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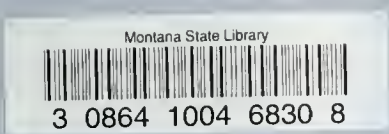
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STATE DOCUMENTS

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MONTANA CONSTITUTIONAL CONVENTION
1971-1972

LOCAL GOVERNMENT COMMITTEE PROPOSAL

No. XI

Date Introduced: February 19, 1972

Ascar S. Peterson Chairman
Virginia H. Blum, Vice Chairman

MONTANA STATE LIBRARY
930 East Lyndale Avenue
Helena, Montana 59601

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Date: February 19, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Local Government Committee

Ladies and Gentlemen:

The Local Government Committee submits herewith its unanimous proposal for a new Local Government Article. The proposal is intended to replace in their entirety the present Article XVI ("Counties--Municipal Corporations and Offices") and Article XIX, Section 6 (dealing with county offices).


The committee was in general agreement that a new local government article should provide flexibility, but was divided on how best to attain this goal. This proposal tends to work with the existing local government structure of cities, towns and counties and seeks to achieve improvement by encouraging experimentation in local government powers and form. Strong minority support originally was voiced in the committee for a proposal by Delegate Franklin Arness to replace the existing city, town, county and school district structure with a new one-level district structure.


Eventually, each of the eleven committee members voted for the adoption of this proposal. In signing this report, however, a committee member does not necessarily endorse each and every statement in it.

This proposal was adopted after consideration was given to nearly 3,000 citizen suggestions and 19 delegate proposals. The committee expresses its thanks to the citizens for their interest and to the delegates who submitted proposals, the intent of which influenced the final proposal to a great degree.

The committee utilized the services of the following people in addition to its members: Mrs. William L. Romine, committee secretary; Miss Pat Chvatal, a Carroll College senior, intern, and Jerry Holloron, committee research analyst.

The committee believes this proposal provides a much-improved constitutional framework for local government in Montana and urges its adoption by the Constitutional Convention.


Oscar L. Anderson, Chairman


Virginia H. Blend, Vice Chairman

MAJORITY PROPOSAL

1 BE IT PROPOSED BY THE LOCAL GOVERNMENT COMMITTEE:

2 That there be a new Article on Local Government to read
3 as follows:

4
5 ARTICLE _____

6 LOCAL GOVERNMENT

7 Section 1. DEFINITION. The term "local government
8 units" includes, but is not limited to, counties and incor-
9 porated cities and towns. Other local government units may
10 be established by law.

11 Section 2. COUNTIES. The counties of the state of
12 Montana as they exist at the adoption of this constitution
13 are the counties of the state. County boundaries shall not
14 be changed or county seats transferred until approved by a
15 majority of those voting on the question in each county
16 affected.

17 Section 3. FORMS OF GOVERNMENT. The legislature shall
18 provide by law for the government of local government units
19 and for procedures of incorporating, classifying, merging,
20 consolidating, and dissolving such units and of altering
21 their boundaries. The legislature shall provide by law for
22 optional or alternative forms of government for each unit or
23 combination of units to enable a unit or combination of
24 units to adopt, amend or abandon an optional or alternative
25 form by a majority of those voting on the question.

26 One optional form of county government includes, but is
27 not limited to, the election of three county commissioners,
28 a clerk and recorder, a clerk of district court, a county
29 attorney, a sheriff, a treasurer, a surveyor, a county
30 superintendent of schools, an assessor, a coroner, and a

1 public administrator whose terms, qualifications, duties and
2 compensation shall be prescribed by law. The Board of
3 County Commissioners may consolidate two or more offices.
4 The Boards of Commissioners of two or more counties may pro-
5 vide for a joint office and for the election of one official
6 to perform the duties of that office in the respective
7 counties.

8 Section 4. GENERAL POWERS. Local government units not
9 exercising self government powers under Sections 5 and 6
10 shall have the following general powers:

11 (1) Incorporated cities and towns shall have the powers
12 of a municipal corporation and such legislative, administra-
13 tive, and other powers as provided or implied by law.

14 (2) Counties shall have such legislative, administra-
15 tive and other powers as provided or implied by law.

16 (3) The powers of incorporated cities and towns and
17 counties shall be liberally construed.

18 (4) Other local government units shall have such powers
19 as provided by law.

20 Section 5. SELF GOVERNMENT CHARTERS. The legislature
21 shall prescribe procedures and may set limits under which a
22 local government unit or combination of units may frame,
23 adopt, amend, revise or abandon a self government charter
24 with the approval of a majority of those voting on the
25 question. The prescribed procedures, however, shall not
26 require approval of a charter by a legislative body.

27 Charter provisions with respect to a local government
28 unit's executive, legislative and administrative structure
29 and organization shall be superior to statutory provisions.

30 Section 6. SELF GOVERNMENT POWERS. Local government

1 units adopting self government charters may exercise all
2 powers not prohibited by this constitution, by law or by
3 charter.

4 This grant of self government powers may be extended to
5 other local government units through optional forms of
6 government provided for in Section 3.

7 Section 7. INTERGOVERNMENTAL COOPERATION. A local gov-
8 ernment unit by act of its governing body may, or, upon
9 being required by initiative or referendum, shall cooperate,
10 consolidate or agree in the exercise of any function, power
11 or responsibility with, or share the service of an officer,
12 or transfer or delegate any function, power or responsibil-
13 ity or duties of an officer to one or more other local
14 government units, school districts, the state or the United
15 States, unless prohibited by law or charter.

16 Section 8. REVENUE SHARING. Nothing in this constitu-
17 tion shall prohibit the state from sharing revenue with
18 local government units or the units from participating in
19 revenue sharing with the state or the United States.

