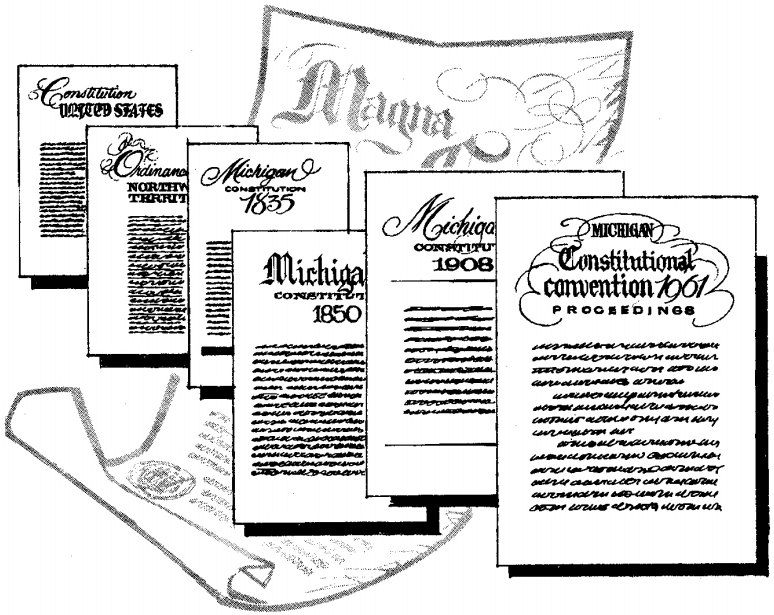
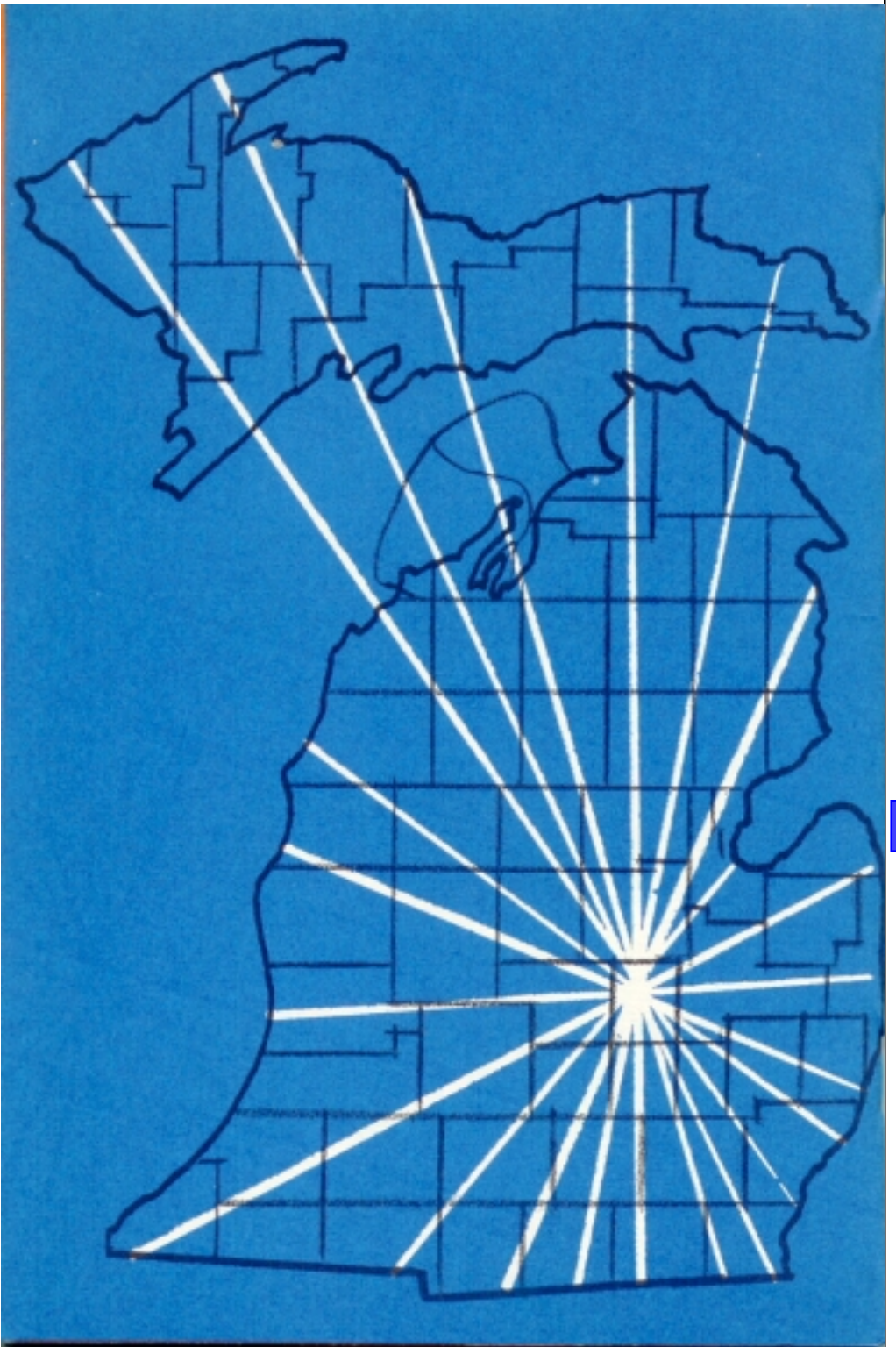
This Report received the 1963 Award for effective presentation of a research subject from the national Governmental Research Association.



A DIGEST of the PROPOSED CONSTITUTION

CITIZENS RESEARCH COUNCIL OF MICHIGAN



A DIGEST of the PROPOSED CONSTITUTION

CITIZENS RESEARCH COUNCIL OF MICHIGAN

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A BRIEF DESCRIPTION OF THE CITIZENS RESEARCH COUNCIL

CRC is a private, non-profit organization, organized in 1916—

CRC is supported by voluntary subscriptions from Business, Industry, Commercial and Financial Institutions, Private Individuals, and Foundations—

CRC has as its purpose the promotion of responsible, effective, and economical government—

CRC conducts continuing, factual research into public affairs and governmental problems at the state and local level with a full time, professional staff—

CRC research results are available to all—

CRC NEVER takes stands on ballot issues; NEVER attempts to tell people bow to vote. It finds and publicizes unbiased and non-political facts on the basis of which citizens can then make their own decisions on the course of public affairs—

INTRODUCTION

The proposed new state constitution will be ratified or rejected by the state's voters on April 1, 1963.

