section 3, Article I). There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as qualification for any office or public trust (Section 4, Article I). No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles . . . (Part of Section 5, Article I).

PUERTO RICO: No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. There shall be complete separation of church and state (Section 3, Article II). No discrimination shall be made on account of . . . religious ideas. . . (Part of Section 1, Article II).

MODEL STATE CONSTITUTION: No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof, . . . (Part of Section 1.01, Article I).

Section 5. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

COMMENT: The word "that" was deleted from the section as it appeared in the 1884 Constitution. Otherwise, the wording is exactly the same as in the 1884 document. During the convention, this section generated some debate regarding the meaning of the words "and open." Several delegates protested that elections could not be "open" if the Australian ballot were used. After being convinced that the word "open" was used only to indicate that the polls would be open to all qualified voters even though the secret ballot were used, the section was adopted (Proceedings, pp-98-99). This section is identical to Section 5, Article II of the Colorado constitution.

ALASKA: No comparable section in Article I.

HAWAII: No comparable section in Article I.

MICHIGAN: No comparable section in Article I.

NEW JERSEY: No comparable section in Article I.

PUEERTO RICO: The laws shall guarantee the expression of the will of the people by means of equal, direct and secret universal suffrage and shall protect the citizen against any coercion in the exercise of the election franchise (Section 2, Article II).

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 6. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property, or character; and that right and justice shall be administered without sale, denial, or delay.

COMMENT: After deleting the word "that" at the beginning of the section and substituting "shall" in line 3 above for "should," this section was adopted as it appeared in the 1884 Constitution. Except for the addition of the word "that," this section is identical to Section 6, Article II of the Colorado Constitution.

ALASKA: No comparable section in Article I.

HAWAII: No comparable section in Article I.

MICHIGAN: No comparable section in Article I.

NEW JERSEY: No comparable section in Article I.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 7. The people shall be secure in their persons, papers, homes, and effects, from unreasonable searches and seizures, and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

COMMENT: During the 1889 convention, a delegate attempted to add the words "and the claim of right of such person or thing seized, and object of such seizure" following the word "seized" (line 5 above), the section was the same as it appeared in the 1884 Constitution. Before these words were deleted, this section was identical to Section 7, Article II of the Colorado Constitution.

ALASKA: The right of the people to be secure in their persons, houses and other property, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (Section 14, Article I).

HAWAII: The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized (Section 5, Article I).

MICHIGAN: The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state (Section 11, Article I).

NEW JERSEY: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized (Section 7, Article I).

Puerto Rico: The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated. Wire-tapping is prohibited. No warrant for arrest or search and seizure shall issue except by judicial authority and only upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons to be arrested or the things to be seized. Evidence obtained in violation of this section shall be inadmissible in the courts (Section 10, Article II).

MODEL STATE CONSTITUTION: (a) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (b) The right of the people to be secure against unreasonable interception of telephone, telegraph and other electronic means of communication /, and against unreasonable interception of oral and other communications by electric or electronic methods, / shall not be violated, and no orders and warrants for such interceptions shall issue but upon probable cause supported by oath or affirmation that evidence of a crime may be thus obtained, and particularly identifying the means of communication and the person or persons whose communications are to be intercepted. (c) Evidence obtained in violation of this section shall not be admissible in any court against any person (Section 1.03, Article I).

Section 8. Criminal offenses of which justice's courts and municipal and other courts, inferior to the district courts, have jurisdiction, shall in all courts inferior to the district courts, be prosecuted by complaint. All criminal actions in the district court, except those on appeal, shall be prosecuted by information, after examination and commitment by a magistrate, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order.

COMMENT: Section 8, Article I of the 1884 Constitution provided: "That until otherwise provided by law, no person shall for felony be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in the time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information." This wording is almost identical to Section 8, Article II of the Colorado Constitution. Section 23, Article I of the 1884 Constitution also provided in part: "Hereafter, a grand jury shall consist of twelve men, any nine of whom concurring, may find an indictment: Provided, The Legislative Assembly may change, regulate, or abolish the grand jury system." The original section suggested to the 1889 convention read: "That, until otherwise provided by law, no person shall for felony be proceeded against criminally, otherwise than by indictment or information (and by information in cases where the accused has been held to answer by the committing magistrate), except in cases arising in the land or naval forces, or in the militia when in actual service in times of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. A grand jury may be drawn and summoned at any time when, in the discretion of the district judges, it may be necessary." The introduction of this section sparked a great debate on the grand jury system. One delegate suggested an amendment intended to abolish grand juries. A second delegate immediately proposed an amendment patterned after a similar section in the California constitution which read substantially like the section finally adopted. Following a lengthy debate, the section was adopted by a vote of 53 to 10. (Proceedings, pp. 99-118)

ALASKA: No person shall be held to answer for a capital, or otherwise infamous crime, unless upon a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended (Section 8, Article I).

HAWAII: No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces when in actual service in time of war or public danger; . . . (Part of Section 8, Article I).

MICHIGAN: No comparable provision in Article I.

NEW JERSEY: No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases now prosecuted without indictment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger (Section 8, Article I).

PUERTO RICO: No comparable provision in Article II.

MODEL STATE CONSTITUTION: No comparable provision in Article I.

Section 9. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall work corruption of blood or forfeiture of estate; the estates of persons who may destroy their own lives shall descend or vest as in cases of natural death.

COMMENT: Smurr observed that this section paraphrased the same clause in the Federal Constitution which reads: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. The congress shall have power to declare the punishment of treason, but no attaignment of treason shall work corruption of the blood, or forfeiture, except during the life of the person attainted" (Section 3, Article III). Except for the deletion of "that" in several places, this section is exactly the same as Section 9, Article I of the 1884 Constitution. The wording of this section is almost identical to Section 9, Article II of the Colorado Constitution.

ALASKA: Treason against the State constists only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court (Section 10, Article I). No bill of attaignment . . . shall be passed. No conviction shall work corruption of blood or forfeiture of estate (Part of Section 15, Article I).

HAWAII: No comparable section in Article I.

MICHIGAN: Treason against the state shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act or on confession in open court (Section 22, Article I). No bill of attaignment . . . shall be enacted (Part of Section 10, Article I).

NEW Jersey: Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court (Section 17, Article I).

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 10. No law shall be passed impairing the freedom of speech; every person shall be free to speak, write, or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel, the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

COMMENT: This section is identical to Section 10, article I of the 1884 Constitution except for the deletion of "that" in two places. Smurr said: "Section ten dealt with the freedom of the press. Here the delegates were fish out of water. No more difficult subject for phrasing could have been found, and their disposition was to adopt the committee report without question. The report had the usual provisions guaranteeing free speech, but went on, as many constitutions did and still do, to fence it in with the insistence that men are responsible for the 'abuse of that liberty.' To this was added a clause allowing truth to be admitted as evidence. The guarantee that the jury would decide both the law and the fact of a libel action was included in this section. The extreme liberal position today is that a man should be allowed to say anything that is true. The committee curtailed that possibility in two ways: First, by the addition of the nebulous phrase, 'responsible for all abuse of that liberty,' and secondly, by the refusal to guarantee exoneration for the alleged libeler who said the truth and nothing but the truth. It is fair to add that the extreme liberal position has never been adopted by an American state. In cases of criminal libel, for example, it is assumed that if the telling of truth leads to social upheavals in which innocent persons are injured, the writer is libel to the extent of these undesired consequences. A more liberal amendment was offered which asserted that a man need only prove good motives and justifiable ends in order to be cleared. In practice, this clause has not protected individuals from prosecution for criminal libel either. The amendment was lost, in any case, and the present provision in the Montana constitution is precisely the first one introduced into the convention" (Smurr, pp. 76-77). One delegate at the convention of 1889 protested the wording allowing the jury to determine both the law and the facts. He stated that the court should determine the law, but his amendment to accomplish that change was not adopted (Proceedings, p. 119). This section is identical to Section 10, Article II of the Colorado Constitution.

ALASKA: Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right (Section 5, Article I).

HAWAII: No law shall be enacted . . . abridging the freedom of speech or of the press . . . (Part of Section 3, Article I).

MICHIGAN: Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press (Section 5, Article I).

NEW JERSEY: Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact (Section 6, Article I).

PUERTO RICO: No law shall be made abridging the freedom of speech or of the press . . . (Part of Section 4, Article II)

MODEL STATE CONSTITUTION: No law shall be enacted . . . abridging the freedom of speech or of the press . . . (Part of Section 1.01, Article I).

Section 11. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly.

COMMENT: The comparable section in the 1884 Constitution read: "That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises, or immunities shall be passed by the Legislative Assembly." The underlined words in the above quotation were deleted during the 1889 convention without extended debate (Proceedings, p. 119). Before deletion of these words, this section was identical to Section 11, Article II of the Colorado Constitution.

ALASKA: No. . . ex post facto law shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. . . (Part of Section 15, Article I).

HAWAII: The power of the State to act in the general welfare shall never be impaired by the making of any irrevocable grant of special privileges or immunities (Section 19, Article I).

MICHIGAN: No. . . ex post facto law or law impairing the obligation of contract shall be enacted (Part of Section 10, Article I).

NEW JERSEY: No comparable section in Article I.

PUERTO RICO: No ex post facto law. . . shall be passed (Part of Section 12, Article II).

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 12. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

COMMENT: Only the word "that" was deleted from the comparable section in the 1884 Constitution. The section was adopted without debate at the 1889 convention. This section is similar to Section 12, Article II of the Colorado Constitution which reads: "No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors in such manner as shall be prescribed by law, or in cases of tort or where there is a strong presumption of fraud.

ALASKA: There shall be no imprisonment for debt. This section does not prohibit civil arrest of absconding debtors (Section 17, Article I).

HAWAII: There shall be no imprisonment for debt (Section 17, Article I).

MICHIGAN: No person shall be imprisoned for debt arising out of or founded on contract, express or implied, except in cases of fraud or breach of trust (Section 21, Article I).

NEW JERSEY: No person shall be imprisoned for debt in any action, or on any judgment found upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace (Section 13, Article I).

PUERTO RICO: . . . No laws impairing the obligation of contracts shall be enacted. A minimum amount of property and possessions shall be exempt from attachment as provided by law (Part of Section 7, Article II). . . No person shall be imprisoned for debt (Part of Section 11, Article II).

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 13. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

COMMENT: Although the 1884 Constitution contained an almost identical section, the committee did not include a comparable section in their report to the 1889 convention. This omission was pointed out by one of the delegates, and the section was inserted in the 1889 document. There was no debate on the addition of this section at the 1889 convention. This section is very similar to Section 13, Article II of the Colorado Constitution.

ALASKA: A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed (Section 19, Article I).

HAWAII: A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed (Section 15, Article I).

MICHIGAN: Every person has a right to keep and bear arms for the defense of himself and the state (Section 6, Article I).

NEW JERSEY: No comparable section in Article I.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner.

COMMENT: The 1884 Constitution contained two sections on this subject which read as follows:

Section 14. That private property shall not be taken for private use, unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes, or ditches on or across the lands of others, for agricultural, mining, milling, domestic, or sanitary purposes.

Section 15. That private property shall not be taken or damaged for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law; and until the same shall be paid to the owner or into court for the owner, the property shall not be needlessly disturbed, or the proprietary right of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

At the 1889 convention, a section was introduced which read: "That private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes or ditches on or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes." This section was exactly the same as Section 14 of the 1884 Constitution, and identical to Section 14, Article II of the Colorado Constitution. The introduction of this section moved one delegate to deliver a strong statement in opposition, and he asked for rejection of the section. The delegate stated that this section would violate the United States Constitution, that he had never heard of any state or court holding that the legislature could take private property for a private use, and that it was "the height of despotism for anyone to take my property." He also pointed out that a territorial law allowing the taking of property for an irrigation ditch had been declared unconstitutional by a Missoula judge. A second delegate supported the section as introduced observing that: "I apprehend we are differently situated in this matter than are a great many states of the Union, and that it becomes with us absolutely necessary to take private property for what is in fact a private use. . . we should introduce this innovation; we should take this step in advance in order that all the lands in the Territory may become available for

agricultural purposes, where it is possible to obtain water upon them. Let us not throw a block under the wheels of progress, but rather urge the car along." Following a suggestion by a third delegate that the convention define what a "public use" was and several proposals to amend the wording, consideration of the section was passed for the day. (Proceedings, pp. 120-124). The following day, a new section was inserted which defined public use to include irrigation works and roads and made condemnation proceedings mandatory. Smurr states that: "Thus they escaped their predicament just as the national government did, by admitting the powers of the legislature on the one hand, and by giving the courts the authority to limit that power with the other" (Smurr, p. 80).

ALASKA: Private property shall not be taken or damaged for public use without just compensation (Section 18, Article I).

HAWAII: Private property shall not be taken for public use without just compensation (Section 18, article I).

MICHIGAN: No comparable section in Article I.

NEW JERSEY: Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners (Section 20, Article I).

PUERTO RICO: Private property shall not be taken or damaged for public use except upon payment of just compensation and in the manner provided by law. No law shall be enacted authorizing condemnation of printing presses, machines or material devoted to publications of any kind. The buildings in which these objects are located may be condemned only after a judicial finding of public convenience and necessity pursuant to procedure that shall be provided by law, and may be taken only when there is placed at the disposition of the publication and /sic/ adequate site in which it can be installed and continue to operate for a reasonable time (Section 9, Article II).

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 15. The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use, and the right of way over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

COMMENT: See remarks on Section 14, above.

Section 16. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

COMMENT: Section 16 of the 1884 Constitution read: "That in criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed." When first introduced during the 1889 convention, there were no amendments to the wording that appeared in the 1884 document (Proceedings, p. 124). During debate on the wording the phrase "subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same" was added. (Proceedings, p. 160) Although several delegates protested that the legislature should be able to limit the number of witnesses an accused person could call in his defense to reduce unnecessary costs, this proposal was not accepted. Except for the last phrase, this section is identical to Section 16, Article II of the Colorado Constitution.

ALASKA: In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve, except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; . . . to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense (Part of Section 11, Article I).

HAWAII: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, or of such other district to which the prosecution may be removed with the consent of the accused; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense (Section 11, Article I).

MICHIGAN: In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 jurors in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; to have an appeal as a matter of right; and courts of record, when the trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal (Section 20, Article I).

NEW JERSEY: In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense (Section 10, Article I).

PUERTO RICO: In all criminal prosecution, the accused shall enjoy the right to have a speedy and public trial, to be informed of the nature and cause of the accusation and to have a copy thereof, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have assistance of counsel, and to be presumed innocent. In all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine (Part of Section 11, Article II).

MODEL STATE CONSTITUTION: In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have the assistance of counsel for his defense, and to the assignment of counsel to represent him at every stage of the proceedings unless he elects to proceed without counsel or is able to obtain counsel. In prosecutions for felony, the accused shall also enjoy the right of trial by an impartial jury of the county or other appropriate political subdivision of the state 7 wherein the crime shall have been committed, or of another county, if a change of venue has been granted (Subsection (a), Section 1.06, Article I).

Section 17. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of the trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

COMMENT: Section 17 of the 1884 Constitution read: "That no person shall be imprisoned for the purpose of securing his testimony in any case longer than may be necessary in order to take his deposition. If he can give security, he shall be discharged; if he cannot give security, his deposition shall be taken by some Judge of the Supreme, district, or county court, at the earliest time he can attend, at some convenient place appointed by him for that purpose, of which time and place the accused and the attorney prosecuting for the people shall have reasonable notice. The accused shall have the right to appear in person and by counsel. If he has no counsel, the judge shall assign him one in that behalf only. On the completion of such examination, the witness shall be discharged on his own recognizance, entered into before said judge, but such deposition shall not be used, if in the opinion of the court the personal attendance of the witness might be procured by the prosecution, or is procured by the accused. No exception shall be taken to such deposition as to matters of form." This wording is almost identical to Section 17, Article II of the Colorado Constitution. Smurr notes that: "The hottest fight came over section seventeen, wherein (in its final form) it is guaranteed to the witness that he will not be detained until the trial if he cannot post surety. The proponents of this measure cited case after case where the accused had gone out on bail while the innocent witness was jailed because the prosecutor dared not lose sight of him. The struggle for this guarantee revealed beyond cavil that many witnesses had languished in jail in some counties for months. The constitution of 1884 had provided that dead or absent persons could testify by deposition, and this provision was introduced to break the deadlock" (Smurr, pp. 82-83).

ALASKA: No comparable section in Article I.

HAWAII: No comparable section in Article I.

MICHIGAN: No comparable section in Article I. See also Michigan provision comparable to Montana Section 20, below.

NEW JERSEY: No comparable section in Article I.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 16. No person shall be compelled to testify against himself, in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense.

COMMENT: Except for deleting the word "that" at the beginning of the section, the wording is exactly the same as in Section 18 of the 1884 Constitution. This section was passed by the 1889 convention with no debate and only minor changes (Smurr, p. 83). This section is identical to the first sentence of Section 18, Article II of the Colorado Constitution. The Colorado section also provides: "If the jury disagree, or if the judgment be arrested after the verdict, or if the judgment be reversed for error in law, the accused shall not be deemed to have been in jeopardy."

ALASKA: No person shall be put in jeopardy twice for the same offense. No person shall be compelled in any criminal proceeding to be witness against himself (Section 9, Article I).

HAWAII: . . . nor shall any person be subject for the same offense to be twice put in jeopardy; nor shall any person be compelled in any criminal case to be a witness against himself (Part of Section 8, Article I).

MICHIGAN: No person shall be subject for the same offense to be twice put in jeopardy. . . (Part of Section 15, Article I). No person shall be compelled in any criminal case to be a witness against himself. . . (Part of Section 17, article I).

NEW JERSEY: No person shall, after acquittal, be tried for the same offense. . . (Part of Section 11, Article I).

PUERTO RICO: . . . No person shall be compelled in any criminal case to be a witness against himself and the failure of the accused to testify may be neither taken into consideration nor commented upon against him. No person shall be twice put in jeopardy of punishment for the same offense . . . (Part of Section 11, Article II).

MODEL STATE CONSTITUTION: No person shall be compelled to give testimony which might tend to incriminate him (Section 1.04, Article I). No person shall be twice put in jeopardy for the same offense (Subsection (c), Section 1.06, Article I).

Section 19. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

COMMENT: With very minor change, this is identical to Section 19 of the 1884 Constitution. It passed the 1889 convention with little change, and no debate. This section is identical to Section 19, Article II of the Colorado Constitution.

ALASKA: . . . The accused is entitled . . . to be released on bail, except in capital offenses when the proof is evident or the presumption great; . . . (Part of Section 11, Article I).

HAWAII: No comparable section in Article I.

MICHIGAN: . . . All persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason when the proof is evident or the presumption great (Part of Section 15, Article I).

NEW JERSEY: . . . All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great (Part of Section 11, Article I).

PUERTO RICO: . . . Before conviction every accused shall be entitled to be admitted to bail . . . (Part of Section 11, Article II).

MODEL STATE CONSTITUTION: . . . (b) All persons shall, before conviction, be bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, giving due weight to the evidence and to the nature and circumstances of the event . . . (Part of Subsection (b), Section 1.06, Article I).

Section 20. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

COMMENT: With minor change, and no debate, the 1889 convention adopted this section based upon section 20 of the 1884 Constitution. Except for the use of "or" instead of "nor," this section is identical to Section 20, Article II of the Colorado Constitution.

ALASKA: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted . . . (Part of Section 12, Article I).

HAWAII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted (Section 9, Article I).

MICHIGAN: Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained (Section 16, Article I).

NEW JERSEY: Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted (Section 12, Article I).

PUERTO RICO: . . . Incarceration prior to trial shall not exceed six months nor shall bail or fines be excessive . . . (Part of Section 11, Article II) . . . Cruel and unusual punishments shall not be inflicted . . . (Part of Section 12, Article II).

MODEL STATE CONSTITUTION: . . . Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted . . . (Part of Subsection (b), Section 1.06, Article I).

Section 21. The privilege of the writ of habeas corpus shall never be suspended, unless, in case of rebellion, or invasion, the public safety requires it.

COMMENT: With no debate and only minor change, the 1889 convention adopted this section based upon Section 21 of the 1884 Constitution. Except for deletion of the word "when" following "unless," this section is identical to Section 21, Article II of the Colorado Constitution.

ALASKA: The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or actual or imminent invasion, the public safety requires it (Section 13, Article I).

HAWAII: The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. The power of suspending the writ of habeas corpus, and the laws or execution thereof, shall never be exercised except by the legislature, or by authority derived from it to be exercised in such particular cases only as the legislature shall expressly prescribe (Section 13, Article I).

MICHIGAN: The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it (Section 12, Article I).

NEW JERSEY: The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it (Section 14, Article I).

PUERTO RICO: The writ of habeas corpus shall be granted without delay and free of costs. The privilege of the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of rebellion, insurrection or invasion. Only the Legislative Assembly shall have the power to suspend the privilege of the writ of habeas corpus and the laws regulating its issuance . . . (Part of Section 13, Article II).

MODEL STATE CONSTITUTION: The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it (Section 1.05, Article I).

Section 22. The military shall always be in strict subordination to the civil power: no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

COMMENT: Again, this section was copied from Section 22 of the 1884 Constitution and adopted with minor change and no debate by the 1889 convention. This section is identical to Section 22, Article II of the Colorado Constitution.

ALASKA: No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power (Section 20, Article I).

HAWAII: The military shall be held in strict subordination to the civil power (Section 14, Article I). No soldier or member of the militia shall, in time of peace, be quartered in any house, without the consent of the owner or occupant, nor in time of war, except in a manner prescribed by law (Section 16, Article I).

MICHIGAN: The military shall in all cases and at all times be in strict subordination to the civil power (Section 7, Article I). No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war, except in a manner prescribed by law (Section 8, Article I).

NEW JERSEY: The military shall be in strict subordination to the civil power (Section 15, Article I). No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, except in a manner prescribed by law (Section 16, Article I).

PUERTO RICO: . . . The military authority shall always be subordinate to civil authority (Part of Section 13, Article II).

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 23. The right of trial by jury shall be secured in all criminal cases and remain inviolate, but in all civil cases and in all criminal cases not amounting to felony, upon default of appearance, or by consent of the parties express in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. A jury in a justice's court, both in civil cases and in cases of criminal misdemeanor, shall consist of not more than six persons. In all civil actions and in all criminal cases not amounting to a felony, two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all such jury concurred therein.

COMMENT: Section 23 of the 1884 Constitution read: "The right of trial by jury shall remain inviolate in criminal cases: but a jury in civil cases in all courts, or in criminal cases not of the grade of felony, may consist of less than twelve men, as may be prescribed by law. And the Legislative Assembly may provide by law that, in civil cases, any number, not less than two-thirds of a jury, may find a verdict, that such verdict, when so found, shall be taken and held to have the same force and effect as if all of such jury concurred therein. Hereafter, a grand jury shall consist of twelve men, any nine of whom, concurring, may find an indictment; Provided, the Legislative Assembly may change, regulate, or abolish the grand jury system." Although there was considerable debate on the wording of this section at the 1889 convention, the final version was essentially the same as when originally introduced (Proceedings, pp. 264-267). Smurr said: "Section twenty-three was another provision which set the lawyers buzzing. It provided for optional jury trials in certain cases, guaranteed them in others, and directed that in cases not involving a felony a majority of two-thirds was ample to convict. The radicals won out on these important measures after a fight against the conservatives. A motion to allow for a two-thirds decision in felony cases was overborne, but showed considerable sentiment in its favor. The folly of attempting to reduce every possibility to a legal formula was illustrated in later years when entirely new situations had arisen. In Cunningham v. Northwestern Improvement Company, the court ruled that section twenty-three applied only to cases existing in 1889; thus only to criminal and civil cases, and not to special cases such as involved the Industrial Accident Board" (Smurr, pp. 83-84).

ALASKA: In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law. The legislature may make provision for a verdict of not less than three-fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve (Section 16, Article I).

HAWAII: In suits at common law where the value in controversy shall exceed one hundred dollars, the right of trial by jury shall be preserved. The legislature may provide for a verdict by not less than three-fourths of the members of the jury (Section 10, Article I).

MICHIGAN: The right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law. In all civil cases tried by 12 jurors a verdict shall be received when 10 jurors agree (Section 14, Article I).

NEW JERSEY: The right of trial by jury shall remain inviolate: but the Legislature may authorize the trial of civil causes by a jury of six persons when the matter in dispute does not exceed fifty dollars. The Legislature may provide that in any civil cause a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury (Section 9, article I).

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 24. 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.

COMMENT: No comparable section existed in the 1864 Constitution. As originally considered at the 1869 convention, the section read: "Law for the punishment of crime shall be founded on the principles of reformation and prevention and not of vindictive justice." The last five words were stricken when one delegate observed that justice is never vindictive (Proceedings, p. 268). After this change was made, the words "but this shall not affect the power of the legislative assembly to provide for the punishment of offenses by death" were added without debate (Proceedings, p. 268). Smurr observed: "This section - passed because of its sentiment - was admittedly of no force" (Smurr, p. 85).

ALASKA: . . . Penal administration shall be based on the principle of reformation and upon the need for protecting the public (Part of Section 12, Article I).

HAWAII: No comparable section in Article I.

MICHIGAN: No comparable section in Article I.

NEW JERSEY: No comparable section in Article I.

PUERTO RICO: . . . The death penalty shall not exist . . . (Part of Section 7, Article II).

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 25. Aliens and denizens shall have the same right as citizens to acquire, purchase, possess, enjoy, convey, transmit, and inherit mines and mining property, and milling, reduction, concentrating, and other works, and real property necessary for or connected with the business of mining and treating of ores and minerals: Provided, That nothing herein contained shall be construed to infringe upon the authority of the United States to provide for the sale or disposition of its mineral and other public lands.

COMMENT: No comparable section existed in the 1884 Constitution. Smurr commented: "With section twenty-five of the Bill of Rights, the members at last came to grips with a problem that vexed them more than any other: the federal law refusing aliens the right to own mining property in the Territories. The short introductory paragraph gave aliens the desired right, subject to federal laws on the location of mines. Dixon of Silver Bow (he who hated 'legislation' in the constitution), then expanded this paragraph to define each kind of mining activity in which aliens would be welcome. Collins said his amendment was 'legislation, pure and simple.' Dixon replied that unless such provisions were written into the organic law, aliens would never trust their investments to men who had so little control over them. (Once again, the argument that the legislature could not be trusted). "Why not include the right to own other property?" Luce asked. Clark replied that the land was for citizens only. The Helena Herald agreed. "We have long since passed the point when we are so anxious for settlement of our public domain as to offer special inducement to the latest arrived emigrants," it said. J.K. Toole settled the issue when he offered an argument that was to make a more telling appearance in another connection. Mines grew poorer, not richer, he said, and aliens could hold as much mining property as they desired without hamstringing the economic security of citizens. There was another brief try to include real estate, but John R. Toole made it plain that the mining interests could not support it, and that group, plus the conservatives who feared rifling of the public domain, managed to kill the amendments" (Smurr, pp. 85-86).

ALASKA: No comparable section in Article I.

HAWAII: No comparable section in Article I.

MICHIGAN: No comparable section in Article I.

NEW JERSEY: No comparable section in Article I.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 26. The people shall have the right peaceably to assemble for the common good, and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance.

COMMENT: This section was copied from Section 24 of the 1884 Constitution and passed the 1889 convention almost without comment. This section is identical to Section 24, Article II of the Colorado Constitution.

ALASKA: The right of the people peaceably to assemble, and to petition the government shall never be abridged (Section 6, Article I).

HAWAII: No law shall be passed respecting . . . the right of the people peaceably to assemble and to petition the government for redress of grievances (Part of Section 3, Article I).

MICHIGAN: The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances (Section 3, Article I).

NEW JERSEY: The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances (Section 18, Article I).

PUERTO RICO: No law shall be made abridging. . . the right of the people peaceably to assemble and to petition the government for a redress of grievances (Part of Section 4, Article II). Persons may join with each other and organize freely for any lawful purpose, except in military or quasi-military organizations (Section 6, Article II).

MODEL STATE CONSTITUTION: No law shall be passed respecting . . . the right of the people peaceably to assemble and to petition the government for a redress of grievances (Part of Section 1.01, Article I).

Section 27. No person shall be deprived of life, liberty, or property without due process of law.

COMMITTEE: This section repeated Section 25 of the 1889 Constitution and was adopted with no debate at the 1889 convention. This wording is identical to Section 25, Article II, of the Colorado Constitution.

ALASKA: No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed (Section 7, Article I).

HAWAII: No person shall be deprived of life, liberty or property without due process of law, . . . (Part of Section 4, Article I).

MICHIGAN: No person shall . . . be deprived of life, liberty, or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed (Part of Section 17, Article I).

NEW JERSEY: No comparable section in Article I.

PUERTO RICO: . . . No person shall be deprived of his liberty or property without due process of law . . . (Part of Section 7, Article II).

MODEL STATE CONSTITUTION: No person shall be deprived of life, liberty or property without due process of law, . . . (Part of Section 1.02, Article I).

. Section 28. There shall never be in this state either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

COMMENT: This section was taken from Section 26 of the 1884 Constitution and passed without comment at the 1889 convention. This wording is identical to Section 26, Article II of the Colorado Constitution.

ALASKA: No comparable section in Article I.

HAWAII: No comparable section in Article I.

MICHIGAN: Neither slavery, nor involuntary servitude unless for the punishment of crime, shall ever be tolerated in this state (Section 9, Article I).

NEW JERSEY: No comparable section in Article I.

PUERTO RICO: Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted . . . (Part of Section 12, Article II).

