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# AN ANALYSIS of the PROPOSED CONSTITUTION

Number 3

December 19, 1962

## THE LEGISLATIVE BRANCH

The legislative provisions of the proposed constitution represent a substantial revision of the present constitution in this area. Legislative power is vested in a senate of 38 members (an increase from the present 34) and in a house of representatives having 110 members—the maximum allowable under the present constitution. Senators would have a four-year term rather than the present two-year term; the first election for the four-year term would be in 1966. Members of the house of representatives would continue to have a two-year term.

### Summary of Major Changes

1. Legislative Apportionment\*
2. Legislative Powers
  - a) An over-all increase is made in the area of legislative discretion.
  - b) A legislative auditor general and a legislative council are new agencies established to increase legislature's effectiveness.
3. Legislative Procedure
  - a) A public record of committee action is required.
  - b) Carry-over of legislative business from one session to the next is required.
  - c) Appropriation bill procedure is specified.
4. The prohibition of dual office holding by legislators is broadened to include public employment.

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\* Legislative apportionment is not discussed in this analysis—see Number 4 in this series, *Legislative Apportionment*.

*Publication made possible by grants from W. K. Kellogg Foundation,  
The Kresge Foundation, McGregor Fund and Relm Foundation.*

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## Legislative Powers

The Michigan legislature can exercise its law-making function to the extent that it is not restricted by federal authority—the federal constitution, laws, treaties and court decisions—and by the state constitution. While a revision of the state constitution cannot directly affect federal restrictions on state legislative power, it can alter the extent of restrictions imposed by the state constitution. The extent to which restrictions on the legislature have been eased in general effect by the proposed constitution must be traced in some detail, since provisions bearing upon the extent of legislative power are found not only in the legislative article but also throughout the instrument.

### Restrictions on Legislative Power

Various restrictions on legislative power in the present constitution are retained in the proposed constitution. Some have been eliminated or modified, while some new restrictions have been added.

**Local and Special Acts.** One restriction expedites the legislature's main responsibility in the area of general legislation by prohibiting the passage of local and special acts where a general act can apply and making this a judicial question. This originated as an important reform in the 1908 constitution which sharply decreased the deluge of local and special acts. It has been continued in the proposed constitution, and is given greater force by requiring a two-thirds vote rather than the present majority vote in both houses for authorized local and special acts before the mandatory referendum in the district affected.

**Initiative and Referendum.** The popular initiative for statutes—infrequently used since its adoption in 1913—is retained as an alternative legislative method and can be considered as a form of limitation on the powers of the legislature. The legislature is given new power to amend or repeal initiated statutes by a three-fourths vote of the legislature. The popular referendum by petition on statutes is also retained, but it may be invoked against an act given immediate effect, a change from the present provision.\*

**Executive Organization.** The maximum of 20 principal departments within and among which administrative agencies are to be allocated can be considered a restriction on legislative discretion in this area intended to remedy the problem of agency proliferation. The legislature will have two years to accomplish this reorganization by statute, or the governor will have a free hand to reorganize the executive branch in the third year. The legislature is not prohibited from passing executive organization or reorganization measures thereafter, but the governor would have concurrent authority to reorganize the executive branch by executive order subject to disapproval by a majority of both houses of the legislature within 60 days.

**Civil Service Rates of Compensation.** Although at present the legislature determines the total appropriation for salaries in the classified civil service, it has no control over

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\* Provisions on the initiative and referendum for statutes have been shifted from the legislative article to the article on elections in the proposed constitution. See Number 2 in this series.

rates of compensation within the classified service which are determined by the civil service commission. Under the proposed constitution, the legislature is given power to “reject or reduce” *increases* in rates of compensation ordered by the commission within 60 days by a two-thirds vote in both houses. The two-thirds vote requirement is intended to prevent capricious legislative interference in this matter while providing for some degree of legislative review.

**Death Sentence and Graduated Income Tax Prohibited.** Two new prohibitions are included in the proposed constitution: (1) no state law shall provide for the death sentence; (2) no state or local income tax “graduated as to rate or base” shall be imposed (Art. IX, Sec. 7).

### **Legislative Restrictions Reduced or Eliminated**

As a result of the elimination of provisions containing restrictive detail and procedural features in the militia, corporations, eminent domain, exemptions and other articles of the present constitution, the legislative process will have wider discretion to legislate in these areas. Greater legislative discretion is also provided with respect to procedural or other features relating to such matters as the initiative and referendum, elections, escheats and investment of pension funds. The present restriction on state involvement in works of public internal improvement is eliminated and the legislative process will have full discretion in this regard.

Some provisions in the present constitution, such as those prohibiting the legislature from establishing a state paper or granting divorces by special act, were not continued in the proposed constitution because the convention felt they were unnecessary—that the legislature could be trusted to refrain from improper action of this type.

### **New Provisions on Legislation**

Several new provisions require or permit the legislature to act on specified matters. Mandatory provisions are intended to require the legislature to act in specific areas while permissive provisions also reflect the convention’s concern with their subject matter.

**Mandatory.** Examples of more important new subjects on which legislation is specifically required are:

1. implementation of the equal protection clause as related to civil and political rights (Art. I, Sec. 2);
2. implementation of some features relating to the new intermediate court of appeals including the determination of its jurisdiction and its judicial electoral districts (Art. VI, Secs. 8, 9 and 10);
3. establishment of courts of limited jurisdiction within five years which will supplant justice courts and circuit court commissioners (Art. VI, Sec. 26);
4. statutory provision for direct court review of “final decisions, findings, rulings and orders” of administrative agencies which are judicial or-quasi-judicial (Art. VI, Sec. 28);

5. statutory provision for a system of charter government for counties, acceptance of which would be optional by the counties—this system may include county home-rule features to the extent of the legislature’s discretion.
6. statutes for the “protection and promotion of public health,” and for the protection of “air, water, and other natural resources” from pollution or impairment.

