A Comparative Analysis of the Michigan Constitution

Volumes II

Articles XVII

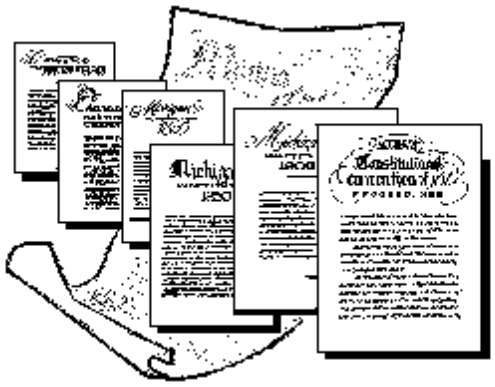

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TABLE OF CONTENTS

CHAPTER XVII AMENDMENT AND REVISION

Section Detail

XVII AMENDMENT AND REVISION

A. AMENDMENT PROCEDURE

1. Amendment Proposed by Legislature

Article XVII: Section 1. Any amendment or amendments to this constitution may be proposed in the senate or house of representatives. If the same shall be agreed to by two-thirds of the members elected to each house, such amendment or amendments shall be entered on the journals, respectively, with the yeas and nays taken thereon; and the same shall be submitted to the electors at the next spring or autumn election thereafter, as the legislature shall direct; and, if a majority of electors qualified to vote for members of the legislature voting thereon shall ratify and approve such amendments, the same shall become part of the constitution.

Constitutions of 1835 and 1850

According to the 1835 provision (Article XIII, Section 1) an amendment or amendments could be proposed in either house of the legislature. If agreed to by a majority of the members elected to each house, it was to be referred to the next legislature, and published for three months previous to the time of electing the new legislature. If the proposal were agreed to by two-thirds of the members elected to each house of the newly elected legislature, submission to the people was required in a manner and at a time prescribed by the legislature. If the people by a "majority of the electors qualified to vote for members of the legislature voting thereon" approved and ratified the proposal or proposals, they would "become part of the constitution."

The provision on amendment in the 1850 constitution (as amended in 1876—Article XX, Section 1), was identical in meaning and effect with the provision of the 1908 constitution.

Constitution of 1908

This provision was carried over from the 1850 constitution as amended unchanged.

Judicial Interpretation

Under this provision, the legislature may control the manner of submitting a proposed amendment to a vote of the people, and is not bound by any statutorily pre-

scribed process.[1] Proposed constitutional amendments must be submitted at regular general elections either spring or fall and not at a special election.[2] A 1913 amendment to Article XVII, Section 2 required that every amendment was to take effect 30 days after the election at which it was approved. This applies to those proposed by the legislature as well as to those initiated by petition.[3]

There is no limit to the subject matter of a constitutional amendment. One amendment may encompass more than one subject.[4] In regard to interpretation of a constitutional amendment, court decisions have held that it must be construed with the whole constitution; that it should be interpreted in the light of conditions at the time of its adoption with attention given to the purpose for which it was adopted; and that if two amendments conflict, they must be construed together and the one adopted more recently will be given preference.[5]

Opinions of the Attorney General

The legislature may propose a constitutional amendment during a special session without regard to the scope of the governor's call or messages according to an opinion of the attorney general of 1948. An attorney general's opinion of 1913 held that proposed amendments were made by joint resolution and were not subject to the gubernatorial veto. An attorney general's opinion of 1948 held that the legislature could rescind by an extraordinary vote (presumably two-thirds of the members elected to each house) a proposed constitutional amendment before it had been submitted to a vote of the people.

Other State Constitutions

In 48 states the legislature may propose constitutional amendments to be voted on by the electorate. In Delaware, however, if two-thirds of all members of each house in two successive legislatures vote to adopt a proposed amendment, it becomes a part of the constitution, and no provision is made for its submission to the electorate. In New Hampshire, the legislature has no authority to make or propose amendments, since this must be done by a constitutional convention.

In 35 states, the action of one legislature is sufficient to submit proposed amendments to a vote of the people. In nine of these, only a simple majority of both houses is required. In one of these (Minnesota) the vote required is only a majority

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[1] Barnett v. Secretary of State, 285 Mich. 494.

[2] Chase v. Board of Election Commissioners of Wayne County, 151 Mich. 407.

[3] Hamilton V. Secretary of State, 204 Mich. 439.

[4] Graham v. Miller, 348 Mich. 684

[5] People ex rel. Attorney General v. Burch, 84 Mich. 408; Civil Service Commission v. Auditor General, 302 Mich. 673; Kunzig v. Liquor Control Commission, 327 Mich. 474.

of those present, while in the other eight a majority of those elected to both houses is required. In one of the eight states, New Mexico, approval of three-fourths of the members elected is required for proposals to amend the elective franchise article and that on education.

Seven states require a three-fifths vote in one legislature to propose an amendment. In one of these states (North Carolina) the requirement is three-fifths of those present, while in the remaining six states (including Nebraska with a unicameral legislature) three-fifths of those elected is required, but in one of these, Florida, a vote of three-quarters of those elected is required for submission at a special election. New Jersey might be considered an eighth state in the group requiring a three-fifths vote, since one legislature may submit an amendment if the vote is three-fifths of all members of each house. If the vote is less than three-fifths, but a majority of all members, it can be submitted if the legislature has a similar majority vote for it in the next legislative year.

A two-thirds vote of each house is required in 18 states, or a majority of those states in which proposed amendments may be submitted by action of one legislature. In four of these, a vote of two-thirds of those present is required (but Mississippi requires this action to be taken three times on three separate days). In two of these 18 states, it must be a two-thirds vote of all members, while in the remaining 14 (including Michigan), the vote necessary is that of two-thirds of those elected to each house.

