

The Washington State Constitution and You

SEPTEMBER 2022

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Overview

Brief History of Washington Constitution

Unbundled or Plural Form of Government vs. Strong or Unitary Executive

County Government

Role of Individual County Officers

The 1889 Washington Constitutional Convention



Constitutional Convention

Convened in Olympia on July 4, 1889

75 delegates equally apportioned among 25 district

- 43 Republicans, 28 Democrats, 2 Independents and 2 Labor Delegates

Cascade Mountain Divide

- Western delegates were 5 votes stronger than those from Eastern Washington



WASHINGTON CONSTITUTIONAL CONVENTION, JULY 4, 1889

Thomas C. Griffith	8. Samuel H. Berry	7. W. H. Gray	4. James Hingate	5. R. M. Roe	1. J. M. Van	12. R. B. Glanville
Matt J. McElroy	18. R. H. Masly	19. Francis Henry	17. T. H. Reed	6. George Turner	13. A. A. Lindley	11. J. H. Traylor
20. Lewis J. McElroy	9. J. C. McFarhan	10. William A. Burk	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
3. J. T. McDonald	12. Morgan McLean	11. William A. Burk	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
4. Herbert J. McKee	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
5. J. T. McDonald	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
6. Herbert J. McKee	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
7. W. H. Gray	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
8. Samuel H. Berry	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
9. J. C. McFarhan	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
10. William A. Burk	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
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12. Morgan McLean	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
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15. A. A. Lindley	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
16. J. H. Traylor	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
17. T. H. Reed	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler
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20. Lewis J. McElroy	13. Dr. S. C. Dabek	12. Morgan McLean	14. J. H. Fowler	10. J. H. Fowler	14. J. H. Fowler	10. J. H. Fowler



Political Backdrop

Legislative scandals in a number of Eastern states

Judicial scandals in mining states and territories

Distrust of major corporations, particularly railroads



Impact on the Delegates

General distrust of government (even of representative government)

Desire to deal with political corruption before it could take hold in Washington

Safeguard against public extravagance

Protect against large business corporations

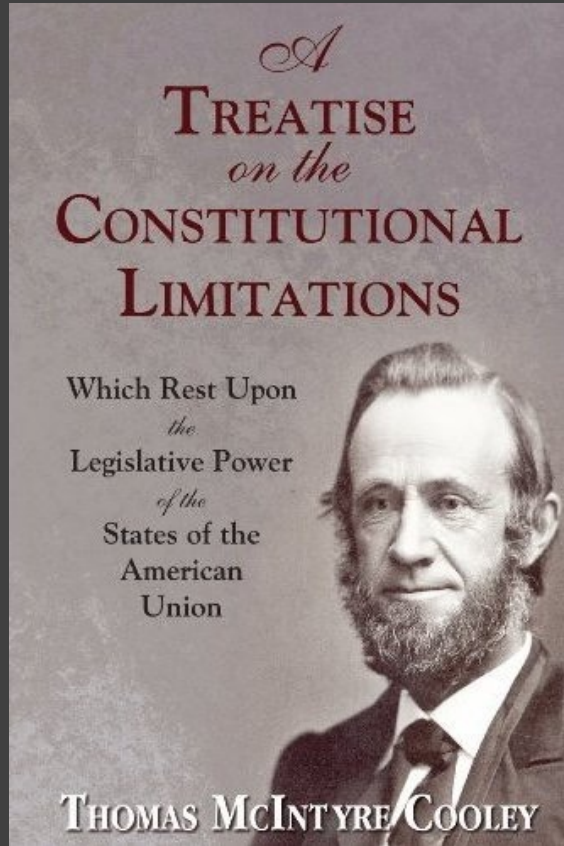
Starting Points

Draft proposed by W. Lair Hill that was published in the Portland Oregonian
Constitutions of Oregon, Wisconsin, Indiana, and other states

Many provisions are identical to provisions in the 1879 California Constitution



Leading Treatise of the Day



One of the best legal treatises of its time: *A Treatise on the Constitutional Limitations*

Fifth edition (1883)
available during the
constitutional convention

Ending Point

State Constitution or Proposed Draft	Identical Section	Similar Section
Hill	51	46
California	45	45
Oregon	23	37
Wisconsin	27	17
Proposed 1878	19	30
Colorado	8	15
Indiana	7	10
Pennsylvania	7	6
United States	7	17
Illinois	6	14
Missouri	3	18
Texas	2	7
Ohio	1	17

Record of How We Got from There to Here

Minimal records available from the convention

Minutes and contemporary newspaper accounts all that remains today.

- Extensive collection available in an on line collection at the Gallagher Law Library --
<https://liblawuw.libguides.com/waconsthist>

STATE OF WASHINGTON.

