CITIZENS RESEARCH COUNCIL OF MICHIGAN

Michigan Constitutional Issues

Tenth 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 pproved, 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 VII – Local Government

In addition to providing authority and power to the three branches of state government, the Michigan Constitution authorizes and empowers local governments. For counties and general law townships[a], the constitutional provisions describe their structure and powers. For cities and villages (and to a lesser extent charter counties), the constitution authorizes home rule provisions for their own self-governance. A constitutional convention might be expected to assess how state preemption of local decisions has weakened Michigan's tradition of home rule, the structure of local government, the use of metropolitan governments and special authorities, and the removal of elected officials.

Local government finance will be discussed in the paper on Article IX – Finance and Taxation.

Local Government Structure in Michigan

Much of Michigan's system of local government organization was established in the Northwest Ordinance of 1787, and was institutionalized in the 1835, 1850, 1908, and 1963 Constitutions. The 1963 Constitution made relatively few changes in the basic structure of local government. The system of local government in Michigan is composed of counties, townships, cities, villages, metropolitan districts, and special authorities. The number of local units in Michigan has changed relatively little since the 1963 Constitution was adopted.

a A Michigan township of at least 2000 residents may incorporate as a 'Charter' Township. Charter township status does such things as incrementally expands the powers of the township, allows for additional trustees, and provides protection from annexation. This type of township should not be confused with a charter city or county.

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General-purpose local units of government – counties, cities, villages, and townships – provide a broad range of services.[b] The entire state is organized into counties, and each resident lives in one county. The entire state is also organized into cities and townships, and each resident lives in either a city or a township, but not in both because the boundaries of these unit types do not overlap. A township resident might also live within a village, which has its own government, but the village remains a part of the township.

Counties were originally organized to serve as administrative arms of state government, providing local services and maintaining records. In that capacity, they are constitutionally charged with responsibility to record births, marriages, and deaths; record the ownership of real property; provide police protection; and prosecute those accused of criminal activities. Counties also bear some statutorily-assigned responsibility for the courts, jails, oversight of property assessing and elections administration, maintenance and construction of some roads and bridges, provision and maintenance of drains, and health services. Some counties also may opt to provide other services, including parks, airports, libraries, public transportation, and refuse disposal.

Townships and general-law villages are organized under state laws that prescribe their governmental structure and powers. Cities and some villages have opted to adopt their own charters under home-rule powers, allowing their constituents to tailor the basic framework for local governance and tailor services to match the needs of their community. Among other things, charters establish the following:

- representation on the city council,
- whether council members shall be elected from wards/districts or at-large,
- whether members shall be elected on partisan or non-partisan ballots,
- the selection process for the mayor and city administrators and define their oversight powers, and
- establish accounting and auditing controls.

Because of the different authorizing laws and the exercise of home rule it is difficult to assemble a comprehensive list of services provided by cities, villages, and townships. Cities and townships are universally responsible for: 1) property assessment as a basis of state, county, municipal, and school taxation; 2) tax collection for their own purposes and on behalf of the state, counties, school districts, and other taxing jurisdictions; and 3) administration of municipal, school, county, state, and national elections. Additionally, cities

b General-purpose local government is contrasted with special-purpose local government that would include K-12 school districts, community college districts, and special authorities (for services such as libraries, fire protection, water and sewer, and swimming pools).

are required to provide for the public peace and health and for the safety of persons and property within their jurisdictions. Commonly provided services include police and fire protection, water and sewerage, parks and recreation, refuse collection, roads and sidewalks, libraries, streetscapes, and economic development.

Special authorities are limited-purpose governments that exist as separate corporate entities created for the purpose of combining local government resources to provide specific services. State laws provide for the creation of special authorities and for their organization, powers, and duties and provide substantial fiscal and administrative independence from general-purpose units and other special-purpose local governments. The service-area boundaries of these authorities overlap existing boundaries of general-purpose governments. Some of the more common purposes for special authorities include fire protection, libraries, mass transportation, airports, solid waste, and water and sewer.

Although authorized in the 1963 Michigan Constitution, no multi-purpose metropolitan governments have been created. In 2013, there was an effort to encourage regional economic and infrastructure planning and service delivery by local public, private, and non-profit partnerships. The initiative was promoted through funding in the Fiscal Year 2014 state budget but failed to take hold given the lack of statutory requirements combined with the practical challenges associated with realigning service delivery in the specified regions.

