

The Interim: The Back Page

Published by the Montana Legislative Services Division
December 2013

The Quest for Legislative Improvement

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The 2013-2014 Legislative Council focused on legislative improvement in its biennial strategic planning session earlier this year. As in any institution or corporation, striving for continual improvement is not a novel concept, but one borne of care, concern and a commitment to providing the best service or product that one can. The Legislative Council's specific areas of concern focus on: the session structure and legislative calendar, including the frequency with which the Legislature meets; staffing for leadership and legislators; budget and legislator support and compensation; orientation and training; and the need for public information and outreach to strengthen trust in the institution.

The current desire to look at the Montana Legislature and ways to strengthen it is spurred in part by the increasing amount of turnover that has occurred since passage of term limits in 1992. However, the concerns cited by the Legislative Council in August are, in fact, a historic and perennial topic of conversation.

Themes related to bicameralism vs. unicameralism, the size of the Legislature and legislative compensation, how often the Legislature should meet, and legislative rules and processes are common throughout Montana's history. Many of the problems have been resolved or at least addressed, leading to practices that are now taken for granted. Other ideas remain a continual source of discussion and study, with no apparent resolution. It is often easier to organize against change than to champion it, and the inertia of the status quo persists.

The 1950s: Advent of the Legislative Council

The Montana Legislature has been studied multiple times, as have most state legislatures across the country. The Legislative Council itself was a result of study — both the committee that bears the name and the staff division that it administers. The Legislative Services Division was originally called the Montana Legislative Council.

"The Legislative Council movement . . . began in Kansas in 1933. By 1958, there were legislative councils or council-type agencies in 36 states." (Tidball, 2008) Although the movement began in the 1930s, provisions in the Montana Constitution combined with efforts by special interest groups kept that movement at bay in Montana until 1953. That year, the Legislature passed a law to establish a Legislative Council. However, the Montana Supreme Court held the law to be unconstitutional in *Mitch v. Holmes*. In 1957, the Legislature passed another attempt at creating a Legislative Council, making changes to address some of the concerns raised in the court case. This law stood the constitutional test.

The new Legislative Council, chaired by Sen. David James, hired as its executive director a young attorney named Eugene Tidball, and the newly formed 12-member, bipartisan committee — the Legislative Council — began to meet frequently to work on what the Montana Legislative Council could become. "Research, budget analysis, legal services (encompassing bill drafting and statutory revision), and post auditing" (ibid.) were the potential tasks discussed. All studies by the council in the future were to conclude with recommendations and proposed legislation.

The first Legislative Council studied the Montana State Prison and the lack of a state budgeting system and incomplete budget analysis. It recommended that the governor be the chief budget officer of the state, responsible for apportioning the budget between executive agencies and recommending revenue measures necessary to balance the budget. The council formed a subcommittee to analyze the executive budget, staffed by a legislative fiscal analyst. A month before the 1959 legislative session began, the council hired two temporary lawyers. A pre-session bill drafting service was begun to assist two law clerks temporarily hired by each house. This marked a change from the previous practice in which professional lobbyists or attorneys for special interests drafted bills for legislators. A temporary research assistant also was hired.

The 1959 Legislature appropriated money for the Legislative Council committee and staff for the next biennium, including the interim in between legislative sessions. The council hired a staff of three: Tidball as director, Richard Roeder as research assistant, and Rosemary Acher as secretary. The second interim included a study of state government, which at that time consisted of a complicated structure of eight elected officials and 109 executive agencies, including all kinds of boards, commissions, institutions and advisory bodies. A study on legislative practices recommended reducing the number of standing committees from 36 to 15 or 16, consolidating first and second reading of bills, developing a new system of printing bills, and planning for a pre-session caucus. The third interim resulted in additional Legislative Council subcommittees, adding eight non-council legislators to study five topics (a precursor to the current system of interim committees).

The Legislative Council spent the duration of the decade studying Montana government and making recommendations that were enacted by the Legislature. These acts formed the structure of state government, including the Legislature as it exists today.

The 1960s: Multiple Studies, New Approaches

In 1963 and 1964, the Legislature charged the Legislative Council with a comprehensive study of the rules of the Legislature. The council was to clarify, simplify and coordinate the rules of the House of Representatives and the Senate — without causing any radical change in the procedures of the two houses. The legislative rules subcommittee decided to employ joint rules as often as possible to comply with that directive. Members started with the original House and Senate rules as the basis for discussion, compared any rules on the same subject, deleted unnecessary provisions, and simplified and recast desirable ones. The report (Legislative Council, 1964) stated that the most important changes in the new rules were the elimination of one reading of bills on introduction, the elimination of memorials (resolutions would be used

instead), and the adoption of Mason's Manual of Legislative Procedure as authority in both houses. Many of these rules look similar to the ones currently in use, although amendments and attempts to improve upon them occur every session.