The Michigan voter is being asked to accept or reject an entire new state constitution. Objection to this "package" approach has been voiced by those who would have liked to afford the voter the right to decide separately on particular major provisions. However, the unit approach does avoid the likelihood of introducing conflicting or inconsistent provisions through the merger of new and old language.

And it should always be kept in mind that, like the present constitution, the provisions of the proposed document can be altered, amended or revised as time goes by.

The importance of the vote scarcely needs stressing.

The purpose of this memorandum is to distill the essence of what the proposed constitution offers, in order to place in the hands of the voter a means for formulating his own appraisal and decision on this momentous public question.

Details and specifics of individual articles and sections give way here to a generalized view of the proposed document. The reader who wishes more detailed particulars is referred to the section-by-section comparison of existing and revised constitutional language issued earlier by the Research Council, *The Proposed Constitution—A Comparison with the Present Constitution*, Report No. 212 (Revised), August, 1962, or to the series of Council publications entitled Analysis of the Proposed Constitution. A third source of detail is available in the Preface and the Address to the People, each published separately by the Convention itself.

The Research Council, by virtue of the nature of its policies and operations, takes no part in urging a decision one way or the other on this issue.

It is earnestly hoped that those who wish to make their own decision upon what they consider to be the merits or flaws of the proposed revision will find in these pages the means for doing so.

If this be accomplished, the sole purpose of this publication has been served.

WHAT IS A STATE CONSTITUTION

In the American tradition, a state constitution is a written document, drafted by the people's representatives, and adopted by the people as the supreme fundamental expression of the principles of government under which they wish to live.[1]

At the outset it is necessary to keep in mind the distinction between the Federal constitution and state constitutions. Except in foreign affairs, the powers of the federal government are delegated powers. It must find authority for what it does in express or implied grants of power under the federal constitution. A state constitution, however, essentially places limitations on the powers of state government. A state constitution grants all competent powers to an organized state government except to the extent that specific limitations and reservations are expressly set forth in it,

While highly simplified, this distinction is important to understanding the federal system and to an appreciation of the need for a virile system of

[1] Throughout, liberal use has been made of **The State Constitution, Its Nature and Purpose**, Paul G. Kauper, Con-Con Research Paper No. 2, Memorandum No. 202, Citizens Research Council of Michigan, October, 1961.

state governments existing as co-partners with a strong federal government.

CHARACTERISTICS OF STATE CONSTITUTIONS

In general, a state constitution has the following characteristics: 1) an explicit statement of rights reserved to the people from encroachment by governmental action; 2) the establishment and outlining of the organs of governmental power-the legislature, the executive branch, the judiciary, local governments, etc.; 3) a definition of relations and distribution of authority among these organs of power; and 4) statements of specific limitations on the powers and on the exercise of the authority conferred, where deemed appropriate.

Certain basic principles are either expressly stated or implied in a state constitution. They require here no further elaboration than mere statement. They are:

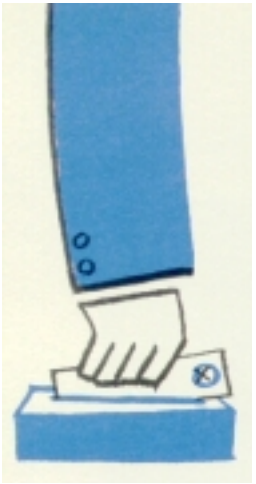
- All political power rests ultimately with the people.
- The forms and institutions established by a constitution are designed to serve the interests and welfare of the people, and to reflect the popular will.
- The government established is subject to the limitations imposed by the people, and it cannot ignore or take away the rights retained by them.
- As fundamental and supreme law, the constitution is to be upheld by the process of judicial review, which must refuse to countenance or enforce any act of government found to be in conflict with its provisions.

It is perhaps unnecessary to add that, in the case of a state constitution, these and other considerations must be dealt with in the light of their conformity with the provisions of the Federal constitution and statutes and their interpretation by the U. S. Supreme Court.

Beyond these fundamentals, there are several broad areas constituting the frame of government with which any constitution must come to grips.

These areas are discussed one by one in the following seven chapters in terms both of their constitutional import and of the solutions reached in the proposed constitution.

Where it is considered appropriate, indication is given of the prevailing views of students of government as to the general nature of desirable constitutional solutions. Dissenting arguments are also noted to provide a rounded view of the major issues.



ELECTORS AND ELECTIONS

Because they adopt and amend the constitution, and because they elect the representatives and major officials who operate government, the electors of the state are the first focus of attention.

There are really three questions involved. First, who shall constitute the electorate-age and other voting qualifications? The revised document retains in greatly simplified language the four basic electoral requirements of the 1908 constitution: 1) age, 21 years; 2) U. S. citizenship; 3) state residence of six months; 4) local residence, but "as provided by law."

Second, to what extent and how shall the electorate participate directly in government? Three devices now exist, which are continued in substantially the same, but simplified language in the proposed document. They are 1) the initiative, or the people's right to propose laws and to enact or to reject them; 2) the referendum, or the people's power to approve or reject laws enacted by the legislature; and 3) the power to recall elected officials (except judges), which is further strengthened by being made a political question, not subject to judicial review as to the sufficiency of the reasons therefor.

Third, there is the question of constitutional recognition and the responsibilities of political parties (the people as politically organized). Political parties are mentioned as governmental factors in the revised document in these significant particulars:

- Boards of canvassers-to count and certify election returns-shall not have a majority composed of members of the same political party.
- Legislative apportionment is placed in the bands of a commission chosen equally from among the two (or three) dominant political parties.
- Neither the proposed highway commission, the proposed civil rights commission nor the civil service commission shall consist of a majority of any one political party.

All in all, no substantial changes are made either in the definition of or in the powers of the state electorate.

ELECTIONS

The biennial Spring election for state-wide offices is abolished and all regular elections "for national, state, county and township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year."

