

# Annual Sessions - Montana History

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In the last 50 years, annual sessions have been raised as a solution to improve the operation of the Legislature. The Montana Legislative Council noted in a 1968 report how the size and complexity of the state and its problems had changed significantly since 1889. At that time, the Legislature was not able to complete its work in 60 calendar days, essentially 44 legislative days of work. Proponents argued that annual sessions would produce more experienced legislators, a more effective Legislature, more careful deliberation, and improved oversight of executive agencies. They proposed that annual sessions would make the legislative process more visible and provide a greater opportunity to participate. (*Lopach, et al., 1983*)

The nonpartisan Montana Citizens Committee on the State Legislature had been created by the Legislature and began its study in August of 1966. The study came out of a national movement to unshackle state Legislatures and attributed the reapportionment of state legislatures as renewing public interest in the state legislative process. (*Final Report of the Montana-Idaho Assembly on State Legislatures*). Thirty-nine citizens, including many former legislators and governors, attorneys, ranchers, publishers, higher educators, and leaders of many state organizations, were appointed by a four-man subcommittee of the Montana Legislative Council.

The Montana Citizens Committee on the State Legislature reported to the 40th Legislative Assembly of Montana in January of 1967. The Montana Citizens Committee recommended a constitutional amendment for annual legislative sessions, but no such amendment was proposed. The Montana-Idaho Assembly on State Legislatures made as one of its recommendations a proposed amendment to extend the length of session from 60 to 80 days. The 1967 Legislature passed a bill to submit to the voters the amendment to extend the session to 80 days (Ch. 248, L. 1967). It also limited legislator compensation to 80 days. On the 1968 ballot, the proposed constitutional amendment was defeated by 40,060 votes - 92,093 in favor and 132,153 votes opposed.<sup>1</sup> Lopach, et al., wrote that the defeat was due in part to the fact that there had been no group organized in support of the measure. However, "a "Montana

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<sup>1</sup>There is no argument information included in the 1968 voter information pamphlet and additional research is warranted.

Constitutional Committee" ran advertisements alleging that the modest extension of time was the first step toward unnecessary annual sessions and expensive legislative salaries." (*Lopach, et al., 1983*)

A study prepared for the 1972 Constitutional Convention provided an argument for annual sessions. The argument was that the legislative advantage was to organized special interests, not to the base of popular support on issues such as health, environmental control, education and community development. The support may have been broad, but not organized at the right time and place. The short session did not provide enough time for those who shared the broad interests to identify each other and to organize. (*Lopach, et al., 1983*)

In the Constitutional Convention transcript, it was noted that in 61 years, since 1911, only 6 Montana Legislatures were able to complete business in 60 calendar days. (*Tran. pgs. 384-5*). The voters adopted the 1972 Constitutional Convention proposal for the Legislature to meet in annual sessions of 60 legislative days--a change from the biennial, 60 calendar days sessions pre-1972-- including that the Legislature was a continuous body during the biennium (June 2, 1972 election). There were considerable discussion of how long the session should be, and the original majority proposal from the Legislative Committee was 90 legislative days annually. In the full Committee of the Whole, it was amended to 60 legislative days annually because they thought that extending the Legislature and its costs 3 to 4 times the current length was too much, and they anticipated that the ability to extend a session would be available by a simple majority if needed. (*Transcript 813-829*) They also did not expect the Legislature to have to use all 60 days for every session. The basic gist was to give the Legislature more flexibility in procedure and more time to consider their bills in order to avoid unpredictable and costly special sessions. There was never a pure discussion exclusively on annual sessions. Multiple variables of submitting the unicameral and bicameral proposals to the public for a vote, the consideration of the minority reports, the number of members needed in the Legislature, whether a limit on the length of sessions was necessary, and the length needed for sessions were interspersed in the discussion of annual sessions and considered from many angles.

