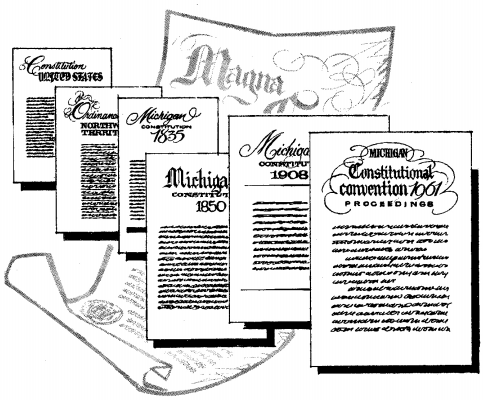


CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 1 December 14, 1962

INTRODUCTION

At the general election on April 1, 1963, the registered electors of the State of Michigan will vote on the adoption of the revised constitution proposed by the constitutional convention which adjourned on August 1, 1962. The revised constitution will be voted on as a single question:

"Shall the revised constitution be adopted?
( ) Yes ( ) No"

If the revised constitution is approved by a majority of the registered electors voting on the question, it will become the supreme law of the state on January 1, 1964.

This is the first of a series of Research Council publications entitled, *An Analysis of the Proposed Constitution*, which will present a factual analysis of the provisions of the proposed constitution in the several major substantive areas. This series together with other Research Council publications, particularly *A Digest of the Proposed Constitution* (Report No. 213), are designed to provide the citizens with factual information upon the basis of which he can intelligently form a judgment on this important public question.

In one of a series of Research Council publications prepared for the use of the delegates to the convention, Dr. Paul G. Kauper stated the following:

> Most of the time and energy spent by the delegates will be devoted to the treatment of specific areas and problems involved in restating the state's organic law.

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

> It is important, however, that the delegates in approaching these specific tasks be guided by a sense of perspective and an overall view as to the nature and purpose of a state constitution both in relation to the structure of our federal system and in relation to the internal purposes served by the state's constitution.[1]

It is equally important that the voter have an understanding of the nature of a state constitution and the place of the state within our federal system in order to evaluate the revised constitution that will be presented to him.

The Written Constitution

The idea of a written constitution defining the structure of government, enumerating the rights of the people, and limiting the powers of government is deeply rooted in American history. The Magna Carta in 1215, the Bill of Rights of 1628 and 1689, and the Habeus Corpus Act of 1679 were significant historical events which influenced American constitutional development. The Mayflower Compact of 1620 was a landmark because it rested on the assumption that men may agree among themselves how they shall be governed and this concept of government based on the consent of the governed underlies American political thinking.

The American states adopted constitutions following the break with England and prior to the drafting of the U. S. Constitution in 1787 and its final ratification in 1789. The U. S. Constitution was the culmination of the concept of a written constitution setting forth the supreme law of the land. This constitution established a federal system of government with powers distributed between the central government and the states. It also provided for a separation of powers and checks and balances among the executive, legislative and judicial branches of the central government. A written constitution is essential to the maintenance of a distribution of powers between the central government and state governments and a separation of powers within a government.

The State Constitution and The Federal System

Michigan is one of fifty states comprising the United States of America. The tenth amendment to the U. S. Constitution states the theory underlying the federal system:

---

[1] Con-Con Research Paper No. 2, The State Constitution: Its Nature and Purpose, by Paul G. Kauper, J.D., Professor of Law, University of Michigan Law School. Copies of this 29 page report are available from the Research Council. The material in this Analysis is drawn largely from Dr. Kauper's paper.

> The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Under this system the people of each state have the power to devise a system of government for their state subject to such restraints as they themselves impose and to restraints resulting from the federal system. Each state has the constitutional right to exercise the general powers of government subject to the provisions of the U. S. Constitution, laws enacted by Congress pursuant to the constitution, and treaties made by the United States.

In recent years there has been a significant expansion of the powers of the federal government. The broadened interpretation of the commerce power, the demands of national security, the virtually unlimited taxing and spending power, and the increased application by the federal courts of the due process and equal protection clauses of the fourteenth amendment to state actions have all contributed to the growth in power and importance of the federal government.

While the rapid expansion of the powers of the central government has had a considerable impact on the "balance of power" in the federal system, the states are not by any means withering away. The growth in recent years in state-local functions and expenditures has been substantial. The bulk of the criminal law, the system of private law, education, public health, and numerous other activities continue to be primary responsibilities of the states.

The future position of the states in the federal system of government will depend in large measure on how effectively the states can hold up their end of the bargain. If the states can perform their tasks efficiently and responsibly, then the vitality and integrity of the federal system can be maintained. Dr. Kauper points up the challenge faced by the states in revising their constitutions:

> To establish a form of government responsive to the will of the people, organized to deal effectively with the problems of our day and equipped with powers adequate to meet the state's needs....

The State Constitution

There is a distinction between the legislative powers of the U.S. Congress and the powers of a state legislature. The powers of the federal government are delegated powers and must be authorized by express or implied grants of power under the constitution. However, the government established by a state constitution enjoys all the powers of general government subject only to restraints derived from the constitution of the United States or the state's own constitution. While ultimate sovereign power rests in the people, when the people through their state constitution establish the basic organs of representative government, they impliedly delegate to that government the general powers of government within the sphere of the

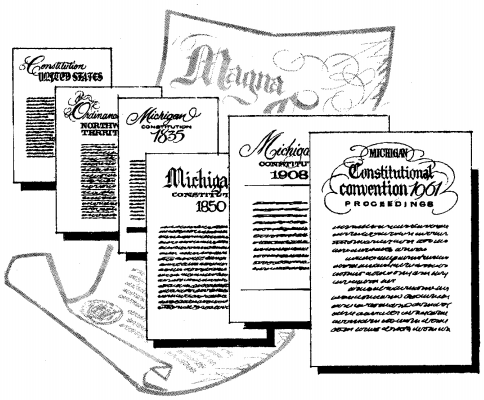
state's constitutional competence, subject to those restraints which the people chose to place in the state constitution.

While it is true that states need not point to specific grants of authority in the constitution, it is common to include specific grants of power as well as specific limitations on powers.

There are certain fundamentals that should be provided for in the state constitution. The qualifications of electors, those who are to participate in the political process, must be defined and the direct role they are to play in the legislative process through devices such as the initiative, referendum and recall must be determined. The organs of governmental power (executive, legislative, and judicial) must be established, and authority, powers and duties must be distributed among them. In addition to the three traditional branches of government, constitutional powers may be vested in local units of government and other public corporations such as universities. Various limitations are normally placed on the organs of government in the exercise of their powers—the traditional bill of rights and limitations on taxing and borrowing powers are examples. The provisions of the proposed constitution in these and other important areas will be the subjects of the series of analyses.

Dr. Kauper concluded the memorandum on *The State Constitution* with this statement:

> In the end, the convention must submit the results of its deliberations to the state's electors for approval. To merit this approval, a proposed revision of the constitution must be a document that can be read and understood by citizens and which in meritorious features commends itself to the people as a worthy instrument for the furtherance of effective and responsible government directed to the end of serving and promoting the common good.



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 2 December 17, 1962

DECLARATION OF RIGHTS - ARTICLE I

ELECTIONS - ARTICLE II

Important changes have been made with respect to the Declaration of Rights Article and the Elections Article in the proposed constitution.

DECLARATION OF RIGHTS

Many of the civil rights features in the federal "Bill of Rights," originally intended largely as restraints on the federal government, have been made applicable as restraints on the states by way of the Fourteenth Amendment. This Amendment prohibits: any state law abridging the privileges and immunities of United States citizens; state deprivation of any citizen's life, liberty or property without due process of law; or denial by any state of the equal protection of the laws to any person in its jurisdiction.

There remains, however, a substantial area for state policy (constitutional and statutory) with respect to civil and political rights concurrent with, and supplementary to, the federal guarantee of basic rights. A "bill of rights" therefore continues to be an important part of a state constitution as a guarantee against governmental infringement on the basic rights of the people. Protection of an individual's rights from infringement by private persons or organizations is traditionally spelled out in statute law rather than in a constitution.

Major Changes

1. A new feature guarantees fair treatment in legislative and executive investigations and hearings for all individuals, corporations and voluntary associations.
2. A verdict agreed upon by 10 of 12 jurors in civil cases is to be received.
3. A new feature guarantees an appeal as a matter of right in all criminal prosecutions.
4. The provision on subversion is eliminated.
5. A new provision guarantees equal protection of the laws, and civil and political

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

rights without discrimination because of religion, race, color or national origin.

6. A new civil rights commission given constitutional status in the executive article (Art. V, Sec. 29) will be concerned with making the above provision effective and with discrimination as related to civil rights guaranteed by the constitution and by law.
7. A new provision reserves other unenumerated rights to the people.

General and Traditional Rights

The convention added a new provision to the declaration of rights which guarantees "fair and just treatment in the course of legislative and executive investigations and hearings" for "all individuals, firms, corporations and voluntary associations."

The provision which proclaims the people's right to assemble peaceably, to consult for the common good, to instruct their representatives and to petition for redress of grievances was carried over with only one change—the people are given the right to petition the "government" rather than the "legislature" as in the present provision. This change was made in order that the right of petition would apply to all branches and levels of government.

No change was made in the substance or effect of the following constitutional provisions dealing with general and traditional rights which were carried over to the proposed constitution;

- all political power is "inherent in the people," and government is "instituted for their equal benefit, security and protection."
- guarantee of "liberty to worship God" to each person according to his conscience, supplemented in some detail and with provision for separation of church and state.
- guarantee of freedom of speech and of the press—with minor changes in phraseology.
- the "right to bear arms," with phraseology changed to the more traditional form—"to keep and bear arms."
- requirement of strict subordination of the military to the civil power.
- restriction on quartering of soldiers.
- prohibition of slavery, and involuntary servitude unless for the punishment of crime—with a change in punctuation.
- prohibition of bills of attainder, ex post facto laws and laws impairing the obligation of contract.
- prohibition of unreasonable searches and seizures with necessary conditions prescribed for the issue of search warrants. The part of the present provision allowing introduction as evidence in any criminal proceeding of narcotic drugs and dangerous weapons seized by peace officers *outside* the "curtilage of any dwelling house" is retained in simplified language.[1]
- prohibition of suspending the writ of habeas corpus except when "in case of rebellion or inva-

[1] There has been some opposition to the retention of this exception on the grounds that it is contrary to a recent decision of the U.S. Supreme Court (**Mapp v. Ohio**, 1961). This case, however, was concerned with search and seizure *inside* the "curtilage." If this part of the provision were held to be contrary to the federal Constitution, it would, of course, have no effect.

sion the public safety may require it."

- prohibition of imprisonment for debt in connection with an express or implied contract it except in cases of fraud or breach of trust."[2]

Rights in Court Procedure

The right to prosecute or defend a court suit in person or by an attorney is retained but the authorization to use an agent of one's choice for such purposes is deleted. The right of trial by jury unless waived by both parties in civil cases is retained but with an added stipulation that a verdict agreed upon by 10 of 12 jurors in civil cases shall be received.

The proposed constitution retains without change the prohibition of any person being rendered incompetent as a witness because of "his opinions on matters of religious belief" and the provision relating to trial procedure in, and truth as a defense against, libel suits and prosecutions.

Rights in Criminal Procedure. The guarantee against double jeopardy has been rewritten to conform more closely with the federal guarantee and with federal and state practice: no person "shall be subject for the same offense to be twice put in jeopardy" replaces "after acquittal upon the merits, shall be tried for the same offense." The prohibition of excessive bail, excessive fines, cruel or unusual punishment and unreasonable detention of witnesses, the guarantee against compulsory self-incrimination in any criminal case and the due process of law clause were carried over unchanged.

The following rights of an accused person in criminal prosecution were carried over to the proposed constitution: to a "speedy and public trial by an impartial jury" of 12 (less than 12 jurors are allowed in other than courts of record); to be informed of the accusation; confrontation of witnesses; compulsory process for favorable witnesses; assistance of counsel and when ordered by a court of record "reasonable assistance as may be necessary to perfect and prosecute an appeal." The convention added to these rights the requirement that an accused in every criminal prosecution shall have "an appeal as a matter of right."

The guarantee against prosecution for treason on unsubstantial evidence was carried over with only a minor change in punctuation. Although jurisdiction over prosecutions for treason and sedition has been preempted by the federal government as was made clear in **Pennsylvania v. Nelson** (1956), the convention decided to retain this guarantee in view of the possibility that the federal government might relinquish to the states some of the jurisdiction in this area which is presently preempted. The possibility that war disaster might cut the state off from federal authority for a period of time was also considered in the decision to retain this provision.

The present constitutional provision on subversion—adopted as an amendment in 1950—was not carried over to the proposed constitution. The convention concluded that it was inappropriate in a bill of rights since it defined a new crime and made it punishable and therefore limited rather than guaranteed rights. The convention felt that its last paragraph violated freedom of speech as provided for in the state and federal constitutions and that statutes could deal effectively with this subject matter within the limits of the state and federal constitutions.

Equal Protection and Civil Rights

A new provision guarantees each person the "equal protection of the laws" and the exercise of his

---

[2] A redundant phrase and an obsolete sentence relating to imprisonment for military fine in time of peace were eliminated.

civil or political rights without discrimination because of religion, race, color or national origin." The legislature is required to implement the provision "by appropriate legislation."

