



CRC Memorandum

STATEWIDE BALLOT ISSUES: PROPOSAL 00-2 "LET LOCAL VOTES COUNT"

This CRC *Memorandum* is a summary of a more detailed analysis of Proposal 00-2 available on the CRC website, www.crcmich.org, or by contacting CRC at the numbers noted elsewhere in this publication.

I. Provisions of Proposal 00-2

Proposal 00-2 on the November 7, 2000, statewide ballot as a result of petitions circulated by the Michigan Municipal League, seeks to amend the 1963 Michigan Constitution to add a Section 55 to Article IV, the legislative article. The amendment would require a two-thirds majority in each house of the legislature to enact laws on or after March 1, 2000, that intervene, or increase the scope of intervention, in the municipal concerns, property, or government of cities, villages, counties, townships, or any municipal authorities. Not encompassed by the proposal are school districts, intermediate school districts, and community college districts. The two-thirds vote requirement would also apply to any bill imposing a condition on the receipt of unrestricted aid that would intervene or increase the scope of intervention.

The proposal defines "municipal concerns, property or government" as "all matters over which a city, village, county, township, or municipal authority could exercise its powers, under the constitution or law effective as of March 1, 2000, by adoption of appropriate charter provisions, ordinances, resolutions, or contracts, whether exercised or not." Finally, the proposal exempts from the two-thirds requirement laws whose application is at the option of the local unit.

II. Operation of Proposal 00-2

According to the drafters, the proposed amendment would create a three-part test to determine whether a law would require a two-thirds majority for passage:

- 1) Was the law enacted on or after March 1, 2000?
- 2) Does the law involve municipal concerns, property, or government?
- 3) Does the law "intervene?"

If the answer to any of these questions is "no," the law will be deemed not to have required a two-thirds majority.

March 1, 2000. Proposal 00-2 uses March 1, 2000, in two ways: First, the date is used to determine the point at which it became necessary for a two-thirds vote in order to enact laws intervening in municipal concerns, property, and government of the affected local units. Second, the date is used to establish a benchmark for determining which municipal concerns, property and government are to be insulated from legislative intervention without a super-majority vote.

Municipal Concerns, Property or Government. The phrase "municipal concerns, property or government" is defined by the proposal as "all matters over which a city, village, county, township, or municipal authority could exercise its powers, under the constitution or law effective as of March 1, 2000, by adoption of appropriate charter provisions, ordinances, resolutions, or contracts, whether exercised or not." The phrase also appears (undefined) in Article VII, Section 22, which authorizes cities and villages to frame and adopt charters.

Certain municipal concerns are reasonably clear. For example, cities, villages, townships, and counties all have the power to provide police protection. Other powers are more ambiguous or are undefined. Home rule units are presumed to have all powers not preempted by the state and the area in which conflict between the state and local units can exist is extensive.

The phrase "whether exercised or not" is meant to protect powers that have not been implemented. For example, al-

though all townships are authorized to provide police services, many do not, relying instead on the county for police services. That power would be protected under the amendment even though it might not have been exercised on March 1, 2000.

The proposed amendment likely would affect home rule and non-home rule units differently. Home rule units are presumed to have powers not de-

nied them by the Legislature or the Constitution. General law units—primarily counties and townships—have their roots as local extensions of the state and do not carry the same presumption of powers. These units are more dependent on legislation to authorize new services or powers. To the extent that these are not optional, their enactment would require a two-thirds vote in each house of the Legislature.

Intervention. No definition of “intervene” or “intervention” is supplied in either the proposed amendment or the drafter’s notes. By leaving these terms undefined, it is open to interpretation whether they apply only to constraints on, but also to enhancement of, municipal concerns, property, and government, and whether they broadly include actions that have little discernible effect.

III. Analysis

A. Local versus State Concerns

At the root of the tension between state government and its local units is the inability to establish a clear distinction between state and local concerns, especially when one of the functions of local government is to carry out state functions at the local level.