This change is largely motivated by the desire to cut down on the frequency of elections in order to bolster voter interest. The Spring election has long had a stigma of voter apathy compared with the November date.

A four-year term of office for state officers and senators is provided. The first four-year term shall apply to officials elected at the 1966 general election, a non-Presidential year. Thus, each November election will command voter interest at either the state or national level, but political considerations affecting one of these areas will tend to be divorced from those affecting the other.

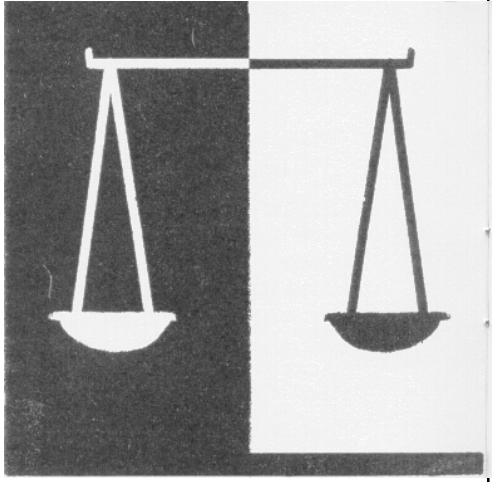
The present restriction that property owners only may vote on bond issuance or on the direct expenditure of public money is changed to restrict to property taxpayers any vote on property tax increases "for a period of more than five years, or for the issue of bonds . . . ." At present, any elector is eligible to vote on increasing millage limitations.

In other matters relating to elections, the legislature is given wide latitude to "enact laws to regulate the time, place and manner of all nominations and elections." Specifically mentioned is legislative authority to exclude mental incompetents and prisoners from voting, and to provide more lenient residence requirements for voting for President and Vice President.

IN BRIEF—ELECTIONS

The two principal changes in elections are the abolition of the Spring election and the restriction that only property taxpayers may vote on an increase of millage limitations in excess of a period of five years.

BASIC RIGHTS



The earliest of written constitutions are primarily concerned with the question of asserting the rights of persons as against the rights of governmental authorities.

A "Declaration of Rights" is traditional in American constitutions to make historic personal liberties and safeguards more certain of protection by their specific enunciation. Their inclusion in the constitution also subjects them to the added protection of judicial review.

A state may establish higher standards of rights than are otherwise afforded by reliance on the Federal constitution. Despite U. S. constitutional safeguards in this area, an explicit statement of basic rights is entirely appropriate in a state constitution.

Looming large in recent years is the question of freedom from discriminatory action on the basis of race, color, religion or national ancestry. This is implicitly guaranteed under the "equal protection" clause of the Fourteenth Amendment of the United States constitution. However, the Fourteenth Amendment is a prohibition against the states, as such, not a prohibition against actions of individuals.

There is particular concern today over constitutional requirements that the state protect individuals from the actions of other individuals, in addition to the traditional protections afforded individuals from the actions of government.

The enumeration and definition of rights in the field of individual relationships have traditionally rested, however, with statute law (legislative prescription) and have not commonly been taken note of in constitutional law. Thus, the reluctance of the Convention to enter the field of social and economic rights of individuals, leaving this to the legislature, extends the reliance on a traditional solution.

A CIVIL RIGHTS COMMISSION

The creation of a bipartisan civil rights commission in the revised constitution established the machinery by which the protection of federal and state laws on individual rights may be implemented. The commission's duty is "to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination."

Some object that the provision for a civil rights commission does not go far enough in specifically including exact language regarding such things as employment, housing, public accommodations and education.

As previously noted, this is left to legislative decision under the theory that constitutional civil rights is a matter of people protected from government, while problems of individual-versus-individual are more properly a matter for statute law.

OTHER CIVIL RIGHTS FEATURES

In two further respects, basic rights were strengthened in the proposed document. In criminal cases, the accused is granted an appeal as a matter of right and not of judicial discretion. And a provision similar to that in the Federal constitution is added to the effect that "the enumeration . . . of certain rights shall not be construed to deny or disparage others retained by the people."

In addition, there is retained in simplified wording the current provision allowing outside-the-home seizure of narcotics and dangerous weapons for evidence without obtaining a search warrant. This provision, contended by many to be contrary to a recent U. S.

Supreme Court decision, caused perhaps t most controversy over the civil rights portion of the revised document.

IN BRIEF

Basic rights in the revised constitution are strengthened, yet without going as far as some desired in terms of specific language.

The revised document specifically requires that public education be provided "without discrimination as to religion, creed, race, color or national origin."

Again, in reference to the state civil service system, one will find further mention of civil rights-"No appointments, promotions, demotions or removals in the classified service shall be made for religious, racial or partisan considerations."

THREE COORDINATE BRANCHES

Of particular interest are the provisions respecting the three traditional branches of American state government-the executive, the judicial, and the legislative. This chapter is concerned primarily with the major outlines and characteristics of the proposed changes.

It is first of all expressly provided that "the powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution."

This is virtually a repetition of existing language. Specific devices of the traditional system of checks and balances, such as senatorial confirmation of appointments and the gubernatorial veto power, are retained in somewhat revised forms.

The Executive Branch

Major decisions called for in this area concern such matters as the role of the governor and extent of his power; the degree to which the constitution should spell out executive departments and administrative agencies; the question of the election or appointment of other major state officials; and the length of term in office.

The following points illustrate some of the major characteristics that are thought by many to typify a sound executive structure-

- *A small number of elected major state officers to focus popular attention and to minimize fragmentation of executive authority.*

The revised document reduces constitutionally elected state officers from seven to four (governor, lieutenant governor, secretary of state, attorney general).

The auditor general becomes an appointed agent of the legislature; the treasurer is to be appointed by the governor; and the superintendent of public instruction is appointed by an enlarged, elected board of education. One statutory elected official, the highway commissioner, is appointed by a bipartisan highway commission which itself is appointed by the governor.

In addition, it is provided that " one vote shall be cast jointly for the candidates for governor and lieutenant governor nominated by the same party." This is intended to achieve political party unity in the two top state offices.

- *An increase in the term of office to avoid too frequent elections and to gain more time for letting performance in office provide a sound basis for voter evaluation and decision.*

The term of all elected major state officers (and of senators also) is increased from two to four years.

