

Eighth in a series of papers about state constitutional issues

At the November 3, 2026, general election, Proposal 2026-01 will ask voters whether a constitutional convention should be convened for the purpose of a general revision of the 1963 Michigan Constitution. Article XII, Section 3 provides that in 1978 and every 16 years thereafter the question of a general revision of the constitution shall be submitted to voters. If the question is approved, the convention would convene in Lansing on October 5, 2027. If rejected, it will automatically appear on the ballot again in 2042.

Proposal 2026-01 will ask voters:

Shall a convention of elected delegates be called for the purpose of a general revision of the Michigan Constitution, any such revision to be submitted to the voters for ratification?

The Citizens Research Council is publishing a series of papers to provide information which voters may use to decide whether the convening of a constitutional convention is in the best interest of Michigan at this time. The Citizens Research Council takes no position on the question of calling a constitutional convention. It is hoped that examination of the matters identified in the papers in this series will promote discussion of vital constitutional issues and assist citizens in deliberations on the question of calling a constitutional convention.

ARTICLE V – EXECUTIVE BRANCH

Like the U.S. Constitution, Michigan's 1963 Constitution employs the separation of powers doctrine providing for three branches of government: legislative, executive, and judicial. Under this doctrine, the executive branch is responsible for overseeing the execution of laws and the delivery of governmental services. Article V of the Michigan Constitution vests the executive power of state government in the governor and broadly defines the appointive, reorganizational, and budgetary powers of the office. It also discusses the organization of the executive branch and allows the governor to call the legislature into extraordinary sessions.

In addition to the governor, Article V provides for four other statewide elected officials and board members to play roles in the administration of executive branch functions: lieutenant governor, attorney general, secretary of state, and an eight-member state board of education to guide policymaking within the Department of Education, including the appointment of a state superintendent of public instruction to serve as the department's executive officer.

During the 1961 Constitutional Convention, considerable debate and action surrounded the topic of strengthening the power of the governor, which resulted in major changes in the executive article. The governor's role in governing state affairs was strengthened by: 1) extending the term of the office from two to four years; 2) reducing the number of elective executive branch officers from eight to four; 3) increasing the authority of the governor by capping the number of executive branch departments and allowing the governor greater discretion in the organization of the executive branch; and 4) expanding the governor's role in the budget process.

From a public policy standpoint, very few issues have arisen in the past 63 years pertaining to the proper functioning of Article V relative to the governor's ability to effectively carry out his or her executive powers. Amendment proposals to Article V have been rare. Of the five contemplated amendments, only two were approved. The first successful amendment (Proposal M of 1978) had the effect of further centralizing executive power in the governor by replacing the State Highway Commission with the State Transportation Commission and changing the Commission's primary function from administrative to policy making (Section 28). The second (Proposal B of 1992) established term limits for the governor, lieutenant governor, secretary of state, and attorney general (Section 30). On the surface, such limitations theoretically diminished the power of the governor to the benefit of the legislative branch; however, term limits also were enacted at the same time for state legislators.

In 1980, a proposal to establish vacancy procedures and powers for the lieutenant governor was defeated by voters, as were two 1982 proposals that would have created a Department of State Police and would have required members of the Public Service Commission to be popularly elected.

While Article V has not been the subject of considerable attention in terms of amendments, a constitutional convention could revisit the power of the governor and consider a number of issues surrounding the executive branch of government, including: 1) the reorganization powers of the governor; 2) single versus plural heads of departments and agencies; 3) the authority of the governor to call special elections to fill legislative vacancies; 4) issues related to executive office vacancies; 5) the governor's responsibility for maintaining annual budget balance, particularly as it relates to executive order reductions; and 6) the governor's appointment authority as it is limited by the senate's advice and consent power.