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 29. The provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

COMMENT: This was taken from Section 27 of the 1884 Constitution and passed without debate by the 1889 convention. Smurr noted: "The section on the mandatory character of the constitution might have caused subsequent generations much trouble, but in State v. McKinley, (29 Mont. 375, 381), the court said that the legislature was a coordinate branch of government, and that the clause should therefore receive a 'liberal' construction. In other words, the delegates had invited the state supreme court to restrict the legislature, as other courts in other states were doing without the courtesy of an invitation. In the McKinley case, at least, the court politely declined. That this has not always been the case is not due to the provision itself, however, as the delegates generally believed that the sole purpose of the organic law was to prescribe the legislature, and not to guide it" (Smurr, pp. 86-87). The wording of this section is identical to Section 22, Article II of the California Constitution.

ALASKA: No comparable section in Article I.

HAWAII: No comparable section in Article I.

MICHIGAN: No comparable section in Article I.

NEW JERSEY: No comparable section in Article I.

PUERTO RICO: No comparable section in Article II. See also last sentence of Section 19, Article II quoted under Section 30, below.

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 30. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

COMMENT: Copied from Section 28 of the 1884 Constitution, this section was passed at the 1889 convention without debate. This wording is identical to Section 28, Article II of the Colorado Constitution.

ALASKA: The enumeration of rights in this constitution shall not impair or deny others retained by the people (Section 21, Article I).

HAWAII: Thy enumeration of rights and privileges shall not be construed to impair or deny others retained by the people (Section 20, Article I).

MICHIGAN: The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people (Section 23, Article I).

NEW JERSEY: The enumeration of rights and privileges shall not be construed to impair or deny others retained by the people (Section 21, Article I).

PUERTO RICO: The foregoing enumeration of rights shall not be construed restrictively nor does it contemplate the exclusion of other rights not specifically mentioned which belong to the people in a democracy. The power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people shall likewise not be construed restrictively (Section 19, Article II).

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 31. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except under the application of the legislative assembly, or of the governor when the legislative assembly cannot be convened.

COMMENT: A comparable section was not included in the 1884 Constitution. Smurr commented: "The final section of the Bill of Rights was a most significant one, and showed the convention at its best. Fearing that either foreign corporations or even the federal government itself might decide one day to run in strikebreakers under the pretense of keeping the peace, the delegates passed a provision forbidding such an eventuality. Only regular forces brought in by the governor or the president of the United States were to be sanctioned. The leaders of the convention lined up almost solidly behind this move and agreed with Peter Breen, a laborer and labor spokesman, that recent activities in the East made such an action necessary. After Breen's attack on Pinkerton detectives, Maginnis said that 'for any one or anybody to bring an armed body of men into the Territory for any purpose whatever, either to foment trouble or put it down, is an invasion of the Territory of Montana, and of its sacred rights and privileges.' He was generously applauded for these remarks, and rich old Francis Sargeant was not appreciated when he replied in defense of his 'inalienable' property rights. It is plain that many delegates were influenced by newspaper reports of the Washington convention, where a similar provision was being debated at the same time. Section thirty-one was one of few on which the press had anything to say. The Butte Miner, located in the heart of the laboring district, was pleased to echo owner Clark's sentiments. On many other provisions the press was mute. The debates had come to sound more and more like a meeting of the state bar, and outsiders could be excused for showing little interest in such an affair" (Smurr, pp. 87-88). During the debate on this section, one delegate stated that he could not conceive of a case where military or other power would be called into the state without an order of the governor or commander in chief of the army. A delegate stated that a federal investigation in Pennsylvania revealed that the Redding Railroad had employed 300 policemen and that a coal and iron company employed 412 all armed with revolvers and rifles "to keep the peace, and keep the working men and others in servitude . . ." (Proceedings, p. 129). Another delegate, Peter Breen, said during the debate: "We see examples of it all over the country; we saw it in Montana in 1876, when the railroad brakemen went on a strike against lowering their wages; and the strike was not well underway when a special body of Pinkerton detectives came to Butte . . . These men did not come as soldiers, or as

officers of the law interested in the welfare of the Territory, but they came at the bidding of some corporation, that, for monetary consideration, wishes to crush the manhood of the people of the Territory to advance their own interests and to swell their own bank accounts . . ." (Proceedings, p. 130). This sentiment was accepted by the convention, and the section included in Article III.

ALASKA: No comparable section in Article I.

HAWAII: No comparable section in Article I.

MICHIGAN: No comparable section in Article I.

NEW JERSEY: No comparable section in Article I.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article I.

Provisions of Selected States Not in Montana Bill of Rights

ALASKA: No person is to be denied the enjoyment of any civil or political right because of race, color, creed, or national origin. The legislature shall implement this section (Section 3, Article I).

HAWAII: No person shall . . . be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry (Part of Section 4, Article I).

No person shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land (Section 6, Article I).

No citizen shall be denied enlistment in any military organization of this State nor be segregated therein because of race, religious principles or ancestry (Section 7, Article I).

No person shall be disqualified to serve as a juror because of sex (Section 12, Article I).

MICHIGAN: No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation (Section 2, Article I).

A suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney (Section 13, Article I).

No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief (Section 18, Article I).

In all prosecutions for libel the truth may be given in evidence to the jury; and, if it appears to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the accused shall be acquitted (Section 19, Article I).

NEW JERSEY: No person shall be denied the enjoyment of any civil or military right, nor be discriminated against . . . because of . . . race, color, ancestry or national origin (Part of Section 5, Article I).

Persons in private employment shall have the right to organize and bargain collectively. Persons in public

employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing (Section 19, Article I).

PUERTO RICO: The dignity of the human being is inviolable. All men are equal before the law. No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or . . . political ideas. Both the laws and the system of public education shall embody these principles of essential human equality (Part of Section 1, Article II).

Every person has the right to an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. There shall be a system of free and wholly non-sectarian public education. Instruction in the elementary and secondary schools shall be free and shall be compulsory in the elementary schools to the extent permitted by the facilities of the state. No public property or public funds shall be used for the support of schools or educational institutions other than those of the state. Nothing contained in this provision shall prevent the state from furnishing to and /sic/ child non-educational services established by law for the protection or welfare of children. Compulsory attendance at elementary public schools to the extent permitted by the facilities of the state as herein provided shall not be construed as applicable to those who receive elementary education in schools established under non-governmental auspices (Section 5, Article II).

. . . No person in Puerto Rico shall be denied the equal protection of the laws . . . (Part of Section 7, article II).

Every person has the right to the protection of law against abusive attacks on his honor, reputation and private or family life (Section 8, Article II).

. . . Suspension of civil rights including the right to vote shall cease upon service of the term of imprisonment imposed (Part of Section 12, Article II).

No titles of nobility or other hereditary honors shall be granted. No officer or employee of the Commonwealth shall accept gifts, donations, decorations or offices from any foreign country or officer without prior authorization by the Legislative Assembly (Section 14, Article II).

The employment of children less than fourteen years of age in any occupation which is prejudicial to their health or morals or which places them in jeopardy of life or limb

is prohibited. No child less than sixteen years of age shall be kept in custody in a jail or pentitentiary (Section 15, Article II).

The right of every employee to choose his occupation freely and to resign therefrom is recognized, as is his right to equal pay for equal work, to a reasonable minimum salary, to protection against risks to his health or person in his work or employment, and to an ordinary work-day which shall not exceed eight hours. An employee may work in excess of this daily limit only if he is paid extra compensation as provided by law, at a rate never less than one and one-half times the regular rate at which he is employed (Section 16, Article II).

Persons employed by private businesses, enterprises and individual employers and by agencies or instrumentalities of the government operating as private businesses or enterprises, shall have the right to organize and to bargain collectively with their employers through representatives of their own free choosing in order to promote their welfare (Section 17, Article II).

In order to assure their right to organize and to bargain collectively, persons employed by private business, enterprises and individual employers and by agencies or instrumentalities of the government operating as private businesses or enterprises, in their direct relations with their own employers shall have the right to strike, to picket and to engage in other legal concerted activities. Nothing herein contained shall impair the authority of the Legislative Assembly to enact laws to deal with grave emergencies that clearly imperil the public health or safety or essential public services (Section 18, Article II).

MODEL STATE CONSTITUTION: No person shall . . . be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, national origin, religion or ancestry (Part of Section 1.02, Article I).

No oath, declaration or political test shall be required for any public office or employment, other than the following oath or affirmation: "I do solemnly swear /or affirm/ that I will support and defend the Constitution of the United States and the constitution of the state of \_\_\_\_\_ and that I will faithfully discharge the duties of the office of \_\_\_\_\_ to the best of my ability." (Section 1.07, Article I).



A R T I C L E IV



COMPARISON OF  
ARTICLE IV OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. The powers of the government of this state are divided into three distinct departments: The legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

COMMENT: With little debate and no changes, this Article was adopted from Article III of the 1884 Constitution (Proceedings, p. 691). This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section.

HAWAII: No comparable section.

MICHIGAN: The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution (Section 2, Article III).

NEW JERSEY: The powers of government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this constitution (Section 1, Article III).

PUERTO RICO: No comparable section.

MODEL STATE CONSTITUTION: No comparable section.



A R T I C L E V



COMPARISON OF  
ARTICLE V OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. The legislative authority of the states shall be vested in the legislative assembly, consisting of a senate and a house of representatives; but the people reserve to themselves power to propose laws, and to enact or reject the same at the polls, except as to laws relating to appropriations of money, and except as to the laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in article V, section 26, of this constitution independent of the legislative assembly; and also reserve power at their own option, to approve or reject at the polls, any act of the legislative assembly, except as to the laws necessary to the immediate preservation of the public peace, health, or safety, and except as to laws relating to the appropriations of money, and except as to laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in article V, section 26 of this constitution. The first power reserved by the people is the initiative and eight per cent of the legal voters of the state shall be required to propose any measure by petition; Provided, That two-fifths of the whole number of the counties of the state must each furnish as signers of said petition eight per cent. of the legal voters in each county, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state, not less than four months before the election at which they are to be voted upon.

The second power is the referendum, and it may be ordered by petition signed by five per cent. of the legal voters of the state, provided that two-fifths of the whole number of the counties of the state must each furnish as signers of said petition five per cent. of the legal voters of such county, or, by the legislative assembly as their bills are enacted.

Referendum petitions shall be filed with the secretary of state, no later than six months after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people by the legislative assembly or by initiative referendum petitions.

All elections on measures referred to the people of the state shall be had at the biennial regular general election except when the legislative assembly, by a majority vote, shall order a special election. Any measure referred to the people shall still be in full force and effect unless such petition be signed by fifteen per cent. of the legal voters of the whole number of the counties of the state, in which case the law shall be inoperative until such time as it shall be passed upon at an

election, and the result has been determined and declared as provided by law. The whole number of votes cast for the governor at the regular election last preceding the filing of any petition for the initiative or referendum shall be the basis on which the number of legal petitions and orders for the initiative and for the referendum shall be filed with the secretary of state; and in submitting the same to the people, he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefore. The enacting clause of every law originated by the initiative shall be as follows:

"Be it enacted by the people of Montana."

This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure.

COMMENT: After much debate and many amendments being proposed, Section 1 was passed by a roll call vote of 39 to 23 (Proceedings, p. 644). The original language of Section 1 of the 1889 Constitution read as follows: "The legislative power shall be vested in the Senate and the House of Representatives, which shall be designated 'The Legislative Assembly of the State of Montana'" (Proceedings, p. 133). The wording of this section was taken in its entirety from Section 1, Article IV of the Constitution of 1884. An amendment passed in 1905, added the provisions of initiative and referendum. Amendment adopted December 7, 1906. Smurr notes that "the first section reported by this committee set up a Senate and a House of Representatives for the new legislature. Though Washington, Idaho, and North Dakota were skirting close to unicameralism in those days, the one house system was never formally considered in Montana. The press was generally willing to take the Helena Herald's word for it that unicameralism was 'hardly a practical question'" (Smurr, p. 142).

ALASKA: The legislative power of the state is vested in the legislature consisting of a Senate . . . and a House of Representatives . . . (Part of Section 1, Article II). The people may propose and enact laws by initiative, and approve or reject acts of the legislature by the referendum (Section 1, Article XI).

HAWAII: The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a Senate and a House of Representatives . . . (Part of Section 1, Article III).

MICHIGAN: The legislative power of the State of Michigan is vested in a senate and a house of representatives (Section 1, Article IV). Amendments may be proposed to this constitution by the petition of the registered electors of this state. Every petition shall include the ful-

text of the proposed amendment, and be signed by registered voters of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding election in which the governor was elected (Part of Section 2, Article XII). The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws, called the referendum . . . (Section 9, Article II).

NEW JERSEY: The legislative power shall be vested in a Senate and General Assembly (Section I, Article IV).

PUERTO RICO: The legislative power shall be vested in a legislative assembly which shall consist of two houses, the Senate and the House of Representatives . . . (Section 1, Article III).

MODEL STATE CONSTITUTION: The legislative power of the state shall be vested in the legislature (Section 4.01, Article IV).

Section 2. Senators shall be elected for the term of four years, and representatives for the term of two years, except as otherwise provided in this constitution.

COMMENT: This section was adopted without debate from the 1884 Constitution. (Proceedings, p. 597). This section has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: . . . The term of representatives shall be two years and the term of senators, four years. One-half of the senators shall be elected every two years (Part of Section 3, Article II).

HAWAII: . . . The term of office of the members of the house of representatives shall be two years beginning with their election and ending on the day of the next general election, and the term of office of members of the senate shall be four years beginning with their election and ending the day of the second general election after their election (Part of Section 5, Article III).

MICHIGAN: The senate shall consist of 38 members . . . for four year terms concurrent with the term of the office of the governor (Part of Section 2, Article IV). The house of representatives shall consist of 110 members elected for two year terms . . . (Part of Section 3, Article IV).

NEW JERSEY: The senate shall consist of forty senators . . . elected for four year terms . . . (Part of Section 2, Article IV). The General Assembly shall consist of eighty members . . . elected for two year terms . . . (Part of Section 2, Article IV).

PUERTO RICO: Members of the Senate and the House of Representatives shall be elected by direct vote at each general election . . . (Part of Section 2, Article III).

MODEL STATE CONSTITUTION: BICAMERAL ALTERNATIVE: Assemblymen shall be elected by the qualified voters of the state for the term of two years and senators for the term of six years. (Section 4.03, Article IV).

Section 3. No person shall be a representative who shall not have attained the age of twenty-one years, or a senator who shall not have attained the age of twenty-four years, and who shall not be a citizen of the United States, and who shall not (for at least twelve months preceding his election) have resided within the county or district in which he shall be elected.

COMMENT: This article, found in Section 3, Article 4 of the 1884 Constitution, read: "No person shall be a Representative who shall not have attained the age of twenty-one years, or a Senator who shall not have attained the age of twenty-five years, and who shall not be a citizen of the United States, and who shall not (for at least twelve months next preceding his election) have resided within the county or district in which he shall be elected: PROVIDED, That any person who, at the time of the adoption of this constitution, was a qualified elector under the territorial laws, shall be eligible to the first Legislative Assembly."

According to the Proceedings (pp. 133, 597, 617, 643, and 957), the age for senators was left at twenty-five. There is no record of any change. However, the completed constitution of 1889 lists the qualifying age for senators as twenty-four. This section has never been amended, nor have any amendments been proposed. Smurr notes that "Section two stated that representatives would serve for two years and senators for four. Section three, limiting the ages of these members to a minimum of twenty-one and twenty-five years, respectively, was quickly passed with the other sections . . ." (Smurr, p. 143).

ALASKA: . . . A senator shall be at least twenty-five years of age and a representative at least twenty-one years of age (Part of Section 2, Article II).

HAWAII: No person shall be eligible to serve as a member of the senate unless he shall have attained the age of thirty years, have been a resident of the State for not less than three years, and be a qualified voter from the senatorial district from which he seeks to be elected. No person shall be eligible to serve as a member of the house of representatives unless he shall have attained the age of twenty-five years . . . /other qualifications for representatives same as senators / (Part of Section 7, Article III).

MICHIGAN: Each senator and representative must be a citizen of the United States, at least 21 years of age, and an elector of the district he represents . . . (Part of Section 7, Article IV).

NEW JERSEY: No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and resident of the State for four years, and of the district for which he shall be elected for one year, next before his election. No person shall be a member of the General Assembly who shall not have attained the age of twenty-one years and have been a citizen and resident of the State for two years, and of the district for which he shall be elected one year, next before his election . . . (Part of Section 2, Article IV).

PUERTO RICO: No person shall be a member of the Senate who is not over thirty years of age, and no person shall be a member of the House of Representatives who is not over twenty-one years of age (Section 5, Article III).

MODEL STATE CONSTITUTION: . . . Each member of the legislature shall be a qualified voter of the state and shall be at least        years of age. (Part of Section 4.02, Article IV).

Section 4. Repealed by an amendment proposed in 1965 and adopted December 6, 1966.

COMMENT: Section 4 of the 1889 Constitution read: The legislative assembly of this state, until otherwise provided by law, shall consist of sixteen members of the Senate, and fifty members of the House of Representatives. It shall be the duty of the first Legislative Assembly to divide the State into Senatorial and Representative districts, but there shall be no more than one Senator from each county. The Senatorial districts shall be numbered from one consecutively to correspond with the number of counties. The Senators shall be divided into two classes. Those elected from districts numbered odd numbers shall constitute one class, and those elected from districts numbered the even numbers shall constitute the other class; and when any additional Senator shall be provided for by law his class shall be determined by lot. One-half of the Senators elected to the first Legislative Assembly shall hold office for one year, and the other half for three years; and it shall be determined by lot immediately after the organization of the Senate, whether the Senators from the odd or the even districts shall hold office for one or three years. With few changes, this section was adopted from Section 4, Article IV of the 1884 Constitution only after a very extended debate between the large and small county interests. Smurr notes that: "It was not until all the amendments were disposed of, in order, and the chair prepared to entertain additional amendments, that the struggle started in earnest. Why it had not come before is a mystery, but it is a fact that the first inkling of a general contest appeared only with an amendment by Robinson to strike out the word "sixteen" and insert "twenty-one." Robinson accepted Toole's amendment to his amendment, calling for the insertion instead of the words "twenty-six" and for the rewording which would make the section read "there shall be at least one senator from each county." The last phrase was an obvious and hopeful sop to the small counties. Toole then officially took up the big-county banner, and the fight was on.

His opening remarks revealed the big-county strategy, which was to leave the matter blank in the article on the legislature and introduce it at a more favorable time . . . . " (Smurr, pp. 146-147).

ALASKA: No comparable section in Article IV.

HAWAII: The Senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective Senatorial districts . . . (Part of Section 2, Article III). The House of Representatives shall be composed of fifty-one members . . . (Part of Section 3, Article III).

MICHIGAN: The Senate shall consist of thirty-eight members to be elected from single member districts . . . (Part of Section 2, Article IV). The House of Representatives shall consist of 110 members elected for two year terms from single member districts . . . (Part of Section 3, Article IV).

NEW JERSEY: . . . The Senate shall be composed of forty senators apportioned among the senate districts as nearly as may be according to their number of inhabitants . . . (Part of Section 2, Article IV). The General Assembly shall be composed of eighty members. Each Senate district to which only one Senator is apportioned shall constitute an Assembly District. . . . (Part of Section 2, Article IV).

PUERTO RICO: The Senate shall be composed of twenty-seven Senators and the House of Representatives of fifty-one Representatives except as these numbers may be increased in accordance with the provisions of Section 7 of this Article (Section 2, Article III). . . . Puerto Rico shall be divided into eight senatorial districts and forty representative districts . . . (Part of Section 3, Article III).

MODEL STATE CONSTITUTION: For the purpose of electing members of the assembly, the state shall be divided into as many districts as there shall be members of the assembly. Each district shall consist of compact and contiguous territory. All the districts shall be so nearly equal in population that the district with the greatest population shall not exceed the district with the least population by more than        per cent . . . (Part of Section 4.04, Article IV).

Section 5. Members of the legislative assembly hereafter elected shall receive twenty dollars (\$20.00) per day, payable weekly, during the session of the legislative assembly, and eight cents (8¢) per mile for each mile traveled to and from their residences and the place of holding the session, by the nearest traveled route.

Members shall also receive fifteen dollars (\$15.00) per day, payable weekly during the session of the legislative assembly, as reimbursement for expenses incurred in attending the session.

COMMENT: Section 5 of the 1884 Constitution provided for a per diem of \$5 and 12¢ per mile traveled. Section 5 of the 1889 Constitution is identical to the 1884 section except for the increase of the per diem to \$6 and 20¢ per mile traveled.

Section 5 was amended in 1965 by increasing the per diem to \$20, lowering the payment per mile traveled to 8¢ and adding the last sentence which provides for reimbursement to legislators for expenses at the rate of \$15 per day. Smurr notes that, "Though several delegates preferred to increase the sum set in the constitution, the rest were spellbound by the previous constitution, which set the remuneration at \$5.00 per day . . ." One delegate said that the cost of operating the state government, as the section stood, would cost \$200,000 yearly. The article on finances, already passed, had geared the mill rate to population, and it was found that if the present section were broadened in any way the cost of government would soar above the figure set in the article on finances. No one mentioned the fact that neither provision should have been considered separately. After a brief discussion, the section passed as first offered" (Smurr, p. 167). A law enacted by the Fortieth Session of the Legislative Assembly, to be referred to the people in the next general election would amend Section 5 to read as follows:

Section 1. Section 5, Article V of the Constitution of the State of Montana is amended to read as follows:

"Section 5. No session of the legislative assembly shall exceed eighty (80) days.

The compensation of the members of the legislative assembly shall be as provided by law; however, no legislative assembly shall fix its own compensation. Per diem and expense payments to members for days in session shall not be made for more than eighty (80) days."

ALASKA: Legislators shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. Presiding officers may get additional compensation (Section 7, Article II).

HAWAII: The members of the legislature shall receive such salary and allowances as may be prescribed by law, but any increase or decrease thereof shall not apply to the legislature which enacted the same . . . (Part of Section 10, Article III).

MICHIGAN: The compensation and expense allowances of the members of the legislature shall be determined by law . . . (Part of Section 12, Article 4).

NEW JERSEY: Members of the Senate and the General Assembly shall receive annually, during the term for which they shall have been elected and while they shall hold their office, such compensation as shall, from time to time, be fixed by law and no other allowance or emolument . . . (Part of Section 4, Article IV).

PUERTO RICO: No comparable provision in Article III.

MODEL STATE CONSTITUTION: The members of the legislature shall receive an annual salary and such allowances as may be prescribed by law but any increase or decrease in the amount thereof shall not apply to the legislature which enacted the same (Section 4.07, Article IV).

Section 6. The legislative assembly (except the first) shall meet at the seat of government at twelve o'clock noon, on the first Monday of January, next succeeding the general election provided by law, and at twelve o'clock, noon, on the first Monday of January, of each alternate year thereafter, and at other times when convened by the governor.

The term of service of the members thereof shall begin the next day after their election, until otherwise provided by law; Provided, That the first legislative assembly shall meet at the seat of government upon the proclamation of the governor after the admission of the state into the Union, upon a day to be named in said proclamation, and which shall not be more than fifteen nor less than ten days after the admission of the state into the Union.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Except for a change in the legislative meeting date which was on the second Tuesday after the first Monday in January in the 1884 Constitution, this section was adopted after little debate (Proceedings, p. 604).

ALASKA: The legislature shall convene each year on the fourth Monday of January, but the month and day may be changed by law (Section 8, Article II). Special sessions may be called by the Governor or by vote of two-thirds of the legislators . . . (Part of Section 9, Article II).

HAWAII: Regular sessions of the legislature shall be held annually. The governor may convene the legislature, or the Senate alone, in special session. . . . The regular sessions shall commence at 10:00 a.m., on the third Wednesday of February . . . (Part of Section 11, Article III).

MICHIGAN: The legislature shall meet at the seat of government on the second Wednesday of January of each year at twelve o'clock noon . . . (Part of Section 13, Article IV).

NEW JERSEY: The Senate and General Assembly shall meet and organize separately at noon on the second Tuesday in January of each year . . . Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all the members of each house, and may be called by the Governor whenever in his opinion the public interest shall require. (Part of Section 1, Article IV).

PUERTO RICO: The legislative body . . . shall meet in regular session each year commencing on the second Monday in January (Part of Section 10, Article III).

MODEL STATE CONSTITUTION: The legislature shall be a continuous body during the term for which its members are elected. It shall meet in regular sessions as provided by law. It may be convened at other times by the governor or, at the written request of a majority of the members of each house, by the presiding officers of both houses (Section 4.08, Article IV).

Section 7. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Except for the words "attorney at law" found within the paren. of the 1884 Constitution, these two articles are identical. Section 7 was adopted with no debate (Proceedings, p. 604).

ALASKA: No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, appointed or elected to any other office or position of profit which has been created, or the salary or emoluments have been increased, while he was a member (Section 5, Article II).

HAWAII: No member of the legislature shall hold any other public office under the state, nor shall he, during the term for which he is elected or appointed, be elected or appointed to any public office or employment which shall have been created, or the emoluments whereof shall have been increased, by legislative act during such term . . . (Part of Section 9, Article III).

MICHIGAN: No person holding any office, employment or position under the United States or this State or a political subdivision thereof, except notaries public, and members of the armed forces reserve, may be a member of either house of the legislature (Section 8, Article IV).

NEW JERSEY: No member of the Senate or General Assembly, during the term for which he shall have been elected, shall be nominated, elected or appointed to any state civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term . . . (Part of Section 5, Article IV).

PUERTO RICO: No Senator or Representative may, during the term for which he has been elected or chosen, be appointed to any civil office in the Government of Puerto Rico, . . . which shall have been created or the salary of which shall have been increased during said term (Section 15, Article III).

MODEL STATE CONSTITUTION: No comparable provision in Article IV.

Section 8. No member of either house shall, during the term for which he shall have been elected, receive any increase of salary or mileage under any law passed during such term.

COMMENT: This section has never been amended nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 8, Article IV of the 1884 Constitution. Section 8 was adopted without debate (Proceedings, p. 604).

ALASKA: No comparable section in Article II.

HAWAII: . . . any increase or decrease in the amount thereof (salary) shall not apply to the legislature which enacted the same . . . (Part of Section 10, Article III).

MICHIGAN: . . . changes in compensation and expense allowances shall become effective only when legislators commence their terms of office after a general election (Part of Section 12, Article IV).

NEW JERSEY: . . . no increase or decrease (in salary) shall be effective until the legislative year following the next general election for members of the General Assembly (Part of Section 4, Article IV).

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: . . . any increase or decrease (salary) in the amount thereof shall not apply to the legislature that enacted the same (Part of Section 4.07, Article IV).

Section 9. The senate shall, at the beginning and the close of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The house of representatives shall elect one of its members speaker. Each house shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Except for the addition of the word "returns" in line 6 of the above section, it is identical to Section 9, Article IV of the 1884 Constitution. Section 9 was adopted with no debate (Proceedings, pp. 604-605). Smurr notes that "A most interesting piece of philosophy involving this section appeared in State ex rel. Smith v. District Court. Noting that the clause permitting the house to judge their members was a blank check, the court said that this was unusual, since it was not a limitation of power, but a grant of power. The court decision is reminiscent of the differences of opinion in the convention as to whether the constitution was capable of making grants of power" (Smurr, pp. 168-169).

ALASKA: . . . Each house may choose its officers and employees. Each is the judge of the election and qualifications of its members . . . (Part of Section 12, Article II).

HAWAII: Each house shall be the judge of the elections, returns and qualifications of its members . . . Each house shall choose its own officers . . . (Part of Section 12, Article III).

MICHIGAN: Each house . . . shall choose its own officers . . . Each house shall be the sole judge of the qualifications, elections and returns of its members . . . (Part of Section 16, Article IV).

NEW JERSEY: Each house shall be the judge of elections, qualifications and returns of its own members . . . Each house shall choose its own officers . . . (Part of Section 4, Article IV).

PUERTO RICO: Each house shall be the sole judge of the election, returns, and qualifications of its members; and shall choose its own officers . . . (Part of Section 9, Article III).

MODEL STATE CONSTITUTION: The legislature shall be the final judge of the election and qualifications of its members . . . Each house shall choose its presiding officer from among its members . . . (Part of Section 4.09, Article IV).

Section 10. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe.

COMMENT: Except for the addition of the words "to do business" in lines 1 and 2 and "in such manner and under such penalties as each house may prescribe," this section was adopted from the 1884 Constitution without debate (Proceedings, p. 605). In 1965, Section 10 was amended by a provision that would in emergency temporarily suspend it. This amendment allows legislators to disregard certain provisions of the Montana Constitution for the purpose of passing laws to allow state and local governments to continue to function during an emergency caused by an enemy attack. Such laws could be in force only for the period of the emergency. (Session Laws, 1965).

ALASKA: . . . A majority of the membership of each house constitutes a quorum to do business, but a smaller number may adjourn from day to day and compel attendance of the absent members (Part of Section 12, Article II).

HAWAII: A majority of the number of members to which each house is entitled shall constitute a quorum . . . A smaller number than a quorum may adjourn from day to day and may compel the attendance of the absent members . . . (Part of Section 14, Article III).

MICHIGAN: A majority of the members elected to and serving in each house shall constitute a quorum to do business. A smaller number in each house may adjourn from day to day, and may compel the attendance of the absent members . . . (Part of Section 14, Article IV).

NEW JERSEY: . . . a majority of its members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members (Part of Section 4, Article IV).

PUERTO RICO: A majority of the total number of members of which each house is composed shall constitute a quorum, but a smaller number may adjourn from day to day and shall have the authority to compel the attendance of absent members (Section 12, Article III).

MODEL STATE CONSTITUTION: . . . it (legislature) may compel the attendance of absent members . . . (Part of Section 4.09, Article IV).

Section 11. Each house shall have the power to determine the rules of its proceedings, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members from violence or offers of bribe or private solicitation and with the concurrence of two-thirds, to expel a member, and shall have all other powers for a legislative assembly of a free state.

A member expelled for corruption shall not thereafter be eligible to either house of the legislative assembly; and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

COMMENT: This Section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 11, Article IV of the 1884 Constitution and was adopted without debate (Proceedings, p. 605).