20 Section 9. INITIATIVE AND REFERENDUM. The initiative
21 and referendum powers reserved to the people by the consti-
22 tution shall be extended by law to the qualified voters of
23 each local government unit.

24 Section 10. RECALL. All elected public officials of
25 local government units are subject to recall by the voters
26 of the unit from which elected. Procedures for recall
27 shall be prescribed by law.

28 Section 11. VOTER REVIEW OF LOCAL GOVERNMENT. The
29 legislature shall within four years of the adoption of this
30 constitution provide for procedures by which each local

1 government unit either separately or jointly shall review
2 the government structure of the local unit or joint unit
3 and shall submit one alternative form of government to
4 the voters at the next general or special election. The
5 legislature shall provide for a review procedure each ten
6 years after the first election.

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Oscar L. Anderson
Oscar L. Anderson, Chairman

Virginia H. Blend
Virginia H. Blend, Vice Chairman

<u>Franklin Arness</u>	<u>Thomas M. Ask</u>	<u>Marian S. Erdmann</u>
<u>Arnold W. Jacobsen</u>	<u>Mrs. Thomas "Katie" Payne</u>	<u>George W. Rollins</u>
<u>Clark E. Simon</u>	<u>M. Lynn Sparks</u>	<u>Lucile Speer</u>

1 COMMENTS ON COMMITTEE PROPOSAL

2 "Flexibility" and "accountability" best describe the
3 goals embodied in the proposal of the Local Government
4 Committee.

5 The proposal aims at creating the widest possible array
6 of local government forms so that local structure may be
7 tailored to local needs. It provides for new self-government
8 powers that may be exercised on the local level and gives a
9 constitutional boost to local efforts to eliminate costly and
10 inefficient duplication of services and functions.

11 At the same time, the proposal requires accountability
12 from local government units. Each new form of government
13 authorized under the proposal would require the approval of
14 local voters before it could be implemented. Local govern-
15 ments could exercise self-government powers only with the
16 approval of local residents. County boundaries could be
17 changed only if a majority of the affected residents agree.
18 The people would be guaranteed the powers of initiative,
19 referendum and recall on the local level.

20 Although the proposal would not force Montanans to change
21 their local governments, it would force them to closely
22 examine the local units with an eye toward improving them.
23 This examination is provided for in a unique "voter review of
24 local government" feature which--at the least--should pay
25 huge dividends in terms of increased voter awareness in and
26 concern for local government.

27 The length of the present local government provisions is
28 more than cut in half by this proposal. Statutory material
29 concerning indebtedness of new counties, county commissioner
30 districts and county office location is deleted. The form of

1 county government now in effect in 55 counties is mentioned--
2 but only as one of what hopefully will be several optional
3 forms of county government.

4 But the real "news" in the proposal is its incorporation
5 of new devices to make local governments more responsive and
6 responsible. Totally new provisions are added allowing
7 local citizens to design their own form of local government,
8 to increase local authority and responsibility and to end
9 needless duplication of local services.

10 The Local Government Committee did not set out to replace
11 the thinking of 1889 with that of 1972. Rather, it attempted
12 to replace the thinking of 1889 with a broad framework that
13 would allow implementation of the thinking of 1990, 2010, and
14 2072, as well as that of 1972. The committee believes this
15 proposal creates that framework.

16 *Section 1. DEFINITION. The term "local government*
17 *units" includes, but is not limited to, counties and incor-*
18 *porated cities and towns. Other local government units may*
19 *be established by law.*

20 COMMENTS

21 The present Montana Constitution creates considerable
22 confusion in its scattergun use of terminology concerning
23 local government. Such imprecise constitutional terminology
24 has resulted in confusion and court litigation. In an
25 attempt to avoid this problem, Section 1 adopts "local govern-
26 ment units" as a generic term and specifies that counties and
27 incorporated cities and towns fall within its meaning. How-
28 ever, the section specifically authorizes the legislature to
29 create other local government units, thus providing freedom
30 for the legislature to meet future needs that cannot be met

1 by the traditional city or county structures. Certain spe-
2 cial districts, for example, might be appropriately desig-
3 nated as "local government units" by the legislature.

4 The committee believes that Section 1 will discourage
5 litigation and avoid confusion concerning the rest of the
6 Local Government Article; it also recommends that terminology
7 corresponding to that used in this section be incorporated in
8 other articles of the new constitution when local government
9 units are discussed.

10 *Section 2. COUNTIES. The counties of the state of*
11 *Montana as they exist at the adoption of this constitution*
12 *are the counties of the state. County boundaries shall not*
13 *be changed or county seats transferred until approved by a*
14 *majority of those voting on the question in each county*
15 *affected.*

16 COMMENTS

17 Section 2, admittedly controversial, provides that the
18 present county boundaries and county seats will be retained
19 unless changed by a majority of those voting on the question
20 in each county affected. County "A" could be consolidated
21 with county "B" only if a majority of those voting on the
22 question in each county approves. Thus, a large county could
23 not "swallow" a small county without the latter's permission.

24 The proposed section combines sections 1, 2 and 8 of
25 Article XVI of the present Constitution. Other than deletion
26 of statutory material, the basic intent of those sections is
27 retained--with one exception. The present language (sections
28 2 and 8) requires approval of a majority of the qualified
29 electors of the county affected before a county boundary can
30 be changed or a county seat transferred; the proposed Section

1 2 would require approval of a majority of those voting on the
2 question.

3 The difference can be quickly seen. Under the present
4 provision, for example, if a county to be consolidated had
5 5,000 "qualified electors" but only 3,000 of them vote on the
6 consolidation question, a majority of the 5,000 (or 2,501),
7 rather than a majority of the 3,000 (or 1,501), apparently
8 would have to favor consolidation to meet the constitutional
9 restriction. Under the proposed language, on the other hand,
10 a majority of those voting--or 1,501--would be required.

