

Considerations for Changing the Size of the Legislature
Prepared for Legislative Council
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Legal Considerations:

- ▶ Article V, section 2 of the Montana Constitution states that, "The size of the legislature shall be provided by law", which is also reiterated in 5-2-101, MCA, and the constitution limits the senate to not more than 50 or fewer than 40 members, and the house shall not have more than 100 or fewer than 80 members.
- ▶ Article V, section 3 states that, "One-half of the senators shall be elected every two years".
- ▶ Article V, section 14 states that, "The state shall be divided into as many districts as there are members of the house... Each senate district shall be composed of two adjoining house districts...".
- ▶ Section 5-1-101(2), MCA, provides that "The plans for redistricting and apportionment of legislative districts must be based on the number of members of the house of representatives and the senate to be determined in the legislative session before the census".
- ▶ The first Districting and Apportionment Commission used the number of seats at 100 house districts and 50 senate districts and no other number has been established by law.
- ▶ An analysis of the effect on the Native American majority-minority districts and the Voting Rights Act would need to be conducted.
- ▶ Because past legal analyses have determined that the 1973 Attorney General Opinion may be an impediment to changing the size of the legislature, the following considerations regarding legislative intent specific to addressing that AG Opinion could be included in any draft legislation:
 - (1) It is the intent of the legislature to determine by law the size of legislature as provided in the Montana constitution.
 - (2) Any legislation is intended to change the laws involved in the attorney general opinion issued in 1973, 35 A.G. Op. 12. The intent is not to negate any action by the commission. The legislature in 1971 attempted to not only enact the size of the legislature, but also provided how it would be redistricted and reapportioned.
 - (3) Legislation would be intended to provide the construct upon which the Commission will accomplish their constitutional duty. The Districting and Apportionment Commission currently does not exist and will be appointed in the 2019 session or the 2029 session. If a change in the size of the legislature becomes law prior to its creation, there will be no absurd result as concluded by the AG Opinion, as the commission will perform its duty under the constitution and redistrict and reapportion to the number of districts as determined by law.
 - (4) The power of the legislature in enacting laws, including one to determine the size of the legislature, has not been curtailed by the constitution, only curtailed in its authority to redistrict and reapportion itself. By creating a Districting and Apportionment Commission to prepare a plan to redistrict the state and reapportion its population into legislative districts, the constitution did not explicitly place the power to determine size in the hands of the Commission, but left it to be "determined by law" which is in the authority of the legislature in the normal course of government.

Initial Decisions

1. To propose to change the size of the legislature or not.

If the answer is to proceed, in order to draft legislation to change the size of the legislature, there are two basic, possibly dependent, decisions to be made, with varying levels of legal risk.

2. Size of legislature, number of house and senate districts:

a. within Constitutional limits - between 40 and 50 senate districts and between 80 and 100 house districts; 2 house districts in each senate district

b. change Constitution - less than 40 or more than 50 senate districts, less than 80 or more than 100 house districts; change ratio and configuration of house to senate districts.

3. Options for method of change:

a. Statutory - enact section determining size of legislature

b. Legislative Referendum - provide voters the opportunity to enact section determining size of legislature

c. Constitutional amendment - provide voters opportunity to amend the constitution to remove legal impediments to changing the size of the legislature.

Secondary Decisions

Once the basic decisions are made, the secondary decisions will be narrowed and basically involve:

1. Timing - when would legislation be passed and when would it take effect.

A statutory change could be made in 2019 and take effect for the 2024 election. A legislative referendum or constitutional amendment could be passed in the 2019 through 2027 sessions for the ballot in the succeeding year, as long as it was in effect prior to the 2029 session when the next Districting and Apportionment Commission would be appointed. The new legislature could not take effect until the 2034 election.

2. Transition

Determine how it would affect the term of holdover senators (40 A.G. Op 2(1983)) that terms may not be shortened as a result of reapportionment and redistricting), and the election of half of the members of the Senate each election (Article V, section 3).

Comparison to 2010 and Example Based on 2015 Estimated Population

2010 Population: 989, 415 people

2015 Population Estimate: 1,032,949 people

Plus or minus 3% deviation used as an example as that is what the 2010 Districting and Apportionment Commission adopted (not a legislative decision).