ALASKA: Each . . . (house) may expel a member with the concurrence of two-thirds of its members . . . (Part of Section 12, Article II).

HAWAII: Each house shall . . . (have) . . . for misconduct, disorderly behavior or neglect of duty of any member, power to punish such member by censure or, upon two-thirds vote of all the members to which house is entitled, by suspension or expulsion of such member . . . (Part of Section 13, Article III).

MICHIGAN: . . . each house . . . may, with the concurrence of two-thirds of all the members elected thereto and serving therein expel a member . . . (Part of Section 16, Article IV).

NEW JERSEY: Each house shall choose its own officers, determine the rules of its proceedings, and punish its members for disorderly behavior. It may expel a member with the concurrence of two-thirds of all its members (Section 4, Article IV).

PUERTO RICO: Each house . . . with the concurrence of three-fourths of the total number of members of which it is composed, may expel any member for the causes established in Section 21 of this Article . . . (Part of Section 9, Article III).

MODEL STATE CONSTITUTION: . . . with the concurrence of two-thirds of all the members, expel a member . . . (Part of Section 4.09, Article IV).

Section 12. Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time, publish the same, except such parts as require secrecy, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

COMMENT: This Section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Section 12 of the 1889 Constitution is identical to Section 12, Article IV of the 1884 Constitution and was adopted without debate (Proceedings, p. 605).

ALASKA: . . . each shall keep a journal of its proceedings . . . (Part of Section 12, Article II).

HAWAII: . . . Each house shall . . . keep a journal . . . (Part of Section 13, Article III).

MICHIGAN: Each house shall keep a journal of its proceedings, and publish the same unless the public security otherwise requires . . . (Part of Section 18, Article IV).

NEW JERSEY: Each house shall keep a journal of its proceedings, and from time to time publish the same. The yeas and nays of the members of either house on any question shall, on the demand of one-fifth of those present, be entered on the journal (Section 4, Article IV).

PUERTO RICO: . . . each house shall keep a journal of its proceedings and of the votes cast for and against the bills. The legislative proceedings shall be published in a daily record in the form provided by law . . . (Part of Section 17, Article III).

MODEL STATE CONSTITUTION: The legislature shall keep a journal of its proceedings which shall be published from day to day . . . a record vote with the yeas and nays entered in the journal, shall be taken on any question on the demand of one-fifth of the members present (Part of Section 4.12, Article IV).

Section 13. The sessions of each house and of the committees of the whole shall be open, unless the business is such as requires secrecy.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. The above section is identical to Section 13, Article IV of the 1884 Constitution and was adopted without debate (Proceedings, p. 605).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: The doors of each house shall be open unless the public security otherwise requires (Section 20, Article IV).

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: The sessions of each house shall be open (Section 11, Article III).

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Section 14, Article IV of the 1884 Constitution is identical to the above section.

ALASKA: Neither house may adjourn or recess for longer than three days unless the other concurs . . . (Part of Section 10, Article II).

HAWAII: Neither house shall adjourn during any session of the legislature for more than three days, or sine die, without the consent of the other (Section 12, Article III).

MICHIGAN: Neither house shall, without the consent of the other, adjourn for more than two intervening calendar days, nor to any place other than where the legislature may be in session (Section 21, Article IV).

NEW JERSEY: Neither house, during the session of the legislature, shall, without the consent of the other, adjourn for more than three days, or to any other place than that in which the two houses shall be sitting (Part of Section 4, Article IV).

PUERTO RICO: The two houses shall meet in the capitol of Puerto Rico and neither of them may adjourn for more than three consecutive days without the consent of the other (Section 13, Article III).

MODEL STATE CONSTITUTION: No comparable section in Article IV

Section 15. The members of the legislative assembly shall, in all cases, except treason, felony, violation of their oath of office and breach of the peace be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Except for the addition of the words "or surety" after the word "breach" in line three, Section 3, Article IV of the 1884 Constitution is identical to the above section.

ALASKA: Legislatures may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. Members attending, going to, or returning from legislative sessions are not subject to civil process and are privileged from arrest except for felony or breach of the peace (Section 6, Article II).

HAWAII: No member of the legislature shall be held to answer before any other tribunal for any statement made or action taken in the exercise of his legislative functions; and members of the legislature shall, in all cases except felony or breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same (Section 8, Article III).

MICHIGAN: Senators and Representatives shall be privileged from civil arrest and civil process during sessions of the legislature and for five days next before the commencement and after the termination thereof. They shall not be questioned in any other place for any speech in either house (Section 11, Article IV).

NEW JERSEY: Members of the Senate and General Assembly shall, in all cases except treason and high misdemeanor, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any statement, speech or debate in either house or at any meeting of a legislative committee, they shall not be questioned in any other place (Section 4, Article IV).

PUERTO RICO: No member of the Legislative Assembly shall be arrested while the house of which he is a member is in session, or during fifteen days before or after such session, except for treason, felony or breach of the peace. The members of the Legislative Assembly shall not be questioned in any other place for any speech, debate or vote in either house or in any committee (Section 15, Article III).

MODEL STATE CONSTITUTION: For any speech or debate in the legislature, the members shall not be questioned in any other place (Section 4.10, Article IV).

Section 16. The sole power of impeachment shall vest in the house of representatives; the concurrence of a majority of all the members being necessary to the exercise thereof. Impeachment shall be tried by the senate sitting for that purpose, and the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant-governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. With minor changes and after it had been determined that it did not conflict with the provisions of the judiciary article, this section was adopted from Section 16, Article IV of the 1884 Constitution (Smurr, p. 170).

ALASKA: All civil officers of the State are subject to impeachment by the legislature. Impeachment shall originate in the senate and must be approved by two-thirds vote of its members. The motion for impeachment shall list fully the basis for the proceeding. Trial on impeachment shall be conducted by the house of representatives. A supreme court justice designated by the court shall preside at the trial. Concurrence of two-thirds of the members of the house is required for a judgment of impeachment. The judgment shall not extend beyond the removal from office, but shall not prevent proceedings in the courts on the same or related charges (Section 20, Article II).

HAWAII: The governor and the lieutenant governor, and any appointive officer for whose removal the consent of the senate is required, may be removed from office upon conviction of impeachment for such causes as may be provided by law . . . (Part of Section 20, Article III).

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: The House of Representatives shall have exclusive power to initiate impeachment proceedings and, with the concurrence of two-thirds of the total number of members of which it is composed, to bring an indictment. The Senate shall have the exclusive power to try and to decide impeachment cases . . . (Part of Section 21, Article III).

MODEL STATE CONSTITUTION: The legislature may impeach the governor, the heads of principal departments, judicial officers and such other officers of the state as may be made subject of impeachment by law, by two-thirds vote of all the members of each house . . . (Part of Section 4.18, Article IV).

Section 17. The governor, and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust, or profit under the laws of the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 17, Article IV of the 1884 Constitution and was adopted after little debate (Smurr, p. 171).

ALASKA: No comparable section in Article II.

HAWAII: . . . Judgments in cases of impeachment shall not extend beyond removal from office and disqualification to hold any office of honor, trust or profit under the State; but the person convicted may nevertheless be liable and subject to indictment, trial, judgment and punishment according to law (Part of Section 20, Article III).

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: . . . The causes of impeachment shall be treason, bribery, other felonies, and misdemeanors involving moral turpitude . . . (Part of Section 21, Article III).

MODEL STATE CONSTITUTION: No comparable section in Article IV.

(See Section 16 for other information concerning impeachment proceedings).

Section 18. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 18, Article IV of the 1884 Constitution and was adopted with no debate (Smurr, p. 171).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 19, Article IV of the 1884 Constitution. Smurr mentions that Section 19 was a hopeful statement and the delegates accepted it without debate (Smurr, pp. 171-172).

ALASKA: No comparable section in Article II.

HAWAII: No law shall be passed except by bill . . . (Part of Section 15, Article III).

MICHIGAN: All legislation shall be by bill . . . (Part of Section 22, Article IV). . . . No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title (Part of Section 24, Article IV).

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: . . . No bill shall be amended in a manner that changes its original purpose or incorporates matters extraneous to it . . . (Part of Section 17, Article III).

MODEL STATE CONSTITUTION: The legislature shall enact no law except by bill . . . (Part of Section 4.14, Article IV).

Section 20. The enacting clause of every law shall be as follows:

"Be it enacted by the Legislative Assembly of the State of Montana."

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 20, Article IV of the 1884 Constitution and adopted without debate (Proceedings, p. 606).

ALASKA: . . . The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska" (Part of Section 13, Article II).

HAWAII: . . . the enacting clause of each law shall be, "Be it enacted by the legislature of the State of Hawaii" (Part of Section 15, Article III).

MICHIGAN: The style of the laws shall be: The people of the state of Michigan enact (Section 23, Article IV).

NEW JERSEY: The laws of this state shall begin in the following style: "Be it enacted by the Senate and the General Assembly of the State of New Jersey" (Section 7, Article IV).

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 21. No bill for the appropriation of money except for the expenses of the government, shall be introduced within ten days of the close of the session, except by unanimous consent in the house in which it is sought to be introduced.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Section 21, Article IV of the 1884 Constitution reads: No act of the Legislative Assembly shall take effect until sixty days after the close of the session, unless in case of emergency (which shall be expressed in the preamble or body of the act), the Legislative Assembly shall, by a vote of two-thirds of all the members present in each house, otherwise direct. No bill for the appropriation of money, except for the expenses of government, shall be introduced after the twenty-fifth day of the session, except by unanimous consent of the house in which it is sought to be introduced. Smurr notes that "There were objections that the ten days' restriction would hamper special sessions and local option election laws. J.K. Toole answered the objections. 'This clause,' he said, 'is a precaution measure against railroading claims against the state through at the end of the session. It is designed simply to cut off that class of legislation which most frequently comes in just at the close of the session.' Here was Montana's solution for a persistent and vexing problem of political science" (Smurr, pp. 173-174).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 22. No bill shall be considered or become law unless referred to a committee, returned therefrom, and printed for the use of the members.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 22, Article IV of the 1884 Constitution and was adopted without debate (Proceedings, p. 608).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No bill shall become a law unless it has been printed, read, referred to a committee . . . (Part of Section 17, Article III).

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 23. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which not be expressed in the title, such an act shall be void only as to so much thereof as shall not be so expressed.

COMMENT: This section has never been amended nor have any amendments been proposed to alter its 1889 wording. Except for the addition of the words "general" in line one and "and bills for the codification and general revision of the laws" in the above section, it is exactly like Section 23, Article IV of the 1884 Constitution.

ALASKA: Every bill shall be confined to one subject unless it is an appropriation or for codifying, revising or re-arranging existing laws. Bills for appropriations shall be confined to appropriations . . . (Part of Section 13, Article II).

HAWAII: . . . Each law shall embrace but one subject . . . (Part of Section 15, Article III).

MICHIGAN: No law shall embrace more than one object, which shall be expressed in its title . . . (Part of Section 24, Article IV).

NEW JERSEY: . . . every law shall embrace but one object, and that shall be expressed in the title . . . (Part of Section 7, Article IV).

PUERTO RICO: . . . Every bill, except general appropriations bills, shall be confined to one subject, which shall be clearly expressed in the title, and any part of an act whose subject has not been expressed in the title shall be void . . . (Part of Section 17, Article III).

MODEL STATE CONSTITUTION: . . . every bill except bills for appropriations and bills for codification, revision or re-arrangement of existing laws shall be confined to one subject. All appropriation bills shall be limited to the subject of appropriations . . . (Part of Section 4.14, Article IV).

Section 24. No bill shall become law except by a vote of a majority of all the members present in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal.

COMMENT: This section has never been amended nor have any amendments been proposed to alter its 1889 wording. The above section is identical to Section 24, Article IV of the 1884 Constitution.

ALASKA: . . . No bill may become law without an affirmative vote of a majority of the membership of each house. The yeas and nays on final passage shall be entered in the journal (Part of Section 14, Article II).

HAWAII: . . . the final passage of a bill in each house shall require the vote of a majority of all the members to which such house is entitled, taken by ayes and noes and entered upon its journal (Part of Section 14, Article III).

MICHIGAN: . . . No bill shall become law without the concurrence of a majority of the members elected to and serving in each house. On the final passage of bills, the votes and the names of the members voting thereon shall be entered in the journal (Part of Section 26, Article IV).

NEW JERSEY: . . . No bill or joint resolution shall pass, unless there shall be a majority of all the members of each body personally present and agreeing thereto, and the yeas and nays of the members voting on such final passage shall be entered on the journal (Part of Section 4, Article IV).

PUERTO RICO: Every bill which is approved by a majority of the total number of members of which each house is composed shall be submitted to the governor and shall become law if he signs it . . . (Part of Section 19, Article III).

MODEL STATE CONSTITUTION: No bill shall become a law unless . . . a majority of all the members has assented to it. The yeas and nays on final passage shall be entered in the journal . . . (Part of Section 4.15, Article IV).

Section 25. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Except for the addition of the words "or conferred" after "extended" in lines 2 and 3 in the 1884 Constitution, Section 25 of the 1884 and 1889 Constitutions is identical.

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length (Section 25, Article IV).

NEW JERSEY: No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length . . . (Part of Section 7, Article IV).

PUERTO RICO: . . . In amending an article or section of a law, said article or section shall be promulgated in its entirety as amended . . . (Part of Section 17, Article III).

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 26. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for granting divorces; laying out, opening, altering or working roads or highways, vacating roads, town plats, streets, alleys or public grounds, locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes in venue in civil or criminal cases; declaring any person of age; for limitations of civil actions, or giving effect to informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures, creating, increasing or decreasing fees, percentages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever; for the punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting the estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury; relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices, or prescribing the powers or duties of officers in counties, cities, township or school districts; or authorizing the adoption or legitimization of children. In all other cases where a general law can be made applicable, no special law shall be enacted.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Except for minor changes this section is identical to Section 26, Article IV of the 1884 Constitution. Smurr pointed out that Section twenty-six "specified no less than eighty kinds of special laws which the legislature could not touch. It is the hardest kind of physical labor to drag one's eyes through this tremendous paragraph . . . The effect of this clause was to tie the legislature in knots. In one case the court ruled that it could not even change the name of a county after it had been established" (Smurr, pp. 177-178). "Whatever may be said of the conditions that inspired such a provision, it is difficult not to agree with Thorpe when he says: 'The objections of this limitation are summed in the proposition that special legislation has become general legislation, and that such general legislation has made a vast amount of over-legislation. It is still an unsettled problem in state-craft whether a special law limited to a locality is worse than a special law limited to the State'" (Smurr, p. 181).

ALASKA: The legislature shall pass no local or special act if a general act can be made applicable . . . (Part of Section 19, Article II).

HAWAII: No comparable section in Article III.

MICHIGAN: The legislature shall pass no local or special act in any case where a general act can be made applicable . . . (Part of Section 29, Article IV).

NEW JERSEY: No private, special or local law shall be passed unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given . . . (Part of Section 7, Article IV).

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 27. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislative assembly immediately after their titles have been publicly read, and the fact of signing shall be at once entered upon the journal.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 27, Article IV of the 1884 Constitution. No debate (Proceedings, p. 610).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 28. The legislative assembly shall prescribe by law the number, duties and compensation of the officers and employees of each house; and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 28, Article IV of the 1884 Constitution. No debate (Proceedings, p. 610).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV

(See above Article V, Section 5, for more details concerning compensation and expenses of members of the compared constitutions).

Section 29. No bill shall be passed giving any extra compensation to any public officer, servant or employee, agent or contractor, after services shall have been rendered or contract made, or providing for the payment of any claim made against the state without previous authority of law, except as may be otherwise provided herein.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Except for the addition of the words, "except as may be otherwise provided herein," in the above section, it is identical to Section 29, Article IV of the 1884 Constitution. No debate (Proceedings, p. 610).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 30. All stationery, printing, paper, fuel and lights used in the legislative and other departments of government, shall be furnished and the printing, and the binding and distribution of laws, journals and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislative assembly, and its committees shall be formed under contract, to be given to the lowest responsible bidder below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor and state treasurer.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 30, Article IV of the 1884 Constitution. Smurr notes that, "Section 30 was a masterpiece, and explains why the constitution was growing with each passing day." He also said that, "This mighty guarantee of the liberties of a sovereign people was so perfect that it too passed without debate" (Smurr, pp. 183-184).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation (Section 10, Article IV).

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 31. Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment; Provided, That this shall not be construed to forbid the legislative assembly from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 31, Article IV of the 1884 Constitution. Smurr noted that, "The one possible exception to this general rule, never entertained by the delegates, came up in court later. The court then ruled that an officer could draw additional salary for doing additional tasks thrust upon him, if these other tasks were to be remunerative by law" (Smurr, p. 184). A law enacted by the Fortieth Session of the Legislative Assembly, to be referred to the people in the next general election would amend Section 31 to read as follows:

Section 1. Section 31, Article V, of the Constitution of the State of Montana, is amended to read as follows:

"Section 31. Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or diminish his salary or emolument after his election or appointment; provided, that this shall not be construed to forbid the legislative assembly from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution.."

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 32. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in the case of other bills.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 32, Article IV of the 1884 Constitution. Smurr notes that one Senator offered to amend Section 32 giving the House and Senate equal powers over money bills but lost. "The court was more successful. It was to rule that the section applied strictly to regular tax measures, and not to those which might incidentally create revenue" (Smurr, pp. 184-185).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: All legislation shall be by bill and may originate in either house (Section 22, Article IV).

NEW JERSEY: All bills for raising revenue shall originate in the General Assembly, but the Senate may propose or concur with amendments, as on other bills (Section 6, Article IV (1)).

PUERTO RICO: . . . all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as in other bills (Part of Section 17, Article III).

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 33. The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislature, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 33, Article IV of the 1884 Constitution.

ALASKA: . . . Bills for appropriations shall be confined to appropriations . . . (Part of Section 13, Article II).

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: . . . All appropriation bills shall be limited to the subject of appropriations . . . (Part of Section 4.14, Article IV).

Section 34. No money shall be paid out of the public treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 34, Article IV of the 1884 Constitution.

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 35. No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation, or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 35, Article IV of the 1884 Constitution. Smurr notes that Section thirty-five was still another guarantee of the complete separation of church and state (Smurr, p. 186).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 36. The legislative assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes, or to perform any municipal functions whatever.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 36, Article IV of the 1884 Constitution. Smurr notes that: "Section thirty-six effectively sealed the counties into the respective voids provided for them by section twenty-six" and "This crippling section was passed without debate" (Smurr, pp. 186-187).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 37. No act of the legislative assembly shall authorize the investment of trust funds by executors, administrators, guardians or trustees in the bonds or stock of any private corporation.

COMMENT. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 37, Article IV of the 1884 Constitution. Smurr notes that, "Having provided for everything imaginable so far, the founding fathers then threw a protective wall around widows and orphans with section thirty-seven . . . This low estimate of the moral worth of investment companies was passed without objection or comment" (Smurr, p. 187).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 38. The legislative assembly shall have no power to pass any law authorizing the state, or any county in the state, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is exactly like Section 38, Article IV of the 1884 Constitution. Smurr comments that, "Section thirty-eight was a voice from the past" (Smurr, p. 187).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 39. Except as hereinafter provided, no obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

It shall, however, be lawful for the legislative assembly, in such manner as it may direct, to authorize the cancellation of any personal property taxes which are not in lien on real estate and which have been delinquent for ten (10) years or more.

It shall also be lawful for the legislative assembly, in such manner as it may direct, to authorize the cancellation of any contractual obligation owed to or held by a county, for seed grain, feed or other relief, the collection of which obligation is barred by the statute of limitations.

NOTE: This section is given in its amended form, approved March 5, 1947.

COMMENT: Except for the addition of the words "Except as hereinafter provided," and the last two paragraphs in the 1947 amended version, this section is identical to Section 39, Article V. Section 39 of the 1889 and 1884 Constitutions were identical.

ALASKA: No comparable section on Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 40. Every order, resolution or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or being disapproved, be repassed by two-thirds of both houses, as prescribed in the case of a bill.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 40, Article IV of the 1884 Constitution.

ALASKA: The governor may veto bills passed by the legislature . . . (Part of Section 15, Article II). . . . Bills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three fourths of the members of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the membership of the legislature (Part of Section 16, Article III).

HAWAII: Every bill which shall have passed the legislature shall be certified by the presiding officers and clerks of both houses and shall thereupon be presented to the governor . . . (Part of Section 17, Article III). Upon the receipt of a veto message from the governor, each house shall . . . proceed to reconsider the vetoed bill, or the item or items vetoed . . . If after such reconsideration such, or such item or items, shall be approved by a two-thirds vote of all the members to which each house is entitled, the same shall become law (Part of Section 18, Article III).

MICHIGAN: Every bill passed by the legislature shall be presented to the governor before it becomes law . . . If he does not approve . . . he shall return it . . . to the house in which it originated . . . This bill shall become law if passed by two-thirds of the members of both houses . . . (Part of Section 33, Article IV).

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: Every bill which is approved by a majority of the total numbers of which each house is composed shall be submitted to the governor and shall become law if he signs it or if he does not return it . . . to the house in which it originated . . . When the governor returns a bill, the house that receives it shall enter his objections upon its journal and both houses may reconsider it. If approved by two-thirds of the total number of members of which each house is composed, said bill shall become law (Part of Section 19, Article III).

MODEL STATE CONSTITUTION: When a bill is passed by the legislature, it shall be presented to the governor . . . If the governor does not approve the bill, he shall veto it and return it to the legislature . . . Any bill so returned by the governor shall be reconsidered by the legislature and, if upon reconsideration two-thirds of all the members shall agree to pass the bill, it shall become law (Part of section 4.16, Article IV).

Section 41. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence in favor or against any measure or proposition, pending or proposed to be introduced into the legislative assembly, in consideration or upon condition that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence, in favor of or against any measure or proposition pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly shall give his vote or influence for or against any measure or proposition pending or proposed to be introduced in such legislative assembly, or offer, promise or assent so to do, upon condition that any other member will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such legislative assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery; and any member of the legislative assembly, or person elected thereto, who shall be guilty of either such offenses, shall be expelled and shall not thereafter be eligible to the legislative assembly, and on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 41, Article IV of the 1884 Constitution. Smurr notes that, "Section forty-one was the Gaslight Era solution to certain problems inherent in frail human nature . . . and generally made it known that honesty was henceforth to be the best policy . . . according to law" (Smurr, p. 188).

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 42. Any person who shall directly or indirectly offer, give or promise any money or thing of value, testimonial, privilege or personal advantage, to an executive or judicial officer or member of the legislative assembly, to influence him in the performance of any of his official or public duties, shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 42, Article IV of the 1884 Constitution.

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparalbe section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 43. The offense of corrupt solicitation of members of the legislative assembly, or of public officers of the state, or of any municipal division thereof, and the occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is exactly like Section 43, Article IV of the 1884 Constitution.

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

Section 44. A member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 44, Article IV of the 1884 Constitution.

ALASKA: No comparable section in Article II.

HAWAII: No comparable section in Article III.

MICHIGAN: No comparable section in Article IV.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article III.

MODEL STATE CONSTITUTION: No comparable section in Article IV.

(See above, Article V, Section 30 for additional information concerning government contracts and private enterprise of its officials).

Section 45. This section was amended in 1931. A proposed amendment to this section was rejected in 1933. This section was again amended in 1965, and finally in 1965 it was repealed.

COMMENT: Section 45 of the 1889 Constitution read: When vacancies occur in either house the governor or the person exercising the functions of the governor shall issue writs of election to fill the same.

Section 45 as amended in 1931 read: When vacancies, caused by death, occur in either house of the legislative assembly, such vacancies shall be filled by appointment by the board of county commissioners of the county from which such vacancy occurs. All vacancies occurring from any other cause shall be filled by election upon proclamation of the governor.

The amendment to Section 45 in 1933 was rejected.

In 1965, an amendment including several other sections and Section 45, Article V was passed which allowed the Legislature to disregard certain provisions of the Montana Constitution for the purpose of passing laws to allow the state and local governments to continue to function during an emergency caused by an enemy attack. Such laws could be in force only for the period of the emergency.

Again in 1965, an amendment was passed which repealed Section 45, Article V.

ALASKA: A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment (Section 4, Article II).

HAWAII: Any vacancy in the legislature shall be filled for the unexpired term in such manner as may be prescribed by law, by appointment by the governor for the unexpired term (Section 6, Article III).

MICHIGAN: The legislature may provide by law the cases in which any office shall be vacant and the manner of filling vacancies where no provision is made in this constitution (Section 38, Article IV).

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: . . . If a vacancy occurs in the office of Senator or Representative for a district, such vacancy shall be filled as provided by law . . . (Part of Section 8, Article III).

MODEL STATE CONSTITUTION: When a vacancy occurs in the legislature it shall be filled as provided by law (Section 4.06, Article IV).

A new section has been added to Article V effective December 6, 1966.

Section 46. The legislative assembly in order to insure continuity of state and local government operations in a period of emergency resulting from a disaster caused by enemy attack may enact laws:

- (1) To provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.
- (2) To adopt other measures that may be necessary to insure the continuity of governmental operations.

Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate from their provisions of the Montana Constitution, including but not limited to the following sections:

- (1) Section 3, Article IV, seat of government.
- (2) Section 2, Article XVI, seat of county government.
- (3) Section 16, Article VII, succession of governor.
- (4) Section 4, Article XVI, vacancy on board of county commissioners.
- (5) Section 6, Article XVI, other vacancies in county government.
- (6) Section 45, Article V, vacancies in legislative assembly.
- (7) Section 11, Article VII, special legislative sessions.
- (8) Section 5, Article V, length of legislative session.
- (9) Section 10, Article V, quorum to do business in each house.
- (10) Section 6, Article XIX, location of county offices.
- (11) Section 1, Article VII, duties of executive officers of state.
- (12) Section 7, Article VII, appointments by governor.



A R T I C L E VI



COMPARISON OF  
ARTICLE VI OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. One representative in the Congress of the United States shall be elected from the state at large, the first Tuesday in October, 1889, and thereafter at such times and places, and in such manner as may be prescribed by law. When a new apportionment shall be made by congress the legislative assembly shall divide the state into congressional districts accordingly.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. With little change in wording, the above section was adopted from Section 45, Article IV of the 1884 Constitution.

ALASKA: No comparable section.

HAWAII: No comparable section.

MICHIGAN: No comparable section.

NEW JERSEY: No comparable section.

PUERTO RICO: No comparable section.

MODEL STATE CONSTITUTION: No comparable section.

Section 2. (1) The senate and the house of representatives of the legislative assembly each shall be apportioned on the basis of population.

(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census.

(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of the state legislative assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county.

COMMENT: Above is the 1965 amended form of Section 2, Article VI of the 1889 Constitution which read: The legislative assembly shall provide by law for the enumeration of the inhabitants of the state in the year 1895, and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for representatives on the basis of such enumeration according to ratios to be fixed by law. Section 2, Article VI of the 1889 Constitution was adopted with little change from Section 46, Article IV of the 1884 Constitution.

ALASKA: Members of the senate shall be elected by the qualified voters of the respective senate districts... (Part of Section 1, Article VI). The governor shall reapportion the house of representatives immediately following the official reporting of each decennial census of the United States... (Part of Section 2, Article IV).

HAWAII: The senate shall be composed of twenty-five members who shall be elected by the qualified voters, of the respective senatorial districts... (Part of Section 2, Article III). The house of representatives shall be composed of fifty-one members, who shall be elected by the qualified voters of the respective representative districts... (Part of Section 3, Article III).

MICHIGAN: Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census...is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter... The commission shall proceed to district and apportion the senate and the house of representatives according to the provisions of this constitution... (Part of Section 6, Article IV).

NEW JERSEY: After the next and every subsequent decennial census of the United States, the Senate districts and Assembly districts shall be established, and the senators and

members of the General Assembly shall be apportioned among them, by an Apportionment Commission consisting of ten members... (Part of Section 3, Article IV).

PUERTO RICO: In the first and subsequent elections under this constitution the division of senatorial and representative districts as provided in Article VIII shall be in effect. After each decennial census beginning with the year 1960, said division shall be revised by a board composed of the Chief Justice of the Supreme Court as Chairman and of two additional members appointed by the Governor with the advice and consent of the Senate... (Part of Section 4, Article III).

MODEL STATE CONSTITUTION: Immediately following each decennial census the governor shall appoint a board of qualified voters to make recommendations within ninety days of their appointment concerning the redistricting of the state... (Part of Section 4.04, Article IV).

Section 3. Senatorial and representative districts may be altered from time to time as the public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the districts as

COMMENT: Above is the 1965 amended form of Section 2, Article VI of the 1889 Constitution which read: Representative districts may be altered from time to time as public convenience may require. When a representative district shall be composed of two or more counties they shall be contiguous, and the district as compact as may be. No county shall be divided in the formation of representative districts.

With little change, Section 3, Article VI was adopted from Section 49, Article IV of the 1884 Constitution.

ALASKA: No comparable section.

HAWAII: No comparable section.

MICHIGAN: No comparable section.

NEW JERSEY: No comparable section.

PUERTO RICO: No comparable section.

MODEL STATE CONSTITUTION: No comparable section.

A R T I C L E      VII



## ARTICLE VII

Section 1. The executive department shall consist of a governor, lieutenant-governor, secretary of state, attorney general, state treasurer, state auditor and superintendent of public instruction, each of whom shall hold his office for four years, or until his successor is elected and qualified, beginning on the first Monday of January next succeeding his election, except that the terms of office of those who are elected at the first election, shall begin when the state shall be admitted into the Union, and shall end on the first Monday of January, A.D. 1893. The officers of the executive department, excepting the lieutenant-governor, shall during their terms of office reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed in this constitution and by the laws of the state. The state treasurer shall not be eligible to his office for the succeeding term.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Except for the changing of the term of office from two to four years, and the addition of the last sentence, the above section is identical to Section 1, Article V of the 1884 Constitution. Smurr notes that "both the philosophy and wording of this section conflicted with that of section five, which said that the supreme executive power of the state was vested in the governor alone. It never occurred to the delegates that to surround this luminary with six department heads who might be elected from different parties, and by pluralities greater than his own, was to deprive him of his "superior" powers, whatever those might be... (Smurr, pp. 118-119).

