



# AN ANALYSIS

of the

## PROPOSED CONSTITUTION

Number 11

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### 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.<sup>1</sup>
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 commission 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.

<sup>1</sup> See Number 6 of this series.

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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.<sup>2</sup>

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.”

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<sup>2</sup> 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.