Executive Reorganization Power

One popular criticism of the 1908 Constitution was that it provided for a decentralized executive branch that lacked clear lines of authority in the executive powers of state government. Proponents of a new constitution sought to centralize executive power in the governor and through a new structure for the executive branch. However, concerns were raised about the organizational powers pertaining to the executive branch and how to balance the new political power of the governor. The 1961 Constitutional Convention resolved this by establishing a broad framework for the executive branch in the new constitution and granting organizational authority to both the legislative and executive branches.

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Initial “organizational” authority was provided to the legislature via temporary provisions within the new constitution and required this power to be exercised within two years of the effective date of the new document (Schedule and Temporary Provisions, Section 12). After this initial organization by law, the constitution provided the governor with “reorganizational” power. The legislature’s initial actions, as codified in the Executive Organization Act of 1965, and any subsequent reorganizations by the governor were limited by the provisions of Article V, Section 2, which capped at 20 the number of principal departments. In addition, Section 2 further allows the governor to “make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration.”

Five principal departments are established directly in the 1963 Constitution, either by specific reference (e.g., state transportation department and state department of education) or because language requires certain individuals to head a principal department (e.g., attorney general, secretary of state, and state treasurer). Outside of the five constitutionally-established departments, the governor has substantial authority to structure the executive branch in the manner he or she desires.

The governor’s reorganization authority is not absolute; it is subject to legislative “veto” in that executive orders contemplating organizational changes can be nullified if disapproved by a majority vote in both chambers of the legislature. Until the early 1990s, Michigan state government operated with 19 departments (which was the original allocation provided through the Executive Organization Act of 1965); however, over the next two decades, the organization of state government went through substantial changes, with the stated goal of reducing the number of departments through consolidations and eliminations. By the end of 2010, the executive branch was organized into 17 principal departments.

That pattern, however, reversed somewhat over the next 15 years. In 2011, Governor Rick Snyder broke apart the Department of Natural Resources and Environment, re-creating the Department of Natural Resources and creating a new Department of Environmental Quality. Most recently, Governor Gretchen Whitmer established a Department of Lifelong Education, Advancement, and Potential in 2023 to focus on early education and childcare as well as workforce-connected education policies and access to higher education. Still, the largest reorganization in recent decades was another consolidation with the merger of the Department of Community Health and the Department of Human Services under Governor Snyder in 2015 into the new Department of Health and Human Services. Currently, Michigan is back to having 19 principal departments.

Given the changes to the executive branch over the last several decades, the governor’s reorganization powers contained in Article V might be considered by a constitutional convention. Proponents of further centralization and strengthening gubernatorial powers may promote efforts to reduce the current limit, thereby reducing the number of department heads that directly

report to the state's chief executive. In contrast, opponents of strengthening the governor might raise concerns about concentration of power. The legislature's role in executive branch reorganizations might also be considered given that some reorganizations historically have generated considerable legislative scrutiny.

Executive Governance: Single Versus Plural Structures

The 1963 Constitution favored the "single head" over the "plural head" form of governance for principal departments within the executive branch. This represented a departure from the previous constitution that placed control of executive branch departments and agencies with various boards and commissions. Section 3 of Article V currently states, "The head of each principal department shall be a single executive unless otherwise provided in this constitution or by law." While the 1963 Constitution allows for the plural form of department head, it requires the governor to appoint members of such boards or commissions, unless these members are elected or appointed pursuant to other constitutional provisions.

Since the adoption of the current constitution, the number of plural heads of departments has declined, in part due to departmental consolidations and eliminations. For example, the Department of Civil Service was eliminated in 2007, and the constitutionally-established Civil Service Commission, which previously served as the head of the department, was transferred to the Department of Management and Budget.

Currently, only two principal departments are headed by the plural form of governance: the Department of Education (elected board that appoints the state superintendent of public instruction) and the Department of Civil Rights (appointed board). The single executive structure has not been universally applied to the state administrative agencies that exist within the principal departments. A host of plural bodies established within the departments exercise administrative and/or advisory functions. Nearly all of these bodies are established within state law, while some have constitutional status (e.g., Civil Service Commission).

