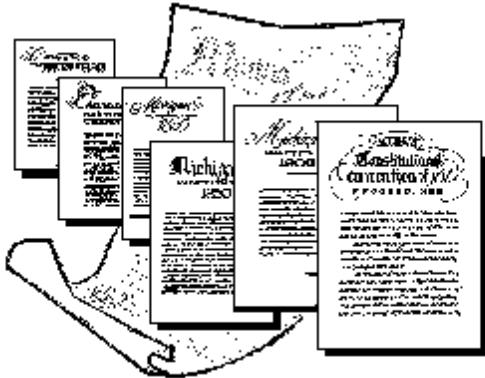


A Comparative Analysis of the Michigan Constitution

Volume I

Article VI



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Foreword to Chapter VI,
Executive Department

The references to the Model State Constitution in Chapter VI are to the 1948 edition. Since Chapter VI was originally issued, the 1961 “preliminary Discussion Draft” of a revised Model has become available. The changes in the 1961 draft from the material cited in Chapter VI from the 1948 Model are shown below:

Page 6—The 1961 draft has dropped the provision for a general assistant to the governor.

Page 17—The 1961 draft contains new wording, but the only substantive change is an exception to the not-to-exceed 20 departments provision. In the 1961 draft, “regulatory, quasi-judicial or temporary agencies established by law may, but need not, be allocated within a principal department.”

Page 2—The 1961 draft has eliminated the former provision requiring an administrative manager. The governor’s power to appoint and remove department heads remains unchanged. All other officers in the administrative service are to be appointed and may be removed as provided by law—a change from the fifth edition.

Page 38—The civil service provision of the draft is greatly altered and is now brief: “The legislature shall provide for the establishment and administration of a merit system in the civil service of the state and of its civil divisions.”

Page 41—The 1961 draft omits the previous provision which entitled the governor, the administrative manager, and department heads to seats in the legislature and allowed them to introduce bills and discuss measures, but not to vote.

Page 43—Legislative vacancies are to be filled as provided by law. This is a change from the alternate processes set forth in the 1948 edition.

Page 44—This provision remains unchanged as it relates to the governor’s power to call special sessions of the legislature. However, in the 1961 draft, the alternate method of calling special sessions is by the presiding officer on request of a majority of the members.

Page 49—The veto provision is largely rephrased, but there is little change of substance. The provision no longer requires a roll call vote on reconsideration of a vetoed bill to be entered on the journal.

Page 60—In the 1961 draft, the provision relating to the governor’s power to grant “reprieves, commutations and pardons, after conviction, for all offenses” is changed

to the extent that he "may delegate such powers, subject to such procedures as may be prescribed by law."

Page 66—The 1961 draft evidently contemplates a specified minimum age requirement for the governor.

Page 70—The 1961 draft is unchanged insofar as it has no provision for a lieutenant governor. The former provision requiring an administrative manager has been omitted in the draft.

Page 73—The provision in the 1961 draft for executive succession is changed substantially. The 1961 draft provision is detailed and comprehensive. The supreme court has full power in questions of the governor's absence, disability or of a vacancy in the office.

VI EXECUTIVE DEPARTMENT

A. STATE OFFICERS

ARTICLE VI: Section 1. There shall be elected at each general biennial election a governor, a lieutenant governor, a secretary of state, a state treasurer, a commissioner of the state land office, an auditor general and an attorney general, for the term of two years. They shall keep their offices at the seat of government, superintend them in person and perform such duties as may be prescribed by law. The office of commissioner of the state land office may be abolished by law.

Constitutions of 1835 and 1850

The Michigan constitution of 1835 provided for the election by the voters of only the governor and lieutenant governor. Their terms were two years in length (Article V, Sections 1, 3). The secretary of state, attorney general and auditor general were appointed by the governor with consent of the senate for a tenure of two years. The state treasurer was appointed by the legislature in joint vote for a two-year period (Article VII, Sections 1, 2, 3). The superintendent of public instruction was appointed for a two-year period by the governor with consent of the legislature in joint vote (Article X, Section 1). The governor, secretary of state, treasurer and auditor general were required to keep their offices at the seat of government (Article XII, Section 8).

The present section is similar to and derived from provisions of the 1850 constitution. Election of and term of office for governor and lieutenant governor appear in the 1850 Article on the Executive Department (Article V, Sections 1,3). Election of and term of office for secretary of state, superintendent of public instruction, state treasurer, commissioner of the land office, auditor general and attorney general were provided for in the State Officers Article of the 1850 constitution (Article VIII, Sections 1, 2).

Constitution of 1908

In the 1908 constitution provision for election and term of the superintendent of public instruction was transferred to the Education Article. The term of office remained two years, but he was to be chosen at the spring election in odd-numbered years.¹ The records of the 1907-1908 convention do not indicate any controversy on

¹ 1908 Article XI, Section 2.

the matter of election and term of office for the various state officials. The convention of 1908 added a new requirement that state officials were to superintend their offices "in person." The debates of 1907-1908 indicate some concern with the evidently prevalent practice of state officials being frequently absent. The departments were actually administered by the deputy department heads, or chief clerks, it was asserted. Criticisms of such executive-administrative practices arose in the debate on fixing salaries for the elected officials and in the debate on the proposal for a budget system.²

Article VI provides for the election of the secretary of state, the state treasurer, the auditor general and the attorney general in addition to the governor and lieutenant governor for a two-year term. Article XI, Section 2 provides for the election of a superintendent of public instruction for a two-year term. Section 3 of the same article provides for the election of eight members of the board of regents of the University of Michigan for eight-year staggered terms. Section 6 provides for the election of three members of the state board of education (the fourth member is the superintendent of public instruction) for staggered six-year terms. Section 7 provides for the election of six members of the board of trustees of Michigan State University of Agriculture and Applied Science (formerly state board of agriculture) for six-year staggered terms. Section 16 provides for the election of six members of the board of governors of Wayne State University for six-year staggered terms.³

In spite of a degree of independence arising from their being elected separately from the governor, the elected department heads were not intended to be immune from gubernatorial supervision. This is clear from the wording of Section 3 of Article VI which charges the governor with faithful execution of the laws and allows him to require information in writing "from all executive and administrative state officers, elective or appointive." The last part of Section 1 provided for legislative discretion

² Proceedings and Debates, pp. 740-745, 1295-1300. The committee on submission of the 1908 constitution stated that this new requirement was "dictated by sound business principles and the growing importance of the offices specified." Ibid., p. 1424

³ As a result of these provisions and the election of a highway commissioner under statutory authority, the voters of Michigan elect eight executive officials (including governor and lieutenant governor) and 23 members of educational boards for a total of 31. Comparative features relating to the matter of electing various state officers will be presented in this part—see Tables I and II below

to abolish the office of the commissioner of the state land office. This was the result of somewhat controversial consideration by the convention on the proposal to abolish this office.⁴

Statutory Implementation

Most of the duties of elected state officials, except the governor and lieutenant governor, are not specified in detail in the constitution, but are prescribed by law in accordance with Section 1.⁵

By statute (Public Act 270, 1913) the office of commissioner of the state land office was abolished as of December 31, 1914. The functions of the land office were transferred to the public domain commission.⁶ The superintendent of public instruction was designated to take the place of and exercise the same powers as the commissioner of the land office on the board of state auditors and all other boards, committees or commissions of which the land commissioner was a member by virtue of his office.

Other State Constitutions

Comparative information relative to the number of officials popularly elected as opposed to the most common alternative of appointment by the executive (or other agency) is set forth in Tables I and II below.

⁴ Proceedings and Debates, pp. 732-737, 1313, 1377.

⁵ For details on the duties performed by the elected department heads see M.S.A. 3.1-3.77, 3.81-3.115, 3.121-3.173, 3.181-3.251; Michigan Manual 1959-1960, pp. 217-220; C. O. Baker, A Guide to the Work of Executive Agencies in Michigan, (University of Michigan, 1959) pp. 1-4, 18-22, 27-36, 135-136. The highway commissioner is elected for a four-year term under statutory authority. M.S.A. 9.202. For the duties of the superintendent of public instruction and the members of educational boards, see the discussion of Article XI on education.

⁶ This law was pursuant to Section 20 of Article VI. The functions transferred to the public domain commission were later transferred to the conservation department upon the abolishment of the public domain commission. (Public Act 17, 1921)

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TABLE I
ELECTIVE STATE OFFICIALS—EXECUTIVE-ADMINISTRATIVE

(Executive councils, legislative auditors, and agencies generally headed by boards are omitted.)

<u>Number of Officials</u>	<u>Number Elected by People</u>	<u>Number of States</u>	<u>Comments</u>
1	4	New Jersey,* New Hampshire,* Tennessee, Maine*	
2	2	Hawaii, Alaska*	Hawaii lt. governor acts as secretary of state; Alaska secretary of state elected as and in lieu of lt. governor.
3	2	Virginia, Maryland*	
4	2	New York, Pennsylvania	
5	3	Rhode Island, Wyoming,* Utah *	
6	10	Massachusetts, Minnesota, Delaware, Colorado, Connecticut, Missouri, Ohio, Vermont (1), Wisconsin, Oregon* (3)	Oregon secretary of state acts as auditor; attorney general statutory. Vermont attorney general statutory.
7	11	Texas (1), Nevada (1), Nebraska, Illinois, Indiana (1), Montana, California, Arkansas, Iowa (I), Arizona,* Florida*	Indiana attorney general statutory.
8	8	South Dakota, Kansas (1), Alabama, MICHIGAN (1), New Mexico, Kentucky, Idaho (1), South Carolina (1)	
9	4	Washington (1), North Dakota, Louisiana, Georgia	
10	4	Oklahoma, Mississippi (3), North Carolina, West Virginia* (3)	Oklahoma five-member commissions of agriculture and land not included.

*States having no lieutenant governor.

In parentheses the number of officials popularly elected under statutory rather than constitutional authority.

Derived from The Book of the States 1960-61, pp. 124-125.

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TABLE II

COMPARATIVE FIGURES FOR SPECIFIC OFFICES ELECTED IN MICHIGAN*

<u>Official</u>	<u>States in Which Appointed</u>	<u>States in Which Elected By Voters</u>	<u>States in Which Elected By Legislature**</u>
Governor	-	50	-
Lieutenant Governor	-	38	1
Secretary of State	7	39	3
Attorney General	7	42	1
Treasurer	5	41	4
Highway Commissioner	37	2 ^a	1
Superintendent of Public Instruction	27	23	-
Auditor General (or other official) with post-audit function:			
Appointed	10		
Mixed control without legislative participation—		4	
Elected—		17	
Mixed control with legislative participation—			4 ^b
Legislative Appointment or Control—			15 ^c

*Except board of education and university boards -- see discussion of Article XI. This table is derived from The Book of the States, 1960-61, pp. 123-125, 134-139.

**Several states have executive officials elected by the legislature. Tennessee has 3 officers so elected under constitutional authority and the lieutenant governor is elected by the senate under statutory authority. Maine has four officers so elected one of which is statutory. New Hampshire has two officers and Maryland and South Carolina each have one officer so elected.

^a Michigan and three-member highway commission in Mississippi

^b Alabama, California, Florida, Mississippi.

^c Alaska, Arizona, Arkansas, Connecticut, Georgia, Hawaii, Maine, Nevada, New Hampshire New Jersey, Rhode Island, South Dakota, Tennessee, Texas, Virginia

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The Model State Constitution provides for the popular election of the governor alone in the executive branch of government with no lieutenant governor. However, the Model does provide for a general assistant to the governor (administrative manager) appointive by the governor and removable by him at pleasure. Under the U.S. Constitution the president and vice president are the only elective officials in the executive branch.⁷

Term of Office -- Comparative. By 1943, 27 states had adopted the four-year term for governor. By 1960, this number had risen to 35 states, an increase of eight four-year term states in 17 years, including all of the states with recently framed or revised constitutions, such as New York, Missouri, New Jersey, Hawaii and Alaska.

An increase in the length of terms for legislators (particularly senators) is likely to be related to the question of a four-year executive term. In 1943, 31 states had a four-year senate term. By 1960, this number had increased to 35. Seven states with a four-year term for governor have a two-year term for senator and seven states have the reverse of this, so that 35 states have a four-year governor's term and 35 have a four-year senate term. Table III follows:

TABLE III

TERMS OF OFFICE

<u>Governor's Term</u>	<u>Senate Term</u>	<u>House Term</u>	<u>Number of States</u>
4 years	4 years	4 years	4
4 years	4 years	2 years	24*
2 years	4 years	2 years	7
4 years	2 years	2 years	7
2 years	2 years	2 years	8**

* Includes Minnesota—four-year term for governor, effective in 1962.

**Includes Michigan, and Nebraska's unicameral legislature

Derived from The Book of the States 1960-61, The Council of State Governments, Chicago, pages 37 and 122.

⁷ Most of the states having new or recently revised constitutions have either reduced the number of executive officials to be elected (as in New York, Missouri, California and Virginia) or eliminated all such elective officials except governor and lieutenant governor, as in New Jersey (no lieutenant governor), Hawaii, and Alaska.

More than four-fifths of the states now have either a four-year term for the governor or for the state senate, and more than half of the states (28) have a four-year term for both governor and senate.

Restriction on Number of Term. Twenty-eight states, including Michigan, have no restriction on the number of terms a governor may serve. In 15 states, a governor may not succeed himself, but may become governor later. These states all have a four-year term for the governor. In six others, there is a limit of two consecutive terms (but later election allowed). In only one of these (New Mexico), the term is for two years. In Delaware, the governor may have only two four-year terms.⁸

Election in Non-Presidential Years. Of the 35 states with a four-year term for governor, 25 do not elect the governor at the time of the presidential election. In 21 of these 25 states the governor is elected at the biennial election midway between presidential elections.⁹ In four of these states the governor is elected at off-year or other elections. The other ten states with the four-year term elect the governor at the time of the presidential election.¹⁰

Comment

Some consideration would undoubtedly be given in the constitutional convention to reducing the number of executive officials to be elected. The most general alternative to popular election of executive officials is gubernatorial appointment (with or without consent of senate) and removal (at pleasure or for cause). This matter would be related to the general issue of deciding the future extent of executive authority to be granted to the governor. It would therefore be considered in connection with the questions: should the governor be given wide authority in the executive-administrative department, having subordinates (department or agency heads) more strictly responsible to him?¹¹ — should the governor have increased power of appointment and removal? (See below — Parts B and C.)

⁸ The Book of the States, p. 122; Index Digest of State Constitutions (1959), p. 508.

⁹ This is usually intended to allow state candidates and issues to be voted on separately from those involved in national elections, with which there is often little connection. Each biennial election thereby tends to attract the interest of voters, since election of either a president or a governor occurs each two years.

¹⁰ The Book of the States, p. 122; Index Digest, pp. 498-499.

¹¹ Election of department heads naturally tends to give them some independence of gubernatorial direction and responsibility.

If it were decided that the number of elected executive officials is to be reduced, consideration might also be given to providing that such officials could not be made elective by statutory authority. Statutory election of officials is not uncommon among the states (see Table 1) and the highway commissioner in Michigan is elected under such authority.

In view of the growing acceptance of the four-year term among the states and the fact that it has been recommended by every major study of Michigan government for over 40 years,¹² the four-year term for governor and lieutenant governor and other elective executive officials (if not made appointive) would undoubtedly be considered.¹³ The duties of the elective department heads in most cases do not really differ from those assigned to appointive department or agency heads. The functions of these elective department heads would probably be considered in relation to those of the many other department and agency heads, the general problems of executive-administrative integration and gubernatorial responsibility in the executive branch.

¹² The Community Council Commission, 1920; Commission on Reform and Modernization of Government, 1938; the Constitutional Revision Study Commission, 1942; and the Joint Legislative Committee on Reorganization of State Government ("Little Hoover" Study), 1951

¹³ The elective auditor general in Michigan is now largely confined to the post-audit function. Most government specialists urge that this function, or the officer responsible for it should be independent of executive control, and preferably appointive by and responsible to the legislature.

B. GENERAL POWERS OF THE GOVERNOR

ARTICLE VI: Section 2. The chief executive power is vested in the governor.

Section 3. The governor shall take care that the laws be faithfully executed; shall transact all necessary business with the officers of government; and may require information in writing from all executive and administrative state officers, elective and appointive, upon any subject relating to the duties of their respective offices.

Constitutions of 1835 and 1850

The constitution of 1835 (Article V, Sections 1, 6, 7) provided that the “supreme executive power shall be vested in a governor;” that he “shall transact all executive business with the officers of government, civil and military; and may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices;” and that he “shall take care that the laws be faithfully executed.”

The constitution of 1850 (Article V, Sections 1, 5, 6) stated that the “executive power is vested in a governor;” that he “shall transact all necessary business with officers of government, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices;” and that he “shall take care that the laws be faithfully executed.”

Constitution of 1908

As reported by the convention’s committee on the executive department, the wording of Section 2 would have reverted to that of the 1835 constitution—the “supreme executive power is vested in a governor.” A motion that “supreme” be stricken and no word inserted carried and temporarily the section remained as it had been in the 1850 constitution. The word “chief” was later inserted upon the recommendation of the arrangement and phraseology committee.¹⁴ The debates do not indicate the purpose of those who wanted the wording of this provision changed or of those

¹⁴ Proceedings and Debates, pp. 706, 1141, 1171, 1301, 1379, 1424.

opposed to the change. Probably those who wanted “supreme” or “chief” inserted before “executive power” thought that it might enhance the executive power of the governor.¹⁵

The major change from the similar provisions of the previous constitutions was the clarification in Section 3 that the governor could require written information from administrative as well as executive state officers, elective and appointive. While executive officers could easily be interpreted as including most or all administrative officers, there was justification for removing any doubt on this matter, since the debate on this section indicated that some question had arisen as to the governor’s power to require information from the elective state treasurer (on the grounds that he was a state officer rather than an executive officer). The insertion of the words “elective and appointive” was specifically intended to clarify the full extent of this power.¹⁶

In the debate on the proposed executive budget, which was finally defeated, one delegate who supported the executive budget expressed the view that “it is time in the state of Michigan that we begin to get into such a condition, so that sometimes and under some conditions we can fix some responsibility upon some one.” However, the traditional fear of gubernatorial power appeared in this and other debates, including that on the proposal for the item veto.¹⁷

¹⁵ However, some have interpreted it as actually weakening the governor’s authority, insofar as it can be understood as limiting the amount of executive power vested in the governor to that of the “chief executive power,” and not all of the executive power. See Report of the Michigan Community Council Commission to the Michigan State Legislature, based upon an organization survey of the Institute for Public Service of New York City, 1920, pp. 31, 39. General Management of Michigan State Government, Staff Report No. 30 to the Michigan Joint Legislative Committee on Reorganization of State Government, 1951, p. II - 11. In view of the provision for other elected executive officials there is some reason for this interpretation. However, since Professor Fairlie (one of the early advocates of strengthening the governor’s powers) favored the new phraseology and since the convention expressly increased the governor’s power to require information in Section 3, the real intent to increase gubernatorial authority seems more reasonable.