Donated by
W.B. Blackwell
2-20-1917
ENABLING ACT AND CONSTITUTION

WITH

SIDE NOTES AND INDEX.

T. M. REED, STATE AUDITOR.

PUBLISHED BY AUTHORITY.

OLYMPIA, WASH.:
O. C. WHITE, STATE PRINTER.
1905

Legislative Branch

Legislative article resulted in a longer constitution than those of other states

Significant restrictions on legislature

- Cannot increase or diminish compensation of any officer
- One subject bills with subject in the title



Judicial Branch



Five justices because it is too easy to corrupt two

Six year terms of office

Directly elected versus appointed

Separately elected clerks

Executive Branch

Executive split into a number
of directly elected positions

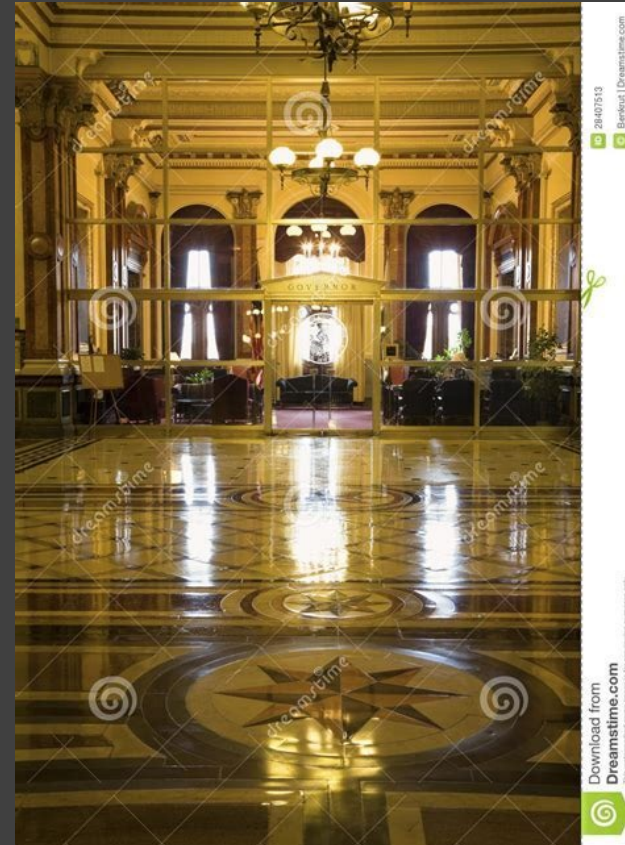
Governor Lieutenant Governor

Secretary of State Treasurer

Auditor Attorney General

Superintendent of Public Instruction

Commissioner of Public Lands





2020 Organization Chart Washington State Government

Legislative Branch

Executive Branch

Judicial Branch

Senate and House of Representatives

Joint Legislative Audit & Review Committee
Joint Legislative Systems Committee
Joint Transportation Committee
Legislative Ethics Board
Office of Legislative Support Services

Legislative Evaluation & Accountability Program (LEAP) Committee
Office of the State Actuary
Redistricting Commission (*activated decennially*)
Statute Law Committee (*Code Reviser's Office*)

Supreme Court

Administrative Office of the Courts
Office of Civil Legal Aid
Court of Appeals
Commission on Judicial Conduct

Law Library
Municipal Courts
Office of Public Defense
District and Superior Courts

Commissioner of
Public Lands

Insurance
Commissioner

Treasurer

Lieutenant
Governor

Governor

Attorney
General

Superintendent of
Public Instruction

Auditor

Secretary
of State

*Dept. of Natural Resources
- Board of Natural Resources*

*Public Deposit Protection
Commission
State Finance Committee*

See offices below

*Executive Ethics
Board*

State Library

Environment and
Natural Resources

General Government

Transportation

Health and
Human Services

Education

Community and Economic
Development

Agencies led by Governor-appointed executives

Department of Agriculture
(*commodity commissions*)
Department of Ecology
Pollution Liability Insurance
Agency
Puget Sound Partnership
Recreation and
Conservation Office

Board of Accountancy
Office of Administrative Hearings
Dept. of Archaeology and Historic
Preservation
Consolidated Technology Services
(WaTech)
- Technology Services Board
Department of Enterprise Services
- Building Code Council
Department of Financial Institutions
Office of Financial Management
- Personnel Resources Board
- Sentencing Guidelines Commission
- Serve Washington
Office of the Governor
- Corrections Ombuds, Office of
- Education Ombuds, Office of
- Equity Office
- Family & Children's Ombuds, Office of
- LGBTQ Commission
*- Regulatory Innovation & Assistance,
Office for*
- Results Washington
- Women's Commission

