

A Comparative Analysis of the Michigan Constitution

Volumes I

Articles III



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III ELECTIVE FRANCHISE

1. Qualifications

Article III: Section 1. In all elections every inhabitant of this state being a citizen of the United States; and every inhabitant of Indian descent, a native of the United States, shall be an elector and entitled to vote; but no one shall be an elector and entitled to vote at any election, unless he or she shall be above the age of 21 years and has resided in this state 6 months, and in the city or township in which he or she offers to vote 30 days next preceding such election: Provided, That a registered qualified elector who shall move into another city or township in this state within said 30 day period shall be entitled to vote in the city or township in which registered and from which he has last removed on filing a sworn affidavit to that effect with the election board of the city or township from which he has last removed: Provided further, That no qualified elector in the actual military service of the United States or of this state or in the army or navy thereof, or any student while in attendance at any institution of learning, or any person engaged in teaching in the public schools of this state, or any regularly enrolled member of any citizens' military or naval training camp, held under the authority of the government of the United States or the state of Michigan; or any member of the legislature while in attendance at any session of the legislature, or said member's immediate family during such time, or commercial traveler, or any qualified elector employed upon or in the operation of railroad trains in this state, or any sailor engaged and employed on the great lakes or in coastwise trade, shall be deprived of a vote by reason of absence from the township, ward or state in which he or she resides; and the legislature shall provide by law the manner in which and the time and place at which such absent electors may vote and for the canvass and return of their votes: Provided further, That the legislature shall have power to pass laws covering qualified electors who may be necessarily absent from other causes than above specified: And provided further, That there shall be no denial of the elective franchise at any election on account of sex; And provided further, That the legislature may provide by law that the electors of a township may cast their ballots at a township polling place located within the

limits of a city which has been incorporated from territory formerly a part of the township.

Constitutions of 1835 and 1850

Both of the earlier Michigan constitutions contained a provision of this type. The 1835 provision (Article II, Section 1) defined an elector as a white male citizen over 21 years of age who had resided in the state six months prior to any election. Under the provision no individual was entitled to vote other than in the district, county or township in which he actually resided at the time of an election.

The 1850 provision (Article VII, Section 1), amended three times, defined an elector as a male inhabitant of the state over 21 years of age and a citizen of the United States, or a foreign born inhabitant who resided in the state 25 years, or a civilized male inhabitant of Indian descent not a member of any tribe.

An elector was not entitled to vote unless he had resided in the state six months and in the township or ward where he intended to vote for 20 days prior to the election.

This section as amended also provided for absentee voting by qualified electors serving in the military services.

The 1850 provision was carried over into the 1908 constitution with no change except in the wording of the “absentee voting” clause to eliminate certain unnecessary words.

Constitution of 1908

Convention of 1907-08. In the constitutional convention of 1907-08 several proposals were considered which would have amended this section to extend suffrage to the women of the state. The section was not changed to extend the suffrage although a Section 4 was added to give women taxpayers the right to vote upon questions involving expenditures of public money.

A proposal to deny the right to vote to a person unable to read the constitution or write his name was not accepted by the convention, apparently because the delegates questioned the wisdom of placing in the election boards the power of determining a question of fact in the case of each potential voter.

Amendments. This section has been amended seven times since 1908. The amendments, for the most part, extended the suffrage and declared various persons entitled to vote under the residence provision. An amendment in 1914 provided for absentee voting for electors who were absent from their place of residence for cer-

tain causes specified in the amendment. In addition, the legislature was given the power to extend the privilege of absentee voting to electors absent for reasons other than those specified.

An amendment in 1918 extended the franchise to women. In 1932 the section was amended to require residence in a city instead of a ward. An amendment in 1950 removed former provisions entitling inhabitants of foreign birth to vote under certain conditions. The last amendment, adopted in 1954, added a clause which entitles an elector to vote under certain conditions in a city or township in which he is registered but from which he has moved.