¹⁶ These changes were adopted as amendments to the original committee proposal despite objections that the 1850 provision should not be changed because the courts had interpreted it. Proceedings and Debates, pp. 305-307. Notes accompanying the submission of the 1908 constitution explained this change as making it clear that the governor might “exercise the fullest power of inquiry as to all other state officers.” Proceedings and Debates, p. 1424.

¹⁷ Proceedings and Debates, pp. 742-745, 412, 492-494.

In regard to administrative reorganization, a strenuous debate was generated over the proposal to require “separate central boards of control” to manage “all state institutions of an allied or kindred nature.” First, an amendment was adopted merely to permit the legislature to establish such boards. Later the whole proposal was rejected. Those who favored the central boards complained of the legislature’s habit of greatly increasing the number of boards. Mr. Fairlie, among others, pointed out the success of central boards in other states and the resulting decrease in expenditure.¹⁸

Statutory Implementation

There is no constitutional provision that relates to a method of establishing other departments and agencies than those headed by elected officers or by the few boards having constitutional status. However, other departments existed before the framing of the 1908 constitution. This constitutional gap has evidently been interpreted by the legislature as allowing them wide discretion in establishing other departments and agencies and providing for their executive heads.¹⁹

There are now approximately 123 state executive-administrative agencies recognized by the department of administration’s budget division. These include the departments headed by the elective state officials, those agencies headed by single directors appointed by the governor (some with and some without consent of senate), those agencies (the most numerous) headed by boards and commissions with members appointed by the governor with or without restrictions (some with and some without consent of the senate), some elected boards and some in whole or part ex-officio in membership.

The vast number of agencies in Michigan intensifies the problem of gubernatorial supervision. Many agency heads, particularly those of the board and commission variety, have longer terms of office than the governor and the policies of a new governor may be obstructed as a result of this and other features which promote insulation of various agencies from executive direction. A listing of most of the executive-administrative agencies in Michigan is given following the comment on Sections 2 and 3.

¹⁸ Proceedings and Debates, pp. 411-415.

¹⁹ Mr. Burton explained that the constitutional convention’s committee on the executive department supposed that the “five superior executive officers” (governor, secretary of state, state treasurer, attorney general and auditor general) would ultimately have under their direction all the inferior state officers. Proceedings and Debates, pp. 744-745. This probably explains at least in part the failure to provide a framework for other agencies to be established by statute, or for those already so established.

Two major institutions have been developed in an endeavor to provide under the governor's direction some coordination of this multiplicity of agencies.

The State Administrative Board originated as a part of the reorganization plan fostered by Governor Groesbeck (in place of the community (council commission plan). This board, established by statute in 1921, was intended to centralize administrative direction under the control of the governor, with seven elective officers as members (the lieutenant governor was added in 1939). This board was an effective instrument of executive direction under Governor Groesbeck who had full control over the board. In 1927, however, its statutory framework was changed and the administrative board became a plural executive in that five members could override the governor's veto of board directives. This statutory board continues to be the most powerful instrument of general state administrative control, except perhaps for the governor.²⁰

The department of administration was established in 1948 (Public Act 51, 1948) at the urging of Governor Sigler. It replaced the less effective department of business administration authorized in 1943. In the department of administration were combined the instruments of administrative fiscal control and service management functions, including: accounting, budgeting, purchasing, motor transport, building and property management, and office services.²¹ The head of the department, the controller, is appointed by the governor with consent of the senate to serve at the pleasure of the governor.

Because the head of this department is effectively responsible to the governor, the establishment of this agency has aided the governor in the area of administrative management. However, statutorily required review and approval of many policy matters in the department's areas of operation by the state administrative board are limitations upon the governor's direct responsibility through the controller. Lines of authority in the relationship between the department of administration and the administrative board are somewhat hazy. Some liaison is provided by the

²⁰ For the impact of this statutory board on the executive power of the governor under Sections 2 and 3 of Article VI, see G. C. S. Benson and E. H. Litchfield, The State Administrative Board in Michigan, Univ. of Michigan, 1948; F. M. Landers and H. D. Hamilton, "State Administrative Reorganization in Michigan, The Legislative Approach," 14 Public Administration Review (1954), 99-111; General Management of Michigan State Government, Staff Report No. 30 (1951) to the Legislative Committee on Reorganization; Preliminary Report, Michigan Commission on Reform and Modernization of Government, 1938.

²¹ Except for personnel—constitutionally restricted to the civil service commission by the amendment of 1940.

controller acting as secretary to the administrative board.²² Michigan is one of only a few states having an executive agency of this kind—concerned with the budget and various service management functions.²³

The Executive Organization Statute of 1958 (Public Act No. 125) was enacted as an attempt to deal with the problem of proliferation of agencies in the executive-administrative branch of Michigan government by consolidation and integration of them. Under this statute, the governor may submit executive reorganization plans to the legislature. Any such plan may then be implemented by executive order unless either the senate or the house disapproves of it within 60 days. In this way the governor is given initiative in administrative reorganization, while either branch of the legislature may exercise its veto check. The legislature, however, retains its own prerogatives of legislating in the executive-administrative organization field. This device has been used by the federal government for many years and its constitutionality has not been successfully challenged.²⁴

²² Some complications have also developed in the relationship between the department of administration and the constitutionally independent civil service commission. The department has taken over most of the pre-audit function formerly carried on by the auditor general.

²³ See F. Heady and R. H. Pealy, The Michigan Department of Administration, Univ. of Michigan, 1956, pp. 11-69; J. A. Perkins, "State Management Limited," 39 National Municipal Review (1950) 72-78; C. O. Baker, Guide to Executive Agencies (1959), pp. 1-4,6-12,37; A Manual of State Government in Michigan (1949). On problems relating to the executive budget subsequent to the budget acts of 1919 and 1921, and prior to the establishment of the department of administration, see J. A. Perkins, The Role of the Governor in Michigan in the Enactment of Appropriations, 1943.

²⁴ T. B. Mason, "Miracle in Michigan", 47 National Municipal Review (1958) 318-324; L. W. Eley, "Executive Reorganization in Michigan," 32 State Government (1959) 33-37. The governor's advisory committee on reorganization has not yet formulated plan for wide-scale, comprehensive reorganization. Problems in limited areas have been dealt with and some of the proposals submitted to the legislature by the governor have been enacted by statute in order to avoid use of the new reorganization process as result of controversy concerning the statute's "constitutionality." The Alaska constitution has a provision similar to the Michigan statute—see below. The Missouri constitution has a provision whereby the governor has wide power in executive organization without the legislative veto—see below.

Other State Constitutions

A majority of state constitutions vest the governor with the “supreme executive power.” The constitutions of seven states, including Michigan, vest the governor with the “chief executive power.” Approximately 12 state constitutions, including most of those which provide for more executive responsibility, resemble the Model State Constitution and the U.S. Constitution in vesting the governor with “the executive power.” Almost all state constitutions charge the governor with faithful execution of the laws in language identical to the Michigan provision, while in a few the wording varies slightly.²⁵ Provisions similar to Michigan’s that the governor shall “transact all necessary business with the officers of government” are not unusual among state constitutions.²⁶ Power to require information in writing is provided for in most state constitutions. However, New Jersey and Alaska have extraordinary provisions (like that in the Model State Constitution) whereby the governor may enforce compliance with, or prohibit violation of, constitutional-statutory mandates by initiating proceedings in the courts, except such action may not be brought against the legislature.²⁷

Executive Organization. The problem of administrative fragmentation resulting from the general tendency of state executive departments and agencies to increase greatly in number is not unusual among the states. Several states, particularly those with new or revised constitutions, have attacked this problem by setting a constitutional maximum number of departments (in most instances 20) thereby forcing integration and consolidation of agencies in a limited number of departments that can be more adequately supervised by the governor.²⁸

²⁵ Index Digest, p. 473, Provisions of the Model State Constitution and the U.S. Constitution are similar also.

²⁶ Neither the Model State Constitution nor the U.S. Constitution contains a similar provision.

²⁷ Index Digest, pp. 504-505, 843-844

²⁸ Some states have approached this problem by statutory process insofar as the lack of constitutional and other obstacles would permit. However, various obstacles in the way of effective statutory reorganization in many states have contributed to the movement for a constitutional mandate for administrative reorganization within the framework of a specified maximum number of departments.

Eight states now have some form of restriction on the number of executive departments (or agencies). The Missouri constitution specifies a maximum of 14 departments. The most common maximum number specified is 20 in New Jersey, Alaska, Hawaii, New York, and Massachusetts.²⁹ The Arkansas constitution provides that no permanent state office can be created that is not provided for in the constitution. Nebraska provides that no executive office can be established by statute except by two-thirds vote of all members of the unicameral legislature.³⁰

The New Jersey constitution of 1947 provides as follows (Article V, Section IV):

1. All executive and administrative offices, departments, and instrumentalities of the State government, including the offices of Secretary of State and Attorney General, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department.
2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law.

²⁹ In Massachusetts, some constitutional exceptions have helped to vitiate the mandatory effect of the maximum number specified. The New York provision inflexibly specified the names of the various departments (with resultant problems and a movement to eliminate department names by amendment).

³⁰ Index Digest, pp. 471-473, and constitutional provisions. For problems relating to state administrative organization see: B. M. Rich, State Constitutions: The Governor (National Municipal League, 1961); F. Heady, State Constitutions: The Structure of Administration (National Municipal League:—1961); The Council of State Governments, Reorganizing State Government (1950); Public Administration Service Constitutional Studies (Prepared for the Alaska Constitutional Convention, 1956, three volumes) Volume II; L. S. Milmed, State Administrative Organization and Reorganization (New Jersey constitutional study, 1947); H. E. Scace, The Organization of the Executive Office of the Governor (1950); C. B. Ransome, Jr., The Official Governor in the United States (Univ. of Alabama, 1956). Some of these and other studies indicate growing concern with the number of multi-headed state executive-administrative agencies (boards and commissions). Many urge restriction of boards and commissions to functions clearly quasi-legislative-judicial, or merely advisory functions, with all other departments or agencies headed by single directors responsible to the governor.

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The Alaska constitution (1956) has the following provision (Article III):

Section 22. All executive and administrative offices departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.

Section 23. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

Section 24. Each principal department shall be under the supervision of the governor.

Section 25. The head of each principal department shall be a single executive unless otherwise provided by law. . .

The Hawaii constitution (1950) provides (Article IV):

Section 6. All executive and administrative offices, departments and instrumentalities of the state government and their respective functions, powers and duties shall be allocated by law among and within not more than twenty principal departments in such manner as to group the same according to major purposes so far as practicable. Temporary commissions or agencies for special purposes may be established by law and need not be allocated within a principal department.

Each principal department shall be under the supervision of the governor and unless otherwise provided in this constitution or by law, shall be headed by a single executive.

The Missouri constitution of 1945 provides (Article IV, Section 12):

The executive department shall consist of all state elective and appointive officials and employees except the officials and employees of the legislative and judicial departments. In addition to the governor and lieutenant governor there shall be a state auditor, secretary of state, attorney general, a state treasurer and a department of revenue, department of education, department of highways, department of conservation, department of agriculture, and such additional departments, not exceeding five in number, as may hereafter be established by law. Unless discontinued all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by the governor to the department to which their respective powers and duties are germane.

The fifth edition (1948) of the Model State Constitution provides (Article V):

Section 506. Administrative Departments. There shall be such administrative departments, not to exceed twenty in number, as may be established by law, with such powers and duties as may be prescribed by law. Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, offices and agencies, and it may increase, modify, or diminish the powers and functions of such departments, offices, or agencies, but the governor shall have power to make from time to time such changes in the administrative structure or in the assignment of functions as may, in his judgment, be necessary for efficient administration. Such changes shall be set forth in executive orders which shall become effective at the close of the next quarterly session of the legislature, unless specifically modified or disapproved by a resolution concurred in by a majority of all the members.

All new powers or functions shall be assigned to departments, offices or agencies in such manner as will tend to maintain an orderly arrangement in the administrative pattern of the state government. The legislature may create temporary commissions for special purposes or reduce the number of departments by consolidation or otherwise.

Comment

The governor of Michigan has been vested successively with the “supreme executive power” (constitution of 1835), the “executive power” (constitution of 1850, and the “chief executive power” (present constitution). The executive powers actually granted to the governor (or denied to others in the executive department) in a revised constitution will have far more influence upon this office than the choice of words with which the power is vested. The words “chief” or “supreme” can be variously interpreted as enhancing his power or restricting it (not all executive power). The powers (and responsibility) of the governor are presently restricted by various constitutional and statutory features—to some extent negating the mandate in Section 3 that he “shall take care that the laws be faithfully executed.”

The basic decision concerning the extent of the governor’s authority and responsibility in the executive branch will be affected not only by the future constitutional framework for executive organization but also by the future extent of his power to appoint and remove department or agency heads. The organization of the executive branch in Michigan has been adversely criticized in major governmental studies for some 40 years.³¹ Since there is room for doubt that 123 separate departments and agencies are necessary, some consideration might be given to establishing a constitutional maximum number of departments and to providing for gubernatorial initiative in executive organization and reorganization procedure.

³¹ Particularly the proliferation of agencies and diffusion of executive power: Community Council Commission (1920), the Commission on Reform and Modernization of Government (1938) and the “Little Hoover” Committee (1951).

STATE AGENCIES*

State Agencies Headed By A Single Director

Adjutant General
Administration, Department of
ATTORNEY GENERAL
AUDITOR GENERAL
Banking Department
Civil Defense, Office of
Corporations & Securities Commission
EXECUTIVE OFFICE
Health, Department of
Highway Department
Hospital Survey & Construction, Office of
Insurance, Department of
Labor, Commissioner of
LIEUTENANT GOVERNOR
Police, Michigan State
Quartermaster General
Racing Commission
Revenue, Department of
SECRETARY OF STATE
STATE TREASURER
SUPERINTENDENT OF PUBLIC INSTRUCTION

State Agencies Headed By A Board Or Commission

Accident Fund, Advisory Board for
Accountancy, Board of
Administrative Board
Aeronautics, Department of
Agriculture, Board of
Agriculture, Department of
Agriculture Marketing Council
Alcoholism, Board of
Apple Commission
Architects, Engineers, Surveyors, Board of Registration of
ASSESSORS, STATE BOARD OF
Athletic Board of Control
Barbers, Board of Examiners of
Basic Sciences, Board of Examiners in
BOARD OF STATE AUDITORS
BOARD OF GOVERNORS, WAYNE STATE UNIVERSITY
BOARD OF REGENTS, UNIVERSITY OF MICHIGAN
BOARD OF TRUSTEES, MICHIGAN STATE UNIVERSITY

* Agencies having constitutional status are in capital letters.

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State Agencies Headed By A Board or Commission (Con't)

Board of Review of State Police Pensions
Bridge Commission
Building & Loan Appeal Board
Building Commission
Building Safety Council
CANVASSERS, BOARD OF
Chiropody, Board of Registration in
Chiropractic Examiners, Board of
CIVIL SERVICE COMMISSION
Conservation, Department of
Corporate Privilege Tax Appeal Board
Corrections, Department of
Cosmetology, State Board of
Crippled Children Commission
Dentistry, State Board of
Economic Development, Department of
EDUCATION, STATE BOARD OF
Electrical Administration Board
Emergency Appropriations Commission
Employees' Retirement Board, State
Employees Security Advisory Council
Employees Security Commission
Employees Security Commission Appeal Board
EQUALIZATION, BOARD OF
ESCHEATS, BOARD OF
Fair Employment Practices Commission
Ferris Institute, Board of Control for
Foresters, Board of Regis. of
Fund Commissioners, Board of
Great Lakes Basin Compact Commission
Great Lakes Tidewater Commission
Health, Council of
Highway Reciprocity Board
Historical Commission, Michigan
Hospital Council, Advisory
Hotel Inspection Commission
International Bridge Authority
Interstate Cooperation, Commission on
Judges' Retirement Board
Labor Mediation Board
Law Examiners, Board of
Legislative Retirement System
Libraries, State Board for
LIQUOR CONTROL COMMISSION
Mackinac Bridge Authority
Mackinac Island State Park Commission
Medicine, Board of Registration in
Mental Health, Department of

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State Agencies Headed by A Board or Commission. (Cont.)

Michigan Cherry Commission
Michigan College of
Mining & Technology, Board of Control for
Michigan Turnpike Authority
Michigan Veterans' Facility Military Board
Mortuary Science, Board of Examiners in
Municipal Employees Retirement Fund Board
Municipal Finance Commission
Naval Board, State
Nursing, Board of
Nursing, Advisory Council to Board of
Optometry, Board or Examiners in
Osteopathic Regis. & Exam. State Board of
Parole Board
Pharmacy, Board of
Plumbing Board
Probate Judges' Retirement Fund
Public School Empl. Ret. Fund Board
Public Service Commission
Recreation, Inter-Agency Council. for
Safety Commission, State
Sault Ste. Marie Locks Cen. Commission
Social Welfare Commission
Soil Conservation Committee
State Fair Commission
Tax Appeals, State Board of
TAX COMMISSION, STATE
Teachers' Tenure Commission
Tourist Council
Tuberculosis Sanatorium Commission
Uniformity of Legis., Board for Promotion of
Veterinary Exam., Board of
U.P. State Fair, Board of Managers of
Veterans' Benefit Trust Fund, Board of
Vocational Education, Board of Control for
Vocational Rehabilitation, Board of Control for
Water Resources Commission
Waterways Commission, State
Workmen's Compensation Appeal Board
Workmen's Compensation Department

* Agencies having constitutional status are in capital letters

C. THE GOVERNOR'S POWER OF APPOINTMENT AND REMOVAL

1. Power of Appointment

Article VI: Section 10. Whenever a vacancy shall occur in any of the state offices, the governor shall fill the same by appointment, by and with the advice and consent of the senate, if in session.