ALASKA: The executive power of the State is vested in the governor (Section 1, Article III).

HAWAII: The executive power of the State shall be vested in the governor... (Part of Section 1, Article IV).

MICHIGAN: The executive power is vested in the governor (Section 1, Article V).

NEW JERSEY: The executive power shall be vested in the governor (Section 1, Article V).

PUERTO RICO: The executive power shall be vested in the governor... (Part of Section 1, Article IV).

MODEL STATE CONSTITUTION: The executive power of the state shall be vested in the governor (Section 5.01, Article V).

Section 2. The officers provided for in section 1 of this article, shall be elected by the qualified electors of the state at the time and place of voting for members of the legislative assembly, and the persons respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislative assembly, at its next regular session, shall forthwith by joint ballot, elect one of such persons for said office. The returns of election for the officers named in section 1 shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. The above section is identical to Section 2, Article V of the 1884 Constitution.

ALASKA: No comparable section in Article III.

HAWAII: The governor shall be elected by the qualified voters of this state at a general election. The person receiving the highest number of votes shall be the governor. In case of a tie vote, the selection of the governor shall be determined in accordance with law... (Part of Section I, Article IV).

MICHIGAN: The governor, lieutenant governor, secretary of state and attorney general shall be elected for four year terms at the general election in each alternate even-numbered year (Section 21, Article V).

NEW JERSEY: The governor shall be elected by the legally qualified voters of this state. The person receiving the greatest number of votes shall be the governor; but if two or more shall be equal and the greatest number in votes, one of them shall be elected governor by the vote of a majority of a the members of both houses in joint meeting at the regular legislative session next following the election for Governor by the people... (Part of Section 1, Article V).

PUERTO RICO: No comparable section in Article IV.

MODEL STATE CONSTITUTION: The governor shall be elected, at the regular election every odd-numbered year, by the direct vote of the people... (Part of Section 5.02, Article V).

Section 3. No person shall be eligible to the office of governor, lieutenant-governor, or superintendent of public instruction, unless he shall have attained the age of thirty years at the time of his election, nor to the office of secretary of state, state auditor, or state treasurer, unless he shall have attained the age of twenty-five years, nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the supreme court of the state, or territory of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States, and have resided within the state or territory two years next preceding his election.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 3, Article V of the 1884 Constitution.

ALASKA: The governor shall be at least 30 years of age and a qualified voter of the State. He shall have been a resident of Alaska at least seven years immediately preceding his filing for office, and he shall have been a citizen of the United States for at least seven years (Section 2, Article III).

HAWAII: No person shall be eligible to the office of governor unless he shall be a qualified voter, have attained the age of thirty-five years and have been a citizen of the United States for twenty years and resident of this State for five years preceding his election... (Part of Section 1, Article IV). There shall be a lieutenant governor, who shall have the same qualifications as the governor... (Part of Section 2, Article IV).

MICHIGAN: To be eligible for the office of governor or lieutenant governor a person must have attained the age of thirty years, and have been a registered elector in this state for four years next preceding his election (Section 22, Article V).

NEW JERSEY: The governor shall not be less than thirty years of age, and shall have been for at least twenty years a citizen of the United States, and a resident of this State seven years next before his election... (Part of Sec. 1, Art. V).

PUERTO RICO: No person shall be Governor unless, on the date of the election, he is at least thirty-five years of age, and is and has been during the preceding five years a citizen of the United States and a citizen and bona fide resident of Puerto Rico (Section 3, Article IV).

MODEL STATE CONSTITUTION: ...Any qualified voter of the state who is at least \_\_\_\_\_ years of age shall be eligible to the office of governor (Part of Section 5.02, Article V).

Section 4. Until otherwise provided by law, the governor, secretary of state, state auditor, treasurer, attorney general and superintendent of public instruction, shall quarterly, as due, during the continuance in office, receive for their services compensation, which is fixed as follows:

Governor, five thousand dollars per annum;  
Secretary of state, three thousand dollars per annum;  
Attorney general, three thousand dollars per annum;  
State treasurer, three thousand dollars per annum;  
State auditor, three thousand dollars per annum;  
Superintendent of public instruction, two thousand five hundred dollars per annum.

The lieutenant-governor shall receive the same per diem as may be prescribed by law for the speaker of the legislative assembly, to be allowed only during the sessions of the legislative assembly.

The compensation enumerated shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office, and the salary of no official shall be increased during his term of office. No officer named in this section shall receive, for the performance of any official duty, any fee for his own use, but all fees fixed by law for the performance by any officer of any official duty, shall be collected in advance, and deposited with the state treasurer quarterly to the credit of the state. No officer mentioned in this section shall be eligible to, or hold any other public office, except member of the state board of education during his term of office.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Except for minor changes in wording, and changes in the pay scale:

Governor \$3,600  
Sec. of State \$2,200  
State Auditor \$2,000  
Treasurer \$2,000  
Attorney General \$2,000  
Superintendent of Public Instruction \$2,000  
this section is like Section 4, Article V of the 1884 Constitution.

After the failure of an amendment to lower the governor's salary by \$2,000, this section passed (Smurr, p. 121).

ALASKA: The compensation of the governor and the secretary of state shall be prescribed by law and shall not be diminished during their term of office, unless by general law applying to all salaried officers of the State (Section 15, Article III).

HAWAII: The compensation of the governor and the lieutenant governor shall be prescribed by law, but shall not be less than eighteen thousand dollars, and twelve thousand dollars, respectively, per annum... (Part of Section 3, Article IV).

MICHIGAN: The governor, lieutenant governor, secretary of state and attorney general shall receive the compensation provided by law in full payment for all services performed and expenses incurred during his term of office... (Part of Section 23, Article 5).

NEW JERSEY: The governor shall receive for his services a salary, which shall neither be increased nor diminished during the period for which he shall have been elected (Section 1, Article V).

PUERTO RICO: No comparable section in Article IV.

MODEL STATE CONSTITUTION: No comparable section in Article V.

Section 5. The supreme executive power of the state shall be vested in the governor, who shall see that the laws are faithfully executed.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. The above section is identical to Section 5, Article V of the 1884 Constitution.

See above Section 1, Article VII all compared states concerning vested power of the governor.

Section 6. The governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part or the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. There is no comparable section to the above section in Article V of the 1884 Constitution.

ALASKA: The governor is commander-in-chief of the armed forces of the State... (Part of Section 19, Article III).

HAWAII: ... (He shall be commander in chief of the armed forces of the State and may call out such forces to execute the laws... (Part of Section 5, Article IV).

MICHIGAN: The governor shall be commander-in-chief of the armed forces and may call them out to execute laws, suppress insurrection and repel invasion (Section 12, Article V).

NEW JERSEY: No comparable section in Article V.

PUERTO RICO: ...He shall be commander-in-chief of the armed forces... (Part of Section 4, Article IV).

MODEL STATE CONSTITUTION: ...He shall be commander-in-chief of the armed forces of the State... (Part of Section 5.04 b, Article V).

Section 7. The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occur in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of secretary of state, state auditor, state treasurer, attorney general or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. With few changes in wording this section was adopted from Section 6, Article V of the 1884 Constitution.

ALASKA: The head of each principal department...shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session.. (Part of Section 25, Article III).

HAWAII: Each principal department shall be under the supervision of the governor and...headed by a single executive. Such single executive shall be nominated and, by and with the advice and consent of the senate, appointed by the governor.. (Part of Section 6, Article IV).

MICHIGAN: ...The single executives heading principal departments shall include a secretary of state, a state treasurer and an attorney general. When a single executive is the head of a department, unless elected or appointed as otherwise provided in this constitution, he shall be appointed by the governor by and with the advice and consent of the senate and he shall serve at the pleasure of the governor (Part of Section 3, Article V).

NEW JERSEY: ...The head of each principal department shall be a single executive unless otherwise provided by law. Such single executives shall be nominated and appointed by the governor, with the advice and consent of the senate... (Part of Section 4, Article V).

PUERTO RICO: For the purpose of exercising executive power, the Governor shall be assisted by Secretaries whom he shall appoint with the advice and consent of the Senate... The Secretaries shall collectively constitute the governor's advisory council, which shall be designated as the Council of Secretaries (Part of Section 5, Article IV).

MODEL STATE CONSTITUTION: The governor shall appoint and may remove the heads of all administrative departments. All other officers in the administrative service of the state shall be appointed and may be removed as provided by law (Section 5.07, Article V).

Section 8. The legislative assembly shall provide for a state examiner, who shall be appointed by the governor and confirmed by the senate. His duty shall be to examine the accounts of state treasurer, supreme court clerks, district court clerks, and all county treasurers and treasurers of such other public institution as may be prescribed by law, and shall perform such other duties as the legislative assembly may prescribe. He shall report at least once a year and oftener if required to such officers as may be designated by the legislative assembly. His compensation shall be fixed by law.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. There is no comparable section to the above section in Article V of the 1884 Constitution.

ALASKA: No comparable section in Article III.

HAWAII: No comparable section in Article IV.

MICHIGAN: No comparable section in Article V.

NEW JERSEY: No comparable section in Article V.

PUERTO RICO: No comparable section in Article IV.

MODEL STATE CONSTITUTION: No comparable section in Article V.

Section 9. The governor shall have the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction and judgment for any offenses committed against the criminal laws of the state; provided, however, that before granting pardons, remitting fines and forfeitures, or commuting punishments, the governor shall be advised concerning the same and that such action has been approved by a board, or a majority thereof, who shall be known as the board of pardons. The legislative assembly shall by law prescribe for the appointment and composition of said board of pardons, its powers and duties; and regulate the proceedings thereof: (Amended Chap. 106, Laws of 1953, effective Dec. 7, 1954).

COMMENT: Section 9, Article VII of the 1889 Constitution was amended in 1954: It provided for a Board of Pardons composed of the governor, secretary of state and the attorney general. It enumerated the duties and all regulations governing the board. The difference between these two sections is that the 1889 version is much longer and that the present section gives the board only advisory status, whereas the 1889 version gave the total power to commute sentences etc. to the Board of Pardons.

Section 9 of the 1889 Constitution is identical to Section 7, Article V of the 1884 Constitution.

ALASKA: Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit all forfeitures. This power shall not extend to impeachment... (Part of Section 21, Article III).

HAWAII: ...The governor may grant reprieves, commutations, and pardons, after conviction, for all offences, subject to regulation by law as to the manner of applying for the same. The legislature may, by general law, authorize the governor to grant pardons before conviction, to grant pardons for impeachment and to restore civil rights denied by reason of conviction of offences by tribunals other than those of this State... (Part of Section 5, Article IV).

MICHIGAN: The governor shall have power to grant reprieves, commutations and pardons after convictions for all cases, except cases of impeachment, upon such conditions and limitations as he may direct, subject to procedures and regulations prescribed by law. He shall inform the legislature annually of each reprieve, commutation and pardon granted, stating reasons therefore (Section 14, Article V).

NEW JERSEY: The governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures. A commission or other body may be established by law to aid and advise the Governor in the exercise of executive clemency (Section 2, Article V).

PUERTO RICO: He shall have the power to suspend the execution of sentences in criminal cases and to grant pardons, commutation of punishment, and total or partial remissions of fines and forfeitures for crimes committed in violation of the laws of Puerto Rico. This power shall not extend to cases of impeachment... (Part of Section 4, Article IV).

MODEL STATE CONSTITUTION: The governor shall have the power to grant reprieves, commutations and pardons, after conviction for all offences and may delegate such powers, subject to such procedures as may be prescribed by law (Section 5.05, Article V).

Section 10. The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time, under oath, from all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution. The governor shall at the beginning of each session, and from time to time, by message, give to the legislative assembly information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the legislative assembly a statement with vouchers of the expenditures of all moneys belonging to the state and paid out by him. He shall also at the beginning of each session present estimates of the amount of money required to be raised by taxation for all purposes of the state.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 8, Article V of the 1884 Constitution.

ALASKA: No comparable section in Article III.

HAWAII: No comparable section in Article IV.

MICHIGAN: No comparable section in Article V.

NEW JERSEY: No comparable section in Article V.

PUERTO RICO: No comparable section in Article IV.

MODEL STATE CONSTITUTION: No comparable section in Article V.

Section 11. He may on extraordinary occasions convene the legislative assembly by proclamation, stating the purposes for which it is convened, but when so convened, it shall have no power to legislate on any subjects other than those specified in the proclamation, or which may be recommended by the governor, but may provide for the expenses of the session and other matters incidental thereto. He may also by proclamation convene the senate in extraordinary session for the transaction of executive business.

COMMENT: This section is identical to Section 9, Article V of the 1884 Constitution.

Section 11 was amended in 1965. The amendment left Section 11 in force but allowed the legislature to disregard certain provisions of the constitution for the purpose of passing law to allow state and local governments to continue to function during an emergency caused by an enemy attack. Such laws would be in force only for the period of the emergency.

ALASKA. Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session (Section 17, Article III).

HAWAII: No comparable section in Article IV.

MICHIGAN: The governor may convene the legislature on extraordinary occasions (Section 15, Article V).

NEW JERSEY: ...He may convene the Legislature, or the Senate alone, whenever in his opinion the public interest shall require... (Part of Section 1, Article V).

PUERTO RICO: ...He shall call the Legislative Assembly or the Senate into special session when in his judgment the public interest so requires... (Part of Section 4, Article IV).

MODEL STATE CONSTITUTION: No comparable section in Article V.

Section 12. Every bill passed by the legislative assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present in that house it shall become a law notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. If any bill shall not be returned by the governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly shall by their adjournment prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislative assembly, unless approved by the governor within fifteen days after such adjournment. In case the governor shall fail to approve of any bill after the final adjournment of the legislative assembly it shall be filed, with his objections, in the office of the secretary of state.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that on Section 12, "the committee report deviated slightly from the Constitution of 1884, one of the few times that this was true of the article on the executive." The governor "was to return objectionable bills within five days (except Sundays), or they would become law. The old constitution had given him ten days. Also, unless he signed bills within fifteen days after adjournment, they were not to become law. The old constitution had not mentioned this contingency at all. The delegates made the changes after reading similar sections in other constitutions, as was their usual practice" (Smurr, p. 127).

ALASKA: No comparable section in Article III (executive). The governor may veto bills passed by the legislature... (Part of Section 15, Article II). Upon receipt of a veto message, the legislature shall meet immediately in joint session and reconsider passage of the vetoed bill or item. Bills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the membership of the legislature... (Part of Section 16, Article II). A bill becomes law if, while the legislature is in session, the governor neither signs nor vetoes it within fifteen days, Sundays excepted,

after its delivery to him. If the legislature is not in session and the governor neither signs nor vetoes the bill within twenty days, Sundays excepted, after its delivery to him, the bill becomes law (Section 17, Article II).

HAWAII: No comparable section in Article IV (executive). Every bill...shall be presented to the governor... If the governor does not approve such bill, he may return it, with his objections to the legislature... The governor shall have ten days to consider bills presented to him ten or more days before the adjournment of the legislature sine die, and if a such bill is neither signed nor returned by the governor with that time, it shall become law in like manner as if he had signed it.

The governor shall have forty-five days, after the adjournment of the legislature sine die, to consider bills presented to him less than ten days before such adjournment, or presented after adjournment, and any such bill shall become law on the forty-fifth day unless the governor by proclamation shall have given ten days' notice to the legislature that he plans to return such bill with his objections on that day. The legislature may convene at or before noon on the forty-fifth day in special session, without call, for the sole purpose of acting upon any such bill returned by the governor. In case the legislature shall fail to convene, such bill shall not become law... If after such reconsideration such bill, or such item or items, shall be approved by two-thirds vote of all members to which each house is entitled, the same shall become law (Part of Section 17, Article III).

MICHIGAN: No comparable section in Article V (executive). ...the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he does not approve, and the legislature has within that time finally adjourned the session in which the bill was passed, it shall not become law. If two-thirds of the members elected to and serving in pass the bill notwithstanding the objection of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house... If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it (Part of Section 33, Article IV).

NEW JERSEY: ...If upon reconsideration, on or after the third day following the return of the bill, two-thirds of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered and if approved by two-thirds of all the members of that house, it shall become a law...

If on the tenth day the Legislature is in adjournment sine die the bill shall become a law if the Governor shall sign it within forty-five days, Sundays excepted, after such adjournment. On the said forty-fifth day the bill shall become a law...unless at or before noon of that day he shall return it with his objections to the house of origin at a special session of the Legislature which shall convene that day, without call or petition, for the sole purpose of acting pursuant to this paragraph upon bills returned by the Governor... (Part of Section 1, Article V).

PUERTO RICO: No comparable section in Article IV (executive) All bills shall become law if he signs it or if he does not return it, with his objections, to the house in which it originated within ten days (Sundays excepted).... If approved by two-thirds of which each house is composed, said bill shall become law. If the legislative assembly adjourns sine die before the governor has acted upon a bill that has been presented to him less than ten days before...the bill shall become law only if the Governor signs it within thirty days after receiving it (Part of Section 19, Article III).

MODEL STATE CONSTITUTION: No comparable section in Article V (executive). When a bill has passed the legislature, it shall be presented to the governor and, if the legislature is in session, it shall become law if the governor signs or fails to veto it within fifteen days of presentation. If the legislature is in recess or, if the session of the legislature has expired during such fifteen day period, it shall become law if he signs it within thirty days after such adjournment or expiration. If the governor does not approve a bill, he shall veto it and return it to the legislature either within fifteen days of presentation if the legislature is in session or upon the reconvening of the legislature from its recess. Any bill so returned by the governor shall be reconsidered by the legislature and if, upon reconsideration two-thirds of all the members shall agree to pass the bill, it shall become law... (Part of Section 4.16, Article IV).

Section 13. The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts approved shall become a law, and the item or items disapproved shall be void, unless enacted in the manner following: If the legislative assembly be in session he shall within five days transmit to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 11, Article V of the 1884 Constitution.

Smurr notes that "another device picked up from New York was the item veto, which was written into the proposed section twelve. Critics of Fredrick Jackson Turner might have thought this section worthy of comment, but the delegates did not, and the section was passed as suggested, and without debate (Smurr p. 128).

ALASKA: ...He may, by veto, strike or reduce items on appropriation bills... (Part of Section 16, Article II).

HAWAII: ...He may veto any specific item or items in any bill which appropriates money for specific purposes by striking out or reducing the same... (Part of Section 17, Article III).

MICHIGAN: The governor may disapprove any distinct item or items appropriating moneys in an appropriation bill... (Part of Section 19, Article V).

NEW JERSEY: If any bill presented to the governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or items while approving the other portions of the bill... (Part of Section 15, Article V).

PUERTO RICO: In approving any appropriation bill that contains more than one item, the governor may eliminate one or more of such items or reduce their amounts, at the same time reducing the total amounts involved (Section 20, Article III).

MODEL STATE CONSTITUTION: The governor may strike out or reduce items in appropriation bills... (Part of Section 4.16, Article IV).

Section 14. In case of the failure to qualify, the impeachment or conviction of felony or infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant-governor.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 12, Article V of the 1884 Constitution.

ALASKA: In case of temporary absence of the governor from office, the secretary of state shall serve as acting governor (Section 9, Article III).

HAWAII: When the office of governor is vacant, the lieutenant governor shall become governor... (Part of Section 4, Article IV).

MICHIGAN: In case of the conviction of the governor on impeachment, his removal from office, his resignation or his death, the lieutenant governor, the elected secretary of state, the elected attorney general and such other persons designated by law shall in that order become governor for the remainder of the governor's term (Section 26, Article V)

NEW JERSEY: In the event of a vacancy in the office of Governor resulting from the death, resignation or removal of a governor in office, or the death of a governor-elect, or from any other cause, the functions, powers, duties and emoluments of the office shall devolve upon the President of the Senate... (Part of Section 1, Article V).

PUERTO RICO: When a vacancy occurs in the office of the Governor caused by death, resignation, removal, total and permanent incapacity, or any other absolute disability, said office shall devolve upon the Secretary of State... (Part of Section 7, Article IV).

MODEL STATE CONSTITUTION: If the Governor elect fails to assume office for any reason, the presiding officer of the senate shall serve as acting governor... When the Governor is unable to discharge the duties of his office by reason of impeachment or other disability, including but not limited to physical or mental disability, or when the duties of the office are not being discharged by reason of his continuous absence, the presiding officer of the senate shall serve as acting governor... (Part of Section 5.08, Article V).

Section 15. The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant-governor, from any cause which applies to the governor, or when he shall hold the office of governor, then the president pro tempore of the senate shall perform the duties of the lieutenant-governor until the vacancy is filled or the disability removed.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 13, Article V of the 1884 Constitution.

ALASKA: No comparable section in Article III.

HAWAII: ...When the office of lieutenant governor is vacant, in the event of the absence of the lieutenant governor from the state, or his inability to exercise and discharge the powers and duties of his office, such powers and duties shall devolve upon such officers in such order of succession as may be provided by law... (Part of Section 4, Article IV).

MICHIGAN: The lieutenant governor shall be president of the senate, but shall have no vote, unless they are equally divided... (Part of Section 25, Article V).

NEW JERSEY: No comparable section in Article V.

PUERTO RICO: No comparable section in Article IV.

MODEL STATE CONSTITUTION: No comparable section in Article V

Section 16. In case of the failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of felony or infamous crime, or disqualification from any cause, of both the governor and lieutenant-governor, the duties of the governor shall devolve upon the president pro tempore of the senate until such disqualification of either the governor or lieutenant-governor be removed, or the vacancy filled, and if the president pro tempore of the senate, for any of the above-named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house.

COMMENT: This section was amended in 1965 by an amendment allowing the Legislature to disregard certain provisions of the Montana Constitution for the purpose of passing laws to allow state and local governments to continue to function during an emergency caused by an enemy attack. Such laws could be in force only for the period of the emergency.

Section 16 of the 1889 Constitution is identical to Section 14, Article V of the 1884 Constitution.

ALASKA: No comparable section in Article III.

HAWAII: When the office of lieutenant governor is vacant...the powers and duties shall devolve upon such officers in such order of succession as may be provided by law (Part of Section 4, Article IV).

MICHIGAN: ...If the governor or the person in line of succession to serve as governor is absent from the state, or suffering under an inability, the powers and duties of the office of governor shall devolve in order of precedence until the absence of inability giving rise to the devolution of powers ceases (Part of Section 26, Article V).

NEW JERSEY: No comparable section in Article V.

PUERTO RICO: No comparable section in Article IV.

MODEL STATE CONSTITUTION: No comparable section in Article V.

Section 17. The first legislative assembly shall provide a seal for the state, which shall be kept by the secretary of state and used by him officially, and known as the great seal of the state of Montana.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Except for quotation marks around "The Great Seal of the State of Montana", this section is identical to Section 15, Article V of the 1884 Constitution.

ALASKA: No comparable section in Article III.

HAWAII: No comparable section in Article IV.

MICHIGAN: No comparable section in Article V.

NEW JERSEY: No comparable section in Article V.

PUERTO RICO: No comparable section in Article IV.

MODEL STATE CONSTITUTION: No comparable section in Article .

Section 18. All grants and commissions shall be in the name and by the authority of the state of Montana, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 16, Article V of the 1884 Constitution.

ALASKA: No comparable section in Article III.

HAWAII: No comparable section in Article IV.

MICHIGAN: No comparable section in Article V.

NEW JERSEY: No comparable section in Article V.

PUERTO RICO: No comparable section in Article IV.

MODEL STATE CONSTITUTION: No comparable section in Article V.

Section 19. An account shall be kept by the officers of the executive department, and of all public institutions of the state of all moneys received by them, severally from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the governor, under oath; they shall also, at least twenty days preceding each regular session of the legislative assembly, make full and complete reports of their official transactions to the governor, who shall transmit the same to the legislative assembly.

COMMENT: This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section is identical to Section 17, Article V of the 1884 Constitution. Smurr notes that one delegate "moved quickly to strike out this section, calling it legislation, Maginnis objected to the motion. This section would be 'an efficient check' upon the officers of the state. Burleigh thought it a 'very wise and indispensable clause.' Brickford sustained Goddard, Maginnis replied briefly, and the committee of the whole was off on another of its fruitless debates on the evils of long constitutions" (Smurr, p. 130).

ALASKA: No comparable section in Article III.

HAWAII: No comparable section in Article IV.

MICHIGAN: No comparable section in Article V.

NEW JERSEY: No comparable section in Article V.

PUERTO RICO: No comparable section in Article IV.

MODEL STATE CONSTITUTION: No comparable section in Article V.

Section 20. The governor, secretary of state and attorney general shall constitute a board of state prison commissioners, which board shall have such supervision of all matters connected with the state prisons as may be prescribed by law. They shall constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the state, except salaries or compensation of officers fixed by law, shall be passed upon by the legislative assembly without first having been considered and acted upon by said board. The legislative assembly may provide for the temporary suspension of the state treasurer by the governor, when the board of examiners deem such action necessary for the protection of the moneys of the state.

COMMENT: Two amendments have been proposed to this section; both failed. In 1919 an amendment was proposed with its purpose to create a board of examiners. In 1959 an amendment was proposed that would have abolished the state board of prison commissioners as a constitutional body.

This section is identical to Section 18, Article V of the 1884 Constitution.

ALASKA: No comparable section in Article III.

HAWAII: No comparable section in Article IV.

MICHIGAN: No comparable section in Article V.

NEW JERSEY: No comparable section in Article V.

PUERTO RICO: No comparable section in Article IV.

MODEL STATE CONSTITUTION: No comparable section in Article V.



A R T I C L E      VIII



COMPARISON OF  
ARTICLE VIII OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court, district courts, justices of the peace, and such other inferior courts as the legislative assembly may establish in any incorporated city or town.

COMMENT: This section is identical to Section 1, Article VI of the 1884 Constitution. In 1961 an amendment was proposed that would have altered the above section by deleting the words "justices of the peace", but this amendment failed adoption.

Smurr's general comment on Article VIII of the Montana Constitution. He did not examine each section in detail.

"...The men of 1889 thought that the prime duty of a constitution was to reduce every contingency of life to a proposition at law. This attitude led them to adopt a modus operandi which very naturally resulted in an overall legal consistency, and an apparent philosophic chaos.

"No part of the Montana constitution better illustrates this failing than the article on the judiciary...Consider, for example, the great roll the judiciary was expected to play in the new system. The delegates had on their desks at this time various sections bearing on the other institutions of government. These had been drawn up in such a way that the two popular branches were hedged-in by a hundred restrictions. Since a state was presumably sovereign within its limited sphere, the need for a powerful agency to put these restrictions into effect was obvious. It is even more clear that the delegates intended the state courts to perform this function, but nowhere in the constitution or in the debate is there the slightest reference to judicial review! Moreover, there is scarcely any mention at all of the general nature and purpose of the judiciary; instead, there are elaborate procedural provisions, and lengthy discussions of these, and very little else.

"The judiciary article therefore looks like a legal code, which is precisely what it was intended to look like. One can learn a good deal about the political mind of the 1880's from the articles on the executive and the legislature, since these involved the real power of the state and were trimmed for that reason; but from the judiciary article one can learn nothing. It is therefore passed over quickly here, just as it was passed over in the convention. It was in every sense of the word a copy of the identical article in the Constitution of 1884. That changes were made usually came in committee before the article was introduced into the convention for debate. The committee was composed of conservative lawyers... Lawyers wrote the article, lawyers debated it, and non-lawyers either accepted these learned arguments in silence, or appealed to other lawyers when differentially introducing ideas which seemed counter to the prevailing temper" (Smurr, pp. 101-103).

ALASKA: The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of the courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law (Section 1, Article IV).

HAWAII: The judicial power of the state shall be vested in one supreme court, circuit courts, and in such inferior courts as the legislature may from time to time establish. The several courts shall have original and appellate jurisdiction as provided by law (Section 1, Article V).

MICHIGAN: The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house (Section 1, Article VI).

NEW JERSEY: The judicial power of the state shall be vested in a Supreme Court, a Superior Court, County Courts and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law (Section 1, Article VI).

PUERTO RICO: The judicial power of Puerto Rico shall be vested in a Supreme Court and in such other courts as may be established by law (Section 1, Article V).

MODEL STATE CONSTITUTION: The judicial power of the state shall be vested in a unified judicial system, which shall include a supreme court, an appellate court and a general court, and which shall also include such inferior courts of limited jurisdiction as may from time to time be established by law. All courts except the supreme court may be divided into geographical departments or districts as provided by law and into functional divisions and subdivisions as provided by law or by judicial rules not inconsistent with law (Section 6.01, Article VI).

Section 2. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, and shall have a general supervisory control over all inferior courts, under such regulations and limitations as may be prescribed by law.

COMMENT: This section is identical to Section 2, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: The supreme court shall be the highest court of the state, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court (Section 2, Article IV).

HAWAII: The supreme court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law (Section 6, Article V).

MICHIGAN: The supreme court shall have general superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court... (Part of Section 5, Article VI).

NEW JERSEY: The supreme court shall exercise appellate jurisdiction in the last resort in all causes provided in this constitution.

The supreme court shall make rules governing the administration of all courts in the state and, subject to law, the practice and procedure of all such courts... (Part of Section 2, Article VI).

PUERTO RICO: The supreme court shall be the court of last resort in Puerto Rico... (Part of Section 3, Article V). The Supreme Court shall adopt rules for the administration of the courts... (Part of Section 7, Article V).

MODEL STATE CONSTITUTION: The supreme court shall have appellate jurisdiction in all cases arising under the constitution... It shall also have original jurisdiction in cases arising under subsections 4.04 and 5.08 of this constitution... (Part of Section 6.03, Article VI). The supreme court shall make and promulgate rules governing the administration of all courts... (Part of Section 6.07, Article VI).