- *Appointment of principal agency heads by the governor to unify executive responsibility.*

While the legislature (apart from constitutional prescriptions) will decide which departments are headed by single executives and which by boards, the governor will appoint both single executives and board members with the advice and consent of the senate.

- *A general prescription governing the organization and duties of executive departments to control undue proliferation of executive agencies.*

Five specific departments are prescribed (highway, education, and departments beaded by the secretary of state, state treasurer, and attorney general).

Not more than 20 principal departments shall contain all executive agencies, including the above-named five departments, but excluding the offices of governor and lieutenant governor and the institutions of higher education.

In keeping with sound principles of constitutional draftsmanship, requirements regarding the departments and their functions are of the most general and minimum nature, if in fact there are any at all.

- *Provision for a co tinning reorganization by the executive within the executive area to keep the structure of government up to date.*

The governor's proposals for reorganization or reassignment of executive functions become effective unless disapproved by a majority vote of both houses of the legislature. Thus, continuing responsibility for the structure of the executive branch rests with the chief executive, but is subject to legislative control.

While this in no way prevents legislative initiation of reorganization, it recognizes the fact that legislatures have traditionally shown themselves either unwilling to exert a sound and continuing concern in this area or inept when the task has been attempted.

Budgetary Provisions—A precisely defined state budget system is called for, affecting both executive , and legislative budgetary duties.

The provisions outline the successive elements of 1) budget preparation and submission to the legislature; 2) legislative consideration and passage; and 3) executive implementation of final appropriations.

- The intent of this new provision is to emphasize fiscal responsibility and to enhance the prospects of its achievement.

Checks on Executive Action—A major check on executive action is the device of senatorial confirmation of executive appointments. A major change in the current requirements is made by rigidly defining "advice and consent."

In the past five years, the senate has failed to take any action on almost one-third of the names submitted to it by the governor for confirmation. These appointees have served, in effect, "at the pleasure of the Senate." The new provision requires disapproval within 60 session days of the date of an appointment and "any appointment not disapproved within such period shall stand confirmed." At the same time, "a person whose appointment has been disapproved by the senate shall not be eligible for an interim appointment to the same office."

- These provisions emphasize the true nature of advice and consent for achieving effective checks and balances, and will prevent its abuse through inaction.

IN BRIEF-THE EXECUTIVE BRANCH

On executive reorganization, the four-year term and the general tendency to focus executive and administrative responsibility in the governor, there was preponderant Convention agreement.

Differences of Opinion were most marked on the question of eliminating the elected state highway commissioner.

Dispute also marked the question of senatorial advice and consent. If not eliminated entirely, a minority then wanted the function to be exercised by both houses of the legislature.

Objections to the specific provisions on budgetary matters were also voiced.

In general, it may be said that the executive branch provisions:

- Focus executive power and authority more sharply in the governor by redefining his powers, by reducing the -number of elected major state officials, and by increasing the term of office to four years.
- Provide a means for initial and subsequent organizational control over the present morass of executive agencies.
- Sharpen the role of the senate in confirmation of appointments by rigidly defining the use of senatorial advice and consent to prevent its abuse.
- Set out specific budgetary guide-lines and procedures to induce fiscal responsibility.
- Create two approaches new in Michigan in the cases of the state highway commission and a nationally unique constitutional civil rights commission.

The Judicial Branch

Considerable contention surrounded the judicial branch proposals. In dispute were election versus appointment of judges; retention of the existing system of partisan nomination and non-partisan election of the supreme court; and district election of the supreme court.

Underlying the final decisions was the concept of a unified court system-one court of justice divided into a four-tier system of constitutional courts, with a fifth tier of "courts of limited jurisdiction" permitted by a two-thirds vote of the legislature.

The present eight-member supreme court, on and after the first vacancy under the proposed constitution, will thereafter become a seven-member body. The chief justice shall be selected by the court itself, as it desires.

Election of the judiciary is continued, and the elective principle is underscored by removing the governor's power of appointment in the case of judicial vacancies. Partisan nomination and non-partisan election of the supreme court are retained, but the proposal calling for district election of this court did not prevail.

Two other major problems in this area are the means of assuming as far as practicable the independence of the judiciary, and whether or not the types of courts and their respective jurisdictions—the judicial system itself—shall be spelled out in detail or merely outlined.

As to the latter, the provisions retain many current details establishing the various types of courts. However, the supreme court will continue to have general superintending control over all courts and is given rule-making power as to judicial practices and administration. The legislature is given generally greater freedom than it now has in matters affecting the jurisdiction of certain courts and in revising lower court judicial districts and numbers of judges.

The new language spells out much more explicitly than do current provisions that the supreme court is to be the active ruler of the state's judicial system.

Regarding judicial independence, a significant provision is made. Elected incumbent judges may qualify for re-election by merely filing an "affidavit of candidacy." This tends to decrease the dependence of judges on political factors once initially elected.

A major innovation is the creation of a new court of appeals. Nine judges will initially be elected "from districts drawn on county lines and as nearly as possible of equal population." The legislature may increase the number of judges and may change district lines. This court is to be subsidiary only to the supreme court. The court's jurisdiction is to be defined by the legislature, but the practices and procedures are to be prescribed by rules of the supreme court.

It is expected that this new court will expedite the administration of justice and relieve some of the current burden on the supreme court. The right of appeal given in any criminal case, mentioned earlier, is another reason for the creation of the court of appeals.

Another important change is the provision for elimination of justices of the peace. If not earlier abolished and a system of "courts of limited jurisdiction" substituted for it by law, the office of justice of the peace is "abolished at the expiration of five years from the date this constitution becomes effective

IN BRIEF-THE JUDICIAL BRANCH

One departure from existing practice that is made in this area is the change in the manner of filling court vacancies. Until a new judge" can be elected, the supreme court may appoint a retired judge to the post, who is not eligible for election to the office.

Abolition of the J-P system is another significant change.

The other major changes all have the intent of strengthening the administration and functioning of the judicial system by establishing an appeals court; reducing political influences on elected judges by allowing affidavits of candidacy; and prohibiting the fee system of salary payment.