Governor's Office of Indian Affairs
State Lottery
Military Department
Department of Retirement Systems
Department of Revenue

Dept. of Licensing
(*occupational regulatory
boards*)
Washington State Patrol
Traffic Safety
Commission
Dept. of Transportation

Dept. of Children, Youth and
Families
Department of Corrections
*- Indeterminate Sentence
Review Board*
Employment Security Dept.
*- Governor's Committee on
Disability Issues and
Employment*
Department of Health
(*occupational regulatory boards*)
- Board of Health
Health Care Authority
- Public Employees Benefits Bd.
- School Employees Benefits Bd.
Dept. of Labor and Industries
Dept. of Services for the Blind
Dept. of Social and Health
Services
Dept. of Veterans Affairs

Center for Deaf and Hard of
Hearing Youth
School for the Blind
Workforce Training and
Education Coordinating
Board

Commission on African-
American Affairs
Arts Commission
Commission on Asian Pacific
American Affairs
Dept. of Commerce
*- Community Economic
Revitalization Board*
*- Developmental Disabilities
Council*
- Public Works Board
- Broadband Office
Commission on Hispanic
Affairs
Office of Minority & Women's
Business Enterprises

Unbundled or Plural Executive

Two Main Forms of Executives

STRONG OR UNITARY

United States President

All power in one person

Appoints other executive officers
and can fire them at will

PLURAL EXECUTIVE

Discrete authority is taken away
from the chief executive and
given exclusively to a directly
elected executive official

Pros and Cons

STRONG OR UNITARY EXECUTIVE

More efficient

Uniformity

Coordination

Accountability

Voters must make a decision on a bundle of policy dimensions

Concentration of power

PLURAL OR UNBUNDLED EXECUTIVE

Produces political outcomes closer to public preferences

Easier to match expertise, ability, and other characteristics to the specific task

Greater time and cost commitment to monitoring performance

Duplication of effort and/or coordination issues

Can protect or enhance minority input

Least Effective Plural Executive Governments

Numerous authorities sharing power.

Shared authority for policy implementation.

Most Effective Unbundled Governments

Specialized executives with exclusive authority to make decisions about one policy dimension.

Unbundled Washington County Government

Delegates' Choices

Plural legislative authority – 3 county commissioners

and

Directly elected specialized executives

Article XI, § 5

The legislature by general and uniform laws shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys, and other county, township or precinct and district officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. . . .

What is the Effect of Naming Specialized Officers in the Constitution?

What can be definitely said on this subject is this: That such powers as are specially conferred by the constitution upon the governor, or upon any other specified officer, the legislature cannot require or authorize to be performed by any other officer or authority; and from those duties which the constitution requires of him he cannot be excused by law. *Constitutional Limitations* (5th ed.), at 135-36.

At the local level, this bedrock principle meant that: [I]f the term of an office is fixed by the Constitution, the legislature cannot remove the officer, — except as that instrument may allow, — either directly, or indirectly by abolishing the office... Or by shortening the constitutional term. . . . or can the legislature take from a constitutional officer a portion of the characteristic duties belonging to that office, and devolve them upon an office of its own creation. . . Nor, where the office is elective, can the legislature fill it, either directly, or by extending the term of the incumbent. *Constitutional Limitations* (5th ed.), at 335 n. 1 (citations omitted).

Does Washington Follow These Principles?

“In naming the county officers in § 5, Article 11 of the constitution, the people intended that those officers should exercise the powers and perform the duties then recognized as appertaining to the respective offices which they were to hold.”

State ex rel. Johnston v. Melton, 192 Wash. 379, 388 (1937)

Plain English Please

Duties of one elected official cannot be transferred to another elected official.

A private individual may not be hired to perform duties assigned to a specific elected official.

Duties belonging to a specific office cannot be removed from that office until the end of the current term.

An office cannot be eliminated mid-term.

Application of the Rule Over the Years

Northwestern Improvement Co. v. McNeil, 100 Wash. 22 (1918) (assessor)

State ex rel. Johnston v. Melton, 192 Wash. 379, 388 (1937) (sheriffs)

State el. Banks v. Drummond, 187 Wn.2d 157 (2016) (prosecutor)

Burrowes v. Killian, 195 Wn.2d 350 (2020) (county clerk)

Surely County Commissioners Have Oversight Powers

The official is accountable not to the board of commissioners but to the public. If the public dislikes a decision, the ballot is its recourse.

