

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 148

Call to Order: By CHAIRMAN C.A. "CASEY" EMERSON, on April 10, 1995, at 3:40 p.m. in Room 405.

ROLL CALL

Members Present:

Sen. C.A. "Casey" Emerson (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Rep. Richard D. Simpkins (R)
Rep. Rick Jore (R)
Rep. Joe Tropila (D)

Members Excused: None

Members Absent: None

Staff Present: Sheri Heffelfinger, Legislative Council
Carla Turk, Committee Secretary

Discussion: CHAIRMAN CASEY EMERSON, SD 14, Bozeman, presented the Committee with a copy of Article III, Section 4, Initiative, of the Constitution of Montana. He referred to Subsection (3) "The sufficiency of the initiative petition shall not be questioned after the election is held". SENATOR EMERSON told the Committee to then look at Article XIV, Section 9, Amendment by initiative. He said that in his original bill he had taken Subsection (3) from Article III, Section 4 and added it as a new Subsection (4) under Article XIV, Section 9. He stated that did not meet with approval in the House, and the Bill had been amended to read that a Constitutional Initiative could only be challenged on its constitutionality.

SENATOR EMERSON explained that challenging a constitutional amendment on its constitutionality sounded like a backward situation. He stated he was worried about a situation where a felon had served his time in prison, paid the debt to society, received all his rights back; and if a constitutional amendment was passed which stated that person could never own, possess, or use a gun, if it was challenged on its constitutionality, it could be thrown out.

SENATOR EMERSON stated he had discussed his concern with Greg Petesch, Legislative Council, who thought the constitutionality of a provision in the Montana Constitution could only be

challenged as unconstitutional under the U.S. Constitution. He said he had asked **Mr. Petesch** if the language "U.S. Constitution" was put in, regarding constitutionality, would that make sense and **Mr. Petesch** stated he believed so.

SENATOR EMERSON asked **REPRESENTATIVE DICK SIMPKINS** why the House had changed the language of the original bill? **REPRESENTATIVE SIMPKINS** replied that **SENATOR EMERSON'S** Bill was addressing the sufficiency of the initiative petition. He said the Bill provided that a petition, not an initiative, could not be challenged after an election for any reason, e.g. a wrong word or technical error. He stated that someone had successfully challenged an initiative because one word was underlined improperly on the ballot in the voter information packet. **REPRESENTATIVE SIMPKINS** contended that he changed the original bill so that that could not happen. He stated that current language would only allow a challenge on the basis of constitutionality itself. He said the way he interpreted it, the entire election was thrown out, and had to be redone; it was like the election had never taken place and that constitutional changes adopted in the election would be void.

REPRESENTATIVE SIMPKINS asked **Sheri Heffelfinger, Legislative Council**, if the House amendment to Article IV, Section 7, and to Article XIV, Section 9, would make an election of an initiative or a referendum properly qualified, to be declared invalid, because the election was improperly conducted. He said the issue should be submitted to the qualifying electors in the next regular election. He stated his understanding, after visiting with the **SPEAKER OF THE HOUSE, JOHN MERCER**, that instead of being limited to the petition process itself, once the people voted on a constitutional initiative it was there to stay. He explained that if someone wanted to go back to find some other reason, it could not be challenged for any reason other than constitutionality under the U.S. Constitution.

SENATOR EMERSON said that the question was whether the Committee wanted to make the Bill even stronger than his original bill, which was the effect of the House amendments, and he said he thought that would be a good idea. **REPRESENTATIVE SIMPKINS** said "yes". He stated it really made no difference if a person had a conflict with the Constitution, as anybody was able to challenge that conflict with the Constitution in the courts. He declared the Supreme Court would say "yes" this article was in conflict with that article and they would rule which article had prominence. He said that if there was a conflict in the Constitution, the courts would strike one.

SENATOR EMERSON alleged that the courts decided which situation was more important and they could leave both in, so different situations could be applied to either one. **REPRESENTATIVE SIMPKINS'** related that the way the language currently read, the Constitution would not be changed.

Ms. Heffelfinger stated in answer to **REPRESENTATIVE SIMPKINS** first question, the Bill was creating an exception for constitutional initiatives. She stated that the only way a constitutional initiative which was passed in any election could be declared invalid for any reason had to be on the basis of constitutionality; which was a conflict with the U.S. Constitution.