An example of this tension is the debate over House Bill 4777, identified as one of the threats to local control. Introduced in reaction to the adoption of a living wage ordinance in Detroit, the bill was expanded to include a wide range of limits on local government power. Supporters of the legislation argue that an undue burden is placed on economic activity by subjecting firms to differing rules and regulations regarding issues ranging from billboards to construction codes. Opponents of the legislation argue that different regulations reflect different local needs and desires and are part of what allow localities to create unique characters.

B. Minority Rule

The Michigan Constitution requires super-majority votes of the Legislature in 17 circumstances. The rationales

for most of these requirements are fairly clear. Three of the required super-majority votes involve removing constitutional officials from office. Two involve divergences from the constitutional norm in legislative enactments (override of the governor’s veto and immediate effect for bills). Others involve overriding constitutional limitations on state revenues and ad valorem tax rates. Some requirements for super-majority votes in the Legislature are accompanied by the additional requirement of voter approval (amending the Constitution, local or special acts, and long-term borrowing). With the exception of immediate effect, the requirements are limited to specific actions or a very limited class of actions.

Proposal 00-2, on the other hand, encompasses a potentially large class of legislation, presently considered part of the normal legislative agenda, including some bills that may only incidentally deal with local government.

Super-majority vote requirements raise two issues. First, a minority of legislators in either chamber can prevent the legislation in question from moving forward, thereby altering the usual dynamics of the legislative process.

Second, each addition to the list of circumstances requiring super-majority votes in the Legislature not only erodes further the principle of majority rule, but also creates another precedent for future additions to the list, creating the potential for significantly reducing the scope of majority rule over the long run.

C. The Question of Retroactivity

The proposed amendment, if adopted, would invalidate legislation deemed to intervene in municipal concerns, property, or government and passed without a two-thirds majority in each house on or after March 1, 2000. In most cases, such bills receive more than a two-thirds majority. In at least four instances, however, bills enacted after March 1 that could be determined to intervene in municipal concerns, property, or government failed to get a two-thirds majority in at least one house:

- Public Act 19 of 2000 (Amendments to the Township Zoning Act)
- Public Act 20 of 2000 (Amendments to the City and Village Zoning Act)
- Public Act 141 of 2000 (Electric deregulation)

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- Public Act 265 of 2000 (Prohibits local units from bringing civil actions against firearms or ammunition manufacturers)

Each of these acts contains provisions that potentially could be viewed as intervening in municipal concerns, property, or government and, therefore, subject to invalidation, in whole or in part, under Proposal 00-2.

In an act such as PA 141, which affects both the private sector and local government, the portions of the act that might be invalidated by Proposal 00-2 could be severed, with the remaining portions continuing in effect. In certain situations, this approach has the potential of producing a result that might not have been possible or desirable in the legislative consideration of the bill.

Whether other legislation might be invalidated is more speculative. Two statutes, PA 212 and PA 261 of 1999 were signed by the Governor and filed with the Secretary of State in late December 1999. PA 212 limits the ability of public employers to impose residency requirements on their employees. PA 261 preempts local laws that purport to extend or revise provisions of the Right to Farm Act or generally accepted agricultural management practices developed under the act. Neither act was given immediate effect and both went into effect on March 10, 2000, 90 days after the adjournment of the 1999 legislative session.

If the date of enactment of a bill is defined as the date it is filed with the Secretary of State, apparently neither the ban on residency requirements nor the Right to Farm amendments would be deemed to have required a two-thirds vote for passage since they were

signed by the Governor and filed with the Secretary of State over two months before March 1, 2000.

When read in its entirety, however, the clear intent of Proposal 00-2 is to provide a layer of insulation, in the form of a two-thirds voting requirement, against legislative diminution of “municipal concerns, property, or government” as they existed on March 1, 2000. Since PA 212 and PA 261 did not go into effect until March 10, local units still had the power to require residency of their employees and adopt soon-to-be-prohibited land use laws related to the Right to Farm Act. This could be viewed as an internal conflict in the proposal to be resolved by the courts.