Section 3. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo-warranto, certiorari, prohibition and injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. When a jury is required in the supreme court to determine an issue of fact, said court shall have power to summon such jury in such manner as may be provided by law. Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writ as he may be authorized by law to issue.

COMMENT: Section 3 of the 1884 constitution was more brief. It read: "Said court, or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, injunction, and other original or remedial writs, with the authority to hear and determine the same; and when a jury may be required by the supreme court to try an issue of fact, the court shall have power to summon a jury to try such question of fact in that court.

This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: The Supreme Court, any of its divisions, or any of its Justices may hear in the first instance petitions for habeas corpus and any other causes and proceedings as determined by law (Section 5, Article V).

MODEL STATE CONSTITUTION: No comparable section in Article VI

ection 5. At least three terms of the supreme court shall be held each year at the seat of government.

COMMENT: Section 4, Article VI of the 1884 Constitution read: "At least two terms..." (remainder same as above). This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

ARIZONA: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

Puerto Rico: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 5. The supreme court shall consist of three justices, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain and the legislative assembly shall have the power to increase the number of said justices to not less nor more than five. In case any justice of the supreme court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the hearing of said cause. In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any cause heard before the court as if regularly participated in by a justice of the supreme court.

COMENT: Section 5 of the 1889 Constitution consisted of only the first sentence in the above section, and was identical to Section 5, Article VI of the 1884 Constitution. Material following the first sentence added by amendment proclaimed December 18, 1900.

ALASKA: ...It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court (Part of Section 2, Article V).

HAWAII: The supreme court shall consist of a chief justice and four associate justices... (Part of Section 2, Article V).

MICHIGAN: The supreme court shall consist of seven justices elected at non-partisan elections as provided by law... (Part of Section 2, Article VI).

NEW JERSEY: The Supreme Court shall consist of a Chief Justice and six Associate Justices. Five members of the court shall constitute a quorum... (Part of Section 2, Article VI).

PUERTO RICO: ...it shall be composed of a Chief Justice and four Associate Justices. The number of justices may be change only by law upon request of the Supreme Court (Part of Section 3, Article V).

MODEL STATE CONSTITUTION: ...it shall consist of a chief justice and \_\_\_\_\_ associate justices (Part of Section 6.02, Article VI).

Section 6. The justices of the supreme court shall be elected by the electors of the state at large, as hereinafter provided.

COMMENT: This section is identical to Section 6, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: Each supreme court justice...shall...be subject to approval or rejection on a non-partisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in like manner every tenth year... (Part of Section 6, Article IV).

HAWAII: The governor shall nominate and, by and with the consent of the senate, appoint the justices of the supreme court... (Part of Section 3, Article V).

MICHIGAN: The supreme court shall consist of seven justices elected at non-partisan elections as provided by law... (Part of Section 2, Article VI).

NEW JERSEY: The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court... (Part of Section 6, Article VI).

PUERTO RICO: Judges shall be appointed by the governor with the advice and consent of the Senate... (Part of Section 8, Article V).

MODEL STATE CONSTITUTION: The governor, with the advice and consent of the senate, shall appoint the chief judges and the associate judges of the supreme, appellate and general courts... (Part of Section 6.04, Article VI).

Section 7. The term of office of the justices of the supreme court, except as in this constitution otherwise provided, shall be six years.

COMMENT: This section is identical to Section 7, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: ...each supreme court justice shall be subject to approval or rejection every tenth year... (Part of Section 6, Article IV).

HAWAII: The term of office of a justice of the supreme court shall be seven years... (Part of Section 3, Article V).

MICHIGAN: ...The term of office shall be eight years and not more than two terms of office shall expire at the same time... (Part of Section 2, Article VI).

NEW JERSEY: The Justices of the Supreme Court,...shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior... (Part of Section 6, Article VI).

PUERTO RICO: ...Justices of the Supreme Court shall...hold their offices during good behavior... (Part of Section 8, Article V).

MODEL STATE CONSTITUTION: ...The judges of the supreme court... shall hold their offices for initial terms of seven years and upon rearpointment shall hold their offices during good behavior... (Part of Section 6.04 (c), Article VI).

Section 8. There shall be elected at the first general election, provided for by this constitution, one chief justice and two associate justices of the supreme court. At said first election the chief justice shall be elected to hold his office until the general election in the year one thousand eight hundred ninety-two (1892), and one of the associate justices to hold office until the general election in the year one thousand eight hundred ninety-four (1894), and the other associate justice to hold his office until the general election in the year one thousand eight hundred ninety-six (1896), and each shall hold until his successor is elected and qualified. The terms of office of said justices, and which one shall be chief justice, shall at the first and all subsequent elections be designated by ballot. After said first election one chief justice or one associate justice shall be elected at the general election every two years, commencing in the year one thousand eight hundred ninety-two (1892), and if the legislative assembly shall increase the number of justices to five, the first terms of office of such additional justices shall be fixed by law in such manner that at least one of the five justices shall be elected every two years. The chief justice shall preside at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve shall preside in his stead.

COMMENT: Except for minor changes, this section was adopted from Section 8, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 9. There shall be a clerk of the supreme court, who shall hold his office for the term of six years, except that the clerk first elected shall hold his office only until the general election in the year one thousand eight hundred ninety-two (1892), and until his successor is elected and qualified. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the supreme court.

COMMENT: Except for minor changes this section was adopted from Section 9, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: ...The supreme court shall appoint an administrator of the courts and other assistants of the supreme court as may be necessary to aid in the administration of the courts of this state... (Part of Section 3, Article VI).

NEW JERSEY: The Clerk of the Supreme Court...shall be appointed by the Supreme Court for such terms and at such compensation as shall be provided by law (Part of Section 7 (3) Article VI).

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 10. No person shall be eligible to the office of justice of the supreme court, unless he shall have been admitted to practice law in the supreme court of the territory or state of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said territory or state at least two years next preceding his election.

COMMENT: This section is identical to Section 10, Article VI of the 1864 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ILLINOIS: Supreme Court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law... (Part of Section 4, Article IV).

HAWAII: ...No person shall be eligible to such office who shall not have been admitted to practice law before the supreme court of this state for at least ten years... (Part of Section 3, Article V).

MICHIGAN: ...Justices and judges of courts of record must be persons who are licensed to practice law in this state... (Part of Section 19, Article VI).

NEW JERSEY: The Justices of the Supreme Court and the Judges of the Superior Court and the Judges of the County Courts shall each prior to his appointment have been admitted to the practice of law in this state for at least ten years (Section 6 (2), Article VI).

PUERTO RICO: No person shall be appointed a Justice of the Supreme Court unless he is a citizen of the United States and of Puerto Rico, shall have been admitted to the practice of law in Puerto Rico at least ten years prior to his appointment, and shall have resided in Puerto Rico at least five years immediately prior thereto (Section 9, Article V).

MODEL STATE CONSTITUTION: No person shall be eligible for judicial office in the supreme court, appellate court and general court unless he has been admitted to practice law before the supreme court for at least \_\_\_\_\_ years... (Part of Section 6.04 (b), Article VI).

Section 11. The district courts shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and for all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization and to issue papers therefor in all cases where they are authorized so to do by the laws of the United States. They shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective districts as may be prescribed by law and consistent with this constitution. Their process shall extend to all parts of the state provided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property, shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine writs of mandamus, quo warranto, certiorari, prohibiti injunction and other original and remedial writs, and also all writs of habeas corpus on petition by, or on behalf of, any person held in actual custody in their respective districts. Injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and non-judicial days.

CONTENT: With minor changes this section was adopted from Section 11, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

ction 12. The state shall be divided into judicial districts, each of which there shall be elected by the electors thereof the judge of the district court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year one thousand eight hundred and ninety-two (1892), and until their successors are elected and qualified. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.

CONTENT: With few changes in wording, this section was adopted from Section 12, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 13. Until otherwise provided by law judicial districts of the state shall be constituted as follows: First district, Lewis and Clark county; Second district, Silver Bow county; Third district, Deer Lodge county; Fourth district, Missoula county; Fifth district, Gallatin, Park and Meagher counties; Seventh district, Yellowstone, Custer and Dawson counties; Eighth district, Choteau, Cascade and Fergus counties.

COMENT: With few changes, this section was adopted from Section 13, Article VI of the 1884 Constitution (changes were in the number of districts). This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI

ection 14. The legislative assembly may increase or decrease the number of judges in any judicial district; Provided, That there shall be at least one judge in any district established by law; and may divide the state, or any part thereof, into new districts; provided, That each be formed of compact territory and be bounded by county lines, but no changes in the number of boundaries of districts shall work a removal of any judge from office during the term for which he has been elected or appointed.

COMPARISON: With few changes in wording, this section was adopted from Section 14, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 15. Writs of error and appeals shall be allowed from the decisions of said district courts to the supreme court under such regulations as may be prescribed by law.

COMENT: This section is identical to Section 15, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI

ction 16. No person shall be eligible to the office of judge of  
district court unless he be at least twenty-five years of age  
and a citizen of the United States, and shall have been admitted  
to practice law in the supreme court of the territory or state of  
Montana, nor unless he shall have resided in this state or territory  
at least one year next preceding his election. He need not be a  
resident of the district for which he is elected at the time of  
his election, but after his election he shall reside in the district  
in which he is elected during his term of office.

COMENT: With minor changes in wording, this section was  
adopted from Section 16, Article VI of the 1884 Constitution.  
This section has never been amended, nor have any amendments  
been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 17. The district court in each county which is a judicial district by itself shall be always open for the transaction of business, except on legal holidays and non-judicial days. In each district where two or more counties are united, until otherwise provided by law, the judges of such district shall fix the term of court, provided that there shall be at least four terms a year held in each county.

COMMENT: After minor changes in wording, this section was adopted from Section 17, Article V of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

ection 18. There shall be a clerk of the district court in each county, who shall be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of the said clerk shall be as provided by law.

COMMENT: With few changes in wording, this section was adopted from Section 18, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected and he shall perform such duties as may be required by law.  
Amended Ch. 164, Laws of 1961, effective December 17, 1962.

COMMENT: With few changes, this section was adopted from Section 19, Article VI of the 1889 Constitution. When adopted in 1889, the term of office for the county attorney was two years. In 1941 and 1943 amendments were proposed to increase the term to four years. An amendment was approved in 1962 which increased the term of office for county attorneys from two to four years.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI

Section 20. There shall be elected in each organized township of each county by the electors of such township at least two justices of the peace, who shall hold their offices, except as otherwise provided in this constitution, for the term of two years. Justices' powers shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this constitution otherwise provided; Provided, That they shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved exceeds the sum of three hundred dollars.

COMMENT: Section 20 is identical to Section 23, Article VI of the 1884 Constitution. Three amendments have been proposed to Section 20, but none have been adopted. In 1941 and 1943 the same amendments were proposed that would have made this section conform to provisions of Chap. 93, L. 1937, relating to terms of office of certain county and municipal officers. In 1962 an amendment that would have eliminated the constitutional status of justices of the peace was defeated at the polls.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 21. Justices' courts shall not have jurisdiction in any case involving the title or right of possession of real property, nor in cases of divorce, for annulment of marriage, nor of cases in equity; nor shall they have power to issue writs of habeas corpus, mandamus, certiorari, quo warranto, injunction, or prohibition, nor the power of naturalization; nor shall they have jurisdiction in cases of felony, except as examining courts; nor shall criminal cases in said courts be prosecuted by indictment; but said courts shall have such jurisdiction in criminal matters, not of the grade of felony, as may be provided by law; and shall also have concurrent jurisdiction with the district courts in cases of forcible entry and unlawful detainer.

COMMENT: Except for the addition of the last clause, this section is identical to Section 24, Article V of the 1884 Constitution. In 1962 an amendment was offered to this section, however it was rejected. This amendment would have eliminated the constitutional status of the Justice of the Peace, police and municipal courts, leaving the establishment of inferior courts to the legislature.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI

ection 22. Justices' courts shall always be open for the transaction of business, except on legal holidays and non-judicial days.

COMMENT: Section 22 is identical to Section 25, Article VI of the 1854 Constitution. In 1962 an amendment was offered to this section, however it was rejected. This amendment would have eliminated the constitutional status of the Justice of the Peace and police and municipal courts, leaving the establishment of inferior courts to the legislature.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 23. Appeal shall be allowed from justices' courts, in all cases, to the district courts, in such manner and under such regulations as may be prescribed by law.

COMMENT: This section is identical to Section 26, Article VI of the 1884 Constitution. In 1962 an amendment was offered to this section, however it was rejected. This amendment would have eliminated the constitutional status of Justice of the Peace, and police and municipal courts, leaving the establishment of inferior courts to the legislature.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

ction 24. ✓ The legislative assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, so shall have jurisdiction in all cases arising under the ordinances of such cities and towns, respectively; such police magistrates may also be constituted ex officio justices of the peace for their respective counties.

COMENT: This section is identical to Section 27, Article VI of the 1864 Constitution. In 1962 an amendment was offered to this section, however it was rejected. This amendment would have eliminated the constitutional status of the Justices of the Peace, and police and municipal courts, leaving the establishment of inferior courts to the legislature.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 25. The supreme and district courts shall be courts of record.

COMMENT: This section is identical to Section 28, Article VI of the 1884 Constitution. This section has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: The supreme court, the court of appeals, the circuit court, the probate court and other courts designated as such by the legislature shall be courts of record... (Part of Section 19, Article VI).

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

ection 26. All laws relating to courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, shall be uniform.

COMENT: This section is identical to Section 30, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUEPTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 27. The style of all process shall be "The State of Montana," and all prosecutions shall be conducted in the name and by the authority of the same.

COMMENT: This section is identical to Section 31, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 28. There shall be but one form of civil action, and law and equity may be administered in the same action.

COMMENT: This section is identical to Section 32, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

AMERICAN SAMOA: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary which shall not be diminished during the terms for which they shall have been respectively elected.

COMMENT: After changes in wording, section 29 of the 1889 Constitution was adopted from Section 34, Article VI of the 1884 Constitution. This section was amended in 1963, effective December 7, 1964. This amendment removed the provision that salaries of supreme court and district court judges shall not be increased during the term of office and other obsolete provisions concerning salaries.

ALASKA: Justices, judges, and members of the judicial council shall receive compensation as provided by law. Compensation of judges and justices shall not be diminished during their terms of office, unless by general law applying to all salaried officials of the state (Section 13, Article IV).

HAWAII: ...They shall receive for their services such compensation as may be prescribed by law, which shall not be diminished during their respective terms of office, unless by general law applying to all salaried officers of the state... (Part of Section 3, Article V).

MICHIGAN: ...salaries of the justices shall be established by law... (Part of Section 7, Article VI).

NEW JERSEY: The justices of the Supreme Court and judges of the Superior Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment... (Part of Section 6 (6) Article VI).

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: The judges of the courts of this state shall receive such salaries as may be provided by law, which shall not be diminished during their term of office (Section 6.04 (f), Article VI).

ction 30. No justice of the supreme court nor judge of the strict court shall accrue or receive any compensation, fee, allowance, mileage, perquisite or emolument for or on account of his office, in any form whatever, except the salary provided by law.

CONTENT: This section is taken partially from Section 34, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No judge or justice of any court of this state shall be paid from the fees of his office nor shall the amount of his salary be measured by fees, other moneys received or the amount of judicial activity of his office (Section 17, Article VI).

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

action 31. No justice or clerk of the supreme court, nor ~~judge~~  
or clerk of any district court shall act or practice as an attorney  
or counsellor at law in any court of this state during his  
continuance in office.

CONTENT: With minor changes in wording, this section was  
adopted from Section 35, Article VI of the 1884 Constitution.  
This section has never been amended, nor have any amendments  
been proposed to alter its 1889 wording.

ALASKA: Supreme court justices and superior court judges  
while holding office may not practice law... (Part of  
Section 14, Article IV).

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: ...They shall not, while in office, engage in  
the practice of law or other gainful pursuit (Part of  
Section 6 (6), Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

ction 32. The legislative assembly may provide for the application of decisions and opinions of the supreme court.

COMMENT: There is no comparable section to this section in Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 33. 11 officers provided for in this article, excepting justices of the supreme court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town for which they may be elected or appointed.

COMMENT: This section is identical to Section 38, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: Whenever a justice or judge removes his domicile beyond the limits of the territory from which he was elected, he shall have vacated his office (Section 20, Article VI).

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI

tion 34. Vacancies in the office of justice in the supreme court, judge of the district court, or clerk of the supreme court, shall be filled by appointment, by the governor of the state, and vacancies in the offices of county attorney, clerk of the district court, and justices of the peace, shall be filled by appointment, by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

COMMENT: With few changes this section was adopted from Section 39, Article VI of the 1884 Constitution. In 1961 an amendment was proposed to this section, however it was not adopted. This amendment would have eliminated the constitutional status of the justice of the peace and police and municipal courts leaving the establishment of inferior courts to the legislature.

ALASKA: The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two persons nominated by the judicial council (Section 5, Article IV).

HAWAII: No comparable section in Article V.

MICHIGAN: A vacancy in the elective office of a judge of any court of record shall be filled at a general or special election as provided by law... (Part of Section 23, Article VI).

NEW JERSEY: No comparable section concerning vacancies in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: The governor shall fill a vacancy in the offices of the chief judges and associate judges of the supreme, appellate and general courts from a list of nominees presented to him by the appropriate judicial nominating commission... (Part of Section 6.04 (a), Article VI).

Section 35. No justice of the supreme court or district judge shall hold any other public office while he remains in the office to which he has been elected or appointed.

CONTENT: With few changes in wording, this section was adopted from Section 40, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: Supreme court justices and superior court judges while holding office may not practice law, hold any office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions... (Part of Section 14, Article IV).

HAWAII: No justice or judge shall hold any other office or position of profit under the State or the United States... (Part of Section 3, Article V).

MICHIGAN: Any justice or judge of a court of record shall be ineligible to be nominated for or elected to an elective office other than a judicial office during the period of his service and for one year thereafter (Section 21, Article VI).

NEW JERSEY: The Justices of the Supreme Court, the Judges of the Superior Court and the Judges of the County Courts shall hold no other office or position, of profit, under the State or the United States... (Part of Section 6 (7) Article VI).

PUERTO RICO: No judge shall make a direct or indirect financial contribution to any political organization or party, or hold any executive office therein, or participate in a political campaign of any kind, or be a candidate for any public office unless he has resigned his judicial office at least six months prior to his nomination (Section 12, Article V).

MODEL STATE CONSTITUTION: ...No person who holds judicial office in the supreme court, appellate court or general court shall hold any other paid office, position of profit or employment under the state, its civil divisions or the United States... (Part of Section 6.04 (b), Article VI).

section 36. A civil action in the district court may be tried by a judge *pro tempore*, who must be a member of the bar of the state, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such case any order, judgment or decree, made or rendered therein by such judge *pro tempore*, shall have the same force and effect as if made or rendered by the court with the regular judge residing.

COMPARISON: With few changes this section was adopted from Section 31, Article VI of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

HAWAII: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PUERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 27. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office.

COMENT: There is no comparable section to the above section in Article VI of the 1887 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IV.

IDAHO: No comparable section in Article V.

MICHIGAN: No comparable section in Article VI.

NEW JERSEY: No comparable section in Article VI.

PuERTO RICO: No comparable section in Article V.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

SECTIONS FOUND IN THE JUDICIAL ARTICLE IN COMPARED STATE'S CONSTITUTIONS NOT FOUND IN THE MONTANA CONSTITUTION

ALASKA: Section 3. The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Section 8. The judicial council shall consist of seven members. Three attorney members shall be appointed for six year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex officio the seventh member and chairman of the judicial council. No member of the judicial council except the chief justice shall hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to the rules it adopts.

Section 9. The judicial council shall conduct studies for the improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Section 10. Whenever the judicial council certifies to the governor that a supreme court justice seems to be so incapacitated as substantially to prevent him from performing his judicial duties the governor shall appoint a board of three persons to inquire into the circumstances, and may on the board's recommendation retire the justice. Whenever a judge of another court seems to be so incapacitated as substantially to prevent him from performing his judicial duties, the judicial council shall recommend to the supreme court that the judge be placed on early retirement. After notice and hearing, the supreme court by majority vote of its members may retire the judge.

Section 11. Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.

Section 12. Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers

HAWAII: Section 3. ...They shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of

the state. They shall be subject to removal from office upon the concurrence of two-thirds of the membership of each house of the legislature, sitting in joint session, for such causes and in such manner as may be provided by law.

Section 4. Whenever a commission or agency, authorized by law for such purpose, shall certify to the governor that any justice of the supreme court or judge of a circuit court appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the governor shall appoint a board of three persons to inquire into the circumstances and on their recommendation the governor may retire the justice or judge from office.

MICHIGAN: Section 5. ...The distinctions between law and equity proceedings shall, as far as practicable, be abolished. The office of master in chancery is prohibited.

Section 25. For reasonable cause, which is not sufficient ground for impeachment, the governor shall remove any judge on the concurrent resolution of two thirds of the members elected to and serving in each house of the legislature.

Section 28. ...In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.

Section 29. Justices of the supreme court, judges of the court of appeals, circuit judges and other judges as provided by law shall be conservators of the peace within their respective jurisdictions.

NEW JERSEY: Section 3 (1). The Superior Court shall consist of such number of judges as may be authorized by law, but not less than twenty-four, each of whom shall exercise the powers of the court subject to the rules of the supreme court.

(2) The Superior Court shall have original general jurisdiction throughout the State in all cases.

(3) The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division. Each division shall have such parts, consist of such number of judges, and hear such causes, as may be provided by rules of the Supreme Court.

(4) Subject to rules of the Supreme Court, the Law Division and the Chancery Division shall each exercise the powers and functions of the other division when the ends of justice so require and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined.

Section 6 (4). The Justices of the Supreme Court and the judges of the County Courts shall be subject to impeachment; any judicial officer impeached shall not exercise his office until

acquitted. The Judges of the Superior Courts and the Judges of the County Courts shall also be subject to removal from office by the Supreme Court for such causes and in such manner as may be provided by law.

(5) Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court, Judge of the Superior Court or Judge of the County Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the Justice or Judge from office, on pension as may be provided by law.

PUERTO RICO: Section 10. The Legislature shall establish a retirement system for judges. Retirement shall be compulsory at the age of seventy years.

Section 12. No judge shall make a direct or indirect financial contribution to any political organization or party...

Section 13. In the event that a court or any of its divisions or sections are changed or abolished by law, the person holding the post of judge therein shall continue to hold it during the rest of the term for which he was appointed and shall perform the judicial functions assigned to him by the Chief Justice of the Supreme Court.

MODEL STATE CONSTITUTION: Section 6.04 (d). The judges of the supreme court, appellate court and general court shall be subject to impeachment and such judge impeached shall not exercise his office until acquitted. The supreme court may also remove judges of the appellate and general courts for such cause and in such manner as may be provided by law.

Section 6.06. The chief justice shall submit an annual consolidated budget for the entire unified judicial system and the total cost of the system shall be paid by the state. The legislature may provide by law for the reimbursement to the state of appropriate portions of such cost by political subdivisions.



A R T I C L E      IX



COMPARISON OF  
ARTICLE IX OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. All elections by the people shall be by ballot.

COMMENT: This section is identical to Section 1, Article VII of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that "all-in-all, the debates and comments on the civil rights and suffrage articles reveal clearly that the mass of the people desired nothing more than a constitution which was similar, if not identical, to the one they had ratified in 1884. Diversions from that pattern were looked upon with suspicion" (Smurr, p. 100).

ALASKA: No comparable section in Article V.

HAWAII: No comparable section in Article II.

MICHIGAN: No comparable section in Article II.

NEW JERSEY: No comparable section in Article II.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article III.

Section 2. Every person of the age of twenty-one years or over possessing the following qualifications, shall be entitled at all general elections and for all officers that now are, hereafter may be, elective by the people, and except as hereinabove provided upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States, second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, in the town, county or precinct such time as may be prescribed by law. If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualification above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question. Provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to citizenship by the governor; provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this Constitution; provided, that after the expiration of five years from the time of the adoption of this Constitution, no person except citizens of the United States shall have the right to vote.

COMMENT: With few changes in wording, Section 2 was adopted from Section 2, Article VII of the 1884 Constitution. In 1895 an amendment to alter the voting qualifications to this section was rejected.

In 1913 an amendment giving women the right to vote was passed.

This section was amended again in 1931 by adding the sentence beginning in line 11 "If the question submitted..."

As soon as Section 2 was introduced to the convention, it "was immediately smothered with amendments" (Smurr, p. 91). The main arguments over this section centered around two topics; suffrage to women and a literacy provision, but when the arguments were over both amendments were lost (Proceedings pp. 330-331).

ALASKA: Every citizen of the United States who is at least nineteen years of age, who meets registration requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election. He shall have been, immediately preceding the election, for one year a resident of Alaska and for thirty days a resident of the election district in which he seeks to vote. He shall be able to read or speak the English language as prescribed by law unless prevented by physical disability. Additional voting qualifications may be prescribed by law for bond issue electors of political subdivisions (Section 1, Article V).

HAWAII: Every citizen of the United States, who shall have attained the age of twenty years, have been a resident of this state not less than one year next preceding the election and be a voter registered in accordance with law, shall be qualified to vote in any state or local election. No person shall be qualified to vote unless he is also able, except for physical disability, to speak, read and write the English or Hawaiian language (Section 1, Article II).

MICHIGAN: Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes (Section 1, Article II).

NEW JERSEY: Every citizen of the United States, of the age of 21 years, who shall have been a resident of this state six months and of the county in which he claims his vote 40 days, next before the election, shall be entitled to vote for all officers that now or hereafter may be elective by the people, and upon all questions submitted to a vote of the people... (Part of Section 3, Article II).

PUERTO RICO: ...Every person over twenty-one years of age shall be entitled to vote if he fulfills the other conditions determined by law. No person shall be deprived of the right to vote because he does not know how to read or write or does not own property... (Part of Section 4, Article VI).

MODEL STATE CONSTITUTION: Every citizen of the age of \_\_\_\_\_ years and a resident of the state for three months shall have the right to vote in the election of all officers that may be elected by the people and upon all questions that may be submitted to the voters; but the legislature may establish: (1) Minimum periods of local residence not exceeding three months, (2) a reasonable literacy test to determine ability, except for physical cause, to read and write English, and (3) disqualifications for voting for mental incompetency or conviction of felony (Section 3.01, Article III).

Section 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state, or of the United States, nor while engaged in the navigation of the waters of the state, or of the United States, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at the public expense, nor while confined in any public pri-

COMMENT: This section is identical to Section 3, Article VII of the 1884 Constitution. This section has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article V.

HAWAII: No person shall be deemed to have gained or lost residence simply because of his presence or absence while employed in the service of the United States, or while engaged in navigation or while a student at any institution of learning (Section 3, Article II).

MICHIGAN: No comparable section in Article II.

NEW JERSEY: In time of war no elector in the military service of the State or in the armed forces of the United States shall be deprived of his vote by reason of absence from his electoral district... (Part of Section 4, Article II).

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article I

Section 4. Electors shall in all cases, except treason, felony or breach of peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom.

COMMENT: This section is identical to Section 4, Article VII of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article V.

HAWAII: No comparable section in Article II.

MICHIGAN: No comparable section in Article II.

NEW JERSEY: No comparable section in Article II.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article III.

Section 5. No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger.

COMMENT: This section is identical to Section 5, Article VI of the 1889 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article V.

HAWAII: No comparable section in Article II.

MICHIGAN: No comparable section in Article II.

NEW JERSEY: No comparable section in Article II.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article

Section 6. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same.

COMMENT: This section is identical to Section 6, Article VII of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article V.

HAWAII: No person shall be deemed to have gained or lost residence simply because of his presence or absence while employed in the service of the United States... (Part of Section 3, Article II).

MICHIGAN: No comparable section in Article II.

NEW JERSEY: No person in the military, naval or marine service of the United States shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place or station within this State (Section 5, Article II).

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article III.

Section 7. No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state at least one year next before his election or appointment.

COMMENT: This section is identical to Section 7, Article VII of the 1884 Constitution. This section has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article V.

HAWAII: No comparable section in Article II.

MICHIGAN: No comparable section in Article II.

NEW JERSEY: No comparable section in Article II.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article III.

Section 8. No idiot or insane person shall be entitled to vote at any election in this state.

COMMENT: This section is identical to Section 8, Article VII of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: ...No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed (Part of Section 2, Article V).

HAWAII: No person who is non compos mentis...shall be qualified to vote (Part of Section 2, Article II).

MICHIGAN: The legislature may by law exclude persons from voting because of mental incompetence... (Part of Section 2, Article II).

NEW JERSEY: No idiot or insane person shall enjoy the right of suffrage (Section 6, Article II).

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article III.

Section 9. The legislative assembly shall have the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise.

COMMENT: With few changes in wording, this section was adopted from Section 10, Article VII of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: ...Secrecy of voting shall be preserved... (Part of Section 3, Article V).

HAWAII: ...Secrecy of voting shall be preserved (Part of Section 4, Article II).

MICHIGAN: ...The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise... (Part of Section 4, Article II).

NEW JERSEY: No comparable section in Article II.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article I

Section 10. All persons possessing the qualifications for suffrage prescribed by section 2 of this article as amended and such other qualifications as the legislative assembly may by law prescribe, shall be eligible to hold the office of county superintendent of schools or any other school district office.

COMMENT: Section 11, Article VII of the 1884 Constitution gave the Legislative Assembly the power to pass laws allowing women the right to hold school district offices.

ALASKA: No comparable section in Article V.

HAWAII: No comparable section in Article II.

MICHIGAN: No comparable section in Article II.

NEW JERSEY: No comparable section in Article II.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article III.

Section 11. Any person qualified to vote at general elections and for state officers in this state, shall be eligible to any office therein except as otherwise provided in this constitution, and subject to such additional qualifications as may be prescribed by the legislative assembly for city offices and offices hereafter created.

COMMENT: There is no comparable section to the above section in Article VII of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article V.

HAWAII: No comparable section in Article II.