A significant qualitative change over the past six decades has been a blurring of the differences between cities, villages, and townships. Additional powers have been granted to villages and townships, consistent with those possessed by cities. State mandates for particular types of local governments to provide specific services have been eroded. The ability of cities and villages to annex township land has been diluted. Today, Michigan's urban areas have several villages and charter townships intermingled among the state's biggest cities.

The primary cause of these changes was enactment of the Charter Township Act of 1947. Although townships had the authority to adopt charter township status since 1947, it was not until the late 1960s that they began doing so in large numbers. Charter township status has allowed urban townships to provide a full range of municipal services, paralleling those provided by neighboring cities in every way except maintenance of roads and bridges. According to the 2020 U.S. Census, 12 charter townships have populations of over 25,000 residents. Of the 1,240 townships, 121 are designated as charter townships, and 1,119 are general law townships.

Another noteworthy quantitative change in the number of local governments over the past 62 years has been the growth in the number of special authorities created by collaborating local governments to provide services. The modest decline in the number of townships reflects their incorporation as cities, mostly in the 1960s. There was a net increase of nine general-purpose local units between 1962 and 2020. (See **Table 1**.)

Table 1
Number of Local Government Units in Michigan

	1962	2020	Change
Counties	83	83	0
Townships	1,259	1,240	-19
Cities & Villages	509	533	24
SubTotal	1,851	1,856	5
Special Authorities	99	437	338

Source: 2020 Census, Census of Governments, Bureau of the Census; 2022 Census of Governments, U.S. Census Bureau

Most of the general-purpose local units serve relatively small populations. Only 7.5 percent of the 1,856 general purpose governments serve 25,000 or more people. According to the 2020 Census, 35 percent of the local governments serve 2,500 to 25,000 people and 58 percent (1,072) serve less than 2,500 people. Across the state, it is estimated that Michigan has more than 18,000 elected officials serving in various public capacities at the local level, such as local city council members, township board members, county commissioners, judges, school board members, etc.[c] (See **Table 2**.)

Table 2
Government Units in Michigan by Population, 2020

	Counties		Cities & Villages		Townships		Total	
Population	Number	Percent	Number	Percent	Number	Percent	Number	Percent
>100,000	20	24.1%	7	1.3%	1	0.1%	28	1.5%
25,000-99,999	38	45.8%	41	7.7%	33	2.7%	112	6.0%
2,500-24,999	24	28.9%	173	32.5%	447	36.0%	644	34.7%
< 2,500	1	1.2%	312	58.5%	759	61.2%	1,072	57.8%
Total	83		533		1,240		1,856	

Source: U.S. Census Bureau, 2020 Census (April 1, 2020)

Constitutional Issues

Article VII contains 34 sections, 16 of which deal with counties, four with townships, six with cities and villages, and two with metropolitan government or joint administration. Six sections cover more than one type of local government. Other provisions that affect local government are scattered throughout the 1963 Constitution. Of the 98 proposed constitutional amendments that have been submitted to the voters since the adoption of the 1963 Constitution, none have dealt with Article VII.

c See *The Long Ballot in Michigan*, Citizens Research Council of Michigan, Council Comments 951, November 1984, www.crcmich.org/PUBLICAT/1980s/1984/cc0951.pdf.

Home Rule

The question of maintaining and strengthening home rule for Michigan's local governments may be one of the most monumental issues that a constitutional convention could confront. Over the century that Michigan has flirted with home rule, some state policymakers have honored its principles, some have not. Although the constitution is the supreme law of the state and has granted broad home rule authority to local governments, various legislative actions and court decisions have had the practical effect of weakening and limiting the exercise of local home rule.