Chamber	Year	# Districts	Ideal Population	+/- 3% deviation
House	2010	100	9,894	297
House	2015	100	10,329	310
House	2015	80	12,912	387
Senate	2010	50	19,788	594
Senate	2015	50	20,659	620
Senate	2015	40	25,824	775

**Regional Analysis of Legislative Districts
Based on 2015 Total Population Estimate (US Census Bureau)**

Districts will change in both size and population depending on a combination of population growth/decline, the number of house or senate districts, and the deviation adopted by the Districting and Apportionment Commission. The 2010 districts are based on the actual districts which cross county lines and do not correspond exactly with the 2015 districts which were analyzed using county boundaries.

Region	Chamber	# Actual Districts 2010 (50/100)	# Districts by Region 2015 (40/80)
1*	House	8 + 4 (pt)	6
	Senate	3 + 4 (pt)	3
2*	House	16 + 3 (pt)	16
	Senate	7 + 3 (pt)	8
3	House	11 + 3 (pt)	10
	Senate	5 + 4 (pt)	5
4	House	10 + 5 (pt)	10
	Senate	5 + 4 (pt)	5
5*	House	32 + 2 (pt)	26
	Senate	16 + 1 (pt)	13
6	House	15 + 1 (pt)	12
	Senate	7 + 2 (pt)	6

Shared HD's: 17,18, 30, 39, 40, 41, 57, 70

Shared SD's: 9, 15, 16, 17, 20, 21, 29

* Includes Indian majority districts (6 House, 3 Senate)

Montana County Total Population Estimates

Source: US Census Bureau, Population Division - Released March 2016

NOTE - Historic figures may have been revised upon release of more current data.

Area	2010 Population Census Count	2015 Population Estimate	Population Change
Montana	989,415	1,032,949	43,534
Beaverhead County	9,246	9,300	54
Big Horn County	12,865	13,242	377
Blaine County	6,491	6,577	86
Broadwater County	5,612	5,689	77
Carbon County	10,078	10,408	330
Carter County	1,160	1,180	20
Cascade County	81,327	82,278	951
Chouteau County	5,813	5,767	-46
Custer County	11,699	12,135	436
Daniels County	1,751	1,760	9
Dawson County	8,966	9,625	659
Deer Lodge County	9,298	9,139	-159
Fallon County	2,890	3,190	300
Fergus County	11,586	11,427	-159
Flathead County	90,928	96,165	5,237
Gallatin County	89,513	100,739	11,226
Garfield County	1,206	1,314	108
Glacier County	13,399	13,647	248
Golden Valley County	884	827	-57
Granite County	3,079	3,240	161
Hill County	16,096	16,572	476
Jefferson County	11,406	11,654	248
Judith Basin County	2,072	1,926	-146
Lake County	28,746	29,457	711
Lewis and Clark County	63,395	66,418	3,023
Liberty County	2,339	2,408	69
Lincoln County	19,687	19,052	-635
McCone County	1,734	1,683	-51
Madison County	7,691	7,915	224
Meagher County	1,891	1,830	-61
Mineral County	4,223	4,251	28
Missoula County	109,299	114,181	4,882
Musselshell County	4,538	4,582	44
Park County	15,636	15,972	336
Petroleum County	494	475	-19
Phillips County	4,253	4,169	-84
Pondera County	6,153	6,184	31
Powder River County	1,743	1,773	30
Powell County	7,027	6,840	-187
Prairie County	1,179	1,160	-19
Ravalli County	40,212	41,373	1,161
Richland County	9,746	11,960	2,214
Roosevelt County	10,425	11,476	1,051
Rosebud County	9,233	9,398	165
Sanders County	11,413	11,336	-77
Sheridan County	3,384	3,687	303
Silver Bow County	34,200	34,622	422
Stillwater County	9,117	9,486	369
Sweet Grass County	3,651	3,634	-17
Teton County	6,073	6,104	31
Toole County	5,324	5,087	-237
Treasure County	718	697	-21
Valley County	7,369	7,659	290
Wheatland County	2,168	2,110	-58
Wibaux County	1,017	1,130	113
Yellowstone County	147,972	157,048	9,076

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