MICHIGAN: No comparable section in Article II.

NEW JERSEY: No comparable section in Article II.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article II.

Section 12. Upon all questions submitted to the vote of the taxpayers of the state, or of any political division thereof, women who are taxpayers and possessed of the qualifications for the right of suffrage required of men by this constitution, shall equally with men have the right to vote.

COMMENT: There is no comparable section to the above section in Article VII of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

No amendments giving women the right to vote had been adopted so far. Near the end of the session "former Governor Carpenter introduced a new section, number twelve... It passed 34 to 26. The women of Montana had won this victory by a bit of guile. Carpenter had cleverly withheld this section until many members had gone home to attend to the business affairs they had ignored for four weeks. Of the fifteen who were absent, at least nine would most certainly have voted against this measure" (Smurr, p. 96).

ALASKA: No comparable section in Article V.

HAWAII: No comparable section in Article II.

MICHIGAN: No comparable section in Article II.

NEW JERSEY: No comparable section in Article II.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article III.

Section 13. In all elections held by the people under this constitution, the person or persons who shall receive the highest number of legal votes shall be declared elected.

COMMENT: There is no comparable section to the above section in Article VII of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article V.

HAWAII: No comparable section in Article II.

MICHIGAN: No comparable section in Article II.

NEW JERSEY: No comparable section in Article II.

PUERTO RICO: ...Every popularly elected official shall be elected by direct vote and any candidate who receives more votes than any other candidate for the same office shall be declared elected (Part of Section 4, Article VI).

MODEL STATE CONSTITUTION: No comparable section in Article

SECTIONS FOUND IN THE SUFFRAGE AND ELECTION ARTICLE IN COMPARED  
STATE CONSTITUTIONS NOT FOUND IN THE MONTANA CONSTITUTION

ALASKA: Article II, Section 5. General elections shall be held on the second Tuesday in October of every even-numbered year, but the month and day may be changed by law.

HAWAII: Article II, Section 5. General elections shall be held on the first Tuesday after the first Monday in November in all even-numbered years. Special elections may be held in accordance with law. Contested elections shall be determined in a court of competent jurisdiction in such manner as shall be provided by law.

MICHIGAN: Article II, Section 3. For purposes of voting in the election for the president and vice-president of the United States only, the legislature may by law establish lesser residence requirements for citizens who have resided in this state for less than six months and may waive residence requirements for former citizens of this state who have removed herefrom. The legislature shall not permit voting by any person who meets the voting residence requirements of the state to which he has removed.

Section 5. Except for special elections to fill vacancies, or as otherwise provided in this constitution, all elections for national, state, county and township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year or on such other date as members of the congress of the United States are regularly elected.

Section 7. A board of state canvassers of four members shall be established by law. No candidate for the office to be canvassed nor any inspector of elections shall be eligible to serve as a member of the board of canvassers. A majority of any board of canvassers shall not be composed of members of the same political party.

Section 8. Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.

Section 9. The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact.

under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

NEW JERSEY: Article II, Section 1 (1). General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of the Legislature shall be chosen in general elections. Local elective officers shall be chosen at general elections or at such other times as shall be provided by law.

Section 1 (4). ...The Legislature shall provide for absent voting by members of the armed forces of the United States in time of peace. The Legislature may provide the manner in which and the time and place in which such absent electors may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

PUERTO RICO: Article VI, Section 4. General elections shall be held every four years on the day of November determined by the Legislative Assembly. In said elections there shall be elected a Governor, the members of the Legislative Assembly and the other officials whose election on that date is provided for by law.

MODEL STATE CONSTITUTION: Article III. None.

A R T I C L E X



COMPARISON OF  
ARTICLE X OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

State Institutions and Public Buildings

Section 1. Educational, reformatory and penal institutions, and, those for the benefit of the insane, blind, deaf and mute, soldier's home, and such other institutions as the public good may require, shall be established and supported by the state in such a manner as may be prescribed by law.

COMMENT: This section is identical to Section 1, Article VIII of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording. Smurr's comment on this is very brief, mentioning only the fact that this section existed (Smurr, p. 329).

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 2. At the general election in the year one thousand eight hundred and ninety-two, the question of permanent location of the seat of government is hereby provided to be submitted to the qualified electors of the state, and the majority of all the vote upon said question shall determine the location thereof. In case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be, and is hereby, submitted in manner to the qualified electors at the next general election thereafter; Provided, That until the seat of government shall have been permanently located the temporary seat of government shall be and remain at the city of Helena.

COMMENT: This section is identical to Section 2, Article VI of the 1884 Constitution. Section 2 has never been amended nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that this section produced heated debate. Each representative "in turn trotted out favorite sons from every village and shire in Montana... Behind this was the obvious fact that Helena had the voting strength and would retain its position." Charges and counter charges were made against some delegates who were supposed to be making deals "The Helena Journal was almost thrown out of the hall because it reprinted a story from Missoula that there had been a swap between the delegates of Missoula and Helena: the state university for the state capitol... Something may have been promised, but what was received? The state university at Missoula? Very likely, but what did Butte get? And Great Falls, Billings, and Miles City?" (Smurr, pp. 326-329)

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 3. When the seat of government shall have been located as herein provided the location thereof shall not thereafter be changed, except by a vote of two-thirds of all the qualified electors of the state voting on that question at a general election at which the question of the location of the seat of government shall have been submitted by the legislative assembly.

COMMENT: With little change this section was adopted from Section 3, Article VIII of the 1884 Constitution. Section 3 was amended in 1965 by an amendment allowing the legislature to disregard certain provisions of the Montana Constitution for the purpose of passing laws to allow the state and local governments to continue to function during an emergency caused by an enemy attack. Such laws could only be in force for the period of the emergency.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 4. The legislative assembly shall make no appropriations or expenditures for capital buildings or grounds until the seat of government shall have been permanently located, as herein provided.

COMMENT: With few changes this section was adopted from Section 4, Article VIII of the 1884 Constitution. Section 4 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

A R T I C L E      XI



COMPARISON OF  
ARTICLE XI OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.

COMMENT: This section is identical to Section 1, Article IX of the 1884 Constitution. Section 1 has never been amended, nor have any amendments been proposed to alter its 1889 wording; and was passed without comment (Proceedings, p. 520).

ALASKA: The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions... (Part of Section 1, Article VII).

HAWAII: The State shall provide for the establishment, support and control of a statewide system of public schools... (Part of Section 1, Article IX).

MICHIGAN: The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law... (Part of Section 2, Article VIII).

NEW JERSEY: The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State... (Part of Section 4(1), Article VIII).

PUERTO RICO: ...There shall be a system of free and wholly non-sectarian public education (Bill of Rights, Part of Section 5, Article II).

MODEL STATE CONSTITUTION: The legislature shall provide for the maintenance and support of a system of free public schools open to all children... (Part of Section 9.01, Article IX).

Section 2. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government, known as school lands; and those granted in lieu of such lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other, special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to the state for general educational purposes.

COMMENT: This section is identical to Section 2, Article IX of the 1884 Constitution. In 1941 an amendment that would have created a board of education, set terms of office and listed duties and requirements of the personnel, was rejected.

Members of the convention feared that the school lands had been secured by the school or they would lose them. Thus, amendments were offered to this section that would enable the school to lease out the lands or sell them. These suggestions proved impossible because the Enabling Act provided that these lands could not be leased for more than five days or sold for more than ten dollars an acre. Finally it was decided that the use of these lands would be left to the future (Smurr, pp. 282-294).

ALASKA: No comparable section in Article VII.

HAWAII: No comparable section in Article IX.

MICHIGAN: No comparable section in Article VIII.

NEW JERSEY: The fund for the support of free public schools, and all the money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provisions of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund... (Part of Section 4 (2), Article VIII).

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article I

Section 3. Such public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings, under the restrictions to be provided by law.

COMMENT: This section is identical to Section 3, Article IX of the 1884 Constitution. Section 3 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article VII.

HAWAII: No comparable section in Article IX.

MICHIGAN: No comparable section in Article VIII.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article IX.

Section 4. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, which shall have the direction, contr leasing and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law.

COMMENT: With few changes in wording this section was adopt from Section 4, Article IX of the 1884 Constitution. This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr comments that "the remaining sections of the article ten of them in all--were passed within half an hour. They h been approved before in the old constitution, and their inclusion now was considered an obligation to society. They were passed in the committee of the whole and in the convent immediately afterward, with a minimum of effort" (Smurr, p.

ALASKA: No comparable section in Article VIII.

HAWAII: No comparable section in Article IX.

MICHIGAN: No comparable section in Article VIII.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article

Section 5. Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds shall be apportioned annually to the several school districts of the state in proportion to the number of children and youths between the ages of six (6) and twenty-one (21) residing therein respectively but no district shall be entitled to such distributive share that does not maintain a public free school for at least six months during the year for which such distribution is made. The remaining five per centum (5%) of all the interest received on the school funds of the state, and the remaining five per centum (5%) of all the rents received from the leasing of school lands and all other income from the public school funds, shall annually be added to the public school funds of the state and become and forever remain an inseparable and inviolable part thereof.

COMMENT: Section 5 of the 1889 Constitution adopted from Section 5, Article IX of the 1884 Constitution with no changes.

Section 5 was amended in 1919 by enumerating the apportionment of interest on school funds and creating a permanent fund.

In 1943 another amendment seeking the apportionment of school funds was rejected.

Section 5 of the 1889 Constitution read: The interest on all invested school funds of the State, and all rents accruing from the leasing of any school lands, shall be apportioned to the several school districts of the State in proportion to the number of children and youths between the ages of six and twenty-one years, residing therein respectively, but no district shall be entitled to such distributive share that does not maintain a free public school for at least three months during the year for which distributions shall be made.

ALASKA: No comparable section in Article VII.

HAWAII: No comparable section in Article IX.

MICHIGAN: No comparable section in Article VIII.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article IX.

Section 6. It shall be the duty of the legislative assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free common school in each organized district in the state, for at least three months in each year.

COMMENT: This section is identical to Section 6, Article IX of the 1884 Constitution. Section 6 has never been amended, nor have any amendments been proposed to alter its 1889 words.

ALASKA: The legislative assembly shall by general law establish and maintain a system of public schools... (Part of Section 1, Article VII).

HAWAII: The State shall provide for the establishment, support and control of a statewide system of public schools... (Part of Section 1, Article IX).

MICHIGAN: The legislature shall maintain and support a system of free public schools... (Part of Section 2, Article VIII).

NEW JERSEY: The legislature shall provide for the maintenance and support of...free public schools... (Part of Section 4 (Article VIII)).

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: The legislature shall provide for the maintenance and support of a system of free public schools... (Part of Section 9.01, Article IX).

Section 7. The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years.

COMMENT: Except for substituting the word "six" in line three of the above section for the word "five" as it was in the 1884 version, this section was adopted from Section 7, Article IX of the 1884 Constitution.

ALASKA: ...system of public schools open to all children of the State... (Part of Section 1, Article VII).

HAWAII: No comparable section in Article IX.

MICHIGAN: No comparable section in Article VIII.

NEW JERSEY: ...free public schools for the instruction of all the children in the State between the ages of five and eighteen years (Part of Section 4 (1), Article VIII).

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article IX).

Section 8. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly, or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

COMMENT: This section is identical to Section 9, Article IX of the 1884 Constitution. Section 9 has never been amended. No amendments have been proposed to alter its 1889 wording.

ALASKA: ...No money shall be paid from public funds for the direct benefit of any religious or other private educational institution (Part of Section 1, Article VII).

HAWAII: ...nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution (Part of Section 1, Article IX).

MICHIGAN: No comparable section in Article VIII.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: ...No public property or public funds shall be used for the support of schools or educational institutions other than those of the state... (Part of Section 5, Article I).

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 9. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex.

COMMENT: This section is identical to Section 10, Article IX of the 1884 Constitution. Section 9 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article VII.

HAWAII: No comparable section in Article IX.

MICHIGAN: No comparable section in Article VIII.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article IX.

Section 10. The legislative assembly shall provide that all elected for school district officers shall be separate from those elected at which state or county officers are voted for.

COMMENT: This section is identical to Section 11, Article II of the 1884 Constitution. Section 10 has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article VII.

HAWAII: No comparable section in Article IX.

MICHIGAN: No comparable section in Article VIII.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article

Section 11. The general control and supervision of the state university and the various other state educational institutions shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eleven members, the governor, state superintendent of public instruction, and attorney general, being members ex-officio; the other eight members thereof shall be appointed by the governor; subject to the confirmation of the senate, under the regulations and restrictions to be provided by law.

COMMENT: The provisions of Section 11 were taken generally from Sections 12, 13 and 14 of the 1884 Constitution

In 1959 an amendment would have made the board of education appointive by the governor with the confirmation of the Senate and would have excluded the governor, superintendent of public instruction, and attorney general from said board, was rejected. This amendment did not appear on the ballot; it was declared unconstitutional in State ex. rel. Livingston v. Murray, decided July 21, 1960.

ALASKA: The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation of a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board (Section 3, Article VII).

HAWAII: There shall be a board of education, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor from panels submitted by local school advisory councils to be established by law... (Part of Section 2, Article IX).

MICHIGAN: The state board of education shall consist of eight members who shall be nominated by party conventions and elected at large for terms of eight years as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall be ex-officio member of the state board of education without the right to vote (Section 3, Article VIII).

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article IX.

Section 12, The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest on said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.

COMMENT: This section is taken in part from Section 14, Article IX of the 1884 Constitution. Section 12 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: The University of Alaska...shall have title to all real and personal property set aside for or conveyed to it. Its property shall be administered and disposed of according to law (Part of Section 2, Article VII).

HAWAII: No comparable section in Article IX.

MICHIGAN; No comparable section in Article VIII.

NEW JERSEY: The fund for the support of free public schools, and all money, stock and other property...shall be securely invested, and remain a perpetual fund; and the income thereon shall be annually appropriated for the support of free public schools... (Part of Section 4 (2), Article VIII).

PUERTO RICO: No comparable section in Article II.

MODEL STATE CONSTITUTION: No comparable section in Article II.

SECTIONS FOUND IN EDUCATION ARTICLE OF COMPARED STATE CONSTITUTIONS  
NOT FOUND IN THE MONTANA CONSTITUTION

ALASKA: ...Schools and institutions so established shall be free from sectarian control... (Part of Section 1, Article VII).

HAWAII: The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control... There shall be no segregation in public educational institutions because of race, religion or ancestry... (Part of Section 1, Article IX).

MICHIGAN: Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged (Section 1, Article VIII).

...Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin (Part of Section 2)

...The legislature shall provide for the establishment and financial support of public community and junior colleges which shall be supervised and controlled by locally elected boards... (Part of Section 7).

Institutions, programs and services for the care, treatment, education or rehabilitation of those inhabitants who are physically, mentally or otherwise seriously handicapped shall always be fostered and supported (Section 8).

The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof... (Part of Section 9).

NEW JERSEY: None.

PUERTO RICO: Education Article found in Bill of Rights. Every person has the right to an education which shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms... (Part of Section 5, Article II).

MODEL STATE CONSTITUTION: None.



A R T I C L E      XII



COMPARISON OF  
ARTICLE XIII OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that especially provided for in this article. The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.

COMMENT: With few changes in wording, this section was adopted after little debate from Section 1, Article XII of the 1884 Constitution (Smurr, pp. 207-208). This section has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: The legislature shall impose taxes sufficient with other resources to pay the expenses of state government (Section 1, Article IX).

NEW JERSEY: Property shall be assessed for taxation under general laws and uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein... (Part of Section 1 (1a), Article VIII).

PUERTO RICO: The power of the Commonwealth of Puerto Rico to impose and collect taxes and to authorize their imposition and collection by municipalities shall be exercised as determined by the Legislative Assembly... (Part of Section 2, Article VI).

MODEL STATE CONSTITUTION: No comparable section in Article VII.

Section 1a. The legislative assembly may levy and collect taxes upon incomes of persons, firms and corporations for the purpose of replacing property taxes. These income taxes may be graduated and progressive and shall be distributed to the public schools and to the state government.

COMMENT: This provision did not appear in the 1884 Constitution nor was it included in the initial writing of the 1889 Constitution. Since its addition to the constitution in 1913 this section has never been amended, nor have any amendments been proposed to alter its initial wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No income tax graduated as to rate or base shall be imposed by the state or any of its subdivisions (Section Article IX).

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article

Section 3. All mineral and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law; and all machinery used in mining, and all mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law.

COMMENT: There is no comparable section in Article XII of the 1884 Constitution. "This section, supported by a well organized mining interest and opposed by a bewildered and weak agrarian group, was passed after a very lengthy but one-sided debate" (Smurr, pp. 223-224). Section 3 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VII

Section 4. The legislative assembly shall not levy taxes upon the inhabitants or property in any county, city, town, or municipal corporation for county, town, or municipal purposes, but it may by law invest in the corporate authorities thereof powers to assess and collect taxes for such purposes.

COMMENT: This section was taken from Section 7, Article XII of the 1884 Constitution. Section 4 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article V

Section 5. Taxes for city, town, and school purposes may be levied on all subjects and objects of taxation, but the assessed valuation of any property shall not exceed the valuation of the same property for state and county purposes.

COMMENT: There is no comparable section in the 1884 Constitution. Section 5 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VII.

Section 6. No county, city, town, or other municipal corporation the inhabitants thereof nor the property therein, shall be released or discharged from their or its proportionate share of state taxes.

**COMMENT:** With few changes in wording, this section was adopted from Section 8, Article XII of the 1884 Constitution. Section 6 has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article .

Section 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation.

COMMENT: With few changes in wording, this section was adopted from Section 9, Article XII of the 1884 Constitution. Section 7 has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: The power of taxation shall never be surrendered... (Part of Section 1, Article IX).

HAWAII: The power of taxation shall never be surrendered, suspended or contracted away (Section I, Article VI).

MICHIGAN: The power of taxation shall never be surrendered, suspended or contracted away (Section 2, Article IX).

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VII.

Section 8. Private property shall not be taken or sold for the corporate debts of public corporations, but the legislative assembly may provide by law for the funding thereof, and shall provide by law for the payment thereof, including all funded debts and obligations by assessment and taxation of all private property not exempt from taxation within the limits of the territory over which such corporations respectively have authority.

COMMENT: With changes in wording, this section was taken from Section 14, Article XII of the 1884 Constitution. Section 8 has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article V.

*Can't sell A's house to pay for a special improvement  
district bond -*

Section 10. All taxes levied for state purposes shall be paid into the state treasury, and no money shall be redrawn from the treasury but in pursuance of specific appropriations made by law.

COMMENT: This section was taken in part from Section 8, Article XII of the 1884 Constitution. Section 10 has never been amended nor have any amendments been proposed to alter its 1889 wording. It was adopted in 1889 after little debate (Proceedings, pp. 515-516).

ALASKA: No money shall be withdrawn from the treasury except in accordance with appropriations made by law... (Part of Section 13, Article IX).

HAWAII: No money shall be withdrawn from the treasury except in accordance with appropriations made by law... (Part of Section 13, Article IX).

MICHIGAN: No money shall be paid out of the state treasury except in pursuance of appropriations made by law (Section 17, Article IX).

NEW JERSEY: No money shall be drawn from the State treasury but for appropriations made by law... (Part of Section 2 (2), Article VIII).

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No money shall be withdrawn from the treasury except in accordance with appropriations made by law... (Part of Section 7.03 (a), Article VII).

Section 11. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

COMMENT: This section was adopted in part from Section 11, Article XII of the 1884 Constitution. Section 11 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose (Section Article IX).

HAWAII: No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose...(Part Section 6, Article VI).

MICHIGAN: The legislature shall provide for the uniform general ad valorem taxation of real and personal property no exempt by law...(Part of Section 3, Article IX).

NEW JERSEY: Property shall be assessed for taxation under general laws and by uniform rules...(Part of Section 1 (1), Article VIII).

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article I

Section 12. No appropriation shall be made nor any expenditures authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislative assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rate allowed in section nine (9) of this article, to pay such appropriations or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years.

COMMENT: This section was adopted from Section 12, Article XII of the 1884 Constitution. Section 12 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: The legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for single object or work distinctly specified therein... (Part of Section 2 (3), Article VIII).

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VII.

Section 13. The state treasurer shall keep a separate account of each fund in his hands, and shall at the end of each quarter of the fiscal year report to the governor in writing, under oath, the amount of all moneys in his hands to the credit of every such fund and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The governor, or other person or persons authorized by law, shall verify said report and cause the same to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the legislative assembly may require. The legislative assembly may provide by law further regulations for the safekeeping and management of the public funds in the hands of the treasurer; but notwithstanding any such regulations, the treasurer and his sureties shall in all cases be held responsible therefor.

COMMENT: This section is identical to Section 11, Article IX, of the 1884 Constitution. Section 13 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article

Section 14. The governor, state auditor and state treasurer are hereby constituted a state depository board with full power and authority to designate depositories with which all funds in the hands of the state treasurer shall be deposited, and at such rate of interest as may be prescribed by law. When money shall have been deposited under direction of said depository board and in accordance with the law, the treasurer shall not be liable for loss on account of any such deposit occurring through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud or dishonorable conduct. The making of profit out of public moneys, or using the same for any purpose not authorized by law, by the state treasurer or by any other public officer, shall be deemed a felony, and shall be punished as provided for by law and part of such punishment shall be disqualification to hold any public office.

COMMENT: This section, except for the addition of the first sentence, was adopted from Section 12, Article XII of the 1884 Constitution. An amendment creating a state depository board in the first sentence, was adopted in 1908.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VII.

Section 15. The board of county commissioners of each county shall constitute the county board of equalization. The duties of such board shall be to adjust and equalize the valuation of taxable property within their respective counties, and all such adjustments and equalizations may be supervised, reviewed, changed, increased or decreased by the state board of equalization. The state board of equalization shall be composed of three members who shall be appointed by the governor, by and with the advice and consent of the senate. A majority of the members of the state board of equalization shall constitute a quorum. The term of office of one of the members first appointed shall end on March 1st, 1925, of another first appointed on March 1st, 1927, and of the third first appointed on March 1st, 1929. Each succeeding member shall hold his office for the term of six years, and until his successors shall have been appointed and qualified. In case of a vacancy the person appointed to fill such vacancy shall hold office for the unexpired term in which the vacancy occurs. The qualifications and salaries of the members of the state board of equalization shall be as provided by law. Provided, however, That such members shall be so selected that the board will not be composed of more than two persons who are affiliated with the same political party or organization; Provided, further, That each member shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, or engage in any occupation or business interfering or inconsistent with his duties as a member of such board, or serve on or under any committee of any political party or organization, or take part, either directly or indirectly, in any political campaign in the interest of any political party or organization or candidate for office. The state board of equalization shall adjust and equalize the valuation of taxable property among the several counties and the different classes of taxable property in any county and between the several counties and between individual taxpayers; supervise and review the acts of the county assessors and county boards of equalization; change, increase, or decrease valuations made by county assessors or equalized by county boards of equalization; exercise such authority and do all things necessary to secure a just and equitable valuation of all taxable property among counties between the different classes of property, and between individual taxpayers. Said state board of equalization shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law.

COMMENT: This section was adopted from Section 15, Article 1 of the 1884 Constitution. In 1916 this section was amended by creating county and state boards of equalization. In 1918 an amendment that would have created a state tax commission was rejected.

Another amendment to this section adopted in 1922 enumerated the rules of appointment, terms of office, vacant qualifications and duties of the county board of equalization and the state board of equalization.

Smurr notes that "the final four sections were passed with little debate, and must therefore be considered to have met the complete approval of the convention" (Smurr, p. 236).

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VII.

Section 16. All property shall be assessed in the manner prescribed by law except as is otherwise provided in this constitution. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to number of miles of railway laid in such counties, cities, towns, townships and school districts.

COMMENT: This section was adopted from Section 16, Article of the 1884 Constitution. Section 16 has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: Standards for appraisal of all property assessed by the State or its political subdivisions shall be prescribed by (Section 3, Article IX).

HAWAII: No comparable section in Article VI.

MICHIGAN: The legislature shall provide for the uniform general ad valorem taxation of all real and tangible personal property not exempt by law. The legislature shall provide the true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed which shall not exceed...50 percent; and for a system of equalization of assessments...(Part of Section 3, Article I).

NEW JERSEY: Property shall be assessed for taxation under general laws and by uniform rules...(Part of Section 1 (1), Article VIII).

PUERTO RICO: The power of the Commonwealth of Puerto Rico to impose and collect taxes and to authorize their imposition and collection by municipalities shall be exercised as determined by the Legislative Assembly...(Part of Section 2, Article VI).

MODEL STATE CONSTITUTION: No comparable section in Article

Section 17. The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

COMMENT: This section is identical to Section 17, Article XII of the 1884 Constitution. Section 17 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VII.

Section 18. The legislative assembly shall pass all laws necessary to carry out the provisions of this article.

COMMENT: This section is identical to Section 18, Article X of the 1884 Constitution. Section 18 has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article I.

In 1925 an amendment adding another section to Article XII was rejected. The amendment read:

"The providing of insurance against loss or damage to crops by hail is hereby declared to be a public purpose and the Legislative Assembly is authorized and empowered to provide for the levy and collection annually of a tax upon agriculture land for said purpose; provided, however, that no such tax shall be levied against lands in any county until a majority of the qualified electors of such county shall, at any regular election or at an election held for such purpose have voted in favor of submitting their lands and the crops growing thereon to the provisions of the State Hail Insurance Laws, or unless the owner of any tract of land in any county shall have consented in writing to the imposition of such tax. Said tax shall be levied upon such classification of said lands and with such exemptions as may be provided by law. The Legislative Assembly shall divide the state into hail insurance districts on such basis as shall seem just and necessary to secure an equitable distribution of the burden of taxation among such lands and may classify the lands within such districts and the rates of tax therein may vary in accordance with the risk incurred. The Legislative Assembly may determine the rates and may levy the tax in the different districts or may provide that such rates may be determined and such tax levied by the State Board of Equalization. The provisions of Section 9 of this Article limiting the rate of tax for such purposes, shall not apply to the tax herein provided for, but such tax shall be in addition thereto."

SECTIONS FOUND IN COMPARED STATES' CONSTITUTIONS IN ARTICLE ON  
TAXATION AND FINANCE NOT FOUND IN THE MONTANA CONSTITUTION

ALASKA: The lands and other property belonging to citizens of the United States residing without the State shall never be taxed at higher rate than the lands and the other property belonging to the residents of the State.

Private leaseholds, contracts, or interests in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable to the extent of the interests.

HAWAII: The land and other property belonging to citizens of the United States residing without the State shall never be taxed at higher rate than the lands and property belonging to the residents thereof.

No appropriation bill except bills recommended by the governor for immediate passage, or to cover the expenses of the legislature shall be passed on final reading until the bill authorizing expenditures for the ensuing fiscal period, to be known as the general appropriations bill, shall be transmitted to the governor.

MICHIGAN: The legislature shall not impose a sales tax on retail at a rate of more than four percent of their gross taxable sales tangible personal property.

No state money shall be deposited in banks other than those organized under the national or state banking laws. No state money shall be deposited in any bank in excess of 50 percent of the capital and surplus of each bank. Any bank receiving deposits of state money shall show the amount of state money so deposited as a separate item in all published statements.

All financial records, accountings, audit reports and other reports of public moneys shall be public records and open to inspection. A statement of all revenues and expenditures of all public moneys shall be published and distributed annually, as provided by law.

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

NEW JERSEY: Exemption from taxation may be granted only by general laws.

Any citizen and resident of the State now or hereafter honorably discharged or released under honorable circumstances from active service...shall be entitled, annually, to a deduction from the amount of any tax bill for taxes on real and personal property.

The Legislature may, from time to time, enact laws granting an annual deduction from the amount of any tax bill from taxes on the real property of any citizen and resident of this State of the age of 65 or more years residing in a dwelling house owned by him which is a constituent part of such real property.

PUERTO RICO: None

MODEL STATE CONSTITUTION: None



A R T I C L E      XIII



COMPARISON OF  
ARTICLE XIII OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law.

COMMENT: After changes in wording, this section was adopted from Section 1, Article XIII of the 1884 Constitution. Section 1 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution (Section 18, Article IX).

NEW JERSEY: No county, city, borough, town, township or village shall hereafter give any money or property, or loan in money or credit, to or in aid of any individual, association or corporation, or become security for, or be directly or indirectly the owner of, any stock or bonds of any association or corporation (Section 3 (2), Article VIII).

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VII.

Section 2. The legislative assembly shall not in any manner create any debt except by law which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of one hundred thousand dollars (\$100,000) except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election.

COMMENT: This section was adopted from Section 3, Article X of the 1884 Constitution. Section 2 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr comments that "section two limited the state again holding it down to a total indebtedness of \$100,000, and providing, by elaborate checks, that every part of the appropriation process would be operated "according to law." Long though it was, it was something of an improvement (in this sense alone) over its counterpart in the old constitution" (Smurr, p. 238).

ALASKA: No state debt shall be contracted unless authorized by law for capital improvements and ratified by a majority of the qualified voters of the state who vote on the question. The state may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the state in war, meeting natural disaster or redeeming indebtedness outstanding at the time this constitution becomes effective (Section 8, Article IX).

HAWAII: All bonds and other instruments of indebtedness issued by or on behalf of the State or a political subdivision thereof must be authorized by the legislature, and bonds and other instruments of indebtedness of a political subdivision must also be authorized by its governing body.

Sixty million dollars is established as the limit of the funded debt of the State at any time outstanding and unpaid. (Part of Section 3, Article VI).

MICHIGAN: No evidence of state indebtedness shall be issued except for debts authorized pursuant to this constitution (Section 12, Article IX). To meet obligations incurred pursuant to appropriations for any fiscal year, the legislature may by law authorize the state to issue its full faith and credit notes in which case it shall pledge undedicated revenue to be received within the same fiscal year for the repayment thereof. Such indebtedness in any fiscal year shall not exceed

15 percent of the undedicated revenues received by the state during the preceding fiscal year...(Part of Section 14, Article IX).