This raises two issues that might be considered by a constitutional convention. The first relates to these administrative agencies. Should all administrative agencies exist with a single executive to foster greater management control and efficiency? Or are plural bodies serving in advisory capacities more effective at ensuring that different perspectives and points of view are considered when public policy is debated?

Another issue is that, unlike the number of principal departments, the executive branch is not bound by a specific number of boards or commissions that can exist within each principal department. These entities are very common in both private and public sector governance models and advocates for them contend that they provide a level of independence and insulation from political manipulation. Bipartisan representation on these bodies, which is often

required, can ensure that a minority voice in the policy debate is heard. On the other hand, critics suggest that such bodies lack accountability and make timely decision-making difficult to achieve. The widespread and disparate use of these bodies throughout state government results in little consistency. The various bodies share little in common in terms of internal operations, membership selection, or general roles and responsibilities. This can make it difficult for citizens to understand how their government is structured and operates.

Legislative Vacancies

Section 13 requires the governor to call elections to fill vacancies that occur in the house of representatives and the senate. This method for filling legislative vacancies dates back to the 1908 Constitution. However, the constitutional language is written in a way that provides the governor with considerable flexibility in the application. While the language requires the governor to call such elections, it does not provide any direction on the timing for such elections. Extended vacancies in either the house or senate leave affected constituents without full legislative representation in Lansing. On the hand, conducting special elections to fill a vacancy comes with a financial cost, and that cost can be a challenge in cases where a vacancy occurs near the end of a term.

Some of the issues surrounding timing have been addressed with the consolidation of election dates in Michigan, but the governor is not bound by such limitations and may call special elections when he or she wants. Generally, filling a vacancy requires a primary election followed by a general election; however, the Michigan Election Law permits the governor to direct that the vacancy be filled at the next general election if the vacancy occurs after the primary election and before the general election. By statute, candidates from each political party to fill the unexpired term are nominated by county committees of the respective political parties.

A recent controversy related to a legislative vacancy might elevate this issue in discussions within a constitutional convention. When Democratic state Senator Kristen McDonald Rivet was elected to the U.S. House of Representative in 2024, her Michigan Senate seat was vacated in January 2025 at the beginning of the new session year. Notably, the vacated seat reduced the Democratic majority in the Michigan Senate to 19-18; meaning that if a Republican were to win a special election, the Democrats would no longer hold a majority.

Governor Whitmer waited until August 2025 to call a special election to fill the critical seat, with a special primary election eventually held on February 3, 2026, and the special election held on May 5, 2026.

A constitutional convention might consider addressing the timing of special elections to replace vacated legislative seats. According to the National Conference of State Legislatures (NCSL), 25 states, including Michigan, have

provisions to fill legislative vacancies by special election. Of those states, Michigan is one of only ten without some form of timeline to call or hold the special election.

A constitutional convention might also consider practices in other states and craft a new method for filling legislative vacancies. The NCSL reports that 23 states use an appointive process. In 11 of the “appointive” states, the governor makes the appointment, while seven states give this authority to county commissioners. Another five states grant the appointment authority to the same political party as the legislator that vacated the office.

Appointment Power

Under the 1963 Constitution, the governor’s appointment power was considerably expanded from what existed in the 1908 Constitution, mainly by centralizing executive authority and eliminating certain elected positions in the executive branch. Appointive positions are created both in the Constitution (e.g., certain department heads and university board members) as well as in state law (e.g., certain boards and commissions within principal departments). In some cases, the governor exercises the appointment power unilaterally, while in other cases the power is limited.

In many states and the federal government, the appointment power held by the chief executive is subject to legislative scrutiny, effectively creating a system of checks and balances between the two branches of government. In Michigan, the governor and the senate share in the responsibility for selecting persons to serve in senior leadership positions within the executive branch that are exempted from the state civil service. The foundation for shared appointment power exists in the “advice and consent” provision of Section 6. Under this section, a gubernatorial appointment subject to advice and consent can be nullified only if disapproved by a majority vote of the senate within 60 days of the appointment being made. Absent such action, an appointment stands. Michigan’s process is different from the federal government’s process, in that individuals nominated by the President to serve in senior governmental positions must be confirmed by a majority vote of the U.S. Senate.

