

Sixth in a series of papers about state constitutional issues

At the November 3, 2026, general election, Proposal 2026-01 will ask voters whether a constitutional convention should be convened for the purpose of a general revision of the 1963 Michigan Constitution. Article XII, Section 3 provides that in 1978 and every 16 years thereafter the question of a general revision of the constitution shall be submitted to voters. If the question is approved, the convention would convene in Lansing on October 5, 2027. If rejected, it will automatically appear on the ballot again in 2042.

Proposal 2026-01 will ask voters:

Shall a convention of elected delegates be called for the purpose of a general revision of the Michigan Constitution, any such revision to be submitted to the voters for ratification?

The Citizens Research Council is publishing a series of papers to provide information which voters may use to decide whether the convening of a constitutional convention is in the best interest of Michigan at this time. The Citizens Research Council takes no position on the question of calling a constitutional convention. It is hoped that examination of the matters identified in the papers in this series will promote discussion of vital constitutional issues and assist citizens in deliberations on the question of calling a constitutional convention.

## ARTICLE III – GENERAL GOVERNMENT

State constitutions are typically organized by theme, with the provisions related to specific issues and structures grouped together to allow for better understanding. The other articles in Michigan’s Constitution are organized thematically, but Article III contains a series of provisions on “general government” that serve as a catch-all for provisions that do not fit neatly into any single category. The provisions present in this article could find homes in other parts of the constitution during a convention process, but no harm comes from grouping them in this manner and it provides a place to drop other similar provisions in the future should any arise. The provisions are important in different ways, offering some key structural attributes of state government. None of the eight sections in Article III have been amended since 1963. Although a few have an interesting lineage from earlier constitutions.

### Michigan’s General Government

Section 1 provides that Lansing is the seat of government (i.e., the state capital), as it has been since 1847 and was set in the constitution beginning in 1850.<sup>1</sup> Section 3 provides for the Great Seal of Michigan and declares its use be provided by law. Section 7, in the name of continuity, declares that the “common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed.”

Section 2 establishes the three branches of government, a core feature of American constitutional design, whose powers are later defined in Article IV (Legislative), V (Executive), and VI (Judicial). While it is easy to think of Section 2 as an afterthought, its second sentence specifies a key aspect of the

separation of powers that “No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” This provision is central to the way the people and the courts interpret the roles of each branch.

### Intergovernmental Agreements

Section 5 authorizes the state, political subdivisions, and governmental authorities to enter into intergovernmental agreements with the federal government, Canada, other states, and any of their political subdivisions “for the performance, financing or execution of their respective functions.” This provision was new in 1963 and aligns with a similar provision in Article VII, Section 28 that permits the legislature to authorize agreements between or among local governments within the state. The Section 5 language offers the ability for the state and its subdivisions to work on issues that do not adhere to the state’s boundaries like flood control, navigation, water conservation, wildlife protection, and harbor development and regulation. Border communities have the ability to work with neighboring jurisdictions in other states and Canada on a variety of issues, including those related to the Great Lakes.

### Michigan’s Armed Forces

Section 4, which provides the “militia shall be organized, equipped and disciplined as provided by law,” is noteworthy for its terminology and its brevity. The “militia” in question is the Michigan National Guard, comprised of the Michigan Army National Guard and Michigan Air National Guard under the command of the Governor pursuant to Article V, Section 12 of the 1963 Constitution and state law.<sup>2</sup> Every state is required to maintain a national guard under federal law,<sup>3</sup> with the potential for the forces to be federalized.<sup>4</sup> Michigan’s National Guard traces its roots back to pre-statehood,<sup>5</sup> but has not been referred to as the “militia” in well over a century. Forces were known as the Michigan State Troops beginning in 1870 and the National Guard in 1891.<sup>6</sup> Michigan’s National Guard can be called on to assist in local emergencies and disturbances, support missions to other states, and for overseas conflicts.

A “militia” provision has been part of all four of Michigan’s Constitutions. The 1850 version specified, in part, that the “militia shall be composed of *all able bodied white male citizens between the ages of eighteen and forty-five years* (emphasis added), except such as are exempted by the laws of the United States or of this State; but all such citizens of any religious denomination whatever, who, from scruples of conscience, may be averse to bearing arms, shall be excused therefrom, upon such conditions as shall be prescribed by

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law.”<sup>7</sup> Following the Civil War, the racial qualification was stripped out by an 1870 constitutional amendment,<sup>8</sup> but the 1908 version of the provision maintained the requirement that all able-bodied men of a certain age were members.<sup>9</sup> The 1963 Constitution included the brief provision that exists today, leaving the remaining details to be sorted out via statute.