The Legislative Branch

The preponderance of constitutional theory regards the powers of the legislative branch as unlimited in their proper area, except as specifically limited by express language. Thus, for example, we find in the revised document that:

- "The legislature shall not authorize any lottery. . . ."
- "No income tax graduated as to base or rate shall be imposed. . . ."
- "The legislature shall not impose a sales tax on retailers at a rate of more than four per cent . . . ."
- "No law shall be enacted providing for the penalty of death."

Without specific limitations, the theory is that a legislature could do these things. Apart from whether such restrictions as these should or should not have been placed on the legislature, they reveal the general acceptance by the Convention of the theory itself.

In general, the changes and innovations made in the legislative area are intended to strengthen the legislature's ability to act in its primary role of policy-maker, and to enable it to exercise more effective oversight as to how capably and accurately legislative policies are being carried out by the executive agencies of the state.

In the past 30 years, the increase in both the number and powers of executive agencies have tended to make the legislative branch less able to formulate policy and to determine that its policies are being effectively executed.

Yet, if the states are to maintain a strong, vital role in the federal system, the general remedy for this is not to hamstring the executive operation, but to provide the means for strengthening legislative operations. This, in general, is what the legislative provisions of the revised document attempt to do.

THREE MAJOR SOLUTIONS

- *The Auditor General*—It has long been argued by many Michigan observers that an auditor general appointed by the legislature (rather than elected by the people) would appropriately increase the ability of a part-time plural body (the legislature) to cope with a massive, 24-hour-a-day executive operation.

This provision constitutes a major attempt to strengthen the legislature in relation to the executive area.

The auditor general is to be appointed by a majority of each house of the legislature. He serves an eight-year term and may succeed himself indefinitely. He is removable only for cause and by a two-thirds vote of each house. His duty is to conduct fiscal audits, and to make investigations of operational efficiency, called performance audits.

" *A Bi-Partisan Legislative Council*—Provision for a bipartisan council of legislators with a staff to perform bill drafting, research and other services for the legislature is a second proposed solution to increasing the ability of the legislature to enforce appropriate policy oversight of executive operations.

" *Legislative Latitude*—A third important feature evidenced throughout the document is the tendency to allow greater latitude to the legislature to implement constitutional directives and requirements. The phrases, "as prescribed by law" and "as provided by law," occur regularly in place of the current lengthy prescriptions of procedural details.

The flexibility so achieved is generally regarded as desirable.

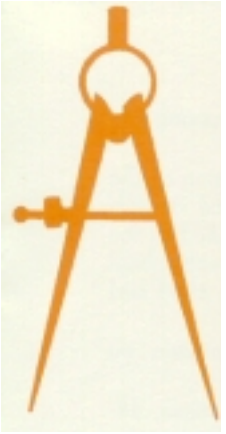
IN BRIEF-THE THREE COORDINATE BRANCHES

The provisions respecting each of the three main branches of government make it clear that the intent of the Convention was to strengthen the ability of each branch to perform capably within its respective area.

At the same time, sight was not lost of the theory of checks and balances. Provisions respecting the auditor general and senatorial advice and consent illustrate this point. Budgetary requirements imposed on both the executive and legislative branches are a further example.

The increased powers given each branch in its own realm translate the traditional theory of the division of powers into potentially effective tools for sounder, more effective state government.

At the same time, the sharpened boundaries of each branch make it apparent that there is a conscious attempt to retain clear separation of the respective functions of making laws (the legislative branch), carrying out laws (the executive branch), and interpreting laws (the judicial branch).



APPORTIONMENT OF THE LEGISLATURE

Apportionment of the legislature saw what may be described as radical changes.

This fundamental question—what bases shall be used for representation in the state legislature—provided the profoundest philosophical disagreement and the most intense differences of opinion in the Convention. Generally speaking, the question divided on partisan lines, although differences within both party groups were discernible.

The final version contained these major points:

- A Senate of 38 members from single-member districts, elected for four-year terms coincident with that of the governor. The four-year term begins with persons elected in November, 1966.

The basis for establishing the 38 districts is a combination of population and area, so weighted as to represent 80 per cent population and 20 per cent area.

- A House of 110 members from single-member districts, elected for two-year terms, and apportioned on a population basis.

The initial criterion for a county to become entitled to a representative is that it have a population of "not less than seven-tenths of one per cent of the population of the state," with counties combined where necessary.

This contrasts with the former provision-five-tenths of one per cent or more. Subsequent assignment of seats is on a population basis.

- Use in both Senate and House apportionment of the "method of equal proportions" in assigning seats.

This is a mathematical method of determining which districts are entitled to more members than others on the basis of the differing factors prescribed for apportioning each chamber.

It is used by the Congress in assigning House seats among the states.

- Both houses are to be reapportioned following the adoption of the proposed constitution, and after each federal decennial census. This contrasts with 34 current senate districts now specified in the constitution and unable to be changed without constitutional amendment. The House must now be reapportioned in 1963 and every tenth year thereafter.
- Establishment of an eight-member, bipartisan commission on legislative apportionment.

This, under certain conditions, might become a tri-partisan, 12-member commission.

Members are to be selected by each major political party with one resident from each of four regions of the state: the Upper Peninsula; the northern Lower Peninsula; southwestern Michigan; and southeastern Michigan.

The function of the commission is to carry out the apportionment provisions. The secretary of state is its secretary (the only specific constitutional duty of this elected officer).

- Provision for supreme court action is made 1) in the event of failure of a majority of the legislative apportionment commission to agree on a plan, and 2) upon application of any elector to compel action by the commission or for a review of the plan adopted by it.
- The apportionment process on this basis is to commence immediately with the effective date of the revised constitution, if approved, on January 1, 1964.