In Michigan, gubernatorial appointees assume their appointed positions upon taking the oath of office as required by Article XI, Section 1 and continue to serve unless the full senate votes to disapprove the appointment. As a matter of practice, the advice and consent process has been used to varying degrees over the years. There is no state statute governing the process; however, some attorney general opinions have been rendered on the subject. Ultimately, the process is a political one in that disapproval results from a vote of the senate.

Recent appointments have raised issues regarding the timing of the governor’s use of appointment authority, which might be considered by a constitutional convention. Nothing in current law discusses the question of “when” a

governor can make an appointment. This can prove problematic when a term for a position subject to gubernatorial appointment expires at or near the end of the current governor's term in office. In such cases, and when there is turnover in the governor's office, the appointee, although appointed by the previous governor, effectively serves "at the pleasure" of the new governor. In theory, nothing under current law prevents a governor from making appointments for terms that expire well-after he or she leaves office, although as a practical matter this is most likely to occur nearer the end of a governor's time in office.

Another issue relating to the governor's appointment power that might be considered by a constitutional convention concerns the state administrative organization for the supervision of elementary and secondary education. The 1963 Constitution provides for a statewide election of the eight-member state board of education, a body responsible for supervision and policy over all public K-12 and adult education. The board is responsible for appointing the superintendent of public instruction. Consideration might be given to centralizing the governor's executive authority over education policy matters by allowing the governor to appoint members of the state school board and/or the state superintendent.

Other states vary in their use of appointive versus elective methods to select public education officials. Of the 47 states with boards of education, 37 use some sort of appointive process, with the appointment most typically made by the governor. Seven states, including Michigan, employ public elections to select board members while three states use a combination of appointments and elections. The chief state school official is appointed by the state board in 21 states, while in 16 other states the governor appoints this official. Twelve states provide for a separately elected chief state school official; while in Oregon, the governor serves as the chief school officer.

State Budget

New provisions in the 1963 Constitution generally strengthened the governor's role in the state's fiscal affairs. Specifically, the Constitution included a new section that requires the governor to submit to the legislature a proposal for a balanced budget for all state operating funds (Section 18). Previously, executive budget submittal was governed by statutory law, not constitutional law.

This balanced budget provision was supplemented by other requirements to ensure the state's budget remained balanced. Section 20 requires the governor, with the approval of the appropriations committees of the house and senate, to reduce appropriation authorizations when revenues fall below the initial estimates on which any enacted budget was based. This constitutional requirement is implemented through statutory provisions contained in the Management and Budget Act. Consistent with the Constitution, executive order reductions to address a revenue shortfall require approval of only the appropriations committees in each chamber; this provides an expedited

approach relative to the process for general appropriation acts, which require a majority vote in each chamber and signature by the governor, who has line-item veto authority. While this avoids delays in bringing the budget back into balance with revenues, it also removes these reductions from the scrutiny of the entire house and senate.

The use of executive order spending reductions has become a key component in the state's arsenal for maintaining balanced budgets throughout the year, especially during economic downturns when actual state tax receipts deviate substantially from the original estimates. The last use of this process occurred at the onset of the COVID-19 pandemic. The economic disruption brought about by COVID-related shutdowns was initially expected to result in a \$3.2 billion decline in Fiscal Year 2020 state revenue from Michigan's two major revenue funds: the General Fund and School Aid Fund. As part of a broader strategy to address the resulting revenue shortfall, Governor Whitmer issued Executive Order 2020-155 which reduced state appropriations for Fiscal Year 2020 by \$667 million.

