

House Bill 769

In The House

February 14, 1981

Introduced and referred  
to Committee on Local  
Government.

February 23, 1981

Committee recommend bill  
do not pass.

1 House BILL NO. 769  
2 INTRODUCED BY Huswitz

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR AN  
5 ELECTION IN A COUNTY WITH A COMMISSION FORM OF GOVERNMENT ON  
6 A PROPOSITION FOR FILLING THE POSITION OF COUNTY SHERIFF  
7 THROUGH APPOINTMENT BY A SHERIFF COMMISSION; TO ALLOW THE  
8 CREATION OF A SHERIFF COMMISSION TO APPOINT SUCH SHERIFF;  
9 AMENDING SECTIONS 7-4-2203, 7-4-2205, 7-4-2206, AND  
10 7-4-2209, MCA."

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

12 NEW SECTION. Section 1. Petition for appointed  
13 sheriff. The electors of a county with a commission form of  
14 government may propose by petition that a vote of the people  
15 be taken to provide for appointment of the county sheriff by  
16 a sheriff commission, which would be created for the purpose  
17 of appointing the sheriff.

18 NEW SECTION. Section 2. Content of petition. A  
19 petition under [section 1] must contain the statement to be  
20 used on the ballot. The statement shall be written in a  
21 manner similar to the following example:

- 22  FOR filling the position of county sheriff through  
23 appointment by a sheriff commission.
- 24  AGAINST filling the position of county sheriff
- 25

1 through appointment by a sheriff commission.  
2 NEW SECTION. Section 3. Signatures -- filing of  
3 petition -- notice. (1) In order to qualify as a measure on  
4 the ballot, a petition must be signed by at least 5% of the  
5 electors of a county and filed with the county clerk at  
6 least 40 days before the first Tuesday of April in a year  
7 during which an election would otherwise be held for the  
8 office of county sheriff.

9 (2) The county clerk, immediately upon the filing of  
10 the petition, shall cause to be printed in every newspaper  
11 published within the county once a week for 3 consecutive  
12 weeks a notice that a petition for the appointment of the  
13 county sheriff by a sheriff commission has been filed with  
14 the county clerk, that such petition is open to inspection  
15 by any interested person, and that an election on the  
16 measure will be held in accordance with the provisions of  
17 [section 4].

18 NEW SECTION. Section 4. Conduct of election. (1) An  
19 election for or against the appointment of the county  
20 sheriff shall be held and conducted and the returns made by  
21 the county election administrator in conjunction with the  
22 school elections provided for in Title 20, chapter 20, but  
23 in the manner prescribed for the general elections in Title  
24 13. The costs incurred for placing the measure on the  
25 ballot must be borne by the county.

1 (2) The question on the ballot shall be written in the  
2 same manner in which it is written on the petition pursuant  
3 to [section 2].

4 NEW SECTION. Section 5. Determination and publication  
5 of election results. The election returns must be received  
6 and compared and the results ascertained by the county  
7 election administrator. If a majority of the electors voting  
8 on the question have voted in favor of appointing the county  
9 sheriff, the election administrator shall give notice of the  
10 results by posting notices thereof in all the election  
11 precincts of the county and by publishing a like notice in a  
12 newspaper printed in the county at least once a week for 4  
13 weeks.

14 NEW SECTION. Section 6. Transmittal of election  
15 results. Whenever an election has been held as provided for  
16 in [sections 1 through 14], the statement made by the county  
17 election administrator showing the result thereof must be  
18 transmitted to the office of the county clerk.

19 NEW SECTION. Section 7. Reversion to elected county  
20 sheriff. The electors of a county in which a sheriff is  
21 appointed may revert to the filling of that office by  
22 election in the same manner as provided in [sections 1  
23 through 6]. If the electors of a county choose to revert to  
24 electing the county sheriff, the sheriff commission, as  
25 established in [section 8], shall be disbanded.

1 NEW SECTION. Section 8. Sheriff commission  
2 established -- appointments. (1) A three-member sheriff  
3 commission shall be established if, in an election pursuant  
4 to [section 4], a majority of the electors of a county vote  
5 in favor of filling the position of county sheriff by  
6 appointment.

7 (2) One commission member shall be appointed by each  
8 of the following:

- 9 (a) the board of county commissioners;  
10 (b) the governing body of the city or town that is the  
11 county seat; and  
12 (c) the members of the governing bodies that made the  
13 appointments in subsections (2)(a) and (2)(b), meeting in  
14 joint session.