The state constitution defines the legal relationship between the state and local governments. It establishes the relative degree to which local governments are dependent on, or independent from, state control. The dichotomy between state control and local self-government is illustrated by the jurisprudence expressed by the courts in Dillon's Rule and the Cooley Doctrine. The theory of state preeminence over local governments was expressed as Dillon's Rule in an 1868 Iowa Supreme Court case:

> Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control.[1]

In contrast to Dillon's Rule, the Cooley Doctrine expressed the theory of an inherent right to local self-determination. In a concurring opinion, Michigan Supreme Court Judge Thomas Cooley in 1871 stated: "[L]ocal government is a matter of absolute right; and the state cannot take it away."[2]

The continuing tension between Dillon's Rule and the Cooley Doctrine is the attempt to balance matters of statewide interest against the rights of communities to determine their own government. Through a state constitution, the people can establish the structure of local government and the distribution and balance of powers between the state government and local governments.

The last two constitutions cast Michigan as a strong home rule state, consistent with the Cooley Doctrine. The Michigan Constitution of 1908 provided home rule for cities and villages. The 1963 Constitution built on that authority for cities and villages and extended the option of home rule to counties. Michigan is one of 33 states that provide home rule for local governments through their constitution or statute. Home rule is universally employed to adopt city charters in the state. A minority of villages have adopted home rule charters. Macomb and Wayne are the only counties that have adopted home rule charters. Townships do not have home rule powers.

During the Progressive Era (1890–1920), when Michigan initially adopted its home rule provisions, the goal was to give local governments a broad range of local discretion to act and adopt policies with minimal direction, influence, and interference from state officials. Prior to that time, an excessive amount

of legislative action was focused on the enactment of local acts, at times micromanaging the affairs of local governments. It was reasoned that better governance could result if the local populaces could frame their own charters, determine how best to secure representation on their city councils, provide their own means for selecting mayors and administrators of the city activities, define the powers that might be exercised, and establish their own financial controls. Not only was it hoped that home rule would cause local officials to be responsible, but it was hoped that home rule would cause local government to be more responsive to the needs and wants expressed by local residents.

Section 22 extends home rule powers to municipal government:

> Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

The courts have remained closer to Dillon's Rule, taking the position that local governments derive their authority from the legislature. Contrary to the broad grant of authority, the courts have stated:

> [L]ocal governments have no inherent jurisdiction to make laws or adopt regulations of government; they are governments of enumerated powers, acting by a delegated authority; so that while the State legislature may exercise such powers of government coming within a power designation of legislative power as are not expressly or impliedly prohibited, the local authorities can exercise those only which are expressly or impliedly conferred, and subject to such regulations or restrictions as are annexed to the grant.[3]

The debate of whether issues are of statewide interest and should be addressed by state laws and administrative rules or matters of local concern that each community should be free to address to reflect the values of their residents continues today. While the 1963 Constitution provides for a liberal interpretation of the powers of municipalities, and some court opinions have declared that municipalities have all powers not expressly denied, other court rulings adverse to home rule often have led municipal officials to seek legislative solutions clarifying the extent of their authority. Each directive and clarification that has amended the Home Rule Cities Act and Home Rule Villages Act has effectively reversed the inclusive nature of the home rule powers toward an exclusionary approach.[4]

Past attempts to legislatively intrude on home rule powers and court decisions to undo the exercise of those powers are found with regard to spending power, public meetings, public access to public records, conflicts of interest by public officials, political rights of public employees, mandatory collective bargaining, and compulsory arbitration of police and fire labor disputes. As the state's largest city, Detroit has been a frequent target of both legislative actions, including statutory attempts to cause change to the method of selecting Detroit city council members,[5] and judicial decisions, such as a ruling overriding the city's ability to impose a living wage ordinance.[6]

Several examples illustrate how constitutional home rule powers were lessened through legislation, administrative rules, and court cases.

Section 2 extended the authority for counties to adopt a charter, but court rulings restricted such a charter from infringing on the powers or method of selection of executive county officers.

Constitutional convention delegates sought to ease the burden on the property tax and to provide additional revenues to local governments. Section 21 provides that, "Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law." However, this constitutional taxing authority was immediately preempted by legislation prohibiting any local non-property tax unless it is specifically authorized by state statute.

More recently, state laws challenged the authority of local governments to site for large-scale renewable energy installations. Renewable energy developers may seek approval at the Michigan Public Service Commission directly if a local government does not have an existing compatible ordinance for such projects or denies their permit application. Similar actions limit local government oversight of sand and gravel mining operations and shift permitting responsibility to state environmental regulators. Both the renewable energy installations and the mining operations are examples of how matters of statewide interest can conflict with local preferences and governance.

