

Citizens Research Council of Michigan

625 SHELBY STREET, SUITE 1B, DETROIT, MI 48226,3220 • (313) 961-5377 • FAX (313) 9614)648
1502 MICHIGAN NATIONAL TOWER, LANSING, MI 48933-1738 • (517) 485-9444 • FAX (547) 485-0423

Michigan Constitutional Issues

CITIZENS RESEARCH COUNCIL OF MICHIGAN IS A 501(C)(3) TAX EXEMPT ORGANIZATION

Report No. 313-4

Fourth in a series on revising the Michigan Constitution

July 1994

ELECTIONS AND TERM LIMITATION PROVISIONS IN THE MICHIGAN CONSTITUTION

THE ISSUE IN BRIEF

At the November 8, 1994 general election, the voters of Michigan will decide whether to call a constitutional convention to revise the Michigan Constitution of 1963. The question appears on the statewide ballot automatically every 16 years as required by the Constitution.

This analysis of Article 2 on elections examines problems the state has experienced in relation to the functioning of the board of state canvassers and with details relating to the powers of initiative and referendum. In addition, two provisions in Article 2 are obsolete. There are several issues that a constitutional convention might wish to consider.

Article 2 of the Michigan Constitution provides for elections. It defines the qualifications of electors and provides for the place, manner, and time of elections; the board of state canvassers; recalls; the powers of initiative and referendum; and term limitation. Additional provisions for term limitation are found in Articles 4, 5 and 12. With the exceptions described below, the elections and term limitation provisions in the Michigan Constitution are reasonably clear and concise and accomplish their intended purposes.

Board of State Canvassers Issues

The Role of the Board of State Canvassers

Section 7 of Article 2 provides that a four-member board of state canvassers shall be established by law. Michigan election law requires the board to perform several duties including: approving the not more than 100-word descriptive designations of statewide propositions to appear on the ballot; reviewing signatures on petitions for recalls, initiatives or referendums; reviewing election returns for president and vice-president of the United States, state executive branch officers United States senators and representatives, circuit court judges, state senators and representatives elected from a district comprised of more than one county, and for statewide propositions; and conducting recounts when requested of election returns for any of these offices. The Constitution provides that no candidate for an office to be canvassed shall serve as a member of a board of canvassers.

The duties of the board of state canvassers are clerical and ministerial, seemingly self-executing and without ambiguity. However, political disagreements have plagued the implementation of these provisions. On several occasions board members have attempted to broadly define their role in a larger way than the statutory definition. The state Attorney General has opined that the board is without authority to address questions concerning the merits or constitutionality of an initiated proposal. There also have been problems in agreeing on the authenticity of the signatures on a petition, problems in performing board duties in a timely fashion, and problems in

BOARD OF DIRECTORS

LOUIS BETANZOS, President
ALFRED R. GLANCY, Vice President
GEORGE N. BASHARA, JR.
BEVERLY A. BELTAIRE
J. EDWARD BERRY
JOHN W. CLARK
STEPHEN T. ECONOMY

MICHAEL M. GLUSAC
DANIEL J. KELLY
SUSAN L. KELLY
DAVID B. KENNEDY
PATRICK J. LEDWIDGE
ROBERT F. MAGILL
ROGER L. MARTIN

PAUL H. MARTZOWKA
MICHAEL E. MASLYN
DONALD R. PARFET
JEROLD E. RING
IRVING ROSE
HOWARD F. SIMS
A. ROBERT STEVENSON

S. MARTIN TAYLOR
JOHN E. UTLEY, JR.
AMANDA VAN DUSEN
RICHARD WEBB
MARTIN ZIMMERMAN

ROBERT L. QUELLER, Vice President-Executive Director

getting board agreement on a 100-word description of proposals. (In July, 1994, the Governor by executive order transferred the statutory responsibilities of approving the 100-word description of statewide ballot propositions from the board of state canvassers to the six-member state administrative board. This board consists of the Governor, Lieutenant Governor, State Treasurer, Secretary of State, Attorney General, and Superintendent of Public Instruction, the last three having constituted the board prior to amendment in 1955.) While statutory in nature, these problems seem to stem in part from the fact that it is a four-member board, composed of an even number of members from both parties who, while appointed by the Governor, are nominated by the two major political parties. Appointments to this presumably impartial board are made in a very political manner and the role of the board is not constitutionally defined.

While it would seem prudent to maintain the restriction on candidates serving on a board of canvassers a constitutional convention might wish to consider whether a constitutional mandate for a board of state canvassers is in fact necessary. Should it opt to continue this constitutional mandate, it might choose to reconsider the number of members on the board, perhaps providing for a tie-breaking vote, provide for their nomination and selection, and consider whether to constitutionally enumerate the role of the board.

Timeliness of Actions by Board of State Canvassers

The Constitution requires that initiative petitions contain a number of signatures equal to a percentage of the total vote cast for all candidates for governor at the last gubernatorial election: five percent for a proposal to initiate a referendum on a statute; eight percent to initiate legislation; ten percent to propose an initiated constitutional amendment; and, 25 percent for the recall of elective officers. Michigan election law provides for the board of canvassers to review the petitions to ascertain that the requisite number of qualified and registered electors' signatures are on the petition and to make an official declaration of the sufficiency or insufficiency of any petition. Section 9 of Article 2 requires the Legislature to either enact or reject initiated legislation within 40 session days of its receipt.