15 (3) In order to be appointed, a candidate for  
16 appointment at the joint meeting must receive a majority of  
17 the combined votes of the members of both governing bodies  
18 voting on the question, meeting in such joint session.

19 (4) No commission member may be an official of any  
20 unit of local government.

21 (5) (a) Initially, one commission member shall serve a  
22 4-year term, one shall serve a 3-year term, and one shall  
23 serve a 2-year term. The length of each member's term shall  
24 be determined by lot.

25 (b) Thereafter, all appointments shall be for 4-year

1 terms.

2 NEW SECTION. Section 9. Chairman. (1) At the first  
3 meeting of the sheriff commission, the member jointly  
4 appointed by the board of county commissioners and the  
5 governing body of the city or town shall be designated by  
6 the commission to serve as temporary chairman.

7 (2) As their first official act, the commission  
8 members shall select a chairman.

9 NEW SECTION. Section 10. Meetings. The sheriff  
10 commission shall meet as often as necessary until the  
11 sheriff is appointed. Thereafter, the sheriff commission  
12 shall meet at least 1 day but not more than 3 days a month.

13 NEW SECTION. Section 11. Vacancies. (1) A vacancy on  
14 the sheriff commission shall be filled by a person appointed  
15 in the same manner as the member he replaces. A person so  
16 appointed shall serve out the unexpired portion of the term  
17 of the person he replaces.

18 (2) A member of a sheriff commission is eligible for  
19 reappointment at the end of his term.

20 NEW SECTION. Section 12. Removal for cause. A  
21 commission member may be removed for cause by the governing  
22 body or bodies that appointed him.

23 NEW SECTION. Section 13. Compensation and expenses.  
24 (1) Each member of a sheriff commission is entitled to  
25 compensation established jointly, by resolution, by the

1 board of county commissioners and the governing body of the  
2 city or town that is the county seat, in an amount not to  
3 exceed \$40 a day for each day's attendance at meetings of  
4 the commission.

5 (2) Each member of the commission is entitled to a  
6 mileage allowance as provided in 2-18-593 for the distance  
7 actually and necessarily traveled between the county seat  
8 and his place of residence to perform official duties. Any  
9 commissioner whose place of residence is 50 miles or more  
10 from the county seat, as measured by the usual route of  
11 travel, and who elects to remain more than 1 day in the  
12 county seat to attend meetings of the commission or perform  
13 his official duties is entitled to receive, in addition to  
14 mileage for one round trip between his place of residence  
15 and the county seat, \$18 a day as expenses for each day's  
16 attendance at meetings of the commission and while engaged  
17 in the performance of his official duties.

18 (3) All claims for lodging expense reimbursement  
19 allowed under this section must be documented by an  
20 appropriate receipt.

21 (4) When other than commercial, nonreceiptable lodging  
22 facilities are utilized by a commissioner, the amount of \$7  
23 will be authorized for lodging expenses for each day in  
24 which travel involves an overnight stay in lieu of the  
25 amount authorized in this section. However, when overnight

1 accommodations are provided at the expense of any government  
2 entity, no reimbursement may be claimed for lodging.

3 (5) Compensation and expenses shall be borne:

4 (a) by the county for the commission member appointed  
5 by the board of county commissioners;

6 (b) by the city or town that is the county seat for  
7 the commission member appointed by the city or town  
8 governing body; or

9 (c) equally by the county and the city or town that is  
10 the county seat for the commission member appointed jointly.

11 (6) This section does not apply to a city or town that  
12 has adopted a charter form of government.

13 NEW SECTION. Section 14. Appointment of sheriff. (1)  
14 The sheriff commission shall appoint the county sheriff no  
15 later than the first Monday of January following the  
16 election held pursuant to [section 4]. The appointed sheriff  
17 shall take office on the first Monday of January following  
18 that election pursuant to 7-4-2205(3).

19 (2) An appointed county sheriff must meet the same  
20 qualifications as required for an elected county official  
21 under 7-4-2201.

22 (3) An appointed county sheriff serves at the pleasure  
23 of the sheriff commission.

24 (4) A vacancy in the position of appointed county  
25 sheriff shall be filled in the same manner as the original

1 appointment. A person so appointed shall take office  
2 immediately upon appointment and shall serve out the  
3 unexpired portion of the term of the sheriff he replaced.

4 (5) An appointed county sheriff is eligible for  
5 reappointment at the end of his term.