Thirteen states require two legislatures to vote for submission of an amendment, not including New Jersey under its alternate procedure noted above. All of these appear to require that the action be taken by two separate legislatures, not the same legislature meeting in two sessions. In one of these 13 (Hawaii), only a majority of those present in each house in two legislatures is required for submission. Nine of these states require a majority of those elected in two legislatures—in one of these states (Massachusetts), the vote is taken in joint session. In Connecticut, merely a majority vote in the lower house is required in the first legislature, but two-thirds of each house is required in the second legislature. Tennessee requires a simple majority of those elected to each house in the first legislature, but two-thirds of those elected to each house in the second legislature. Vermont requires a two-thirds vote of the senate and a majority of the lower house in the first legislature, but only a majority of each house in the second legislature for submission of an amendment.[6]

Vote Required on Submission to Electorate. In 48 of the 50 states, amendments proposed by the legislature are submitted to a vote of the electorate for approval. In

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[6] Index Digest, pp. 10-15; Manual on State Constitutional Provisions, pp. 315-317, 324-326; Book of the States, 1960-61, p. 13.

39 states (including Michigan), a majority of the electors voting on the amendment or question is sufficient for approval. In two of these states (Nebraska and Hawaii), the majority of those voting on the amendment must equal 35 per cent of those voting at the election.[7] In another of these 39 states (New Mexico) there is the exception that proposed amendments affecting the elective franchise or education articles require not only the extraordinary legislative vote mentioned above, but also three-quarters of those voting on the question throughout the state and two-thirds of such vote in each county.

Rhode Island is the only state to require more than a majority vote of those voting on the question or at the election when an amendment is submitted to the electors. However, since this requirement is three-fifths of those voting on the amendment, it may often be more easily attained than would a majority of those voting at the election. Seven states have the more difficult requirement of a majority of those voting at the election to approve an amendment. The Illinois constitution provides for alternative requirements in the vote of the electorate on an amendment. This vote must be either a majority of those voting at the election or two-thirds of those voting on the amendment.

In Delaware, amendments are not submitted to a referendum vote, but are adopted by action of two legislatures. The New Hampshire constitution provides that amendments can be proposed only by a constitutional convention and not by the legislature.[8]

Other Features. Many constitutions require that each amendment be voted on separately if more than one is proposed.[9] A few states have limits on the number of amendments to be submitted at one time or the frequency with which the same amendment can be proposed or submitted.[10]

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[7] This acts as a safeguard against adoption of an amendment by a small percentage of participants but is not as stringent as requiring an absolute majority of those voting at the election. In the states having this requirement, those who vote at the election, but do not vote on the amendment, are in effect counted as voting, "No" on the amendment.

[8] Index Digest, pp. 13-16; Manual on State Constitutional Provisions, pp. 319-320,337-338 (Alabama, North Carolina and Texas provisions misstated); The Book of the States, 1960-61, p. 13 (Alabama, Arkansas, New Jersey and Michigan provisions misstated). In view of the many state constitutions that appear to lack basic flexibility, provisions which make amendment or general revision overly difficult intensify the problems resulting from inflexibility.

[9] However, this appears to be the rule in all states (including Michigan) whose constitutions do not specify this detail. In Michigan an amendment can encompass more than one subject.

[10] Index Digest, pp. 10-17; Manual on State Constitutional Provisions, pp. 315-320, 330, 331; Book of the States, 1960-61, p.15. Restrictions on the number and frequency of amendments have caused problems in some of the few states having such provisions, and are not recommended by constitutional specialists.

The Model State Constitution provides that the legislature may propose amendments if by a vote of a majority of all the members. For approval a majority of those voting on the question is required at an election held not less than two months after it has been agreed to by the legislature.

Article V of the U.S. Constitution requires approval of a proposed amendment by two-thirds of both houses of Congress and ratification by three-fourths of the states by the legislatures or conventions as indicated by the Congress. There is also an alternate method of federal amendment. Upon application by the legislatures of two-thirds of the states, the Congress shall call a convention for proposing amendments to be ratified by three-fourths of the states in the same manner.

Comment

In view of the inter-relationship between this section and the one following it (Section 2) which provides for amendments to be proposed by initiative petition, these two sections will be commented upon jointly. See Comment under Section 2 following.

2. Amendment Proposed By Initiative

Article XVII: Section 2. Amendments may also be proposed to this constitution by petition of the qualified and registered electors of this state. Every such petition shall include the full text of the amendment so proposed, and be signed by qualified and registered electors of the state equal in number to not less than 10 per centum of the total vote cast for all candidates for governor at the last preceding general election, at which a governor was elected. Petitions of qualified and registered electors proposing an amendment to this constitution shall be filed with the secretary of state or such other person or persons hereafter authorized by law to receive same at least four months before the election at which such proposed amendment is to be voted upon. The legislature may prescribe penalties for causing or aiding and abetting in causing any fictitious or forged name to be affixed to any petition, or for knowingly causing petitions bearing fictitious or forged names to be circulated. Upon receipt of said petition the secretary of state or other person or persons hereafter authorized by law shall canvas the same to ascertain if such petition has been signed by the requisite number of qualified and registered electors, and may, in determining the validity thereof, cause any doubtful signatures to be checked