11 In substituting the less stringent--but more common--
12 majority requirement, the committee endorses the reasoning
13 that persons who do not vote on an issue should not be able
14 to thwart the will of those who do. Let the proponents and
15 opponents of county consolidation or county seat transfer go
16 to the polls and let the majority rule.

17 County Boundaries

18 Calls for county consolidation--both nationwide and state-
19 wide--have gone unanswered, despite their frequency during
20 the Twentieth Century. Indeed, the number of counties nation-
21 wide has remained almost constant in the last 40 years, de-
22 spite frequent complaints that many counties lack the popula-
23 tion and economic base to be viable units of local government.

24 If judged by national standards, certainly many of
25 Montana's 56 counties are too sparsely populated to meet the
26 tests of viability. But who should be the final judge of
27 whether a county is too large or too small and of whether it
28 should be consolidated with another? The Local Government
29 Committee believes this choice must be left to the voters
30 of the counties affected.

1 Therefore, Section 2 allows changes in county boundaries
2 only if approved by a majority of those voting on the ques-
3 tion in each county affected. The committee considered
4 leaving the matter of county boundaries entirely to the
5 legislature, but decided that the authority would be more
6 appropriately lodged in the people of the affected counties.
7 After all, if sparsely populated counties are as inefficient
8 and uneconomical as their critics claim, certainly the resi-
9 dents of those counties soon will be clamoring for county
10 consolidation because of high tax bills and insufficient
11 local government services.

12 It should be stressed that the proposed Section 2 does
13 not prevent county consolidation. It simply requires that
14 any such boundary change must be approved by the persons most
15 directly affected--the residents of the counties concerned.
16 It also should be noted that the proposed Local Government
17 Article allows ways short of total consolidation in which
18 counties with dwindling population and tax base can be aided.
19 Under Sections 3 and 5, a wide range of structural options
20 can be provided, including one or more directed toward those
21 counties that do not need the full range of county offices
22 and services. Indeed, Petroleum County--the county with the
23 smallest population in the state--already makes successful
24 use of a county manager form of government. In addition, the
25 broad language of Section 7 should encourage counties to band
26 together--and to join with cities and towns within their
27 boundaries--to provide more efficient, economical government
28 services.

29 Provisions in the present Constitution (Article XVI,
30 Section 3) concerning the division of debt when new counties

1 are formed were deleted from this proposal on the basis that
2 they can be provided by legislation--if they ever are needed.

3 County Seats

4 Constitutional provisions protecting county seats from
5 being changed by legislative action are common among the 50
6 states. Section 2 simply substitutes a concise statement of
7 the protection now found in Article XVI, Section 2 and
8 Article V, Section 26. The present Constitution's require-
9 ment that county offices must be kept at the county seat
10 (Article XIX, Section 6) was deleted from the proposal. Such
11 a requirement might prevent counties from sharing officers
12 and setting up branch county offices. To the extent that
13 such a requirement is needed, it can be provided for by
14 legislation.

15 *Section 3. FORMS OF GOVERNMENT. The legislature shall*
16 *provide by law for the government of local government units*
17 *and for procedures of incorporating, classifying, merging,*
18 *consolidating, and dissolving such units and of altering*
19 *their boundaries. The legislature shall provide by law for*
20 *optional or alternative forms of government for each unit or*
21 *combination of units to enable a unit or a combination of*
22 *units to adopt, amend or abandon an optional or alternative*
23 *form by a majority of those voting on the question.*

24 *One optional form of county government includes, but is*
25 *not limited to, the election of three county commissioners,*
26 *a clerk and recorder, a clerk of district court, a county*
27 *attorney, a sheriff, a treasurer, a surveyor, a county super-*
28 *intendent of schools, an assessor, a coroner, and a public*
29 *administrator whose terms, qualifications, duties, and compen-*
30 *sation shall be prescribed by law. The Board of County*

1 *Commissioners may consolidate two or more offices. The*
2 *Boards of Commissioners of two or more counties may provide*
3 *for a joint office and for the election of one official to*
4 *perform the duties of that office in the respective counties.*

5 COMMENTS

6 Section 3 aims at allowing the legislature to provide the
7 broadest possible range of forms of local government for
8 counties, cities, towns and other local government units,
9 including consolidated forms. Virtually every national and
10 state authority on local government urges such flexibility;
11 indeed, the Montana Constitution (Article XVI, Section 7)
12 already gives the legislature broad powers to provide "any
13 plan, kind, manner or form" of local government.

14 The intent of Section 3 is to offer just as broad freedom
15 to the legislature to provide various forms of local govern-
16 ment as is allowed under the present Section 7. Because of
17 that intent, the committee considered retaining the present
18 language of Section 7; this idea eventually was rejected
19 because the present wording is unclear and confusing. It is
20 hoped that Section 3's straightforward direction to the
21 legislature to provide optional and alternative forms of
22 government will result in a greatly expanded offering to the
23 local government units in Montana.

24 The possibilities that could be provided under Section 3
25 are great. At present, only three forms of city government
26 (mayor-council, commission, and commission-manager); two
27 forms of county government (the traditional form and county
28 manager), and one general form of city-county consolidation
29 are authorized by statute in Montana. Other states offer
30 considerably more alternatives. New Jersey, for example,

1 employs what has been called the "cafeteria-style" form of
2 local government options, under which a local unit may choose
3 different alternatives within a form of government offered
4 by the legislature. Section 3 was drafted to allow such a
5 flexible "cafeteria" in Montana, too. Thus, the legislature
6 could offer the mayor-council form of government but leave
7 to the locality the question of whether to elect or appoint
8 a city treasurer, police judge and other city officers. In
9 this regard, it should be noted that Section 3 specifically
10 directs the legislature to provide forms of government which
11 can be amended, as well as adopted and abandoned, by a vote
12 of the local residents.