Judicial Interpretation

In regard to the powers of the legislature the courts have held that where the constitution specifically provides for the qualifications of electors voting on certain questions, the qualifications cannot be changed by legislation.¹ In voting on ordinary school matters, the statutory provisions of the school code control, but when the question being voted on involves an increase in the tax limitation the constitutional provisions control with respect to voter qualifications.²

Other State Constitutions

Most other state constitutions contain a provision which establishes voter qualifications. The qualifications established by a majority of the states include considerations of age, citizenship and residence while considerations of property, education and tax payment also are frequently included.

Age. Forty-six state constitutions fix the minimum age requirement for voting at 21. In Alaska the minimum age requirement is 19, while Georgia and Kentucky recently lowered the minimum age qualification to 18 years. West Virginia provides that minors are not permitted to vote.³

Citizenship. Forty-five states require United States citizenship as a qualification for voting. California, Minnesota, New York and Utah provide, in addition, that a voter must have been a citizen for 90 days⁴ prior to an election. Seven states also require a voter to be a citizen of the state.

Residence. A number of states provide that a voter must reside in the state, the county, the township and the election district a given period of time before an election. The length of time necessary to establish residence varies considerably. One

¹ Kentschler v. Detroit Board of Education, 324 Mich. 603.

² Dearborn Township School District No. 7 v. Cahow, 289 Mich. 643.

³ Index Digest, p. 437.

⁴ Index Digest, p. 438.

state, Maine, requires three months residence in the state. Ten states, including Michigan, require six months residence in the state, while 35 states require residence in the state for one year. Alabama, Mississippi, Rhode Island, and South Carolina require two years.

Thirty-one states require residence in the county for periods varying from 30 days in Idaho and Nevada, to one year in Alabama, Louisiana (Parish) and South Carolina. Six states require 90 days residence in the county, while eight states require six months.

Residency requirements in cities varies from 30 days in Michigan and Washington, to six months in Rhode Island and Virginia. Mississippi requires one year's residence in a city,⁵ except a clergyman and his wife may vote after six months' residence in a city.

The period of residence required in an election precinct also varies from a minimum of 30 days in eleven states, to a maximum of one year in Mississippi.

Absentee Voting. Twenty-five states, including Michigan, have provisions in their constitutions to permit absentee voting. In states other than Michigan, the provisions are usually short and either authorize or direct the legislature to provide for the matter by law. The following are a few examples.

Qualified electors of the state who are absent, whether within or without the state, may be enabled by general law to vote at all elections by the people. (Missouri constitution, Article VIII, Section 7)

. . . The legislature may, by general law, provide for the casting of votes by duly registered voters who expect to be absent from their respective precincts or unable to vote therein, by reason of physical disability, on the day on which any election is held. (California constitution, Article II, Section 1)

Methods of voting, including absentee voting, shall be prescribed by law. ... (Alaska constitution, Article V, Section 3) The Hawaii constitution contains a similar provision.

The U.S. constitution provides that electors choosing members of the house of representatives and the senate "shall have the qualifications requisite for electors of the most numerous branch of the State legislature."⁶

⁵ Index Digest, p. 448.

⁶ U.S. constitution, Article I, Section 2 and Article XVII.

Under the fifteenth amendment the right to vote “shall not be denied or abridged by the United States or by any State on account of race, color, or previous conditions of servitude.” The nineteenth amendment provides that the right of citizens to vote cannot be denied on the basis of sex.

Comment

The voter qualifications established in this section would appear to be comparable to those of most of the other 49 states.

In recent years, three states have lowered their minimum age requirement. A number of constitutional amendments have been proposed in the Michigan legislature to lower the voting age from 21. The most commonly suggested minimum was 18. This question will undoubtedly be raised in the forthcoming convention. The question is of national significance in that the U.S. constitution provides that any person having the qualifications requisite for electors of the most numerous branch of the state legislature is entitled to vote in national elections.

Some consideration might be given to simplifying the language of this section by leaving the matter of absentee voting to be prescribed by the legislature.