Civil Rights Commission. A new civil rights commission would be established by a provision in the executive article (Art. V, Sec. 29). This commission would be concerned with the new provision on equal protection and civil rights and other constitutional and statutory civil rights guarantees. This commission's constitutional status would be unique among the states. It would have eight members—not more than four of the same political party—appointed by the governor, subject to senate disapproval within 60 days, for four-year staggered terms. An annual appropriation for the commission is required.

The commission is required to investigate cases of "alleged discrimination against any person because of religion, race, color or national origin" with respect to civil rights guaranteed by the constitution or by law. The commission is also required to "secure the equal protection of such civil rights without such discrimination." The commission is given power in accordance with the constitution and general laws governing administrative agencies to prescribe its own procedures, to hold hearings, administer oaths, subpoena witnesses and records through court authorization, take testimony, and to issue appropriate orders; and to have "other powers provided by law to carry out its purposes." Appeals from orders of the commission are to be tried (de novo) in the circuit court having jurisdiction.

Unenumerated Rights Reserved

A new provision states that the enumeration of constitutional rights "shall not be construed to deny or disparage others retained by the people."

ELECTIONS

Many of the provisions on elections were altered by the convention in framing the proposed constitution. The provisions for the popular initiative by petition for statutes and for popular referendum by petition on laws enacted by the legislature were transferred from the legislative article to the elections article.

Major Changes

1. Legislative discretion is extended with respect to: local residence requirements for voting; exclusion of persons from voting because of mental incompetence or penal confinement; absentee voting and other matters relating to elections.

2. Property ownership is required for voting on an increase in local ad valorem tax rate limitations for more than five years.

3. The Spring election is eliminated.

4. Control of local boards of canvassers by one party is prohibited.

5. Sufficiency of a statement for recall of elected officers is made a political question not subject to judicial review.

6. Changes are made in initiative and referendum for statutes: detail deleted; amendment of initiated laws by a three-fourths vote of legislature allowed; law given immediate effect made subject to referendum.

Qualifications for Voting

The United States citizenship, 21-year age and six-month state residence requirements for voting have been retained. The requirement of 30 days' residence in a city or township (with exceptions) has been deleted and replaced by "requirements of local residence" as provided by law. The legislature is required to "define residence for voting purposes" which replaces various constitutional details on this matter. A new provision authorizes the legislature to exclude persons from voting because of mental incompetence or penal confinement.

Property Ownership Required for Special Voting Purposes. The requirement that only property owners and their spouses may vote on bond issues by a political subdivision of the state was retained. This requirement was newly applied to voting on an "increase of the ad valorem tax rate limitation" for more than five years, but eliminated for voting on the direct expenditure of public money.

Presidential Elections. In order to increase participation in presidential elections, the legislature may require a shorter period of residence for citizens residing in the state for less than six months. The legislature may also waive residence requirements for former citizens who have moved to another state if they do not meet the residence requirements for voting in that state.

Spring Election Eliminated

Under the proposed constitution, all regular elections for national, state, county and township officers are required to be held at the November election in even-numbered years.[3] This provision would eliminate the April election required by the present constitution in odd-numbered years. The election of state board of education and university board members, supreme and circuit court judges and township officers would be shifted to the November election.

Regulation of Elections

The legislature is required to enact laws to regulate the "time, place and manner of all nominations and elections," except as otherwise provided in the constitution. Requirements that laws be enacted to preserve the purity of elections, and guard against abuses of the elective franchise are carried over from the present constitution.

New requirements were added that laws be enacted to "preserve the secrecy of the ballot" and to provide for a "system of voter registration and absentee voting."[4] Another new feature prohibits a "ballot designation" for any candidate in a partisan primary or partisan election except when necessary to identify candidates for the same office having the same or similar surnames.

Boards of Canvassers

The present provision requiring establishment by law of a board of state canvassers-having four members a majority of whom shall not be of the same political party-was carried over without change in effect. The prohibition of control by one party was extended to local boards of canvass-

---

[3] On the first Tuesday after the first Monday—or on "such other date" as members of Congress are regularly elected.

[4] Some present constitutional details on absentee voting were deleted.

ers. A candidate for an office to be canvassed remains ineligible to be a member of the state board. Such ineligibility was extended to local boards of canvassers. Inspectors of elections were newly made ineligible to membership on the state board or local boards.

Recall of Elective Officers

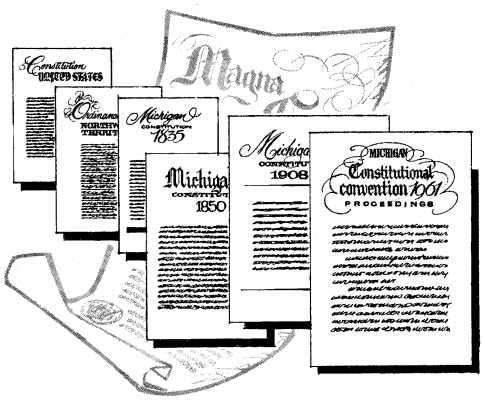
The recall provision remains unchanged with respect to the 25 per cent requirement for the recall petition— 25 per cent of the number voting in the preceding election for governor in the district affected. All elective officers, except judges of courts of record, remain subject to the recall procedure. The convention added a new sentence to this provision which makes determination of the sufficiency of a statement of reasons for recall a political rather than a judicial question—that is, not subject to judicial review.

Initiative and Referendum for Statutes

The provisions on the popular initiative by petition for laws and on popular referendum by petition for laws enacted by the legislature were shifted from the legislative article in the present constitution to the elections article in the proposed constitution. Much of the procedural and other detail was deleted, but the provisions remain self-executing.

The number of signers required for an initiatory petition remains eight per cent-and for a referendum petition five per cent—of the total number of votes for governor at the preceding general election. Use of the referendum with respect to appropriation acts continues to be prohibited. The provision on the referendum was altered to make it clear that the referendum may be invoked against an act given immediate effect which would then be suspended until approved or rejected by the voters.

An initiated measure remains immune from the governor's veto. An initiated law cannot be amended or repealed except by a vote of the electors unless otherwise provided in that law, or by a three-fourths vote of the members elected to and serving in each house of the legislature. Such amendment or repeal by the threefourths legislative vote is a new feature. The legislature continues to be permitted to amend any law approved by the people under the referendum procedure.



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 3 December 19, 1962

THE LEGISLATIVE BRANCH

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

Summary of Major Changes

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

---

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

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

Legislative Powers

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

Restrictions on Legislative Power

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

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

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

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

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

---

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

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

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

Legislative Restrictions Reduced or Eliminated

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

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

New Provisions on Legislation

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

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

1. implementation of the equal protection clause as related to civil and political rights (Art. I, Sec. 2);

2. implementation of some features relating to the new intermediate court of appeals including the determination of its jurisdiction and its judicial electoral districts (Art. VI, Secs. 8, 9 and 10);

3. establishment of courts of limited jurisdiction within five years which will supplant justice courts and circuit court commissioners (Art. VI, Sec. 26);

4. statutory provision for direct court review of "final decisions, findings, rulings and orders" of administrative agencies which are judicial or-quasi-judicial (Art. VI, Sec. 28);

5. statutory provision for a system of charter government for counties, acceptance of which would be optional by the counties—this system may include county home-rule features to the extent of the legislature's discretion.

6. statutes for the "protection and promotion of public health," and for the protection of "air, water, and other natural resources" from pollution or impairment.

Permissive. Examples of new permissive provisions are:

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

New Legislative Agencies

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

Legislative Auditor

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

Legislative Council

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

Legislative Procedure

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

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

Procedure on Bills

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

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

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

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

Legislators: Qualifications, Eligibility and Other Provisions

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

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

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

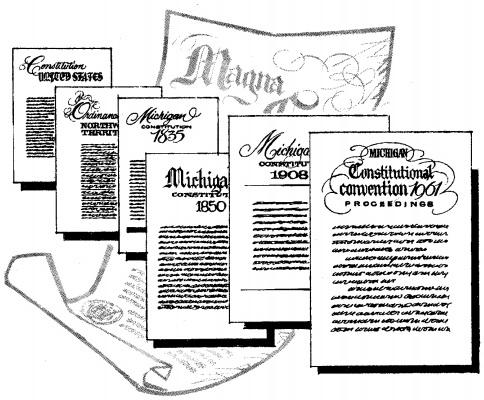
Ineligibility to Public Appointment. The proposed constitution retains the present prohibition of any legislator receiving a "civil appointment within this state" (except notary public) from the governor, the legislature or any other state authority during the term for which he is elected. The present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

Conflict of Interest

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

Compensation

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



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 4 December 26, 1962

APPORTIONMENT OF THE LEGISLATURE

Senate

- The number of senators is increased from 34 to 38 and the term of office is increased from two years to four.
- Senate districts will be reapportioned every ten years. Present senate districts are frozen permanently in the constitution.
- Senators will be apportioned among the counties on the basis of a combination population-area factor (80% population, 20% area). The present senate district boundaries are fixed in the constitution.

House

- The size of the house is fixed at 110 members. The present provision requires "not more than 110 members." The present two-year term of office is continued.
- All representatives will be elected from single-member districts while at present as many as five representatives can be elected from a single district.
- The house will continue to be apportioned among the counties on the basis of population, but the minimum requirement for a house seat for any county or group of counties will be raised from the present one-half of one per cent of the total state population to seven-tenths of one per cent. The method of equal proportions will be used to allot additional house seats among counties or groups of counties.
- Districting within counties will be done by the legislative apportionment commission, rather than by the county board of supervisors.

Apportionment Commission

- The proposed constitution establishes a legislative apportionment commission repre-

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

senting the major political parties and geographic regions of the state.

- The commission is responsible for reapportioning both the senate and the house, with the supreme court authorized to review any apportionment plan.
- Both the house and senate are to be reapportioned each ten years immediately after the results of the federal decennial census are available.

SENATE

The proposed constitution increases the number of senators from 34 to 38, lengthens the term of office from two years to four, and continues the present requirement of election from single-member districts. While in the present constitution the senate district boundaries are spelled out and frozen permanently, the proposed constitution provides for reapportionment of the senate every ten years, on the basis of a formula which includes both population and area factors (80% population and 20% area). The proposed constitution provides a detailed method for distracting the state into 38 single-member districts following each federal decennial census.

Computation of Apportionment Factors

Each county is to be assigned an apportionment factor computed by dividing its population by the total state population and its land area by the total state land area. The percentage of total state population in the county is to be multiplied by four and then added to the county's percentage of total state land area to determine the apportionment factor for the county. This gives population four times as much weight as land area in the apportionment factor. For all counties in the state together there are a total of 500 apportionment factors, 400 or 80% based on population and 100 or 20% based on land area.

Arranging the Counties into Districts

The counties are to be separated into two groups: 1) counties having 13 or more apportionment factors; and, 2) counties having less than 13 factors. The 38 senate seats are to be allocated between these two groups of counties in the proportion that the total number of apportionment factors of the counties in each group bears to the total number of apportionment factors in the state, rounded to the nearest whole number. There is a different procedure for arranging senatorial districts within each of these groups.

Counties with 13 or More Apportionment Factors. After the total number of senators assigned to the group of counties with 13 or more apportionment factors has been determined, the proposed constitution provides that the senate seats be apportioned among the counties in the group as follows:

1. Each of the counties is entitled to at least one senator;
2. The remaining senators allocated to the group are to be distributed among the counties by the method of equal proportions applied to the apportionment factors.

The method of equal proportions is a mathematical formula which is to be applied to the apportionment factor of each county in this class to determine how the additional seats are

to be allocated. The method of equal proportions involves the use of a complex mathematical formula to develop a priority list used to determine which county is most entitled to each of the additional seats to be allocated.

Counties With Less Than 13 Apportionment Factors. The counties with less than 13 apportionment factors must also be arranged into single-member senatorial districts. The proposed constitution provides that these counties be arranged into senate districts that meet the following requirements:

1. Districts are to have as nearly as may be possible 13 apportionment factors, with no less than 10 factors and no more than 16 factors;

2. Districts are to be compact, convenient, and contiguous by land;

3. Districts are to be as rectangular in shape as possible; and,

4. Existing senatorial district lines shall be followed to the extent possible if other requirements are met.

The present constitution contains no similar requirements inasmuch as it lists the counties which are to be included in each senate district. Under the proposed constitution the legislative apportionment commission will arrange the counties into senatorial districts each ten years.

Districting Within a County. Since the proposed constitution provides for the election of senators from single-member districts, counties entitled to two or more senators must be divided into districts. The populations of such districts are to be as nearly equal as possible, but not less than 75% nor more than 125% of a ratio computed by dividing the total population of the county by the number of senators to which it is entitled. The proposed constitution further provides that districts shall follow city and township boundaries to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible. The requirements that populations of the district fall within a 75-125% range and that districts be compact and uniform in shape are new requirements not presently provided for. Districting within a county will be done by the legislative apportionment commission.

HOUSE OF REPRESENTATIVES

In the proposed constitution the size of the house is fixed at 110 members (which at present is the maximum) elected for two-year terms. Representatives are to be elected from single-member districts, while at present there can be as many as five representatives elected from a district. Districts are to consist of compact and convenient territory contiguous by land. Under the present constitution districts are required to consist of convenient and contiguous territory, and counties can be "contiguous" by water.