13 Section 3 provides the legislature with authority to meet
14 the rapidly shifting governmental needs of vastly different
15 units of local government. For example, the legislature
16 under Section 3 could provide streamlined forms of county
17 government specially suited for areas in which population is
18 dwindling and a variety of forms of consolidated government
19 for areas where virtually all of a county's population is
20 urban.

21 Section 3 clearly states that any optional or alternative
22 plan will go into effect on a local level only after it has
23 been approved by the voters. The legislature is directed to
24 offer choices of government structure for local government
25 units; the voters of those units have the final control over
26 what type of structure they select.

27 Present County Government Form

28 Section 3 provides that one form of optional government
29 available to counties shall be what might be called the
30 "traditional form"--that structure now used in 55 of the

1 state's 56 counties. This form of government--including 13
2 elected officials--has been spelled out in Montana's Constitu-
3 tion since 1889. Similar forms receive constitutional
4 recognition in most other states.

5 The question facing the Local Government Committee was
6 whether to continue the present constitutional emphasis on
7 the "traditional" form of county government or to eliminate
8 any constitutional mention of the "traditional" form. The
9 committee believes its solution to the problem is both wise
10 and workable.

11 Section 3 emphasizes the legislature's broad power to
12 offer optional and alternative forms of government, subject
13 to local voter approval. But it provides that one of those
14 optional forms must be the "traditional" form of county
15 government. In other words, Section 3 assures the people
16 that they may, if they wish, continue to operate under their
17 present county government structure, while at the same time
18 encouraging counties to adapt their government structure to
19 local needs. Under Section 3, the "traditional" structure
20 of county government might best be described as an "assured
21 option."

22 And Section 3 builds flexibility even within the "tradi-
23 tional" option. That is accomplished in two ways:

24 --The Board of County Commissioners is empowered to con-
25 solidate offices within a county. This power already is
26 contained in the present Constitution (Article XVI, Section 5)
27 and has received limited application, most notably in the
28 frequent combination of the offices of sheriff and coroner.

29 --The Boards of County Commissioners of two or more
30 counties are authorized to provide for a multicounty office.

1 For example, the commissioners of three sparsely populated
2 counties might agree to elect one coroner to serve all three
3 counties.

4 The offices of county attorney and clerk of district
5 court, also mentioned in the proposed judicial article, are
6 enumerated in Section 3 for the express purpose of making
7 the offices eligible for inter-county and multicounty con-
8 solidation. The Local Government Committee strongly recom-
9 mends that the judicial article be worded so as not to
10 foreclose the possible consolidation of these two offices
11 with others as provided under Section 3.

12 Eliminated from the provision for the "traditional" plan
13 are the present complicated provisions for overlapping terms,
14 procedures by which county offices may be consolidated and
15 the method of filling vacancies in county offices. If needed,
16 these procedures may be outlined by law. More specifically,
17 it is the intent of the committee that the language allowing
18 the legislature to set qualifications for the county commis-
19 sioners should allow the election of commissioners from dis-
20 tricts, as is now the case.

21 Section 3 omits the present prohibition against county
22 treasurers succeeding themselves in office.

23 The committee believes it is clear that the provisions
24 of Section 3 concerning a majority vote on a new form of
25 government in no way will weaken Section 2, which requires a
26 majority vote in each county affected when county boundaries
27 or county seats are changed. If a new plan of government
28 involves two or more counties to the extent that they would
29 be consolidated, it is the intent of the Local Government
30 Committee that Section 2 would control, and a majority vote

1 in each county would be required. It should be noted that
2 the present Constitution (Article XVI, Sections 7 and 8)
3 also contains different majority requirements for form of
4 government (Section 7) and boundary changes (Section 8).

5 "Incorporating...Dissolving"

6 Section 3 directs the legislature to provide procedures
7 for "incorporating, classifying, merging, consolidating and
8 dissolving" units of local government and of altering their
9 boundaries. The importance of these factors dictates their
10 constitutional mention. For example, the committee wishes to
11 clearly direct the legislature to classify local government
12 units in order to deal with them more effectively through
13 legislation. Classification probably will take the form of
14 dividing cities into population classes, then applying cer-
15 tain legislation only to one or several classes. Such classi-
16 fication is used now under Montana law for instances in which
17 legislation must be tailored for the specific needs of a
18 group of local government units.

19 The committee also wishes to direct the legislature to
20 provide methods by which cities and towns, in effect, may
21 go out of business. At present, methods for disincorporation
22 are provided by law only for towns with less than 500 popula-
23 tion. The committee believes disincorporation might be a
24 workable means of ending needless duplication of governmental
25 services on the local level.

26 *Section 4. GENERAL POWERS. Local government units not*
27 *exercising self government powers under Sections 5 and 6*
28 *shall have the following general powers:*

29 *(1) Incorporated cities and towns shall have the powers*
30 *of a municipal corporation and such legislative, administra-*

1 freedom of action.

2 The intent of Section 4 is to encourage the court to
3 liberally interpret the powers of incorporated cities and
4 towns--to allow them reasonable control over local affairs
5 or concerns without granting them a full range of self
6 government powers in all areas of concern. Section 4 does
7 not attempt to upset the present established power relation-
8 ship between the state and cities and towns. What it does
9 intend to do is direct the court, when possible, to give the
10 benefit of the doubt to the city or town. Section 4 attempts
11 to give cities and towns more elbow room to act.