Constitutions of 1835 and 1850

Under the 1835 constitution (Article V, Section 12), the governor had a wide power of appointment, particularly of his major subordinate officials, in contrast to his power under the later constitutions. When a vacancy occurred he was to fill it by granting a commission to the appointee which would expire at the end of the next legislative session. Even vacancies in offices ordinarily appointed by the legislature were to be filled in this way. In the 1850 constitution (Article VIII, Section 3), this provision was the same as the 1908 provision.

Constitution of 1908

Article VI, Section 10 has not been amended since the adoption of the present constitution. This section provides for gubernatorial appointment power only to fill vacancies. Since there is no general method provided in the constitution for gubernatorial appointment of officers, appointment (or other procurement) of heads of agencies not having constitutional status has been provided for by a variety of statutes (see below).

Other Provisions for Appointment. Other provisions of the 1908 constitution relate to the governor's power of appointment.

Gubernatorial power to appoint commissioners to compile state laws is in Article V, Section 40. Specific vacancies in various offices to be filled by gubernatorial appointment are also provided for: delegate to a constitutional convention (Article XVII, Section 4); judge of courts of record until a successor is elected and qualified for the remainder of the unexpired term (Article VII, Section 20); regent of the university (Article XI, Section 3); a state officer under impeachment who has been suspended by the governor (Article IX, Section 5). In addition to these, Article XVI, Section 5 states that the legislature "may provide by law the cases in which any office shall be deemed vacant and the manner of filling vacancies, where no provision is made in this constitution."

Statutory Implementation

Present statutes in force which implement Article VI, Section 10 and other appoint-

ment provisions listed above presently provide a uniform method of appointment to fill vacancies in executive-administrative offices.³² The constitution does not provide a manner of procuring heads of agencies not having constitutional status. Because of this gap in the constitution, the legislature has assumed wide discretion in this area and statutorily provided for a wide variety of methods of appointment, types of agency head (single or multiple), and terms of office (in many instances longer than the governor's). These matters are dealt with in the numerous statutes whereby the scores of agencies not having constitutional status have been established. Most of the single directors of the 20-odd agencies having such are appointed by the governor (some with, and some without, consent of senate).³³ Most of the 120-odd agencies in the state are headed by boards and commissions, some 17 of which are in whole or part ex-officio.

The governor appoints (sometimes with, sometimes without, consent of senate) the members of about 80 of the existing boards and commissions. However, in many cases, the governor is restricted to appointment of persons nominated by private professional or occupational groups.³⁴

Judicial Interpretation

Article VI, Section 10 has been interpreted to apply only to, vacancies in executive offices having constitutional status. The term of officers appointed to fill such vacancies has been interpreted to mean until their successors are elected and qualified. However, under authority of Article XVI, Section 5 statutory restriction of the

³² M.S.A. 6.711.

³³ Several of the single-headed agencies are, of course, directed by elective officers..

³⁴ The reorganization ("Little Hoover") study of 1951 pointed out the lack of logical pattern in the manner of appointment, removal, term of office, etc. for single-headed and multi-headed agencies. General Management of Michigan State Government Part II; see also Baker, Guide to Executive Agencies. Most boards and commissions have the power to appoint their administrative director, and thus these agencies tend to be somewhat insulated from gubernatorial direction (not only through problems inherent in the operation of a board or commission, but also by the tendency of a board or commission to stand between the active administrator of an agency and the governor). In most cases, statutory provisions for appointment of agency heads with consent of senate and for those without consent of senate seem to bear no general relation to their relative need or lack of need for closer responsibility to the governor.

term until the next session of the legislature of an officer appointed to fill a vacancy in an office not having constitutional status was upheld by the court.³⁵

Opinion of the Attorney General

In 1934, the attorney general held that if the governor filled a vacancy by appointment while the legislature was in session and confirmation was later refused by the senate, the governor could not appoint the same person to that office when the legislature had adjourned.³⁶

Other State Constitutions

The most common method of procuring heads of major departments (other than those elected) among the states is by gubernatorial appointment with the consent of the senate.³⁷ Comparative data for all of the states on gubernatorial power to appoint many of the more important department heads are indicated by the table inserted following this page.³⁸

Among the more recent state constitutions, the New Jersey Constitution (Article V, Section IV) after specifying that the head of each of the not more than 20 principal departments "shall be a single executive unless otherwise provided by law," provides that these single executives shall be appointed by the governor with consent of the senate to serve at the governor's pleasure, except that the secretary of state and attorney general shall be so appointed to serve during the governor's term. The

³⁵ Attorney General v. Oakman, 126 Mich. 717. Present statutes, however, provide for a uniform process of appointment to vacancies in executive-administrative offices. M.S.A. 6.711.

³⁶ Many states have explicit constitutional provisions to this effect.

³⁷ A preponderance of state governmental specialists favor increasing the governor's power to appoint department heads (with or without consent of senate). The U.S. Constitution and some recent state constitutions provide for wider power of appointment by the chief executive than do most other state constitutions. There has been a trend for some years in many states for increase in the governor's power of appointment and removal by statutory enactment insofar as the lack of constitutional obstacles would permit. The Council of State Governments, Reorganizing State Government (1950) pp. 20-27; The American Assembly, The Forty-Eight States: Their Tasks as Policy Makers and Administrators (1955) pp. 112-115; General Management of Michigan State Government, Part II.

³⁸ From The Book of the State 1960-61, p. 123.

APPOINTING POWER OF THE GOVERNOR

<i>State</i>	<i>Sec. of State</i>	<i>Treasurer</i>	<i>Auditor (a)</i>	<i>Attorney General</i>	<i>Tax Commission</i>	<i>Administration and Finance</i>	<i>Budget Officer</i>	<i>Comptroller (a)</i>	<i>Education</i>	<i>Agriculture</i>	<i>Labor</i>	<i>Health</i>	<i>Welfare</i>	<i>Insurance</i>	<i>Highways</i>	<i>Conservation</i>
Ala. E	E	E	E	E	G	G	DG (b)	DG (b)	E	G	B	GSH (c)	B	G	G	G
Alaska. E	E	O	E	GSH	GSH	GSH	G	DG (b)	GSH	D	GSH (c)	GSH (c)	D	D	D	O
Ariz. E	E	E	E	E	G	O	O	O	E	G	GSH (c)	GSH (c)	(d)	(d)	GS	GS
Ark. E	E	E	E	E	GS	O	DG	G	B	O	GS	GS	GS	B	GE	BG
Calif. E	E	E	L (e)	E	E	(f)	CS	E	GS	GS	GS	GS	GS	GS	GE	GS
Colo. E	E	E	E	E	CS	O	CS	CS	CS	CS	CS	CS	CS	CS	CS	GE
Conn. E	E	E	E	E	GE	DG	E	B	GE	GE	GE	GE	GE	GE	B	B
Dela. GS	E	E	E	E	GS	O	B (g)	O	B	B	B	B	B	B	B	B
Fla. E	E	GS	(j)	E	E (h)	O	G (i)	E (h)	E	E	G	GS	G	E	G	B
Ga. E	E	L	E	E	GS	O	G (j)	E (k)	E	E	GS	GS	GS	E (k)	L	O
Hawaii (l)	GS (m)	L	GS	GS	GS	O	GS	GS	GS (n)	GS (n)	GS	GS	GS	GS (m)	GS	GS (n)
Idaho ... E	E	E	E	E	GS	O	G	O	E	GS	GS	GS	GS	GS	GS	GS
Ill. E	E	GS (o)	E	E	GS	GS	(f)	O	E	GS	GS	GS	GS	GS	G	GS
Ind. E	E	E	E	E	GS	O	G	O	E	E	G	G	G	G	G	GS
Iowa E	E	E	E	E	GS	O	GS (q)	GS	B	GS	GS	GS	GS	GS	GS	GS
Kan. E	E	E	E	E	GS	G	DG (b)	DG (b)	E	B	GS	GS	B	E	G	O
Ky. E	E	E	E	E	GS	GS	DG	DG	E	E	GS	B	G	G	G	G
La. E	E	O	L	E	GS	GS	G (s)	E	EE	G	GS	GS	B (r)	E	B (r)	GS
Maine.. L	L	L	DG	GC	GC	DG	DG	DG	B	GC	GC	GC	GC	GC	GC	GC
Md. GS	L	G	E	GS	G (s)	G (s)	E	E	GS	G	B	B	B (r)	G	G	G
Mass. E	E	E	E	E	GC	GC	GC	GC	B	GC	GC	GC	GC	GC	GC	GC
Mich. E	E	E	E	E	GS	G (t)	G (t)	G (t)	E	GS	GS	GS	GS	GS	E	GS
Minn. E	E	E	E	E	GS	GS (s)	GS (s)	O	B	GS	GS	B	GS	GS	E	GS
Miss. E	E	E	E	E	GS	O	G	G (t)	E	E	O	GS	GS	E	E	B
Mo. E	E	E	E	E	GS	GS (t)	GS (t)	GS (t)	B	GS	GS	GS	GS	GS	GS	GS
Mont. E	E	E	E	E	G	O	G	GS (t)	E	GS	GS	GS	GS	E	G	O
Nebr. E	E	E	E	E	GS (u)	O	GS (u)	O	B	GS	GS	B	GS	GS	GS	GS
Nev. E	E	E	E	E	G	O	G	E	B	B	G	B	B	G	B	O
N.H. L	L	I	I	SC	GC (t)	GC (t)	GC (t)	GC (t)	B	GC	GC	B	B	GC	GS	O
N. Jer. GS	GS	GS	GS	GS	GS	GS	GS (q)	GS	GS	BG	GS	GS	BG	GS	G	GS
N. Mex. E	E	E	E	GS	G (v)	DG	O	O	B	GS	GS	GS	GS	E (w)	GS	GS
N. York GS	GS	GS	GS	GS	O	G	E	E	B	GS	GS	GS	B	GS	B	GS
N. Car. E	E	E	E	E	G	G	D	O	E	E	E	GS	G	E	GC	GS
N. Dak. E	E	E	E	E	E	O	B (x)	O (x)	E	E	E (y)	E (y)	G	E	E	O
Ohio E	E	E	E	E	GS	GS	GS (s)	O	B	GS	GS	GS	GS	GS	GS	GS
Oklahoma ... E	E	E	E	E	GS	O	GS (s)	O	E	(z)	E	(z)	(z)	E	(z)	(z)
Ore. E (aa)	E (aa)	E (aa)	E	G	G	(f)	O	E	G	E	E	GS	G	G	GS	G
Pa. GS	E (ab)	E	GS	GSH	O	GSH	E (ab)	GS	GS	GS	GS	GS	GS	O	GS	GS
P.R. GSH	GS	O	SC	O	GS	GSH	GSH	GSH	GS	GS	GS	GS	GS	(ac)	O	O
R.I. E	E	O	E	DG	O	DG	D	B	GS	GS	GS	GS	GS	DG	GS	GS
S. Car.. E	E	B (ad)	E	GS	O	B (ad)	E	E	E	GS	GS	GS	B	L	B	B
S. Dak. E	E	E	E	GS	GS	D	L	E	E	E (ae)	GC	GC	G	GS	G	B
Tenn. L	L	O	SC	G	G (s)	G (s)	L	E	G	GS	GS	G	G	G	G	B
Texas .. GS	E	L (af)	E (ag)	O	G (ah)	E	E	E	E	GS	B	B	B	B	B	O
Utah.... E	E	E	E	GS	GSH	BG	BG	B	GS	GS	GS	GS	GS	GS	BG	GS
Vt. E	E	E	E	GS	O	GSH	O	B	GS	GS	GS	GS	GS	GS	GSH	GS
Va. GSH	GSH	L	E	GSH	O	GSH	GSH	GSH	GSH	GSH	G	G	GSH	B (d)	GSH	GSH
Wash. E	E	E	E	GS	G	G	O	E	GS	GS	GS	GS	GS	E	GS	GS
W. Va. . E	E	E	E	GS	GS (s)	GS (s)	O	B	E	GS	B	GS	GS	GS	GS	GS
Wisc. E	E	GS	E	GS	GS	D (b)	D (b)	E	B	GS	B	B	B	GS	GS	B
Wyo. E	E	E	GS	(ai)	G (s)	G (s)	O	E	B	G	B	B	B	GS	B	O

(r) Board of Eight appointed by Governor; Governor is ex-officio member.

(s) Budget officer is head of a dept. of administration, and fin.

(t) Controller is head of dept. of admin. and budg. officer.

(u) Tax Commissioner is the Budget Officer.

(v) Head of dept. of fin. and admin. IS comptroller.

(w) Insurance Board is three elected members of the Corporation Commission.

(x) Under a new law effective July 1, 1961, a Director of Accounts and Purchases will be ex-officio budget officer.

(y) A combined Department of Agriculture and Labor is headed by a single elected official.

(z) Governor appoints board with consent of Senate, board appoints Executive Director except in Agriculture where board elects a member as President.

(aa) Secretary of State is ex-officio auditor.

(ab) Treasurer also serves as comptroller.

(ac) Appointed by Secy. of Treas. with approval of Governor.

(ad) State Auditor IS appointed by Budget and Control Board and serves as budget officer.

(ae) Attorney General serves ex-officio as Industrial Commissioner.

(af) Appointed by Legislative Audit Committee and approved by Senate.

(ag) The Tax Comm. is an ex-officio body which fixes tax rate. The Comptroller is Tax Administrator.

(ah) Legislative Budget Board separate; works in same field as Governor's budget officer.

(ai) None; duties under State Board of Equalization.

(aa) See table on page 134 for pre- and post-audit functions.

(bb) Subject to civil service act.

(cc) Health and welfare comprise one department.

(dd) Appointed by State Corporation Commission.

(ee) Auditor General is appointed by Jt. Leg. Audit Comm.

(ff) Budget officer is a designated official in a department of administration and finance.

(gg) Budget officer is appointed by the Budget Commission.

(hh) The Comptroller collects most of Florida's taxes.

(ii) Governor appoints with approval of Budget Commission.

(jj) Governor ex-officio budget officer assisted by Auditor.

(kk) Comptroller General is ex-officio Insurance Commissioner.

(ll) Lieutenant Governor functions as Secretary of State.

(mm) Treasurer regulates insurance.

(nn) Agriculture and conservation comprise one department.

(oo) Aud. Gen. appointed; Aud. of Pub. Accts. elected.

(pp) Lt. Gov. is ex-officio Commissioner of Agriculture.

(qq) Comptroller is budget officer.

members of a board or commission heading a principal department are appointed in the same manner.³⁹ Such board or commission may appoint a principal executive officer if authorized by law, but this appointee must be approved by the governor.⁴⁰

The Alaska constitution (Article III, Sections 25, 26) is similar to the New Jersey provision, except that confirmation of appointments is by a majority of the members of the legislature in joint session (and the secretary of state is elected in lieu of a lieutenant governor).⁴¹

The Hawaii constitution (Article IV, Section 6) is similar to the Alaska provision in regard to appointment of single executive department heads, but these may be removed by the governor with consent of the senate. (The legislature may provide, however, for such removal without consent of senate.) The members of boards and commissions heading a principal department are appointed by the governor with consent of the senate for a term prescribed by law.⁴²

The Missouri constitution (Article IV, Section 17) provides for the election of the secretary of state, state treasurer, attorney general and state auditor (in addition to governor and lieutenant governor). The heads of all the other departments are appointed by the governor with consent of senate. All appointive officers "may be removed by the governor."⁴³

The Model State Constitution (Article V, Sections 505,506) provides that the governor shall appoint an administrative manager with an indefinite term at the governor's pleasure. The heads of all administrative departments "shall be ap-

³⁹ These "may be removed in a manner provided by law."

⁴⁰ The executive officer is removable by the governor "upon notice and an opportunity to be heard."

⁴¹ The governor must approve appointment of a principal executive officer by a board or commission, as in New Jersey, but gubernatorial removal of such an executive is not specified as in the New Jersey constitution.

⁴² These boards or commissions may appoint a principal executive officer (who may, by law, be made an ex-officio voting member of the board). Approval of such appointment by the governor is not specified. This principal officer may be removed by majority vote of members appointed by the governor.

⁴³ This would involve removal at the pleasure of the governor.

pointed by and may be removed by the governor.”⁴⁴

In the U.S. Constitution, the president is granted power to appoint, with advice and consent of the senate, ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers “not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”

Comment

In view of the evident need for more departments (or agencies) than are given constitutional status, some consideration might be given to providing for some form of general gubernatorial power to appoint executive-administrative department heads (except for any that might be retained as elective officers). The lack of a constitutional basis for such appointment power (except to fill vacancies) has lead to a chaotic variety of statutory provisions relating to methods of original appointment.

Although some general method for appointment of executive-administrative officials would probably be desirable in the constitution, some flexibility could be retained. A general method of such appointment might be by the governor—either with or without consent of the senate. Although the governor’s responsibility would be enhanced by not requiring senate confirmation for most of the governor’s subordinates, such confirmation is traditional in the general power of appointment by the chief executive on the state and federal levels.⁴⁵ Legislative concern with the more important appointive executive officers is reflected by the traditional confirmation of appointments. If senate confirmation, (or a related method such as by both houses in joint session) is determined to be the requirement for most appointments, some flexibility could be provided for by exceptions in the provision itself or, through granting discretion to make such exceptions to the law-making process. An

⁴⁴ Consent of the legislature is not required for such appointment—removal is at pleasure, not for cause.

⁴⁵ A possible alternative to the traditional requirement for legislative confirmation would be a provision that the governor submit appointments to the legislature, such appointments to be effective unless rejected by the legislature within a stipulated period of time.

exception would be particularly logical for those more immediately responsible to the governor, such as staff aides and the controller (head of the department of administration) whose appointment by the governor alone might be more appropriate.

2. Power of Removal

Article IX: Section 7. The governor shall have power and it shall be his duty, except at such time as the legislature may be in session, to examine into the condition and administration of any public office and the acts of any public officer, elective or appointive; to remove from office for gross neglect of duty or for corrupt conduct in office, or any other misfeasance or malfeasance therein, any elective or appointive state officer, except legislative or judicial, and report the causes of such removal to the legislature at its next session.⁴⁶

Constitutions of 1835 and 1850

The 1835 constitution had no specific provision relating to removal of officials by the governor. The governor's power of appointment was wider under this constitution than under those of 1850 and 1908. Insofar as it resembled the U.S. Constitution, removal power could have been viewed as incidental to the power of appointment.

