CITIZENS RESEARCH COUNCIL OF MICHIGAN

Michigan Constitutional Issues

Twelfth 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 IX – Finance and Taxation

The power to tax and the disposition of the revenues collected involve two of the essential characteristics of civil government. This analysis examines several provisions in Article IX, "Finance and Taxation," of the Michigan Constitution and issues related to them that a constitutional convention might consider: state and local tax limitations; state tax structure; local tax structure; pension and other post-employment benefit funding; state borrowing; and, earmarking of state revenues for specific public programs. Neither the list of foregoing issues nor the presentation that follows is intended to be exhaustive.

Historically, Article IX has been the subject of the most attempts to amend the 1963 Constitution (32 proposed amendments), indicating the importance of the issues contained therein to many citizens. In the first four decades following the constitution's establishment, the article had been successfully amended 10 times. The two most significant amendments during this period were Proposal E of 1978 (Headlee Amendment) and Proposal A of 1994; both dealt with multiple sections and both created tax and/or spending limitations.

More recently, however, there has been less attention to reforms of Article IX, with only one successful amendment adopted in 2020 to modify spending and cap limitations on the Natural Resources Trust Fund and State Parks Endowment Fund. Two other proposals have failed over the last two decades.[a]

a Proposal 12-5 would have required either a supermajority vote of the state legislature or a statewide popular vote to enact any new or increased state taxes. Proposal 15-1 would have raised the state sales tax to 7 percent as part of a legislative road funding package. Both proposals were rejected by voters.

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Constitutional Convention Issues

A key purpose of a state constitution is to limit the governmental power of the state. That principle is of particular importance with respect to the power of the government to tax and the interest of the people to limit that power. Article IX, "Finance and Taxation," of the Michigan Constitution contains various limitations upon the otherwise plenary power of the legislature. These limitations range from prescribing the proportion of value at which property may be taxed, to requiring voter approval before units of local government may increase certain taxes and indebtedness, to limiting the forms and rates of taxation (state and local), to specifying how the revenues from certain taxes are to be expended. Many of these provisions were contained in the Constitution when it was adopted, while others were added subsequently through amendments approved by voters.

The level of detail which the Constitution should contain with respect to taxation was an area of considerable disagreement at the 1961 Constitutional Convention. Many delegates believed that the legislature should be free to determine the level and type of taxation as circumstances arose, while other delegates expressed the view that the legislature should not be allowed complete discretion. In the end, convention delegates agreed to provide the legislature with a "power of the purse" that is bound by constitutional limitations pertaining to the type of taxes that may be employed and the rates of certain taxes that may be levied. Subsequent amendments to the Constitution added further limitations to this foundational legislative power. A new convention might begin by reexamining this fundamental question about the proper role of the state constitution relative to the legislature's "power of the purse."

In addition to the broad concerns surrounding the level of detail contained in Article IX that a constitutional convention would be expected to address, Article IX contains several specific provisions upon which a convention might wish to focus its attention.

State Tax and Revenue Limitations

Except for the limitations placed on it by the Constitution in Article IX, the Michigan Legislature unilaterally exercises the "power of the purse" when it comes to state fiscal matters. The legislature exercises this "power of the purse" through two distinct, but related, powers designed to ensure a reasonable balance between the legislative and executive branches of government.

Through the power to tax (Section 1), the legislature is able to transfer economic resources from individuals and businesses to the state government to finance public goods and services and to redistribute wealth among individuals and private entities. This power is the sole province of the legislature and cannot be "surrendered, suspended, or contracted away" (Section 2).

The logical complement to the power to collect taxes is the power to direct state spending through appropriations, which also rests entirely with the legislature (Section 17). Combined, the power to tax and the power to appropriate funds provide the legislative branch with the authority to command and guide state financial resources and thus exert an important check on the powers of the executive branch.