The term “militia” reflects an antiquated conception of Michigan’s National Guard, both because the word “militia” has come to be associated with paramilitary-style social organizations and because the National Guard has been professionalized significantly over the last 150 years. Convention delegates may seek to more clearly define the proper moniker for the state’s armed forces in the event of a convention. The provision could also be removed from the constitution entirely, as the Michigan National Guard itself is established in state statute and is a requirement of federal law, leaving the constitutional provision largely duplicative.

It is also possible that given recent controversies surrounding the federalization of state national guards that delegates would seek either prescriptive or restrictive language on the deployment of the National Guard for certain purposes. While federal law on the subject is likely more central to the underlying concerns, it could be the case that advocates would attempt to place certain parameters into the state constitution.

### Internal Improvements

Section 6 specifies that the “state shall not be a party to, nor be financially interested in, any work of internal improvement, nor engage in carrying on any such work, except for public internal improvements provided by law.” This provision traces its history to debates from the earliest days of the United States, as controversy existed about the extent to which the government should contribute to building infrastructure that benefitted private entities. The idea that the state might not participate at all in this work is somewhat antiquated, particularly in the context of core transportation infrastructure like roads and bridges. Yet the evolution of this portion of Michigan’s Constitution follows the trajectory of the public debate.

In the years after the U.S. Constitution was adopted, both the federal and state governments provided subsidies for the construction of “internal improvements,” most of which were also privately funded and expected to generate returns for the private investors. Many states had provided state funds for the construction of privately owned infrastructure, or had incurred considerable debt in constructing toll roads, canals, and railroads. Governmental involvement was justified in order to facilitate trade, transportation, national defense, national unity, and economic prosperity. Unfortunately, many of these projects were characterized by corruption and ended in financial catastrophe; a number of states had trouble repaying debts incurred for internal improvements. In response to those experiences, many

states amended their constitutions to prevent investment in internal improve-

ments. Generally, if there is no essential governmental purpose for a capital project, these constitutional provisions apply.<sup>10</sup>

Michigan's first constitution in 1835 encouraged internal improvements and directed the legislature to develop infrastructure goals and provide funds to meet those goals.<sup>11</sup> By contrast, the language in the 1850 Constitution shifted to a prohibition on participating in internal improvements "except in the expenditure of grants to the State of land or other property."<sup>12</sup> Further exceptions were added by amendment in 1894 and 1905 permitting the legislature to allow the City of Grand Rapids to issue bonds for the improvement of the Grand River and the state to aid the improvement of public wagon roads.<sup>13</sup> The 1908 Constitution retained the exception for public wagon roads but no longer addressed the Grand Rapids exception.<sup>14</sup> It was later amended in 1945 and 1946 to offer a more expansive description of the kinds of improvements in which the state could participate, prohibiting participation in internal improvements except:<sup>15</sup>

1. In the development, improvement and control of or aiding in the development, improvement and control of public roads, harbors of refuge, water-ways, airways, airports, landing fields and aeronautical facilities;
2. In the development, improvement and control of or aiding in the development, improvement and control of rivers, streams, lakes and water levels, for purposes of drainage, public health, control of flood waters and soil erosion;
3. In reforestation, protection and improvement of lands in the state of Michigan;
4. In the expenditure of grants to the state of land or other property.

The 1963 Constitution took a more general approach to the question of exceptions, maintaining the prohibition but allowing "public internal improvements provided by law." This language ensures any internal improvements must be "public" and that they must be authorized through the legislative process, but that the specific purpose of any given project was a decision for the legislature rather than confined to only those topics allowed in the constitution.

Today, Michigan funds and participates in roads, ports, airports, water and sewer lines, housing, high-speed internet, and other improvements that are specifically authorized in state statute. The traditional way that states have circumvented (or in some cases, directly violated) internal improvements clauses has been to create dummy corporations or independent public bodies to administer funds for private projects. The state's capital outlay process controls the planning and financing of acquisition, construction, renovation, and maintenance of facilities used by a state agency, public university, or community college. Nearly all major state-owned facility renovations and new construction are financed by the State Building Authority (SBA) from bond proceeds. SBA bonds are limited obligations of the SBA, payable from the annual SBA rent payment in a state budget bill, and are not general obligations

of the state. Highway and bridge construction projects are covered by other administrative and legislative procedures.<sup>16</sup> In order to support the development of housing for low and moderate income residents, and still accommodate the internal improvements clause, the State of Michigan created the Michigan State Housing Development Authority, which sells bonds and channels federal grants to fund that development, a structure that the Michigan Supreme Court held did not violate the internal improvements framework.<sup>17</sup>

The questions of how much the state should invest in internal improvements and what counts as public improvements remain central to modern governance, but the existing constitutional provision on the topic may be a relic of the past. It is likely advocates from both sides would seek to push constitutional language on the topic that makes the status quo more or less restrictive, but delegates would be wise to debate this topic with fresh eyes and consider whether the terminology itself is a useful way to regulate the underlying concept. What counts as an “internal improvement” and “public” in this context, as well as what counts as the state being a “party” or “interested in” a project are all questions that leave interpretative space for workarounds.