In the months before the November 2026 election other debates regarding statewide and local preferences may intensify. The mismatch between statewide interest in attracting investments in data centers as the use of artificial intelligence accelerates versus local concerns about the zoning and siting of these centers (especially because of their water use, environmental impacts, and energy consumption) will raise the issue of state preemption of local decisions again before many voters. In addition, in an effort to address the shortage of affordable housing in Michigan, state policymakers may try to preempt local zoning authority by limiting regulatory oversight of residential development.

The final section of Article VII, Section 34 was included to make clear the intent of the convention delegates that the provisions of the constitution and laws concerning counties, townships, cities, and villages are to be construed liberally in their favor and that the powers granted to counties and townships by the constitution and by law are to include those fairly implied and not prohibited by the constitution.

This section was added by the 1963 Constitution. Prior to its addition, laws concerning the powers of counties and townships were written with specificity. In the years since, such laws have become briefer and have been written to liberally grant powers to those types of governments. In that regard, this provision can be seen as a success.

On the other hand, the evidence of diminishing home rule powers for cities

and villages seems to indicate that Section 34 has held little sway in deciding inconsistencies between state laws and locally expressed powers in favor of the local governments.

The home rule powers laid out in the 1963 Constitution indicate that Michigan is a strong home-rule state, but in practice Michigan cities and villages have far less home rule discretion than local governments in states such as Illinois and Colorado. In each of those states, within the scope of local responsibilities, the home rule units have considerably more discretion and freedom from state control than do comparable Michigan units.

A constitutional convention could choose to end Michigan's experiment with home rule or diminish the home rule powers of local governments. Wording could be changed to limit home rule powers to selection of officers and creation of the rules within which local governments operate. Language could be adopted to place control over economic matters with the state.

Alternatively, a constitutional convention may wish to undo legislative actions, administrative rules, and judicial decisions by strengthening home rule. Such a preference would make the home rule powers self-executing. Local governments would no longer need empowering statutes to carry out the strong authority already granted in the constitution.

Local Government Structure

A constitutional convention could examine the extent to which the present organizational structure of local government meets the current and future needs of residents and businesses.

A constitutional convention might seek to "reinvent" local government by examining the need for 1,860 separate local units of government, 58 percent of which serve fewer than 2,500 people. It might consider whether counties, townships, cities and villages, and special authorities, with overlapping geographical boundaries, overlapping powers, and service responsibilities, are the most effective means of providing local services and the most efficient use of scarce public resources.

Arguments have been made that the local government structure needs to be reorganized to define the power and authority relationships between counties and municipalities in both service delivery and regulatory functions. A simplified local government structure could include a municipal level of government consisting of only two classes of municipalities (charter cities and townships) that are equal in authority. This streamlined framework of municipal government would eliminate the intermediate form of government, the village.

Other reforms might include the examination and reevaluation of roles played by counties and townships. Convention delegates might focus on the problems inherent in attempting to solve local or regional problems at the state level. Advocates for clarifying these roles might identify the shortcomings of the state government oversight in this area and could propose either to

strengthen counties to usurp some responsibilities currently vested with the state or suggest creating regional governance structures with taxing and spending powers.

Some delegates may focus on activities that are provided at the most local levels in Michigan but are provided at the county level in most other states. This includes election administration, property assessment, and tax collection. Should a constitutional convention choose to reform local government by transferring responsibility for these services to counties, many of Michigan's least populated, most rural townships would exist solely to define the location of property within each county and for planning and zoning purposes. The levy of taxes would then relate to each township's decision to provide other services (police and fire protection, refuse collection/disposal, etc.).

Reforms could simplify local government, but the success of such reforms to "fix" local government is not a given. It is not clear that the potential savings of taxpayer dollars that could result from governmental consolidations would be worth the surrender of local political control and the connection many residents feel with community-centered government.

County Officers

Other papers in this series have warned of the potential issues inherent in drafting too much detail in state constitutions. Descriptions of governance and administration of county functions are appropriate in the state constitution. However, after such descriptions were added in the 1963 Michigan Constitution, they were found to be inconsistent with later U.S. Supreme Court decisions. Clarification of these minor issues that could be addressed during a constitutional convention.