against the registration records by the clerk of any political subdivision in which said petitions were circulated, for properly determining the authenticity of such signatures. If the secretary of state or other person or persons hereafter authorized by law to receive and canvass same determines the petition is legal and in proper form and has been signed by the required number of qualified and registered electors, the proposed amendment shall be submitted to the electors at the next regular election at which any state officer is to be elected. An official declaration of the sufficiency or insufficiency of the petition shall be made by the secretary of state or such other person or persons as shall hereafter be authorized at least two months prior to such election. Any constitutional amendment initiated by the people as herein provided, shall take effect and become a part of the constitution if the same shall be approved by the number of qualified electors required in section one hereof for the approval of amendments proposed by the legislature, and not otherwise. Every amendment shall take effect 30 days after the election at which it is approved. The secretary of state or such other person or persons as may be hereafter authorized by law shall submit all proposed amendments to the constitution initiated by the people for adoption or rejection in compliance herewith. The petition shall consist of sheets in such form and having printed or written at the top thereof such heading as shall be designated or prescribed by the secretary of state, or such other person or persons hereafter authorized by law to receive, canvass and check the same. Such petition shall be signed by qualified and registered electors in person only with the residence address of such persons, showing street names and also residence numbers in cities and villages having street numbers, and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached the affidavit of the qualified and registered elector circulating the same, who shall be required to identify himself by affixing his address below his signature, stating that each signature thereto was signed in the presence of such qualified and registered elector and is the genuine signature of the person signing the same, and that to the best knowledge and belief of the affiant each person signing the petition was at the time of signing a qualified and registered elector.

Constitutions of 1835 and 1850

There was no provision of this type in the earlier constitutions.

Constitution of 1908

The longest and most spirited debate in the convention of 1907-08 revolved around the Proposal for the initiative process as an additional amendment procedure.[11] A proposal for a direct initiative on amendments was accepted in the convention but later a substitute measure was adopted by a vote of 49 to 47 whereby the initiative became indirect to the extent that the initiated proposal for amendment was to be submitted to the legislature in which a majority of those elected to both houses in joint session could veto the initiated proposal or offer by the same vote an alternative proposal to be submitted with the one initiated for a choice by the electorate or rejection of both.[12]

This was the origin of the provision for the initiative on constitutional amendments. Under the original provision, the number of petitioners for a proposed amendment was required to "exceed twenty per cent of ...the total number of electors" who voted for secretary of state at the last election. The petitions were to be signed at the regular places of election and registration with the officials thereof required to verify the signatures, as well as the fact that the signers were registered electors. No amendment to change this section by the initiatory process was permitted. In the vote of the electorate upon submission of an amendment, a majority of those voting thereon was sufficient, but a minimum of one-third of the highest number of votes for any office at the election was required.

1913 Amendment. In 1913, an amendment to this section was proposed by the legislature and adopted by the people. This made a substantial change in the provision whereby the initiative or proposed amendments became direct. That part of the original provision was eliminated whereby initiated proposed amendments were required to be submitted to the legislature for possible veto or submission of an alternative. Also eliminated was the prohibition against change of this section itself by the initiative method and the minimum vote of the electorate formerly required for approval. The number of petitioners required for the initiative was reduced to ten percent of the "legal voters" to be computed on the basis of the total number of votes cast for governor at the preceding election.

A new requirement, that the petitions be filed with the secretary of state four

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[11] Proceedings and Debates, pp. 546-687.

[12] Proceedings and Debates, pp. 680-687, 960-965.

months before the election, was added in this amendment, as was the requirement that the secretary of state canvass the petition for signatures by the "requisite number of qualified electors." It was also specified that: "Every amendment shall take effect thirty days after the election" at which it was approved.[13] Additional requirements were included in the amended version pertaining to signatures on petitions and affidavits of those circulating the petitions.

1941 Amendment. The amendment of this section proposed by the legislature and adopted in 1941, put the provision in its present form. It did not change the provision as radically as did the 1913 amendment. There was some rearrangement of the language, and the provision was made more specific as to the form of the petition, and in requiring the electors signing the petitions to be registered and to indicate their addresses. Provision for further checking the signatures on the petitions was also made. Discretion was given to the law-making process to assign the functions of the secretary of state in regard to such petitions to another "person or persons." A further feature required by the 1941 amendment was that an "official declaration of the sufficiency or insufficiency of the petition" be made "at least two months prior" to the election.

Statutory Implementation

By statute, the duties assigned by this provision to the "secretary of state or such other person or persons" have been given to a board composed of the board of state canvassers and the attorney general.[14] Various details relating to the initiatory process for constitutional amendments have been set forth in statutes.[15]

Judicial Interpretation

Various opinions of the supreme court (and of attorneys general) have interpreted this section in its present and previous forms. These opinions seem not to have expanded or contracted the meaning of this section or caused it to deviate substantially by interpretation beyond the usual sense of its language. The initiative procedure, as set forth in the section, is sufficiently explicit that it needs no statutory implementation of a substantive nature, and statutory conditions or additional procedures in relation to the initiatory process are not binding.[16]

Other State Constitutions

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[13] This language was interpreted, as mentioned above, to apply to all amendments whether submitted by initiative petition or by the legislature.

[14] M.S.A., 6.1474.

[15] M.S.A., 6.1471-6.1484.