In August 1966, the Legislative Council created the nonpartisan Montana Citizens Committee on the State Legislature. A four-person subcommittee of the council appointed 39 members, including state Sens. David F. James and Jean A. Turnage, Reps. Fred Broeder, Jr., and Thomas Judge, former legislators and governors, attorneys, ranchers, publishers, educators and leaders of many state organizations.

The Montana Citizens Committee on the State Legislature reported to the 40th Legislative Assembly of Montana in January 1967 and recommended:

- a constitutional amendment to provide for annual legislative sessions;
- an increase in compensation for legislators from \$35 to \$50 per legislative day and reimbursement for one round-trip to Helena at 8 cents a mile, as well as compensation of \$25 a day, 8 cents per mile and actual expenses for interim committee work;
- development of adequate facilities, including parking space, and a study to provide for better office space for legislative work, committee meetings, public hearings and luncheon facilities; and
- continued study of the legislative branch with citizen participation.

Committee members also considered, but did not act on, a recommendation for additional staff, including another full-time bill drafter. In their postscript, they mentioned the work of a committee that was meeting concurrently and that came up with similar recommendations. (Montana Citizens Committee, 1967)

That committee was the Montana-Idaho Assembly on State Legislatures, which convened in Missoula on Dec. 1-4, 1966. Sponsored by the University of Montana and the American Assembly of Columbia University, the assembly involved 69 participants from Montana and Idaho. Although it was not connected to the Montana Citizens Committee mentioned above, some of the group's recommendations were consistent. The assembly recommended:

- continuation of a citizen Legislature;
- removal of the constitutional restriction on length of legislative sessions (60 calendar days), so legislatures would be free to determine the frequency and length of legislative sessions;
- removal of some constitutional restrictions and the use of statutes instead;

- legislative salaries that were sufficient so that most citizens could afford to serve;
- adequate staff for legislative councils, the use of interim committees for budget analysis, post-audit, and review of administrative policy, and use of the same staff for standing and interim committees; and
- the use of orientation sessions for newly elected legislators.

In addition, the group noted the inadequacy of facilities, saying: "Legislatures need a sufficient number of committee rooms properly equipped. Legislators require work and consultation facilities in addition to the legislative chambers." (Montana Citizens Committee, 1967)

Landmark civil and voting rights decisions were passed by the courts in the mid-1960s, spurring further changes. The principle of "one-person, one-vote" forced reorganization of legislatures in the form of districting and apportionment. It also led to other discussions of legislative organization and process. The studies and decisions contributed to a culmination of interest in holding a constitutional convention. The 1972 Constitutional Convention subsequently affirmed and codified some of the legislative changes and gave the people of Montana some new choices.

The 1970s: Voters Shape Legislative Structure

The Constitutional Convention put the questions of legislative structure and process to the voters. The electorate chose a bicameral Legislature and adopted a proposal to meet in annual sessions of 60 legislative days, with the Legislature being a continuous body during the biennium (June 2, 1972, election). After the Legislature held just one "annual" session, the people of Montana reversed course. By initiative, they approved an amendment to the Montana Constitution to provide for 90-day biennial legislative sessions (Constitutional Initiative No. 1, Nov. 5, 1974.)

Although the 1972 Constitution and the subsequent amendment set the parameters of our current Legislature and reflected the thought of the day, some of these questions had recurred over time. Unicameralism — or a legislature made up of only one chamber — was proposed in 1937, 1949, 1967 and 1969 (Speer, 1971) and was a major point of discussion during the 1972 Constitutional Convention. Convention delegates decided to give the electorate the choice between unicameralism and bicameralism; unicameralism garnered 95,259 votes, while bicameralism received 122,425 votes. (Laws of Montana, 1973)

The length of the session also has been a common topic. The 1889 Montana Constitution specified biennial sessions of 60 calendar days each. Prior to the 1972 Constitutional Convention, the previous 12 sessions of the Montana Legislature had exceeded 60 days and the governor called special sessions after adjournment in 1967, 1969 and 1971 to allow for completion of business. (Speer, 1971) [In the original Montana Constitution, only the governor could call special sessions.] Discussions for the new constitution ranged from placing no limits on the length of the session to having sessions of 60, 80 or 90 legislative days. These discussions

were held in concert with those on annual or biennial sessions. The final proposal remained at 60 days in annual sessions, although that was promptly changed as noted above.