SENATOR EMERSON stated he liked that idea.

REPRESENTATIVE SIMPKINS asked if they had to clarify the language by referring to the U.S. Constitution, rather than just stating "constitutionality". **Ms. Heffelfinger** answered that that was the only basis that **Mr. Petesch** thought "constitutionality" could be interpreted.

REPRESENTATIVE SIMPKINS asked what the Secretary of State's objection was to the language. **Joe Kerwin, Deputy Secretary of State**, conveyed they had a concern with the constitutionality question that had been brought up. He wanted the Committee to be aware that if there was a problem with an election, the Secretary of State, or any type of problem on the council level, the challenge would not be clear that election year. He said that if a county had an error on their ballots, or tabulated them wrong, once the canvass was finished there would be no way of correcting the problem (i.e. if an election was declared invalid the constitutional amendment passed by initiative would still have to be considered valid). He told the Committee that in recent years there had only been one challenge after an election, when in 1984 Constitutional Initiative 23 had been challenged. **Mr. Kerwin** related there had been efforts to pass a resolution stating Montana should adopt a balanced budget and that was something the court ruled couldn't be done because it was a resolution. He stated there had also been a problem related to voter information pamphlets regarding CI 30.

SENATOR EMERSON maintained that in 1986 a constitutional amendment had been thrown out after passage because somebody had underlined two words rather than drawing a line through the two words in the voter information pamphlet. He said the pamphlet had about six or eight pages and everything else was correct with the exception of that error on the front. He stated that all of the radio and television advertising had also been correct; however, it was thrown out. **SENATOR EMERSON** said he had read the entire report and thought the Supreme Court didn't want the initiative in the Constitution, so therefore found a way to get rid of it. He maintained that **REPRESENTATIVE SIMPKINS** had been trying to correct that type of situation, and agreed people (not the courts) should be making the Constitution and that was why he had proposed the amendment.

REPRESENTATIVE SIMPKINS asked if, in the history of Montana, an election had ever been rerun because it had been declared improper. **Mr. Kerwin** stated he would have to go back to check, but he was not aware of any.

REPRESENTATIVE SIMPKINS maintained that certain actions, such as initiatives had been invalidated; however, he was talking about total elections that had fallen under the provisions of Article IV, Section 7, Subsection (3) of the Montana Constitution.

SENATOR EMERSON expressed that he did not know of an instance.

REPRESENTATIVE SIMPKINS stated that the reason the Committee was being asked to look at this issue, was because of the simplicity of the wording. He maintained that it simply stated that once the people voted passage of a constitutional initiative, it was, no matter what, valid, unless a person wanted to challenge regarding the constitutional issue itself. He alleged that just because one county had some petitions that were off, or found an election was irregular in that county, the election wouldn't be redone.

SENATOR SUE BARTLETT maintained that she had managed elections and the potential was there for something to be on the ballot improperly, in spite of all the proofreading that was done. She contended that something could be on the ballot which caused the people to look at the question being asked in a way that was inaccurate, or didn't reflect the true measure, and then vote based on what they read on the ballot. She explained that the voters may, or may not, have accurately reflected their opinion.

SENATOR BARTLETT remarked that wasn't outright fraud, errors do happen; for example, she had left the County Attorney off the ballot in one election and it wasn't noticed until absentees had started to vote. **SENATOR BARTLETT** declared they had a system where it was immediately corrected; however, if they had gone all the way through the election, would they or would they not have had a County Attorney, because she missed that office on the ballot?

REPRESENTATIVE SIMPKINS insisted that would not affect an initiative for a constitutional amendment. He said if she had to cancel that election for that county, because of the described omission, the initiative would still have passed in her county. **SENATOR BARTLETT** questioned if that was correct, even though people had been voting on the basis of reading wrong information on the ballot.

SENATOR EMERSON stated that with an initiative there was a certain way it had to be publicized so people would have the opportunity to get its true meaning, whether it showed on the ballot just right or not, so he thought there was some protection.