- Commissioners lack authority to interfere with hiring decisions of separately elected county official. *Osborn v. Grant County*, 130 Wn.2d 615 (1996).
- Commissioners lack authority to insist on whom a separately elected county official assigns to a specific task. *State ex rel. Banks v. Drummonds*, 187 Wn.2d 157 (2016).
- Commissioners cannot hire a private contractor to perform functions of an “incompetent” voter selected public officer. *Northwestern Improvement Co. v. McNeil*, 100 Wash. 22, 33 (1918).

What Are the Duties of Each Named Officer

The Washington Supreme Court construes “core functions” according to a given office's historical usage: ‘In naming the county officers in § 5, Article 11 of the constitution, the people intended that those officers should exercise the powers and perform the duties then recognized as appertaining to the respective offices which they were to hold.’ ”

State ex rel. Banks v. Drummond, 187 Wn.2d 157, 180 (2016)

How Do I Determine the Core Functions of My Office

Title 36 RCW sets out the statutes for counties.

Each officer has a separate chapter:

36.22 County Assessor

36.23 County Clerk

36.24 County Coroner

36.27 Prosecuting Attorney

36.28 County Sheriff

36.29 County Treasurer

36.32 County Commissioners

Those Chapters Have My Office's Current Duties, I Want to Know My Historical Duties

Current chapters generally have a “duties” provision:

RCW 36.22.010

Duties of auditor.

The county auditor:

(1) Shall be recorder of deeds and other instruments in writing which by law are to be filed and recorded in and for the county for which he or she is elected; . . .

History of Provision

Code Reviser is required to “prepare and maintain full historical records showing the enactment, amendment, revision, supersession, and repeal of the various sections of the revised code.”

[2009 c 337 § 3; 1995 c 194 § 1; 1984 c 128 § 2; 1963 c 4 § 36.22.010. Prior: 1955 c 157 § 9; prior: (i) Code 1881 § 2707; 1869 p 310 §§ 1, 2, 3; 1863 p 549 §§ 1, 2, 3; 1854 p 424 §§ 1, 2, 3; RRS § 4083. (ii) Code 1881 § 2709; RRS § 4085. (iii) Code 1881 § 2711; RRS § 4088. (iv) 1893 c 119 § 2; Code 1881 § 2712; 1869 p 311 § 6; 1863 p 550 § 6; 1854 p 425 § 6; RRS § 4089. (v) 1893 c 119 § 3; Code 1881 § 2571; RRS § 4090. (vi) 1893 c 119 § 4; Code 1881 § 2713; 1869 p 311 § 7; 1867 p 130 § 1; RRS § 4091. (vii) 1893 c 119 § 5; Code 1881 § 2714; 1869 p 311 § 8; 1867 p 131 § 2; RRS § 4092. (viii) 1893 c 119 § 7; Code 1881 § 2718; 1869 p 312 § 13; RRS § 4095. (ix) Code 1881 § 2719; RRS § 4098. (x) 1893 c 119 § 8; Code 1881 § 2720; RRS § 4099.]

History Hyperlinks to Older Versions

SESSION LAWS, 1893.

CHAPTER CXIX.

[S. B. No. 265.]

RELATING TO THE DUTIES OF COUNTY AUDITORS.

AN ACT amending sections 2710, 2712, 2571, 2713, 2714, 2717, 2718, 2720, 2726, 2727 and 2728 of the Code of 1881, and repealing section 2721, Code of 1881, as amended by subdivision 9 of section 1, page 45, session laws of 1883, laws of the Territory (now State) of Washington, relating to the duties of county auditors, and declaring an emergency

Shortcut Method

Go directly to the Code of
1881

<https://leg.wa.gov/CodeReviser/documents/sessionlaw/1881Code.pdf>

CODE OF WASHINGTON

CONTAINING ALL

ACTS OF A GENERAL NATURE

REVISED AND AMENDED BY THE LEGISLATIVE ASSEMBLY OF THE TERRITORY
OF WASHINGTON, DURING THE EIGHTH BIENNIAL SESSION, AND THE
EXTRA SESSION, ENDING DECEMBER 7, 1881; THE CONSTITUTION
OF THE UNITED STATES AND AMENDMENTS THERETO; THE
ACTS OF CONGRESS APPLICABLE TO THE TERRITORY OF
WASHINGTON; AND THE NATURALIZATION LAWS.

Published by Authority.

QUESTIONS

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Read More About It

Christopher R. Berry and Jacob E. Gersen, *The Unbundled Executive*, 75 U. Chi. L. Rev. 1385 (2008)

Jacob E. Gersen, *Unbundled Powers*, 96 Va. L. Rev. 301 (2010)

Steven G. Calabresi and Nicholas Terrell, *The Fatally Flawed Theory of the Unbundled Executive*, 93 Minn. L. Rev. 1696 (2009)