Number of Signatures Required - Direct Initiative. Of the 11 state constitutions having provision for the direct initiative for proposals of constitutional amendment, the North Dakota constitution requires that the petitions be signed by 20,000 electors. This is the only state having an absolute number required. Three of these 11 states require the number of petition signers to be eight percent of the votes cast in the last general election—Colorado uses the standard of votes cast for secretary of state; California uses those cast for governor; and in Missouri the requirement is eight percent of the votes cast for governor in each of two-thirds of the state's congressional districts. Five states of these eleven (including Michigan) require the number of electors signing petitions to be ten percent of the vote in the last pertinent election in order to initiate an amendment. Of these five, Oregon requires a number of electors "not more than" ten percent of all votes for supreme court justice—probably the easiest requirement to meet of these five states. Four states require the number of signers to be ten percent of the vote for governor. In Michigan, this is the only requirement, while the other three states have additional stipulations. In Arkansas, this number must include five percent of the vote for governor in 15 counties (Arkansas has some 80 counties). In Nebraska, this number must equal five percent of the vote for governor in two-fifths of the state's counties. In Ohio, the number of signers must include five percent of the vote for governor in one-half of the state's counties. In two states of the 11, the number of petition signers for initiating an amendment proposal must be 15 percent of the vote in the last election. Arizona requires the number to be 15 percent of the vote for governor, while in Oklahoma it must be 15 percent of the highest number of votes cast for any state office.[17]

Number of Signatures Required - "Indirect Initiative." The constitutions of two states Massachusetts and Nevada provide for proposed amendments by an initiatory process which is indirect to the extent that the proposal is submitted first to the legislature which may accept or reject the proposal of amendment. However, in Nevada, if the initiated proposal is rejected, the proposal is submitted to the electorate regardless of this disapproval, although the legislature may also submit an alternative proposal to the electorate for a choice between them or rejection of both.

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[16] Hamilton v. Secretary of State, 221 Mich. 541; Opinion of the Attorney General, March 22,1950, No. 1151; City of Jackson v. Commissioner of Revenue, 316 Mich. 694. In regard to the initiative for both constitutional amendments and statutes to 1940, see J. K. Pollock, The Initiative and Referendum in Michigan (Univ. of Michigan, 1940).

[17] Index Digest, pp. 556-558 (Colorado provision not included); Manual on State Constitutional Provisions, pp. 317-318, 327 (percentage of voters required in Oregon misstated); Book of the States, 1960-61, p. 14 (percentage of voters required in Ohio misstated); pertinent constitutional provisions.

This type of provision is somewhat similar to the original form of the Michigan provision—1908-1913, before amendment, although the Michigan legislature could then kill the initiated proposal by a joint majority vote. The complicated Massachusetts provision is also similar to the original Michigan provision in that the legislature may veto the proposal; however, this veto is not highly restrictive, since in order to be submitted to the electorate, the initiated proposal must receive the vote in joint session of only one-fourth of those elected to both houses in two successive legislatures. The Massachusetts legislature may also submit alternative proposals.

The number required to sign petitions in order to initiate a proposal of amendment in Nevada is 10 percent of the total vote at the last general election including 10 percent of that vote in 75 percent of the state's counties; while in Massachusetts the number required is only three percent of the last vote for governor, but no one county may contribute more than one-quarter of the required number of signatures.[18]

Vote Required on Submission to Electors. All of the 13 states having an initiatory process for amendments (11 direct, two indirect) require approval by a majority of those voting on the amendment, except Oklahoma where the requirement is a majority of those voting at the election. However, Massachusetts requires for approval of initiated proposals a majority voting on the amendment equal to at least 30 percent of those voting at the election; Nebraska has a similar stipulation, but the majority must be a minimum of 35 percent of those voting at the election. Arkansas, although requiring a majority voting at the election to ratify a legislative proposal of amendment, reduces the requirement to a majority voting on the amendment for initiated proposals.[19]

Other Features Regarding Initiated Proposals. Seven states, including Michigan, of the 13 having an initiatory process for proposals of amendment have no limit on the subject matter or frequency of amendments so proposed. All of the others, with the possible exception of Massachusetts, have limitations, but these are not particularly restrictive. Even the restrictions on the use of the initiative for amendments in

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[18] Index Digest, pp. 558 (Ohio included as having indirect initiative on amendments, but provision seems to apply only to laws; see Ohio Constitution Article II, Section 1 a, b, g); Manual on State Constitutional Provisions, p. 327 (number of signers listed for Mass. not now applicable); Book of the States, 1960-61, p. 14; and pertinent constitutional provisions.

[19] Index Digest, pp. 556-558; Book of the States 1960-61 p. 14 (Mich. requirement misstated).

Massachusetts—relating to changes in the bill of rights, courts, particular local governments, and specific appropriations—are probably not far-reaching in practice.[20] The Michigan provision seems to be the most comprehensive and specific with regard to requirements concerning circulation of petitions, examination of them and the declaration of sufficiency. The requirement of filing the petitions four months before the election is the most common requirement in regard to this matter among the 13 states.[21]

The Model State Constitution provides for amendments to be proposed by initiative petition (somewhat indirect). The number of signers as a percentage of the preceding vote for governor is not specified. If the legislature fails to approve it in the usual manner, the proposal is submitted to the voters at an election not less than two months after the end of the legislative session. The legislature is permitted to provide by law procedure for withdrawal of a petition by its sponsors prior to its submission to the people.

The Model requires approval of initiated proposals of amendment by a majority of those voting on the amendment. In case of conflict in amendments (proposed in any manner) adopted at the same election, the one receiving the highest number of affirmative votes "shall prevail to the extent of such conflict." The U.S. constitution has no provision of this type.