2. Residence

Article III: Section 2. No elector shall be deemed to have gained or lost a residence by reason of his being employed in the service of the United States or of this state, nor while engaged in the navigation or the waters of this state or of the United States or of the high seas, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at public expense, nor while confined in any public prison; except that honorably discharged soldiers, seamen and marines who have served in the military or naval forces of the United States or of this state and who reside in soldiers' homes established by this state may acquire a residence where such home is located.

Constitutions of 1835 and 1850

A similar section of the 1835 constitution provided for the retention of the voting privilege only for those persons leaving the state on public business. It did not bar people from obtaining residence who were temporarily in the state on public business. The 1835 constitution (Article II, Section 5) provided:

No person shall be deemed to have lost his residence in this state, by reason of his absence on business of the United States, or of this state.

The language of the present provision originated in the 1850 constitution (Article VII, Section 5). The 1850 provision provided not only for the retention of the voting privilege for the Michigan resident while temporarily absent from the state, but also barred from voting persons who were present in the state for certain specified reasons. The 1850 provision was carried over into the 1908 constitution with only minor changes in phraseology. The word “seamen” was inserted in the last clause of the provision in the place of the word “sailor” which appeared in the 1850 provision to broaden the meaning of the former term as it applied to employment on the Great Lakes and to correspond with the same word in the first line of the next section (Article III, Section 3).⁷

An additional change to improve the phraseology of the section was made by inserting the words “at any institution of learning” in place of the words “of any seminary of learning.”

This section has not been amended since the adoption of the present constitution.

Other State Constitutions

Most other state constitutions contain a provision of this type. Eighteen states, in addition to Michigan, combine into a single section provisions relative to the gain and loss of residence. Residence is not gained or lost while confined in a public prison in nine states, nor while an inmate of an almshouse or asylum in eleven states, nor while a student at an institution of learning in nineteen states. Seven other states provide only that residence is not lost by reason of absence on state business. Michigan’s provision that allows soldiers, seamen and marines residing in soldiers’ homes to acquire residence appears to be unique among the states.⁸

Neither the Model State Constitution nor the U.S. constitution contains provisions of this type.

Comment

In that a number of state constitutions, including the newer and recently revised constitutions of Alaska and New Jersey, contain no provisions of this type, some consideration might be given to eliminating this section and leaving the matter to be provided for by the legislature.

⁷ See Proceedings and Debates, p. 1284.

⁸ Index Digest, pp. 447-448.

This section and the following section (Article III, Section 3) both bar from voting certain persons who migrate into the state. Should Section 2 be retained, consideration might be given to combining the subject matter of these two provisions to form a single section.

3. Residence - Not Obtained Because of
Military Service in State

Article III: Section 3. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed in any military or naval place within the state.

Constitution of 1835 and 1850

The language of this provision originated in the constitution of 1835. It was carried over into the 1850 constitution unchanged.

Constitution of 1908

The 1850 provision was carried over into the present constitution with only one minor change. The word “state” at the end of the present section replaced the word “same” which appeared in the 1850 provision.

This section has not been amended since the adoption of the present constitution.

Opinions of the Attorney General

In 1956, the attorney general held that while members of the military services do not acquire residence merely by being stationed in a given community, nothing precludes⁹ their obtaining a new residence in a community off a federal post while in services.

Other State Constitutions

Twenty-three states, in addition to Michigan, have a provision of this type. In a number of states the provision is combined with subject matter similar to that found in the previous section of Michigan’s constitution (Article III, Section 2). For example, the Missouri constitution provides (Article VIII, Section 6):

For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence

⁹ Op. Attorney General, October 1, 1956, No. 2807.

while engaged in the civil or military service of this state or of the United State, or in the navigation of the high seas or the waters of the state or of the United States, or while a student of any institution of learning, or kept in a poor house or other asylum at public expense, or confined in public prison.

Comment

Those revising the constitution might consider eliminating this section and leaving the matter to be provided for by law.

Should the section be retained, consideration might be given to integrating the subject matter with that of Section 2 of Article III to combine in a single section of the revised constitution the intent of retaining or denying the voting privilege for persons who are temporarily absent or present in the state.