A problem arises from the fact that neither the state Constitution nor Michigan election law requires the board of canvassers to either begin or complete certification of petitions for initiated referendum and initiated legislation by a date certain. In contrast, Section 2 of Article 12 requires filing of petitions to initiate a constitutional amendment at least 120 days before the next general election. Certification of the petitions must be completed at least 60 days prior to that election. Michigan election law requires the certification of recall petitions within 35 days after their filing. With no requirements for either beginning or completing the certification of initiative or referendum petitions by a date certain, it is possible for the board to set its own agenda, and on occasion, the board has failed to act in a timely fashion. A constitutional convention might wish to create provisions for the filing of petitions and the beginning and completion of certification. This could be a process similar to that for initiated constitutional amendments or recalls, with the proviso that for an initiated statute an additional 40 days must be allowed for legislative action on the initiative. Such timetable provisions should ensure that the question is placed on the ballot at the next general election after filing of the petitions.

Other Issues

Form and Manner of Initiated Legislation

Another question that might be considered by a constitutional convention is the extent to which a law proposed by initiative petition must conform to the requirements established for laws proposed by the Legislature. Section 9 of Article 2 defines the power of initiative as "the power [of the people] to propose laws and to enact and reject laws, and limits the extent of this power by providing, "[t]he power of initiative extends only to laws which the legislature may enact under this constitution...." It is not entirely clear whether this provision was intended only as a restriction upon the substantive content of an initiated law, or also restricts its form to that prescribed for laws enacted by the Legislature. For example, Article 4 provides for the style of laws (Section 23), that no law shall embrace more than one subject and that the subject shall be expressed in its title (Section 24), and for the method of revision, alteration or amendment (Section 25). A constitutional convention might wish to clarify if initiated law must meet requirements such as those provisions in Article 4.

Legislative Avoidance of Referendum

Section 9 of Article 2 defines the referendum as "the power [of the people] to approve or reject laws enacted by the legislature..." and limits the extent of this power by providing, "[t]he power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds..." Without a clear definition of appropriations bills, this restriction on the referendum has become equivocal in recent years, as bills have included both substantive policy and appropriations. The Legislature has included token appropriations in what appear to be substantive bills and substance into appropriations bills, apparently to avoid a possible referendum vote by the electorate. A constitutional convention might wish to more clearly define "appropriations" to avoid future abuses of this limitation on referendum.

Term Limitation

At the 1992 general election, 59 percent of the Michigan electors voted to add four sections to the state Constitution. Section 10 of Article 2, Section 54 of Article 4, and Section 30 of Article 5, were added to limit the number of terms of office that could be served by United States congressional representatives (no more than three two-year terms during any 12-year period) and senators (no more than two six-year terms during any 24-year period), members of the state Legislature (three two-year terms for representatives and two four-year terms for senators), and elected officials of the executive branch of state government (two four-year terms). Section 4 of Article 12 provides for the severability of the term limitation sections, subsections, and parts from each other in case one is found to be invalid or unconstitutional. It is worth noting that provisions in other states that limit the terms of United States congressional representatives have come under judicial review. Although the people of Michigan have recently spoken on this issue and these provisions will not affect a candidate for office until three years after the possible convening of a convention, a constitutional convention might wish to revisit the term limitation issue.

Obsolete Provisions

Conformity to the United States Constitution

As was discussed in the first of this series on constitutional convention issues (**Report No. 313-01**), states are not sovereign entities in the full sense of the word. States may not in their constitutions violate the rights reserved to the people in the United States Constitution. Sections 1 and 6 of Article 2 of the Michigan Constitution do just this.

Qualifications of Electors Section 1 of Article 2 of the Michigan Constitution provides that citizens who are 21 years of age or older who have resided in this state six months, and who meet local residency requirements are qualified to vote. This conformed to the federal voting age requirements in 1963, but those requirements have since changed. In 1971, the Twenty-sixth Amendment was added to the United States Constitution, providing that the right to vote of citizens who are 18 years of age or older shall not be abridged on account of age. Section 1 of Article 2 of the Michigan Constitution is contrary to the United States Constitution, and has not been adhered to since 1971. Additionally, the Michigan Attorney General has stated, based on several United States Supreme Court cases, that the six-month residency requirement is no longer applicable. The current statutory requirement is 30 days.

Property Ownership Requirement for Voting Section 6 of Article 2 provides that only property taxpayers and their spouses may vote on ballot issues to increase the constitutional property tax rate limitations for a period of more than five years or to issue bonds. The United States Supreme Court has held that with respect to laws affecting the right to vote, unless an election is for narrow, special purposes, the only permissible constitutional qualifications for voting are residence, age, and citizenship. In another cases the court has ruled that restricting the right to vote on the issuance of general obligation bonds to property owners violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. While there has never been a court case in Michigan challenging Section 6, it is clear that it would not be sustained and municipalities have ceased using property ownership as a criterion for participating in these elections.