Office Vacancies of Statewide-Elected Officials

Timely and clear lines of succession relating to vacancies in elective office are hallmarks of democracies. Vacancies in the offices of statewide-elected executive branch officials can be either permanent (e.g., resignation, death) or temporary (e.g., absence from state, incapacitation). Article V covers these issues, but it may be deficient with respect to vacancies in the office of lieutenant governor and it could be updated to reflect the modern-day roles and responsibilities of the governor.

Section 26 provides a clear line of succession to the office of the governor when a vacancy occurs. The lieutenant governor is the first person to fill a gubernatorial vacancy, followed by the secretary of state, the attorney general, and then any other persons established in state statute. Section 21 also requires the governor to appoint replacements for vacancies in the offices of secretary of state and attorney general. However, the Constitution is silent with respect to filling a void in the office of lieutenant governor. The lack of specific constitutional provisions for filling a vacancy in this office was a change from the 1908 Constitution, which allowed the governor to appoint a replacement.

A constitutional convention might revisit the issues surrounding vacancies in the office of lieutenant governor. The lieutenant governor is one of four statewide-elected officials serving in the executive branch. However, unlike the secretary of state and attorney general, the lieutenant governor appears on the same ballot as the governor, thereby ensuring that the chief executive and his or her lieutenant are from the same political party. The lieutenant governor has both executive and legislative roles but does not possess any unique executive branch powers and only performs those duties assigned by the governor. In fact, Section 25 prohibits the governor from delegating any vested powers to the lieutenant governor.

In terms of constitutional legislative powers, the lieutenant governor serves as the president of the Michigan senate. Acting as its presiding officer, the lieutenant governor is allowed to vote only to break a tie in the 38-member body. Without a means to fill a vacancy in the office of lieutenant governor, it must remain unfilled until the next gubernatorial election, a scenario that occurred when Lieutenant Governor William Milliken ascended to the chief executive post after Governor George Romney resigned to become Secretary of the U.S. Department of Housing and Urban Development in 1969.

Vacancies in the office raise both practical and political issues. Positions on statutorily-created boards, such as the State Administrative Board, that the lieutenant governor serves on would have to remain vacant until after a gubernatorial election. Similarly, tie votes in the senate could not be broken because the constitution entrusts only the lieutenant governor with this responsibility. The current system of gubernatorial succession also introduces a political consideration: when a lieutenant governor ascends to the chief executive post and the lieutenant position is left vacant, the “next in line” for gubernatorial succession is the secretary of state, who could be a member of another political party.

Section 26 also discusses how temporary gubernatorial vacancies, such as out-of-state travel or “inability” to serve, are to be handled. However, the 1963 Constitution makes no distinction between these two situations with the governor’s duties shifting to the lieutenant governor, or whoever is currently serving as the “next in line” in accordance with the Constitution’s prescribed line of succession. In light of modern-day communication and travel speeds, and the frequency and reasons for the state’s governor to travel, it seems somewhat antiquated that temporary vacancies and the transfer of gubernatorial powers caused by travel should be treated the same as those caused by an “inability” to serve.

Conclusion

As noted, Article V has not been a common target for constitutional amendments since the Constitution’s implementation in 1963, and it seems likely that the article would not be a major focus of a constitutional convention. Unlike other articles in the 1963 Constitution, Article V does not include obsolete provisions that have been ruled unconstitutional or inoperable – meaning a constitutional convention would not be tasked with developing conforming language with the U.S. Constitution or U.S. Supreme Court decisions. A convention would likely examine the broad issues dealing with the powers of the governor and executive branch structure and organization. Nothing in Article V has prevented the executive branch from governing effectively over the past 63 years and no related issues have risen to the level of crisis that would suggest immediate modification is necessary.

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Part of our mission is to help educate Michigan citizens about important policy issues, especially those for which citizens will be asked to voice their opinion.

Publication of the series of constitutional convention papers will conclude with a webinar reviewing the con con process and the major issues identified. If you would like us to share this information with your business, civic group, association, or another gathering, please contact Maureen McNulty-Saxton (msaxton@crcmich.org or 517-485-9444) to make arrangements.