The U.S. Constitution is particularly flexible in this regard. Some agency heads (both single and multiple) in Michigan are presently appointed by the governor alone under statutory authority, but there is no clear pattern or standard related to need for closer responsibility to the governor in the present statutory appointment provisions, whereby some single and multiple heads of agencies are appointed with consent of the senate and some without consent of the senate.

⁴⁶ The presence of the section on removal by the governor in Article IX (Impeachments and Removals) rather than Article VI (The Executive) is not accidental. As indicated below, it originated as a substitute for the impeachment process, even though the grounds or causes for such removal are less serious than those for impeachment. The governor's removal power is discussed here because of its usual association with the powers of the Governor, particularly that of appointment.

⁴⁷ These circumstances indicate that this provision originated as a substitute for the impeachment process (when the legislature was not in session). K. N. Hylton, The Executive Power of Removal in Michigan (Wayne State Univ. thesis; 1953), pp. 19-22.

The original 1850 constitution had no provisions for removal of officials by the governor (and his appointment power was sharply curtailed). The substance of the present provision originated as an amendment to the 1850 constitution (Article XII, Section 8) in 1862. The governor, shortly before this amendment was added, felt that he did not have authority to remove the state treasurer for failure to perform his duties properly while the legislature was not in session.⁴⁷

Constitution of 1908

The convention made no change in the meaning or effect of the removal provision in carrying it over from the 1850 constitution as amended. Enumeration in the former provision of the state officers to be removable by the governor was omitted as unnecessary. The former clause requiring the governor to appoint a successor for the remaining term of office was also discarded. The convention's committee on submission noted that this clause was a mere repetition of the authority granted in Article VI, Section 10 of the 1908 constitution.⁴⁸ This provision has not been amended since the adoption of the present constitution.

Power to Examine. The power granted to the governor in Section 7 "to examine into the condition and administration of any public office and the acts of any public officer, elective or appointive" is directly related to the governor's power of removal for cause. This power of examination, as a part of the removal process, is allowed only when the legislature is not in session.

It is apart from the governor's authority under Article VI, Section 3 to require written information from executive and administrative officers upon any matter relating to their duties.

Statutory Implementation

Statutes pursuant to Article IX, Section 7 provide that the secretary of state, attorney general, state treasurer, or auditor general may be removed by the governor when the legislature is not in session, for any of the causes specified in Section 7, provided that such person is served with a written notice of the charges against him, and is afforded an opportunity for a public hearing conducted personally by the governor.⁴⁹ Among those specified in statutes as removable for cause by the governor are: members of the state tax commission; all officers who are, or shall be,

⁴⁸ Proceedings and Debates, p. 1434.

⁴⁹ M.S.A., 6.1083.

⁵⁰ M.S.A., 7.632, 6.695, 3.294, 3.612, 3.613, 3.598, 3.600, 3.263.

appointed by the governor to fill vacancies during recess of the legislature; any officer of the state government, including members of any state board or commission, who fails to comply with the budget act; any person found negligent, incompetent, or responsible for irregularities in handling, or in the accounting of state funds—hearing specified; officers failing to keep accounts and records, or not making reports as required by the auditor general—hearing specified; officials of administrative departments, boards, commissions, and institutions failing to follow the orders of the state administrative board.⁵⁰

Judicial Interpretation

By court interpretation, the governor's removal power is judicial in nature. It can be used only when the legislature is not in session and for the causes listed in Section 7. His charges against officers must be specific regarding alleged acts or neglect. Notice of the charges must be given, and opportunity for defense.⁵¹ The legislature may vest removal power relating to subordinate officers in officers other than the governor.⁵²

Such removal power normally would be vested in the appropriate appointing agency.

The facts related to the constitutionally specified cause for removal must actually exist; the governor must not act arbitrarily, and the courts may inquire into such questions. However, the governor's finding of fact is conclusive on the court.⁵³ The governor's removal power is coupled with his duty to examine the acts of public officers, and members of quasi-judicial agencies are not excluded from the group of officials removable by him (for cause).⁵⁴

⁵¹ Dullam v. Willson, 53 Mich. 392; 1884. The decision in this case states expressly that the governor "acts in the place of a court of impeachment" when the legislature is not in session.

⁵² Fuller v. Ellis, 98 Mich. 96; 1893.

⁵³ People ex rel. Johnson v. Coffey, 237 Mich. 591; 1927.

⁵⁴ People ex rel. Clardy v. Balch, 268 Mich. 196; 1934. This case was decided shortly before the Humphrey Case decision, in 1935, in which the federal supreme court disallowed presidential removal of a member of the quasi-judicial Federal Trade Commission. Statutory causes for such removal had not been invoked. Since the federal case involved removal at the president's pleasure, these decisions are not opposite in effect.

Other State Constitutions

Most, state constitutions restrict the governor's removal power (in contrast to the federal constitution). However, some constitutions, particularly those framed or revised in recent years, have provided wider removal power for the governor.⁵⁵ Most state constitutions give removal power to the governor, but by a method to be prescribed by law. Generally this removal is allowed only for cause (such as malfeasance) and removal for administrative reasons is thereby precluded. Some states require consent of senate for removal—the governor of Florida may remove officials for cause with consent of senate. A few states provide for gubernatorial removal on address (resolution) of the legislature. Some states allow removal of officials for certain causes by court action.⁵⁶ The Model State Constitution and the U.S. Constitution (by interpretation) provide for unfettered executive removal power over officials responsible to the executive.

Comment

The governor's power to remove officials (affected by this section) is limited to those periods when the legislature is not in session. A further limitation on this power resulted from the adoption of the amendment requiring annual legislative sessions.⁵⁷ When the legislature is not in session, the governor's power to remove officials having constitutional status (and many statutory officials) is restricted by

⁵⁵ See comparative state provisions on appointment power above-removal provisions of recent constitutions summarized. In some states, the governor's power of appointment and removal has been enhanced by statute where constitutional obstacles were not prohibitive. Lack of substantial removal power for the governor in many states tends to lessen the governor's responsibility for administration. State officers who might be expected to be responsible to the governor are somewhat remote from gubernatorial control as a result. State government specialists lean preponderantly in favor of more extensive removal power for the governor, in conjunction with more extensive power of appointment. Reorganizing State Government, pp. 20-27; General Management of Michigan State Government, pp. 1-15, 16; 11-8,19-23; Belle Zeller, Editor, American State Legislatures, 1954, pp. 165-167; Abram S. Freeman, "The Governor—Constitutional Power of Investigation and Removal of Officers," Preparatory Research Studies (New Jersey Constitutional Convention, 1947) pp. 8-10.

⁵⁶ Index Digest, pp. 839-842.

⁵⁷ The governor's responsibility for administration would naturally be increased if his power to investigate and remove officials were made effective at all times. The Commission on Reform and Modernization of Government recommended this in 1938, and the "Little Hoover" study in 1951.

the stipulation that it be for cause. Because of this restriction, the governor's power to remove officials for administrative reasons (or at pleasure) is restricted to those officials made so removable by statute.

By statute, some officials and agency heads have been made removable by the governor at pleasure. The controller of the department of administration, as pointed out above, is one of these. In view of the language of Section 7, and the lack of any other provision on removal, constitutional justification for such statutory provisions is not clear. Section 7 states that "any elective or appointive state officer, except legislative or judicial" shall be removed for the causes specified. However, there is no positive constitutional prohibition of gubernatorial power to remove at pleasure. There has not as yet been a court test of such statutes but justification for removal of some officials under statutory authority at the governor's pleasure might not be interpreted as being in conflict with this section. The competency of the law-making process to provide for permissive removal of some officials by the governor at pleasure might be justified as an alternate or concurrent mode of removal, since removal for cause as set forth in Section 7 is mandatory and binding upon the governor, and evidently intended to apply mainly to the constitutional state offices of the executive department. If removal only for cause of some officials were retained in a revision of the constitution, clarification of this matter would be desirable. The constitution could specify which officials, or types of officials, would be removable at pleasure and which for cause, or it could allow such matters to be determined by law.

If the governor were given power to remove most or all officials responsible to him at his discretion or pleasure, exceptions could still be retained, such as removal of members of quasi-judicial bodies only for cause. Such exceptions should be clearly defined, however, if it is considered desirable to avoid a basis for encroachment upon the governor's power of appointment and removal. If the governor were granted extensive power to remove officials at pleasure, procedures presently required by the constitution, statutes and court decisions in removal for cause would no longer apply for such officials.

These procedures related to removal for cause, however, could be retained for officials such as members of quasi-judicial agencies who would not be directly responsible to the governor.

Because of the close association between the governor's powers of appointment and removal of his subordinates, provisions relating to such powers should probably be combined or linked in a new executive article in order to avoid the curious divorce of the governor's power of removal from his other powers—particularly that of appointment—as presently provided.

D. CIVIL SERVICE COMMISSION

Article VI: Section 22. The state civil service shall consist of all positions in the state service except those filled by popular election, heads of departments, members of boards and commissions, employees of courts of record, of the legislature, of the higher educational institutions recognized by the state constitution, all persons in the military and naval forces of the state, and not to exceed two other exempt positions for each elected administrative officer, and each department, board and commission.

There is hereby created a non-salaried civil service commission to consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for eight-year, overlapping terms, the four original appointments to be for two, four, six and eight years respectively. This commission shall supersede all existing state personnel agencies and succeed to their appropriations, records, supplies, equipment, and other property.

The commission shall classify all positions in the state civil service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the state civil service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the state civil service. No person shall be appointed to or promoted in the state civil service who has not been certified as so qualified for such appointment or promotion by the commission. No removals from or demotions in the state civil service shall be made for partisan, racial, or religious considerations.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the state civil service and who shall be responsible to and selected by the commission after open competitive examination.

To enable the commission to execute these powers, the legislature shall appropriate for the six months' period ending

June 30, 1941, a sum not less than one-half of one per-cent, and for each and every subsequent fiscal year, a sum not less than one per cent, of the aggregate annual payroll of the state service for the preceding fiscal year as certified to by the commission.

After August 1, 1941, no payment for personal services shall be made or authorized until the provisions of this amendment have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

This amendment shall take effect on the first day of January following the approval thereof.

Constitution of 1908

Convention of 1907-08. In the constitutional convention of 1907-08, Professor Fairlie introduced a proposed constitutional provision for the establishment of the merit system in appointments to the public service similar, as he pointed out, to a provision in the New York constitution. The convention's committee on miscellaneous provisions refused to report the proposal, and Fairlie's motion to refer the matter to the committee of the whole was voted down, since only 33 yeas favored his motion.⁵⁸

Mr. Adams felt that it was a matter purely for legislation; that the merit system for Michigan would be an "experiment," that the convention should not "tie the hands of the legislature for fifty years." Mr. Fairlie pointed out to the contrary that his proposal would leave complete discretion to the legislature for implementing the principle. Mr. Manchester stated that the proposal would not add to the powers of the legislature, but would simply be "an addition of so much deadwood to the instrument."⁵⁹

⁵⁸ Proceedings and Debates, pp. 50, 1018, 1019

⁵⁹ Ibid., p. 1019.

Statutory Commission. In the absence of this type of constitutional mandate for statutory implementation of the merit system, a civil service act became effective some 30 years later in 1938.⁶⁰ In 1939, the civil service commission established by this act had much of its power taken from it by statutory reduction in appropriation and statutory provision for a widespread removal of positions from the classified service.

Constitutional Commission by Amendment, 1940. Reaction to this form of tampering with the statutory commission resulted in the organization of a drive by reform groups to put the merit system beyond the reach of statutory interference. They initiated a proposed amendment by petition in 1940 which became Section 22 of Article VI when approved by a vote of 766,764 to 709,894 in the November, 1940, election. This amendment (largely as a result of the circumstances that brought it about) set up a civil service commission with a large degree of independence from the legislative and executive branches of the state government.

Statutory Implementation

No statutory basis was needed to implement this provision owing to the self-executing nature of the amendment.

Judicial Interpretation

Much litigation has developed as a result of the civil service amendment. The commission's powers are extensive and they tend somewhat to impinge upon areas of activity normally associated with the executive and legislative branches. This would seem to be one reason for the extensive litigation. Another seems to result from some lack of clarity in the scope of its authority, extensive as it is. Numerous court decisions have construed the powers of the commission.

Two Exempt Positions. The first paragraph of Section 22 defines what the state civil service will consist of mainly by specifying those positions exempted from it. After the more obvious exemptions including elective officials and both single and multiple heads of departments, there is further provision for "not to exceed two other exempt positions for each elected administrative officer, and each department, board and commission." The turnpike authority's employees were held to be exempt

⁶⁰ Public Act 346, 1937; effective January 1, 1938.

from civil service provisions, because the authority was an autonomous agent of the state, not an alter ego of the state.⁶¹

Approval of Creation and Abolition of Positions. In *Kunzig v. Liquor Control Commission* (1950), the supreme court held that the civil service commission has power to approve or disapprove abolition of positions in the classified service by administrative agencies.⁶² The majority opinion in the *Kunzig* case appears substantially to have based its interpretation that the commission has power to approve or disapprove all abolitions of positions upon the last sentence of paragraph three—that no removals or demotions shall be made “for partisan, racial, or religious considerations.” This decision states that the commission “may exercise authority over removals” in the civil service for otherwise “it would have no initial supervisory control over a question as to whether a removal or demotion has been made for partisan, racial, or religious considerations.” After stating that “the authority of the liquor control commission to reorganize its department” was not involved in the case, this opinion later stated that the finding of the civil service commission was based on the facts brought out at its hearing and “need not necessarily be consid-

⁶¹ *City of Dearborn v. Michigan Turnpike Authority*, 344 Mich. 37. The attorney general held similarly with regard to the Mackinac bridge authority. Opinion of August 13, 1956. The attorney general also held that if two or more agencies were consolidated into one department that department would be entitled to not more than the two exempt positions. Opinion of December 30, 1955.

⁶² 327 Mich. 474. According to an opinion of the attorney general (December 30, 1946) this would also be true for the creation of such positions. The statutory commission (1937-1940) had some power in this area, and it is undoubtedly part of the background for interpretations of the present constitutional commission’s power in this regard which, perhaps, amplify or extend its power beyond what could normally be understood from the language of this specific provision (see paragraph three of provision). The attorney general held that the commission had power to approve creation of new positions (if determined to be “necessary”) in view of its specified powers to “approve or disapprove disbursements for all personal services,” and to “classify all positions” in the civil service.

ered as a finding that the attempt to abolish" this position "was induced by subterfuge or fraud."⁶³

The dissenting opinion in this case took issue with the majority interpretation and held that administrative agencies could abolish positions without commission approval. This opinion argued that if the commission had such power of approval, it could actually control administrative policies; that if this extraordinary power over abolishment of positions had been intended by the people to be granted to the commission, the amendment easily could have been framed to grant this power expressly, and that there was no logical reason for reading this power into the amendment provisions.⁶⁴

Power to Fix Rates of Compensation. Civil Service Commission v. Auditor General is the basic case dealing with this power of the commission.⁶⁵ The civil service commission has full authority to fix rates of compensation for those in the classified service and the legislature in its power of appropriation has discretion concerning only the total amount of funds to be spent for personal services, but has no power to specify rates (or ranges) of compensation for those in the classified civil service. Appropriations for personal services for each department or agency cannot be detailed by the legislature to the extent that they would infringe upon the compensation-fixing powers of the commission.

⁶³ Since the civil service commission based its decision upon considerations of efficiency, and since no charge of fraud (to avoid removal for the prohibited reasons) was involved in the case, the majority opinion seems somewhat inconsistent. It would suggest that the civil service commission could interfere in substantive administrative organization problems of executive agencies, when abolition of positions was concerned, even when such fraud and subterfuge were not involved. It was pointed out in this case, however, that the civil service-commission had never refused to allow a position to be abolished.

⁶⁴ For general discussion of the majority opinion's possible effect on executive responsibility and administrative management, see Personnel Administration in Michigan State Government. (Staff Report No. 9, 1951 to the Michigan Joint Legislative Committee on Reorganization of State Government), pp. 26-32; Hylton, Power of Removal, pp. 54-63.

⁶⁵ 302 Mich. 673.

Mandatory One Per Cent Appropriation. The fifth paragraph of the civil service section requires the legislature to appropriate each year not less than one per cent of the preceding fiscal year's payroll for those in the "state service." The basic supreme court case for interpretation of this provision is Civil Service Commission v. Department of Administration.⁶⁶ The opinion in this case held that the mandatory appropriation is restricted to one per cent of the aggregate classified civil service payroll. This opinion also determined that the appropriation was not self-executing, since the legislature was to have some discretion in the matter of the appropriation—which could be more than the mandatory one per cent.⁶⁷

Other State Constitutions

Many states have statutory provision for partial or extensive civil service classification of state personnel.⁶⁸ Only 13 states have constitutional provisions for a civil service system, and for the most part these constitutional provisions are not specific and detailed. While making the institution of the merit system mandatory, discretion is usually left to the legislature as to the specific mode of its implementation.⁶⁹

The civil service provision in the Hawaii constitution (Article XIV, Section 1) is very brief: "The employment of persons in the civil service, as defined by law, of or under the State, shall be governed by the merit principle." The Alaska provision (Article

⁶⁶ 324 Mich. 714.

⁶⁷ An earlier court decision—Civil Service Commission v. Auditor General, 302 Mich. 673—was reversed thereby to the extent that it had held that this was a continuing appropriation without the necessity of legislative initiation.

⁶⁸ For 1955 modification of Illinois statutory provision, see S. K. Gave, "The Executive," Illinois State Government: A Look Ahead, University of Illinois (1955), pp. 27-28. A department of personnel assumed most of the functions of the civil service commission which then became primarily a quasi-judicial body. On comparative systems see W. W. Crouch and J. N. Jamison, The Work of Service Commissions (Civil Service Assembly, no date—C. 1955).

⁶⁹ Index Digest, pp. 94-100.