NEW JERSEY: The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by law for some single object or work distinctly specified therein... (Part of Section 2 (2), Article VIII).

PUERTO RICO: ...The power of the Commonwealth of Puerto Rico to contract and to authorize the contracting shall be exercised as determined by the Legislative Assembly...(Part of Section 2, Article VI).

MODEL STATE CONSTITUTION: No debt shall be contracted by or in behalf of this state unless such debt shall be authorized by law for projects or objects distinctly specified therein (Section 7.01, Article VII).

Section 3. All moneys borrowed by or on behalf of the state or a county, city, town, municipality or other subdivision of the state shall be used only for the purpose specified in the law authorizing the loan.

COMMENT: There is no comparable section to this section in the 1884 Constitution. Section 3 has never been amended, nor have any amendments been proposed to alter its 1889 wording. Smurr noted that Section 3 "repeated a monotonous theme--that all monies borrowed by the state would be used only for the purpose specified" (Smurr, p. 238).

ALASKA: The state and its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year... (Part Section 10, Article IX).

HAWAII: No comparable section in Article VI.

MICHIGAN: Public bodies corporate shall have power to borrow money and to issue their securities evidencing debt, subject to this constitution and law (Section 13, Article IX).

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article

Section 4. The state shall not assume the debt, or any part thereof, of any county, city, town or municipal corporation.

COMMENT: There is no comparable section in the 1884 Constitution. Section 4 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that "the wording of this section later gave the court a convenient out, when it ruled that the framers did not intend 'municipal corporations' to include counties, or they would not have used separate terms in this section. This was absolutely false. Had the learned justice taken the trouble to read the debates on taxation, he would have learned the truth" (Smurr, p. 238).

ALASKA: No comparable section in Article IX.

HAWAII: No comparable section in Article VI.

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VII.

Section 5. No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law.

COMMENT: Section 5 was adopted from Section 4, Article XII of the 1884 Constitution after few changes in wording. In an amendment that would have substituted the words "the sum by law" for the words "ten thousand dollars (\$10,000)" in the above section, was rejected.

Smurr notes that "this proviso also fell afoul of court logic-chopping. On one occasion, the legislature provided for the erection of a new high school in a county where the maximum indebtedness had already been reached. This difficulty was resolved by the enabling act, which specified that construction could not begin without the consent of the local voters. The court ruled this invalid, saying that the legislature could not authorize an expenditure in excess of the constitutional limitation. Lex majeste! The section itself provoked a running debate of some minutes just before final passage. There were a good many doubts that \$10,000 would cover all the possibilities, but an amendment to increase this to \$15,000 was defeated all the same" (Smurr, p. 239).

ALASKA: No debt shall be contracted by any political subdivision of the State, unless authorized for capitol improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question (Section 9, Article IX).

HAWAII: A sum equal to ten percent of the total of the assessed values for tax rate purposes of real property in any political subdivision, as determined by the last tax assessment rolls pursuant to law, is established as the limit of the funded debt of each political subdivision at any time outstanding and unpaid... (Part of Section 3, Article VI).

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article I.

Section 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district, or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

COMMENT: This section was taken from section 5, Article XIII of the 1884 Constitution. In 1950 this section was amended by setting the limitation of the indebtedness of a county at 5% instead of 3%. Section 6 was again amended in 1958 by adding high school districts thus increasing the debt limit.

ALASKA: No comparable section in Article IX (see above Section 5, Art. XIII).

HAWAII: No comparable section in Article VI (see above Section 5, Art. XIII).

MICHIGAN: No comparable section in Article IX.

NEW JERSEY: No comparable section in Article VIII.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VII.



A R T I C L E      XIV



COMPARISON OF  
ARTICLE XIV OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. The militia of the state of Montana shall consist of all able-bodied male citizens of the state between the ages of eighteen (18) and forty-five (45) years inclusive, except such persons as may be exempted by the laws of the state or of the United States.

COMMENT: This section is identical to Section 1, Article XI of the 1884 Constitution. Section 1 has never been amended, nor have any amendments been proposed to alter its 1889 wording. With little discussion, the five sections in Article XIV were adopted at the same time (Proceedings, p. 194).

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable article in this constitution.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 2. The legislative assembly shall provide by law for the organization, equipment, and discipline of the militia, and shall make rules and regulations for the government of the same. The organization shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

COMMENT: With few changes in wording, this section was adopted from Section 2, Article XI of the 1884 Constitution. Section 2 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable article in this constitution.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 3. The legislative assembly shall provide by law for maintaining the militia, by appropriations from the treasury of the state.

COMMENT: This section is identical to Section 3, Article XI of the 1884 Constitution. Section 3 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable article in this constitution.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 4. The legislative assembly shall provide by law for the safe keeping of the public arms, military records, relics and banners of the state.

COMMENT: This section is identical to Section 4, Article XI of the 1884 Constitution. Section 4 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable article in this constitution.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 5. When the governor shall, with the consent of the legislative assembly, be out of the state in time of war, at the head of any military force thereof, he shall continue commander-in-chief of all the military forces of the state.

COMMENT: This section is identical to Section 5, Article XI of the 1884 Constitution. Section 5 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable article in this constitution.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

MILITARY PROVISIONS IN COMPARED STATES' CONSTITUTIONS NOT  
FOUND IN THE MONTANA CONSTITUTION

ALASKA: The governor shall proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty days without the approval of a majority of the members of the legislature in joint session (Section 20, Article III).

HAWAII: None

MICHIGAN: None

NEW JERSEY: None

PUERTO RICO: None

MODEL STATE CONSTITUTION: None

A R T I C L E      XV



COMPARISON OF  
ARTICLE XV OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. All existing charters, or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the time of the adoption of this constitution, shall thereafter have no validity.

COMMENT: This section is identical to Section 1, Article XV of the 1884 Constitution. Section 1 has never been amended, nor have any amendments been proposed to alter its 1889 wording. Smurr notes that "the first section passed without comment...It was a copy from the old constitution..." (Smurr, p. 266).

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 2. No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state; but the legislative assembly shall provide by general law for the organization of corporations hereafter to be created; Provided, That any such laws shall be subject to future repeal or alteration by the legislative assembly.

COMMENT: This section is identical to Section 2, Article XV of the 1884 Constitution. Section 2 has never been amended, nor have any amendments been proposed to alter its 1889 wording. In speaking of sections 1, 2 and 3, Smurr notes that "all three were commonplace and were thought to be essential to good government" (Smurr, p. 266).

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 3. The legislative assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the state.

COMMENT: With few changes in wording this section was adopted from Section 3, Article XV of the 1884 Constitution. Section 3 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 4. The legislative assembly shall provide by law that in all elections for directors or trustees of incorporated companies every stockholder shall have the right to vote in person or by proxy the number of shares of stock owned by him for as many persons as there are directors or trustees to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit, and such directors or trustees shall not be elected in any other manner.

COMMENT: This section is identical to Section 4, Article XV of the 1884 Constitution. Section 4 has never been amended, nor have any amendments been proposed to alter its 1889 wording. Smurr notes that "the discussion on this section was somewhat different from the others, since it did not touch the fundamental dilemma of the deliberations on corporate power. All that was involved here was a selfish attempt by a convention of stockholders to secure, by constitutional right, the dominant economic situation enjoyed by them" (Smurr, p. 5).

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 5. All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers and subject to legislative control, and the legislative assembly shall have the power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the state. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state and to connect at the state line with railroads of other states and territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad.

COMMENT: This section is identical to Section 5, Article XV of the 1884 Constitution. Section 5 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that "the railroad was the villain, and no one was willing to defend it. Railroads had been sought after; they had been haggled over and solicited by a variety of means, many of them dishonest; but the honeymoon was over. Indeed, it had been over as early as 1884 in Montana" (Smurr, p. 270).

"How many of these sections were supported with sincerity? Apparently all of them, largely because railroads were generally foreign, and therefore suspect. There was also the impressive fact that other conventions had been forced to adopt similar provisions. Some members were holders of railroad stock, but they were no more timid about attacking the old system than were the other delegates. Of course they may have noticed the ominous drift of the Supreme Court toward a very negative position on the question of state controlled railroads, and possibly hoped to profit thereby. Even so, they could not have been blind to the anti-railroad legislation and agitation of the 1880's. It was clear that rugged individualism in the rail business was a thing of the past. Certainly the fact that the voters of 1884 had ratified similar provisions must have given them pause. And as for the Supreme Court, it was not to take a final stand on the issue until 1897" (Smurr, pp. 271-272).

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 6. No railroad corporation, express or other transportation company, or the lessees or managers thereof, shall consolidate its stock, property or franchises, with any other railroad corporation, express or other transportation company owning or having under its control a parallel or competing line; neither shall it in any manner unite its business or earnings with the business or earnings of any other railroad corporation; nor shall any officer of such railroad, express or other transportation company act as an officer of any other railroad, express, or other transportation company owning or having control of a parallel or competing line.

COMMENT: This section was adopted from Section 6, Article X of the 1884 Constitution. Section 6 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 7. All individuals, associations, and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this state. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad, or transportation, or express company, between persons or places within this state; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state. No railroad, express, or transportation company, nor any lessee, manager, or other employee thereof, shall give any preference to any individual, association or corporation, in furnishing cars or motive power, or for the transportation of money or other express matter.

COMMENT: This section is identical to section 7, Article XV of the 1884 Constitution. Section 7 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 8. No railroad, express, or other transportation company in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of state an acceptance of provisions of this constitution in binding form.

COMMENT: This section is identical to Section 8, Article X of the 1884 Constitution. Section 8 has never been amended, have any amendments been proposed to alter its 1889 wording

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 9. The ~~rights~~ of eminent domain shall never be abridged, nor so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the police powers of the state shall never be abridged, or so construed, as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

COMMENT: This section is identical to Section 9, Article XV of the 1884 Constitution. Section 9 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 10. No corporation shall issue stocks or bonds, except for labor done, services performed, or money and property actually received; and all fictitious increase of stock of indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty days notice given in pursuance of law.

COMMENT: This section is identical to Section 10, Article XV of the 1884 Constitution. Section 10 has never been amended, nor have any amendments been proposed to alter its 1889 wording. This section was passed after much debate about adding an amendment that would have made each individual responsible individually for the amount of stock that he owned in a corporation (Proceedings, pp. 701-702).

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 11. No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state.

COMMENT: This section was taken from Section 11, Article XV of the 1884 Constitution. Section 11 has never been amended, nor have any amendments been proposed to alter its 1889 wording. Smurr notes that "the remaining sections were accepted without much debate by the delegates. Here the suspicion of corporations in general overcame feelings of moderation, and the provisions, taken all together, form one vast catalogue of negatives" (Smurr, p. 278).

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: Corporations not organized in Puerto Rico, but doing business in Puerto Rico, shall be bound by the provisions of this section so far as they are applicable (Section 14, Article VI).

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 12. No street or other railroad shall be constructed within any city or town without the consent of the local authority having control of the street or highway proposed to be occupied by such street or other railroad.

COMMENT: This section is identical to Section 12, Article XV of the 1884 Constitution. Section 12 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 13. The legislative assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed.

COMMENT: This section is identical to Section 13, Article XV of the 1884 Constitution. Section 13 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 14. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct or maintain lines of telegraph or telephone within this state, and connect the same with other lines; and the legislative assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph or telephone company owning or having control of a competing line, or acquire by purchase or otherwise, any other competing line of telegraph or telephone.

COMMENT: This section is identical to Section 14, Article XI of the 1884 Constitution. Section 14 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 15. If any railroad, telegraph, telephone, express or other corporation or company organized under any of the laws of this state, shall consolidate, by sale or otherwise, with any railroad, telegraph, telephone, express, or other corporation, organized under any of the laws of any other state or territory of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state, in all matters that may arise as if said consolidation had not taken place.

COMMENT: This section is identical to Section 15, Article XV of the 1884 Constitution. Section 15 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 16. It shall be unlawful for any person, company or corporation to require of its servants or employees, as a condition of their employment or otherwise, any contract or agreement where such persons, company or corporation, shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company or corporation, by reason of negligence of such person, company or corporation, or the agents or employees thereof; and such contracts shall be absolutely null and void.

COMMENT: This section is identical to Section 16, Article VI of the 1884 Constitution. Section 16 has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 17. The legislative assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

COMMENT: This section is identical to Section 17, Article XV of the 1884 Constitution. Section 17 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 18. The term "corporation," as used in this article, shall be held and construed to include all associations and joint stock companies, having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

COMMENT: This section is identical to Section 18, Article VI of the 1884 Constitution. Section 18 has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 19. Dues from private corporations shall be secured by such means as may be prescribed by law.

COMMENT: This section is taken from Section 19, Article XV of the 1884 Constitution. Section 19 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

Section 20. No incorporation, stock company, person or association of persons in the state of Montana, shall directly, or indirectly combine or form what is known as a trust, or make any contract with any person, or persons, corporation, or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever, for the purpose of fixing the price, or regulating the production of any article of commerce, or of the produce of the soil, for consumption by the people. The legislature shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, or in case of foreign corporations, prohibiting them from carrying on business in the state.

COMMENT: There is no comparable section in the 1884 Constitution. Section 20 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that "if the constitution of 1884 had never been drawn up, there was good reason to believe that the Constitution of 1889 would have incorporated the same provisions against corporations. It is true that on a few occasions--notably with such matters as corporate liability and corporation affairs--some of the delegates were more concerned with their private successes. This was only to be expected. Both the haves and the have-nots were bound to clash over such issues in Montana in 1889 because two mutually hostile economic forces were at work in the territory. In Montana, the drive for corporation reform, which was fast coming to a boiling point elsewhere in 1889, ran hard against a delayed corporate growth" (Smurr, p. 281).

ALASKA: No comparable article in this constitution.

HAWAII: No comparable article in this constitution.

MICHIGAN: No comparable article in this constitution.

NEW JERSEY: No comparable article in this constitution.

PuERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable article in this constitution.

SECTIONS FOUND IN COMPARED STATES' CONSTITUTIONS NOT FOUND IN  
MONTANA CONSTITUTION

ALASKA: None

HAWAII: None

MICHIGAN: None

NEW JERSEY: None

PUERTO RICO: No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold except such as may be reasonably necessary to enable it to carry out the purposes for which it was created, and every corporation authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture.

Corporations, however, may loan funds upon real estate security, and purchase real estate necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title.

The provisions shall not prevent the ownership, possession or management of lands in excess of five hundred acres by the commonwealth, its agencies or instrumentalities. (all part of Section 14, Article VI)

MODEL STATE CONSTITUTION: None



A R T I C L E      XVI



COMPARISON OF  
ARTICLE XVI OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. The several counties of the territory of Montana, as they shall exist at the time of the admission of the state into the Union, are hereby declared to be the counties of the state until otherwise established or changed by law.

COMMENT: This section is identical to Section 1, Article XIV of the 1884 Constitution. Section 1 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that "the most interesting thing about the debate on municipal corporations is the failure of the people to sustain the policies of the founding fathers. The municipal article has been amended five times, and the net result has been to restore it somewhat to the unhappy status it enjoyed when the committee report first came in. This would certainly have annoyed many of the delegates, who decided in this particular case that the people could be trusted to do right, but perhaps the committeemen would have accepted the popular verdict with more aplomb.

The committee report was a parrotted copy of an article in the old constitution, with the usual number of 'improvements' and a strengthened clause here and there. About the only section which the delegates were in favor of retaining as submitted was the first" (Smurr, pp. 242-243).

ALASKA: A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session... (Part of Section 12, Article X).

HAWAII: No comparable section in Article VII.

MICHIGAN: No comparable section in Article VII.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: The Legislative Assembly shall have the power to create, abolish, consolidate and reorganize municipalities; to change their territorial limits; to determine their organization and functions; and to authorize them to develop programs for the general welfare and to create any agencies necessary for that purpose... (Part of Section 1, Article VI).

MODEL STATE CONSTITUTION: No comparable section in Article VIII.

Section 2. The legislative assembly shall have no power to remove the county seat of any county, but the same shall be provided for by general law; and no county seat shall be removed unless a majority of the qualified electors of the county, at a general election on a proposition to remove the county seat, shall vote therefor; but no such proposition shall be submitted oftener than once in four years.

COMMENT: With few changes in wording, this section was adopted from Section 2, Article XIV of the 1884 Constitution. Section 2 was amended in 1966 by a provision which would allow the Legislature to disregard certain provisions of the Montana Constitution for the purpose of passing laws to allow state and local governments to continue to function during an emergency caused by an enemy attack. Such laws would be in force only for the period of the emergency.

ALASKA: No comparable section in Article X.

HAWAII: No comparable section in Article VII.

MICHIGAN: A county seat once established shall not be removed until the place to which it is proposed to be moved shall be designated by two-thirds of the members of the board of supervisors and a majority of the electors voting thereon shall have approved the proposed location in the manner prescribed by law (Section 10, Article VII).

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VI.

Section 3. In all cases of the establishment of a new county it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed, less the ratable proportion of the value of the county buildings and property of the county or counties from which it is formed; Provided, That nothing in this section shall prevent the re-adjustment of county lines between existing counties.

COMMENT: With few changes in wording, this section was adopted from Section 4, Article XIV of the 1884 Constitution. Section 3 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article X.

HAWAII: No comparable section in Article VII.

MICHIGAN: No organized county shall be reduced by the organization of new counties to less than 16 townships as surveyed by the United States, unless approved by a manner prescribed by law by a majority of electors voting thereon in each county to be affected (Section 3, Article VII).

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: 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 boundaries... (Part of Section 8.01, Article VIII).

Section 4. In each county there shall be elected three County Commissioners, whose term of office shall be six years; provided that each county in the State of Montana shall be divided into three Commissioner Districts, to be designated as Commissioner District numbers one, two and three, respectively.

The Board of County Commissioners shall in every county in the state of Montana, at their regular session, on the first Monday, in May, 1929, or as soon thereafter as convenient or possible, not exceeding sixty days thereafter, meet and by and under the direction of the District Court Judge or Judges of said county, divide their respective counties into three Commissioner Districts as compact and equal in population and area as possible and number them consecutively, one, two and three, and when such division has been made, there shall be filed in the office of the County Clerk and Recorder of such county, a certificate designating the metes and bounds of the boundary lines and limits of each of said Commissioners Districts, which certificate shall be signed by said Judge or Judges; provided, also that at the first regular session of any newly organized and created county, the said Board of County Commissioners, by and under the direction of the District Court Judge or Judges of said county, shall divide such new county into Commissioner Districts as herein provided.

Upon such division, the Board of County Commissioners shall assign its members to such districts in the following manner; each member of the said Board then in service shall be assigned to the district in which he is residing or the nearest thereto; the senior member of the Board in service to be assigned to the Commissioner District No. 1, the next member in seniority to be assigned to Commissioner District No. 2, and the junior member of the Board to be assigned to Commissioner District No. 3; provided, that at the first general election of any newly created and organized county, the commissioner for District No. 1, shall be elected for two years for No. 2, for four years, and for No. 3, for six years, and biennially thereafter there shall be one Commissioner elected to the place of the retiring Commissioner, who shall hold his office for six years.

That the Board of County Commissioners by and under the direction of the District Court Judge or Judges of said County, for the purpose of equalizing in population and area such Commissioner Districts, may change the boundaries of any or all the Commissioner Districts in their respective county, by filing in the office of the County Clerk and Recorder of such county, a certificate signed by said Judge or Judges designating by metes and bounds the boundary lines of each of said Commissioner Districts as changed, and such change in any or all the districts in such county, shall become effective from and after filing of such certificate; provided, however, that the boundaries of no Commissioner District shall at any time be changed in such a manner as to affect the term of office of any County Commissioner who has been elected, and whose term of office has not expired; and provided, further, that no change in the boundaries of any Commissioner District shall be made within six months next preceding a general election.

At the general election to be held in 1930, and thereafter at

each general election, the member or members of the Board to be elected, shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the Board shall be submitted to the entire electorate of the county, provided, however, that no one shall be elected as a member of said board, who has not resided in said district for at least two years next preceding the time when he shall become a candidate for said office.

When a vacancy occurs in the Board of County Commissioners the Judge or Judges of the Judicial District in which the vacancy occurs, shall appoint someone residing in such Commissioner District where the vacancy occurs, to fill the office until the next general election when a Commissioner shall be elected to fill the unexpired term.

COMMENT: This section was taken from Section 9, Article XIV of the 1884 Constitution. Originally this section consisted of only the first paragraph. In 1902 Section 4 was amended by providing for the election and appointment of county commissioners.

Section 4 was again amended in 1927 by creating county commissioner districts.

In 1966 an amendment which allowed the Legislature to disregard certain provisions of the Montana Constitution for the purpose of passing laws to allow state and local governments to continue to function during an emergency caused by an enemy attack. Such laws would be in force only for the period of the emergency.

ALASKA: The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter... (Part of Section 4, Article X).

HAWAII: Each political subdivision shall have power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by law (Section 2, Article VII).

MICHIGAN: A board of supervisors shall be established in each organized county consisting of one member from each organized township and such representation from cities as provided by law (Section 7, Article VII).

Boards of supervisors shall have legislative, administrative and such other powers and duties as provided by law (Section 8, Article VII).

Boards of supervisors shall have exclusive power to fix the compensation of county officers not otherwise provided by law (Section 9, Article VII).

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner for their election... (Part of Section 8.04, Article VIII).

Section 5. There shall be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by Section 2 of Article IX of this constitution and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex-officio recorder; one sheriff; one treasurer, who shall be collector of the taxes, provided, that the county treasurer, shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid offices, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order.

COMMENT: This section was taken from Section 11, Article XIV of the 1884 Constitution. In 1938 this section was amended by setting the qualifications and terms of office of the county officials enumerated in this section.

ALASKA: No comparable section in Article X.

HAWAII: No comparable section in Article VII.

MICHIGAN: There shall be elected for four-year terms in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a county attorney, whose duties and powers shall be provided by law... (Part of Section 4, Article VII).

NEW JERSEY: County prosecutors shall be nominated and appointed by the Governor with the advice and consent of the Senate. Their term of office shall be five years, and they shall serve until the appointment and qualification of their

respective successors.

County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years, and of sheriffs three years. Whenever a vacancy shall occur in any such office it shall be filled in the manner to be provided by law (Section 2, Article VII).

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election... (Part of Section 8.04, Article VIII).

Section 6. The legislative assembly may provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require and their term of office shall be as prescribed by law, not in any case to exceed two years, except as in this constitution otherwise provided.

COMMENT: With few changes in wording, this section was adopted from Section 13, Article XIV of the 1884 Constitution. Two amendments to this section, one in 1951 that would have authorized the legislature to provide for the election of certain officers, and one in 1959 that would have increased the time limit of office for certain county, township, precinct and municipal officers, were rejected.

In 1966 Section 6 was amended by allowing the legislature to disregard certain provisions of the Montana Constitution for the purpose of passing laws to allow the state and local governments to continue to function during an emergency cause by enemy attack. Such laws would be in force only for the period of the emergency.

ALASKA: No comparable section in Article X.

HAWAII: No comparable section in Article VII.

MICHIGAN: No comparable section in Article VII.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article V.

Section 6. The legislative assembly may provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require and their terms of office shall be as prescribed by law, not in any case to exceed two years, except as in this constitution otherwise provided.

COMMENT: With few changes in wording, this section was adopted from Section 13, Article XIV of the 1884 Constitution. Two amendments to this section, one in 1951 that would have authorized the legislature to provide for the election of certain officers, and one in 1959 that would have increased the time limit of office for certain county, township, precinct, and municipal officers, were rejected.

In 1966 Section 6 was amended by allowing the legislature to disregard certain provisions of the Montana Constitution for the purpose of passing laws to allow the state and local governments to continue to function during an emergency caused by enemy attack. Such laws would be in force only for the period of the emergency.

ALASKA: No comparable section in Article X.

HAWAII: No comparable section in Article VII.

MICHIGAN: No comparable section in Article VII.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VIII

Section 7. The legislative assembly may, by general or special law, provide any plan, kind, manner or form of municipal government for counties, or counties and cities and towns, or cities and towns, and whenever deemed necessary or advisable, may abolish city or town government and unite, consolidate or merge cities and towns and county under one municipal government, and any limitations in this constitution notwithstanding, may designate the name, fix and prescribe the number, designation, terms, qualifications, method of appointment, election or removal of the officers thereof, define their duties and fix penalties for the violation thereof, and fix and define boundaries of the territory so governed, and may provide for the discontinuance of such form of government when deemed advisable; Provided, however, that no form of government permitted in this section shall be adopted or discontinued until after it is submitted to the qualified electors in the territory affected and by them approved.

COMMENT: There is no comparable section in Article XIV of the 1884 Constitution. Section 7 was added to this article by an amendment in 1922.

ALASKA: The governing body of the organized borough shall be the assembly and its composition shall be established by law... (Part of Section 4, Article X).

HAWAII: The legislature shall create counties, and may create other political subdivisions within the state, and provide for the government thereof. Each political subdivision shall have and exercise such powers as shall be conferred under general laws (Section 1, Article VII).

MICHIGAN: The legislature shall provide by general laws for the incorporation of cities and villages (Part of Section 21, Article VII). Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter... (Part of Section 22, Article VII).

NEW JERSEY: Upon petition by the governing body of any municipal corporation formed for local government, or of any county and by vote of two-thirds of all the members of each house, the legislature may pass private, special or local laws regulating the internal affairs of the municipality or county... (Part of Section 7 (10), Article IV).

PUERTO RICO: The Legislative Assembly shall have the power to create, abolish, consolidate and reorganize municipalities to change their territorial limits; to determine their organization and functions; and to authorize them to develop programs for the general welfare and to create any agencies necessary for that purpose... (Part of Section 1, Article VI).

MODEL STATE CONSTITUTION: The legislature shall provide by general law for the government of the counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries... (Part of Section 8.01, Article VIII).

Section 8. Any county or counties in existence on the first day of January, 1935, under the laws of the State of Montana or which may thereafter be created or established thereunder shall not be abandoned, abolished and/or consolidated either in whole or in part or at all with any other county or counties except by a majority vote of the duly qualified electors in each county proposed to be abandoned, abolished and/or consolidated with any other county or counties expressed at a general or special election held under the laws of said state.

COMMENT: There is no comparable section in Article XIV of the 1884 Constitution. Section 8 was added to this article by an amendment in 1936.

ALASKA: The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly shall exercise in an organized borough (Section 6, Article X).

HAWAII: No comparable section in Article VII.

MICHIGAN: No comparable section in Article VII.

NEW JERSEY: No comparable section in Article IV.

PUERTO RICO: No comparable section in Article VI.

MODEL STATE CONSTITUTION: No comparable section in Article VIII.

SECTIONS FOUND IN COMPARED STATE CONSTITUTIONS ARTICLE ON LOCAL GOVERNMENT NOT FOUND IN THE MONTANA CONSTITUTION

ALASKA: The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units (Section 1, Article X).

All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers to organized boroughs and cities only (Section 2, Article X).

Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law (Section 7, Article X).

The governing body of the city shall be the council (Section 8, Article X).

The legislature may extend home rule to other boroughs and cities (Section 10, Article X).

Agreements, including those for cooperative or joint administration of any function or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer (Section 13, Article X).

An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law (Section 14, Article X).

HAWAII: No law shall be passed mandating any political subdivision to pay any previous accrued claim (Section 4, Article VII).

MICHIGAN: Two or more contiguous counties may combine into a single county if approved in each affected county by a majority of the electors voting on the question (Section 13, Article VII).

The board of supervisors of each organized county may organize and consolidate townships under restriction and limitations provided by law (Section 14, Article VII).

Any county, when authorized by its board of supervisors shall have the authority to enter or intervene in any action or certificate proceeding involving the services, charges or rates of any privately owned public utility furnishing services or commodities to rate payers within the county (Section 15, Article VII).

Each organized township shall be a body corporate with powers and immunities provided by law (Section 17, Article VII).

No organized township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless the proposition shall first have been approved by a majority of the electors of such township voting thereon at a regular or special election (Section 19, Article VII).

The legislature shall provide for the dissolution of township government whenever the territory of an organized township is included within the boundaries of a village or villages notwithstanding that a village may include territory within another organized township and provide by law for the classification of such village or villages as cities (Section 20, Article VII).

Any city or village may acquire, own, establish and maintain, within or without its corporate limits, parks, boulevards, cemeteries, hospitals and all works which involve the public safety (Section 23, Article VII).

Except as otherwise provided in this constitution, no city or village shall have the power to loan its credit for any private purpose or, except as provided by law, for any public purpose (Section 26, Article VII).

No franchise or license shall be granted by any township, city or village for a period longer than thirty years (Section 30, Article VII).

The legislature shall not vacate or alter any road, street, alley or public place under the jurisdiction of any county, township, city or village (Section 31, Article VII).

Any county, township, city, village, authority or school district empowered by the legislature or by this constitution to prepare budgets of estimated expenditures and revenues shall adopt such budgets only after a public hearing in a manner prescribed by law (Section 32, Article VII).

Any elected officer of a political subdivision may be removed from office in the manner and for the causes provided by law (Section 33, Article VII).

NEW JERSEY: The Legislature shall not pass any private, special or local laws:

- (1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may be at the time under any legal disability to act for themselves.
- (2) Changing the law of descent.
- (3) Providing for change of venue in civil or criminal cases.
- (4) Selecting, drawing, summoning or empaneling grand or petit jurors.
- (5) Creating, increasing or decreasing the emoluments, terms or tenure rights of any public officers or employees.
- (6) Relating to taxation or exemption therefrom.
- (7) Providing for the management and control of free public schools.
- (8) Granting to any corporation, association or individual an exclusive privilege, immunity or franchise whatever.
- (9) Laying out, opening, altering, constructing, maintaining and repairing roads or highways.
- (10) Vacating any road, town plot, street, alley or public grounds.
- (11) Appointing local officers or commissions to regulate municipal affairs.
- (12) Regulating the internal affairs of municipalities formed for local government and counties, except as otherwise in this constitution provided (Section 7 (9), Article IV).