Apportionment of Seats Among the Counties

While both the present and proposed constitutions utilize population as the basis of apportionment of house seats among the counties, there are several significant differences in the methods used. Under the proposed constitution the house seats are to be apportioned

among the counties on the basis of population. Any county or group of counties having seven tenths of one percent of the state population is to be made a representative area and entitled to one member (the present ratio of five tenths of one per cent is increased to seven tenths of one per cent). The proposed constitution provides that after the state has been apportioned into representative areas, each of which receives one representative, the remaining seats are to be apportioned among these areas on the basis of population by the method of equal proportions. At present, each county or group of counties with more than five tenths of one per cent of the state population is entitled to an additional seat for each additional one per cent of the state population. Use of the method of equal proportions will achieve the most equitable distribution of the additional seats among the previously established areas as measured by the relative differences in the average population per representative district and in the individual share in a representative per district. Equal proportions is the method used in allocating seats in the U. S. House of Representatives among the states.

Districting Within a Representative Area

Any county comprising a representative area entitled to two or more representatives is to be divided by the apportionment commission into single-member districts each of which shall contain not less than 75 per cent nor more than 125 per cent of a ratio of representation determined by dividing the population of the county by the number of seats to which it is entitled. These districts are to follow city and township boundaries when possible and are to be compact, contiguous and as nearly square in shape as possible.

A representative area consisting of more than one county which is entitled to two or more representatives shall be divided into single-member districts. The districts shall follow county boundary lines and shall be as equal as possible in population.

APPORTIONMENT COMMISSION

Under the present constitution the legislature is responsible for the apportionment of the house seats among the counties in the third year following each decennial census (1953, 1963, etc.) and if it fails to act, the board of state canvassers is to make the reapportionment. In any county entitled to two or more senators or representatives the county board of supervisors has the responsibility of distracting within the county.

Under the proposed constitution both the house and senate are to be reapportioned following the publication of each decennial census by a commission on legislative apportionment. The commission is to consist of eight members, with the state organizations of the two major political parties each selecting four members. One member from each party is to come from each of four regions of the state—1) upper peninsula, 2) northern half of lower peninsula, 3) western half of southern lower peninsula, and 4) eastern half of southern lower peninsula. If a third party polled more than 25 per cent of the votes for governor it would also be entitled to four members, and the size of the commission would be increased to 12 members. The secretary of state shall be secretary of the commission and furnish technical services.

The commission shall convene 60-75 days after the adoption of the constitution and after the results of each decennial census are available and shall complete its work within 180

days. The commission shall reapportion and redistrict house and senate seats in accordance with the provisions of the constitution. A plan approved by a majority of the members shall become law. If a majority of the members of the commission cannot agree on a plan, then any member or group of members may submit plans to the supreme court. The supreme court shall determine which plan is to be adopted.

Upon the application of any elector the supreme court may compel the performance of duties imposed in this section and may review any plan adopted by the apportionment commission and remand such plan to the commission for further action if it fails to comply with the requirements of the constitution.

COMPARISON OF APPORTIONMENTS

In order to compare the results of the apportionment processes provided for in the proposed constitution with the present apportionment of the house and senate, illustrative apportionment plans were prepared by the Citizens Research Council. While the proposed constitution provides comparatively detailed apportionment procedures to reduce the amount of discretion in the apportionment process, there are still several alternate ways in which counties could be combined into senate districts or representative areas. Because of this, the illustrative apportionment used in this Analysis is shown only by major regions of the state rather than by individual district.

The comparisons of apportionment are shown for the senate and house. It should be noted in the tables that "1/2" of a senate or house seat is used when a district consists of counties which are not all in the same region (e.g., if there are two counties in a district, one of which is in region 3 and the other in region 4, each region is shown with 1/2 seat).

Comparison of Senate Apportionments by Region

	Number of Senate Seats		
Region	Present Constitution	Proposed Constitution	Change
1. Upper Peninsula	3	3	—
2. Northern Lower Peninsula	3½	3	-½
3. South West Michigan	9½	8	-1½
4. South East Michigan	9	9	—
5. Wayne, Oakland, & Macomb	9	15	+6
Total	34	38	+4

The four additional seats resulting from the increase in total membership to 38 will all go to Wayne, Oakland and Macomb counties and two present seats will be shifted to them from the Northern Lower Peninsula and Southwestern Michigan. Of these six seats Wayne will gain three, Oakland two, and Macomb one.

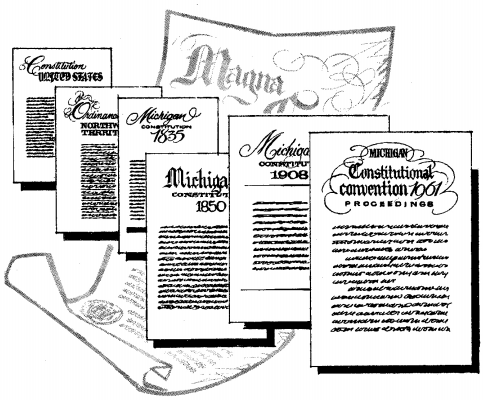
The present house apportionment was made in 1953 on the basis of the 1950 census of population and the present constitution provides that the house is to be reapportioned in 1963 on the basis of the 1960 census. Thus, a comparison of the apportionment under the proposed constitution with the present (1953) apportionment would reflect not only changes resulting from the changes in the apportionment formula, but also a decade of

population change. Consequently, the comparison shows the results of apportionment under the present constitutional provision based on both the 1950 census and the 1960 census and shows the apportionment under the proposed constitution based on the 1960 census.

Comparison of House Apportionments by Region

	Number of House Seats			
	Present Constitution		Proposed	Change, Present to
Region	1950 Census	1960 Census	Constitution 1960 Census	Proposed Provision 1960 Census
1. Upper Peninsula	7	6	5	-1
2. Northern Lower Peninsula	8½	7½	5½	-2
3. South West Michigan	25	25	23	-2
4. South East Michigan	22½	23½	24½	+1
5. Wayne, Oakland, & Macomb	47	48	52	+4
Total.	110	110	110	—

Under the present constitution the reapportionment of the house on the basis of the 1960 census will cause a net loss of one seat each in the upper peninsula and the northern lower peninsula. The southeastern Michigan region and the Wayne, Oakland and Macomb region will each gain one seat. Apportionment under the provisions of the proposed constitution would result in a further shift of seats. The change in the apportionment formula would remove one additional seat from the upper peninsula and two additional seats from the northern lower peninsula. The southwestern region would lose two seats. These seats would be gained in the southeastern region (one seat) and in the Wayne, Oakland and Macomb region (four seats).



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 5 December 27, 1962

THE EXECUTIVE BRANCH

The executive article of the proposed constitution represents a major revision of the present constitution in this area. At present, the governor cannot exercise unified direction of all the departments and agencies in the executive branch because of constitutional and statutory obstacles. In this analysis of provisions on the executive branch, emphasis will be given to their effect on the governor's role as head of the executive branch.

Summary of Major Changes

1. The term for governor and other elective executive officers is extended from two to four years.
2. The number of elective executive officers is reduced from eight to four.
3. The powers of the governor are increased.
   a) The governor's capacity to supervise the executive branch would be increased by a requirement that executive agencies be consolidated into not more than 20 major departments.
   b) The governor is granted authority to keep the executive branch organized efficiently.
   c) The governor would have increased power to appoint, remove and supervise department heads.
   d) The governor would be given authority for an executive budget and for control of expenditures.
4. New provision is made for temporary succession to the governorship.

The Governor: Election and Term

The governor will be elected for a four-year term in November of non-Presidential even-

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

numbered years—the first election for the four-year term will be in 1966. The lengthened term is intended to provide the governor with more time to develop executive policy and administrative efficiency and to give the electorate a better basis for judging the quality of the governor's administration. Election of the governor in non-Presidential years is intended to separate state and national issues and to stimulate voter interest in such elections.

The age requirement of 30 years is retained for eligibility to the office of governor or lieutenant governor; four years as a registered elector replaces the present requirement of five years of United States citizenship and two years of state residence.

Other Elective Officers. The lieutenant governor will be nominated in party convention and elected jointly with the governor for the same term. The lieutenant governor will continue to be president of the senate. He will have the deciding vote (now prohibited) in case of equal division. The governor may "request" him to perform other duties but shall not delegate any power to him. The secretary of state and attorney general will be nominated in party convention and elected at the same election and for the same term as the governor and lieutenant governor.

Four presently elected state officers would become appointive: state treasurer by the governor; superintendent of public instruction and highway commissioner[1] by boards; and auditor general by the legislature.

The Governor: Executive and Administrative Powers

The governor is vested with the "executive power" under the proposed constitution which is intended to be more extensive than the "chief executive power" with which he is presently vested.

Executive Organization

The present constitution provides no framework for organization of the executive branch beyond the designation of several elective executive officers and of several elective and appointive boards and commissions. At present there are also scores of departments and agencies operating under statutory authority in the absence of any constitutional restriction on their number. Most of these departments and agencies are headed by boards and commissions rather than single directors.

Mandatory Allocation Within Limit of 20 Departments. An important new feature in the proposed constitution is the prescribed maximum of 20 principal departments, among and within which all executive and administrative agencies are required to be consolidated and grouped "as far as practicable according to major purposes." The only exceptions to this requirement are the offices of governor and lieutenant governor, boards controlling state institutions of higher education, and temporary commissions or agencies in existence for two years or less. This prescribed maximum of 20 principal departments concerned with major functions is intended to increase the governor's supervisory capacity in his area of responsibility. The present fragmentation of administrative functions among scores of departments and agencies severely hampers effec-

[1] The state highway commissioner is presently elected under statutory authority.

tive supervision by the governor. The initial allocation or consolidation must be carried out by law within two years after the effective date of the proposed constitution or by the governor during the third year.

Five of these principal departments are designated in the proposed constitution: one headed by a state treasurer appointed by the governor; two headed by executive officers who remain elective—the secretary of state and the attorney general; one headed by an appointed four-member (bipartisan) highway commission; and one by an elective eight-member state board of education.[2] One or more of the other agencies having constitutional status such as the civil service commission, the liquor control commission, and the new civil rights commission could be made heads of principal departments by statute or be allocated within appropriate principal departments without thereby modifying their constitutional status.

To promote continued efficient executive organization, the governor would have continuing authority to alter the pattern of executive organization and the assignment of functions among the principal departments. Where such changes "require the force of law," the governor would submit executive orders to the legislature to become effective at a time designated by the governor unless disapproved within 60 days by a majority of both houses of the legislature. However, the legislature would retain its power to enact statutes relating to executive organization.

The Governor's Power of Appointment and Removal

Four types of department heads are possible under the proposed constitution. Three types are required: (1) an appointive single executive; (2) an elective officer; (3) a board or commission having constitutional status; (4) a fourth type is permitted—a board or commission established by statute.

The head of each principal department is required to be a single executive unless otherwise provided by the constitution or law. Two of these single executives heading principal departments remain elective officers—secretary of state and attorney general. The governor's power of appointment with respect to these offices is restricted to filling vacancies—with no senate confirmation required.

The state treasurer and other single executives heading principal departments must be appointed by the governor subject to senate confirmation. Senate confirmation—"by and with the advice and consent of the senate"—has been redefined to mean "appointment subject to disapproval by a majority vote" of those elected to and serving in the senate "within 60 session days" or the appointment "shall stand confirmed."[3] These appointed single executive heads of principal departments "shall serve at the pleasure of the governor."

When a board or commission is the head of a principal department, unless otherwise provided in the constitution, the members must be appointed by the governor subject to the new form of senate confirmation. The term of office and removal procedure for such members would be as prescribed by the constitution or by law. The term of office for

---

[2] See Number 8 of this series.

any statutory board or commission "created or enlarged" under the proposed constitution would be a maximum of four years, however. This feature would increase the governor's power to appoint members of such boards during his four-year term.

Commissions Having Constitutional Status. Under a new provision the governor would be required to appoint a state highway commission having four members (not more than two of the same political party) subject to the new form of senate confirmation for four-year staggered terms. This commission would appoint, and have power to remove, a state highway director who would be principal executive officer of the state highway department. Another new provision requires the governor to appoint a civil rights commission having eight members (not more than four of the same political party) subject to the new form of senate confirmation for four-year staggered terms.[4] The governor would continue to appoint the state civil service commission having four members (not more than two of the same political party) for eight-year staggered terms.[5] Senate confirmation is not required for such appointments.

Investigation and Removal For Cause. The governor's power (and duty) to inquire into the "condition and administration of any public office and the acts of any public officer, elective or appointive" could be exercised at any time rather than only when the legislature is not in session as presently provided. The governor's power to remove from office "any elective or appointive state officer, except legislative or judicial" for gross neglect of duty, corrupt conduct in office, or "any other misfeasance or malfeasance" could also be exercised at any time under the proposed constitution rather than only when the legislature is not in session as presently provided.[6]

The Governor's Power of Supervision

The governor would continue to be required to "take care that the laws be faithfully executed, " and to "transact all necessary business" with government officers. His authority to "require information in writing from all executive and administrative state officers" with respect to the duties of their offices is also continued.

