

VOLUME NO. 36

Opinion No. 8

**CONSTITUTIONAL LAW — Veto power of Governor; GOVERNOR — Powers — Veto; LEGISLATURE — Powers — Override of veto by Governor; Montana Constitution (1972) — Article VI, Section 10(3) — Article XIV, Section 8; Montana Constitution (1889) — Article VII, Section 12.**

- HELD:** 1. A gubernatorial veto may be overridden only upon a vote of two-thirds of the members present in each house of the Legislature.
2. The Governor's veto of House Bill No. 155 was sustained.

June 25, 1975

Representative Dan Yardley  
 P.O. Box 482  
 Livingston, Montana 59047

Dear Mr. Yardley:

You have requested my opinion relative to the following factual situation:

House Bill No. 155 was vetoed by the Governor during the 1975 legislative session. Thereafter, the House of Representatives voted 76-13 in favor of a motion to override the veto. The Senate voted 29-19 against a similar motion.

Your question is:

Was the Governor's veto sustained or overridden by this action, in light of the veto provision in the 1972 Montana Constitution?

Article VI, Section 10(3), Montana Constitution (1972) provides:

If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

The question you raise is an appropriate one, since from section 10(3) alone it is unclear whether the vote to override a gubernatorial veto must be two-thirds of the members present of each house or just two-thirds of the members present of the whole Legislature. In this instance, more than two-thirds of the members present of the whole Legislature (95 out of 137) voted to override the Governor's veto.

Under the 1889 Montana Constitution the vote of two-thirds of the members present of each house was needed to override a gubernatorial veto. Article VII, Section 12 of that document provided in pertinent part:

If two-thirds of the members present (of the house where the vetoed bill originated) agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present in that house it shall become a law notwithstanding the objections of the governor.

By comparison, the present provision is not so explicit and therefore requires construction. After having reviewed such extrinsic aids as the official transcripts and committee reports of the 1972 Montana Constitutional Convention, I am firmly convinced that a two-thirds vote of each house of the Legislature is still needed to override a gubernatorial veto.

During the early stages of the convention, both the Legislative and Executive Committees considered the veto power question. Neither committee proposal, however, seemed to intend any change in this procedure from the 1889 Constitution.

The Legislative Committee Proposal, submitted to the full Convention on February 16, 1972, contained a majority recommendation for both a unicameral and a bicameral legislature. The recommendation for the latter provided that:

The legislature, upon receipt of a veto message, shall reconsider the vetoed bill or item. The legislature may amend a bill to eliminate the objections of the governor, and return the bill to the governor for reconsideration. **The legislature may override the veto by an affirmative vote of two-thirds of the members present in each house.** (Emphasis added) Legislative Committee Proposal, p. 48.

On the following day the Executive Committee Proposal was submitted. It contained a gubernatorial veto provision nearly identical to that which the Convention finally adopted:

Upon receipt of a veto message, the legislature shall reconsider passage of the vetoed bill. A two-thirds vote of the members present overrides the veto, and the bill shall become law. Executive Committee Proposal, p. 27.

While the Committee made no direct comment on this section, they did state that the Governor's authority to disapprove state and federal constitutional amendments should be removed because "[c]onstitutional amendments initially must be approved **by a two-thirds vote in each house, which is the same majority required to override a gubernatorial veto.**" (Emphasis added) Executive Committee Proposal, p. 28.

Subsequently it was decided that the veto power provision of Montana's new Constitution should be incorporated into the Executive Article. Thus, the Executive Committee's majority recommendation was submitted on February 25, 1972. Delegate Thomas Joyce, Chairman of the Executive Committee, discussed the veto power proposal (ultimately approved by the Convention), stating that "[i]n the veto power, what the committee tried to do, **is retain it essentially as it is now,** with the addition of the amendatory veto and elimination of the pocket veto." (Emphasis added) Transcript of Proceedings, Montana Constitutional Convention, 1972, Volume IV, p. 2924. With regard to the role of the Governor in the constitutional amendment process, Delegate Joyce observed that "[c]onstitutional amendments, initially, **must be approved by two-thirds of each house if it's a bicameral (legislature), which is the same majority required to override a gubernatorial (sic)**

**veto.**” (Emphasis added) Transcript of Proceedings, *supra*, p. 2925. These statements clearly reflect the Convention’s desire to retain the old veto override requirement.

What the Convention delegates did **not** say regarding the gubernatorial veto provision is as significant as what they did say. A departure from the two-thirds-of-each-house requirement would notably alter the delicate balance of power between the executive and legislative branches, and surely would have sparked intense debate. For example, compare the extensive discussion on the change in the two-thirds vote requirement for placing proposed constitutional amendments on the ballot. Transcript of Proceedings, *supra*, Volume III, pp. 1515-1523. Article XIV, Section 8, Montana Constitution (1972), specifically provides that a proposed constitutional amendment shall appear on the ballot upon approval of two-thirds of the total membership of the Legislature. This represents a substantive change from the 1889 provision, which called for a two-thirds vote of the members elected to each house. That change was vigorously debated, and unequivocal language was inserted to make it clear that two-thirds of the Legislature, “whether one or more bodies”, is needed to place a proposed constitutional amendment on the ballot. Yet, at no time during the proceedings did the delegates even imply, much less advocate, a similar change in the gubernatorial veto provision, nor does any such language appear in Article VI, Section 10(3).

**THEREFORE, IT IS MY OPINION:**

- a. A gubernatorial veto may be overridden only upon a vote of two-thirds of the members present in each house of the Legislature.
2. The Governor’s veto of House Bill No. 155 was sustained.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General