Section 4. Voting on direct Expenditures
or Bond Issues

Article III Section 4. Whenever any question is submitted to a vote of the electors which involves the direct expenditure of public money or the issue of bonds, only such persons having the qualifications of electors who have property assessed for taxes in any part of the district or territory to be affected by the result of such election or the lawful husbands or wives of such persons shall be entitled to vote thereon.

Constitutions of 1835 and 1850

This provision appeared in neither the constitution of 1835 nor the constitution of 1850.

Constitution of 1908

As originally written into the 1908 constitution this section was substantially different from its present form. It then read as follows:

Whenever any question is submitted to a vote of the electors which involves the direct expenditure of public money or the issue of bonds, every woman having the qualifications of male electors who has property assessed for taxes in any part of the district or territory to be affected by the result of such election shall be entitled to vote thereon.

The address to the people stated that the purpose of this section (i.e., the extension of the elective franchise in certain elections to women property owners) was “in

keeping with the principle that no person's property should be directly affected without the consent of the owner thereof."

Amendment in 1932. The section as it emerged from the 1907-08 convention was amended in the general election of November, 1932. Whereas the purpose of the original provision was to extend the elective franchise (in certain elections) specifically to women property owners, the 1932 amendment limited the franchise in elections involving the direct expenditure of public money or the issue of bonds to property owners and their spouses. This served to exclude male non-property owners who formerly could vote in such elections.

Judicial Interpretation

A number of cases have defined more exactly the elections in which non-property owners mayor may not vote. The court decided that this provision's restriction of the electorate did not apply to a vote on the issuance of revenue bonds;¹⁰ or on the issuance of self-liquidating bonds by the Huron-Clinton Metropolitan Authority.¹¹ In another case the court upheld the results of a special school bond election saying that:

The section of the constitution in question contains no provision indicating that a failure to observe strictly the voting limitation renders the election void. It has been repeatedly held by this court that irregularities in the conducting of an election will not invalidate the action taken unless it appears that the result was, or may have been, affected thereby.¹²

Other State Constitutions

Four state constitutions specifically prohibit a property requirement for voting. Oregon and Alaska (for local bond issues) leave any such requirement to the discretion of the legislature. Six state constitutions include the requirement for both state and local governments (three of these relate only to votes on issuing debt). Three state constitutions limit the suffrage to taxpayers only in local elections. Finally, the remaining 36 state constitutions contain no property ownership requirement for voting. None of the states having recent conventions has included a property ownership requirement in the constitution. Neither the Model State Constitution nor the U.S. constitution contains a property requirement for voting.

¹⁰ Michigan Gas and Electric Co. v. City of Dowagiac, 278 Mich. 522.

¹¹ Huron-Clinton Metropolitan Authority v. Boards of Supervisors of Five Counties, 300 Mich. 1.

¹² Rosenbrock v. School District No.3, Fractional, 344 Mich. 335, 339.

Comment

The restriction of the franchise to property owners for certain purposes has a long history.¹³ The restriction has been premised on the principle that no person's property should be directly affected without the consent of the owner. Historically, the property tax was the source of both state and local revenues and, therefore, the traditional assumption was that property owners paid for the "direct expenditure of public money or the issue of bonds," whether state or local.

The provisions of this section apply to the state as well as to local governments and the state no longer levies a general ad valorem property tax. Thus, voting on a state bond issue is limited to property owners even though property owners, as such, will not have to pay the principal and interest on the debt. A state bond issue would be financed through general state taxes, paid in part at least by all the citizens of the state.

In respect to local governments, which do rely on the property tax to finance general obligation bond issues and a large portion of their direct expenditures, this provision presents an interesting anomaly. Only property owners and their spouses can vote to issue bonds or make direct expenditures, but all electors, whether property owners or not can vote to increase the limitation on the amount of property taxes which can be levied by the local governing body. Thus, on a local bond issue on the ballot, only property owners and their spouses can vote, but on the question of increasing the property tax limitation to raise the funds to pay the debt service on the bonds, all qualified electors can vote.

As noted previously, the more recent state constitutions do not contain provisions of this type. If this section is to be continued, the convention may wish to consider the question of whether voting on millage increases should be similarly restricted.