XII, Section 6); is equally brief and similar in content. The New Jersey provision (Article VII, Section 1, 2) is longer but maintains flexibility and leaves much discretion to the law-making process. The Missouri provision (Article IV, Section 19) is similar to that of New Jersey, as is the New York provision (Article V, Section 6), except for its details relating to veterans' preference. The California provision is detailed and self-executing. The powers of the civil service commission under the California provision (Article XXIV) are similar to those of the Michigan commission, except that no mandatory appropriation is required.⁷⁰

The New York provision is mandatory upon all units of local government as well as the state government. The New Jersey provision makes civil service mandatory for the state service, but that for local government is at the discretion of the legislature. The provision of the Model State Constitution relating to civil service (Article IX) is similar to the New York provision. The principle is made mandatory for local governments as well as for the state service, but the "civil divisions" of the state may choose whether or not to come under the jurisdiction of the state department of civil service. Those that do not so elect, and do not provide for personnel functions in a home rule charter, will be provided for by state law.⁷¹

Comment

Some consideration might be given to the adequacy of the two-exempt-position provision in this section in view of problems that might develop relative to political policy direction. A constitutional standard for positions that should be classified

⁷⁰ The Michigan civil service provision is almost unique among state constitutions in the extent of independent authority granted to the commission, and its special constitutional standing.

⁷¹ In addition to the civil service provision in its Model State Constitution, the National Municipal League has published A Model State Civil Service Law. Under this model law, the director of personnel, appointed by the governor and removable by him for cause, is responsible for most administrative phases of the state personnel program. The three-member commission is partly advisory; but it has power to investigate personnel administration; and it has power of approval over rules for the classified service prescribed by the director of personnel. The provision for exempt positions is similar to that in the Michigan provision. The director of personnel under the model law has power similar to that of the Michigan commission to approve or disapprove disbursement for personal services.

(non-policy-making) and those that should not be classified (policy-making) is difficult to establish with workable flexibility in view of the probability that the policy-making level might vary from department to department.⁷²

Some consideration might also be given to modification or clarification of the scope of power granted by this section to the civil service commission. One alternative to the present practice would be to make the governor responsible for the personnel function of the present commission.⁷³ If this were done, the civil service commission could continue as a quasi-judicial agency to set standards for and to enforce the merit system (and principle). If it is determined that the civil service commission should retain the powers and functions presently specified in the constitution, some clarification of the commission's power relative to approval of creation and abolition of positions might be made.⁷⁴ The advantages and disadvantages involved in the

⁷² This present provision is rigid, since the size of the department or agency has no effect on the number of exempt positions to which it is entitled. The provision may be somewhat restrictive for some of the larger departments or agencies, and if administrative reorganization through consolidation of agencies in a smaller number of departments were effected, the maximum of two exempt positions for the consolidated departments would be more restrictive.

⁷³ The present department of administration has all the so-called "tools of management" except for personnel. Heady and Pealy, Department of Administration, pp. 59-64. See also Scace, Executive Office of the Governor, pp. 22-28. A director of personnel in the department of administration would be closely responsible to the governor.

⁷⁴ The major reason for the commission to have authority in this area is to forestall abolishment of positions by subterfuge to effect removal of a state employee for partisan, racial or religious considerations. Review of complaints in such matters by a quasi-judicial civil service commission, or such review by the courts, could restrain possible abuse in such matters without the potential for infringement upon traditional executive (and legislative) authority to create and abolish positions resulting from inter-agency or intra-agency reorganization.

commission's power to fix rates of compensation would probably be weighed against the advantages and disadvantages of legislative (and executive) discretion in this area.⁷⁵

The present provision includes a mandatory one per cent appropriation for the civil service commission. Despite the rigidity in this provision, it appeared necessary when the amendment was adopted in 1940 in view of the then inadequate political support for the merit system. A determination of the question of whether or not this provision should be continued might be based upon a new evaluation of the basis for popular and political support of the merit system.

⁷⁵ In regard to this and other powers of the civil service commission see Personnel Administration in Michigan Government, Reports of the Civil Service Commission, R.W. Conant, Editor, General Government in Michigan (Samuel Hegby Camp Foundation, 1960), pp. 17-20. It has been held by supporters of the commission's power to set rates of compensation that chaotic disparity in such rates commonly results from exercise of such power by the political process.

E. THE GOVERNOR'S RELATIONS WITH THE LEGISLATURE

1. Messages to the Legislature

Article VI: Section 5. He shall communicate by message to the legislature, and at the close of his official term to the incoming legislature, the condition of the state, and recommend such measures as he may deem expedient.

Constitutions of 1835 and 1850

In the 1835 constitution (Article V, Section 8) it was required that the governor “communicate by message to the legislature, at every session the condition of the state, and recommend such matters to them as he shall deem expedient.”

The 1850 provision (Article V, Section 8) had the same meaning and effect as the 1908 provision under discussion, although the language was somewhat different. The 1850 provision originated the so-called exaugural address.

Constitution of 1908

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

Other State Constitutions

Almost all state constitutions require the governor to report on the condition of the state and to make recommendations to the legislature. Most require this at each session of the legislature; many follow the federal provision of requiring it “from time to time.” Many require this at the beginning of each session, while others require it at the beginning of each regular session. Only six states in addition to Michigan require the exaugural message.⁷⁶

⁷⁶ Index Digest, pp. 503-504. The Model State Constitution requires the governor to give information to the legislature at the beginning of each session; he may at other times. Under the Model the governor may participate in legislative discussions and introduce bills, but cannot vote.

Comment

There appears to be no great problem with this provision in a revision of the constitution. Requiring the state-of-the-state message at the beginning of each regular session—or every session—might be considered. The power to recommend legislation to the legislature is one of the most important executive powers, and the present provision seems to allow full latitude for this power. While the exaugural message is somewhat unusual, it appears to offer no serious disadvantages and could be helpful to the extent that the governor may use it as an occasion to make recommendations in the light of experience at a time when more immediate political considerations would ordinarily be less pressing.

2. Writs of Election for Legislative Vacancies

Article VI: Section 6. He shall issue writs of election to fill such vacancies as occur in the senate or house of representatives.

Constitutions of 1835 and 1850

The constitution of 1835 (Article IV, Section 20) had a provision similar to this in the legislative article. The provision in the 1850 constitution (Article V, Section 10) is the same as the present provision.

Constitution of 1908

This section has not been amended since 1908.

Statutory Implementation

The Michigan election law of 1954 provides for gubernatorial discretion in calling such special elections or leaving the matter for the next general election.⁷⁷

⁷⁷ M.S.A., 6.1178, 6.1634. These sections are derived from Public Act No. 351 of 1925. An opinion of the attorney general, July 19, 1950, held that the governor has discretion either to call a special election to fill such vacancies or to leave the matter for the next general election.

Other State Constitutions

Some eighteen states in addition to Michigan have a similar provision. Several state constitutions specify a method to be provided by law. In some states a vacancy is filled by selection of the county commissioners, or party committees.⁷⁸

Comment

Since this provision has been interpreted (by statute and the attorney general) very flexibly, it has not been a source of difficulty. In view of the desirability of the governor having discretion in this matter (particularly for vacancies occurring near the end of a term), some consideration might be given to changing the language of this provision in order to avoid its present suggestion of mandatory intent.⁷⁹ This matter could, of course, be left to the discretion of the law-making process. Some consideration might also be given to placing this provision, or a revision of it, in the legislative article where it appeared in the 1835 constitution.

3. Convening Special Legislative Session

Article VI: Section 7. He may convene the legislature on extraordinary occasions.

Constitutions of 1835 and 1850

The 1835 constitution (Article V, Section 8) and the 1850 constitution (Article V, Section 7) had similar provisions.

Constitution of 1908

This section is directly related to Article V, Section 22 of the present constitution which restricts the business of a special session to the subjects "expressly stated in the governor's proclamation or submitted by special message."

⁷⁸ Index Digest, pp. 678-679. The Model State Constitution provides that legislative vacancies be filled by majority vote of the remaining members from the district concerned, or in a manner provided by law. but if the vacancy is not filled within 30 days the governor shall appoint an eligible person.

⁷⁹ Perhaps to make it conform more closely to its meaning as interpreted.

Judicial Interpretation

The court case most important to the interpretation of the restriction in Article V, Section 22 on the legislative business of a special session to the subjects specified by the governor is *Smith v. Curran*.⁸⁰ The legislation must be germane to, or covered by, the general scope of the subjects indicated by the governor. The governor's signature is not sufficient justification that the legislation was within the scope of the governor's call.⁸¹

Other State Constitutions

All of the states grant the governor power to convene the legislature in special session. In 12 states he may convene the legislature or the senate alone. In one of these (Alaska) the governor may convene either or both houses, or both houses in joint session. In this, Alaska is closest to the federal provision for convening either or both houses. Same 19 states have provisions similar to Michigan's restriction of legislative business in a special session to the subjects designated by the governor.⁸² This feature enables the governor to focus legislative attention and, at times, public opinion upon specific measures which he feels have particular importance.

Nine states provide for legislative initiation of special sessions by a simple or extraordinary majority. Four states (Alaska, Arizona, Louisiana and Virginia) require two-thirds of both houses; three states (Georgia, New Mexico and West Virginia) require three-fifths of both houses; and two states (New Hampshire and New Jersey) require only a simple majority.⁸³

Comment

Consideration might be given to some form of legislative initiative in calling special sessions, as a supplement to the present provision.

⁸⁰ 268 Mich. 366.

⁸¹ See discussion of Article V, Section 22.

⁸² Index Digest, pp. 674-675, Manual on State constitutional Provisions, p. 140. See also provisions of state constitution for discrepancies.

⁸³ Index Digest, pp. 674-675. The Model State Constitution allows the governor and a majority of the legislative council to call special sessions.

4. Convening Legislature
Elsewhere Than at State Capital

Article VI: Section 8. He may convene the legislature at some other place when the seat of government becomes dangerous from disease or a common enemy.

Constitutions of 1835 and 1850

The 1835 constitution (Article V, Section 10) and the 1850 constitution (Article V, Section 9) had similar provisions.

Constitution of 1908

This provision has not been amended, nor have there been any difficulties with respect to its interpretation.⁸⁴

Other State Constitutions

The constitutions of 15 states have similar provisions. However, in Oklahoma, two-thirds of the members elected to each house of the legislature must concur with the governor in a convocation elsewhere. Three other states provide the legislature with initiative in this matter. In Delaware and Florida, the legislature may decide to meet elsewhere; while in Kentucky, the governor must give his permission for the legislature to do so.⁸⁵

Comment

Violent epidemics are not now likely to make it necessary for the legislature to leave the state capital, except for the possibility of bacteriological warfare. The state government (or any of its branches) might be considered as having inherent power based upon sovereignty to remove from or carryon their work elsewhere than the state capital in the event of disaster or invasion without constitutional authorization. However, a provision of this type can have value in establishing a workable, flexible procedure. Consideration might be given to combining or coordinating this section with Section 5 of Article XVI (adopted in 1959) which grants the legislature authority to provide for the continuity of governmental operations in the event of disaster occurring in the state caused by enemy attack on the United States.

⁸⁴ Article I, Section 2 requires the seat of government to be at Lansing.

⁸⁵ Index Digest, p. 672.

5. Gubernatorial Veto

Article VI: Section 36. Every bill passed by the legislature shall be presented to the governor before it becomes a law. If he approve, he shall sign it; if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon its journal and reconsider it. On such reconsideration, if two-thirds of the members elected agree to pass the bill, it shall be sent with the objections to the other house, by which it shall be reconsidered. If approved by two-thirds of the members elected to that house, it shall become a law. In such case the vote of both houses shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered on the journals of each house, respectively. If any bill be not returned by the governor within ten days, Sundays excepted, after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature, by adjournment, prevents its return, in which case it shall not become a law. The governor may approve, sign and file in the office of the secretary of state within five days, Sundays excepted, after the adjournment of the legislature any bill passed during the last five days of the session, and the same shall become a law.

Constitutions of 1835 and 1850

In the 1835 constitution (Article IV, Section 16), the governor's veto could be overridden by a vote of "two-thirds of all the members present" in each house. The 1850 constitution (Article IV, Section 14) made a "concurrent resolution, except of adjournment" in addition to bills, liable to the veto. The 1850 constitution originated the requirement of two-thirds of those elected to each house to override the veto. The "ten days, Sundays excepted," allowed the governor for return of a bill is common to all three constitutions.

Constitution of 1908

The present provision resembles that of the 1835 constitution in that only bills were specified as liable to the veto. However, Article V, Section 19 requires that all legislation "shall be by bill." The 1908 provision continued the 1850 requirement that two-thirds of those elected to each house were necessary to override the veto.⁸⁶

Judicial Interpretation

Court cases concerning the gubernatorial veto power in Michigan have not been frequent, and in general the decisions have not diverged from the ordinary meaning of the constitutional provision, or from the usual interpretation of similar provisions in other jurisdictions. The governor may return a bill to the house in which it originated when that house is in recess.⁸⁷ If the governor complies with a legislative resolution asking him to return a bill presented to him, the bill will not become law due to lapse of time while not in his possession.⁸⁸

Opinion of the Attorney General

A recent opinion of the attorney general held that the day on which the governor receives a bill is not to be included in the ten days, Sundays excepted, allowed for his disapproval of a bill.⁸⁹

Other State Constitutions

Exceptions to the Veto. All of the state constitutions except that of North Carolina provide for the gubernatorial veto. In two states (Maryland and West Virginia), the general appropriation bill is not liable to the governor's veto. In 17 states (including Michigan) of the 22 having the initiative for statutes, the governor is prohibited from vetoing initiated measures. In Maine, the governor may veto initiated mea-

⁸⁶ The last clause of the 1908 provision—allowing the governor five days to “approve, sign and file” bills passed in the last five days of the session—originated substantially in the 1850 constitution. However, “Sundays excepted” was added to this clause by the 1908 convention. Proceedings and Debates, p. 121. In a case decided under the 1850 constitution, it was held that a bill passed before the last five days of a session and approved after adjournment, within ten days of its passage, became law. *Detroit v Chapin*, 108 Mich. 136.

⁸⁷ *Wood v. State Administrative Board*, 255 Mich. 200.

⁸⁸ *Anderson v. Atwood*, 273 Mich. 316.

⁸⁹ Opinion of May 25, 1961. The legislative practice has been to allow the governor 240 hours, Sundays excepted.

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sures, and if the veto is sustained by the legislature the measure is referred to popular vote at the next general election. In 17 states (including Michigan) of the 27 having the referendum on statutes the governor is prohibited from vetoing referred measures.⁹⁰

Number Required to Override Veto. The Table below summarizes comparative data on legislative vote necessary to override gubernatorial vetoes among the states:

VOTE REQUIRED

Majority of Members:		Three-Fifths:		Two-Thirds:	
<u>Present</u>	<u>Elected</u>	<u>Present</u>	<u>Elected</u>	<u>Present</u>	<u>Elected</u>
1	6	1	4	14	23

In one state (Connecticut) merely a majority of the members present in either house is required to override the veto; six states (Alabama, Arkansas, Indiana, Kentucky, Tennessee and West Virginia) require a majority of the members elected to each house or its equivalent; one state (Rhode Island) requires three-fifths of the members present and voting to override the veto; four states (Delaware, Maryland, Nebraska and Ohio) require three-fifths of those elected to override. Twelve states (Florida, Idaho, Massachusetts, Montana, New Mexico, Oregon, South Dakota, Texas, Vermont, Virginia, Washington and Wisconsin) require a vote of two-thirds of the members present in each house in order to override.⁹¹ Nineteen states (Alaska, Arizona, California, Colorado, Hawaii, Illinois, Iowa, Kansas, Louisiana, Michigan, Missouri, Nevada, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Utah and Wyoming) require two-thirds of the members elected (or all members) to each house, or its equivalent, in order to override the veto.⁹²

⁹⁰ The Book of the States, 1960-61, p. 51.

⁹¹ The Virginia constitution requires that the two-thirds vote of those present include a majority of those elected to each house.

⁹² The Iowa constitution requires a veto to be overridden by "two-thirds of the members of each house" which is interpreted similarly. The Alaska constitution uniquely requires reconsideration of vetoed bills in joint session of the legislature, a joint vote on reconsideration as in confirmation of appointments. In order to override vetoes of revenue bills and appropriation bills (or items) a three-quarters vote in joint session of those elected is required.

Six states (Georgia, Maine, Minnesota, Mississippi, New Hampshire and South Carolina) have provisions resembling the U.S. Constitution in vagueness concerning the number of votes necessary to override a veto. The Georgia provision requires “two-thirds of each house” to override. The others require “two-thirds of that house. . .” as does the U.S. Constitution.⁹³ The Model State Constitution requires a two-thirds vote of all members of the unicameral legislature to override the veto.

Most states whose constitutions provide the governor with extensive executive power also provide for strong gubernatorial veto power—overridden only by two-thirds of those elected to each house. However, Michigan and many other states whose governors have largely restricted authority have this same feature. In such “weak-governor” states having the somewhat incongruous powerful veto, the governor has more control (through the veto and other powers) over legislation than he has in his own executive-administrative department.

In 23 states (19 by specific constitutional provision and at least four others by interpretation) having the requirement of two-thirds of those elected to override, the gubernatorial veto is almost absolute. Comparatively few vetoes tend to be overridden throughout all the states, but in those requiring a two-thirds vote of those elected to each house, overridden vetoes are particularly rare.⁹⁴

Amendment by the Governor. Five states (Virginia, Alabama, Hawaii, Massachusetts and New Jersey) now have a feature related to the governor’s veto known as the “Virginia plan.” Under this, the governor may propose amendments to any bill which he may return without signing. The legislature may act upon or accept or reject the governor’s amendment. The bill may then be presented to the governor for his consideration in the usual manner. The Alabama provision is unique among the five, since if either house refuses to amend the bill as desired by the governor, the bill is reconsidered as a vetoed bill.⁹⁵

⁹³ By rulings from the chair (in Congress) sustained by court decisions, this has been interpreted to require only two-thirds of those present and voting, if a quorum, to override the presidential veto in each house. Such interpretation seems to have been attached to similar provisions in the Maine and South Carolina constitutions; while the other four states are generally classified with the states requiring two-thirds of those elected to override. Book of the States, p. 51 (Alaska provision in part misstated); Index Digest, p. 615 (Mass. provision not properly classified); Manual on State Constitutional Provisions, p. 55 (in contrast to The Book of the States classification, the Manual places Maine and South Carolina among those requiring two-thirds of the members elected). For discrepancies see pertinent provisions of state constitutions.

⁹⁴ B. M. Rich, State Constitutions: The Governor, pp. 20-22.

⁹⁵ Index Digest, pp. 614-615.