REPRESENTATIVE SIMPKINS declared the initiative process itself had a greater interest than a referendum or any particular individual, because those signatures must be obtained by 10% or 15%, so there was a group that backed that initiative and there would be greater publicity on all aspects, not just the voter information pamphlet, but the initiative itself as well as the follow-up, the newspapers, articles, letters to the editor, etc., people would take positions on that.

REPRESENTATIVE SIMPKINS asked when an initiative had to be filed? **Mr. Kerwin** replied they had to be filed in mid July, so their office had enough time to thoroughly check it over.

REPRESENTATIVE SIMPKINS claimed the margin for error on an initiative process for a constitutional amendment would be far less than for other types of initiatives. He thought this really covered all aspects of the problem and it was hard for him to envision something the people would vote for that was really bad, as there would be too many people to get past beforehand.

SENATOR EMERSON related that in addition to what **REPRESENTATIVE SIMPKINS** had just stated, the constitutional initiative process caused the amendment to be published, as provided by law, twice each month, two months previous to the next regular state-wide election, that included the election in 1986 where it had been published twice and only on the one pamphlet had there been a mistake. He believed strongly that if the people had been contacted that had voted for and against it, they knew what they were voting for or against. He said he leaned with **REPRESENTATIVE SIMPKINS** in that he would like the Bill to be very strong.

REPRESENTATIVE SIMPKINS related that **REPRESENTATIVE DEB KOTTEL** had been strongly opposed to this; but stated he had talked with her regarding the present proposal and she agreed with it and felt the language was clear, rather than just a petition sufficiency.

REPRESENTATIVE JOE TROPILA asked about the concern of **Mr. Petesch**. **REPRESENTATIVE SIMPKINS** stated they did not have a concern. **SENATOR EMERSON** remarked that he had been the one with the concern that it didn't just mean the U.S. Constitution and he asked them if the Committee could put that term in and **Mr. Petesch** related "sure", put "U.S. Constitution" in, but he didn't think there would be any problem.

REPRESENTATIVE SIMPKINS said at the same time if there was a conflict in the Constitution between one section and another section, then a person would present that to the Judge, or the Supreme Court; whichever one was applicable. He assumed that would be on a case by case basis.

SENATOR AL BISHOP stated he didn't think they were adding anything by stating "only on its constitutionality"; he thought that didn't have to be stated. He stated that a person could always challenge on the basis of constitutionality regardless of what the Bill added. He told the Committee that as far as he was concerned if the "for" and "against" portions were clear, that was all the voters looked at.

REPRESENTATIVE SIMPKINS thought the Bill had a tough road at present, because it now had 63 votes and they needed 100. He said they had picked up a few more votes with the third reading.

Mr. Kerwin asked **Ms. Heffelfinger** if there was a question on the title. She stated "no".

SENATOR EMERSON stated there was an amendment to Article XIV, Section 9. **Ms. Heffelfinger** said it provided that constitutional initiatives may be challenged only on constitutional grounds.

REPRESENTATIVE SIMPKINS said he thought it was stronger and more encompassing than what they had to start with; however, if they thought they would get more votes the other way, they should try to put it back.

SENATOR EMERSON asked how the House Members were taking it now and **REPRESENTATIVE SIMPKINS** stated they were more apt to throw it out.

REPRESENTATIVE TROPILA declared that when it had come to the committee, he had voted for it the way it was written on the petition, before it went into the constitutionality. He stated anything could happen during an election, no matter how many times it was proofread, people do miss things.

SENATOR EMERSON stated they could go one of two ways, either back to the way the Bill was originally drafted, or they could insert "U.S. Constitution" to make sure that part was cleared up. He asked the Committee if that made sense to them.

REPRESENTATIVE SIMPKINS asked **REPRESENTATIVE TROPILA** if making reference to the constitutionality made the Bill better? **REPRESENTATIVE TROPILA** stated he liked the way **SENATOR EMERSON** had originally drafted the language "sufficiency of the petition". **REPRESENTATIVE TROPILA** stated it could be challenged by the election, or challenged by the voter information pamphlet, and he thought there were also existing statutes that dealt with constitutionality.