Board of Supervisors

States have considerable discretion in drafting the fundamental laws that govern their operations and that afford rights to their residents. State constitutions, however, are bound by the United States Constitution and may not violate the provisions contained in that document. State constitutional provisions that are obsolete because they violate the provisions of the federal constitution make the language of a state constitution confusing and misleading. These provisions should be removed or revised to reflect the current status of law.

The provisions in Article VII that establish county boards of supervisors are not consistent with the federal constitution. The county boards of supervisors in each county were to consist of one member from each township and representation from cities as provided by law. This language was drafted at the same time precedent-setting legal cases were being decided by the U.S. Supreme Court establishing the "one person, one vote" principle.[7] With equal representation granted to all townships, the vote of a supervisor representing a township with a population of 1,000 was equal to the vote of a supervisor from a township of 10,000 residents; and the number of people represented

by members of the boards from cities could be wholly different. In 1966, the Michigan Supreme Court held that the method of apportioning county boards of supervisors violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.[8]

As a result of the U.S. Supreme Court's one person-one vote decisions, boards of supervisors were statutorily replaced with county boards of commissioners that are smaller, more partisan, and representative of people rather than units of government. County commission election districts are drawn to be as nearly equal in population as is practicable based on the latest official published decennial U.S. census. They are to be contiguous, compact, of as nearly square shape as is possible. Finally, they must respect township, village, and city boundaries, and are not to be drawn to effect partisan political advantage.

The loss of the county boards of supervisors created a void. Because members of the boards of supervisors represented local governments, the county board meetings routinely brought together local government officials with the opportunity to discuss service provision. Appointed and independently elected county officials heard from the supervisors about the need for an expanded county role, the services that local units were providing adequately, and the services for which local governments would benefit from county cooperation. The move to independently elected county commissioners reduced counties' connection to local units. Where supervisors were inherently prepared to address the needs of the local governments they represented, county commissioners tend to be aware of the needs of the local governments only when they make special efforts to learn of those needs.

At a minimum, a constitutional convention could be expected to bring Article VII into compliance with current day practice in the selection of county commissioners. Beyond that, a convention may seek to create a structure that reconnects counties with the local governments to improve intergovernmental efficiency and collaboration. Given the current void in intergovernmental relations, arguably a principal function of counties, restructuring to improve those connections would be an appreciated advancement

County Administration

Of all the types of local governments in Michigan, not one operates under a more antiquated structure than the counties. Four counties have taken advantage of available alternative organizational structures, but the other 79 counties operate without a single executive officer to lead the government. County commissions share legislative and administrative duties and power is further disbursed among the many independently elected constitutional officers: prosecuting attorney, clerk, register of deeds, treasurer, and sheriff. Power is further disbursed to the drain commissioner and the boards of county road commissioners.

Notwithstanding the change from county boards of supervisors to boards of commissioners, this basic structure has existed since statehood in the 1830s. It reflects the counties' role as administrative arms of the state and

the principle of Jacksonian democracy, the early to mid-19th century political theory that held that the problem with government was the appointive status of government officials. The proposed cure was to have as many officials as possible elected directly to short (two-year) terms. This approach, which would theoretically keep democracy close to the people, reflected the early settlers' belief in personal versatility and suspicion of specialization. Government was not believed to require specialized skills or training. It was hoped that the fragmentation of power and frequent turnover of officials would prevent the formation of a government aristocracy.

The 1963 Constitution attempted to provide an alternative to this antiquated form of local government by authorizing charter, or home rule, counties. It was hoped that home rule powers would provide counties with the ability to streamline county government and minimize the number of boards, commissions, and authorities common in the administration of county government. Counties now have two organizational alternatives to the general form: optional-unified county government or charter county government. The optional-unified form provides for an elected or appointed county executive and some power to reorganize the departmental structure, but the core powers of the boards of commissioners, as well as the "row" officers, are undisturbed. Under the charter county form, the powers of a county executive are somewhat stronger and the options for reorganization a little greater than under the other forms. However, the requirement in Article IV that each county independently elects a sheriff, clerk, treasurer, register of deeds, and prosecuting attorney cannot be undone by statute.