In some other states, amendment by the governor is used informally—the governor returning bills before signing or vetoing particularly for minor changes in order that they may be re-passed. The formal constitutional device of returning bills to the legislature for amendment appears to have been successful and to have provided flexibility in relations between the governor and legislature in the law-making process.⁹⁶

Veto of Parts of Bills Other Than Appropriation Items. The veto power over appropriation items is provided for in 41 states. This “item veto” will be discussed below. However, the constitutions of three states (Virginia, Washington and South Carolina) provide the governor with power to veto parts or sections of any bill. The Oregon constitution permits the governor to veto emergency provisions in bills separately from the remainder of such bills.⁹⁷

Number of Days to Consider with Legislature in Session. In nine states the governor has only three days (Sundays excepted) in which to return a disapproved bill or it becomes law. In 21 states, the limit is five days; in four states, six days; in 13 states (including Michigan) ten days; and in two states, 15 days.⁹⁸ Most states having new or revised constitutions allow the governor ten days or more. Alaska is one of those specifying 15 days. The Missouri constitution provides that if the governor has not returned a bill in 15 days, the legislature may by joint resolution direct the secretary of state to enroll the bill as enacted.

After Adjournment—The “Pocket” Veto. Of the 17 states that provide for a “pocket” veto in the sense that a bill does not become law unless signed by the governor within a specified period after adjournment of the legislature, most provide a longer period than the five days, Sundays excepted, allowed the Michigan governor. Only one state provides for a shorter period—three days. The five-day period is effective in Michigan and two other states.⁹⁹ In Wisconsin and Maryland the period is six days from presentation which may take place after adjournment; in Virginia and

⁹⁶ Rich, The Governor, p. 22; A. W. Bromage, “Constitutional Revision in Michigan.” 36 University of Detroit Law Journal, 102.

⁹⁷ Index Digest, p. 614. Emergency provision in legislative bills in Oregon is similar to “immediate effect” for bills in Michigan.

⁹⁸ In most of these, Sundays are excepted, as in Michigan. Some except holidays or the day the governor receives the bill. Index Digest, pp. 611-612.

⁹⁹ Massachusetts—in practice the legislature remains in session until all bills are acted upon—and Vermont whose provision is somewhat hazy.

Alabama, 10 days; Oklahoma and Montana, 15 days; New Mexico, 20 days; California, Delaware, Georgia and New York, 30 days; and Missouri, 45 days.¹⁰⁰

Requirement of an Express Veto. Thirty of the 32 states which provide for the veto, but have no “pocket” veto, require an express veto (or the bill becomes law after the time allowed for it lapses) after adjournment.¹⁰¹ Of these 30 states which require the express veto during adjournment or the bill becomes law, three allow the governor five days; 11 allow ten days; three allow 15 days; six allow 20 days; two (Connecticut and Pennsylvania) allow 30 days; two (New Jersey and Hawaii) allow 45 days; and in three (Maine, Mississippi and South Carolina) if the bill is not returned to the legislature within the first few days of the next session, it becomes law. The New Jersey constitution provides that the legislature shall convene in special session on the 45th day after adjournment to act on vetoed bills. Bills not signed or vetoed by the 45th day become law. The Hawaii provision is similar except that the legislature may decide whether or not it will convene in such a special session; if the legislature fails to convene, vetoed bills do not become law.¹⁰²

Comment

In revising the Michigan constitution, if the executive article were rewritten to make the governor more responsible for the operation of a unified executive-administrative branch of government, some consideration might be given to reducing the governor’s power as a third branch of the legislature in view of the extreme effectiveness of the veto as a check on the legislature.¹⁰³ Possible alternatives to the

¹⁰⁰ The Book of the States, p. 51 (Georgia provision misstated); Index Digest, pp. 612-613. In only about one-half of the 17 “pocket-veto” states is the device used to any extent. Rich, The Governor, p. 22. In practice, the “pocket” veto has been avoided in Michigan (as in other states) by the legislative practice of recessing for more than ten days before final adjournment in order that the governor may consider all bills.

¹⁰¹ In the other two (Kansas and New Hampshire), the governor can neither sign nor veto a bill following adjournment.

¹⁰² The Book of the States, p. 51; Index Digest, pp. 612-613.

¹⁰³ The present requirement to override a veto—two-thirds of the members elected—might be desirable to retain for vetoes of appropriation bills or items, even if other vetoes were made less difficult to override. See discussion of item veto below.

present provision for overriding the veto would be to require three-fifths of those elected in each house or in joint session, or two-thirds of those present (this number might also be required to include at least a majority of those elected as in the Virginia constitution). Separation of powers as proclaimed in Article IV of the present constitution might thereby be given more effect, with "balances" being given equal emphasis with "checks."

In view of the constitutional procedure in some states for gubernatorial amendment of bills, with the approval of the legislature, through which the formal veto process can be avoided particularly for less consequential matters, some consideration might be given to its possible efficacy in Michigan. Consideration might also be given to the somewhat related, but not incompatible, device of allowing the governor to veto parts or sections of any bill.

While the "ten days, Sundays excepted" allowed the governor, to sign or veto bills when the legislature is in session, is probably adequate in most instances, consideration might be given to extending the period allowed for such action. Since only 17 states provide for the "pocket" veto, and in only half of these is it used to any extent, its continuance might be questioned. In Michigan, use of the "pocket" veto is avoided by the practice of keeping the legislature in session (although recessed) until at least the ten days, Sundays excepted, have elapsed for the governor's consideration of bills (before final adjournment of the legislature). By constitutionally requiring an express veto after adjournment, the legislature could be given an opportunity to reconsider vetoed bills at a special session (as in New Jersey and Hawaii) or at the next legislative session; and a longer period of time could be allowed the governor for adequate consideration of the bills.¹⁰⁴

If the "pocket" veto is retained in a revised constitution, consideration should probably be given to extending substantially the period now allowed for consideration by the governor after adjournment (five days, Sundays excepted).¹⁰⁵

¹⁰⁴ In view of the problems concerned with the full legislative process of once again passing a bill the same as, or similar to, one having been "pocket" vetoed, there may well be advantages to some of the formal constitutional devices used in other states so that the legislature may later have an opportunity to override the governor's express veto (with the "pocket" veto not permitted).

¹⁰⁵ In view of the usual rush of bills at the end of a session, the period for consideration of bills after adjournment should probably be longer than for such consideration when the legislature is in session, rather than the reverse as now provided. If the present practice of recessing the legislature (until after the time has elapsed for vetoes) were expected to continue, there would be advantage in extending the period allowed for vetoes when the legislature is in session.

The veto and item veto sections of the constitution are here discussed in connection with the executive department. In a revised constitution these provisions would be appropriate in either the legislative or the executive article.

6. Item Veto

Article VI: Section 37. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items; and the part or parts approved shall be the law; and the item or items disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Constitution of 1908

This section of the executive article originated in the convention of 1907-1908. In the debate on the item veto, some fear was expressed that it was a "very dangerous" power to give to the governor. However, those supporting the item veto pointed out that it would prevent "log-rolling," and allow the governor to strike out unwarranted items without having to veto an entire appropriation bill. Mr. Fairlie (who introduced the proposal) pointed out that every state having revised its constitution in the preceding 30 years had adopted an item veto provision, and that 30 states had already adopted it at that time. This proposal passed on second reading by a vote of 64-26.¹⁰⁶

Judicial Interpretation

In 1911, Governor Osborn started the practice of reducing appropriation items in addition to vetoing entire items. At that time, a Pennsylvania court decision had interpreted a similar provision in the Pennsylvania constitution as authorizing the governor to reduce as well as to strike items subject to legislative override. Later courts in five other states denied the power to reduce items in the absence of specific constitutional authority to do so. It was during the administration of Governor Brucker in 1931 that the Michigan supreme court denied the governor the power to

¹⁰⁶ Proceedings and Debates, pp. 492-494. The item veto originated in the confederate constitution.

reduce items in appropriation bills—prohibiting by this interpretation a practice that had been used for 20 years.¹⁰⁷

Opinion of the Attorney General

The procedure for the item veto in Michigan as specified in Section 37 is not detailed. The governor in 1951 signed and filed with the secretary of state an appropriation bill with disapproved items indicated on the bill. Although this manner of vetoing items might be inferred from the language of this section, and is used in some of the 41 item-veto states, an attorney general's opinion held that the veto of those items was null—that the entire bill should have been returned to the legislature for its action on the items.

Other State Constitutions

Forty-one state constitutions provide the governor power to veto items in appropriation bills. The vote required in the various states to override item vetoes is in general the same as that required to override other vetoes, as in Michigan. As pointed out above, the Alaska constitution is unique in requiring a larger vote (three-fourths of the members elected to both houses, in joint session) to override the veto of an appropriation bill, or items of such a bill, than for other vetoes (two-thirds of those elected, in joint session). The Model State Constitution provides for the item veto in the article on finance (Section 704) in connection with budget procedure. The U.S. Constitution does not provide for the item veto.

¹⁰⁷ Wood v. Administrative Board, 225 Mich. 220-225 (1931). The court's strict interpretation of the item-veto power took from the governor an implement that had been useful in achieving governmental economy. Continued lack of adequate and sufficiently detailed itemization in appropriation bills had made the practice of reducing items helpful. Some governors in the period following this decision used the expedient of vetoing some item appropriations for the second year and spreading the first year's amount over the two-year period (for which appropriations were then made) but this was not as effective as the former practice of reducing items. Another method of dealing with the continuing problem of an unbalanced budget was enactment in 1935 of authority for the governor to reduce appropriations to the extent that they exceeded revenue receipts. A provision of this type was continued until 1939. Perkins, Role of the Governor, pp. 51-76. This statutory feature was revived in 1958. The Missouri constitution has a provision (Article IV, Section 27) similar to this statute in Michigan.

Power to Reduce Items. Several state constitutions have specific provisions authorizing the governor to reduce items by the veto procedure in addition to vetoing whole items. Alaska, California, Hawaii, Massachusetts and Tennessee (like the Model State Constitution) have specific provisions for reduction of items. New Jersey and Missouri have provisions that operate with the same effect, whereby the governor may veto items or parts or portions of items. The Missouri constitution, however, denies the governor power to reduce any appropriation for free public schools, or for payments related to the public debt.¹⁰⁸ While not specifically provided for in the constitutions of Pennsylvania and New York, the governor's power to reduce items appears to have been established by precedent.¹⁰⁹

Comment

If the vote necessary to override vetoes were reduced to some extent such as to require only three-fifths of those elected or two-thirds of those present in each house, some consideration might be given to providing for a higher vote requirement for overriding vetoes of appropriation bills and items (and possibly parts of items). The present requirement to override all vetoes—two-thirds of those elected (to each house)—might be retained for such vetoes.¹¹⁰

In view of its potential for adding flexibility to the item veto provision, consideration might also be given to authorizing the governor to reduce items or parts of items in appropriation bills, in addition to his present item veto authority.

If in revising the constitution, an executive budget that the legislature cannot raise beyond the governor's request were provided for, the item veto would lose most, if not all, of its effectiveness.¹¹¹

¹⁰⁸ Index Digest, pp. 27-29,613-614.

¹⁰⁹ S. Goldmann and B. C. Bland, The Governor's Veto Power (New Jersey Constitutional Study, 1947), pp. 13, 18.

¹¹⁰ As pointed out above, Alaska requires a higher vote to override such vetoes than for other vetoes.

¹¹¹ A proposal for an executive budget was made in the convention of 1907-08) but was rejected by a narrow vote. In the original proposal no appropriation was to be allowed in excess of the amount recommended by the board of auditors. Another version offered as a motion would have restricted the legislature to the total amount of the appropriation recommended with the legislature having discretion as to items within this total. Proceedings and Debates, pp. 732, 738, 745, 1000, 1177-1179.

F. OTHER POWERS OF THE GOVERNOR

1. Military Powers

Article VI: Section 4. He shall be commander-in-chief of the military and naval forces, and may callout such forces to execute the laws, to suppress insurrection and to repel invasion.

Constitutions of 1835 and 1850

The constitution of 1835 (Article V, Section 5) provided that: "The governor shall be commander-in-chief of the militia, and of the army and navy of this state." The 1850 provision (Article V, Section 4) was identical in meaning with the 1908 provision with only minor differences in phraseology.

Constitution of 1908

In Article VI, Section 16 (last sentence of first paragraph) of the present constitution it is provided that the governor shall continue to be "commander-in-chief of all the military force of the state" when he is out of the state "at the head of a military force thereof." Provisions concerning the membership and organization of (and selection of officers for) the militia are in Article XV of the present constitution.

Statutory Implementation

Extensive statutes deal with the military establishment in Michigan.¹¹²

Other State Constitutions

Some 31 state constitutions (not including Michigan) specify that the governor shall not be commander-in-chief when the state's forces are called into the service of the United States.¹¹³ The reasons specified in the Michigan provision for which the governor may callout the state forces and the designation of these forces are not unusual among state constitutions.¹¹⁴ The above-mentioned clause of Article VI, Section 16 of the Michigan constitution is based upon the assumption that the

¹¹² M.S.A. 4.591-4.826. See also the discussion of Article XV—on the militia.

¹¹³ Index Digest, p. 701; Manual on State Constitutional Provision, p. 141.

¹¹⁴ Manual on State Constitutional Provision, p. 141. The Alaska and Hawaii constitutions refer with commendable flexibility to the state's "armed forces."

governor may personally command state forces outside of the state (or presumably in the state). Although this provision for commanding forces out of the state is unique among state constitutions, several other states allow the governor to command state forces when out of the state with consent of the legislature. Four states allow the governor to command state forces personally when the legislature so consents or directs.

The most important state force in Michigan and other states is the national guard. Some states, including Michigan, have naval militia, but in Michigan this is virtually an adjunct to the U.S. naval reserve.¹¹⁵ There was some misuse of the national guard for political purposes by governors in a few states prior to the Second World War.¹¹⁶ However, judicial proceedings have disallowed use of armed forces for unjustified purposes in some jurisdictions.¹¹⁷

Comment

Some consideration might be given to making the description of the forces over which the governor is commander-in-chief more general and flexible—such as “armed forces.” If the present provision is not sufficiently flexible to allow the governor discretion to callout the state forces in any emergency for which they

¹¹⁵ Michigan Joint Legislative Committee on Reorganization of State Government, Staff Report No. 26, Michigan Military Establishment, 1952, pp. 33-35.

¹¹⁶ Graves, American State Government, 3rd Edit., pp. 384-385.

¹¹⁷ State governors have tended recently to rely more heavily on state and local police forces to deal with many emergencies for which the national guard was formerly used. However, the national guard tends to be used in recent years more extensively for disaster relief in many states. Establishment by statute of state disaster relief agencies organized to deal with such problems (and thereby avoiding the use of the national guard and the rigidity of martial law in event of local or more widespread disaster) has been recommended by authorities in this area. Graves, American State Government, 4th Edit., pp. 395-398. See also B. M. Rich and P. H. Burch, Jr., “The Changing Role of the National Guard,” 50 American Political Science Review (1956) pp. 702-706.

might be needed, some consideration might be given to broadening the provision's scope in this regard. The possibility that a governor might abuse the power to callout state forces to execute the laws (or preserve order) is difficult to check or limit in a constitutional provision of this kind without making it overly inflexible.¹¹⁸

The related provision of Article VI, Section 16 (last sentence of first paragraph), insofar as it appears to assume that the governor may take direct personal command of state forces, should be considered in relation to the American tradition of a broad distinction between civil and military authority (emphasized, perhaps, more at the federal than at the state level).

It should also be viewed in relation to Article II, Section 6 of the Michigan constitution which provides: "The military shall in all cases and at all times be in strict subordination to the civil power."¹¹⁹ Since situations developed that actually or potentially occasioned a governor to lead troops out of his own state only in the colonial or early federal period (and since such action at the present time would be highly unusual), this sentence of Article VI, Section 16 might well be considered for revision or elimination.

2. Reprieves, Commutations and Pardons

Article VI: Section 9. He may grant reprieves, commutations and pardons after convictions for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to regulations provided by law relative to the manner of applying for pardons. Upon conviction for treason, he may suspend the execution of the sentence until the case shall be reported to the legislature at its next session, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence or grant a further reprieve. He shall communicate to the legislature at each session information of each case of reprieve, commutation or pardon granted and the reasons therefor.

¹¹⁸ Unjustified use of such power has been checked by court action in other jurisdictions.

¹¹⁹ While the executive is rightly styled as "commander-in-chief," authority for him to take direct personal command of armed forces would seem to vitiate the distinction between civil and military authority by unifying the two in the executive.

Constitutions of 1835 and 1850

In the constitution of 1835 (Article V, Section 11), the governor was given power “to grant reprieves and pardons after conviction, except in cases of impeachment.” The 1850 provision (Article V, Section 11) was the same as, and the origin of, the present provision.

Constitution of 1908

No change was made in carrying this provision over from the 1850 constitution, nor has it been amended since 1908. Article V, Section 28 authorizes the legislature to provide by law for “indeterminate sentences so called as a punishment for crime, on conviction thereof, and for the detention and release of persons imprisoned or detained on said sentences.”

Statutory Implementation

A board of pardons with advisory functions was established in Michigan by statute in 1893. The general functions of this board in matters relating to this section are now carried on by the parole board in the department of corrections. While its powers are still advisory, its hearings and recommendations to the governor are naturally influential.

Judicial Interpretation

As interpreted by the courts, the governor’s powers with regard to reprieves, commutations and pardons are restricted to criminal offenses.¹²⁰ The governor has wide discretion in making conditional pardons—those receiving pardons being required to perform or not perform specified acts.¹²¹ The power to pardon and to commute a sentence is exclusively that of the governor. Neither the judiciary nor the legislature may restrict or infringe upon this power.¹²²

¹²⁰ In re Probasco, 269 Mich. 453.

¹²¹ People v. Marsh. 125 Mich. 410; In re Cammarata, 341 Mich. 528.

¹²² People v. Freleigh, 334 Mich. 306.