Comment

Of the 125 constitutional amendments that have been proposed in Michigan since 1908, 69 have been adopted. Almost two-thirds (59) of the 90 proposed by the legislature have been adopted, while less than one-third (10) of the 35 initiated by petition have been adopted. However, most of the ten initiated amendment proposals ratified by the voters have been unusually important: prohibition, 1916; establishment of the liquor control commission, 1932; property tax limitation, 1932 and 1948; earmarking gas and weight taxes for highways, 1938; nonpartisan election of

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[20] Manual on State Constitutional Provisions, pp. 317-318, 327; Index Digest, pp. 556-558.

[21] Manual on State Constitutional Provisions, p. 327; Index Digest, pp. 556-557. For some of the more recent material relating to state constitutional amendment and revision—the subject matter of all four sections of Article XVII of the Michigan constitution—see A.L. Sturm, Methods of State Constitutional Reform (Univ. of Michigan, 1954); Sturm, "Constitutional Amendment and Revision," Major Constitutional Issues in West Virginia (West Virginia, University, 1961); John P. Keith, Methods of Constitutional Revision (University of Texas, 1949); w. Brooke Graves, Editor, Major Problems in State Constitutional Revision (Public Administration Service, 1960, particularly chapters 2-7.

judges, 1939; state civil service, 1940; legislative reapportionment, 1952; earmarking of sales tax, 1946; and the change in ground rules for a constitutional convention, 1960.

In view of Michigan's expanding population and a trend toward greater participation in elections, some might favor a reduction in the required number of initiative petition signers as a percentage of votes cast in the previous election in order to facilitate the use of the initiative.[22] However, contrary to this view, others believe that the initiatory process should be reserved for extraordinary occasions—the electorate's last resort, and that the initiative in Michigan has already been used too frequently for substantial constitutional changes. If there is a need to facilitate the submission of constitutional amendments to the voter, some might argue that it would be preferable to make it easier for the legislature to submit amendments by reducing the extraordinary majority requirement of two-thirds of the members elected to each house to some smaller number. And, it is argued, legislative proposals of amendment tend to be more carefully drafted and considered in relation to the remainder of the constitution.

The detailed procedure spelled out in Section 2 is self-executing and forestalls possible statutory obstruction of the initiatory procedure. The vote requirement in Michigan for approval or ratification by the voters of amendments proposed by either legislative or initiatory action is found in most states. Some might favor the further requirement that the majority voting on the question must be at least 30 or 35 percent of those voting at the election in order to forestall adoption of amendments by too small a minority of the electorate.[23]

The time for voting on proposed amendments is the same in Sections 1 and 2 although expressed differently—at the next spring or fall election (Section 1), and at the next regular election for any state officer (Section 2 for initiated proposals). If

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[22] If the governor were given a four-year term and elected at the "off-year" election, the difficulty of meeting the petition signature requirement would not be alternately intensified following presidential elections with enlarged voter participation.

[23] The Georgia constitution (Article XIII, Section 1) under certain conditions requires the vote by the electorate only in the affected locality or localities rather than state-wide for constitutional amendments pertaining only to specific local governments. This feature has been suggested for inclusion in the Pennsylvania constitution.

the spring election is eliminated in the revised constitution, some consideration might be given to providing for submission to the electorate of amendment proposals (perhaps in event of emergency) more frequently than every two years.[24]

3. Publication and Statement on Ballot of Proposed Constitutional Amendments

Article XVII: Section 3. All proposed amendments to the constitution and other questions to be submitted to the electors shall be published in full, with any existing provisions of the constitution which would be altered or abrogated thereby, and a copy thereof shall be posted in each polling place. The purpose of any such proposed amendment or question shall be designated on the ballots for submission to the electors in not more than 100 words, exclusive of caption. Such designation and caption shall be prepared by the secretary of state or by such other authority as shall be hereafter designated by law within 10 days after the filing of any proposal and shall consist of a true and impartial statement of the purpose of the amendment or question in such language as shall create no prejudice for or against such proposal.

Constitutions of 1835 and 1850

The constitution of 1835 in the provision (Article XIII, Section 1) dealing with amendment by proposal of two separate legislatures required publication of the proposed amendment for three months previous to the election of the succeeding legislature.[25] The 1850 constitution had no provision relating to the publication of proposed amendments or any of the subject matter of this present provision.

Constitution of 1908

The original form of this section as it came from the hands of the convention was as follows:

> Section 3. All proposed amendments to the constitution submitted to the electors shall be published in full, with any existing provisions of the constitution which would be altered or abrogated

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[24] Some states provide for submission of amendment proposals at special elections or when prescribed by the legislature.

[25] See above—discussion of Article XVII, Section 1.

> thereby, and a copy thereof shall be posted at each registration and election place. Proposed amendments shall also be printed in full on a ballot or ballots separate from the ballot containing the names of nominees for public office.

Amendment of 1918. An amendment adopted in 1918 required that proposed amendments "together with any other special questions to be submitted" at the election be printed in full on a single ballot separate from that containing the names of "candidates or nominees." The chief purpose of this amendment was to require that questions to be voted on would be on a single separate ballot rather than "on a ballot or ballots" as originally required.

Amendment of 1941. The present form of this section is the result of an amendment proposed by the legislature and adopted in the April, 1941, election. Article XVII, Section 2 was concurrently altered by this same amendment. The amendment to Section 3 discarded the requirement that proposed amendments be printed in full on the ballot. The caption and designation of the proposed amendment's purpose in "not more than 100 words" replaced the former requirement.

The procedure required in this section applies to amendments proposed by the legislature as well as to those proposed by the initiatory process.