REPRESENTATIVE SIMPKINS stated that the way **SENATOR EMERSON** had drafted the Bill, a constitutional initiative could not be challenged on the basis of the sufficiency of the initiative petitions themselves. He stated that under the draft of the Bill, an initiative could still be challenged if somebody claimed there was an error, or misleading language, in the voter

information pamphlet (which was a separate document) and if that petition was correct, even though the error was made on the document published by the Secretary of State's office which misled the people, then it could be challenged even though the petition was correct. The petition is a separate document.

SENATOR EMERSON related that he interpreted the "initiative petition" as everything in the process and that the Supreme Court should not have thrown out an initiative because of an error in the voter information pamphlet because the pamphlet was part of the petition. He thought that the voter information pamphlet, etc., were all part of the petition.

REPRESENTATIVE SIMPKINS contended a referendum was published in exactly the same manner in the voter information pamphlet. But, he stated, there was a difference between a referendum, a voter information pamphlet, and an initiative.

SENATOR EMERSON maintained that the signing, publishing, all of that was part of the whole petition; the petition was not just that piece of paper. **REPRESENTATIVE SIMPKINS** explained the voter information pamphlet included referendums and initiatives, so the pamphlet was not part of the petition process. He said the Bill, as amended in the House, was simply stating in the initiative itself, if it made it through the election process, could not be challenged and thrown out, unless it was unconstitutional.

SENATOR EMERSON inquired about the meaning of "the sufficiency of the initiative petition shall not be questioned". **Ms. Heffelfinger** said the statement simply addressed the sufficiency of the correctness of the signatures on the petition to qualify the initiative for the ballot and the petition statement, itself. That was the petition process. She stated that once an initiative qualified for the ballot, there was a whole different process during the election.

REPRESENTATIVE SIMPKINS explained that he had described to **SPEAKER MERCER** the issue that **SENATOR EMERSON** was concerned about. He said that **SPEAKER MERCER** had related that the Bill as introduced did not take care of the concern about the error in the voter information pamphlet. **SENATOR EMERSON** remarked he had been erroneously assuming that the voter information pamphlet was part of the petition process. He told the Committee he thought they should go with **REPRESENTATIVE SIMPKINS** amendments, which were passed by the House.

Motion/Vote:


REPRESENTATIVE SIMPKINS' MOTION TO ACCEPT THE HOUSE COMMITTEE OF THE WHOLE AMENDMENT CARRIED 5-1 WITH SENATOR BARTLETT VOTING NO.

Motion/Vote:

REPRESENTATIVE RICK JORE'S MOTION TO ADOPT THE COMMITTEE REPORT
CARRIED 5-1 WITH SENATOR BARTLETT VOTING NO.

ADJOURNMENT

Adjournment: The meeting adjourned at 4:13 p.m.


SENATOR C.A. "CASEY" EMERSON, Chairman


CARLA TURK, Secretary

CE/cmt

Conference Committee
on SB 148
Report No. 1, April 11, 1995

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Mr. President and Mr. Speaker:

We, your Conference Committee on SB 148, met and considered:

House Committee of the Whole amendments to the third reading
copy -- blue, dated March 28, 1995.

We recommend that the amendments considered above to SB 148 be
acceded to by the Senate.

And that this Conference Committee report be adopted.

For the Senate:

Emerson

Chair

Bishop

Bartlett

Amd. Coord.

Sec. of Senate

For the House:

Simpkins

Chair

Jore

Tropila

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enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. Civilian control of the military. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. Importation of armed persons. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. Unenumerated rights. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. Servicemen, servicewomen, and veterans. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

ARTICLE III

GENERAL GOVERNMENT

Section

1. Separation of powers.
2. Continuity of government.
3. Oath of office.
4. Initiative.
5. Referendum.
6. Elections.
7. Number of electors.
8. Prohibition.
9. Gambling.

Section 1. Separation of powers. The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, but as this Legislative, Executive, or Judicial.

Section 2. Continuity of government. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. Initiative. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Section 5. Referendum. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. Elections. The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Section 7. Number of electors. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petition are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. Petition signers. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. Submission. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.