An analogous situation is the provisions in Article IV that create higher thresholds for local and special acts and local and private appropriations.<sup>20</sup> It is usually possible to craft a policy that gets around the letter of the law but violates the spirit. Similar debates exist for tax breaks and incentives that promote economic investment. Proponents can usually find space in the language of the constitution or the law to get a policy to pass legal muster.

Delegates will first need to decide if this limitation makes sense in the modern world, or if a better process exists to ensure public money is not spent for the benefit of private entities, which is something that continues to happen despite the long history of constitutional limitations. If delegates seek to maintain some version of the constitutional limitation on internal improvements, they should craft the language in a way that more clearly defines their intent and establishes enforceable parameters.

### Proposed Amendments

Only one proposed amendment to Article III has ever been placed in front of voters, a 2012 initiated effort (Proposal 6) to require the approval of voters in a statewide election and in affected municipalities before the state could use public funds to build an international bridge or tunnel.<sup>18</sup> This effort was related to the now-named Gordie Howe International Bridge. The proposed amendment failed by a 41 to 59 percent margin.<sup>19</sup> Other efforts to amend Article III through initiative petition and the legislative process have failed to reach the ballot.

## Advisory Supreme Court Opinions

Article III closes with Section 8, which grants “[e]ither house of the legislature or the governor” the ability to “request the opinion of the supreme court on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law but before its effective date.” This provision essentially establishes a process by which the lawmaking branches can enact legislation and then seek a court ruling (referred to as an “advisory opinion”) on the constitutionality of the law before it takes effect and becomes ripe for an ordinary legal challenge.

This provision has not been used very often, but it was used most recently in 2019. Both legislative chambers adopted resolutions in 2019 asking the Michigan Supreme Court to weigh in on the constitutionality of the “adopt and amend” effort that enacted two initiative petitions to prevent them from being placed on the ballot and later amending them to significantly alter their language.<sup>21</sup> Section 8 does not compel the court to issue an advisory opinion. In this case, the Supreme Court declined to rule on the constitutionality of the laws at the time of the request from the legislature,<sup>22</sup> announcing that decision after the laws had taken effect. The Supreme Court eventually overturned the “amend” part of the effort through ordinary legal challenges brought by injured parties.<sup>23</sup> Prior to 2019, the last request under the provision was 2006 in which the Court granted the request to weigh in and deemed the law in question constitutional.<sup>24</sup>

Article III, Section 8 is designed in the name of efficiency, but the 2019 “adopt and amend” saga shows its limitations as written. In the modern world where it is common for high stakes legislation to be litigated in the courts, an opportunity to fast-track questions of facial constitutionality (i.e., is the law itself constitutional) offers an opportunity to avoid disruptive and costly implementation of laws that are destined to be struck down.

The case of “adopt and amend” demonstrates this clearly. Implementing one set of laws and then reverting to different minimum wage and sick leave laws years after the alternative laws were implemented is complicated and many people missed out on wages and paid time off that the court now says they should have received. Avoiding protracted legal fights on certain issues is a worthwhile goal, especially when it is clear from the outset that the state’s supreme court is going to have to settle the issue.

The problem with the current provision, as seen in 2019, is that it does not mandate the Supreme Court rule on the question. As a result, the provision does not force a resolution one way or another, it merely offers the Supreme Court a chance to give its opinion on a topic prior to the issue becoming legally ripe (i.e., an actual controversy exists in which a party is harmed or about to be harmed). While the existence of that option is better than nothing, delegates may want to consider if the goal of the provision is to resolve controversies or to merely offer the court the discretion to resolve them early.

Courts of last resort like Michigan’s Supreme Court are rarely compelled

to rule and often deny review or wait for the controversy to percolate, but Article III, Section 8 may reflect a situation in which compelling a decision is actually the desired outcome. The intent of the framers seems to have been to settle facial constitutionality questions before certain laws were implemented, which makes sense from a public policy perspective. This is different from compelling the Supreme Court to answer any question of law (something that was proposed in the failed 1867 Convention), which could create an endless loop of work for the court on theoretical issues.

Convention delegates should consider exactly what the purpose of Article III, Section 8 is, and if it is designed to settle a specific constitutional question that is certain to arise, whether it makes sense to empower the legislative and executive (either independently or jointly) to compel the Michigan Supreme Court to answer.

## Potential Additions

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If Michigan voters call a constitutional convention, delegates would certainly debate the contested issues described above, but they may also consider adding provisions related to issues that are not presently in the state's constitution.