Statutory Implementation

The preparation of the caption and designation of the proposed amendment's purpose has been assigned by statute to the "director of elections with the approval of the state board of canvassers."[26]

Judicial Interpretation

Section 3 requires that "any existing provisions" of the constitution that would be "altered or abrogated" by the proposed amendment must be published in full with the proposed amendment. This has been interpreted to mean that if a specific provision would be amended or replaced by the proposal it must be published, but that it is not necessary to publish other existing provisions which will remain opera-

[26] M.S.A., 6.1474.

tive even though they may be modified by, or need to be construed with, the proposed new provision.[27]

Other State Constitutions

Most state constitutions have provisions requiring notice or publication of proposed amendments to the constitution before their submission to the electorate. Many require such publication in newspapers. The requirement in the Michigan provision that proposed amendments be published with any existing provisions which would be "altered or abrogated thereby" appears to be unique among state constitutions.[28]

The Model State Constitution provides that a proposal of amendment shall be submitted by a "ballot title" descriptive but not argumentative or prejudicial, "prepared by the legal department of the state, subject to review by the courts." The U.S. constitution has no provision of this type.

Comment

Although the requirement that existing constitutional provisions, which would be "altered or abrogated" by a proposal of amendment, be published with the proposal is unique among state constitutions, it appears to have merit. The electorate is given thereby a greater opportunity to understand more fully the impact and ramifications of the proposed amendment.

B. CONSTITUTIONAL CONVENTION —GENERAL REVISION AND/OR AMENDMENT

Article XVII: Section 4. At the biennial spring election to be held in the year 1961, in each sixteenth year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors qualified to vote for members of the legislature. In case a majority of the electors voting on the question shall decide in favor of a convention for such purpose, at an election to be held not later than 4 months after the proposal shall have been certified as approved, the electors of each house of representatives district as then organized shall elect 1 delegate for each state repre-

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[27] School District of Pontiac v. City of Pontiac, 262 Mich. 338; City of Jackson v. Commissioner of Revenue, 316 Mich. 694; Graham v. Miller, 348 Mich. 684.

[28] Index Digest, pp. 11-12, 557; Manual on State Constitutional Provisions, pp. 319-320, 332-333.

sentative to which the district is entitled and the electors of each senatorial district as then organized shall elect 1 delegate for each state senator to which the district is entitled. The delegates so elected shall convene at the capital city on the first Tuesday in October next succeeding such election, and shall continue their sessions until the business of the convention shall be completed. A majority of the delegates elected shall constitute a quorum for the transaction of business. The convention shall choose its own officers, determine the rules of its proceedings and judge of the qualifications, elections and returns of its members. In case of a vacancy by death, resignation or otherwise, of any delegate, such vacancy shall be filled by appointment by the governor of a qualified resident of the same district. The convention shall have power to appoint such officers, employees and assistants as it may deem necessary and to fix their compensation, and to provide for the printing and distribution of its documents, journals and proceedings. Each delegate shall receive for his services the sum of 1,000 dollars and the same mileage as shall then be payable to members of the legislature, but such compensation may be increased by law. No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal. Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner provided by such convention on the first Monday in April following the final adjournment of the convention; but, in case an interval of at least 90 days shall not intervene between such final adjournment and the date of such election, then it shall be submitted at the next general election. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon such constitution or amendments shall take effect on the first day of January following the approval thereof.

Constitutions of 1835 and 1850

Article XIII, Section 2 of the 1835 constitution provided the following procedure for the calling of a constitutional convention. If two-thirds of each house of the legislature thought it "necessary to revise or change this entire constitution," the question was to be submitted to the electors at the next election for legislators. If a majority of the electors voting at the election were in favor of it, the legislature was required at its next session to "provide by law for calling a convention, to be holden within six months" after passage of the law. The convention was to have a "number of members not less than that of both branches of the legislature."

The 1850 constitution (Article XX, Section 2) originated the requirement of submitting the question of general constitutional revision by convention to the electorate every 16 years and at other times as provided by law. Approval by a majority of the electors voting at the election was required for calling a convention (as in the 1835 provision and the original form of the 1908 provision), in which event the legislature at its next session was required to provide by law "for the election of such delegates to such convention."[29] In 1866 the people voted on the question of calling a convention. Although the vote for the proposal fell short of the required majority of those voting at the election (even though the vote was three to one in favor) the legislature interpreted this as having been an effective call and made provision for a convention.[30] The proposed constitution resulting from this convention was rejected by the voters, by a vote of 110,582 to 71,733 in 1868.[31]

Constitution of 1908

Before its recent amendment, the original form of Section 4 required submission to the electors of the question of general revision in 1926 and in "each sixteenth year

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[29] The last sentence of this 1850 provision seems to have been somewhat out of context in this section concerned with "general revision," except that this revision could have been in the form of amendments. The last sentence (probably referring also to the preceding section) read: "All the amendments shall take effect at the commencement of the year after their adoption."

[30] The legislators used a Wisconsin court decision as a precedent.

[31] In 1873, creation of a. constitutional revision commission was authorized by the legislature, the governor appointing two members from each of the nine congressional districts. This commission's revision was submitted in amendment form, but was rejected by a vote of 124,034 to 39,285 in 1874. C. R. Tharp, "Michigan State Constitutional Revision Procedures," Michigan Governmental Digest (No. 3, Univ. of Michigan, September, 1948), p. 2.

thereafter." Approval by a majority of the electors voting at the election was required in order to call a convention, in which event three delegates were to be elected from each senatorial district at the "next biennial spring election." These delegates were required to "convene at the state capitol" on the first Tuesday in September following the election.