5. Elector; Privilege from Arrest

Article III: Section 5. Every elector in all cases, except for treason, felony or breach of the peace, shall be privileged from arrest during his attendance at elections and in going to and returning from the same.

Constitutions of 1835 and 1850

Both the 1835 and 1850 constitutions contained similar provisions.

¹³ As early as the sixth century, B.C., property was used in Athens as a basis for dividing the citizenry into four classes.

Constitution of 1908

Only a few grammatical changes were made in carrying this provision over from the 1850 constitution.

Other State Constitutions

Twenty-five state constitutions contain the same provision as is in the Michigan constitution. Ten other states have basically the same provision, but variously include as exceptions such things as larceny, violation of election laws and illegal voting, or arrest on civil process.¹⁴ Only Missouri of the states having new constitutions includes a provision similar to that in the Michigan constitution. Neither the Model State Constitution nor the U.S. constitution includes any comparable provision.

Comment

See Comment under next section.

6. Elector; Militia Duty

Article III: Section 6. No elector shall be obliged to do militia duty on the day of election, except in time of war or public danger, or to attend court as a suitor or witness.

Constitutions of 1835 and 1850

The 1835 constitution (Article III, Section 4) excluded militia duty on “the days of election” and did not include the phrase “or attend court as a suitor or witness.” Both these changes were made in the 1850 constitution (Article VII, Section 4).

Constitutions of 1908

No change was made in carrying this provision over from the 1850 constitution.

Other State Constitutions

Sixteen states, including Michigan, release electors from their obligation to perform military duty on an election day except in time of war or public danger. Three states, including Michigan, exclude electors from duty as a suitor or witness on election day; both Virginia and West Virginia also exclude duty as a juror, the latter

¹⁴ Index Digest, p. 437.

state doing so only for the continuance of the election or the time needed for going to or returning from the election.¹⁵ None of the newer constitutions or the Model State Constitution makes either type of exception.

Comment

Sections 5 and 6 are designed to guarantee the traditional right of Americans to cast their ballots on election day. The major question in connection with these two provisions is whether they should be continued in the constitution or in the subject matter provided by law.

7. Votes to be by Ballot

Article III: Section 7. All votes shall be given by ballot, except for such township officers as may be authorized by law to be otherwise chosen.

Constitutions of 1835 and 1850

This provision originated in the constitution of 1835 (Article II, Section 2); except for a minor change in word order it was carried over into the 1850 constitution (Article VII, Section 2).

Constitution of 1908

The provision was maintained exactly as it appeared in the 1850 constitution. There was no debate on the section during the convention.

Statutory Implementation

The legislature provided for the election of poundmasters and one overseer of highways for each township road district by a viva voce vote or in such other manner as the annual meeting might direct.¹⁶ This provision was repealed in 1944.¹⁷

Judicial Decisions

This section has been held not to preclude the use of voting machines. The latter have specifically been interpreted as a type of ballot.¹⁸ The important item seems to be that the voter be able to cast a secret vote.¹⁹

¹⁵ Index Digest, pp. 436-37.

¹⁶ M.S.A., 5.10.

¹⁷ Public Acts of 1944, No. 16.

¹⁸ *Henderson v. Board of Election Commissioners of Saginaw*, 160 Mich. 36.

¹⁹ *Helme v. Board of Election Commissioners Lenawee County*, 149 Mich. 390.

Other State Constitutions

Thirty-seven states require use of a ballot in elections.²⁰ Six states permit either a ballot or an alternate method prescribed by law; three of these states specifically require the retention of secrecy. Connecticut requires a ballot only in the elections of state officers and members of the legislature. Six states exclude some local elections from the general requirement. The provisions in the constitutions of Minnesota and Wisconsin are almost identical to that in the Michigan constitution. The constitutions of both Alaska and Hawaii leave the matter to the state legislature. The U.S. constitution leaves the “times, places and manner” of holding elections of senators and representatives to the state legislatures (Article 1, Section 4 (1)). The Model State Constitution gives to the legislature all controls over elections and includes no specific requirements itself.²¹

Comment

It would not appear necessary to include a provision specifically allowing the use of voting machines in elections as some states have done, since the courts have upheld the legality of the use of machines in lieu of written ballots. Since the legislature has repealed the laws excepting some township officers from the ballot requirement, that portion of the provision could probably be removed from the constitution. The convention may, however, want to consider a provision requiring all votes by the electorate to be by secret ballot or its equivalent, which would give the use of mechanical voting devices explicit constitutional sanction.