LEO GRAYBILL, JR., PRESIDENT	BRUCE M. BROWN
JEAN M. BOWMAN, SECRETARY	DAPHNE BUGBEE
MAGNUS AASHEIM	WILLIAM A. BURKHARDT
JOHN H. ANDERSON, JR.	MARJORIE CAIN
OSCAR L. ANDERSON	BOB CAMPBELL
HAROLD ARBANAS	JEROME J. CATE
FRANKLIN ARNESS	RICHARD J. CHAMPOUX
CEDOR B. ARONOW	LYMAN W. CHOATE
WILLIAM H. ARTZ	MAX CONOVER
THOMAS M. ASK	C. LOUISE CROSS
BETTY BABCOCK	WADE J. DAHOOD
LLOYD BARNARD	CARL M. DAVIS
GRACE C. BATES	DOUGLAS DELANEY
DON E. BELCHER	MAURICE DRISCOLL
BEN E. BERG, JR.	DAVE DRUM
E. M. BERTHELSON	DOROTHY ECK
CHET BLAYLOCK	MARIAN S. ERDMANN
VIRGINIA H. BLUND	

JAMES R. FELT	MARSHALL MURRAY
DONALD R. FOSTER	ROBERT B. NOBLE
NOEL D. FURLONG	RICHARD A. NUTTING
J. C. GARLINGTON	MRS. THOMAS PAYNE
E. S. GYSLER	CATHERINE PEMBERTON
OTTO T. HABEDANK	DONALD REBAL
ROD HANSON	ARLYNE E. REICHERT
R. S. HANSON	MRS. MAE NAN ROBINSON
GENE HARBAUGH	RICHARD B. ROEDER
PALL K. HARLOW	GEORGE W. ROLLINS
GEORGE HARPER	MILES ROMNEY
DANIEL W. HARRINGTON	STERLING RYGG
GEORGE B. HELIKER	DON SCANLIN
DAVID L. HOLLAND	JOHN M. SCHLITZ
ARNOLD W. JACOBSEN	HENRY SIDERIUS
GEORGE H. JAMES	CLARK E. SIMON
TORREY B. JOHNSON	CARMAN M. SKARI
THOMAS F. JOYCE	M. LYNN SPARKS
A. W. KAMHOOT	LUCILE SPEER
ROBERT LEE KELLEHER	R. J. STUDER, SR.
JOHN H. LEUTHOLD	MRS. JOHN JUSTIN
JEROME T. LOENDORF	(VERONICA) SULLIVAN
PETER "PETE" LORELLO	WILLIAM H. SWANBERG
JOSEPH H. MCCARVEL	JOHN H. TOOLE
RUSSELL C. McDONOUGH	MRS. EDITH M. VAN BUSKIRK
MIKE MCKEON	ROBERT VERMILLION
CHARLES B. MCNEIL	ROGER A. WAGNER
CHARLES H. MAHONEY	JACK K. WARD
RACHELL K. MANSFIELD	MARGARET S. WARDEN
FRED J. MARTIN	ARCHIE O. WILSON
J. MASON MELVIN	ROBERT F. WOODMANSEY
LYLE R. MONROE	

TRANSITION SCHEDULE

Transition Schedule. The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

- Section 1. Accelerated Effective Date (Executed)
- Section 2. Delayed Effective Date (Executed)
- Section 3. Prospective Operation of Declaration of Rights
- Section 4. Terms of Judiciary (Executed)
- Section 5. Terms of Legislators (Executed)
- Section 6. General Transition.
- Section 1. Accelerated effective date.** Executed (certified) December 4, 1974



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 148

Representative Simpkins

March 28, 1995 8:47 am

Page 1 of 2

Mr. Chairman: I move to amend Senate Bill 148 (third reading copy -- blue).

Signed: *Mark Simpkins*
Representative Simpkins

And, that such amendments to Senate Bill 148 read as follows:

1. Title, line 5.

Following: the first "TO"

Insert: "ARTICLE IV, SECTION 7, AND"

2. Title, line 6.

Strike: "INITIATIVE PETITIONS FOR"

Strike: "NOT"

Following: "CHALLENGED"

Insert: "ONLY ON CONSTITUTIONAL GROUNDS"

3. Page 1, line 10.

Insert: "Section 1. Article IV, section 7, of The Constitution of the State of Montana is amended to read:

"Section 7. Ballot issues -- challenges -- elections. (1)

An initiative or referendum that qualifies for the ballot under Article III or Article XIV shall be submitted to the qualified electors as provided in the Article under which the initiative or referendum qualified unless a new election is held pursuant to this section.