12 In this regard, it should be pointed out that under this
13 section--and, indeed, under the present Montana Constitution--
14 the legislature could give considerably more freedom to
15 local units than it has chosen to do. In recent sessions,
16 the legislature has been moving toward freeing local govern-
17 ments; authorizing an all-purpose mill levy as a substitute
18 for the individual levy limits on separate funds is a leading
19 example.

20 Counties

21 Montana counties--like most of those elsewhere in the
22 nation--are even more tightly under the legislature's thumb
23 than are cities and towns. The Montana county presently is
24 more administrative than governmental in nature; rules are
25 made in Helena every other year and carried out--or adminis-
26 tered--on the county level day-to-day.

27 Through stringent court interpretations (notably Plath
28 v. Hi-Ball Contractors, Inc. in 1961 and Bacus v. Lake County
29 in 1960), Montana counties have been denied the local legis-
30 lative, or ordinance-making powers possessed by cities and

1 towns.

2 It is not enough to say that Montana counties can act
3 only when authorized to do so by the legislature. That
4 statement may be true of Montana's cities and towns, but
5 for the state's counties, authorization to act is not suffi-
6 cient. Rather, the legislature must not only tell counties
7 that they may act; it also must spell out in what manner they
8 may act. Neil S. Keefer succinctly summed up the role to
9 which Montana counties have been relegated in a 1964 article
10 in the Montana Law Review:

11 To be constitutional, a statute granting authority
12 to counties must be sufficiently explicit and restric-
13 tive, so that its execution requires only administra-
14 tive action and not an exercise of legislative
15 power. (p. 197.)

16 In the past, the court has struck down Montana planning
17 and zoning legislation and laws authorizing county and dis-
18 trict health boards as unconstitutional delegations of
19 legislative powers to counties. An Idaho professor, author
20 of perhaps the leading text on county government, describes
21 the lack of a more extensive ordinance-making power as "an
22 important weakness in county government" (see Herbert Sydney
23 Duncombe, County Government in America, p. 48).

24 The Local Government Committee is well aware of conten-
25 tions that counties should not exercise any legislative
26 power because the traditional county structure does not
27 allow for clear separation of the legislative and executive
28 functions and thus does not provide for clear separation of
29 powers. However, the committee believes the legislature
30 can build safeguards into any grant of legislative powers
to counties to guard against such alleged abuse of the separa-
tion of powers concept. The language of Section 4,

1 subsection 2 clearly hinges the grant of legislative powers
2 to counties on grants from the legislature; no broad grant
3 of power is given directly to counties by this section.

4 The committee's overriding concern is that Montana
5 counties, through the officials elected locally, be allowed
6 to meet the increasing challenges of a rapidly changing state.
7 Allowing the legislature to give counties legislative power
8 will provide another tool in coping with the urban sprawl
9 outside incorporated municipalities and in eliminating some
10 of the present reasons feeding the growth of overlapping
11 governmental jurisdictions and special districts.

12 Other Local Units

13 Section 4 provides that local government units other than
14 cities, towns and counties will have those powers provided
15 by law. Thus, the legislature could establish special dis-
16 tricts to provide special functions and could assign either
17 municipal-corporation or county-type powers to a city-county
18 consolidated government.

19 General Comments

20 In general, the intent of Section 4 is to provide that
21 units of local government not adopting self-government powers
22 will not be crippled in meeting local needs. Thus, the
23 powers of incorporated cities, towns and counties are to be
24 "liberally construed" and counties may be allowed to exercise
25 legislative powers--something the court has said they may not
26 do under the present Constitution.

27 However, Section 4 is not intended as a broad grant of self
28 government powers; such powers are provided for in Section 6
29 only upon an affirmative vote of the residents of a local
30 government unit.

1 might determine that only those units or combination of units
2 with more than 10,000 population should have charter-writing
3 authority. Or the legislature could specify the method of
4 selection and the number of members of a local charter-
5 drafting commission. The committee considered including such
6 provisions within Section 5, as some state constitutions do,
7 but rejected the idea on the basis that such provisions
8 should have the flexibility of statutory law.

9 (2) No charter or charter amendment could become effec-
10 tive until it is approved by a majority of the local voters.

11 The section also limits the power of the legislature over
12 locally written charters in two ways:

13 (1) Although it allows the legislature to set procedures
14 and limitations concerning the drafting of a local charter,
15 Section 5 specifically denies both the state legislature and
16 local legislative bodies (such as city councils) the power to
17 veto a locally approved charter. The committee believes that
18 a legislative body should not be allowed to set aside a
19 properly drafted charter that local residents believe meets
20 their needs.

21 (2) Charter provisions on a local unit's executive,
22 legislative and administrative structure will supercede
23 statutory provisions under the language of Section 5. Thus,
24 if a local unit decides through its local charter to elect
25 a treasurer but state law generally requires that treasurers
26 must be appointed, the charter provision calling for election
27 will become effective.

28 Testimony before the committee indicated that no massive
29 movement toward locally drafted charters is likely to occur in
30 the foreseeable future. However, at least one official--the

1 mayor of Missoula--did express considerable interest in a
2 self government charter. The committee believes local
3 charter writing authority is a valuable tool for several
4 reasons:

5 --It allows a locality to tailor its governmental struc-
6 ture to its own needs and offers an excellent method whereby
7 more people can become directly involved in their government.

8 --It provides a method whereby a local government unit
9 can bypass a recalcitrant legislature which refuses to pro-
10 vide optional forms of government.

11 Many of the states which authorize local charter writing
12 limit the grant of authority to local units over a certain
13 population size. The committee, however, believes that no
14 such constitutional limitations should be imposed; rather, it
15 would leave such restrictions to the legislature.

16 *Section 6. SELF GOVERNMENT POWERS. Local government*
17 *units adopting self government charters may exercise all*
18 *powers not prohibited by this constitution, by law or by*
19 *charter.*

20 *This grant of self government powers may be extended to*
21 *other local government units through optional forms of govern-*
22 *ment provided for in Section 3.*

23 COMMENTS

24 Local government units adopting self government charters,
25 or adopting a special optional form of government that the
26 legislature is empowered to authorize, will be allowed to
27 exercise all powers not prohibited by this constitution, by
28 law or by charter.

29 In effect, Section 6 grants to local units the authority
30 to share powers with the state government--a form of what

1 generally has become known as "home rule." The Local Govern-
2 ment Committee, however, has studiously avoided this term,
3 preferring to call the grant of authority "self government
4 powers."

5 Section 6 is intended to authorize certain local units to
6 have considerably more freedom in determining their local
7 affairs. Under the present Montana Constitution--and under
8 the general authority authorized in Section 4 of this propo-
9 sal--local units would have only those powers granted or
10 directly implied by the legislature. The provisions of
11 Section 6, on the other hand, would reverse this situation:
12 self government units would be able to exercise all powers
13 that their charters, the legislature or the constitution did
14 not prohibit.

15 This "shared powers" concept is relatively new. It is
16 endorsed by the National Municipal League and the Advisory
17 Commission on Intergovernmental Relations and is included in
18 the constitutions of at least five states--Alaska, South
19 Dakota, Missouri, Massachusetts and Pennsylvania. It
20 clarifies lines of responsibility. Legislative inaction no
21 longer could block local action; instead, such inaction on
22 the state level would serve as a go-ahead for local govern-
23 ments. Significantly, the "shared powers" concept does not
24 leave the local unit free from state control; it does, how-
25 ever, change the basic assumption concerning the power of
26 local government. At present, that assumption is that local
27 government lacks power unless it has been specifically
28 granted. Under the shared powers concept, the assumption is
29 that local government possesses the power, unless it has been
30 specifically denied.

1 The legislature, in areas such as pollution control where
2 statewide uniformity is desirable, still could impose state-
3 wide standards under the shared powers concept. Some areas--
4 such as the definition and punishment of felonies--
5 undoubtedly would be retained by the legislature. But in
6 other areas of unique concern to a local unit, it could apply
7 flexible approaches to problems and not be bound by state
8 inaction or disinterest.

9 The committee believes the "shared powers" concept em-
10 bodied in Section 6 is desirable because it grants consider-
11 able autonomy to those local units that wish it, yet it
12 allows the legislature at any time to step in and prohibit
13 the local unit from proceeding in a manner contrary to state
14 interests. It clearly is the most flexible approach toward
15 local self government.

16 As worded in Section 6, the grant of self government
17 powers also is surrounded by ample safeguards. Most signifi-
18 cantly, no unit of local government will be able to exercise
19 the increased local authority without prior approval of its
20 residents in one of two ways:

21 --Approval of a locally drafted charter, which can
22 restrict the powers of the local unit.

23 --Approval of a legislatively drafted charter, which also
24 can limit the powers of the local unit.

25 Thus, no local government unit will be able to exercise
26 the self government powers without the express approval of a
27 majority of the local voters. The legislature would retain
28 final authority to guard against infringement of the power.

29 A frequent question in regard to local self-government
30 powers concerns what authority a unit should have in the area

1 of taxation. Under this proposal, a self-government unit
2 could exercise all taxation power not denied it by the con-
3 stitution, by law or by its charter. Theoretically, that
4 may sound like a dangerous grant of power, but on a practical
5 basis, taxation probably would be the first area to be circum-
6 scribed by the legislature or by the local charter. For
7 example, the legislature might prohibit any self government
8 unit to impose any tax other than property and license taxes
9 and might limit property taxes to no more than 70 mills.
10 The committee is not endorsing such restrictions; it simply
11 wishes to point out that from a practical standpoint, both
12 the legislature and the local voters undoubtedly will impose
13 taxation limitations on a self-government unit.

14 *Section 7. INTERGOVERNMENTAL COOPERATION. A local*
15 *government unit by act of its governing body, may, or, upon*
16 *being required by initiative or referendum, shall cooperate,*
17 *consolidate or agree in the exercise of any function, power*
18 *or responsibility with, or share the service of an officer,*
19 *or transfer or delegate any function, power or responsibility*
20 *or duties of an officer to one or more other local govern-*
21 *ment units, school districts, the state or the United States,*
22 *unless prohibited by law or charter.*

23 COMMENTS

24 Section 7 is intended to be a complete grant of authority
25 to all local government units to cooperate in the exercise
26 of powers and functions, share the services of officers and
27 transfer functions and responsibilities to other units of
28 government. Such functional cooperation and consolidation
29 is increasingly demanded by the rising costs of governmental
30 services and the careless duplication of governmental

1 services.

2 Broad grants of power to cooperate already are provided
3 under Montana law, but the committee believes that constitu-
4 tional language should be added giving broad latitude to
5 local units in cooperative ventures. Section 7 has several
6 features:

7 --It specifically authorizes local residents, through the
8 initiative, to force their local governments to cooperate
9 and to stop senseless duplication of services.

10 --It allows the legislature or, in case of locally
11 drafted charters, the voters to directly prohibit certain
12 forms of cooperation.

13 The committee believes that maximum activity by local
14 government units under Section 7 could solve many of the prob-
15 lems of inefficiency and duplication of services now plaguing
16 some areas in Montana.