8. Purity of Elections; Recall of Officials

Article III: Section 8. Laws shall be passed to preserve the purity of elections and guard against abuses of the elective franchise, and to provide for the recall of all elective officers, except judges of courts of record and courts of like jurisdiction upon petition of twenty-five per centum of the number of electors who voted at the preceding election for the office of governor in their respective electoral districts.

²⁰ Index Digest, p. 423.

²¹ Article II, Section 202.

Constitutions of 1835 and 1850

The 1835 constitution did not have a provision of this type. The 1850 constitution (Article VII, Section 6) provided: “Laws may be... passed to preserve the purity of elections and guard against abuses of the elective franchise.”

Constitution of 1908

The original form of Section 8 in the constitution of 1908 was the same as in the 1850 provision except for the substitution of “shall” for “may” which made the provision mandatory. An amendment, proposed by the legislature and approved at the April, 1913, election, added the provision relative to recall.

Statutory Implementation

The Michigan election law of 1954 (Public Act 116 of 1954) contains detailed provisions relating to elections including those that are more specifically an implementation of Section 8.²² Statutory provisions relating to recall are detailed and specify that every elective officer in the state, with the constitutional exception of most judges, may be recalled. This includes U.S. senators and members of congress as well as state legislators and state executive officers. A petition for recall cannot be circulated against any officer until he has performed the duties of office for 45 days in a legislative office or for three months in any other office. Any officer “sought to be recalled” shall continue to perform the duties of office until the result of the recall election is declared. Under certain conditions, if the petition has insufficient signatures, the sponsor or sponsors of the recall may file additional signatures within ten days. The statement of reasons for the recall and the officer’s statement justifying his conduct must each appear on the ballot in 200 words or less.

In most cases, the election will take place within 35 days from the time it was called by the proper official. The election must be called within 30 days from the filing of the petition unless there is to be “any general, special or primary election” within 90 days at which time the recall election can be held. If a recall election fails to remove an incumbent, no further recall petition against him shall be filed during the term, unless “such further petitioners” pay into the pertinent public treasury the whole amount of the expenses for the preceding special recall election. If an officer is recalled in Michigan, he cannot be a candidate for the same office at the subsequent election to fill the vacancy.

²² M.S.A.,6.1001-6.2116. Statutory provisions dealing more specifically with purity of elections and safeguards against abuses of the elective franchise are in M.S.A., 6.1531-6.1943. Recall provisions are in M.S.A., 6.1951-6.1976.

Judicial Interpretation

Many court decisions relate to statutes which implement in whole or part the mandate of Section 8 concerning purity of elections and abuse of the elective franchise. The legislature has wide discretion in this area and pertinent judicial opinions are concerned largely with statutory interpretation related only indirectly to this provision of Section 8.²³

Section 8 as it relates to recall of officers and statutes in pursuance of it have been interpreted somewhat frequently. The statement of reason or reasons required by statute in a petition for recall has been interpreted to mean that it must show some misfeasance, nonfeasance or malfeasance in office, but a recall petition need not be as specific concerning alleged acts as is required in procedure for removal of officers by the governor.²⁴

Other State Constitutions

The constitutions of 13 states—Michigan, Alaska, Arizona, California, Colorado, Idaho, Kansas, Louisiana, Nevada, North Dakota, Oregon, Washington and Wisconsin—provide for the recall. Most of these have details that in Michigan, Alaska and Idaho are determined by statute. All of the state provisions for recall restrict its use to recall of elected public officers, except in Kansas where elective or appointed officers are subject to recall. In Michigan, Alaska, Idaho, Louisiana and Washington, all or most judges are not subject to recall.