6 Section 15. Section 7-4-2203, MCA, is amended to read:

7 "7-4-2203. County officers. (1) There may be elected  
8 or appointed the following county officers, who shall  
9 possess the qualifications for suffrage prescribed by the  
10 Montana constitution and such other qualifications as may be  
11 prescribed by law:

- 12 (a) one county attorney;
- 13 (b) one clerk of the district court;
- 14 (c) one county clerk;
- 15 (d) one sheriff;
- 16 (e) one treasurer;
- 17 (f) one auditor if authorized by 7-6-2401;
- 18 (g) one county superintendent of schools;
- 19 (h) one county surveyor;
- 20 (i) one assessor;
- 21 (j) one coroner;
- 22 (k) one public administrator; and
- 23 (l) at least one justice of the peace.

24 ~~(2) A three-member sheriff commission, as provided in~~  
25 ~~[section 8], shall appoint the county sheriff if a majority~~

1 of the electors in the county vote in favor of filling the  
2 position by appointment.

3 ~~(2)(3)~~ The commissioners may appoint at their  
4 discretion constables. Not more than one constable may be  
5 appointed for each justice's court.

6 ~~(3)(4)~~ All elective township officers may be elected  
7 at each general election as now provided by law."

8 Section 16. Section 7-4-2205, MCA, is amended to read:

9 "7-4-2205. Term of office. (1) ~~Persons A sheriff~~  
10 ~~appointed pursuant to [section 14] and persons~~ elected to  
11 the different offices named in 7-4-2203 shall hold their  
12 respective offices for the term of 4 years and until their  
13 successors are ~~appointed or~~ elected and qualified.

14 (2) ~~Persons Except as provided for appointed county~~  
15 ~~sheriffs pursuant to [section 14], persons~~ appointed to the  
16 different offices serve at the pleasure of the  
17 commissioners.

18 (3) ~~The An appointed county sheriff and the~~ officers  
19 mentioned in this part must take office on the first Monday  
20 of January succeeding their ~~the appointment or~~ election,  
21 except the county treasurer, whose term begins on the first  
22 Monday of March next succeeding his election."

23 Section 17. Section 7-4-2206, MCA, is amended to read:

24 "7-4-2206. Vacancies. (1) For the purposes of this  
25 part, "vacancy" has the same meaning as prescribed in

1 2-16-501.

2 (2) Vacancies in all county offices, except that of  
3 county commissioner, shall be filled by appointment by the  
4 board of county commissioners. Except for the justice of the  
5 peace, the appointee shall hold his office, if elective,  
6 until the next general election unless otherwise provided in  
7 subsections (3) or (4), and if not elective, the appointee  
8 serves at the pleasure of the commissioners.

9 (3) Whenever a vacancy occurs 50 days or more before  
10 the general election held during the second year of the  
11 term, an individual shall be elected to complete the term at  
12 that general election. The election procedure to be used to  
13 elect the successor is as follows:

14 (a) Whenever the vacancy occurs 50 days or more before  
15 the primary election during the second year of the term, the  
16 same procedure shall be utilized as is used to elect a  
17 person to that office for a full 4-year term.

18 (b) Whenever the vacancy occurs after the 50th day  
19 preceding the primary election, any political party desiring  
20 to enter a candidate in the general election shall select a  
21 candidate as provided in 13-38-204. A political party shall  
22 notify the clerk and recorder of the party nominee. A  
23 person desiring to be a candidate as an independent shall  
24 follow the procedures provided in 13-10-501 and 13-10-502.  
25 The petition for an independent candidate shall be filed

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1 with the clerk and recorder on or before the 40th day prior  
2 to the general election. A candidate for a nonpartisan  
3 office shall file as provided in Title 13, chapter 14.

4 (4) Whenever a vacancy occurs after the 50th day  
5 preceding the general election held during the second year  
6 of the term, the person appointed by the commissioners under  
7 7-4-2206(2) shall serve until the end of the term.

8 (5) Vacancies occurring in the office of justice of  
9 the peace shall be filled as provided in Title 3, chapter  
10 10, part 2.

11 ~~(6) A vacancy occurring in the office of an appointed~~  
12 ~~county sheriff shall be filled as provided in [section 14]."~~

13 Section 18. Section 7-4-2209, MCA, is amended to read:

14 "7-4-2209. Authority to administer oaths. Every  
15 officer mentioned in ~~7-4-2203(1)~~ subsections (1) and (2) of  
16 7-4-2203 may administer and certify oaths."

-End-