17 *Section 8. REVENUE SHARING. Nothing in this constitution*
18 *shall prohibit the state from sharing revenue with local*
19 *government units or the units from participating in revenue*
20 *sharing with the state or the United States.*

21 COMMENTS

22 Article XII, Section 4 of the present Montana Constitu-
23 tion has been interpreted as limiting the state aid that can
24 be provided for local governments. The result has been a
25 tightening of the local fiscal squeeze, increased reliance on
26 the property tax, subterfuge to "get around" the constitution-
27 al limitation and the fact that Montana ranks 46th in the
28 nation in state per capita aid to city and county governments.

29 At the time of adoption of this majority proposal by the
30 committee, it appears that Article XII, Section 4 will be

1 deleted from the new constitution. However, the committee
2 believes it is highly desirable to affirmatively provide
3 that the state may share revenue with the local units and
4 that the local units may participate in revenue sharing with
5 the state and the United States. Such a provision will not
6 assure such state or federal assistance; it only will assure
7 that the constitution will not stand in the way of statu-
8 tory provisions for such aid.

9 *Section 9. INITIATIVE AND REFERENDUM. The initiative*
10 *and referendum powers reserved to the people by the consti-*
11 *tution shall be extended by law to the qualified voters of*
12 *each local government unit.*

13 COMMENTS

14 The committee believes it is essential that local resi-
15 dents have the powers of initiative and referendum, particu-
16 larly in view of the broad self government powers offered in
17 this proposal. The committee also believes that the proper
18 place to assure these "people powers" is in the local govern-
19 ment article. Specific provisions concerning petition
20 requirements, however, should be left to statutory law where
21 they can be easily reached if change is needed.

22 *Section 10. RECALL. All elected public officials of*
23 *local government units are subject to recall by the voters*
24 *of the unit from which elected. Procedures for recall shall*
25 *be prescribed by law.*

26 COMMENTS

27 The people should have the right to remove public
28 officials on the local level, for much the same reasons as
29 cited in the comments to Section 9. Once again, the commit-
30 tee favors leaving recall procedures to statutory law,

1 although concern was expressed that the requirements should
2 be of sufficient severity to eliminate frivolous and repeated
3 recall elections.

4 *Section 11. VOTER REVIEW OF LOCAL GOVERNMENT. The legis-*
5 *lature shall within four years of the adoption of this con-*
6 *stitution provide for procedures by which each local govern-*
7 *ment unit either separately or jointly shall review the*
8 *government structure of the local unit or joint unit and shall*
9 *submit one alternative form of government to the voters at*
10 *the next general or special election. The legislature shall*
11 *provide for a review procedure each ten years after the*
12 *first election.*

13 COMMENTS

14 Section 11 represents perhaps the most unique feature of
15 the local government proposal. It requires that the legisla-
16 ture, within four years after the adoption of the constitu-
17 tion, must provide methods by which each local unit, singly
18 or in combination with another or others, must study its
19 governmental structure. The key provision is that residents
20 of each unit must have an opportunity to vote on whether to
21 adopt an alternative form or retain their present form.

22 Although the procedures are left up to the legislature,
23 the committee envisions that local commissions might be
24 created to draft an entirely new type of government or simply
25 take an alternative form authorized by the legislature and
26 recommend that it be put on the ballot locally. Different
27 counties and different cities could vote on different
28 alternatives; some counties and cities might want to submit
29 consolidated city-county forms for judgment by the voters.

30 The committee strongly believes that such local review

1 of government is highly desirable. Costs would be minimum
2 and more than repaid if local governments can be improved.
3 Increased voter interest and awareness of local government
4 issues would be assured, and some local units, through experi-
5 mentation, might find answers to local government problems
6 that would aid other units in the state.

7 An overriding consideration is that the local voters
8 would be the final judges of whether the alternative pro-
9 posed really would be a better form of government than that
10 in effect at the time of the election. Even if every county,
11 city and town decides to retain its existing form of govern-
12 ment following the review procedure, the committee believes
13 the time spent in study and discussion of local government
14 will result indirectly in more responsive and responsible
15 local government.

16 Section 11 directs the legislature to provide for a
17 "review procedure" each ten years after the first election.
18 Such decennial review would not necessarily have to require
19 that each unit in the state go through the complete review
20 process required the first time.

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APPENDIX A

CROSS REFERENCES

Proposed Section	Present Article & Section
1	none
2	XVI, 1, 2, 8
3	XVI, 4, 5, 6, 7
4	none
5	none
6	none
7	none
8	none
9	none
10	none
11	none
Not Replaced	XVI, 3; XIX, 6

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Local Government Committee during its deliberations:

	<u>Number of Proposal</u>	<u>Chief Sponsor</u>	<u>Subject Matter</u>	<u>Disposition</u>
1.	5	Katie Payne	Repeal Article XVI, Section 5	Rejected
2.	6	Katie Payne	Local Charters	Intent Adopted in Part
3.	9	Franklin Arness	District Plan	Rejected
4.	17	Arnold Jacobsen	Districting for Boards of County Commissioners	Rejected
5.	23	Virginia Blend	Welfare Funding	Handled by Revenue & Finance, Public Health, Welfare, Labor & Industry Committees
6.	54	George Rollins	Repeal Article XIX, Section 6	Adopted
7.	56	Marian Erdmann	New Article on Local Government	Intent Adopted in Part

	<u>Number of Proposal</u>	<u>Chief Sponsor</u>	<u>Subject Matter</u>	<u>Disposition by Majority</u>
8.	60	Rod Hanson	Prohibit Consolidating Counties Without Vote of People	Intent Adopted in Part
9.	79	C. B. McNeil	Distribution of Governmental Powers in Subdivisions	Rejected
10.	89	Oscar Anderson	Article XVI, County Boundaries and County Seats	Adopted
11.	97	Thomas Ask	New Article on Local Government	Adopted
12.	99	Robert Kelleher	City Manager	Rejected
13.	108	Dorothy Eck	Elections on Alternate Forms of Government	Intent Adopted in Part
14.	110	Geoffrey Brazier	Limit Terms of Officers	Rejected
15.	122	Thomas Ask	Delete Prohibition on Salary Increases	Handled by Legislative Committee
16.	126	Lucile Speer	New Article on Local Government	Intent Adopted in Part
17.	134	Franklin Arness	Repeal Article XII, Sections 15 & 16; and Amend Article XII, Section 17	Handled by Revenue & Finance Committee
18.	156	J. Mason Melvin	Election of Sheriffs	Intent Adopted in Part
19.	166	Katie Payne	Legislative Powers for Certain Counties	Intent Adopted in Part