In some counties, the broad distribution of power among many officials has created deadlocks in the budgeting processes. Each elected officer is the administrative head of a department and, even in those counties with elected county executives, power is not sufficiently centralized for that person to assume control of hiring and firing personnel or arranging the organization of those departments. At times of economic contraction, when many local governments are cutting the size of their budgets, the lack of a single executive officer with control over administration of the county, and a lack of budgetary control by the county commissions, complicates the ability to manage the counties' assets and operate within the resources available.

A constitutional convention could reexamine the constitutional provisions for county government to allow greater flexibility to change officers from elected to appointed status, reorganize administration of the county, and effect the changes needed to bring county government into the twenty-first century.

Municipal Control of Highways and Rights-of-Way

Section 29 requires public utilities to obtain consent from counties, cities, villages, and townships for the right to use highways, streets, alleys or other public places. In essence, this section says that private entities should pay economic rents for the right to use public assets for business purposes.

A provision similar to Section 29 was first included in the 1908 Constitution

(Article VIII, Section 28). Neither Section 29 nor its predecessor language attempted to extend to local governments the ability to influence rate setting for public utilities. For purposes of regulating utilities, this legislative power was delegated to the Michigan Public Service Commission (MPSC), whose history dates to 1873. The MPSC has played a role from time to time in the regulation of railroads, electricity, telephone, natural gas, petroleum pipelines, motor carriers, and water utilities. A number of court cases since adoption of the 1908 Constitution declared that the local control established in the Constitution preempts the MPSC's statewide interest in regulating the use of public highways and rights-of-way by public utilities.

The authority of local units to require franchises and to receive just compensation for use of the public rights-of-way by private utilities, including electric transmission, pipeline, telecommunication and cable service providers, has been undermined by legislative initiatives. In each of these areas, the control provided to local governments in Section 29 has been eroded by state legislative assertions of authority. In effect, these legislative actions have subordinated public control of public property (rights-of-way), and the economic rents payable for the use of that public property, to the interest of private businesses.

Local governments have not received relief on these issues from the courts. As part of a wholesale rehabilitation of a four-mile stretch of roadway in 1999, the City of Taylor (Wayne County) acted to reduce the number of automobile collisions with utility poles along Telegraph Road by relocating electric wires to below ground. The city and utility disagreed on responsibility for the cost of moving the wires. In a ruling that favored the utility, the Michigan Supreme Court decision in *City of Taylor v. The Detroit Edison Company*[9] shifted the preemption for control of public places from the local governments to the MPSC.

In previous cases dealing with similar questions, utilities were made to bear the cost of relocation as part of the cost of doing business as long as the relocation was in the course of the discharge of a governmental function. In overturning the precedent, the court relied on reasoning that the municipalities may exercise the constitutional power to pass ordinances and regulations with reference to their highways and bridges only to the extent that those ordinances and regulations are consistent with the general state law. This was the first case to arise since the MPSC promulgated rules in 1970 governing the underground placement of new and existing utility wires. The court's interpretive posture is spelled out in the opening paragraph of the analysis, confirming that Dillon's Rule is the lens through which a city's home-rule power will be examined.

A constitutional convention could address the conflict between the legislative powers of the state regarding public utilities, and the regulatory powers delegated to the Michigan Public Service Commission to oversee public utilities, and the constitutional authorities of local governments to regulate use of rights-of-way. Consistent with the earlier discussion of home rule powers, a convention could act to clarify the state preemption of local government

in the regulation of public utilities as a statewide concern or strengthen the constitutional language to reinforce how the law has been interpreted by the courts.

Metropolitan Government and Special Authorities

A number of public services transcend the borders of Michigan's local governments. Public transportation, major arts and cultural facilities, harbors and airports, water and sewer, and roads and bridges may provide benefits beyond the relatively small borders that characterize Michigan's local governments or incur costs that are of sufficient magnitude that individual local governments cannot bear the burden alone. Each of these functions has its own constituency, yet all are oriented toward the region, rather than a single jurisdiction. Different population groups in the same part of the region may place greater or lesser value on certain regional functions. Sewerage issues may be more pressing in one part of the region, while transit issues may be more urgent in another. But each function is essentially a creature of the region, not of individual jurisdictions.