Other State Constitutions

Pardons. Almost all state constitutions, give the governor authority to grant pardons; in many states, however, there are restrictions on this power. One Michigan exception—cases of impeachment—is common to the great majority of states. The other exception, treason (qualified in the second clause), is common to a majority of the states. In approximately one-third of the states, the governor alone may not exercise the power to pardon; in most instances it is shared with a board. In some 14 states, the legislature may regulate the procedure by law. In the remaining one-third of the states (16 including Michigan) the governor's power of pardon is relatively unrestricted, with the law-making process governing only the manner of applying for pardons.¹²³

Reprieves. In approximately one-half of the states, the governor's power to grant reprieves is relatively unrestricted. In the remainder, except for the few in which the governor has no such power, his authority in the area of reprieves is restricted by such features as board action and/or the lawmaking process.¹²⁴

Commutations of Sentence. In some 17 states, the governor's power to commute sentences is relatively unrestricted. In some 20 other states, the power is shared (chiefly with boards), or controlled by the law-making process; while in the remainder (approximately 13), the governor has no such power.¹²⁵

The Model State Constitution provides the governor with power to grant reprieves, commutations and pardons, "after conviction, for all offenses." The manner of applying therefor is subject to regulation by law. The U.S. Constitution provides the president with power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Remit Fines and Forfeitures. Although not a part of the Michigan constitution, a slight majority of the state constitutions provide for gubernatorial power to remit fines and forfeitures (in connection with the powers here dealt with). In most of

¹²³ Manual on State Constitutional Provisions, p. 139; Index Digest, pp. 338-339.

¹²⁴ Manual on State Constitutional Provisions, p. 139-140; Index Digest, pp. 346-347.

¹²⁵ Manual on State Constitutional Provisions, p. 140; Index Digest, pp. 346-347. The features set forth in the second and third sentences of this section of the Michigan constitution are not unusual among state constitutions.

these, however, the governor's power is restricted by the law-making process, or by sharing the power (usually with boards).¹²⁶

Paroles. Few state constitutions deal with a system of paroles, thereby leaving it to the law-making process as in Michigan. Most of the 14 state constitutions that deal specifically with paroles require that the system be regulated by the law-making process; in a few of these state constitutions, the power is largely delegated to a board.¹²⁷

Comment

In view of the constitutional framework for the exercise of these powers in the various state governments, those revising the Michigan constitution would probably consider the present operation of this provision (which allows the governor wide latitude) against the advisability of qualifying the governor's power by a constitutional provision for more discretion to the law-making process, or by a constitutional provision whereby these responsibilities would be shared by a board or taken over entirely by a board.

The important powers here dealt with are somewhat judicial in nature although usually conferred upon the executive (with or without restrictions). They are in general unrelated to the governor's major area of responsibility in executive-administrative matters. Gubernatorial power in such matters as pardons and reprieves, whether restricted or not, is therefore not essential to his major executive function and probably hampers this function.¹²⁸

¹²⁶ Manual on State Constitutional Provisions, p. 140; Index Digest, pp. 344-346.

¹²⁷ Index Digest, p. 341.

¹²⁸ Since matters concerned with executive clemency have often been extremely time-consuming and nerve-wracking for governors (particularly in states having capital punishment) leading authorities have urged that the governor be relieved entirely of such duties, which could be taken over by a board of pardons. W. B. Graves, American State Government, 4th Edition, pp. 347-350.

Some consideration might be given to expanding a revised provision dealing with the present subject matter of this section to include power to remit fines and forfeitures (or other penalties). The last two sentences of the present section, if retained, seem to present slight difficulty for revision, unless the first sentence were so revised as to make harmonious changes necessary.

3. Use of the Great Seal

Article VI: Section 11. All official acts of the governor, except his approval of the laws, shall be authenticated by the great seal of the state, which shall be kept by the secretary of state.

Constitutions of 1835 and 1850

The great seal of the state originated in the convention which framed the constitution of 1835. In Article V, Section 20 of that constitution, the governor was directed to provide the seal as specified by a committee of the convention, but it was not described in the constitution. The secretary of state was to keep the seal and all official acts of the governor, except his approval of the laws, were to be authenticated by it. The provision in the 1850 constitution (Article V, Section 18) is the same as that in the 1908 constitution, except for a very slight difference in phraseology. The basic provision concerning use and custody of the great seal has been the same in all three constitutions.

Constitution of 1908

This provision has not been amended since 1908. Some distinction has been made between "official acts" of the governor and other acts by court interpretation.¹²⁹

¹²⁹ Attorney General v. Jochim, 99 Mich. 358 (under the similar provision of the 1850 constitution). Null v. Tanner, 280 Mich. 22. The attorney general has held that the great seal must remain at the seat of government at all times, and that no dies or mechanical duplicates of the great seal may be made. However, a facsimile of the seal may appear on official publications. Opinions of January 27, 1947 (Nos. 53, 54), November 8, 1955.

Other State Constitutions

Custody of the seal by the secretary of state is the most common provision among state constitutions, although some place such custody in the governor. Few state constitutions make the use of the great seal as mandatory and specific for “official acts” as does the Michigan provision. The most common provision among the states is that the governor shall use it officially—without specifying particular uses. Other provisions require the secretary of state to use it officially, or as directed by law, or as directed by the governor.¹³⁰

Comment

Some consideration might be given to making this provision less rigid and mandatory as it affects the use of the great seal for “official acts.” Although the term “official acts” is vague and open to somewhat flexible interpretation, court decisions should probably be avoidable in regard to such clearly ministerial duties as use of the state seal. This provision could be revised to allow use of the great seal to be prescribed by law. If this matter is not to be prescribed by law, the present mandatory effect could be modified.

4. Issuance of Commissions

Article VI: Section 12. All commissions issued to persons holding office under the provisions of this constitution shall be in the name and by the authority of the people of the state of Michigan, sealed with the great seal of the state, signed by the governor and countersigned by the secretary of state.

Constitutions of 1835 and 1850

The constitution of 1835 (Article VI, Section 21) provided very briefly in this area: “All grants and commissions shall be in the name and by the authority of the people of the state of Michigan.” The 1850 provision (Article VI, Section 19) was identical to the present provision (except for having a comma after governor).

Constitution of 1908

This section has not been amended since 1908, nor has it caused any difficulty in interpretation.

¹³⁰ Index Digest, pp. 920-921.

Other State Constitutions

This provision is not unusual among state constitutions. There are more state constitutional provisions that require commissions to be attested by the secretary of state after signature by the governor than there are such that require commissions to be countersigned by the secretary of state.¹³¹

Comment

If the preceding section relating to use of the great seal were revised, some related revision of this section might be made. The necessity of requiring commissions to be sealed with the great seal might be questioned. Some or all of the details in this provision could also be left to the discretion of the law-making process.

¹³¹ Index Digest, p. 812.

G. ELIGIBILITY, LIEUTENANT GOVERNOR, SUCCESSION AND OTHER PROVISIONS

1. Eligibility to Office of Governor

Article VI: Section 13. No person shall be eligible to the office of governor or lieutenant governor who shall not have attained the age of thirty years and who has not been five years a citizen of the United States and a resident of this state two years next preceding his election.

Constitutions of 1835 and 1850

In the 1835 constitution (Article V, Section 2) there was no age requirement for governor or lieutenant governor.¹³² The 30-year minimum age requirement originated in the 1850 constitution (Article V, Section 2) and was carried over in the 1908 provision. U.S. citizenship and state residence requirements have been the same in all three constitutions.

Constitution of 1908

Section 13 has not been amended since the adoption of the present constitution. This provision is clear and definite without need for statutory implementation. Furthermore, it leaves little room for variance of interpretation. There has been no litigation with respect to this provision.

Other State Constitutions

A sizeable majority of states (36) have constitutional provision for a minimum age of 30 years for governor. Eight states specify no minimum age. In four states (Arizona, California, Minnesota and Nevada), the minimum age is 25 years; in Oklahoma, 31 years; and Hawaii, 35 years.

Thirty-nine of the 50 states require the governor to be a U.S. citizen—the remainder do not. Seventeen of the 39 states merely require such citizenship without specifying a number of years. Two years of U.S. citizenship is required in one state; five years in seven states (including Michigan); six years in one state; seven years in one state; ten years in five states; 12 years in one state; 15 years in three states; and 20 years in three states.

¹³² Michigan's first governor was well under the present age requirement.

State residence requirements preceding filing for office, election, or taking office, vary as follows among the states: six states not specified; one year in one state; two years in eight states (including Michigan); three years in one state; four years in one state; five years in nineteen states (including Maryland where a total of ten years of state citizenship at any time is also required); six years in three states; seven years in eight states; and ten years in three states.¹³³

The only qualification required by the Model State Constitution (Section 501) is that the governor be a qualified voter of the state. The U.S. constitution requires (in Article II, Section I, Clause 5) that the president be a natural born citizen who has attained the age of 35 years, and been a U.S. resident for fourteen years.

Comment

In view of the long-standing qualification for governor, particularly in regard to U.S. citizenship and state residence, there would probably be some reluctance to change the present requirements and little need to do so. Michigan's age requirement is in line with most other states; the length of the U.S. citizenship required is slightly above the average, while the state residence qualification is somewhat below the average.

2. Prohibition of Dual Office Holding and Legislative Appointment

Article VI: Section 14. No member of congress nor any person holding office under the United States or this state shall execute the office of governor, except as provided in this constitution.

Section 15. No person elected governor or lieutenant governor shall be eligible to any office or appointment from the legislature, or either house thereof, during the time for which he was elected. All votes for either of them for any such office shall be void.

Constitutions of 1835 and 1850

The 1835 constitution (Article V, Section 16) and 1850 constitution (Article V, Sec-

¹³³ Index Digest, pp. 506-508, Manual on State Constitutional Provisions, pp. 135) 136, 152. Incomplete coverage checked against constitutional provisions.

tion 15) had similar provisions concerning the ineligibility of office holders under the United States or Michigan to execute the office of governor. These in turn are similar to Section 14 of the present constitution. However, the words "except as provided in this constitution" were added in the convention of 1907-08.

The constitution of 1835 did not have a provision similar to Section 15. This provision originated in the constitution of 1850 (Article V, Section 16). It makes the governor or lieutenant governor ineligible to an appointment or office from the legislature during the period for which he was elected.

Constitution of 1908

Sections 14 and 15 have not been amended since the present constitution was adopted.

Judicial Interpretation

These sections have not given rise to much litigation. In regard to the prohibition of dual office holding in Section 14, the Michigan supreme court held that under the similar provision of the 1850 constitution a city mayor elected to the governorship could not also continue to carryon as mayor of the city.¹³⁴

Other State Constitutions

Close to one-half of the states have provisions similar to the restrictions set forth in Section 14. Except for the similar provision in the New Jersey constitution (Article V, Section 1, 3), Section 15 of the Michigan constitution appears to be unique among state constitutions. However, some five states make the governor ineligible to any other office during the term for which he was elected. In addition to these, Utah makes the governor ineligible for election as U.S. senator during the term for which he was elected. Alabama carries this further and makes the governor ineligible for election or appointment as U.S. senator during the term for which he was elected or for one year thereafter.¹³⁵

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

¹³⁴ Attorney General v. Common Council of Detroit, 112 Mich. 145.

¹³⁵ Index Digest, pp. 507-508.

Comment

Dual office holding of the type prohibited in Section 14 presents an aspect of incompatibility so obvious that there would probably be no need to forbid it in the constitution. However, if a provision of this type is to be retained, the language of the section could be broadened to prohibit dual office holding by other state officers in addition to the governor. Although the legislature would undoubtedly have power to deal with such matters if the present section were eliminated, a provision could be framed to authorize the legislature to provide for such matters by law.

In regard to Section 15, it is somewhat difficult to conceive of either the governor or lieutenant governor being appointed to any office by the legislature or either of its houses, particularly since the ratification of the seventeenth federal amendment for the popular election of U.S. senators in 1913. This section, therefore, might well be considered for elimination in a revision of the constitution. There is probably no compelling reason for following the example of the few states in which the governor is made ineligible to any other office or only to that of U.S. senator during the term for which he was elected. There might be more reason to make the governor ineligible to appointment as U.S. senator during the term for which he was elected, if those who revise the constitution desired to preclude the resignation of a governor in order that he could be appointed to a vacancy in the U.S. senate by his successor.

3. Lieutenant Governor

Article VI: Section 19. The lieutenant governor shall be president of the senate, but shall have no vote.

Constitutions of 1835 and 1850

The constitutions of 1835 and 1850 were similar in phraseology. Changes in punctuation, however, allowed room for a different interpretation. The 1835 provision (Article VI, Section 15) was as follows:

The lieutenant governor, shall, by virtue of his office, be president of the senate; in committee of the whole, he may debate on all questions; and when there is an equal division, he shall give the casting vote.

The 1850 constitution (Article V, Section 14) provided:

The lieutenant governor shall, by virtue of his office, be president of the senate. In committee of the whole he may debate all questions; and where there is an equal division, he shall give the casting vote.

The only change in phraseology—"debate all questions" rather than "debate on all questions" in the 1835 constitution—could have no influence on the meaning of the section. However, the change from a semicolon after "senate" to a period seems to have changed the meaning from the vagueness in the 1835 constitution and seemed to identify the lieutenant governor's power to vote in event of equal division more specifically with his power to debate in committee of the whole. It was judicially determined in 1907 (under the 1850 constitution) that the lieutenant governor could vote to break a tie only in committee of the whole.¹³⁶

Constitution of 1908

Under the draft provision as presented to the convention of 1907-1908 by the committee on the executive department, the lieutenant governor was not authorized to debate in committee of the whole and was to have no vote in the senate, "except in case of equal division." Mr. Fairlie, a member of the committee, explained that the committee found that only six other states besides Michigan allowed the lieutenant governor to debate in committee of the whole, and had therefore eliminated that part of the 1850 provision. It had inserted in the draft provision authority for him to vote in event of a tie because that was the universal practice in other states having a lieutenant governor. The clause which would have allowed the lieutenant governor to vote on final passage of a bill in the event of an equal division was deleted in the course of the convention debate.

It was pointed out in the convention debate that lieutenant governors had not exercised their right to vote or debate in committee of the whole for many years. However, it was also pointed out that the lieutenant governor then holding office (under the 1850 constitution) had cast the deciding vote on final passage of a bill in the evenly divided senate. This controversy and the senselessness of continuing the lieutenant governor's power to vote on equal division only in committee of the whole (under the 1850 provision as recently judicially determined) seem to have been influential in the convention's decision to deprive the lieutenant governor of all power to vote in the senate. Another factor in the decision not to allow the lieutenant governor to vote, particularly on final passage of a bill, was the probably exag-

¹³⁶ Kelley v. Secretary of State, 149 Mich. 343.

gerated fear expressed by some in the debate that such power would violate the principle of separation of powers.¹³⁷

This section has not been amended, nor has there been any problem of its interpretation since the adoption of the present constitution

Other State Constitutions

In eleven states (see table in Part A above—ten if Alaska is not included), there is no office of lieutenant governor. In Tennessee, the office is statutory. In the Washington constitution the legislature is authorized to abolish the office, but has not done so. In 37 of the 39 states having the office, the lieutenant governor presides over the senate. In 32 of these 37 states, the lieutenant governor has power to cast the deciding vote in case of equal division. In Massachusetts, the lieutenant governor does not preside over the senate but does preside over the governor's council. In Hawaii, the lieutenant governor is not president of the senate, but under statutory authority acts as secretary of state. In Alaska, the secretary of state is elected jointly with the governor. Except for not having the title, this officer is really a lieutenant governor. The practice is the same in Alaska and Hawaii, although the titles are reversed.¹³⁸

The Model State Constitution does not provide for a lieutenant governor. However, it does provide for an administrative manager appointive by, and removable at the pleasure of, the governor—to serve as a general assistant to the governor. The vice presidency on the federal level is in the process of evolving toward greater responsibility in the executive branch. However, the vice president's only constitutional duty remains that of presiding over the U.S. senate.¹³⁹

¹³⁷ Proceedings and Debates, pp. 340-341, 490-492, 1426.

¹³⁸ The five states in which the lieutenant governor as president of the senate does not have the casting vote: Georgia, Louisiana, Michigan, Minnesota and Tennessee (office is statutory). Index Digest, pp. 658-659, 689; Manual on State Constitutional Provisions, pp. 150, 192-193; pertinent constitutional provisions. In about one-half of the states having lieutenant governors, he is a member of one or more boards, as in Michigan. In Michigan, this officer's most important duty under statutory authority is his membership on the state administrative board (since 1939).

¹³⁹ In several states, the executive functions of the lieutenant governor have also been expanded in practice. R. L. Nichols, Constitutional Revision in Kansas: The Executive and the Legislative (Univ. of Kansas, 1960), pp. 5-6.

Comment

In view of the fact that the office of lieutenant governor is not universal among the states, some might question the desirability of continuing it. If this office were abolished, other provisions would have to be made relative to succession and a presiding officer for the senate (probably senate election of a president). However, an office of this kind is largely traditional on the state as well as the federal level. Reasons for retaining the lieutenant governor as a constitutional officer would be related to the duties to which he might be assigned in the constitution and/or by statute.

If the office of lieutenant governor is retained in a revision of the constitution, and if he is to continue to be president of the senate, consideration may be given to authorizing him to cast the deciding vote in event of an equal division in the senate. This power has always existed for the vice president of the U.S. and is exercised in 32 of the 37 states having a lieutenant governor as president of the senate.

No serious threat to the principle of separation of powers seems to have arisen thereby in these jurisdictions. Where the senate has an even number of members, as in Michigan, the casting vote of the president has some value in resolving possible deadlock. Under parliamentary procedure a motion is defeated by an equal division.¹⁴⁰

The office of lieutenant governor could be retained without requiring that he preside over the senate. He might be assigned departmental responsibilities as in Alaska and Hawaii. The practice in Alaska and Hawaii is similar although the titles are reversed.

In Alaska he is called secretary of state (and is elected jointly with the governor). In Hawaii, the constitution requires a lieutenant governor, but the determination of his duties is prescribed by law. The legislature has assigned him the duties of secretary of state.

Another alternative use of the office of lieutenant governor would be to make this officer more specifically an assistant governor required neither to preside over the senate nor to administer a department. The governor at his discretion might then delegate more general or specific duties or responsibilities to the lieutenant gover-

¹⁴⁰ Article V, Section 23 of the present constitution stipulates that no bill "shall become a law without the concurrence of a majority of all the members elected to each house." The lieutenant governor is not a member of the senate.

nor; and the lieutenant governor might relieve the governor of some of his ceremonial and social functions.¹⁴¹

Joint Election With Governor. If the lieutenant governorship is retained, it undoubtedly would continue to be filled by popular election. Joint election of governor and lieutenant governor as in Alaska and New York (and president and vice president as is the actual practice on the federal level) might be considered whether this officer would continue to preside over the senate or administer a department. If it were intended to make the lieutenant governor a general assistant to the governor, joint election would be a practical necessity in order to preclude the possibility of these two officers being of different party affiliation.