**Permissive.** Examples of new permissive provisions are:

1. suspension of administrative regulations issued when the legislature is not in regular session by a joint committee (so authorized by resolution) until the end of the next regular session;
2. enactment of legislation to regulate the use of atomic and other new forms of energy and to provide “safety measures” in connection with the use of such energy.

### **New Legislative Agencies**

The legislature is required by the proposed constitution to establish two new agencies which will be responsible only to the legislature—a legislative auditor general and a legislative council. These agencies are intended to make the exercise of legislative power and responsibility more effective.

#### **Legislative Auditor**

Under the proposed constitution, the office of auditor general has been made appointive by and responsible to the legislature rather than an elective office in the executive branch as at present. This change was intended to establish a legislative agency capable of ascertaining whether funds appropriated by the legislature have been expended in accordance with legislative intent. This purpose would be achieved through the fiscal post-audit and the performance audit of all branches, departments, agencies and institutions. The performance audit would provide a qualitative evaluation of the operational effectiveness or performance of such departments and agencies.

#### **Legislative Council**

The proposed constitution also requires the legislature to establish a bipartisan legislative council “consisting of legislators appointed in the manner prescribed by law.” The council’s staff is required to maintain bill drafting, research and “other services” for members of the legislature. The council is required “periodically” to examine the various state laws and recommend revision of them to the legislature.

### **Legislative Procedure**

Some provisions for legislative organization and procedure have been altered from the present constitution. Majority requirements in the legislature, such as for a quorum or for passage of bills, have been changed to a majority of the “members elected to and serving in” each house rather than of the “members elected” as presently provided. This new requirement is applicable to extraordinary majorities as well. This feature will eliminate vacancies in computing such majorities.

**Committee Procedure.** One new provision specifically authorizes the establishment of committees and joint committees. Each committee is required to record by vote and name all action taken on bills and resolutions. This record is to be “available for public inspection.” Advance notice of each committee hearing and a clear statement of all subjects to be considered at it are required to be published in the journal.

### **Procedure on Bills**

The proposed constitution carries over without change in effect many of the present provisions on bill procedure including the requirement that all legislation “shall be by bill,” the prohibition of a general revision of the laws and the authorization for the legislature to submit new legislation to popular referendum.

**Appropriation Bill Procedure.** A new provision sets forth procedure with respect to appropriation bills. Except for supplementary appropriation bills for any current fiscal year, general appropriation bills covering budget items for the following fiscal year are required to be passed or rejected in either house before that house passes any bill appropriating funds for items not in the budget—and every bill which would require an appropriation to carry out its effect is to be considered an appropriation bill. The legislature is also required to itemize in one of the general appropriation bills its estimates of revenues for each operating fund and to keep the amounts of general appropriation bills within its estimates of revenue.

**Original Purpose.** The proposed constitution continues the present provision requiring each law to “embrace no more than one object” to be expressed in the title. Also continued is the prohibition of a bill being “altered or amended on its passage through either house so as to change its original purpose.” However, this prohibition has been modified by the addition of the words—“as determined by its total content and not alone by its title.” The question of the germaneness of amendments to bills would tend to arise less frequently under this feature.

**Carry-over.** A revised feature of the proposed constitution requires that any “business, bill or joint resolution” pending when a regular session in an odd numbered year is adjourned shall carry over to the next regular session of any one “legislature” with the same status. The present constitution prohibits any form of carry-over.

### **Legislators: Qualifications, Eligibility and Other Provisions**

The present requirements that each senator and representative be a United States citizen, at least 21 years of age and an elector of his district are retained. Ineligibility to the legislature is retained for persons convicted of subversion. Ineligibility under the present provision as a result of conviction of a felony involving a breach of public trust has been limited to apply to those so convicted within the preceding 20 years under the proposed constitution.

**Dual Public Office Holding or Employment Prohibited.** Under the proposed constitution legislators are prohibited from having any other public office or employment—national, state, or local—except notary public and the armed forces reserve. The present

provision prohibits legislators from holding national, state or county office except notary public, militia officer and elective township office. This change extends the prohibition to all public employment and to all local government.

**Ineligibility to Public Appointment.** The proposed constitution retains the present prohibition of any legislator receiving a “civil appointment within this state” (except notary public) from the governor, the legislature or any other state authority during the term for which he is elected. The present prohibition of appointment of legislators to the United States Senate was eliminated.

### **Conflict of Interest**

Under the proposed constitution members of the legislature (and other state officers) are prohibited from having a direct or indirect interest in any contract with the state or any political subdivision which causes a “substantial conflict of interest.” The legislature is given discretion to implement this provision “by appropriate legislation.” The present constitution prohibits legislators from having a direct or indirect interest in any contract with the state or any county “authorized by any law passed during the time for which he was elected” or for one year thereafter.

### **Compensation**

The basic provision on compensation and expense allowances for legislators remains unchanged in general effect—to be determined by law. Changes in compensation or expense allowances are to become effective only when legislators begin their terms of office “after a general election.” A detailed provision specifying the documents legislators are to receive and prohibiting the state from furnishing them with such materials as books or newspapers was not carried over to the proposed constitution.