The constitutional convention of 1907-08 in the part of its address to the people relating to this section indicated that the detail in the section was intended to enhance the independent power of a convention and restrict legislative control or interference with it. The section was "designed to place beyond question the power such a convention shall exercise." Because "grave doubt" had arisen during the convention as to whether it had power under the 1850 constitution "to submit a complete instrument and also at the same time, separate amendments," this section was "designed to provide a method for submitting special questions. . . about which there might be great conflict of opinion to a vote of the electors, separate and apart from the instrument" or main body of the constitution.[32]

Under the original 1908 provision requiring a majority of those voting at the election, the question of calling a convention was submitted to the electorate four times, (three by the automatic provision and one by law in 1948). It failed to carry each time. On the last two of the four occasions, a majority of those voting on the question favored the proposal, but it failed to carry by a majority of those voting at the election:

"Yes" Vote Required For Approval

Year	For Approval	"Yes" Vote	"No" Vote
1926*	315,377	119,491	285,252
1942*	613,387	408,188	468,506
1948 (by law)	1,056,561	855,451	799,198
1958*	1,170,915	821,282	608,365

*By constitutional mandate

Amendment of 1960. As a result of successive failure to achieve the vote required to call a convention under the original 1908 provision, civic organizations, early in 1960, undertook the task of changing this provision by initiating a proposed amendment by petition. The proposed amendment was adopted at the November, 1960,

[32] Proceedings and Debates, pp. 1442-1443. The intent of the convention so clearly spelled out is still valid for the present form of this section since the limited though important changes made by amendment in 1960 do not affect its general intent as specified in the address to the people.

election. This amendment reduced the vote required for the call from a majority voting at the election to a majority changed from three for each senatorial district to one for each senator and representative. The only other change made by the amendment, except for those chronological in nature, was that the delegates were to convene "at the capital city" rather than "at the state capitol."

By constitutional mandate under the new amendment, the question of calling a constitutional convention was submitted in the April, 1961, election in which the "yes" vote carried. The constitutional convention will convene in Lansing, October 3, 1961.

Statutory Implementation

Statutes relating to this section passed prior to adoption of the 1960 constitutional amendment have been amended since its adoption, largely to make them conform with the new constitutional amendment.[33]

Judicial Interpretation and Opinions of the Attorney General

Since the constitutional convention to be held in 1961 will be the first under the constitution of 1908, there has previously been no need for interpretation of constitutional provisions which appear to make some state officials ineligible to election as convention delegates, such as Article V, Sections 6 and 7 and Article VII, Section 9 which explicitly prohibit legislators and circuit judges from being delegates. Under the 1850 constitution with similar provisions, legislators were interpreted as not eligible to be delegates.[34] Circuit and probate judges were also held to be ineligible.[35] An opinion of the attorney general, No. 3605, May 3,1961, held that:

> Members of the legislature are ineligible as delegates to constitutional convention during the term for which elected. Circuit judges are ineligible for the term for which elected and one year thereafter. The sheriff is ineligible unless he resigns his office. No other officers are ineligible.

Ten states (including Michigan) have constitutional provisions requiring the question of calling a constitutional convention to be submitted to the electorate at set

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[33] M.S.A. 6.1181-6.1190; 3.640.

[34] Fyfe v. Kent County Clerk, 149 Mich. 349; Opinion of the Attorney General, 1907.

[35] Opinions of the Attorney General, 1907—ineligibility of probate judges is not as explicit in either the constitution of 1850 or that of 1908.

intervals. In New Hampshire the interval is seven years; in Iowa, Alaska, and Hawaii 10 years; in Michigan 16 years; and in the remainder (Maryland, Missouri, New York, Ohio, and Oklahoma) 20 years. Most state constitutions, including these 10, provide explicitly that the question of calling a convention may be submitted to the electorate as provided by law or by an extraordinary vote of the legislature.[36]

Eighteen states (including Michigan) have constitutional provisions for the question to be submitted by law or by a majority (usually of those elected) of each house of the legislature.[37] In one state (Nebraska), a three-fifths vote of those elected to the unicameral legislature is necessary to submit the question to the voters. Twenty states have constitutional provisions whereby a two-thirds vote (usually of those elected or the equivalent) of each house of the legislature is necessary for submission of the question of calling a convention to the electorate.[38]

Required Vote of Electorate on Submission of Question. Of the 40 states having constitutional provisions for submission of the question of calling a convention to the voters (or where this is done in practice despite the absence of such provision in three of these states), 27 (now including Michigan) require a majority of those voting on the question to call a convention.[39] Thirteen states require a majority of those voting at the election to call a convention.[40]

Number and Qualifications of Delegates and other Provisions. The number of convention delegates is specified by constitutional provision in 14 states (including Michigan). Five other states specify a minimum number of delegates equal to the number in the lower house or both houses of the legislature, while two states provide a maxi-

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[36] Eleven states have no constitutional procedure for calling a convention, but action of the legislature has been widely interpreted as authoritative to accomplish this purpose in such states.

[37] In one of these (Kentucky) the majority vote in each house must be attained in two successive legislatures.

[38] Index Digest, pp. 17-18; Manual on State Constitutional Provisions, pp. 328-329. Book of the States 1960-61, p. 15. Discrepancies and incomplete coverage checked against state constitutional provisions.

[39] Index Digest, p. 19; Book of the States 1960-61, p. 15 - Idaho, Kansas and Nevada provisions misstated. In one of these (Kentucky) this majority must equal one-fourth of those voting in the last general election; in Nebraska it must be at least 35 percent of those voting at the election.