(2) A preelection challenge to the procedure by which an initiative or referendum qualified for the ballot or a postelection challenge to the manner in which the election was conducted shall be given priority by the courts.

(3) If Subject to Article XIV, section 9, if the election on an initiative or referendum properly qualifying for the ballot is declared invalid because the election was improperly conducted, ~~the secretary of state shall submit the issue~~ shall be submitted to the qualified electors at the next regularly

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SB 148

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scheduled statewide election unless the legislature orders a special election.""

Renumber: subsequent sections

4. Page 1, line 22.

Strike: "The sufficiency of"

Insert: "If approved by the qualified electors,"

Strike: "petition"

Strike: "not"

Strike: "after the election is held"

Insert: "only on its constitutionality"

5. Page 1, line 27.

Strike: "initiative petitions for"

Following: "amendments"

Insert: "enacted by initiative"

Strike: "not"

Following: "challenged"

Insert: "only on its constitutionality"

6. Page 1, line 29.

Strike: "initiative petitions for"

Following: "amendments"

Insert: "enacted by initiative"

Strike: "not"

7. Page 1, line 30.

Following: "challenged"

Insert: "only on its constitutionality"

-END-

CONSTITUTIONAL AMENDMENT

SENATE BILL NO. 148

INTRODUCED BY EMERSON, BURNETT, BAER, HARGROVE, HARDING, KEATING, MESAROS

A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 7, AND ARTICLE XIV, SECTION 9, OF THE MONTANA CONSTITUTION TO PROVIDE THAT INITIATIVE PETITIONS FOR CONSTITUTIONAL AMENDMENTS MAY NOT BE CHALLENGED ONLY ON CONSTITUTIONAL GROUNDS AFTER THE ELECTION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. ARTICLE IV, SECTION 7, OF THE CONSTITUTION OF THE STATE OF MONTANA IS AMENDED TO READ:

"Section 7. Ballot issues -- challenges -- elections. (1) An initiative or referendum that qualifies for the ballot under Article III or Article XIV shall be submitted to the qualified electors as provided in the Article under which the initiative or referendum qualified unless a new election is held pursuant to this section.

(2) A preelection challenge to the procedure by which an initiative or referendum qualified for the ballot or a postelection challenge to the manner in which the election was conducted shall be given priority by the courts.

(3) ~~Subject to Article XIV, section 9, if the election on an initiative or referendum properly qualifying for the ballot is declared invalid because the election was improperly conducted, the secretary of state shall submit~~ the issue shall be submitted to the qualified electors at the next regularly scheduled statewide election unless the legislature orders a special election."

Section 2. Article XIV, section 9, of The Constitution of the State of Montana is amended to read:

"Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published

as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

~~(4) The sufficiency of IF APPROVED BY THE QUALIFIED ELECTORS, the initiative petition shall not be questioned after the election is held ONLY ON ITS CONSTITUTIONALITY."~~

NEW SECTION. Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1996 by printing on the ballot the full title of this act and the following:

[] FOR providing that ~~initiative petitions for~~ constitutional amendments **ENACTED BY INITIATIVE** may ~~not~~ be challenged **ONLY ON ITS CONSTITUTIONALITY** after the election.

[] AGAINST providing that ~~initiative petitions for~~ constitutional amendments **ENACTED BY INITIATIVE** may ~~not~~ be challenged **ONLY ON ITS CONSTITUTIONALITY** after the election.

-END-

of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petition are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. Petition signers. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. Submission. If more than one amendment is submitted in the same election, each shall be so prepared and distinguished that it can be voted upon separately.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.