After holding one "annual" session, the people of Montana reversed course and approved an amendment to the Constitution to provide for 90-day biennial legislative sessions (Constitutional Initiative No. 1, November 5, 1974). The amendment struck the language on the Legislature being a "continuous body" and the provision that "any business, bill, or resolution

pending at adjournment of a session shall carry over with the same status to any other session of the Legislature during the biennium."<sup>2</sup>

The provision regarding the carry over of business between sessions within a biennium may have led to the defeat of annual sessions. There were at least a couple of different groups behind the change. Charles S. Johnson, in a speech during the Montana History Conference in October of 2007, noted that in 1974, the Montana Farm Bureau and its allies passed a constitutional initiative to revert to every-other-year sessions, increasing to 90 legislative days. In a 1983 publication, Lopach, et.al., stated that the "Committee for Biennial Legislative Sessions" mounted a petition drive and collected the required number of signatures. The measure called for biennial sessions of ninety days in length. It alleged that annual sessions had generated an excessive volume of legislation and had increased the frenzy of legislative work rather than reducing it." (*Lopach, et al, 1983, pgs. 69-70*) The vote in 1974 on Constitutional Amendment No. 3 produced a margin of 6,006 votes, slim out of the 215,168 cast.

The opponents of annual sessions were better organized in 1974; however, the proponents persisted. In 1975, 1977, and 1979, bills were introduced in the Legislature proposing a constitutional referendum to return to annual sessions. In 1981, a bill was passed (Ch. 517, L. 1981) calling for annual sessions of 60 legislative days in odd-numbered years and 45 legislative days in even-numbered years. The first session was to be dedicated to substantive legislation and the second session of 45 days dedicated to budgetary matters. (Constitutional Amendment No. 11, 1982)

Proponents of the constitutional amendment stated that it would save the state and its taxpayers money, it would be more cost-effective and accountable, and the process would be more responsive. They argued that the limitations were sensible, but that the 2/3 vote option would provide enough flexibility. The present Legislature (1981), had met an additional 15 days in special sessions at a cost of \$441,000, and a third special session was seriously contemplated. The increasing number of complex problem required greater legislative attention and that addressing them in sporadic special sessions was not only bad management but also poor economics and could soon exceed the costs of limited annual sessions. The proponents argued that it would improve accountability and that legislators could be directly involved in the

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development of the state budget. They believed that incumbent legislators running for reelection immediately after the appropriations session would increase accountability. The Legislature would have better control over funding by meeting more regularly. In their rebuttal, the proponents stated the need to break up the tight existing administrative bureaucracy. They stated that people from all walks of life could run for the Legislature as the sessions would be shorter and predictable. The type of sessions had little to do with the number of bills; only the type of discipline and the restrictions imposed by the Legislature mattered. The cost factor was about equal taking into consideration the cost of special sessions. They noted that a 2/3 vote is not easy to get. They stated that lobbyists, bureaucrats, special interest groups and foes of responsible government were against annual sessions. (*Voter Information Pamphlet, 1982*)

The opponents argued that the initiative in 1974 should be respected, and they believed that the major reasons for opposing annual sessions were as valid then and even stronger. They desired a citizen Legislature; annual sessions, making people from all walks of life unable to take the time off, were moving us to professional legislators who spent their time listening to lobbyists and state department heads who all wanted more money and power. Annual sessions would lead to more bills, more costs, and more legislative meddling. They stated, as proof, that "in 1973 and 1974, 2,970 bills were introduced" contrasting it to the "1359 bills (less than half) were introduced in the last regular biennial session of 1981"<sup>3</sup>. Opponents estimated annual sessions would cost \$250,000 a year more, not including staff and the administration of additional measures. They mentioned that the 2/3 vote requirement would allow only 34 senators or 67 representatives to open the session to anything they wished. The opponents refuted the belief that sessions would be "limited" saying that they could be "easily extended" to last longer, and could "increase government (taxes) and harassment even more. The