PUERTO RICO: None

MODEL STATE CONSTITUTION: A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties or cities of its class, and is within such limitations as the legislature may establish by general law. This grant of home rule powers shall not include the power to enact private or civil laws governing civil relationships except as incident to an exercise of independent county or city power, nor shall it include power to define and provide for the punishment of a felony (Section 8.02, Article VIII).

Except as provided in sections 8.03 and 8.04, each city is hereby granted full power and authority to pass laws and ordinances relating to its local affairs, property and government... (Part of Section 8.05, Article VIII.)

A R T I C L E XVII



COMPARISON OF  
ARTICLE XVII OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. All lands of the state that have been, or that may hereafter be granted to the state by congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the board of land commissioners, as follows: First, lands which are valuable only for grazing purposes. Second, those which are principally valuable for the timber that is on them. Third, agricultural lands. Fourth, lands within the limits of any town or city or within three miles of such limits; Provided, That any of said lands may be reclassified whenever, by reason of increased facilities for irrigation or otherwise, they shall be subject to different classification.

COMMENT: There is no comparable section in the 1884 Constitution. Section 1 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that protection of the public lands "was a difficult problem to face. Precedent could not guide the delegates, for precedent had mostly been bad. It was perhaps necessary to strike out boldly in new directions--something the members were never very happy to do. But in spite of their timidity the delegates produced two articles on the land problem which were probably as good as could be attained in that era" (Smurr, pp. 285-286). Smurr also reported that "long before the question of legislation in the constitution became important, the delegates had gazed upon the land policies of other states and had made their choice--if it took a constitution of 100,000 words to do it, the public lands of Montana would be protected at all costs" (Smurr, pp. 282-283).

ALASKA: The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people (Section 2, Article VIII). Lands and interests therein, including submerged and tidal lands, possessed or

acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the public domain (Section 6, Article VIII).

HAWAII: The legislature shall vest in one or more executive boards or commissions powers of the management of natural resources owned or controlled by the State, and such powers of disposition thereof as may be authorized by law; but land set aside for public use, other than a reserve for conservation purposes, need not be placed under the jurisdiction of such a board or commission... (Part of Section 2, Article X).

MICHIGAN: The legislature shall have general supervisory jurisdiction over all state lands useful for forest preservation, game areas and recreational purposes; shall require annual reports as to such lands from all departments having supervisory or control thereof; and shall by general law provide for the sale, lease or other disposition of such lands.

The legislature by an act adopted by two-thirds of the members elected to and serving in each house may designate a part of such lands as a state land reserve. No lands in the state land reserve may be removed from the reserve, sold, leased or otherwise disposed of except by an act of the legislature (Section 5, Article X).

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 2. The lands of the first of said classes may be sold or leased, under such rules and regulations as may be prescribed by law. The lands of the second class may be sold, or the timber thereon may be sold, under such rules and regulations as may be prescribed by law. The agricultural lands may be either sold or leased under such rules and regulations as may be prescribed by law. The lands of the fourth class shall be sold in alternate lots of not more than five acres each, and not more than one-half of any one tract of such lands shall be sold prior to the year one thousand nine hundred and ten (1910).

COMMENT: There is no comparable section in the 1884 Constitution. Section 2 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with the terms governing concurrent use, and for forfeiture in the event of breach of conditions (Section 8, Article VIII).

Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owner's use, prevent the control of trespass, or preclude compensation for damage (Section 9, Article VIII).

HAWAII: See above Section 1, Article XVII for information concerning management of natural resources.

MICHIGAN: ...No lands in the state land reserve may be removed from the reserve, sold, leased or otherwise disposed of except by an act of the legislature (Part of Section 5, Article X).

NEW JERSEY: No comparable article in this constitution.

PUERTO RICO: Public property and funds shall only be disposed of for public purposes, for the support and operation of state institutions, and pursuant to law (Section 9, Article VI).

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 3. All other public lands may be disposed of in such manner as may be provided by law.

COMMENT: There is no comparable section in the 1884 Constitution. Section 3 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in Article VIII.

HAWAII: No comparable section in Article X.

MICHIGAN: No comparable section in Article X.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

PROVISIONS FOUND IN COMPARED STATE CONSTITUTIONS NOT FOUND  
IN THE MONTANA CONSTITUTION

ALASKA: It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest (Section 1, Article VIII).

The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, and wildlife, and waters (Section 5, Article VIII).

The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them for the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people (Section 7, Article VIII).

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife (Section 10, Article VIII).

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes (Section 14, Article VIII).

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State (Section 15, Article VIII).

No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law (Section 16, Article VIII).

HAWAII: All fisheries in the sea waters of the State not included in any fish pond or artificial inclosure shall be free to the public, subject to vested rights and the right of the State to regulate the same (Section 3, Article X).

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law (Section 5, Article X).

MICHIGAN: The disabilities of coverture as to property are abolished. The real and personal estate of every woman acquired before marriage and all real and personal property to which she may afterwards become entitled shall be and remain the estate and property of such woman, and shall not be liable for the debts, obligations or engagements of her husband, and may be dealt with and disposed of by her if she were unmarried. Dower may be relinquished or conveyed as provided by law (Section 1, Article X).

A homestead in the amount of not less than \$3,500 and personal property of every resident of this state in the amount of not less than \$750, as defined by law, shall be exempt from forced sale on execution or other process of any court. Such exemptions shall not extend to any lien thereon excluded from exemption by law (Section 1, Article X).

NEW JERSEY: None

PUERTO RICO: None

MODEL STATE CONSTITUTION: None

A R T I C L E XVIII



COMPARISON OF  
ARTICLE XVIII OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. The Legislative Assembly shall provide for a department of agriculture, and a separate department of labor and industry to be located at the capitol and each of said departments shall be under the control of a separate commissioner who shall be appointed by the governor, subject to the confirmation of the senate. Each commissioner shall hold office for four (4) years and until his successor is appointed and qualified; the compensation of each commissioner shall be as provided by law. The powers and duties of each commissioner shall be prescribed by the legislature.

COMMENT: There is no comparable section in the 1884 Constitution. In 1950 this section was amended by separating the Department of Labor and Industry from the Department of Agriculture.

Smurr notes that the committee concerned with the labor article was "composed of a sprinkling of laboring and professional men, most of whom were in moderate circumstances and lacking in political experience...For a guide it had only a two-section article from the old constitution which touched upon labor only indirectly. That article had set up a bureau of industrial resources, which was to be managed by a commissioner elected for four years...Presumably what labor problems might arise in the state would be considered by his office. The present committee could copy this article if it chose, and expand it if necessary. It could also do something entirely new. It was decided to follow the second alternative..." (Smurr, pp.308-309).

The article mentioned by Smurr is Article X of the 1884 Constitution. This article is in no way similar to the 1889 article on labor.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 2. It shall be unlawful for the warden or other officer of any state penitentiary or reformatory institution in the state of Montana, or for any state officer to let by contract to any person or persons or corporation the labor of any convict confined within said institutions.

COMMENT: There is no comparable section in the 1884 Constitution. Section 2 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr noted that section 2 "provoked a long debate on convict labor... Those who supported (convict labor) argued that the system had been found vicious wherever it had been tried, and that every state had either a constitutional or statutory provision against it... Even where free men were not tainted by working side-by-side with convicts, as occurred in some states, they suffered through competition with a cheap labor market... The proponents of convict labor wished to remove from their own shoulders the financial burden of supporting state penal institutions..." (Smurr, pp. 314-315).

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 3. It shall be unlawful to employ children under the age of sixteen (16) years of age in underground mines.

COMMENT: There is no comparable section in the 1884 Constitution. Section 3 did not appear in the original 1889 Constitution, it was added to the constitution by amendment in 1904.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: The employment of children less than fourteen years of age in any occupation which is prejudicial to their health or morals or which places them in jeopardy of life or limb is prohibited... (Part of Section 15, Article II). Bill of Rights.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 4. A period of eight hours shall constitute a day's work in all industries, occupations, undertakings and employments, except farming and stock raising; provided, however, that the legislative assembly may by law reduce the number of hours constituting a day's work whenever in its opinion a reduction will better promote the general welfare, but it shall have no authority to increase the number of hours constituting a day's work beyond that herein provided.

COMMENT: There is no comparable section in the 1884 Constitution. Section 4 did not appear in the original 1889 Constitution, it was added by amendment in 1904.

In 1936 an amendment added the portion of the above section that stipulates that the legislature may by law reduce the number of hours constituting a day's work.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: The right of every employee to...an ordinary workday which shall not exceed eight hours... (Part of Section 16, Article II). Bill of Rights.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 5. The legislature by appropriate legislation shall provide for the enforcement of the provisions of this article.

COMMENT: There is no comparable section in the 1884 Constitution. Section 5 did not appear in the 1889 Constitution, it was added to the constitution by amendment in 1904.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

PROVISIONS FOUND IN COMPARED STATE CONSTITUTIONS NOT FOUND IN  
THE MONTANA CONSTITUTION

ALASKA: None

HAWAII: None

MICHIGAN: None

NEW JERSEY: None

PUERTO RICO: None

MODEL STATE CONSTITUTION: None

A R T I C L E      XIX



COMPARISON OF  
ARTICLE XIX OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly, or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law, so help me God." And no other oath, declaration or test shall be required as a qualification for any office or trust.

COMMENT: This section was adopted from Section 4, Article XVI of the 1884 Constitution. Section 1 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that "after considerable wrangling, it was decided that besides the usual words the new officer would swear that he had abided by the election laws and had not come into office as the creature of any selfish interest. There was much discussion here, but the decision to confine all pledges of faith to this particular oath, and not to require others, was not contested" (Smurr, p. 331).

ALASKA: All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the state of Alaska, and that I will faithfully discharge my duties as...to the best of my ability." The legislature may provide further oaths or affirmations (Section 5, Article XIII).

HAWAII: All public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as...to the best of my ability." The legislature may prescribe further oaths or affirmations (Section 4, Article XIV).

MICHIGAN: All officers, legislative, executive and judicial before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of...according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust (Section 1, Article XI).

NEW JERSEY: Every State officer, before entering upon the duties of his office, shall take and subscribe to an oath or affirmation to support the Constitution of this State and of the United States and to perform the duties of his office faithfully, impartially and justly to the best of his ability (Section 1 (1), Article VII).

PUERTO RICO: All public officials and employees of the Commonwealth, its agencies, instrumentalities and political subdivisions, before entering upon their respective duties, shall take an oath to support the Constitution of the United States and the Constitution and the laws of the Commonwealth of Puerto Rico (Section 16, Article VI).

MODEL STATE CONSTITUTION: No oath, declaration or political test shall be required for any public office or employment other than the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the constitution of the state of...and that I will faithfully discharge the duties of my office of...to the best of my ability (Section 1.07, Article I).

Section 2. 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.

COMMENT: This section is identical to Section 1, Article XVI of the 1884 Constitution. Section 2 has never been amended nor have any amendments been proposed to alter its 1889 wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: The legislature shall not authorize any lottery nor permit the sale of lottery tickets (Section 41, Article IV).

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 3. The legislative assembly shall enact suitable laws to prevent the destruction by fire from any cause of the grasses and forests upon lands of the state or upon lands of the public domain the control of which may be conferred by congress upon this state, and to otherwise protect the same.

COMMENT: This section was adopted from section 2, Article XVI of the 1884 Constitution. Section 3 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that the "third section--taking cognizance of the drought--authorized the legislature to pass suitable laws to prevent grass or forest fires. The anti-legislationists thought this was a pretty silly provision, but the agrarian delegates had won their way " (Smurr, p. 331).

ALASKA: The legislature shall provide for the utilization, development, and conservation of all natural resources...(Part of Section 1, Article VIII).

HAWAII: The legislature shall promote the conservation, development and utilization of agriculture resources, and fish mineral, forest, water, land, game and other natural resources (Section 1, Article IX).

MICHIGAN: The legislature shall have general supervisory jurisdiction over all state owned lands useful for forest preserves, game areas and recreational purposes...(Part of Section 5, Article X).

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 4. The legislative assembly shall enact liberal homestead and exemption laws.

COMMENT: This section is identical to Section 3, Article XVI of the 1884 Constitution. Section 4 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

ALASKA: It is the policy of the State to encourage the settlement of its land...(Part of Section 1, Article VIII).

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 5. No perpetuities shall be allowed, except for charitable purposes.

COMMENT: This section is identical to Section 6, Article XVI of the 1884 Constitution. Section 5 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that "the fifth section was intended to plug any tax holes not as yet perceived" (Smurr, p. 332).

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 6. All county officers shall keep their offices at the county seats of their respective counties.

COMMENT: This section is identical to Section 7, Article XVI of the 1884 Constitution. Section 6 was amended in 1966 by an amendment which allows the legislature to disregard certain provisions of the Montana Constitution for the purpose of passing laws to allow state and local governments to continue to function during an emergency caused by an enemy attack. Such laws would be in force only for the period of the emergency.

ALASKA: No comparable section in Article X. (Local Government)

HAWAII: No comparable section in Article VII. (Local Government)

MICHIGAN: The sheriff, county clerk, county treasurer and register of deeds shall hold their principal offices at the county seat (Section 5, Article VII). (Local Government)

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in Article VIII (Local Government).

Section 7. In the disposition of the public lands granted by the United States to this state, preference shall always be given to actual settlers thereon, and the legislative assembly shall provide by law for carrying this section into effect.

COMMENT: This section was taken from Section 9, Article XVI of the 1884 Constitution. Section 7 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Speaking of the first seven sections, Smurr notes that "there was no fundamental disagreement on any of these provisions, and if the delegates had not been so worked-up over railroad passes they could have disposed of this article in two hours. As it turned out, they struck down some provision that might have provoked even longer discussion at other times. Such, for example, was the fate of the original section two, a meaningless thing providing that undefined offices created by the constitution would be defined by the legislature. Another section stated that officers would hold their offices until their successors were elected and qualified. This was taken from the old constitution. Section twelve was the most important of those stricken out because it liberalized the community property law in favor of women" (Smurr, pp. 332-333).

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 8. The legislative assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts. The legislative assembly shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of the members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly. Said convention shall meet within three months after such election and prepare such revisions, alterations or amendments to the constitution as may be deemed necessary, which 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 or more than six 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.

COMMENT: This section was adopted from Section 12, Article XVI of the 1884 Constitution. Section 8 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that "included in the article on miscellany were two methods for amending the constitution. These were similar to sections appearing in the old constitution, but were designed to make the amending process a trifle more difficult. As it was finally worded section eight said that the legislature might, by two-thirds vote of both houses, call a constitutional convention...Sometime, between two and six months after the convention rose, the voters would be asked to ratify the new constitution. A majority vote could ratify it. In the old constitution a simple majority vote of both houses was needed to set the machine in motion" (Smurr, p. 333-334).

ALASKA: If during any ten-year period a constitutional convention has not been held, the secretary of state shall place on the ballot for the next general election the question: "Shall there be a Constitutional Convention?" If a majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten-year period. If a majority of the votes cast on the

...in the affirmative, delegates to the convention shall be chosen in the next regular statewide election, unless the legislature provides for the election of the delegates at a special election... (Part of Section 3, Article XIII).

HAWAII: The legislature may submit to the electorate at any general or special election the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" If any ten-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period (Section 2, Article XV).

MICHIGAN: At the general election to be held in the year 1970 and in each sixteenth year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors of the state. If a majority of the electors voting on the question decide in favor of a convention for such purpose, at an election to be held not later than six months after the proposal was certified as approved, the electors of each representative district as then organized shall elect one delegate and the electors of each senatorial district as then organized shall elect one delegate at a partisan election... (Part of Section 3, Article XII).

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: The Legislative Assembly, by a concurrent resolution approved by two-thirds of the total number of members of which each house is composed, may submit to the qualified electors at a referendum, held at the same time as a general election, the question of whether a constitutional convention shall be called to revise this Constitution. If a majority of the electors voting on this question vote in favor of the revision, it shall be made by a Constitutional Convention elected in the manner provided by law... (Part of Section 2, Article VII).

MODEL STATE CONSTITUTION: The legislature by an affirmative record vote of a majority of all the members, may at any time submit the question "Shall there be a convention to amend or revise the constitution?" to the qualified voters of the state. If the question of holding a convention is not otherwise submitted to the people at some time during any period of fifteen years, it shall be submitted in the general election in the fifteenth year following the last submission... (Part of Section 12.03 (a), Article XII).

Section 9. Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately; Provided, however, That not more than three amendments to this constitution shall be submitted at the same election.

COMMENT: This section was adopted from Section 13, Article XVI of the 1884 Constitution. Section 9 has never been amended, nor have any amendments been proposed to alter its 1889 wording.

Smurr notes that "section 9 prescribed that a two-thirds vote of each house would suffice to offer an amendment to the constitution to the voters... In the old constitution a simple majority vote was sufficient to put an amendment on the ballot, and any number could be submitted at that time. The delegates were inclined to think the new constitution was a distinct improvement over the former one because of these new restrictions. There were objections, of course, but when it is remembered that the only point of contention was this matter of settling on a majority or a two-thirds vote of the legislature, and that the right of the people to inaugurate an amendment or a convention was not even considered, one can see easily enough that the real dispute was in deciding whether to make the constitution difficult to amend or very difficult to amend" (Smurr, pp. 334-335).

ALASKA: Amendments to this constitution may be proposed by two-thirds vote of each house of the legislature. The secretary of state shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next statewide election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the secretary of state (Section 1, Article XIII).

HAWAII: The legislature may propose amendments to the constitution by adopting the same, in the manner required for legislation, by a two-thirds vote of each on final reading at any session... (Part of Section 3, Article XV).

MICHIGAN: Amendments to this constitution may be proposed by the senate or the house of representatives. Amendments agreed to by two-thirds of the members elected to and serving in each house, shall be submitted to the electors at the next general election...(Part of Section 1, Article XIII).

Amendments to this constitution may be proposed by petition of the registered electors of the state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected...(Part of Section 2, Article XIII).

NEW JERSEY: Any specific amendments to this Constitution may be proposed in the Senate or General Assembly. At least twenty calendar days prior to the first vote thereon in the house in which amendment or amendments are first introduced, the same shall be printed and placed on the desks of the members of each house...If the proposed amendment shall be agreed to by three-fifths of all the members of each of the respective houses, the same shall be submitted to the people...(Part of Section 1, Article IX).

PUERTO RICO: The Legislative Assembly may propose amendments to this Constitution by a concurrent resolution approved by less than two-thirds of the total number of members of which each house is composed. All proposed amendments shall be submitted to the qualified electors in a special referendum...(Part of Section 1, Article VII).

MODEL STATE CONSTITUTION: An amendment proposed by the legislature shall be agreed to by record vote of a majority of all of the members, which shall be entered on the journal (Section 12.01 (b), Article XIII).

An amendment proposed by the initiative shall be incorporated by its sponsors in an initiative petition which shall contain the full text of the amendment proposed and which shall be signed by the qualified voters equal in number to at least...per cent of the total votes cast for governor in the last preceding gubernatorial election...(Part of Section 12.01 (c), Article XIII).

SECTIONS FOUND IN COMPARED STATE CONSTITUTIONS ARTICLE ON  
MISCELLANEOUS NOT FOUND IN THE MONTANA CONSTITUTION

ALASKA: No similar article.

HAWAII: No similar article.

MICHIGAN: No similar article.

NEW JERSEY: No similar article.

PUERTO RICO: No similar article.

MODEL STATE CONSTITUTION: No similar article.



A R T I C L E      XX



A R T I C L E      XXI



COMPARISON OF  
ARTICLE XXI OF THE MONTANA CONSTITUTION  
WITH SIMILAR ARTICLE IN THE  
CONSTITUTIONS OF SELECTED OTHER STATES

Section 1. The state of Montana does hereby agree and covenant to accept from any natural person, or persons, from inside or outside the state, gifts, donations, grants and legacies in any amount or value not less than Two Hundred Fifty (\$250.00) Dollars each, for the creation of a state permanent revenue fund, for the creation of a state permanent school fund, for the creation of a permanent revenue fund for the university of Montana, and for the benefit of scientific, educational, benevolent and charitable work, subject, however, to all the provisions and limitations of this article.

COMMENT: Article XXI did not appear in the Montana Constitution until 1924 when it was added by amendment. Section 1 has never been amended, nor have any amendments been proposed to alter its initial wording. The University of Montana is now the name of the Missoula unit. The system is now named the Montana University System.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 2. The state further agrees and covenants to hold in trust all such contributions (gifts, donations, grants and legacies), to administer the same perpetually, and to apply the net earnings thereof as therein directed, subject, however, to the provisions and limitations of this act.

COMMENT: Section 2 was added by amendment in 1924. Section has never been amended, nor have any amendments been proposed to alter its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 3. The original amounts of all contributions for the state permanent revenue fund, for the state permanent school fund, and for the permanent revenue fund for the university of Montana, shall be added to such funds respectively and become inseparable and inviolable parts thereof. Contributions for other objects may contain a provision to the effect that the net earnings thereof, or part of the net earnings, shall be added to the principal for a certain length of time, or until it has reached a certain amount, or until the happening of a certain event, but such contingent event shall not be more remote than permitted by the laws effecting perpetuities; but no contribution containing such provision as to accumulation shall be accepted by the state until it has been approved by the supervisory board hereinafter constituted, which board shall have power to reject any such contribution that it may deem unwise.

COMMENT: Section 3 was added by amendment in 1924. Section 3 has never been amended, nor have any amendments been proposed to alter its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 4. The state treasurer shall keep a permanent record of such gifts, donations, grants and legacies, showing the names of givers, the purpose of the contributions, and other essential facts relating thereto. A duplicate of this record shall be kept by the secretary of state. These records shall be preserved perpetually as a lasting memorial to the givers and their interest in society. The legislative assembly shall from time to time make provisions for suitable publicity concerning these benefactors of their fellowmen.

COMMENT: Section 4 was added by amendment in 1924. Section 4 has never been amended, nor have any amendments been proposed to alter its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 5. The same state board and officers that have charge of the investment and administration of the public school fund of the state shall have charge of the investment and administration of all the funds administered under this article. All these funds shall be invested as one common fund to be known and designated as the Montana trust and legacy fund. In case any contribution is in some other form than cash, such board shall convert it into cash as soon as practicable.

COMMENT: Section 5 was added by amendment in 1924. Section 5 has never been amended, nor have any amendments been proposed to alter its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 6. The public school permanent fund, the other permanent funds originating in land grants from the United States for the support of higher institutions of learning, and for other state institutions, subject to investment, shall be invested as parts of the Montana trust and legacy fund; so also all other funds in the custody of any officer or officers of the state, subject to investment, that the legislative assembly may prescribe. The separate existence and identity of each and every fund invested and administered as a part of the Montana trust and legacy fund shall be strictly maintained.

All investments belonging to the public school permanent fund, except investments in state farm mortgage loans, and all investments belonging to the said land grant funds, shall be transferred to the Montana trust and legacy fund at the full amounts of the unpaid balances of such investments.

COMMENT: Section 6 was added by amendment in 1924. Sections 6 - 11 were amended in 1938. Section 6 was changed by stipulating how the investment and administration of the public school fund should be carried out.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 7. The state shall accept for investment and administration as parts of the Montana trust and legacy fund, sinking funds, permanent funds, cumulative funds and trust funds belonging to or in the custody of any of the political subdivisions of the state when requested to do so by the governing board of such political subdivision, subject, however, to such limitations as the legislative assembly may prescribe. The legislative assembly may provide for the investment and administration as a part of the Montana trust and legacy fund of any other fund subject to its power.

COMENT: Section 7 was added by amendment in 1924. Section 7 was amended in 1938. Section 7, prior to its amendment told precisely how the funds were to be invested, i.e. "safe loan investments drawing a fixed rate of interest and being in aid of home making, farming and educational work" (Laws 1923, p. 134).

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 8. The Montana trust and legacy fund shall be safely and conservatively invested in public securities within the state, as far as possible, including school district, county and municipal bonds and bonds of the state of Montana; but it may also be partly invested in bonds of the United States, bonds fully guaranteed by the United States as to principal and interest, and Federal Land bank bonds. All investments shall be limited to safe loan investments bearing a fixed rate of interest. In making long term investments preference shall be given to securities payable on the amortization plan or serially. The legislative assembly may provide additional regulations and limitations for all investments from the Montana trust and legacy fund.

All existing constitutional guarantees against loss or diversion applying to the public school fund, to the funds of the state university and to the funds of all other state institutions of learning, shall remain in full force and effect.

COMMENT: Section 8 was added by amendment in 1924. Prior to amendment in 1938 Section 8 read: "Whenever the security given for a loan is liable to damage or destruction by fire, the insurance company accepting the risk shall be absolutely liable to the state for the full amount of the policy, and the policy itself shall specifically recite such full liability. The state may itself provide for insurance on any property constituting security for its loans."

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 9. On the last day of March, of June, of September and of December of each year, the state treasurer shall apportion all interest collected for the Montana trust and legacy fund during the three-month period then terminating to all the separate and integral funds which constitute such fund on the day of such apportionment and which constituted parts of the fund on the first day of the three-month period then terminating. The basis of apportionment shall be the average amount of each such fund between the first day and the last day of the three-month period.

COMMENT: Section 9 was added by amendment in 1924. Prior to its amendment in 1938 Section 9 read: "The Legislative Assembly shall provide other and additional ways and means for beginning or increasing any of the funds created or authorized by this Article."

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 10. The state treasurer shall keep all deposits of money belonging to the Montana trust and legacy fund separate and distinct from other deposits of money in his keeping.

COMMENT: Section 10 was added by amendment in 1924. Section 10, prior to amendment in 1938, was almost identical to the present Section 7, Article XXI of the Montana Constitution.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 11. All money in any of the separate and integral funds constituting the Montana trust and legacy fund and the interest apportioned therefrom, shall be subject to payment to the person, institution or other entity entitled thereto, without appropriation by the legislative assembly, upon proper authorization as provided by law.

COMMENT: Section 11 was added by amendment in 1924. Section 11, prior to amendment in 1938 was almost identical to Section 9, Article XXI of the present Montana Constitution.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 12. All the net earnings accruing to the state permanent revenue fund shall annually be added thereto until it has reached the sum of One Hundred Million Dollars (\$100,000,000.00). Thereafter only one twentieth of the annual net earnings shall be added to the fund itself, and the remaining nineteen twentieths of the net earnings shall be used for the general expenses of the state.

COMMENT: Section 12 was added by amendment in 1924. This section has never been amended since its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 13. All the net earnings accruing to the state permanent school fund shall annually be added thereto until it has reached the sum of Five Hundred Million Dollars (\$500,000,000.00). Thereafter only one twentieth of the annual net earnings shall be added to the fund itself, and the remaining nineteen twentieths shall annually be apportioned to the school districts of the state on the basis of the aggregate actual school attendance in each district during the preceding attendance in each district during the preceding school or calendar year by persons between the ages of six and eighteen years and shall be used exclusively for educational purposes subject to such regulations and limitations as may be prescribed by law.

COMMENT: Section 13 was added by amendment in 1924. This section has never been amended since its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 14. All the net earnings accruing to the permanent revenue fund for the University of Montana shall annually be added thereto until it has reached the sum of One Hundred Million Dollars (\$100,000,000.00). Thereafter only one twentieth of the annual net earnings shall be added to the fund itself, and the remaining nineteen twentieths shall be apportioned to all the educational institutions then comprising the University of Montana, on the basis of the aggregate actual attendance in each institution during the preceding school or calendar year, and may be used for all purposes properly connected with the work of these institutions, subject, however, to such regulations and limitations as may be prescribed by law.

COMMENT: Section 14 was added by amendment in 1924. This section has never been amended since its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 15. Whenever the purpose for which a certain contribution was made has been accomplished, or can no longer be ascertained or followed, then the total amount of such fund shall be transferred to the state permanent school fund and become a permanent and inviolate part thereof. All contributions without a specified purpose shall be credited to the state permanent school fund.

COMMENT: Section 15 was added by amendment in 1924. This section has never been amended since its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 16. Should the time ever come when any of the three aforesaid permanent funds become so large that no further increase is necessary or desirable, then, in such case, the legislative assembly shall have power to provide for the use of all of the net income from such fund for the purpose for which it was created, or it may use the one twentieth of the annual net income which was to be added to the fund itself for the creation of other permanent revenue funds, or for any other public purpose that it may deem wise; Provided, however, That none of the foregoing provisions of this section shall apply to any of these funds until it has reached the specific amount fixed by this article.

COMMENT: Section 16 was added by amendment in 1924. This section has never been amended since its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 17. The justices of the supreme court of the state of Montana are hereby made and constituted a supervisory board over the entire administration of all the funds created or authorized by this article and the income therefrom. During January of each year, this board shall review the administration for the preceding year. It shall decide all uncertain or disputed points arising in the administration of the funds whenever requested to do so by a beneficiary, by a state official charged with some part of the administration of the fund, or any other interested party; and it may do so upon its own initiative. It shall be the duty of the supervisory board to do and perform all acts and things that it may deem necessary in order to cause the board and officers having direct charge of these funds to administer the same carefully and wisely in full compliance with the provisions of this article and such further legislation as may be enacted relating thereto. The clerk of the supreme court shall be ex-officio clerk of this supervisory board.

COMMENT: Section 17 was added by amendment in 1924. This section has never been amended since its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.

Section 18. The legislative assembly shall from time to time enact such further legislation as it may deem necessary to carry into effect the provisions of this article.

COMMENT: Section 18 was added by amendment in 1924. This section has never been amended since its initial wording.

ALASKA: No comparable section in this constitution.

HAWAII: No comparable section in this constitution.

MICHIGAN: No comparable section in this constitution.

NEW JERSEY: No comparable section in this constitution.

PUERTO RICO: No comparable section in this constitution.

MODEL STATE CONSTITUTION: No comparable section in this constitution.



*Constitutional Convention Occasional Papers*