The governor is given new power to initiate court proceedings (except against the legislature) to enforce constitutional or statutory mandates or to restrain violations of such by any state officer, department or agency, or by any local government. Another new provision specifies that each principal department "shall be under the supervision of the governor unless otherwise provided by this constitution."

---

[3] Senate confirmation could take two forms—passing a resolution of approval or taking no action within 60 session days. This new definition is applicable to all constitutional and statutory requirements of senate confirmation.

[4] The powers and duties of this commission are discussed in Number 2 of this series.

[5] Changes with respect to the civil service commission are discussed in Number 11 of this series.

[6] The governor is given new power to suspend such officers for the same causes.

Reprieves, Commutations and Pardons

Under the present constitution the governor has largely unrestricted power to grant reprieves, commutations and pardons while statutory regulations in this area may relate only "to the manner of applying for pardons." In the proposed constitution, all of the governor's power to grant reprieves, commutations and pardons is made "subject to procedures and regulations prescribed by law."

The Governor: Powers Relating to the Legislature

Under the proposed constitution the governor will continue to have authority to convene the legislature "on extraordinary occasions." He may convene the legislature elsewhere than at the state capital when it becomes dangerous "from any cause" rather than only "from disease or a common enemy" as presently provided.

Messages. The requirement that the governor "communicate by message" to the legislature is continued but it is newly required "at the beginning of each session." The part of the present provision requiring a message list the close of his official term" is omitted. The governor's authority to "recommend measures" to the legislature is continued.

Legislative Vacancies. The requirement that the governor issue writs of election for vacancies in the legislature is continued. A new feature added to this provision requires that any such election be held "in a manner prescribed by law."

Veto of Bills. The governor's power to disapprove bills passed by the legislature is continued in a revised form and remains in the legislative article (Art. IV, Sec. 33). The governor will have more time in which to consider bills—fourteen days "measured in hours and minutes" whether or not the legislature is in session. At present, he has "ten days, Sundays excepted" if the legislature is in session and "five days, Sundays excepted" after adjournment for bills passed in the last five days of a session. The majority required to override a veto would be two-thirds of the members elected to and serving in each house, which continues the present requirement except for the "and serving" feature.

Item Veto. The governor's power to veto items in appropriation bills is continued. The new time limit for vetoes and the minor change in the majority for repassage over the veto would also be applicable to item vetoes.

Executive Budget. The proposed constitution has a new provision which requires the governor to submit to the legislature a detailed budget setting forth proposed expenditures and estimated revenue for all state operating funds. Proposed expenditures cannot exceed the estimated revenue for each fund. The governor is required concurrently to submit general appropriation bills including the budget items to the legislature together with any necessary revenue bills to meet proposed expenditures. The governor is also authorized to submit amendments to appropriation bills to either house.

Reduction of Authorized Expenditures. A new provision provides a method by which authorized expenditures are to be reduced if it "appears" that actual revenues will fall below the estimates on which appropriations were based. The governor is to

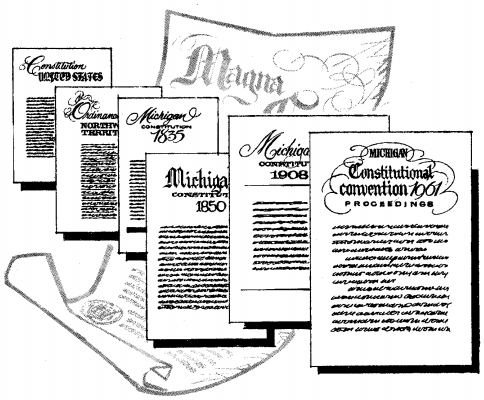
reduce expenditures in accordance with procedures prescribed by law with the approval of the appropriation committees of both houses. No such reduction can apply to the legislative or judicial branches, or to funds constitutionally dedicated. Expenditure of appropriated funds is declared not to be mandatory.

The Governor: Succession and Residence

The line of succession to the office of governor is altered to follow the revised list of elective executive officers—lieutenant governor, secretary of state and attorney general—beyond which others may be designated by law.

An important new feature provides a method of determining the "inability" of the governor whereby the next in line of succession would act as governor until the inability ceases. On joint request of the president pro tempore of the senate and the speaker of the house, a majority of the supreme court shall make a "final and conclusive" determination whether the governor or person acting as governor is suffering under an inability. On its own initiative, the supreme court shall determine "if and when the inability ceases." This is intended to fill the constitutional gap relative to "temporary" succession common to the federal and most state constitutions.

Executive Residence. A new provision in the proposed constitution requires a suitably furnished residence to be provided for the governor at the state capital. An allowance for its maintenance shall be provided by law.



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 6 December 28, 1962

THE JUDICIAL BRANCH

The proposed constitution makes the following major changes with respect to the judicial article:

1. Provisions to effectuate a unified judicial system.

2. Increased judicial and administrative authority for supreme court as head of the state court system.

3. A new court is established—an intermediate court of appeals-subordinate only to the supreme court.

4. Provisions on circuit and probate courts make these courts more adaptable to changes in judicial activity.

5. Courts of limited jurisdiction to replace justices of the peace and circuit court commissioners within five years.

6. Provisions relating to judges:

   a) Assignment of retired judges by the supreme court until judicial vacancies are filled by election replaces appointment by the governor.

   b) Incumbent judges may seek re-election by filing affidavits of candidacy.

   c) Uniform salaries are required by type of court; fee system is prohibited.

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

A Unified Judicial System

Under the proposed constitution, the state judicial power is "vested exclusively in one court of justice"—divided into the supreme court, the court of appeals, the circuit court (designated as a trial court of general jurisdiction), the probate court, and "courts of limited jurisdiction" which may be established by law for which a two-thirds vote of the legislature is required. The first four courts specified are designated as "courts of record." The courts of limited jurisdiction (which will supplant justices of the peace and circuit court commissioners within five years) may be designated "courts of record" by statute.

The intermediate court of appeals provided for in the proposed constitution is intended to relieve the supreme court of some of its appellate load and permit the supreme court greater discretion to sift judicial cases and concentrate on those involving more important questions. This and other features intended to increase the supreme court's judicial and administrative supervision of the other courts would emphasize the supreme court's role as head of a unified state judicial system.

Appeal and Review. Two new provisions in the proposed constitution are likely to increase judicial activity:

1. The accused in every criminal prosecution shall have "an appeal as a matter of right." (Art. I, Sec. 20)

2. All final decisions and orders—which are judicial or quasi-judicial and affect private rights or licenses—issued by any administrative agency are required to be "subject to direct review by the courts as provided by law," with specified exceptions relating to workmen's compensation and property tax appeals. The court review must include determination whether such decision is authorized by law and whether it is supported by substantial evidence in the record if a hearing is required.

The Supreme Court

Several changes from present provisions have been made in the proposed constitution with respect to the personnel of the supreme court, as well as its judicial powers including judicial administration.

Supreme Court Justices

1. The number of justices is fixed at seven. The present constitution does not specify the number of supreme court justices—eight are required by law. This number would be reduced to seven by not filling the first vacancy occurring after the proposed constitution's effective date.

2. The term of office is specifically required to be for eight years which is presently prescribed by law. Not more than two terms of office shall expire at the same time—a similar but clarified version of the present provision which prohibits more than two justices from going "out of office" at the same time.

3. No change is made in the provision for nomination of supreme court justices—as prescribed by law (presently by party conventions)-except that an incumbent justice may renominate himself by filing an "affidavit of candidacy" not less than 180 days before his term expires. Final election of justices remains "non-partisan." but at the November election—the April election having been discarded in the proposed constitution.

4. Selection of a chief justice by the supreme court from its membership is required by the proposed constitution. The chief justice shall perform "duties required by the court." The method of selecting a chief justice is carried over from present practice for which constitutional authority is not clear.

Supreme Court Powers

The supreme court retains unchanged its "general superintending control" over all courts and under its original jurisdiction the power to issue, hear and determine prerogative and remedial writs. Various changes have been made affecting the powers of the supreme court:

1. The court's appellate jurisdiction would be specifically under its own control—"as provided by rules of the supreme court."

2. The court's responsibility to "establish, modify, amend and simplify" judicial practice and procedure by general rule has been extended to all state courts rather than all courts of record as at present.

3. The supreme court is prohibited from removing a judge.

4. The court is required to appoint an "administrator of the courts" (presently a statutory office) to perform administrative duties assigned by it, and other supreme court assistants to aid in administering the state court system.

5. The court is authorized to appoint and remove its "staff," rather than the presently specified clerk, reporter and crier. The court is given "general supervision" of its staff; this is a change from the present requirement that court officers perform duties prescribed by law.

6. New power is provided the court to control the "preparation of its budget recommendations" and the expenditure of funds appropriated for court operations or its staff's activities.

Advisory Opinions. A new provision (Art. III, Sec. 8) permits the supreme court to issue advisory opinions on questions relating to the constitutionality of any law after its enactment but before its effective date. Such opinions may be issued only on the request of the governor or either house of the legislature.

Supreme Court Decisions

The requirement that decisions of the supreme court be in writing and contain a concise statement of facts and reasons is continued and made more comprehensive. A statement of reasons for each "denial of leave to appeal" is a new requirement.

Court of Appeals

The new intermediate court of appeals, inferior only to the supreme court, would have nine judges, but this number could be increased by law.

1. Court of appeals judges would be nominated and elected at nonpartisan elections from districts prescribed by law.

2. Court of appeals election districts would have equal population to the extent that this is possible under the requirement that districts follow county lines.

3. The terms of office for judges of the court of appeals would' be six years, arranged so that not all terms for judges in each district would expire at the same time.

4. The court of appeals' jurisdiction would be prescribed by law.

5. The sessions of the court of appeals and its practice and procedure would be prescribed by the supreme court. The supreme court may also require the court of appeals to sit in divisions of not less than three judges.

Other State Courts

Three other classes of courts—the circuit and probate courts and courts of limited jurisdiction—are required by the proposed constitution.

Circuit Courts

The nomination and election of circuit judges would remain non-partisan under the proposed constitution. They would continue to have a six-year term of office. A new provision requires staggering of terms in circuits having more than one circuit judge. other changes in provisions relating to circuit courts are:

1. Judicial circuits are required to be drawn along county lines.

2. Specific direct authority is given to the supreme court to assign circuit judges to court duty in other circuits.

3. The legislature's power to alter circuits and the number of circuit judges is continued, but such changes are made mandatory when recommended by the supreme court "to reflect changes in judicial activity."

4. The original jurisdiction of the circuit courts would be in all matters "not prohibited by law." Their appellate jurisdiction from all inferior courts and tribunals would be "except as otherwise provided by law." Their supervisory and general control over inferior courts and tribunals within their "respective jurisdictions" is required to be in accordance with supreme court rules.

Probate Courts

The nomination and election of probate judges would remain non-partisan. The following changes have been made with respect to probate courts:

1. The term of office for probate judge is extended from four to six years. In counties or districts with more than one probate judge the terms are to be staggered.

2. The requirement of a probate court in each county is unchanged, but the legislature is granted discretion to create or alter probate court districts of more than one county if approved by a majority voting on the question in each affected county. Another new feature would allow the office of probate judge to be combined by law with a "judicial office of limited jurisdiction within a county."

3. More than one judge of probate in each county or probate district may be provided by law. The present requirement that a county have over 100,1000 population in order to have more than one probate judge was not continued.

4. The probate court's original jurisdiction in all cases of juvenile delinquents and dependents is qualified by the added phrase, "except as otherwise provided by law."

Courts of Limited Jurisdiction

Within five years of the proposed constitution's effective date, the legislature is required to establish a court or courts of limited jurisdiction which will be subordinate to the circuit courts. Their powers and jurisdiction will be prescribed by law. The location of these courts and details relating to their judges are also to be prescribed by law.

Abolishment of Justice Courts and Circuit Court Commissioners. The courts of limited jurisdiction will replace the offices of justice of the peace and circuit court commissioner which will be abolished five years after the effective date of the proposed constitution if not previously abolished by law within that period.

General Provisions Affecting Judges

Justices and judges of all courts of record are required to be "licensed to practice law in this state." This is presently required only of supreme court and circuit court judges. The age limit of 70 years for election or appointment to judicial office is applied to all judges rather than only to supreme court and circuit judges as at present.

Judicial Vacancies

Any vacancy in a judicial office in any court of record is required to be filled "at a general or special election as provided by law." The supreme court may authorize retired judges "to perform judicial duties" from the time of a vacancy until a successor is elected and qualified. Any retired judge temporarily filling a vacancy is made ineligible for election to that office.

This provision for temporary assignment of retired judges to vacant judicial offices by the supreme court replaces the present requirement that the governor fill judicial vacancies by appointment. Any judge so appointed by the governor is eligible for election to that office under the present constitution.