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<sup>3</sup> (*1982 Voter Information Pamphlet.*) In trying to verify the numbers of bills introduced as stated in the pamphlet, records show for the two sessions in 1973 and 1974, there were a total of 2,654 bill draft requests, 2,211 bills introduced, and 1,193 bills passed. Both sessions were in a "continuous body" and about double the number of the bills introduced and passed in 1971. However, implementing the amendments to the constitution accounts for over 50 bills in the 1973 session. In the 1973 session, over 50 bills were passed for local government changes related to many constitutional changes, and there were 29 workers' compensation bills and 16 bills related to the Legislature alone. The Legislature passed around 10 bills for each of the 1973 and 1974 sessions on executive reorganization, including many large multisection bills for each agency, and many of the remaining boards and committees. Also, bills such as the Uniform Probate Act and bills for juvenile justice and developmental disabilities were passed in 1974. In the 1974 session, there were 37 appropriation bills and the Legislature passed 126 resolutions. For the most part, other than the bills noted above, most bills amended or repealed one or two sections of law and would have been "simple" bills. (Information derived from the 1973 and 1974 Legislative Review, Montana Legislative Council)

opponents stated that the amendment would not restrict the calling of special sessions and that taxation measures could be presented in any of the sessions calling the inference of limitation to money matters "a sham." (*1982 Voter Information Pamphlet*)

The fiscal note in the Voter Information Pamphlet stated that the cost of legislators' salaries, expenses, and staff for the 90-day legislative session was approximately \$3.2 million and that if the amendment was approved and the Legislature were to meet in yearly sessions totaling 105 days during the same 2-year period, these costs would increase about \$500,000, appearing to refute the opponents arguments that it did not include staff or administration. The semantics of using the words "revenue and appropriation" seem to contribute to the argument of whether revenue meant taxation. Traditionally, the Legislature has included tax measures under the category of revenue as anything that raises or lowers revenue, but that internal distinction was lost in this discussion. In November 1982, Constitutional Amendment No. 11 was rejected by a vote of 118,908 for to 171,196 against, a difference of 52,288 votes.

The Legislature again proposed a constitutional amendment for the ballot in 1988 (Ch. 633, L. 1987). Constitutional Amendment No. 20 proposed "split sessions". The final proposal from the Legislature was amended to add 10 days, proposing not more than 100 days in a 2-year period and requiring the Legislature to apportion the legislative days between sessions. No session could exceed 60 days, in the odd-year session, only revenue and appropriation bills could be heard, and in the even year, only bills not related to revenue and appropriations could be introduced. There was a specific statement that no bill introduced in one session could be carried over to any other session of that Legislature. There was a fiscal note in the Voter Information Pamphlet that indicated an additional cost to government of \$462,000. (*Voter Information Pamphlet, 1988*) The additional 10 days and the fiscal note may have contributed to the loss. The measure failed by 9,358 votes of 348,352 cast.

The proponents in the Voter Information Pamphlet argued a need for a more timely and responsive method than special sessions for lawmaking that could meet the increased demands of the state on the Legislature. The argument stated, "From 1981 to 1987, the Legislature of Montana met in special session for 44 days at a cost of approximately \$1,500,000. The 1985 Legislature, including special sessions, met 109 days as opposed to the scheduled 90 days." They mentioned that both sessions would adjourn about the end of February and that the current system bred crisis management and legislator burnout and stifled public participation. "The end results are laws passed for Montana that are frequently drafted under pressure,

considered in haste, and often passed in frustration." The opponents used the 1974 return to biennial sessions in their argument and stated that the message from the voters was loud and clear -- "less legislative involvement and less spending". Arguments included that the Legislature did not need to meet in annual sessions and that a procedure should be established to screen bills to reduce the number and allow more time for review. They pointed out that the lone experience with annual sessions showed that the Legislature was not able to complete its work in 60 days and that the 1975 Legislature still required a special session. The increased cost for more staff and more legislative days was mentioned and purported to make the Legislature a professional legislature precluding qualified people from serving because of the lengthy absences. They believed that annual sessions were more aptly suited to densely populated states with urban populations. *(1988 Voter Information Pamphlet)*

The proponents rebutted that the amendment did not call for annual sessions, but called for split sessions. They mentioned that it prohibited the "carryover" of a bill, which they stated was the main problem with the annual sessions in the 1970's. The proponents argued that the proposal would allow the Legislature to bring critical issues into a general session (permitted by rule), requiring the Legislature to meet each year with the regular session limited to 60 days, and would provide for shorter sessions so more Montanans could participate.