### Non-disclosure Agreements

A topic of significant controversy over the last decade in Michigan government has been governmental bodies and/or officials signing non-disclosure agreements. This has come up both in terms of agreements with private entities (e.g., businesses considering local developments) and former public employees (e.g., those who received a settlement from the government upon exiting employment). While some situations may warrant full or partial non-disclosure, it is likely that convention delegates would consider if any constitutional limitations should be placed on this practice. Article III is a natural place for such a provision, either as it would relate to intergovernmental agreements<sup>25</sup> and internal improvements, or government more generally.

### Transparency

Michigan's poor comparative record on government transparency has also been the subject of debate in recent years which could motivate delegates to consider transparency minded provisions in a new constitution. Depending on the scope and specificity of those provisions, Article III could be where those provisions land, although other options exist. In particular, provisions related to open records laws could be added to the executive and legislative articles, or an entirely separate article could be crafted.

## Conclusion

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Article III is likely to draw less controversy than other areas of the 1963 Constitution in the event of a convention, but a few of its provisions would get a close look from delegates. Modernizing the reference to Michigan's "militia" would likely fit into broader efforts to bring the constitution's language into the 21<sup>st</sup> century.

The biggest question for Article III would be how the topic of internal improvements is viewed by the delegates and whether it is time for the state to take a different constitutional approach to defining and limiting public spending on projects that benefit private entities.

Another possible debate would come from whether the provision related to requests for supreme court opinions on yet-to-be-implemented laws is actually written in a way that achieves its intent.

Deliberations on Article III could also be a place where the public's interest in transparency comes to a head, although those topics could be integrated into other articles, or its own article, depending on how delegates approach the topic.

## Endnotes

- 1 ["Three Capitols."](#) Michigan State Capitol Commission. Accessed March 27, 2026. See also: [1835 Mich Constitution](#), Article XII, Section 9; [1850 Mich Constitution](#), Article 2; [1908 Michigan Constitution](#), Article 1, Section 2.
- 2 See 1963 Constitution, [Article V, Section 12](#) and [1967 PA 150](#).
- 3 See [32 USC § 101 et seq.](#)
- 4 ["Defense Primer: Reserve Forces."](#) Congressional Research Service. June 13, 2025.
- 5 ["Michigan Military History."](#) Michigan Department of Veterans and Military Affairs. Accessed March 27, 2026.
- 6 ["Post-Civil War."](#) Michigan Department of Veterans and Military Affairs. Accessed March 27, 2026.
- 7 See 1850 Michigan Constitution, Article 17, Section 1 [as ratified](#).
- 8 See 1850 Michigan Constitution, Article 17, Section 1 [as amended](#).
- 9 See 1908 Michigan Constitution, Article 15, Section 1 [as ratified](#).
- 10 See, for example: ["Michigan Constitutional Issues: Article III – General Government."](#) Citizens Research Council of Michigan. April 2010; Minicucci, Stephen. ["Internal Improvements and the Union, 1790–1860."](#) *Studies in American Political Development* 18, no. 2 (2004): 160–85.
- 11 See [1835 Michigan Constitution](#), Article XII, Section 3.
- 12 See 1850 Michigan Constitution, Article 14, Section 9 [as ratified](#).
- 13 See 1850 Michigan Constitution, Article 14, Section 9 [as amended](#) by Joint Resolution No. 9 of 1893 (Approved by voters January 19, 1894) and Joint Resolution No. 4 of 1905 (Approved by voters April 3, 1905).
- 14 See 1908 Michigan Constitution, Article 10, Section 14 [as ratified](#).
- 15 1908 Constitution, Article 10, Section 14 [as amended](#) by Joint Resolution No. 2 of 1945 (Approved by voters April 2, 1945) and Joint Resolution No. 1 of the 1st Extra Session of 1946 (Approved by voters November 5, 1946).
- 16 ["Michigan's Capital Outlay Process."](#) House Fiscal Agency. February 2015.
- 17 See [Advisory Opinion Re Constitutionality, PA 1966](#), 158 N.W.2d 416, 380 Mich. 554. May 6, 1968.
- 18 ["Statewide Ballot Issues: Proposal 2012-06 — Vote Requirement for International Crossing."](#) Citizens Research Council of Michigan. September 2012.
- 19 ["Proposed Amendments to the Constitution of 1963 — Summary Of Adoption Or Rejection."](#) Michigan Manual, 2023-2024.
- 20 See 1963 Michigan Constitution [Article IV, Section 29](#) and [Article IV, Section 30](#).
- 21 See [Senate Resolution 16 of 2019](#) and [House Resolution 25 of 2019](#).
- 22 See [In re House of Representatives Request for Advisory Opinion Regarding Constitutionality of 2018 PA 368 & 369](#), 505 Mich 884 (2019).
- 23 See [Mothering Justice v Attorney General](#), (2024)
- 24 See [House Resolution 199 of 2006](#) and [In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71](#) (2007).
- 25 See [House Joint Resolution X of 2022](#).