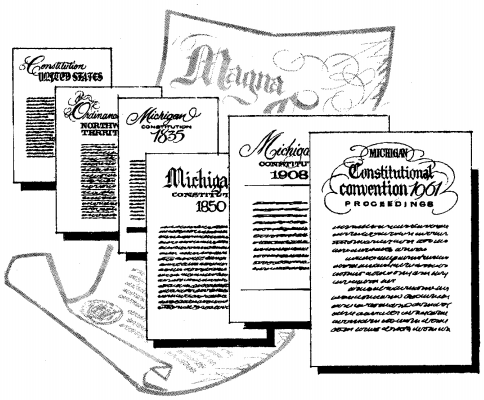
Affidavit of Candidacy

Any elected incumbent judge of the court of appeals, circuit court or probate court may be a candidate in the primary election for the office he holds by filing an "affidavit of candidacy in the form and manner prescribed by law." An incumbent supreme court justice may renominate himself by filing an affidavit of candidacy not less than 180 days before his term expires.

Salaries Uniform by Type of Court

Uniformity of salary is required for supreme court justices, for appeals judges, for circuit judges "within a circuit," and for probate judges "within a county or district." During a term of office salaries may be increased but not decreased except to the extent of a general salary reduction in all other branches. Under the present constitution, salaries of public officers except circuit judges can be neither increased nor decreased "after election or appointment." The present provision which permits each circuit judge to receive additional salary from any county in which he holds court is continued in the proposed constitution.

Remuneration from Fees Prohibited. A new provision prohibits payment of any judge from the fees of his office or the measurement of his salary by fees or funds received or by the amount of judicial activity.



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 7 January 4, 1963

TAXATION AND EARMARKING OF REVENUES

The proposed constitution includes taxation and earmarking provisions relating both to the state and to local governments. Constitutional provisions on taxation and earmarking of revenues are generally in the nature of limitations on the legislature's power. In the absence of specific state constitutional provisions, the legislature's powers to tax would be relatively unlimited. The provisions of the proposed constitution on taxation and earmarking continue many of the present restrictions on the legislative power, add some new restrictions and eliminate or liberalize some of the present restrictions.

Taxation

Among the major provisions in the taxation section of the proposed constitution are the following:

- The present prohibition against taxation by reference to other tax laws is deleted.
- The present uniform rule of taxation for the general property tax is continued.
- The requirement that all other taxes must be uniform by class is continued. This permits graduated taxes, except for the income tax and the property tax.
- A new explicit restriction is that no income tax may be imposed by the state or its subdivisions that is graduated as to rate or base.
- The four per cent limit on the sales tax is continued.
- The present reference to the 1946 statutory base of the sales tax is deleted, thus clarifying the legislature's authority to define the base.
- The legislature is given greater discretion in determining what kinds of property are to be subject to the general property tax.
- Certain property owned and used by charitable organizations is to be exempt from the property tax.
- Property may not be assessed at more than 50 per cent of the true cash value after Janu-

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

ary 1, 1966.

- State assessed public service business (utilities) may be taxed at alternate rates.
- The 15-mill limit on property taxes is made less restrictive by providing an alternate 18-mill limit, by exempting taxes levied for debt service, and by specifically exempting from the limitation all charter units of government.
- Only property owners may vote on increasing the millage limitation for more than a five year period.
- Home rule cities and villages and charter counties are given constitutional authority to impose non-property taxes, subject to limitation and prohibition provided by law.

General Provisions

Section 1 of the Finance and Taxation Article (IX) continues the present requirement that the legislature impose taxes sufficient with other resources to pay the expenses of state government. This instruction to the legislature to use its taxing powers to finance the costs of state government is enforced in the proposed constitution by a new requirement that appropriations shall not exceed estimated revenues. The proposed constitution also continues the present prohibition against surrendering, suspending or contracting away the power of taxation.

A significant modification in the general provisions on taxation is the deletion of the present prohibition against tax laws including references to any other law. The new provision requires only that tax laws distinctly state the tax. Thus, under the proposed constitution it would be possible, for example, for a state income tax law to refer to the federal income tax.

There are two other general provisions on taxation that are of considerable significance:

First—Property subject to the general ad valorem property tax shall be taxed uniformly; and,

Second—All other taxes shall be uniform by class.

These provisions continue the present requirements that property taxes be at a uniform rate and upon a uniform base of assessment while all other taxes must be uniform only by class (the rate or base of the tax can vary by class). Thus, taxes other than the property tax can be graduated, with the exception of the income tax (see below).

Provisions Relating to Specified Taxes

In addition to the general provisions on taxation, the proposed constitution contains several provisions relating to specified types of taxes—the income tax, the sales tax, the property tax, and other taxes.

Income Tax. The proposed constitution prohibits the state or any of its subdivisions from imposing an income tax "graduated as to rate or base." As noted previously, this is an exception to the general provision that taxes other than the property tax may be graduated so long as they are uniform upon the classes upon which they operate. This provision is intended to prohibit a graduated income tax either through progressive rate structure or

through applying a flat rate to a base that is graduated (such as the amount of federal income tax you pay). The convention committee on finance and taxation indicated that this provision would not prohibit allowing reasonable exemptions in a flat-rate income tax, but would prohibit a graduated tax.

Sales Tax. The proposed constitution continues the present prohibition against the legislature imposing a sales tax of more than four per cent on sales of tangible personal property. The present reference in the sales tax provision to the "1946 statutory base (not rate)" has been deleted in order to clarify the legislature's authority to change the base of the tax. (See below, "Dedication of Revenues," for the new earmarking provision). The proposed constitution also continues the present provision that the legislature may provide for an excise tax on the retail sales of alcoholic beverages.

Property Tax. The proposed constitution makes a number of changes in the constitutional basis of the property tax and modifies somewhat the present rate limitations.

In respect to the base of the property tax the major provisions and changes are the following:

1. While the present uniform rule of property taxation is continued, it is modified by limiting the rule to "real and tangible personal property not exempt by law." Under the present constitution all property (including intangible personal property) is subject to the uniformity requirements except property paying specific taxes. Thus, under the present provision property can be exempted from the uniform rule of property taxation only by subjecting it to a specific tax in lieu of the property tax (such as the specific tax on intangibles), while under the new provision property can be exempted by law without imposing any in-lieu tax.
2. In addition, the proposed constitution provides that the legislature may provide for alternate means of taxation of designated real and tangible personal property in lieu of the general property tax.
3. Property owned and occupied by non-profit, religious and educational organizations and used exclusively for their purposes, as defined by law, shall be exempt from the property tax.
4. The legislature is to provide for the determination of the true cash value of property subject to the general ad valorem tax. The uniform assessments of such property shall not exceed 50 per cent of its true cash value after January 1, 1966. This is a major change from the present constitutional requirement that property be assessed at its cash value.
5. The legislature is to provide for a system of equalization of assessments.
6. The legislature is to provide for state assessment of the property of public service businesses now state assessed (telephone companies, railroads, etc.) and of other property designated by the legislature. Property assessed by the state is to be at the same proportion of true cash value as specified for property subject to the general property tax. The proposed constitution provides for alternate rates of taxation on such property: 1) the average state tax rate on general property (total state equalized value of property divided by the total amount of general property taxes levied) presently used, or, 2) the legislature may provide as an alternate that the property of each business assessed by the state be taxed at the average rate of those counties in which the prop-

erty of the business is situated (total state equalized value in counties in which property is located divided by the total general property tax levy in those counties).

In addition to the provisions on the base of the property tax and the method of taxing the property of public utilities, the proposed constitution also contains several provisions limiting the rate of the property tax:,

1. While the 15-mill limit on property taxes is continued, an alternate 18-mill limitation is provided. Under the present and proposed 15-mill limitation the 15 mills must be allocated among the units subject to the limitation. Under present law this is done annually by a tax allocation board in each county. The proposed constitution provides that under procedures provided by law a majority of voters in any county may approve separate tax limitations for the county, and the townships and school districts therein, which limitations cannot exceed an aggregate of 18 mills. This separate tax limitation provision would eliminate the necessity for annually allocating millage among the various units. The separate rates may be changed by vote of the people, but the total cannot exceed 18 mills.
2. Taxes levied for the payment of principal and interest on bonds are specifically exempted from the millage limitations and may be levied without limitation as to rate or amount. Thus, approval of a bond issue will automatically carry with it authorization to levy the taxes necessary to retire the debt.
3. The 15-mill or 18-mill limitation may be increased to an aggregate of 50 mills for not more than 20 years at any one time, if approved by a majority of the *qualified* electors voting on the question. Under the Elections Article (II) of the proposed constitution only property owners and their spouses are qualified to vote on an increase for a period of more than five years. At present any elector can vote on a millage increase.
4. Specifically exempted from the millage limitations are cities, villages, charter counties, charter townships, charter authorities or other authorities, whose tax limitations are provided by charter or by general law. The general laws providing for city and village home rule and charter counties shall limit their rate of ad valorem property taxation.
5. The new provision specifically applies the limitation to the "assessed valuation of property as finally equalized," which is the current practice by court interpretation.
6. A new proviso is that the property tax limit in any school district extending into two or more counties may be that available in the county containing the greatest part of the area of the district.
7. The proposed constitution continues the present provision that the general property tax for county road purposes cannot exceed in any year one-half of **one** per cent (5 mills) of the assessed valuation for the preceding year.

Local Non-Property Taxes. A major innovation in the proposed constitution is the authorization for home rule cities and villages and charter counties to levy non-property taxes, subject to constitutional and statutory limitations and prohibitions. These local units will thus have considerable discretion in imposing taxes while the legislature will be able to regulate the non-property tax field by prohibiting or limiting specified kinds of non-property taxes. At present, all constitutional taxing authority is vested in the state, and local units can levy only those taxes which they are authorized to levy by the state.

Present laws authorize counties to levy only the property tax and home rule cities and villages can levy only the property tax and "excises" if so provided in their charters.[1]

Earmarking of Revenues

Among the tax revenues presently earmarked or dedicated to expenditures for particular purposes by constitutional provisions are the gas and other motor vehicle taxes, two and one-half cents of the four cent sales tax, and a number of specific taxes earmarked to the primary school interest fund. The proposed constitution continues the earmarking of gas and motor vehicle taxes and the sales tax, but eliminates the earmarking of specific taxes to the primary school interest fund.

Highway User Taxes

The proposed constitution continues the earmarking for highway purposes of taxes on motor vehicle fuels and motor vehicles but adds a new provision that "highway purposes" are to be defined by law. This will place primary responsibility in the legislature for determining what constitutes a highway purpose for which the earmarked funds may be expended. The new provision omits much of the detail in the present constitution.

Sales Tax

The present four per cent limit on the sales tax and the earmarking of a sizeable portion of sales tax revenue for local units and schools are continued.

Under the present provision one-half cent of the sales tax is to be returned to cities, villages, and townships on a per capita basis and two cents is earmarked to the school aid fund for aid to school districts. The proposed constitution makes several changes in the earmarking to local units and school districts.

Local Units

1. Instead of earmarking one-half cent of the sales tax, the proposed constitution earmarks one-eighth of the total retail sales tax. While under the present four per cent levy this amounts to the same thing, the use of a fixed proportion (one-eighth) instead of a fixed rate (one-half cent) will provide for an adjustment in the amount returned to local units if the rate of the sales tax is changed.
2. The new provision deletes the present reference to the "1946 statutory base (not rate)" thus clarifying the legislature's authority to change the base of the sales tax and to revise accordingly the amount of earmarked revenues. Thus, under the proposed constitution the legislature could exempt some class of sales from the tax and the resulting revenue loss would be reflected in the distribution to local units and schools.
3. While the new provision continues to require distribution to cities, villages and townships on a population basis, the present detailed computation procedure is deleted and the distribution is to be as provided by law.

---

[1] The question of whether a local income tax is an "excise" within the meaning of the home rule act is now before the Michigan Supreme Court.

School Aid

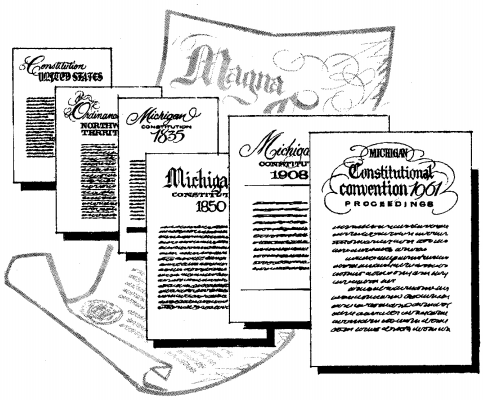
1. The proposed constitution earmarks one-half of the sales tax revenue (instead of two cents) and "other tax revenues provided by law" to the school aid fund. As in the case of local units, the use of a proportion (one-half) instead of a fixed rate (two cents) will permit increases or decreases in the sales tax revenues earmarked for schools if the total state rate is changed.
2. The present reference to the 1946 statutory base is omitted also from the school earmarking provision.
3. The present provision limits use of these earmarked funds to aid to school districts and school employees retirement systems, providing that there shall be appropriated to the retirement systems not less than 5 per cent nor more than 7.5 per cent of the salaries of the school district employees participating in the retirement systems. This provision is modified in the proposed constitution by providing that the school aid fund be used for aid to school districts, *higher education* and school employees retirement systems. "Higher education" is added to the list of purposes for which the earmarked funds may be used and the provision on the amount to be appropriated to the retirement systems has been deleted.

One further change should be noted—under the present provision earmarking sales tax revenues to local units and schools the cost of collection of the tax is deducted prior to distribution. Thus, the amount distributed is *net* after collection costs. The proposed constitution deletes this reference to deducting collection costs. Thus, apparently one-half and one-eighth of the *total* sales tax collection will be returned to schools and local units respectively, with the cost of collection borne by the general fund of the state.