D. State Revenue Distribution Programs

Over 70 percent of all state-raised revenues are sent to local units through various distribution programs. Most of the distributed revenues, such as funding for highways, mental health, and courts, involve significant restrictions on their use. However, revenue distributed under the general revenue sharing program, which annually disburses approximately \$1.5 billion to cities, villages, townships, and counties, is considered to be unrestricted.

Restricted aid is not mentioned in Proposal 00-2, but it would require a two-thirds vote to place a condition on the receipt of any appropriation of unrestricted aid that intervenes or increases the scope of intervention in municipal concerns, property, or government. Certain provisions of the Revenue Sharing Act could be construed as conditions. For example, the state may withhold revenue sharing payments if a local unit fails to provide an adequate financial report or

audit. Amendments adopted in 1998 permit certain townships to be treated as cities for purposes of the formula if they provide specified levels of police, fire, and water services. If these are considered to be conditions, future alteration of these provisions might be deemed to require a two-thirds legislative vote.

Local governments, through charters, ordinances, resolutions, and contracts, can affect the expenditure of local revenues, but they cannot affect the level of state revenues shared with local government, implying that the level of shared revenues is not a municipal concern and, therefore, would be exempt from the two-thirds majority vote requirement.

The sharing of state revenues, through restricted and unrestricted aid, however, is a major source of local revenue. Some units are more reliant on shared state revenues than they are on local tax sources. The ability under charter, ordinance, or contract to provide local government services may depend on the receipt of these revenues. A reduction of revenue sharing would reduce the ability of municipalities to meet their “concerns” and could be viewed as intervention requiring a two-thirds majority vote.

E. Tax Policy

The Michigan Constitution includes two provisions for super-majority votes that relate either directly or indirectly to tax increases. As a result of Proposal A of 1994, Article IX, Section 3, contains a requirement for a three-fourths majority vote in each house to increase the statutory limits on school district operating millage rates, and Article IX, Section 27, part of the Headlee Amendment of 1978, requires a two-thirds vote of each

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house in order to exceed the state revenue limit. Moreover, proposals to require super-majorities for any tax increase are made from time to time.

In contrast, Proposal 00-2 would require a two-thirds majority of a legislated reduction in local taxes. For example, a key element in the adoption of the new revenue sharing formula in December 1998 was a phased reduction in the Detroit income tax in exchange for freezing Detroit's allocation of revenue sharing dollars, rather than permitting them to decline. It is reasonably clear that the income tax reduction called for in this agreement would have required a two-thirds majority if Proposal 00-2 had been in effect at that time.

E. Intergovernmental Powers

It is not clear how a transfer of powers between two levels of local gov-

ernment should be treated under the proposed amendment. The legislature, as the law making body, occasionally attempts to deal with the division of governmental responsibilities among the different types of local governments. Whether dealing with courts, highways, zoning, or a myriad of other issues, reform efforts do not necessarily involve an increase or decrease of powers for local governments as a whole, but types of governments may gain or lose powers.

An example of such a transfer of powers might be the provision of additional powers to townships at the expense of counties. Would legislation that shifts some traffic control responsibilities to townships from county road commissions imply state intervention? The state has not gained any powers relative to local governments under such a scenario, and local governments have not ceded any powers to the state.

But the powers of one type of local government would be adversely affected, and the powers of another type of government would be strengthened. The legislation, therefore, could be determined to have intervened in municipal affairs.

G. Home Rule in Michigan

The provisions in the Michigan Constitution related to home rule for cities and villages place Michigan in the rank of states with strong home rule powers for local units. Moreover, Article VII, Section 34, provides that the provisions of the Constitution and law shall be liberally construed in favor of counties, township, cities, and villages. Proposal 00-2 would add a new dimension to this preference by requiring a broad range of legislation to be subject to a super-majority vote of each house of the Legislature.