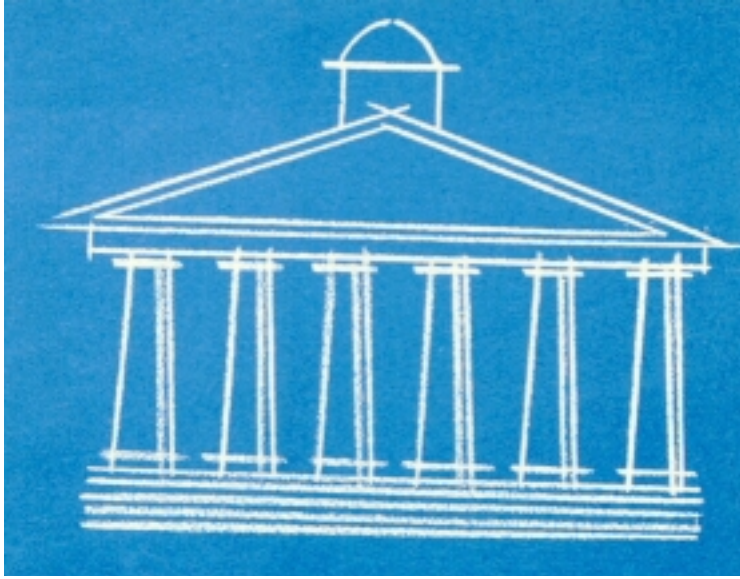
IN BRIEF—APPORTIONMENT[2]

The revised apportionment provisions call for a house of representatives chosen on a population basis, and a senate chosen on a combination of population and area factors in four-to-one ratio.

Decennial reapportionment of both houses is assured by the powers given to a commission on legislative apportionment and to the supreme court for enforcement of the apportionment provisions.

The chief objections raised by some delegates are that the new methods do not sufficiently approach an ideal for both houses of complete equality of representation on a population basis, and that a system of apportionment of Congressional seats is not included.

[2] Most readers are aware of the recent Michigan Supreme Court decision on state senate apportionment and of the Probable review of this decision by the U. S. Supreme Court. What requires noting here is that the apportionment provisions of the proposed constitution are not directly at issue in these court cases.



LOCAL GOVERNMENT

In three significant respects the proposed document offers change or innovation in the general area of local government—

- *County home rule.* Provisions similar to those for municipal home rule are made for counties. These are not self-executing and will require legislative implementation. This was done for cities and villages in the current Home Rule Act, stemming from provisions first inserted in the 1908 constitution.

The growing density of population in many counties and the consequent extension of governmental needs and problems over county-wide areas have long been felt by many observers to justify attempts to strengthen the operations of county government, particularly in urban areas.

Current constitutional provisions require large boards of supervisors with no focus of county executive authority, and set up exactly the same structure of government for both urban and rural counties.

The proposed document continues the present form of county government, but offers an alternative form as well. The success of municipal home rule in gaining vitality for city and village operations is made potentially available also at the county level, under terms of the proposed document.

Metropolitan Problems—A two-pronged solution to problems in metropolitan areas is made available.

- First, intrastate governmental cooperation is specifically offered to two or more counties, townships, cities, villages or districts, or any combination of these units.

Sharing of costs and credit, contractual agreements, transfer of functions and responsibilities, and mutual cooperation in general *shall* be authorized under the terms of general law.

In short, the first level of attack on common problems that transcend local boundaries is to be provided by the local units themselves through cooperative undertakings.

- Second, additional forms of government may be established by the legislature, the only restriction being that such governments wherever possible "shall be designed to perform multi-purpose functions rather than a single function."

This level of attack looks essentially to future problems that may better lend themselves to new organizational forms for their solution. Thus, without detailed prescription or requirement, the proposed constitution makes ultimately available a solution at the local level for currently unforeseen needs and problems.

- *Liberal construction of provisions.* The Convention's intent to strengthen and encourage government at the local level is nowhere better illustrated than in the provision calling for liberal interpretation by the courts of constitutional and statutory language relating to local units.

The provision further specifically says that local unit powers "shall include those fairly implied and not prohibited by this constitution." In many cases, court decisions have been hesitant to grant "fairly implied" powers to counties and townships, and these local units have found themselves restricted in performing some functions and services by the fact that certain explicit authority for action was not stated in law.

The new provision reverses the situation and says, in effect, that all local units may do whatever Deeds to be done to carry out their general powers, unless something is specifically prohibited by the constitution or by statute.

- *New taxing powers.* Each home rule county, and each city and village is granted the power to levy other taxes than property taxes, subject to constitutional and statutory limitations and prohibitions.

The added flexibility which this provision affords the financing of local government is thus specifically subjected to the safeguard of constitutional or legislative pre-emption and restriction.

MISCELLANEOUS PROVISIONS

Miscellaneous provisions affecting local government require brief mention.

Among them are—

- A four-year term of office is provided for county elective officers.
- Total debt of a county may not exceed 10 per cent of its assessed valuation.
- Township officers may by law be given terms of office of up to four years, by contrast with the traditional two-year term.
- All local units (including school districts) having authority to prepare budgets shall adopt them only after a public hearing.
- An annual accounting is required for all public moneys, and uniform local accounting systems shall be prescribed and maintained. Also, all financial records and other reports of public money shall be public records and open to inspection. These provisions are more expressly and clearly stated than is certain corresponding language of the 1908 constitution.

IN BRIEF

Local government provisions exhibit a blending of two major concerns—

- Retention of the historical forms of local rule along with all significant traditional powers, duties and functions on the one hand.
- On the other hand, provision for experimentation, as in the case of county home rule, and for adaptation to need, as in the case of the recognition of metropolitan area problems.

Reinforcing the traditional, the experimental, and the provision for changes that the future may bring is the general trend toward strengthening local level ability to cope with governmental problems. This is best summed up in the provision calling for liberal construction by the courts and use of the doctrine of implied powers, and in the provision for broader taxing powers.

THE EDUCATIONAL SYSTEM

Provisions for public education in the proposed constitution will be of particular interest to most citizens.

THE PUBLIC SCHOOL SYSTEM

A major organizational change is made in the area of public school education.

The state board of education, now consisting of three elected officials plus the elected superintendent of public instruction, is enlarged to an eight-member body chosen at large in partisan elections for eight-year terms.

The governor is made an *ex officio* member without the right to vote.

The board is given "leadership and general supervision" over all public education except institutions of higher education, and is to serve as the "general planning and coordinating body" for all public education, including higher education. The current constitution gives the superintendent of public instruction "general supervision of public instruction in the state."

The board appoints the superintendent of public instruction for a term determined by it. He becomes chairman of the board without the right to vote, and is "the principal executive officer of a state department of education."

Supported generally by political scientists and educators, the proposal has as its objective the securing of top quality professional assistance divorced as far as possible from the political arena. It is also argued that in a highly technical area such as this the voter, by and large, does not have the means available to allow him to make a sound, intelligent choice for the post.

Those who oppose this arrangement do so on the grounds that it "demotes the superintendent of public instruction to a mere appointee of an eight-member board," a position in which be would have "no effective power to represent and fight for the educational system."[3]

[3] **Journal**, No. 136, May 11, 1962, p. 1332.

Public community and junior colleges are recognized constitutionally for the first time. It is expressly provided that they "shall be supervised and controlled by locally elected boards."

HIGHER EDUCATION

Ten institutions of higher education are specifically named in the proposed constitution and each governing board is made "a body corporate." However, the ten are divided into two uniform classes as regards their structure and control.

Three institutions-University of Michigan, Michigan State University, and Wayne State University-are each to be governed by an eight-member board *elected* for eight-year terms. The legislature shall provide for the details of election and may specify a system of overlapping terms. Retained are the current names of the boards of each of the three major institutions-the regents (U. of M.), the trustees (M.S.U.), and the governors (W.S.U.).

Seven other institutions (and any others hereafter created) are each to be governed by an eight-member board of control *appointed* by the governor with the advice and consent of the senate for eight-year, overlapping terms.

Specifically called for from each institution is an annual accounting to the legislature of all income and expenditures, and all formal sessions of the governing boards shall be open to the public.

AMENDMENT AND REVISION

As the constitution itself is established by the authority and will of the people, so must provision be made for opportunity to amend and revise the document from time to time.

AMENDMENT

As a constitutional problem, there are some basic considerations.

A constitution too easy to amend may become the prey of pressure groups. Or it may in a short time find itself not the expression of fundamental principles, but grown bloated with content that is essentially of a statutory nature.

A constitution too difficult to amend may seriously impede the carrying out of the popular will.

There have been a total of 127 voter opportunities to amend the present state constitution. Seventy amendments have been adopted, one-third of them between 1950 and 1962. Of these 70, the legislature proposed 60 and 10 were the result of initiative petitions.

It can scarcely be said that it has been particularly difficult to amend the Michigan constitution. Whether it has not been difficult enough will depend on one's views of the particular amendments that have succeeded.

In any case, no substantial change 'is proposed in the amending process in the revised constitution.

Amendments originated in the legislature continue to require a two-thirds vote in each house and a majority acceptance at a subsequent election. Amendments proposed by petition require the same number of signatures (10 per cent of the total vote for gubernatorial candidates) and, as at present, must be voted on at the next general election. (Legislative proposals may be voted on at general or special elections as directed by the legislature.)

A new feature specifies that in case of a conflict between two or more amendments approved at the same election. the amendment which receives the largest affirmative vote shall prevail.

REVISION

Provisions for submitting the question of a general revision of the constitution to the voters remain basically unchanged. The submission must be made in 1978, in each 16tb year thereafter, and at such times as may be provided by law. As in the current constitution, opportunity for a general revision is thus guaranteed at intervals roughly corresponding with each succeeding generation.

Delegates are to be chosen as at present, one from each senatorial and representative district, but a new provision specifies partisan elections, a requirement on which the present constitution is silent.

Apparently prompted by its own experience, where three resignations were filled by the governor from members of the party opposite to that originally represented, the Convention also required that the governor's appointee to a vacancy shall be "a member of the same party as the delegate vacating the office."

Any future dispute over the time at which the revised document shall be presented for voter approval or rejection is avoided by giving to the convention the right to specify the manner and time of submission. It is merely provided that this vote shall not occur less than 90 days after final adjournment of the convention.

The convention is also given the right to decide when the new document, if approved, shall take effect, rather than the current provision, "the first day of January following the approval thereof."

IN BRIEF

Except for removing much unnecessary procedural detail, no basic changes are made in the processes that now prevail for amendment and revision of the state constitution.

NEW CONCEPTS IN MICHIGAN GOVERNMENT

While anyone would be ill-advised to form his judgment on a mere listing of things new in the proposed constitution, it may prove helpful to sum up in one place the major new concepts. They fall into three broad categories-organizational, political and fiscal.

ORGANIZATIONAL PROVISIONS

- The executive branch is to be organized into 20 principal departments, five of which are specified in the proposed constitution. This is exclusive of the offices of governor and lieutenant governor, boards of control of institutions of higher education, and temporary agencies and commissions.
- Problems of metropolitan areas are to be dealt with by existing agencies on a cooperative basis, and by additional forms of government which the legislature may establish.

- The auditor general becomes an appointive officer of the legislature, rather than an elective officer.
- The superintendent of public instruction becomes an appointive officer of an enlarged, elected board of education. The state highway commissioner becomes an appointive officer of a four-member, bipartisan highway commission which itself is appointed by the governor with senatorial advice and consent. He will be called the state highway director.
- The state treasurer is appointed by the governor, with senatorial advice and consent, to serve at the pleasure of the governor. A bipartisan civil rights commission is appointed by the governor, with senatorial advice and consent for four-year terms.
- Vacancies in judicial offices shall not be filled except by election. Temporary appointments of retired judges are authorized to be made by the supreme court.
- A court of appeals, elected by districts and inferior only to the supreme court, is created.
- The office of justice of the peace is abolished within five years of the adoption of the proposed document.
- An alternate to the traditional form of county government may be established as charter, or home-rule counties.

POLITICAL PROVISIONS

- A four-year term is provided for the major state elective offices, for state senators and for county elective offices.
- Biennial Spring elections for state-wide offices are abolished. All such elections are to be in November.
- Provision is made for apportionment of both house and senate periodically by a special bipartisan commission.

- The governor and either house of the legislature "may request the opinion of the supreme court on important questions of la", upon solemn occasions." These advisory opinions are restricted to laws enacted, but not vet in effect. The object is to expedite judicial decisions on questions of constitutionality.
- "Advice and consent" of the senate is rigidly defined.
- Particular attention is given throughout the revised document to securing publicity for governmental affairs and to protecting individuals from improper hearing procedures and from the abuse of "administrative law," or the rulings and interpretations of law made by executive agencies. The following series of provisions illustrate the nature of this concern:

  √ All local units (including school districts) having authority to prepare budgets shall adopt them only after a public bearing.

  √ An annual accounting is required for all public moneys, state and local, and uniform local accounting systems shall be prescribed and maintained. Also, all financial records and other reports of public money shall be public records and open to inspection. These provisions are more expressly and clearly stated than is certain corresponding language of the 1908 constitution.