In 1995, the Legislature passed House Bill No. 273 (Ch. 341, L. 1995) to place a constitutional amendment on the ballot in 1996. Constitutional Amendment No. 32 proposed that the Legislature meet in regular session biennially in even-numbered or odd-numbered years (but not both) and retained the 90-day limit. There were 174,471 votes for and 196,618 votes against, defeating the amendment.

Proponents argued that the even-year option would give citizens, small business, and legislators more time to understand the impact proposed laws and policies would have on work, taxes, and the Montana way of life. They stated that the current system left too little time to organize the Legislature, appoint committees, and have proposed legislation drafted, too little time to review proposed laws and notify the public of hearings and committee action, and too little time to review the Governor's proposed budget, government spending levels and taxation. It made clear that it did not allow annual sessions but would give the Legislature a year to organize the session and prepare legislation, to submit proposed legislation to the public for review and comment, and to schedule hearings well in advance to promote citizen participation. Overall, it would give "all Montanans a much greater opportunity to thoughtfully

consider the benefits and drawbacks of any proposed new law, budgetary, or taxation proposal and let their elected officials know how they feel about important issues. The current system severely hinders the opportunity to change government in response to the will of the people." *(1996 Voter Information Pamphlet)*

The opponents argued that it would create more problems and have the following negative consequences: voters would have to wait more than a year for the legislators they elected to carry out the will of the people; it would give lobbyists and special interest groups plenty of time to make their case with new legislators "so that they are more likely to forget why they were even elected in the first place"; legislators would meet during an election year, which could make legislators reluctant to take any tough stands and more willing to spend large amounts of time posturing; and it would provide legislative leaders more control over the entire process because the additional time would allow them to manipulate committee memberships, caucus positions, and timing of hearings to further their own agendas. The opponents concluded that because the whole idea would fail, the Constitution would need to be amended again, to meeting in odd years or every year. They considered this amendment a disguised vote for annual sessions.

Proponents rebutted that the elected legislators could spend more time with their constituents to discuss issues and produce sound long-term policy and that meeting in an election year would increase accountability. They reiterate that the amendment did not mandate, but gave the option of even-year sessions, provided more input into policy decisions, and furthermore specifically prohibited annual sessions. The opponents' rebuttal said there was no need to wait a year; the Legislature could meet for a short period of time in January of an odd-numbered year, recess for a month or so to allow for more public input and still finish its work in April or May of the same year. They stated that if they (proponents) succeeded, annual sessions would be inevitable as legislators would be working full time in even-numbered years and emergencies would cause special sessions which would lead to the conclusion that annual sessions made more sense. They also mentioned the failure or rejection of similar measures in the Legislature twice before.

In 2001, Sen. Bohlinger proposed a bill to amend the Constitution to allow the Legislature to meet for 30 days in each odd-numbered year and 60 days in each even-numbered year (SB 123, L. 2001). The odd-numbered year could be expanded but the total could not exceed 90 days, except in an emergency determined by 2/3 vote of each house. The odd-year session would be

spent considering revenue and appropriations and the even-year session spent on general bills. The bill did not allow bills to be carried over from one session to the next. Although the bill passed the Senate and the House State Administration Committee, it died on the House floor 27 to 73. Testimony of the Montana Farm Bureau, the sole opponent in the House State Administration Committee, stated that the main reason they opposed the bill was that bills could be transferred from one session to the next (even though the bill stated no bills could be carried over except by a vote of 2/3 of each house). They also stated that annual sessions meant additional costs, including in the start up of session, even though the fiscal note stated there would be no additional cost.

In the 2003 session, Sen. Bohlinger and 2 others introduced bills. His bill, Senate Bill No. 182, was slightly changed from his 2001 bill (SB 123), to allow adopting rules permitting consideration of the other types of bills during a session. It included the no-carryover provision and removed the ability to increase the limit on any subsequent session, which was original language in the 1972 Constitution. Sen. Stonington introduced Senate Bill No. 214 to allow the Legislature to meet each year, not to exceed 90 days in a 2-year budget period. Senate Bill No. 14 also removed the ability to increase the length of subsequent sessions. These two bills were tabled on the same day in the Senate State Administration Committee. A third bill was considered and passed the committee that same day. Sen. Sprague introduced Senate Bill No. 70 for annual sessions of not more than 45 days each, with no carryover bills allowed, and the ability to increase subsequent sessions remained. Senate Bill No. 70 died on the House floor.