LEO GRAYBILL, JR., PRESIDENT	BRUCE M. BROWN
JEAN M. BOWMAN, SECRETARY	DAPHNE BUGBEE
MAGNUS AASHEIM	WILLIAM A. BURKHARDT
JOHN H. ANDERSON, JR.	MARJORIE CAIN
OSCAR L. ANDERSON	BOB CAMPBELL
HAROLD ARBANAS	JEROME J. CATE
FRANKLIN ARNESS	RICHARD J. CHAMPOUX
CEDOR B. ARONOW	LYMAN W. CHOATE
WILLIAM H. ARTZ	MAX CONOVER
THOMAS M. ASK	C. LOUISE CROSS
BETTY BABCOCK	WADE J. DAHOOD
LYLOYD BARNARD	CARL M. DAVIS
GRACE C. BATES	DOUGLAS DELANEY
DON E. BELCHER	MAURICE DRISCOLL
BEN E. BERG, JR.	DAVE DRUM
E. M. BERTHELSON	DOROTHY ECK
CHET BLAYLOCK	MARIAN S. ERDI
VIR H. BEND	LESLIE ESKILDSEN
GEOFFREY L. BRAZIER	MARK ETCHART

JAMES R. FELT	MARSHALL MURRAY
DONALD R. FOSTER	ROBERT B. NOBLE
NOEL D. FURLONG	RICHARD A. NUTTING
J. C. GARLINGTON	MRS. THOMAS PAYNE
E. S. GYSLER	CATHERINE PEMBERTON
OTTO T. HABEDANK	DONALD REBAL
ROD HANSON	ARLYNE E. REICHERT
R. S. HANSON	MRS. MAE NAN ROBINSON
GENE HARBAUGH	RICHARD B. ROEDER
PAUL K. HARLOW	GEORGE W. ROLLINS
GEORGE HARPER	MILES ROMNEY
DANIEL W. HARRINGTON	STERLING RYGG
GEORGE B. HELIKER	DON SCANLIN
DAVID L. HOLLAND	JOHN M. SCHLITZ
ARNOLD W. JACOBSEN	HENRY SIDERIUS
GEORGE H. JAMES	CLARK E. SIMON
TORREY B. JOHNSON	CARMAN M. SKARI
THOMAS F. JOYCE	M. LYNN SPARKS
A. W. KAMHOOT	LUCILE SPEER
ROBERT LEE KELLEHER	R. J. STUDER, SR.
JOHN H. LEUTHOLD	MRS. JOHN JUSTIN
JEROME T. LOENDORF	(VERONICA) SULLIVAN
PETER "PETE" LORELLO	WILLIAM H. SWANBERG
JOSEPH H. MCCARVEL	JOHN H. TOOLE
RUSSELL C. McDONOUGH	MRS. EDITH M. VAN BUSKIRK
MIKE McKEON	ROBERT VERMILLION
CHARLES B. McNEIL	ROGER A. WAGNER
CHARLES H. MAHONEY	JACK K. WARD
RACHELL K. MANSFIELD	MARGARET S. WARDEN
FRED J. MARTIN	ARCHIE O. WILSON
J. MASON MELVIN	ROBERT F. WOODMANSEY
LYLE R. MONROE	

TRANSITION SCHEDULE

Transition Schedule. The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

- Section 1. Accelerated Effective Date (Executed)
- Section 2. Delayed Effective Date (Executed)
- Section 3. Prospective Operation of Declaration of Rights
- Section 4. Terms of Judiciary (Executed)
- Section 5. Terms of Legislators (Executed)
- Section 6. General Transition.

Section 1. Accelerated effective date. The date of the effective date of the Constitution shall be the date of the adoption of the Constitution.

Section 2. Delayed effective date. The date of the effective date of the Constitution shall be the date of the adoption of the Constitution.

enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. Civilian control of the military. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. Importation of armed persons. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. Unenumerated rights. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. Servicemen, servicewomen, and veterans. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

ARTICLE III

GENERAL GOVERNMENT

Section

1. Separation of powers.
2. Continuity of government.
3. Oath of office.
4. Initiative.
5. Referendum.
6. Elections.
7. Number of electors.
8. Prohibition.
9. Gambling.

Section 1. Separation of powers. The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the

Section 2. Continuity of government. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. Initiative. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Section 5. Referendum. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. Elections. The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Section 7. Number of electors. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the pre-

DATE 4/10/95
SENATE COMMITTEE ON Conference Comm.
BILLS BEING HEARD TODAY: SB 148

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Joe Kerwin	SOS	SB 194		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY