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Review of Local Government: Democracy Montana Style

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The 1972 Montana Constitution and the 1974 Montana Legislature have given the state's communities an opportunity unique in the history of local government in the United States. Voter review of local government is rare in itself, but the requirement that *all* municipalities and counties conduct such a review—and vote on an alternative form of government—finds no parallel in any other state constitution. Each community will have the chance either to build a local government structure of its own design or to adopt one of several optional forms made available by the legislature. Two benefits can result: citizens can adopt a form that is more responsive to the needs of the community; and Montanans can feel that, whatever the final outcome, they have had an opportunity to influence the future direction of their local government.

Montana politics has long been highlighted by individualistic sentiments. The centrality of the citizen's place in the political scheme has been argued repeatedly by farm and labor groups, rural cooperatives, and consumer organizations. Citizen review of local government, therefore, is consistent with this theme in state politics. It is especially noteworthy in this regard that the local government article in the 1972 Montana Constitution grew out of the implicit faith in citizen involvement held by delegates to the Constitutional Convention. Unlike attempts at decentralization of government and participatory democracy elsewhere in the nation, the review was not inspired by—nor will it be imposed by—agencies of the federal government. There is no threatened sanction, no promise of increased largesse, and no *quid pro quo*. The roots of the review lie deep in the state's political tradition.

The spirit of the 1972 constitution, in general, and the language embodied in Section 9, in particular, indicate that the constitutional convention delegates desired to maximize

direct citizen involvement in the review process. The final report of the Local Government Committee of the convention emphasized that "even if every county, city and town decides to retain its existing form of government following the review procedure, the committee believes the time spent in study and discussion of local government will result indirectly in more responsive and responsible local government."

The 1974 Montana Legislature incorporated this spirit in the procedures that it enacted to implement the review of local government. Citizens of Montana must now do their part to carry out the review process set in motion by the constitution and the legislature. It should be kept in mind, however, that they have yet to be called upon. Thus, the critical question is: will citizens of Montana live up to the grass roots spirit summoned forth by the review?

This report discusses the local government review legislation passed by the 1974 legislature and identifies the steps in the process that require citizen involvement.

Implementation of Local Government Review by the 1974 Montana Legislature

In the fall of 1973, a number of Montana citizens and groups initiated vigorous and probing discussions on key issues of the review process. The groups most actively involved included: the Governor's Local Government Advisory Council; various city-county Inter-local Cooperation Commissions; the University of Montana's Bureau of Government Research; Forward Great Falls; League of Women Voters; Montana League of Cities and Towns; Montana Association of Counties; and the Montana Chamber of Commerce. This widespread activity in the initial stages of local government review suggests the kind of citizen participation that will be required for the major phases of the process.

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Peter Koehn is project director of the Bureau's Montana Voter Review of Forms of Local Government Project and James Lopach is director of research. This project is partially funded by Community Service Programs, Title I of the Higher Education Act of 1965.

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House Bill 805: Local Review Commissions

This early citizen involvement preceded enactment of House Bill 805. Four of the key issues discussed concerned commission size and the procedure for selecting review commissioners; the financing of local study commissions; the conduct of a cooperative review; and the scope of the study commissions' deliberations. Each of these issues is discussed below.

Since local government study commissions have varied greatly in size throughout the United States, the legislature had to consider first how large local commissions should be and who should make this determination. House Bill 805 resolved these questions by requiring that each local government unit determine the number of members to serve on its study commission. The bill stipulated, however, that the membership of a study commission must be an odd number, not less than three.

The question of how to select the members of study commissions received thorough discussion both in committee and on the floor of the legislature. Proponents of a statewide standard for election of commissioners emphasized the citizen-oriented nature of the review as prescribed by the constitution. It was pointed out that a constitutional convention and a study commission are both charged with reviewing government structure and making recommendations for basic change. This argument—that local review commissions will function as mini constitutional conventions—was persuasive.

At the same time, advocates of elected commissioners opposed leaving the selection process to the discretion of local officials, fearing that this option would result in commissioners being appointed. Such appointments, it was argued, would exceed the responsibilities of local government officials who had been elected only to govern their cities and counties. They had not been charged in any way with the citizens' task of reviewing alternative forms of local government. The experience of the Pennsylvania local government review also was drawn upon to bolster the argument for election of commissioners.

Accordingly, House Bill 805 provides that citizens will elect all study commissioners on a nonpartisan ballot. Qualified voters of each municipality will elect members of *city* and *town* study commissions on an at-large basis. Residents of cities and incorporated towns *also* will vote for candidates for their *county* study commissions. However, legislators endeavored to insure rural representation on county study commissions. Hence, they devised a complex and somewhat confusing election system whereby candidates for the three required positions will receive designations corresponding to the three existing county commissioner districts, but they will be elected on an at-large basis. In addition, it was specified that each of these candidates must reside in the district from which he or she will run. However, if a county authorizes *more* than three study commission members, the additional positions will be called "at-large positions." Candidates for these additional positions can reside in any part of the county.

The second key issue decided by the 1974 legislature involved financing the local study commissions. On the basis of their experience with inter-local cooperation commissions, citizen groups testified that successful review

would depend on adequate funding. Discussion revolved around the source of such funding and whether or not financing should be mandatory or permissive. Financing the review out of local government funds was defended on the grounds that local control and increased local backing would thereby result. Local funding was also viewed as a logical step in the direction of self-government. On the other hand, it was argued that exclusive reliance on local funding would be unfair because local review was mandated by the state.

The legislature resolved this matter by adopting a compromise plan. Part of each commission's operating funds will come from the state's general fund, and part from local revenue or in-kind services that must total not less than the amount provided by state funds. Discretion to provide either revenue or in-kind services is left to local officials. The legislature appropriated the sum of \$229,600 to support the work of local review commissions. This will be distributed to city and county review commissions on the basis of population. Allocations will range from a maximum of \$5,000 to a minimum of \$500, in the case of counties, and \$100 in the case of small towns.

Cooperative review was the third issue on which considerable discussion focused. Article XI of the Montana constitution anticipated that two or more local government units might wish to work together to construct a consolidated form of local government. Concern for this objective was shared by many, and differing approaches were put forward to implement a joint review. The legislature decided to allow individual commissions flexibility in cooperating with other study commissions in the conduct of their work. Therefore, Section 6 of House Bill 805 simply provides that a majority vote of each study commission is required to initiate a cooperative study. Moreover, "cooperative studies do not preclude each study commission from making a separate report and recommendation."

The final issue that was considered, but not entirely resolved, by the 1974 legislature concerned the scope of the review commissions' work. The local government article of the Montana constitution had provided for two distinct but closely related local government exercises: review of local government forms and self-government charter writing. It had to be decided whether the implementation of charter writing should be delayed or whether it could be conducted simultaneously with local government review. In order to utilize fully the expertise available on local study commissions, the legislature decided to allow the commissions either to *recommend* drafting a self-government charter, to "draft a self-government charter," or to submit an "alternative form of government" to the voters. Units that draft their own charters or select self-government forms authorized by the legislature will have all powers *not denied* by the Constitution, state law or local charter. All other units of local government will have "general powers," that is, those powers *specifically granted* by the legislature. However, "general powers" is to be liberally construed.

The following important questions remain for the 1975 legislature to address: What does a self-government charter entail? Which communities can write a self-government charter? By what date must a local study commission decide to write a self-government charter? What is an alternative form of government? When is a self-government charter an alternative form of government?

House Bill 774: State Commission on Local Government

In its 1974 session, the Montana Legislature also passed House Bill 774 to establish a temporary Commission on Local Government. The act states that the state Commission shall consist of eight members and a chairperson appointed by the Governor. In March, 1974, Governor Thomas L. Judge appointed the following persons to three-year terms: State Representative Harold E. Gerke (Chairman); Bozeman City Manager Harold A. Fryslie (Vice Chairman); State Senator C. R. Thiessen; State Representative Albert E. Kosena; State Senator Glen L. Drake; University of Montana Professor of Political Science Dr. Thomas Payne; Cascade County Commissioner Edward L. Shubat; Flathead County Commissioner Melford R. Wollan; and Miles City Councilor Carroll V. South.

Establishment of the state Commission on Local Government recognizes that there should be a valid state role—but not state control—in the review process. The state Commission may offer various kinds of assistance to local study commissions so that they will not have to begin their work from scratch. For instance, the University of Montana Bureau of Government Research, working closely with the state Commission on Local Government, will publish materials on various review topics. In addition, the Commission on Local Government is required by House Bill 774 to conduct a comprehensive study of local government structures, powers, services, finances, and state-local relations. On the basis of this study, the Commission will prepare a revised code of local government. It will then present recommendations for improving local government to the governor and the legislature for enactment in 1975.

House Bill 774, therefore, is an important step in keeping the review from becoming an empty promise. The establishment of the state Commission on Local Government will facilitate informed participation in the review process. By combining citizen involvement with expert consultation and assistance, the Commission will help to insure that each citizen is knowledgeable when alternative forms are submitted for the final vote of the Montana electorate.