Other Earmarking

The proposed constitution does not continue the earmarking of taxes to the primary school interest fund. The present constitution establishes a primary school interest fund and dedicated the inheritance tax, foreign insurance company taxes, and the ad valorem taxes on railroads, telephone and telegraph companies, etc., to that fund. Inasmuch as the primary school interest fund monies, currently about $62 million a year, are now used as an offset in the school aid fund distribution formula, elimination of the provision will not reduce automatically state aid to local schools. However, elimination of the constitutional earmarking will increase legislative discretion in this area. It should be noted also that the new school aid fund provision authorizes "other tax revenues provided by law" to be dedicated to the fund in addition to the one-half of the sales tax.

In addition to these provisions earmarking tax revenues, the proposed constitution continues the earmarking of penal law fines to the support of libraries, adding that county law libraries may also be supported from such fines.



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 8 January 7, 1963

EDUCATION - ARTICLE VIII

The education article of the proposed constitution represents a substantial revision of the present constitution in this area. The constitutional framework of general responsibility for elementary and secondary education has been altered substantially. Changes were also made with respect to the boards controlling institutions of higher education.

Major Changes

1. Discrimination in public schools is prohibited.

2. The following changes affect the state board of education:

   a) membership increased from four to eight;

   b) to have "general supervision" of public education except for four-year state universities and colleges; to appoint a superintendent of public instruction who would be "principal executive officer" of a state department of education;

   c) to be the "general planning and coordinating" agency for all public education including higher education;

   d) to appoint an advisory state board for public community and junior colleges.

3. The following changes have been made with respect to higher education:

   a) Michigan State and Wayne State Universities to have boards of control similar in composition and authority to the present board of the Uni-

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

versity of Michigan; these three university boards remain elective;

b) other four-year state institutions of higher education to have appointed boards of control similar in authority to the boards of the three larger universities;

c) each state institution of higher education is required to give the legislature an annual accounting of all income and expenditure; formal sessions of each institution's governing board are to be open to the public.

Encouragement of Education

The proposed constitution retains unchanged the present provision on the encouragement of education taken from the Northwest Ordinance of 1787:

> Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

General Provision on Public Schools

The provision of the proposed constitution relating to the public schools is as follows:

> The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

The language forbidding discrimination in public schools is new, as is the reference to secondary schools. The words "maintain and support" are used in place of "continue." The present requirement that all instruction be conducted in the English language was eliminated. Details relating to the distribution of the primary school interest fund were also eliminated, thereby allowing the legislature wider discretion with respect to "school aid."

The State Board of Education

Under the proposed constitution, the state board of education would have eight members nominated by party convention and elected at large for eight-year staggered terms. The governor would fill board vacancies by appointment for the unexpired term and be an ex-officio, non-voting member of the board. Under the present constitution the state board of education has four members—three elected for six-year terms and the superintendent of public instruction with a two-year term. Important changes have been made in the board's powers.

1. The state board of education would have "general supervision over all public education" except for four-year state colleges and universities. Adult education and "instructional programs" in state institutions are also placed under the board's supervision. The board is charged to provide "leadership" in all these areas of public education. Under the present constitution the elective office of superintendent of public instruction is vested with "general supervision of public instruction" and the present board of education has only limited statutory authority in this area.

2. The state board of education would appoint a superintendent of public instruction and determine his term of office. The superintendent would serve as non-voting chairman of the board, and be responsible for carrying out the board's policies in his capacity as "principal executive officer" of a state department of education "which shall have powers and duties provided by law."

3. The state board of education would be required to "serve as the general planning and coordinating body for all public education, including higher education." The board would also be required to "advise the legislature as to the financial requirements" for all public education including higher education. The state board of education would not continue to serve as the board of control for Eastern, Central, Western and Northern Michigan Universities.

4. The state board of education would be required to appoint a "state board for public community and junior colleges" composed of eight members with eight-year staggered terms. The superintendent of public instruction would be an ex-officio non-voting member of this board. This board (to be provided for by law) is required to "advise the state board of education concerning general supervision and planning for" public community and junior colleges and "requests for annual appropriations for their support."

Higher Education

Under the proposed constitution the Michigan State University Board of Trustees and the Wayne State University Board of Governors would become similar in composition and authority to the University of Michigan Board of Regents which remains unchanged. The three universities and one college presently under the supervision of the of the state board of education and other four-year state colleges would each have an appointed board of control.

The legislature would be required to "appropriate moneys to maintain" ten specified state universities and colleges and any others that may be established by law. Each institution would be required to give the legislature "an annual accounting of all income and expenditures."[1] Each institution would have an eight-member governing board whose formal sessions must be "open to the public."

Elective Boards Retained for the Major Universities

The University of Michigan would continue to have a governing board of eight members elected for eight-year terms. The Michigan State University[2] and Wayne State University boards would also have eight members elected for eight-year terms rather than six members elected for six-year terms as at present. Vacancies in any of these three boards would be filled by appointment of the governor. The present method of staggering university board terms—two members of each board elected every two years—or some other method, may be prescribed by law.

Each major university's governing board would continue to be a "body corporate" and to have "general supervision" of its institution. All three major university boards would have equal authority based upon the powers presently granted to the University of Michigan Board of Regents:

1. The Wayne State board would be granted the "control and direction" of all university expenditures. This authority is continued for the other two major university boards.

2. The Michigan State and Wayne State boards would no longer be required to perform duties prescribed by law.

3. Selection of a university president would continue to be a function of each university's board. Each university president would continue to be "principal executive officer" of the institution and to preside at board meetings as an ex-officio, non-voting member. The superintendent of public instruction would no longer be an ex-officio, non-voting member of the University of Michigan and Wayne State University boards.

Appointive Boards for Other Four-Year Institutions

Under the proposed constitution, seven other specified state universities and colleges (and any others established by law) would each have an appointed eight-member board of control. The seven institutions specified are:

1. Eastern Michigan University

2. Central Michigan University

3. Western Michigan University

4. Northern Michigan University
   (presently Northern Michigan College)

---

[1] This is presently required of Wayne State University.

[2] The words "of agriculture and applied science" would be eliminated from The University's title.

5. Michigan College of Science and Technology
   (presently Michigan College of Mining and Technology)

6. Ferris Institute

7. Grand Valley State College

The first four institutions listed are referred to in the present constitution as "the state normal college and the state normal schools," and are under the "general supervision" of the state board of education. The fifth institution listed is referred to in the present constitution as "the college of mines." The last two institutions listed have indirect reference in the present constitution as "other educational institutions as may be established by law." At present each of the last three institutions listed has a board of control by statutory authority.

The members of each of these boards would be appointed by the governor, subject to the disapproval of the senate within 60 days, for eight-year staggered terms. Appointments to vacancies in any of these boards would be subject to senate disapproval within 60 days.

1. Each of these appointive boards of control would be a "body corporate," with the same authority with respect to its institution as each of the three elective university boards would have.

2. The provision relating to the president of each of these institutions is the same as for the larger universities except that each appointive board may designate the president or one of its members to preside at meetings'.

Public Community and Junior Colleges

The legislature is required to provide by law for the "establishment and financial support" of public community and junior colleges. Colleges of this type "shall be supervised and controlled by locally elected boards." The state board of education would be responsible for "general supervision and planning" for such colleges and "requests" for their annual appropriations. A state board required to be appointed by the state board of education and advisory to it on matters relative to this type of college is discussed above in connection with the powers of the state board of education. There is no specific provision in the present constitution relating to this type of college and those presently established operate under statutory authority.

Institutions for the Handicapped

The proposed constitution provides as follows with respect to the handicapped:

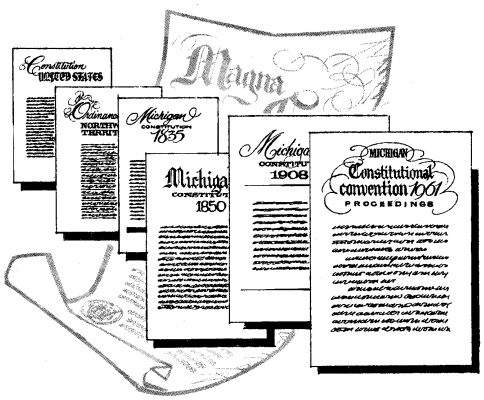
> Institutions, programs and services for the care, treatment, education or rehabilitation of those inhabitants who are physically, mentally or otherwise seriously handicapped shall always be fostered and supported.

This phraseology is more comprehensive and euphemistic than that of the present provision which requires institutions for those inhabitants who are "deaf, dumb, blind, feeble-minded or insane" to be fostered and supported.

Public Libraries

The legislature is required to provide by law for the "establishment and support" of public libraries. These libraries are newly required to be "available to all residents of the state under regulations adopted by the governing bodies thereof." All fines assessed and collected in counties, townships and cities for any breach of the state penal laws would continue to be assigned to public libraries—the words "and county law libraries as provided by law" were added in order to encompass present practice.

The present constitution requires the legislature to provide by law for the "establishment" of at least one library in each township and city. This requirement was not continued in the proposed constitution.



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 9 January 9, 1963

LOCAL GOVERNMENT

The Local Government Article (VII) in the proposed constitution continues the basic pattern of local government provided for in the present constitution, but makes a number of significant changes in the status and powers of the various units of local government (counties, townships, cities and villages, and metropolitan authorities). Among the most significant changes are the following:

- A new section requiring legislative implementation provides for a charter form of county government on a local option basis as an alternate to the present constitutional-statutory form of county government. A charter county may legislate on matters relating to its concerns, may levy non-property taxes subject to constitutional and statutory limitations and prohibitions, and to the extent provided by law may reorganize the structure of county government.

- Home rule cities are authorized to levy non-property taxes subject to constitutional and statutory limitations and prohibitions.

- A new provision requires that the powers of cities, villages, townships and counties be liberally construed and counties and townships are to have powers "fairly implied."

- The legislature is authorized to establish additional forms of government in metropolitan areas with such powers, duties and jurisdiction as provided by law.

- A new provision on intergovernmental cooperation gives a broad grant of power to local units jointly to administer or transfer functions, share costs, lend credit and cooperate with the state.

In addition to these major changes a number of other changes in local government provisions are included in the proposed constitution.

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

County Government

Under the present constitution counties do not have home rule powers—the constitution and statutes prescribe in detail the structure and organization of county government, the substantive power of counties to perform services, and the taxing power of county government. A major issue in the constitutional convention was whether and to what extent counties should be vested with home rule powers in these three major areas. As finally approved by the convention the sections of Article VII dealing with counties provide that counties may continue to operate under the standard constitutional-statutory (non-charter) form of county government or, when the necessary enabling legislation is enacted, may adopt a charter form of government.

Non-Charter Form of County Government

The present basic constitutional provisions on county government were continued with some modification in the proposed constitution. The sheriff, clerk, treasurer, register of deeds and prosecuting attorney will continue to be elected in each county but the term of office will be increased from two years to four years. The present board-of-supervisor system with one member from each organized township and representation of cities as provided by law was continued without change.

The powers and immunities of counties will continue to be provided by law and legislative, administrative, and other powers and duties may be conferred upon the boards of supervisors by law. However, a general provision was added that the constitutional and statutory powers of counties and townships are to be liberally construed in their favor and shall include those fairly implied and not prohibited by the constitution. The courts traditionally have construed narrowly the powers of counties and townships. In order to exercise a given power it has been necessary to point to specific constitutional or statutory authorization. This provision for liberal construction and implied powers is intended as a mandate to the courts to construe more broadly the powers of these local units.

Two major changes in the fiscal powers of non-charter counties are proposed. The present limitation of 1/10 of 1 mill that may be spent for capital outlay without a vote of the people is deleted and the county debt limit is increased from three per cent to ten per cent of its assessed valuation. Non-charter counties will continue to be subject to the 15-mill property tax limitation or to the new alternate 18-mill limitation (see *Analysis* on Taxation).

A new provision authorizes two or more contiguous counties to combine in ‘ to a single county with the approval of the voters in each county. The present provision authorizing cities of over 100,000 to organize into a separate county is deleted. A new section authorizes counties to intervene in proceedings involving the rates or services of privately owned public utilities. Airports were added to the list of public works projects which the legislature may authorize counties to undertake.

In addition to these changes, a number of minor changes or deletions were made in the present constitutional provisions on counties. On the whole there was relatively little major change in the basic structure, the substantive powers or the financial powers of non-charter counties.

Charter Form of County Government

As an alternate to the present constitutional form of county government, the proposed constitution provides a charter form of county government The charter. county provision is not self-executing and will require legislative implementation. The legislature by general law is to provide for the manner of framing and adopting a charter, the powers and limitations of charter counties, limitations on the rate of property taxation and on borrowing, and may permit the reorganization of county government in a form different from that set forth in the constitution.

Organization. The provision that the law *may* permit the organization of county government in a form different from that provided in the constitution was a compromise. Some convention delegates wanted to give counties the home rule power to determine their own structural organization (what officials they wanted and how they wanted to select them). Other delegates wanted all counties, charter and non-charter, to have the elected sheriff, clerk, treasurer, prosecuting attorney, register of deeds and a board of supervisors representing the townships and cities.