Prohibition on Graduated Income Taxes

A graduated or "progressive" income tax is one that assesses a proportionately larger tax rate on higher income earners than on lower income earners. Section 7 prohibits the imposition of an income tax, graduated as to rate or base, by the state or any of its subdivisions. This provision was new to the 1963 Constitution. For all practical purposes, it has effectively served to mandate that any income taxes levied at either the state or local level assess a single or "flat" rate on both individual and business income. Notably, Section 7 neither requires an income tax nor does it limit the maximum rate allowed if such a tax is authorized. These decisions are left to the discretion of the legislature and, within the guidelines established by state law, to city governments.

While the "flat" tax rate requirement of Section 7 is fairly straightforward, the section's prohibition on a "graduated" tax base is less clear. Statutory implementation of an income tax, whether for individuals or for businesses, can have the practical effect of graduating the tax base. Michigan currently uses federal Adjusted Gross Income (AGI) together with various credits and exemptions to determine taxable income under the income tax, effectively resulting in a "graduated" state income tax base.

During the 1961 convention, there was considerable discussion about the use of federal AGI in light of the proposed new language; however, the convention delegates noted that federal AGI could be used without violating the constitutional provision. The delegates also discussed the implications of the use of credits and exemptions in light of the new prohibition and believed that the legislature could prescribe their use.

Over time, Michigan courts have upheld the use of exemptions, exclusions and credits, but on the grounds that they apply to all taxpayers without regard to income. However, it is noteworthy that the legislature also has enacted exemptions which are based upon income. The amount of the homestead property tax credit is based on the income of the tax filer, as is the amount of the earned income tax credit that a taxpayer can claim. [Note: Although the homestead property tax credit is applied against income tax liability, the credit is designed to provide property tax relief and therefore some contend that it cannot violate the Section 7 prohibition.]

The prohibition against a "graduated" income tax was a contentious issue for a period of time following adoption of the new constitution. Proposals to allow graduated income taxes were defeated in 1968 (Proposal I), 1972 (Proposal D), and 1976 (Proposal D). In recent years the issue has reemerged in the public policy debate in Lansing.

According to the Federation of Tax Administrators, as of January 2025, Michigan was one of twelve states[b] that had a broad-based "flat" rate individual income tax rate.[c] Five states have moved from graduated to flat-rate income taxes over the past decade and a half. Twenty-nine states use a graduated income tax rate system, with maximum rates that vary from a low of 2.5 percent in North Dakota to a high of 13.3 percent in California. In addition, the number and range of the various tax brackets used in each state differ markedly, although most have between three and seven brackets. Eight states[d] do not have an individual income tax and one state (New Hampshire) only applies the tax to dividend and interest income.

A constitutional convention would likely include significant discussions regarding retaining or reforming the prohibition on graduated income taxes and to consider factors that affect uniformity of the tax base.

Limitations on Sales Taxation

In some sense, Michigan's six percent state sales tax can be viewed as two separate taxes – a discretionary tax and a mandatory tax. Section 8 limits the rate of the sales tax on gross taxable sales of tangible personal property to not more than four percent, but then also requires the levy of an additional two percent on those same sales. Authorization for the legislature to levy the discretionary tax, at a rate of up to four percent, mirrors the language that was included in the 1908 Constitution and carried forward to the 1963 Constitution.

Under the General Sales Tax Act, the legislature has authorized that the maximum four percent rate be imposed for the discretionary tax. The Constitution dedicates 60 percent of the proceeds to the School Aid Fund (Section 11) and 15 percent of the proceeds to cities, villages, and townships, on a population basis (Section 10). The mandatory two percent tax was added by amendment in 1994 (Proposal A) and is authorized in the General Sales Tax Act. All proceeds from the mandatory tax are dedicated in Section 8 to the School Aid Fund.