Steps Involved in Voter Review

On the basis of action taken by the 1974 legislature, the broad outline for the review of local government is already established. Candidates for election to city and county study commissions can conduct their campaigns before and after the filing deadline of August 1, 1974. Voters in each community will elect local government study commissioners on November 5, 1974. Each local commission will study forms of local government for at least fifteen months, concluding its work with a report and recommendation to the voters. This will be followed by a campaign for retention of the present form of government or for adoption of an alternative form. Each community will then vote on whether or not to adopt the study commission's recommendation sometime in 1976. In communities that adopt reform, voters will elect officials to the new government and a period of transition from the old to the new form of government will follow. At some point in 1977 or early 1978, the review will

have run its course. All communities will have had an intense educational experience concerning their local government, and some may be starting a new chapter in their local public life.

As conceived by the legislature, the success of the review depends upon the participation of local government officials, the candidates and commission members, and the citizens of Montana communities. Each of these groups will play a critical role in the review process.

Local Government Officials

House Bill 805 gives local government units an important role to play. Prior to April 15, 1974, each county and municipality passed a resolution authorizing the establishment of a local commission. This resolution stated how many members the community's commission will have. In case of resignations, or the election of too few commissioners, the mayor (with council approval) or the board of county commissioners will fill the vacancies. However, no elected official of the local government unit may be appointed.

In addition to approving the budget of the study commission each year, local officials also may be asked to share with the commission the valuable knowledge, insight and experience they possess as members of existing local government bodies.

Local Study Commission Candidates

Citizens who wish to run as candidates for the 182 separate commissions must come forward during the summer of 1974. Any qualified voter may seek nomination but no person may serve on more than one local study commission. Thus, a candidate living in the city may run for either the city or county study commission, but not both.

To appear on the ballot, a candidate will have to execute a "certificate of nomination." This document must include the signatures of 100 qualified voters, or one percent of the qualified electorate of the governmental jurisdiction, whichever is less. Each candidate must file a completed certificate of nomination with the clerk of the appropriate government unit on or before August 1, 1974.

Certified candidates for local commissions will appear on the general election ballot, November 5, 1974. During the campaign period, candidates can do much to raise levels of awareness and promote discussion of local government review in Montana communities.

Citizens and Local Study Commissioners

Citizen interest and involvement are central to the review. Commission procedures anticipate community participation, and the importance of the issues being discussed should insure it. Officially, commissions will be in existence from their first meeting—which must be held no later than November 26, 1974—until their statutory termination date of June 30, 1977. All commission meetings will be open to the public. Public hearings and community forums will involve citizens directly in commission work and will offer citizens their best opportunity to voice opinions on local government. Finally, the decision to retain a present form of local government or adopt a new form rests with the voters.

Review of Local Government: Wisdom or Folly?

During their 1974 session, Montana legislators got the review of local government off to a promising start. Their actions kept alive the spirit generated by delegates to the constitutional convention. From that time until the present, proponents of local government review have continued to share the belief that the process offers an opportunity to bring fundamental government decisions closer to Montana citizens. House Bills 805 and 774 have given this intent concrete expression. Not only will citizens have complete control over the review process, they will be provided with state and local resources to assist in this important task. All aspects of local government—its structure, powers and activities—will be subject to citizen review.

Attention now shifts to the local level where study commissions will be formed and commence their work. For local communities, it will be a period of unprecedented challenge and opportunity—but an opportunity that could be lost if involvement is half-hearted and interest not sustained. Therefore, in the coming months there will be a critical need for public information concerning the review. It is likely that a close correlation will be found between the adequacy of media coverage and educational programs, and the awareness, interest and involvement of state citizens.

For several years, serious students of American public affairs have urged that government decision-making be decentralized—turned back to local citizens and groups. Many of these observers have predicted that such a step would result in more responsive government, heightened political involvement and feelings of efficacy for the citizen, and achievement of a sense of “community.”

Local government review presents Montana with a singular opportunity to test the accuracy of these predictions. In short, we face a challenge set down *for* Montanans *by* Montanans. The way in which citizens respond to this challenge will determine whether or not the legislators and the delegates to the constitutional convention were justified in placing their confidence in revitalized citizen interest in the affairs of local government.

Review Highlights

Review will be first and foremost a citizen function. One hundred and eighty-two commissions will study local government forms.

Citizens will be elected to commissions on November 5, 1974.

Optional forms will be made available by the state legislature.

State Commission on Local Government and other groups will assist local commissions in their work.

Commissions will study forms and recommend one alternative.

Communities may design their own self-government charters.

Communities may assume new local government powers. Commission meetings will be open and public hearings will be held.

Voters will decide whether or not to adopt an alternative form in 1976.

MONTANA PUBLIC AFFAIRS REPORT

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