Under this provision the legislature can provide for no change in the organization of county government; it could provide one or more alternate forms of government allowing the charter county to select one of these; or, the legislature could follow the precedent established in the present city home rule act and give the counties a broad grant of home rule power to determine in its charter the form of organization it wants. This provision does not give counties structural home rule, but it does permit the legislature to do so.

Powers

As in the case of non-charter counties the powers and limitations of charter counties are to be provided by general law and are to be liberally construed and include those fairly implied. However, subject to law, a county charter may authorize the county to adopt resolutions and ordinances relating to its concerns. This provision is intended to broaden the powers of a charter county government to deal with its local problems.

Finance

The state enabling legislation for charter counties is to limit the rate of ad valorem property taxation for county purposes and to restrict their powers of borrowing money and contracting debts. Charter counties are specifically exempted from the general 15-mill limit provided for in Article IX, Section 6 of the proposed constitution. Charter counties are granted the power to levy taxes other than the property tax subject to limitations and prohibitions set forth in the constitution or law. Exempting charter counties from the

15mill limit and authorizing them to levy non-property taxes broadens significantly the taxing power of charter counties.

Procedure. The charter county provision authorizes any county with approval of a majority of electors voting on the question to frame, adopt, amend or repeal a county charter in a manner provided by law. The law shall provide for the election of a charter commission. The question of electing a charter commission may be placed on the ballot by a majority vote of the board of supervisors or by petition of five per cent of the electors.

Townships

The powers and immunities of organized townships and the legislative and administrative powers and duties of the township officers will continue to be provided by law. However, the powers of townships are broadened somewhat by the provision that constitutional and statutory provisions concerning townships are to be liberally construed in their favor and their powers shall include those fairly implied.

The structure of township government as prescribed in the constitution will be changed slightly. The supervisor, clerk, and treasurer remain constitutional elective officers and, in addition, the township trustee is given constitutional status by the provision that not to exceed four trustees are to be elected. The term of office may be increased by law from two years to not more than four years and, instead of being elected in April of odd numbered years, township officers will be elected in the November election. The present provision for commissioners of highways, constables and reclassification of justices of the peace are deleted.

Townships will continue to be subject to the constitutional property tax limitation, but charter townships are specifically exempted from the limitation. The present restriction on townships granting public utility franchises is continued. A new section provides for the dissolution of a township government whenever all of the township territory is included within a village.

Cities and Villages

The proposed constitution provides for a continuation of municipal home rule and extends the authority of cities and villages in the field of non-property taxation and in legislating with respect to municipal property and Government. General laws of the state are to provide for the incorporation of cities and villages and restrict their *property* taxing and borrowing powers. However, the taxing authority of cities and villages is broadened considerably by the provision that they can levy taxes other than the property tax subject only to limitations and prohibitions provided by the constitution and laws. Under the present constitution cities and villages have only the taxing authority granted them by the legislature.

The proposed constitution continues the grant of municipal home rule power by providing that the electors of a city or village have the authority to frame, adopt and amend a char-

ter under general laws. The present constitutional power to adopt resolutions and ordinances relating to municipal concerns subject to the constitution and laws is extended to municipal property and government. This provision is intended to give cities and villages greater power in these areas subject only to specific limitations imposed by law. It is further provided that the enumeration of powers in the constitution shall not limit or restrict the general grant of authority conferred upon cities and villages in the constitution.

The present provision on public works and public utilities were continued with some modification. Authorization was added for cities and villages to own and operate sewage disposal facilities and they may be authorized by law to increase the amount of heat, power or light sold outside the corporate limits. The present general prohibition against a city or village loaning its credit was changed to permit a city or village to loan its credit for public purposes as provided by law.

Metropolitan Government and Intergovernmental Cooperation

Two sections of the local government article of the proposed constitution deal with metropolitan government and intergovernmental cooperation. These two provisions expand significantly the power of the state and the local units to find solutions to the problems of providing governmental services in areas which have multiplicity of units of local government.

The metropolitan provision of the proposed constitution gives the legislature a broad grant of power to establish in metropolitan areas additional forms of government or authorities with such powers, duties and jurisdictions as the legislature shall provide, "notwithstanding any other provision of the constitution." This provision apparently does not contemplate the elimination of existing constitutional units of local government (counties, townships, cities and villages), but rather the creation of additional forms of government. However, since the legislature can establish the jurisdiction, powers and duties of any metropolitan unit notwithstanding any other provision of the constitution, it appears that the legislature would have considerable discretion in transferring powers and duties from existing units of Government to a metropolitan government. In order to discourage the formation of a number of overlapping single-purpose metropolitan authorities, the provision further requires that whenever possible metropolitan units shall be designed to perform multi-purpose functions.

The section on intergovernmental cooperation provides that the legislature shall by general law authorize two or more counties, townships, cities, villages or districts to:

1. contract with one another or with the state for the joint administration of their respective functions or powers;

2. share the costs and responsibilities of functions and services with one another or with the state;

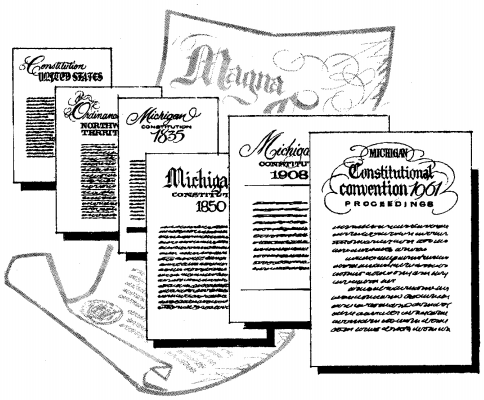
3. transfer functions or responsibilities to one another with **the consent of each unit**;

4. cooperate with one another and with state government; and,

5. lend their credit to one another in connection with any authorized publicly-owned undertaking.

The section also authorizes state and local officers and employees to serve on any governmental body established for the joint administration of functions. This is a broad grant of power for intergovernmental cooperation and permits a wide variety of intergovernmental arrangements subject only to the limitations imposed by the requirement that units cannot do jointly that which they cannot do individually and such other limitations as may be provided by law.

This section is not limited to metropolitan areas of the state and with the necessary enabling legislation all units of government in the state will be able to utilize these provisions, including those rural areas of the state which individually lack the population or the fiscal capacity to provide necessary services.



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 10 January 25, 1963

BUDGETING, ACCOUNTING, PENSION AND DEBT PROVISIONS

The proposed constitution includes new provisions on state and local budgeting and on the benefits and financing of public pension systems. Substantial changes are made in the provisions of the proposed constitution relating to debt and accounting for public funds.

One of the major innovations in the proposed constitution is the establishment of a constitutional framework for a state budget system. Michigan has had a state budget system for over forty years, but the system has been entirely statutory. This constitutional framework for a budget system is intended to promote the orderly management of the status financial affairs and to provide a mandate for a balanced budget.

Underlying the constitutional budget system are two basic provisions which have been carried over without substantial change from the present constitution.

1. "No money shall be paid out of the state treasury except in pursuance of appropriations made by law." This provision requires that all expenditures of money be authorized by statute or by the constitution. Thus, the spending of money is subjected to a number of procedural safeguards, some of which are applicable to all statutes and some of which specifically apply to appropriations statutes.

2. "The legislature shall impose taxes sufficient with other resources to pay the expenses of state goverment." This is a general mandate to the legislature to use its taxing powers to pay the expenses of the state.

The proposed constitution supplements these basic provisions by providing for a constitutional budget system which includes an executive budget, the legislative appropriation process, and a system of budget administration and control.

Preparation and Submission of the Executive Budget

The proposed constitution places in the chief executive of the state, the governor, the responsibility for preparing and submitting to the legislature a budget. The executive budget preparation

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

provision requires the following:

1. The governor shall submit to the legislature at a time fixed by law a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenues of the state. This gives the governor the constitutional responsibility and authority for submitting a comprehensive plan of financial operation covering all agencies and activities of the state including those officers and institutions not directly responsible to the governor.

2. Proposed expenditures *shall not* exceed estimated revenues. This is a requirement for the governor to submit a balanced budget.

3. At the same time the bud-et is submitted, the governor shall submit appropriation bills embodying proposed expenditures and any bills needed to provide additional revenues to meet proposed expenditures. The purpose of this provision is to place the executive budget before the legislature in the form in which the legislature acts on measures—in bill form.

4. The governor shall include in the budget the amount of any surplus or deficit incurred during the last preceding fiscal period and it shall be incorporated in an appropriation bill. This provision requires the financing of deficits within two years of when they occur and is designed to prevent the building up of a large accumulated deficit. Similarly, the provision requires that a prior surplus be included in the budget, thus preventing the accumulation of an unbudgeted surplus.

5. The governor is authorized to submit amendments to the next year's appropriation bills after they are in the legislature and is required to submit deficiency or supplemental appropriation bills for the current year. This will permit the governor to correct oversights in his original budget or provide for emergencies that arise during the budgetary process and requires the submission of bills to cover supplements needed during the current year.

Adoption of the Executive Budget

As a second step in the overall budget process the proposed constitution provides for legislative consideration and action on the executive budget bills.

1. The legislature must pass or reject the items set forth in the governor's appropriation bills prior to passing any appropriation for any other item, except supplemental appropriations for the current year. This provision is designed to insure consideration of and action on the governor's budget proposals prior to consideration of any other budget proposals.

2. Any bill requiring an appropriation is to be considered an appropriation bill. The apparent intent of this provision is to integrate into the budgetary process all legislation which involves the expenditure of money. This will prevent piece-meal appropriations which would vitiate the consolidated and balanced budget concepts.

3. One of the appropriation bills must contain an itemized statement of estimated revenues by major source in each fund, the total of which shall not be less than the total of the appropria-

tions made from each fund. The purpose of this provision is to require the legislature to adopt a balanced budget. At present, the legislature makes no official estimate of the revenues upon which its appropriations are based. It is impossible, therefore, to determine whether or not the legislative appropriations exceed estimated revenues. The requirement that revenue estimates be shown by major source for each operating fund will give the governor, who has the item veto power on appropriation bills, and the public the opportunity to determine whether the estimates are reasonable and thereby determine whether the legislature has complied with the balanced budget requirement.

Approval by the Governor

The third step in the budget process is the approval of the legislative appropriation bills by the governor. The proposed constitution requires, as does the present constitution, that every bill, including appropriation bills, passed by the legislature must be presented to the governor before it becomes law. All bills, except appropriation bills, must be approved or disapproved in their entirety. In the case of appropriation bills, the governor has item veto power-he may approve or disapprove any distinct item appropriating money. The parts approved become law and the items disapproved are void unless repassed by a two-thirds vote of the members elected to and serving in each house.

Budget Execution

The final step in the constitutional budget process is administration of the budget during the fiscal year in which it is effective. The constitutional provisions on budget execution are designed primarily to implement the requirements that the budget be balanced. The proposed constitution states that, "no appropriation shall be a mandate to spend." That is, appropriations are to be considered an "authorization" instead of a mandate to spend. The proposed constitution provides that when actual revenues fall below the estimates upon which the appropriations were based, thus threatening to throw the budget out of balance, the governor shall reduce expenditures with the approval of the house and senate appropriation committees. Procedures for reducing expenditures are to be prescribed by law. Expenditures of the legislative and judicial branches, which are co-equal with the executive branch, are exempted from the governor's expenditure-reduction powers as are funds constitutionally dedicated for specific purposes.

Budgets of Local Units of Government

A new provision requires that any county, township, city, village, authority or school district empowered to prepare a budget shall adopt such budget only after a public hearing in a manner prescribed by law.

Accounting

The proposed constitution continues the present constitutional requirements on accounting of funds by the state and counties and expands it to include all local units of government. The new provision requires an annual accounting of all public money, state and local, and interim account-

ing may be provided by law. The legislature is to provide by law for the maintenance of uniform accounting systems by units of local government—the present constitution requires a uniform system of accounts for counties.

The requirement of auditing of county accounts by competent state authority is continued, and a new provision calls for the auditing of other units of government as provided by law.

Pensions

A new provision makes the accrued financial benefits of each state and local pension plan a contractual obligation of the state or its subdivisions. The state and local units are prohibited from diminishing or impairing these accrued benefits. This provision is designed to give the employee a vested right in his earned pension benefits. It is further provided that financial benefits of pension plans arising on account of service rendered in each year shall be funded (paid for) during that year and that such funds shall not be used to finance unfunded accrued liabilities.

In order to provide greater flexibility in the investment of public pension funds, the proposed constitution exempts pension funds from the constitutional prohibition against granting the credit of the state or investing state funds in stock. The present prohibition against granting the credit of the state to any person, association or corporation, public or private, is continued with the proviso "except as authorized in this constitution." The proposed constitution provides that this shall not be construed to prohibit the investment of public pension funds as provided by law. The present prohibition against the state subscribing to or having an interest in stock is continued, except that public pension funds may be invested as provided by law.

Credit and Debt

The proposed constitution includes several provisions limiting the state's power to borrow money. In general the new sections provide- for greater flexibility in incurring and repaying debt than the present provisions.