Recall provisions in California and Colorado require that the recall election be combined with a vote for a successor, the successor to take office if the incumbent is recalled. Under the form of recall used in Arizona, Nevada, North Dakota and Wisconsin the recall takes the form of an election in which the incumbent runs against other candidates—in effect, the incumbent is forced to run for re-election.

²³ The distinction between regulation of the right of franchise and action which might be destructive of it has been ruled upon in several cases; e.g., *Attorney General v. Common Council of Detroit*, 78 Mich. 545; *Todd v. Board of Election Commissioners of Kalamazoo*, 104 Mich. 474; *Brown v. Board of Election Commissioners of Kent County*, 174 Mich. 477; *People v. O'Hara*, 278 Mich. 281; *Elliott v. Secretary of State*, 295 Mich. 245. The Elliott case deals more specifically with problems of fairness to, or the rights of, those seeking elective office.

²⁴ *People v. O'Hara*, 246 Mich. 312; *Eaton v. Baker*, 334 Mich. 521; *Amberg v. Welsh*, 325 Mich. 285.

The number required to sign recall petitions varies from 10 per cent to 30 per cent with 25 per cent the most common requirement. Ten per cent is required in Kansas,²⁵ 12 per cent in California,²⁶ 25 per cent in Michigan, Arizona, Colorado, Nevada, Oregon, Wisconsin and Washington,²⁷ and 30 percent in North Dakota. In California, Colorado, Arizona and Washington, the percentage is computed on the basis of all votes for the office affected in the preceding election; in Nevada and Oregon all votes for justice of the highest court; in Michigan, Wisconsin and North Dakota all votes for governor. In Alaska and Idaho the number is determined by statute.²⁸

Comment

The recall procedure in Michigan has not been used against state officers, legislators, United States senators or representatives in congress although it has been used against local elective officers.²⁹ The failure to use the recall process for state officers in Michigan may be explained by the rarity of manifest malfeasance by public officers or the existence of effective remedies for such problems. While recall procedure may be misused, the difficult 25 per cent requirement for petition signatures is generally considered an important and necessary safeguard against possible misuse of the device. The exception of most judicial officers from being subject to recall, is provided in five states while the eight other states having recall make judges subject to recall. Subjection of judges to recall is a controversial matter.³⁰ The present provision is brief and flexible although explicit and would seem not to need any added features to make it more self-executing. The statutes implementing it appear to be reasonable and comprehensive.

²⁵ Ten per cent for state officers, 15 per cent for those elected in a county.

²⁶ 20 per cent for state officers elected in a political subdivision.

²⁷ In Washington, 35 per cent for state legislators and some local officers.

²⁸ Index Digest, pp. 896-903; Manual on State Constitutional Provisions, pp. 125-127. In all 13 states having the constitutional recall, local officers are subject to it. In at least 16 other states there is statutory provision for recall of city officers or all local officers. W. B. Graves, American State Government (Fourth Edit., 1953), pp. 150-153.

²⁹ Recall for state officers and legislators, unlike recall for local officers) has been used very rarely among the states having provision for recall. Adverse factors in recall practice are discussed in H. R. Penniman, Sait's American Parties and Elections (Fifth Edit., 1952), pp. 504-507.

³⁰ President Taft strongly objected to judicial recall in Arizona in 1911 as destructive of judicial independence, and most authorities agree with his position in this matter. Recall of judicial decisions as a constitutional experiment in Colorado (1912) was considered a radical venture in popular control of government in that period.

9. Board of State Canvassers

Article III: Section 9. A board of state canvassers consisting of four members shall be established by law. No candidate for an office to be canvassed by the board shall be eligible to serve as a member of said board. A majority of the board shall not be composed of adherents of the same political party.

Constitutions of 1835 and 1850

The constitution of 1835 had no specific provision similar to this. However, in Article V, Section 4, the returns for every election for governor and lieutenant governor were required to be sealed and sent to the president of the senate “who shall open and publish them in the presence of the members of both houses.” The 1850 constitution (Article VIII, Section 4) provided for three elective state officers to constitute a board of state auditors and a board of state canvassers.