  √ The civil service commission is specifically subjected to an annual audit and required to furnish at least annual reports. All institutions of higher education must give the legislature an annual accounting of all income and expenditures. In addition, formal sessions of their governing boards shall be open to the public.

  √ Legislative committee secrecy is forbidden by the requirement that all committee actions on bills and resolutions shall be recorded by name and vote and made available for public inspection.

  √ Notice of all committee hearings and the subjects to be considered must be published in the legislative journal in advance.

  √ Fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

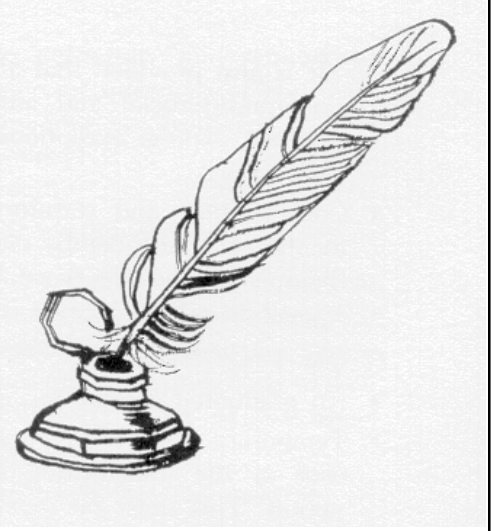
  √ Administrative agency rulings made between sessions may be suspended by the legislature Dot longer thin the end of the next regular session whenever there is reason to challenge the validity of the ruling in relation to the requirements of the law. It is also provided that all such final rulings "which are judicial or quasi-judicial and affect private rights and licenses," with certain express exceptions, shall be subject to direct review by the courts.

- Constitutional and statutory, provisions concerning local governments "shall be liberally construed in their flavor." Powers granted them "shall include those fairly implied and not prohibited."
- Appeal in criminal cases is granted its a matter of right.

FISCAL PROVISIONS

- No graduated income tax may be imposed.
- Temporary state borrowing is permitted up to a limit of 15 per cent of the undedicated state revenues of the preceding fiscal period. This must be repaid not later than the end of the fiscal year in which the borrowing occurs. The present unrealistic limit of $250,000 is thus replaced with a flexible limit that currently represents a maximum borrowing power of about $70 million.
- Money may be borrowed for specific purposes when approved by a two-thirds vote of the legislature and subsequently ratified by majority vote of the electors. "The question submitted to the electors' shall state the amount to be borrowed, the specific purpose to which the funds shall be devoted, and the method of repayment." This provision makes it possible to borrow for particular projects (for example, the $65 million hospital bond issue of 1950) in the same manner as now, provided without, however, requiring a specific additional amendment to the constitution on each occasion.
- The permissible county debt limit is increased from three per cent to 10 per cent of assessed valuation.
- Taxing powers of charter counties, cities and villages are made more flexible by granting them the right to levy other than property taxes, but these powers are still subject to constitutional and legislative limitations.
- A precisely defined state budget system is prescribed, governing both executive and legislative responsibilities.
- Only property taxpayers and their spouses may vote on exceeding a tax limitation for a period of more than five years.
- Financial benefits of governmental pension systems are made contractual obligations of the state and local units, and it is required that sufficient money be set aside annually to meet the benefits arising on account of service tendered in 'a particular year.

RETAINING TRADITIONAL PRACTICES



With considerable public emphasis and dispute centering around the validity and merits of changes that are made, it is of equal pertinence to consider certain major provisions that basically represent the continuation of current practices.

Many of these provisions are considered by political observers to be particularly appealing to, or cherished by the Michigan voter

FISCAL PROVISIONS

- The 15-mill limit on general property taxation is continued as a basic rule. An alternative allows a separate tax rate to be established by county voters for county, township and school district purposes, the total of which shall not exceed 18 mills. These separate, fixed limits may be altered from time to time by popular vote, as long as the 18-mill aggregate limit is observed.
- Property shall continue to be assessed at "true cash value," but after January 1, 1966, no assessment shall be made in excess of 50 per cent of true cash value.
- The earmarking of gasoline and weight taxes for highway purposes is continued.
- The present four cent limit on the sales tax is retained.
- Sales tax earmarking for schools and local units is also continued. However, instead of assigning a fixed amount (two cents to schools; one-half cent to local units), a proportion is used (one-half and one-eighth, respectively). With a four-cent sales tax, these proportions are equivalent to the fixed amounts now assigned.

- State loans to school districts are provided for under provisions substantially similar to those currently in effect.
- Voting on bond issuance continues to be restricted to property owners and their spouses.

POLITICAL PROVISIONS

- The initiative, referendum, and recall are all continued as tools of popular control of government with no basic change.
- Home rule for cities and villages, so popular and successful in Michigan since the principle first entered the constitution in 1908, is retained.
- In addition to allowing county home rule under legislative prescription and providing for future metropolitan needs, the traditional forms of local governments are retained and their ability to be more effective is enhanced.
- The constitutional status of the three major universities is retained with a standardized elective board of control for each. Other basic educational provisions stressing the state's duties and responsibilities in the field of education are retained.

CIVIL SERVICE SYSTEM

- While a number of chances are made, the Michigan principle of a separate, strong, self-financed, constitutional control of the civil service and merit system for state employees is embodied in the revised document. Three major changes are:
  - √ Requiring pay increases ordered by the commission to be submitted with the governor's budget to the legislature, and to become effective only at the start of a fiscal year, unless the legislature permits otherwise.
  - √ Permitting the legislature, by a two-thirds vote in each house, to reject or reduce proposed salary increases. A reduction shall apply uniformly to all affected classes of employees to prevent legislative juggling of salaries of individuals or classes, and salaries may not be reduced by the legislature below those then in effect.
  - √ Encouraging the establishment of local civil service systems for all employees except teachers, with technical assistance of the state civil service commission provided on a reimbursable basis.

PERSONAL RIGHTS

- Retention and extension of basic rights are discussed in Chapter III.

A 100-Question Quiz

NOTE: The following 100 questions were prepared to serve as a basis for an intensive study of the contents of this **Digest**. Page numbers where the answers will be found are given after each question.

IN THE PROPOSED CONSTITUTION—

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(Chapter X)

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