General Provisions

The proposed constitution continues the prohibition against granting the credit of the state or using it to aid any person, association or corporation, public or private, but adds a new provision—"except as authorized in this constitution." This exception is needed because of the school bond loan fund provided for in the present and proposed constitutions(see below). The present general prohibition against issuing evidence of state indebtedness except for debts authorized pursuant to the constitution is also continued. This provision is intended to apply only to debt which involves the faith and credit of the state and not to revenue bonds. The debts authorized by the constitution and thus excepted from the general prohibition are discussed below.

Long-Term State Debt

The proposed constitution provides that the state may borrow money for specific purposes with the approval of two thirds of the members elected to and serving in the legislature and with the ap-

proval of a majority of the electors voting on the question. The question submitted to the electors must state the amount to be borrowed, the specific purpose for which the funds are to be used, and the method of repayment. Under the present constitution, the state cannot borrow money on its faith and credit without amending the constitution. While the proposed constitution retains the present safeguards for issuing bonds in terms of vote requirements (two thirds of the legislature and a majority of voters), the necessity for adding long and detailed amendments to the constitution authorizing specific bond issues is eliminated.

Two other provisions governing long-term debt are included in the Schedule and Temporary Provisions section of the proposed constitution. The first of these provides that contractual obligations of the state incurred pursuant to the present constitution shall continue to be obligations of the state. This section serves to protect the integrity of the state's faith and credit and to assure the rights of present bondholders. This provision also appropriates from the state's general fund sufficient monies to pay the principal and interest on the Korean War bonus bonds. A second special provision authorizes the legislature by a two-thirds vote to borrow money to refund the bonds issued by the Mackinac bridge authority. The present bridge bonds are revenue bonds and this authorizes refunding them by issuing faith and credit obligations of the state. The provision requires that the authority be abolished at the time of refunding and operation of the bridge transferred to the state highway department.

Short-Term State Borrowing

The proposed constitution provides short-term borrowing power for the state to meet revenue deficiencies during a fiscal year. The provision authorizes the state to issue faith and credit notes to meet obligations incurred pursuant to appropriations for any fiscal year and requires that undedicated revenues to be received during the same fiscal year be pledged for the repayment of these notes. Such notes must be repaid when the pledged revenues are received and not later than the end of the fiscal year in which they are issued. The amount of notes issued cannot exceed 15 per cent of the undedicated revenues received by the state during the previous year—this would authorize short-term borrowing of about $70 million at current levels of revenue. This provision does not authorize borrowing against future years' tax collections to meet current obligations, but it does provide flexibility in borrowing against revenues within any given year. The present constitution authorizes the state to borrow up to $250,000 to meet deficits in revenue.

School Bonds

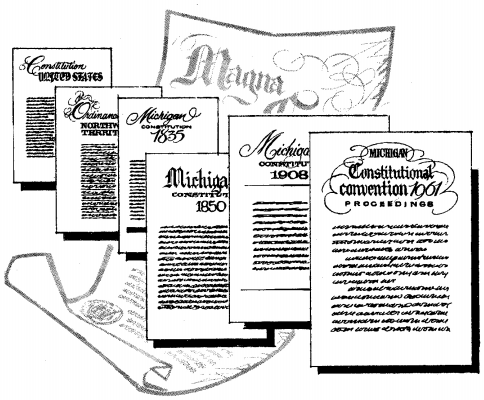
The proposed constitution continues with minor change the present school bond loan fund provision. The provision authorizes the state to borrow money and pledge its faith and credit for the purpose of making loans to school districts under certain prescribed circumstances. A school district may borrow from the state funds to meet principal and interest payments on qualified bonds when the school district's debt service requirements exceed 13 mills ($13 per $1,000) on the state equalized valuation or such lower millage as may be prescribed by the legislature. The proposed constitution deletes the present time limit for issuing qualified bonds, of July 1, 1972. The provision also requires the state to lend money to a school district to pay debt service to prevent a default. Any school district receiving loans from the state is required to levy for debt service 13 mills or such lower millage as may be prescribed by law until the loan has been repaid.

The power of the school districts to tax for the payment of debt service or the repayment of state loans is without limitation as to rate or amount. The provision also protects the rights of holders of bonds issued under the present constitutional school bond fund provisions.

Borrowing by Public Bodies Corporate

A new provision authorizes public bodies corporate to borrow money and issue bonds subject to the constitution and laws. Units of government named as bodies corporate include the state universities and colleges, counties, townships, and cities and villages. The proposed constitution provides that the general laws providing for the incorporation of cities and villages and the charter county law shall restrict their powers to borrow money and contract debts. The constitutional debt limit for counties is placed at ten per cent of the assessed valuation, an increase from the present three per cent limit. Cities and villages are prohibited. from lending their credit for private purposes , but,are authorized to loan-their credit for public purposes provided by law. The proposed constitution also authorizes counties, townships, cities, villages and districts to lend their credit to one another as provided by law in connection with any authorized publicly owned undertaking. This provision is designed to permit the joint financing of public facilities by local units of government.

Two other provisions on the borrowing power of local units are significant. First, debt service is specifically exempted from the property tax millage limitation provision and taxes for debt service may be imposed without limitation as to rate or amount. Thus, the authorization of a bond issue will automatically carry with it the authorization to levy the taxes necessary to pay the debt service requirements. Another provision in the proposed constitution continues the present requirement that whenever the question of authorizing a bond issue is submitted to the electors of a political subdivision only property taxpayers and their spouses may vote on the question.



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1526 DAVID STOTT BLDG.
DETROIT 26, MICH.

204 BAUCH BLDG.
LANSING 23, MICH.

AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 11 January 29, 1963

MISCELLANEOUS PROVISIONS: ARTICLES III, X, XI AND XII

Three of four articles of the proposed constitution here analyzed are new in name and arrangement. They are composed in part of new provisions and in part of provisions revised and carried over from the present constitution. These three articles are: III—General Government; X—Property, and XI—Public Officers and Employment. Transfers to these and other articles (and deletions) made it possible to do away with eight separate articles in the present constitution dealing with the following specific subjects: Boundaries and Seat of Government; Division of Powers; Impeachments and Removals from Office; Corporations; Eminent Domain; Exemptions; Militia; and, Miscellaneous Provisions. The fourth article discussed here, XII—Amendment and Revision, is a revised version of Article XVII of the present constitution.

Major Changes

1. Specific provision is made for interstate governmental agreements.
2. The state is authorized to engage in works of public internal improvement as provided by law.
3. A new feature allows advisory opinions on the constitutionality of new laws by the supreme court on request of the governor or either house of the legislature.[1]
4. The property rights of married women are enhanced.
5. Compensation for private property taken for public use is to be determined in a court of record.
6. The legislature is granted "general supervisory jurisdiction" over all stateowned forest, game and recreation lands and authority to designate state land reserves.
7. Changes in regard to the state civil service c- ission modify present features on fixing rates of compensation and creation or abolition of positions.
8. A new provision establishes procedure for local government civil service systems.

[1] See Number 6 of this series.

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

9. Various details on constitutional amendment and revision have been modified or eliminated.

General Government (Art. III)

Interstate Governmental Agreements. A new and comprehensive provision (Art. III, Sec. 5) allows intergovernmental agreements to be made by the state government or by any local government in this state with other states, the United States, Canada—or with any of their respective local governments. The making of such agreements would be subject to "provisions of general law." These agreements would be for the purpose of performing and financing the functions of the state government or of local governments in cooperation with such out-of-state governments.[2]

These agreements may be employed to establish any suitable "governmental body" to carry out these functions on an intergovernmental basis. State or local officers or employees are allowed to "serve on or with" any governmental body established by such intergovernmental agreements without relinquishing their offices or employment; the legislature, however, may impose "restrictions, limitations or conditions on such service."

Public Internal Improvements. The prohibition of state involvement in works of internal improvement was carried over from the present provision, but a broad exception—"for public improvements provided by law"—replaced the list of specific exceptions in the present provision.

Other Changes. All constitutional details relating to the state militia and the use of the great seal of the state have been eliminated. The proposed constitution requires that such matters be "provided by law." A detailed and partially inaccurate boundary description in the present constitution has been eliminated. The convention concluded that a boundary description in a state constitution is unnecessary and not authoritative. Also eliminated as unnecessary was a provision requiring the English language to be used in public records and proceedings.

Property (Art. X)

The present constitutional property rights of a married woman have been retained and further enhanced by a new feature which would abolish the "disabilities of coverture." The property of a married woman would not be liable for any obligations of her husband. Another new feature provides that dower (a widow's basic share in her husband's teal estate) may be "relinquished or conveyed as provided by law."

Eminent Domain. Just compensation for private property to be taken for public use would be determined "in proceedings in a court of record." This is a new requirement. Requirements for determining necessity with respect to eminent domain and other details have been eliminated.

State Owned Lands. A new provision grants the legislature "general supervisory jurisdiction over all state owned lands useful for forest preserves, game areas and recreational purposes." The legislature must also require reports from executive departments having "supervision or control" of such lands. Sale, lease or other disposition of such lands shall be provided for by general law. A state "land reserve" may be designated by law for which a two-thirds majority is required. No reserve lands may be removed from the reserve, leased or disposed of, "except by an act of the legislature."

[2] Provision for intergovernmental agreements within the state is in the article on,local government—Art. VII, Sec. 28—of the proposed constitution.

Other Changes. The corporations article (XII) in the present constitution has been eliminated, except for the provision on banking laws which was transferred to the legislative article of the proposed constitution (Art. IV, Sec. 43). The minimum exemption from forced sale by court process has been raised from $2,500 to $3,500 for a homestead and from $500 to $750 for personal property. These exemptions would not "extend to lien thereon excluded from exemption by law." The present provision on homestead exemption excludes "any mortgage" lawfully obtained. Other details on exemptions have been eliminated.

Public Officers and Employment (Art. XI)

State Civil Service Commission. The substance of the present civil service provision and the powers of the four-member commission appointed by the governor have been retained with some modification of various features. The head of each principal department (maximum of 20) would not be included in the classified civil service. The "principal executive officer" of principal departments headed by boards and commissions are also to be excluded. Two "other exempt positions"—one of which must be policy-making—will be available to each department, and three additional policy-making positions for each principal department may be exempted by the civil service commission. Under the present constitution, in addition to department or agency heads, not more than two other exempt positions are authorized for each "elected administrative officer, and each department, board and commission."

The commission's power to fix rates of compensation for the classified service has been modified. Unless waived by a majority vote of the legislature, the commission must give the governor prior notice of an increase in rates of compensation for inclusion in the budget and such increases would take effect at the beginning of a fiscal year. Within 60 days, the legislature may "reject or reduce increases" in rates of compensation by a two-thirds vote in each house. Any such reduction of increases must apply uniformly to all affected classes of employees, and shall not adjust established pay differentials, and rates of compensation may not be reduced by the legislature below those then in effect.

Removals and demotions for religious, racial or partisan considerations remain prohibited. Appointments and promotions for the same considerations are newly specified as prohibited. A new feature specifies that positions shall not be created or abolished "except for reasons of administrative efficiency." Appointing authorities may create or abolish positions for such reasons without the commission's approval, but any employee who considers himself aggrieved thereby would have the "right of appeal to the commission."

A new provision requires the commission to recommend to the governor and the legislature rates of compensation for all non-classified appointive positions in the "executive department." There are new requirements that the commission give annual reports of its expenditures to the governor and the legislature, and that the commission be "subject to annual audit as provided by law."

Local Civil Service Systems. A new provision sets forth procedure for establishment by any local government of a civil service system for its "employees other than teachers under contract or tenure." Approval of the voters is required to establish, modify or discontinue such system, unless otherwise provided by charter. The state civil service commission is authorized to furnish technical assistance on request of any local unit "on a reimbursable basis. "

Amendment and Revision (Art. XII)

The two present methods of amending the constitution are continued without substantial

change—one by legislative proposal, the other by initiative petition. Either type of proposal must be adopted by a majority of the electors voting on the question to become a part of the constitution as at present.

For legislative proposals of amendment the two-thirds vote in each house is continued, but of the members elected and serving rather than those elected, as presently provided. A 60-day interval would be required before submission of legislative proposals "at the next general or special election as the legislature shall direct." At present, no interval is required for such submission "at the next spring or autumn election thereafter."

For proposals of amendment by initiative petition the number of signers required remains "at least 10 per cent" of the total number of votes for governor at the preceding general election. The petition must be filed at least 120 days (rather than four months as at present) before the election. Initiated proposals of amendment would be submitted to the voters at the next general election. Various procedural details were eliminated from the provision for constitutional amendment by initiatory petition.

Any amendment approved by the voters would take effect 45 days (rather than 30 days as at present) after the election. Details requiring publication and information with respect to proposals of amendment appear to have been restricted to initiated proposals. A new feature specifies that in case of conflict between two or more amendments approved at the same election, the one receiving the largest affirmative vote shall prevail.

Constitutional Convention. Submission of the question of calling a constitutional convention to the voters would continue to be required every 16 years (starting in 1978). The present basis of representation is continued. Partisan election of delegates is newly required. Delegate vacancies would continue to be filled by the governor from the same district but the appointee is newly required to be of the "same party as the delegate vacating the office." The convention is given new power to specify the time for submission of their revision for voter approval but not less than 90 days after the convention's final adjournment.

THIS IS THE LAST OF THIS SERIES.