As is the case with any array of services provided by an individual governmental unit, not all services are used equally by all residents of the jurisdiction. Police and fire protection blanket the city or township, while relatively few individuals may use a senior citizen center, but both may receive general tax support. In any general-purpose government, an implicit agreement exists that, while every service may not be used equally by every taxpayer, the menu of services funded by the jurisdiction will be supported by all the taxpayers. That menu may be controversial and may change over time but, in a government of any size, some tax-supported services will be used by virtually all residents, some by several, and some by a few.

Regional functions are subject to the same kinds of variation in utilization. However, no structure exists for the financing of competing regional services. Counties perform this task over a limited range of functions, but many regional problems do not respect county lines any more than city or township lines. This underlies the language in Article VII, Section 27 which encourages multi-purpose metropolitan special authorities.

> Notwithstanding any other provision of this constitution the legislature may establish in metropolitan areas additional forms of government or authorities with powers, duties and jurisdictions as the legislature shall provide. *Wherever possible, such additional forms of government or authorities shall be designed to perform multipurpose functions rather than a single function*. [Emphasis supplied.]

Although the clear intent of this section is to encourage the development of governmental units that could provide multiple services on a regional basis, there has been little movement in that direction during the six decades since the adoption of the new constitution. Instead, the prevailing vehicles for delivering regional services have been interlocal agreements and single-purpose special authorities. Some of these authorities have limited taxing authority,

some are funded by user charges, and some rely on the taxing authority of the general-purpose units they encompass. Truly multi-purpose regional authorities are the exception, not the rule in Michigan.

A constitutional convention may wish to consider alternatives to encourage greater use of multi-purpose special authorities as appropriate responses to regional service needs.

Removal of Elected Officials

Section 33 provides that, "Any elected officer of a political subdivision may be removed from office in the manner and for the causes provided by law."

Article VII, Section 33, and Article V, Section 10, and Section 327 of the Michigan Election Law dealing with removal of officeholders has been viewed by legal experts as sufficiently ambiguous. When the Michigan Governor announced a hearing to oust former Detroit mayor Kilpatrick at the request of the Detroit City Council (2008), there was disagreement about whether a governor's decision to remove an elected official could be appealed.

Local government officials have been forced from office for misconduct related to their office and/or crimes unrelated to their office. Since the 1908 Constitution, electors have had the right to petition for the recall of an elected officer (Article II, Section 8) on political grounds, regardless of any legal allegations.

A constitutional convention could examine whether legal ambiguities and challenges to efforts to oust public officials are related to the strength of wording, or lack of same, in the constitutional provisions or in the statutes enacted to implement these provisions.

Conclusion

The most impactful issue a constitutional convention could address in 2027 is balancing the powers of the state to empower, oversee, and control local governments and the local governments' interest in exercising the home rule powers currently provided in the constitution. Legislative action, administrative rules, and court rulings have eroded the spirit of home rule as it was originally envisioned by the drafters of the 1908 and 1963 Constitutions.

Other reforms in Article VII include efforts to streamline the structure of local government and creating greater flexibility to streamline the administration of county government.

A convention could examine the need to address constitutional provisions related to multi-purpose special authorities.

Finally, a convention may clarify language in two sections: the authority of local governments to control the use of their highways and public places by utilities and the power of the state to regulate those same utilities and to update the language relating to the removal of elected officials from office.

Endnotes

1 *Clinton v Cedar Rapids and the Missouri River Railroad*, (24 Iowa 455; 1868).
2 *People v Hurlbut*, (24 Mich 44, 95; 1871).
3 *City of Kalamazoo v Titus*, 208 Mich. 252, 262, 175 N.W. 480 (1919).
4 Kenneth VerBurg, A Study of the Legal Powers of Michigan Local Governments: Comparing Cities, Townships, and Charter Townships, (1960).
5 Election of Detroit City Council Members, Citizens Research Council of Michigan, Memo #1063, regarding Public Act 432 of 2002.
6 *Richard Rudolph V Guardian Protective Services, Inc.*.
7 Article IV – Legislative Branch, Citizens Research Council of Michigan, Report 425-07, May 2026.
8 *Advisory Opinion re Constitutionality of Public Act 261 of 1966*, (380 Mich 736; 1966).
9 *City of Taylor v. The Detroit Edison Company* 475 Mich. 109, 715 N.W. 2d 28 (2006).

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