[40] Loc. cit. This does not include West Virginia where the question is submitted at a special election – therefore classified with those states requiring a majority voting on the question.

mum number. The Georgia provision requires convention representation to be based as nearly as practicable on population. Approximately one-half of the states have no specific provision relating to the number of convention delegates.[41] Nine states provide qualifications for convention delegates – in most cases the same as for senators or all legislators. At least six states (including Michigan) make the convention the judge of its delegates' qualifications. Most other state constitutions are not as largely self-executing or as specific and detailed with regard to such matters as compensation of delegates, the time of their election, or the organization and powers of the convention, although a few states such as Missouri and New York also have somewhat detailed provisions. Most state constitutions indicate that a constitutional convention may revise and/or amend the constitution.[42]

Vote Required on Submission of Convention's Work. In almost one-half of the states there are no constitutional provisions regarding submission to the voters of a convention's work of revision or amendment. This is usually provided for, in practice, by law. In a few states approval by the voters is constitutionally required, but the size of the vote is not specified. Fifteen states have provisions whereby the work of a convention must be approved by a majority of those voting on the proposal,[43] while seven states have provisions requiring approval by a majority of those voting at the election. Minnesota requires approval by three-fifths of those voting on the question, and New Hampshire approval by two-thirds of those voting on the question. Rhode Island requires approval by three-fifths of those voting at the election.[44]

Model State Constitution and U.S. Constitution

The Model State Constitution provides that the question of calling a convention may be submitted to the electorate by a majority vote of all members of the legislature. If the question has not been submitted within any period of 15 years, the secretary of the legislature shall submit it at the general election "in the fifteenth year following the last submission." The legislature is required to provide for a

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[41] Index Digest, p., 21; Manual of State Constitutional Provisions, pp. 318-319; 328-329.

[42] Index Digest, pp. 19-22; Manual on State Constitutional Provisions, p 319: 328-329. The Michigan provision leaves no doubt concerning the plenary powers of a constitutional convention. In some other states controversy has arisen with respect to legislative power to control or limit the subject matter of a convention's deliberation. "Limited Conventions" have been held in some states. The New Jersey convention of 1947 was limited only to the extent that reapportionment of the legislature could not be considered. A. L. Sturm, Major Constitutional Issues in West Virginia, pp. 132-133.

[43] Hawaii, one of these, requires that this majority be at least 35 percent of the total vote at the election.

[44] Index Digest, pp. 22-23; Book of the States 1960-61, p. 15.

"preparatory commission" before the vote on the question. The commission collects "information on constitutional questions to assist the voters." If the convention is authorized, this commission will continue "for the assistance of the delegates." A majority of those voting on the question is required to call the convention. If the convention is authorized, the delegates shall be chosen "at the next regular election not less than three months thereafter," unless the legislature provides by law for the election of delegates at the same time that the question is submitted. One delegate shall be elected from each existing legislative district. Further detailed provisions relate to the organization and procedure of the convention. This provision was intended to be comprehensively self-executing.

The Model's provision is similar to (but goes somewhat beyond) the Michigan provision in that the work of the convention shall be submitted to the voters "either as a whole or in such parts and with such alternatives as the convention may determine."

In the U.S. Constitution (Article V), a convention "for proposing Amendments" shall be called by the Congress upon application of the legislatures of two-thirds of the states. Amendments proposed by such a convention would also require ratification by three-fourths of the states (by the legislatures or conventions as indicated by the Congress).[45]

Comment

This provision has been recently amended and is largely self-executing. Some may feel that a revised constitution should be safeguarded from future tampering by restrictive provisions on general revision or amendment. Others, however, may argue that a constitutional revision which establishes a basic governmental structure with lasting qualities of flexibility and adaptability is likely to survive as a venerated instrument without overly rigid restrictions intended to make alteration difficult.

The constitutional convention is the most widely used means for general revision of state constitutions. A convention's revision is likely to command more popular support than the proposals of a constitutional revision commission. General revision has been attempted in several states by a single amendment. General constitutional revision in Georgia (1945) was accomplished in this manner.[46]

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[45] No federal convention for such purpose has ever been authorized since the adoption of the federal constitution 1787.

[46] The constitution proposed in Michigan in 1874 was framed by a revision commission and offered as a single amendment, but was rejected by the voters.

Constitutional conventions of the 1920's and 1930's (such as those in Missouri and New York), fearful that individual controversial provisions would defeat acceptance at the polls of their revision proposals as a whole, offered them for acceptance part by part. Many of these parts were rejected. The constitutions framed in the 1940's and 1950's such as those in Missouri, New Jersey, Hawaii, and Alaska were proposed as a single unit and adopted as such.

Since the various parts of a general constitutional revision are inter-related, problems and confusion could result from some parts of a revision being accepted and others rejected. If any parts of a constitutional revision, expected to be controversial, were to be submitted for approval separate from the main body of the proposed revision, it might be well to limit the number of these. It is clear that a constitutional convention in Michigan has power to submit its proposed revision in whole or in parts. It might be interpreted (in view of the very wide discretion allowed it under Section 4) as having power to submit its revision in whole and in parts at the same election – the vote on the-parts having effect only if the vote for the whole failed to carry.[47]

The present statute requires the constitutional convention to frame and publish 25,000 copies of an address to the people explaining any changes that may be made in the constitution and the reasons for such changes. This would appear not to be binding upon the convention in view of its independent and plenary power. However, the convention might well decide to write and publish an address of this kind in view of the success of this device in 1908, and its obvious value of throwing light upon the delegates' intentions in framing the various provisions for those who will be called upon for future interpretation of the document.

[47] It might possibly be interpreted as having authority to submit the whole revision at one election, and if the vote for it failed to carry, to submit the revision in parts at a succeeding election.