There has been no ballot issue on annual sessions or changing the length of sessions since 1996. Term limits entered the Constitution via initiative in 1992 and the efforts to remove those have been the more consistent attempt in recent history, to no avail.

This summary of the recent history of the discussion of annual or biennial sessions is clouded with other variables as to how many days to meet, either for a session or a biennium, the variable of the ability to carry over a bill from one session within a biennium or not, the variable of designating what types of bills could be heard in each annual session within a biennium, and other general concerns of cost and control. Rather than a consistent choice for the voters, each attempt has been unique and has presented variations on a theme.

Consistently, the problems have included insufficient time to complete the legislative work and provide sufficient time for public notice and an opportunity to participate, insufficient time for



base support to organize, and increased complexity of problems. The pressure on legislators was noted in terms of burnout, crisis management, and not enough time for drafting, consideration, or passage of bills. The cost and sporadic nature of special sessions was a common theme, both before and after the 1972 Constitution. During the 1980's, changes in federal funding and other funding difficulties resulted in many special sessions, even though sessions had been extended to 90 days in a biennium. The carryover provision, intended to be more efficient and not require reprinting of bills and rehearing them, proved to be a consistent and effective argument against special sessions. There seemed to be common understanding that there was not sufficient time to organize the Legislature between election and session, but opponents certainly didn't want to allow leadership too much time.

Some conclusions:

- The Legislature should make sure that it reviews its procedures to limit the number of bills, allow ample time for public notice and testimony prior to referring annual sessions to the people, and use the interim for agency oversight.
- Cost information on annual sessions should be made more clear. It was an easy argument to make, even with fiscal notes to the contrary. Cost-neutrality and illustration of how that might be accomplished would be important. Because there have not been as many special sessions since 2007, that argument may be less germane or reasonable.
- If a proposal were made for sessions that limited the types of bills, those types should be well defined and thought through. What to do with a general bill that would have a fiscal impact with no provision for adjustments to the budget is a valid question. Would revenue bills include taxation measures? Do appropriation bills include all appropriations, including statutory appropriations? The distinction of legislative or calendar days is important, but the underlying work schedule could be equally important -- 5-day workweeks, weekends, length of breaks, etc. Can the Legislature do its work; i.e., public hearings, etc., without "burning" a legislative day? How would that impact legislator compensation?
- The ability to retain a citizen Legislature and keep it open to Montanans of all walks of life was important to both proponents and opponents. There was an inherent disagreement whether an annual session ending in February provided more or less opportunity. Understanding the recruitment and candidate concerns in greater detail would be important to know whether a change would enhance participation or make it difficult for people from certain occupations or professions to run for the Legislature.

- It also appears that without a "champion" for annual sessions, the proponents do not fare well. Every time it has been placed on the ballot, it has been through a legislative bill -- it does not appear to be a citizen initiative.

## BIBLIOGRAPHY

1. Lopach, James, et al. We the People of Montana...The workings of a Popular Government. Mountain Press Publishing Company, Missoula, 1983.
2. The Montana Citizens Committee on The State Legislature. A Report to the Fortieth Legislative Assembly. The State of Montana, Montana Citizens Committee on State Legislature. January 1967. (As cited in Lopach, et. al., December, 1968, p. 9)
3. The Montana Citizens Committee on The State Legislature. A Report to the Forty-First Legislative Assembly. The State of Montana, December, 1968, p. 9.
4. Transcript of Proceedings of the Montana Constitutional Convention. The Convention, Helena, 1972.
5. University of Montana and the American Assembly of Columbia University. Final Report of the Montana-Idaho Assembly on State Legislatures. December, 1966.
6. Voter Information Pamphlets (1968, 1972, 1982, 1988). Secretary of State website: <http://sos.mt.gov/Elections/archives/index.asp>. Accessed December, 2013, and January 2014.

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