Constitution of 1908

The constitution of 1908 (Article VI, Section 20) continued the 1850 provision and gave these three officers further duties as a board of escheats and a board of fund commissioners.³¹ An amendment proposed by the legislature and ratified in April, 1955, by a vote of 456,986 to 297,250 removed that part of Article VI, Section 20 that required the three elective state officers to act as a board of state canvassers, and required a bipartisan board of state canvassers to be established by law. This amendment became a new section of the elective franchise article—Article III, Section 9.

In most instances the elective state officers of which the board of state canvassers was formerly constituted were adherents of the same political party. The potential for partisan advantage under that provision fostered the change to the bipartisan board required by Article III, Section 9.

Statutory Implementation

This provision was implemented by Public Act 239 of 1955. The act provides that the four members are to be appointed for a four-year term by the governor with the advice and consent of the senate. Two members are to be appointed from each of

³¹ See discussion of Article VII, Section 20 in Chapter VI, pp. 80-82.

the two political parties “casting the greatest number of votes for secretary of state” in the November general elections. The state central committee of each party submits a list of three names from which the governor makes each appointment. Any three members constitute a quorum of the board, “but no action shall become effective unless one member from each major political party shall concur therein.”³²

Other State Constitutions

This provision of the Michigan constitution appears to be unique among state constitutions. A few states have constitutional boards of canvassers constituted in a manner similar to the former provision in Michigan. A few states assign duties in this area to courts or court officers. A few other state constitutions merely state that ballots are not to be counted or canvassed in secret. In most states there is no constitutional provision relating to the canvass of votes which is then at the discretion of the law-making process.

Comment

Article III, Section 9 is the result of a recent amendment which changes the board of state canvassers from a membership likely to give one party an advantage to one having guarantees of equal representation of the two major political parties.

10. Determination by Board of State Canvassers of Contested Elections for Office Except Legislative

Article XVI: Section 4. In all cases of tie vote or contested election for any state office except a member of the legislature, any recount or other determination thereof may be conducted by the board of state canvassers under such laws as the legislature may prescribe.

Constitutions of 1835 and 1850

The constitution of 1835 did not have a provision of this type. The 1850 constitution (Article VIII, Section 5) provided:

In case two or more persons have an equal and the highest number of votes for any office, as canvassed by the board of state canvassers, the legislature in joint convention shall choose one of said

³² M.S.A., 6.2111-6.2117. ‘Statutory provisions relating to duties of the board of state canvassers are in M.S.A., 6.1841-6.1894.

³³ Index Digest, pp. 426, 429, 430.

persons to fill such office. When the determination of the board of state canvassers is contested, the legislature in joint convention shall decide which person is elected.

Constitution of 1908

This provision was carried over from the 1850 constitution unchanged. An amendment, proposed by the legislature and ratified in April, 1935, changed the provision to its present form whereby the board of state canvassers is permitted greater latitude in this area.

Statutory Implementation

Detailed statutory provisions relating to the subject matter of this provision are in the Michigan election law (Public Act 116 of 1954 as amended).³⁴

Other State Constitutions

A number of state constitutions deal with the matter of tie votes. The Michigan provision is largely unique among state constitutions. With exceptions, a new election must be called by the governor in Maryland in the event of a tie vote. Four states provide for determination of tie votes by the legislature in joint vote.

Most state constitutions do not deal with the matter of contested elections, thereby leaving the matter to be determined by law. The constitutions of approximately 20 states deal with contested elections and most of them provide that the procedure for settling contested elections is largely to be determined by law or provision is made for judicial determination.³⁵

Comment

Although the present form of Section 4 is fairly clear in its intent, the language does not make it mandatory. If this provision, or one of similar subject matter is retained, consideration might be given to making it a part of an elective franchise article.

³⁴ On tie votes, recounts and other matters relating to contested elections, see M.S.A., 6.1846-6.1894. Judicial decisions in this area have been concerned mainly with statutory interpretation.

³⁵ Index Digest, pp. 457, 427.