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Howard Hammer - Ravalli County Commissioner - Hamilton - Provisions on counties.
2. Earl Daley - Valley County Commissioner - Nashua - Provisions on counties.
3. Dale Skaalure - Hill County Commissioner - Big Sandy - Provisions on counties.
4. Burt Hurwitz - Meagher County Commissioner - White Sulphur Springs - Provisions on counties.
5. Ralph Armstrong - Gallatin County Commissioner - Belgrade - Provisions on counties.
6. Don Gibson - Dawson County Commissioner - Glendive - Provisions on counties.
7. Milo Dean - Cascade County Commissioner - Great Falls - Provisions on counties.
8. Dean Zinnecker - Montana Association of County Commissioners - Helena - Provisions on counties.
9. Gene Nordberg - Citizen - Sidney - General local government.
10. Walter Anderson - City Manager - Helena - General local government.
11. Dan Mizner - Montana League of Cities and Towns - Helena - General local government.
12. Tom Phillips - Montana League of Cities and Towns - Helena - General local government.
13. George Schroeder - County Treasurers Association - Great Falls - Matters relating to county treasurers.

14. Mary E. Westermarck - County Treasurers Association - Shelby - Matters relating to county treasurers.
15. Earl J. Holman - Silver Bow County Commissioner - Butte - Legalizing gambling.
16. Jean Anderson - League of Women Voters - Billings - General local government.
17. Robert Herrig - Lincoln County Superintendent of Schools - Libby - Keeping County Superintendents of Schools in Constitution.
18. Opal Eggert - Elected County Officials Association - Helena - Keeping county officials in Constitution.
19. Margaret Brown - Gallatin County Superintendent of Schools - Bozeman - Keeping County Superintendents of Schools in Constitution.
20. Harry L. Axtmann - Roosevelt County Superintendent of Schools - Wolf Point - Keeping county officials in Constitution.
21. Fred Barclay - Missoula County Assessor - Missoula - Qualifications and pay of assessors.
22. J. J. Schmidt - Clerk and Recorders Association - Great Falls - Suggestions concerning absentee ballots.
23. William Cassella, Jr. - Executive Director, National Municipal League - New York - General local government.
24. H. J. Pierce - Citizen - Great Falls - Inefficiency in local government.
25. Dr. Thomas Payne - Professor, University of Montana - Missoula - Local government in general.
26. J. Mason Melvin - Delegate - Bozeman - Elected sheriffs.
27. George Turman - Mayor - Missoula - Suggestions for local government article.
28. Jean Ellison - Meagher County Superintendent of Schools - White Sulphur Springs - Electing County Superintendents of Schools.
29. Roy Crosby - Citizens for Constitutional Government - Helena - Suggestions for Local Government Article.

30. James Moore - Law Student - Missoula - Local Government Article.
31. Robert D. Watt - Montana Student Presidents Association, Retired County Superintendent of Schools & Legislator - Missoula - Keeping County Superintendents of Schools in Constitution.
32. Grace Hanson - Flathead County Superintendent of Schools - Kalispell - Keeping County Superintendents of Schools in Constitution.
33. Dorothy Simmons - Lewis & Clark County Superintendent of Schools - Helena - Keeping County Superintendent of Schools in Constitution.
34. Carolyn Frojen - Missoula County Superintendent of Schools - Missoula - Keeping County Superintendent of Schools in Constitution.
35. Lloyd Markel - Montana Education Association - Helena - Keeping County Superintendent of Schools in Constitution.
36. Dolores Colberg - State Superintendent of Schools - Helena - Regarding County Superintendents of Schools.
37. Dorothy Eck - Vice Chairman of Convention - Bozeman - Delegate Proposal 108.
38. Rod Hanson - Delegate - Fairfield - Delegate Proposal 60.
39. James Felt - Delegate - Billings - Delegate Proposal 40.
40. William Wheeler - Flathead County Surveyor - Kalispell - Keeping surveyors elected.
41. C. B. McNeil - Delegate - Polson - Delegate Proposal 79.
42. B. J. Goodheart - State Senator - Malta - General local government.
43. P. J. Keenan - State Senator - Anaconda - General local government.
44. Gordon McOmber - State Senator - Fairfield - General local government.
45. Henry S. Cox - Representative - Billings, General local government.
46. William Campbell - Representative - Missoula - General local government.

47. Harold McGrath - Representative - Butte - General local government.
48. Mario Micone - Mayor - Butte - General local government.
49. John Ray - Citizen - Hamilton - Power to local government and optional plans.
50. John Hauser - Citizen - Stevensville - Power to local government and optional plans.
51. Dave Drum - Delegate - Billings - General local government.
52. Mrs. Roberta West - Citizen - Chinook - General local government.
53. Robert Mitchell - Chairman, Missoula Interlocal Cooperation Commission - Missoula - General local government.
54. Laurence Bjerneby - Mayor - Kalispell - General local government.
55. Mrs. Fern Hart - League of Women Voters - Missoula - General local government.
56. John McLaughlin - Mayor - Great Falls - General local government.
57. Mary C. Holt - Citizen - Augusta - General local government.