Refinement of Structure, Processes

Despite the changes made in the early 1970s, the 1977 Legislature established a Legislative Improvement Interim Committee of eight legislators to make recommendations to the 1979 Legislature on bill limits, time management and ways to expedite the legislative process. Final recommendations included:

- providing deadlines for agency bills and pre-introduction of bills;
- setting caucus and orientation dates and a deadline for committee appointments;
- requesting that the State of the State address be given on the first legislative day;
- allowing joint sponsorship of bills;
- revising bill request and introduction deadlines;
- providing for the consent calendar;
- prohibiting Appropriations Committee members from serving on substantive committees that met at the same time
- providing for committee block scheduling;
- providing rules on adverse committee reports;
- requiring amendments for second reading to be prepared and delivered before the amendment was voted upon;
- providing conference committee report formats and engrossing of adopted amendments; and
- requiring ranking of interim committee study resolutions prior to session adjournment.

The Interim Committee on Legislative Improvement also provided recommendations to the pre-session caucuses in 1980, on bills limits, effective dates, staffing and scheduling.

In 1980, the Interstate Consulting Clearinghouse of the Council of State Governments conducted a study of the organization of Montana's legislative staffing. The organization of the various legislative staff agencies had become diffused among several independent and potentially conflicting staff providers. There were five independent staff units, two clerks, two

administrative committees and leaders in each house — all providing staff. This structure led to jurisdictional fights between legislators and staff and contributed to confusion and duplication of services. The study recommended creation of an overall management mechanism and said the Legislative Council could fulfill that role. It also recommended that legislative leaders serve on the council, including the speaker of the House, the president of the Senate, and the presiding officers of the Finance and Claims, Taxation and State Administration committees.

In 1987, the Legislature created the Legislative Reorganization and Improvement Commission, made up of 12 legislative and public members. The commission made recommendations on bill limits and deadlines, appropriations subcommittees and revenue estimates, procedural changes for committee bills and adverse committee reports, and appeal of fiscal notes. It also recommended that a four-member leadership committee oversee a more uniform administration of the legislative agencies and committees.

An Ongoing Discussion

Recently, other entities have also studied the Legislature. The Burton K. Wheeler Center commissioned a study on Legislature Reform and Representative Government in Montana (Calvert, 1993). The agenda for reform included returning to annual legislative sessions, reducing the size of the Legislature, increasing public access and legislative visibility, and making the job more attractive — all topics relevant to the current Legislative Council discussion.

Following the contentious 2007 legislative session, the Wheeler Center held a two-day conference entitled "Strengthening Montana's Legislative Process: Ideas and Strategies for Reform." Discussions of annual sessions and term limits arose again. Ideas abounded for ways to improve the Legislature, including providing more time between the rancorous election cycle and the start of a session and moving the session to even-numbered years instead of odd-numbered years. That same year, Humanities Montana held a conference on Public Discourse in Montana, for which the 2007 session provided a partial catalyst. The conference brought calls for more civility and to "ramp up your style and grace." (Independent Record, 10/7/2007)

Many of the past recommendations have been implemented over time and are in place today. Staffing organization topics were revisited again in 1989, 1991, 1993 and 1994. The consolidation of the legislative branch agencies — the Legislative Services, Fiscal and Audit divisions — was passed in 1995. Orientation sessions have occurred in their current form since at least 2001 and are conducted by staff from all three divisions. The directors of the three divisions of the legislative branch meet every other week to keep current and administer a uniform pay plan and administrative manual. All divisions work on orientation, training and outreach to legislators, so that lawmakers may better understand staff services and receive coordinated information from staff.

Continuing the Tradition

The 2013-14 Legislative Council is continuing in the fine tradition of the dedicated study of the legislative institution. The areas of concern are recurrent, yet timely:

- how often the Legislature should meet;
- how long legislative sessions should last and what deadlines are needed to maintain pressure to finish business;
- how much funding and staffing is needed to make the Legislature an equal partner in state government;
- how training and orientation can be improved to provide new legislators with the information necessary to do their work and to allow all legislators to improve their understanding of the nuances of the institution; and
- foremost, how public outreach can be enhanced to strengthen the institution.

The desire to improve the Legislature and to keep it responsive, efficient and effective will benefit from all of the past work and study.

The Legislature is a dynamic institution that has evolved over time. As a part of a citizen Legislature, the Legislative Council holds the opinions and ideas of all citizens dear. All citizens in Montana are stakeholders, and the Legislative Council invites all to share perspectives, experience, information and ideas as it considers ways to improve the institution. Stakeholders will be offered opportunity at each council meeting to come forward and be a part of the study.

For more information on opportunities to participate in Legislative Council meetings or for related reports and a bibliography of sources used for this article, please visit the Legislative Council website, www.leg.mt/legcouncil.

The next Legislative Council meeting is set for Jan. 8 at the Capitol in Helena.