4. Devolution of the Governor's Powers Upon Lieutenant Governor

Article VI: Section 16. In case of the impeachment of the governor, his removal from office, death, inability, resignation or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term or until the disability ceases. When the governor shall be out of the state at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

In case of the death of the governor-elect before taking and subscribing to the constitutional oath of office, or before entering upon the duties of his office, the powers and duties of the office shall devolve upon the lieutenant governor-elect on the commencement of his term of office.

Constitutions of 1835 and 1850

The provision in the constitution of 1835 (Article V, Section 13) was similar to the first sentence of the present section. However, "inability" of the governor was not included as a reason for the duties to devolve upon the lieutenant governor. The

¹⁴¹ The most useful of recent material dealing with the office of lieutenant governor: Byron R. Abernathy, Some Persisting Questions Concerning the Constitutional State Executive (Univ. of Kansas, 1960), pp. 17-31; see also Bromage, "Constitutional Revision in Michigan," p. 99.

words “for the residue of the term” were not included and the powers were to devolve “until such disability shall cease, or the vacancy be filled.” The 1850 provision (Article V, Section 12) was identical with the first paragraph of the present section, except for the additional phrase “in time of war” following the words “out of state” in the second sentence, and some variation in punctuation.

Constitution of 1908

Amendment in 1948. The second paragraph of this section was added by amendment—proposed by the legislature in 1947 and approved at the November election in 1948. Problems of succession in other states, including the death of a governor-elect, stimulated this action and concurrent amendment of the two succeeding sections (17 and 18) of Article VI in order to deal with the problem of succession comprehensively.

Opinions of the Attorney General

An opinion of the attorney general (January 6, 1938) held that the powers and duties of the governor do not devolve upon the lieutenant governor, if the governor is absent from the state for only a few days (in view of speedier transportation and communication) unless an emergency arises or the governor officially requests the lieutenant governor to act as governor. Ten years later (November 8, 1948), an opinion of the attorney general reversing this ruling held that the lieutenant governor becomes acting governor whenever the governor is out of the state. An opinion of the attorney general (March 28, 1939) held that when a lieutenant governor succeeds a governor who has died or resigned, the office of lieutenant governor cannot be filled by appointment (nor can the line of succession be broken by such action).

Other State Constitutions

In all states having a lieutenant governor, this officer is first in the line of succession to the governorship. In six of the eleven states having no lieutenant governor, the president of the senate is first in line of succession; in four, the secretary of state; and in one, the legislature elects a successor. The reasons specified in the Michigan provision for the governor’s powers and duties to devolve upon the lieutenant governor and the duration of his service as governor or acting governor are common to most state constitutions, the Model State Constitution, and the U.S. Constitution. Provisions similar to that in the second paragraph of this section are not now unusual among state constitutions.

Some states require a special election for governor under various circumstances.¹⁴²

Incidents have occurred in some states giving rise to the problem of how to determine whether or not the governor is capable of performing the duties of his office due to physical or mental disorder. Only three states have attacked the problem of temporary or permanent succession in such a contingency by inserting provisions in their constitutions which set forth a procedure for the determination of inability or disability.¹⁴³

In New Jersey, after six months of gubernatorial absence or disability, if a resolution is passed by two-thirds of the total membership of both legislative houses, the state supreme court may make a determination of vacancy in the office of governor. The delay of six months, the two-thirds vote necessary, and the lack of procedure for restoring the governor to office seem to be serious defects in this provision. The Mississippi procedure is not overly ponderous. If there is doubt concerning the existence of a disability or the termination of a disability, the secretary of state shall submit the question in doubt to the supreme court which shall determine the question and give an opinion in writing to the secretary of state which shall be "final and conclusive." The Alabama provision applies specifically to unsoundness of mind. The supreme court upon written request of two officers in the chain of succession (but not including the officer next in line of succession) shall make a determination concerning the soundness of mind of the governor. This court may also determine the question of restoration of sanity and office.¹⁴⁴

¹⁴² Index Digest, pp. 503,509-513,514-515. Comparative constitutional provisions relating to the governor commanding military forces out of the state are discussed in the preceding Part F—"Military Powers of the Governor."

¹⁴³ "Inability" is used with the specific causes for succession, and "disability" in regard to the cessation of such causes in the U.S. Constitution, the present Michigan provision and other state constitutions. The present meaning and usage of these terms seem to be reversed—"disability" more specific from onset of some physical or mental disorder) and "inability" the more general term.

¹⁴⁴ New Jersey constitution, Article V, Section 1,8; Mississippi constitution, Article V, Section 131; Alabama constitution, Article V, Section 128; Rich, The Governor, pp. 8-12.

The Mississippi provision seems to be the most satisfactory and comprehensive of the three, since it appears to cover all contingencies, and applies to the full line of succession. It seems also to have the virtue of simplicity to the extent possible in dealing with this complicated matter.

The Model State Constitution and the U.S. Constitution, like most state constitutions, are vague and indefinite with regard to determination of executive incapacity in regard to succession.

Comment

Unless the office of lieutenant governor were eliminated in a revision of the Michigan constitution, there appears to be no great difficulty with the present contents of this section.¹⁴⁵ Those revising the constitution might consider it advisable to modify the provision as it affects the governor's absence from the state necessitating an acting governor. However, the present practice in Michigan appears to be prevalent among the states, and there are good reasons for the governor or an acting governor to be present in the state at all times. Since the lieutenant governor, if the office is retained, would generally be the acting governor in the absence of the governor, problems might arise from the possibility of the governor and lieutenant governor being of different political parties.

Joint election of governor and lieutenant governor would preclude such possibility and its potential for partisan confusion.

Because the problem of determining the fact of gubernatorial disability might arise in Michigan as it has in other jurisdictions (e.g. Louisiana), it might be desirable to frame a revision of this section in order to establish a procedure similar to those in Mississippi, Alabama and New Jersey or with those features that seem best in their provisions. It is difficult to provide for flexibility in this sensitive area of temporary or permanent succession in event of executive incapacity due to physical or mental disorder, and at the same time guard against possible political abuse or opportunism.

The supreme court may be the most appropriate tribunal for determination of such incapacity. While some might fear a violation of the separation-of-powers principle in this feature, it would be difficult to allow an officer or officers in the executive department to determine gubernatorial incapacity without the possibility of action being taken that could verge, or seem to verge, upon insubordination.

¹⁴⁵ Except for possible elimination of the second sentence of the first paragraph--see discussion of military powers above, Part F.

5. Succession Beyond Lieutenant Governor

Article VI: Section 17. After the lieutenant governor, the line of succession and order of precedence of state officers, who shall act as governor, shall be secretary of state, attorney general, state treasurer and auditor general, and during a vacancy in the office of governor, if the lieutenant governor or any state officer or officers in this line of succession die, resign, be impeached, displaced, be incapable of performing the duties of office, or be absent from the state, leaving no state officer prior in the line of succession to fill the office of governor, the state officer next in line of succession shall act as governor during the residue of his term or until the absence or disability giving rise to the succession ceases.

In case of the death of the lieutenant governor-elect or any state officer or officer-elect in this line of succession before taking and subscribing to the constitutional oath of office, or before entering upon the duties of office, leaving no state officer-elect prior in line of succession to fill the office of governor, the powers and duties of the office of governor shall devolve upon the state officer elect next in line on the commencement of his term of office.

Section 18. The lieutenant governor or other state officer in the line of succession, while performing the duties of governor, shall receive the same compensation as the governor.

Constitutions of 1835 and 1850

Provisions of the constitutions of 1835 (Article V, Section 14) and 1850 (Article V, Section 13) were somewhat similar to the original form of Section 17 in the 1908 constitution (see below) except that the president pro tempore of the senate was specified for the succession after the lieutenant governor rather than the secretary of state. The 1835 provision did not have the words "be incapable of performing the duties of his office" or the final words "or the disability cease" (vacancy was to be filled at the next annual election for legislators—Article V, Section 17).

In regard to the content of Section 18 of the present constitution, the 1835 constitution (Article V, Section 19) provided that the lieutenant governor "except when acting as governor" and the president of the senate pro tempore receive the same compensation as the speaker of the house. The 1850 provision (Article VI, Section

17) was similar to the original form of Section 18 in the 1908 constitution (see below) except that the president of the senate pro tempore was specified instead of secretary of state.

Constitution of 1908

These two sections were amended jointly with Section 16 by a legislative proposal of 1947 ratified by a vote of 1,055,632 to 495,214 in November, 1948. Thereby, problems of succession were dealt with more comprehensively. Before this amendment, the provisions were as follows in the 1908 constitution:

Section 17. During a vacancy in the office of governor, if the lieutenant governor die, resign or be impeached, displaced, be incapable of performing the duties of his office, or absent from the state, the secretary of state shall act as governor until the vacancy be filled or the disability cease.

Section 18. The lieutenant governor or secretary of state, while performing the duties of governor, shall receive the same compensation as the governor.

Other State Constitutions

Section 17 of the Michigan constitution, as amended, is one of the most comprehensive among state constitutional provisions dealing with this matter. Although several state constitutions provide for succession by the lieutenant governor-elect if the governor-elect dies before taking office, few carry this feature into effect for the entire line of succession. Several states require a special election of a governor, or governor and lieutenant governor, in event of vacancy, under certain circumstances. Approximately one-half of the states having a lieutenant governor still provide that the president of the senate pro tempore is second in line of succession.¹⁴⁶

Approximately one-half of the state constitutions have a provision similar to Section 18.¹⁴⁷

The Model State Constitution like the U.S. Constitution does not provide beyond the first officer in line of succession. However, since the Model provides that this officer shall be the presiding officer of unicameral legislature, a successor would presumably be available from that office at all times.

¹⁴⁶ Index Digest, pp. 511-515.

¹⁴⁷ Loc. Cit.

Comment

Sections 17 and 18 as amended, related as they are to Section 16, provide a relatively comprehensive chain of succession. Most eventualities, except the possibility that all state officers in the specified line of succession might die or be incapacitated at the same time, seem to be covered by the present provision. This one eventuality was provided for by the 1959 amendment of Article XVI, Section 5 which gave the legislature power to provide for full continuity in state government in event of disaster due to enemy attack. Under this amendment, the legislature has power to deal with the problem of continuity in all branches of the state government. In revising the constitution, some question might arise as to whether or not some of the material of this 1959 amendment might be integrated in the part of the executive article under discussion. In any event, the words "thereafter as may be provided by law" might be added after the line of succession specified in Section 17, if a line of succession is retained in the constitution. The line of succession could, of course, be left to the discretion of the legislature, as could some of the material presently dealt with in detail in these sections.

For purposes of simplification, whatever is retained of the subject matter of Sections 16, 17, 18 and possibly 19 of the executive article might be rearranged and integrated, together with any related new material, to form one unified section of the revised constitution.

6. Compensation of State Officers

Article VI: Section 21. The governor, secretary of state, state treasurer, auditor general, and attorney general shall each receive such compensation as shall be prescribed by law which shall be in full for all services performed and expenses incurred during his term of office: Provided, That the same shall not be changed during the term of office for which elected.

Constitutions of 1835 and 1850

The 1835 constitution allowed full latitude with regard to salaries to the law-making process. Article VI, Section 18 provided that the governor "shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he has been elected."

The 1850 provision (Article IX, Section 1) was similar to the original 1908 provision (see below) but included the salary for the judges of the circuit court in addition to those for the state officers. Under the 1850 section, the governor's salary was originally \$1,000 annually, but was raised to \$4,000 by an amendment ratified in 1889. The state treasurer and superintendent of public instruction each received \$1,000 annually; the secretary of state, commissioner of the state land office, and attorney general each received \$800 annually.

Constitution of 1908

Before its amendment in 1948, Section 21 specified the amount of compensation for the elective state officers. In the convention of 1907-08, one of the most spirited debates arose over the question of whether to fix the salaries of the state officers in the constitution or leave discretion in this matter to the law-making process. Advocates of flexibility through the lawmaking process lost out.¹⁴⁸

As originally fixed in this section of the 1908 constitution, the governor and attorney general received \$5,000 annually; the secretary of state, state treasurer, commissioner of the state land office and auditor general each \$2,500 annually. The section then continued: "They shall receive no fees or perquisites whatever for the performance of any duties connected with the offices. It shall not be competent for the legislature to increase the salaries herein provided." Salary provision for the lieutenant governor as president of the senate (the same as for the speaker of the house and other legislators) is in Article V, Section 10 of the present constitution.

This section was amended to its present form by a legislative proposal ratified by a vote of 935,441 to 531,950 in November, 1948. Under present statutes, the governor receives \$27,500 per year and the elective officers specified in this section receive \$17,500 per year (Public Act 162, 1960).

Other State Constitutions

A large majority of state constitutions either provide that the salaries of the governor and other state officers shall be fixed by law, or indicate an amount which can be changed by law. The New York constitution fixes a maximum for the governor of

¹⁴⁸ Proceedings and Debates, pp. 341-343, 888-889, 1003, 1313-1317, 1059-1062, 1257-1267. Some elements of public opinion and the press seem to have exerted pressure in order to secure the inflexible fixed salaries. In their view, the delegates would be lacking in courage if they failed to fix the compensation of these state officers in the constitution.

\$50,000 annually. Provisions that prohibit changes in salaries for state officers during the term for which they are elected are common among state constitutions.¹⁴⁹

The Model State Constitution has no provision relating to the governor's compensation. The U.S. Constitution requires that the president shall receive a compensation which cannot be increased or diminished during his term of office.

Comment

In a revision of the constitution, some change might be made in the list of state officers as specified in Section 21. The list of state officers other than governor presently specified might be eliminated, particularly if these were made appointive rather than elective. However, the lieutenant governor (if retained) might be included with the governor; provision for his compensation would probably be considered more appropriate in the executive article than in the legislative article as at present.

Those who argued strenuously, if vainly, against constitutionally fixing the state officers' salaries in the convention of 1907-1908 appear to have been vindicated by the amendment ratified some 40 years later. The basic flexibility in this section as amended appears to present no problem for revision.

7. Boards of State Auditors, Escheats, and Fund Commissioners

Article VI: Section 20. The secretary of state, state treasurer and such other state officers as shall be designated by law shall constitute a board of state auditors. They shall examine and adjust all claims against the state not otherwise provided for by general law. They shall act as a board of escheats and a board of fund commissioners. They shall perform such other duties as may be prescribed by law.

Constitutions of 1835 and 1850

The 1835 constitution had no provision similar to this. The 1850 constitution (Article VIII, Section 4) had a provision similar to the first three sentences in the original form of this section of the 1908 constitution. The officers designated were not

¹⁴⁹ Index Digest, pp. 495-496, 813, 924-925.

required to act as a state board of escheats, a board of fund commissioners, nor to perform other duties as prescribed by law.

Constitution of 1908

In its original form this section designated the secretary of state, state treasurer, and commissioner of the state land office to constitute the various boards designated including a board of state canvassers. Since the office of the commissioner of the state land office was made subject to abolition by law (Article VI, Section 1), the last sentence of the original Section 20 stated that if that office were abolished, another officer "shall be designated by law" to replace the land commissioner on the various boards mentioned in the section. In 1913 the office of commissioner of the state land office was abolished and the superintendent of public instruction was designated to take the commissioner's place on the various boards (see above—part A). The 1955 amendment of Section 20 continued the discretion of the law-making process (following abolishment of the office of commissioner of the state land office) in designating the third member of the various boards.

The present form of Section 20 is in part the result of an amendment ratified in April, 1955, by a vote of 456,986 to 297,250. The chief purpose of this amendment was to terminate the duties and function of the officers designated in this section as a board of state canvassers as provided for in the original section. A four-member bipartisan board of state canvassers to be established by law was made mandatory by the amendment (in Article III, Section 9 of the present constitution).

Statutory Implementation

Before the establishment of the budget commission in 1919 and the state administrative board in 1921, the board of state auditors was the most important agency for central control and management of state government.

Some of its statutory authority was transferred to these agencies and most of its remaining function to the newly created department of administration in 1948. Its power to examine and adjust all claims against the state was restricted by the statute establishing the court of claims in 1939 (Public Act 135).¹⁵⁰

Extensive statutes deal with the matter of escheated property. Much of the procedure relating to escheats pertains to duties required of the attorney general's office.

¹⁵⁰ Heady and Pealy, Department of Administration, pp. 11-21. M.S.A., 3.451-4.511; 27.3548. Abbott v. Michigan State Industries, 303 Mich. 575.

Ultimate responsibility for escheated property remains in the state board of escheats.¹⁵¹

The board of fund commissioners under statutory authority is required to invest any treasury surplus in "the purchase of bonds and other liabilities of the state."¹⁵² This function is similar to that of the securities division of the treasury department.

Other State Constitution

This section of the present Michigan constitution appears to be unique among state constitutions.¹⁵³ Neither the Model State Constitution nor the U.S. Constitution has a similar provision.

Comment

In view of the likelihood that the elective state officers designated to be members of the various boards given constitutional status in this section would often be members of the same political party, the 1955 amendment which established a bipartisan board of canvassers was a well justified reform.

The residual power of the board of state auditors is restricted and its function somewhat marginal. In view of this, the desirability of continuing the board's constitutional status is questionable.

Since the function of the designated officers as the board of fund commissioners is related to the operation of the treasury department's securities division, and the duties of the board of escheats is largely dependent upon action taken by the attorney general's office, continued constitutional status for these boards might also be questioned.¹⁵⁴

¹⁵¹ M.S.A., 26.1011-26.1054.

¹⁵² M.S.A., 3.681-3.691. The state treasurer has statutory authority to invest surplus funds in U.S. securities, and under certain conditions to deposit surplus funds in banks.

¹⁵³ Index Digest, pp. 48, 461, 486.

¹⁵⁴ The "Little Hoover" report recommended that the board of state auditors, the board of escheats, and the board of fund commissioners be abolished; that the function of the board of escheats be transferred to the treasury department and that of the board of fund commissioners be transferred to the securities division of the treasury department. Revenue Administration, Staff Report No. 6, pp. 39-40; General Management of Michigan State Government, pp. II-73-76. The attorney general's office is responsible for much of the procedure relative to escheated property. Ultimate responsibility for property escheated to the state could be transferred to the treasury department, if the board of escheats were abolished. Such matters could be dealt with by statute if this section were eliminated.