As of January 2026, all but five states[e] levied a statewide sales tax, with rates ranging from 2.9 percent in Colorado) to 7.25 percent in California. Ten states, including Michigan, levied the tax at a six percent state sales tax rate.[f]

b Along with Arizona, Colorado, Georgia, Idaho, Illinois, Indiana, Kentucky, Massachusetts, North Carolina, Pennsylvania, and Utah.

c The 2025 Michigan individual income tax rate is 4.25 percent

d Alaska, Florida, Nevada, South Dakota, Tennessee, Texas, Washington, and Wyoming.

e Alaska, Delaware, Montana, New Hampshire, and Oregon.

f Florida, Idaho, Iowa, Kentucky, Maryland, Pennsylvania, South Carolina, Vermont, and West Virginia. See Tax Foundation, *State and Local Sales Tax Rates, 2026*.

Of the 50 states, 38 allow for some form of sales taxation at the local level in addition to their statewide sales tax. Michigan is one of the 12 states that do not allow local-option sales taxes.

A constitutional convention would provide an opportunity to revisit the current limitations on the sales tax as well as to consider authorizing the levy of local-option sales taxes (discussed below).

State Revenue Earmarking

Earmarking, or dedicating revenues, refers to the practice of reserving revenues from a tax or other revenue source for specific functions. In the absence of such earmarks, resources flow to a government's general fund to be allocated at the discretion of the legislature through an appropriations process. Earmarking may occur as a fixed dollar amount or as a percentage of the revenues from a given source. In Michigan, earmarking occurs through both statutory provisions, which can be modified by the legislature, and through constitutional provisions, which can be changed only by a vote of the people. Constitutional earmarking is thus the most restrictive form and effectively limits the discretion available to the Michigan Legislature in exercising its "power of the purse" with respect to authorizing appropriations.

Article IX contains many earmarking provisions that dedicate specific percentages of revenues from different taxes to a variety of functions (See **Table 1**).

Table 1
State Tax Constitutional Earmarking Provisions and Fiscal Year 2025 Collections (Millions of dollars)

Tax	Earmark/Purpose	Total FY2025 Collection	Earmarked Amount
Sales Tax			
4% Rate (Sec. 11)	60% - School Aid Fund	$7,176	$4,305
4% Rate (Sec. 10)	15% - cities, villages and townships	$7,176	$1,076
2% Rate (Sec. 8)	100% - School Aid Fund	$3,582	$3,582
Use Tax			
2% Rate (Sec. 8)	100% - School Aid Fund	$713	$713
Gasoline Tax (Sec. 9)	100% - transportation	$1,337	$1,337
Diesel Fuel Tax (Sec. 9)	100% - transportation	$281	$281
Vehicle Registration Tax (Sec. 9)	100% - transportation	$1,583	$1,583
Minor Fuel Taxes (Sec.9)	100% - transportation	$15	$15
Tobacco Tax Products (Sec. 36)	6% - health care	$623	$37

Note: Other state taxes are statutorily dedicated to specific purposes but were excluded here for simplicity.

Source: Research Council calculations based revenue data from Michigan Department of Treasury, Annual Report of the Michigan State Treasurer - FY2025.

In addition to earmarking state taxes, other state revenues are controlled by constitutional earmarking provisions including various fee revenue for natural resources, state parks, and recreation purposes (Sections 35, 35a, 40, 41, and 42). In some cases, earmarking creates a separate, unique state fund (e.g., trust fund) for the purposes of receiving specific revenues and the use of the revenues is strictly controlled by constitutional language.

Some of the current earmarking provisions pre-date the 1963 Constitution and were incorporated, or expanded, in the new document. Other dedications have been added to the current constitution through amendment, with much of the amendatory activity occurring between 1994 and 2006. In terms of the amount of revenue associated with the various provisions, the majority of the dollars earmarked pertain to provisions included in the original 1963 document.

A high level of earmarking, both constitutional and statutory, contributed to the calling of the 1961 Constitutional Convention. In the years immediately preceding the new constitution, upwards of 70 percent of Michigan state tax receipts were dedicated to specific purposes, either through law or the Constitution. Following the adoption of the new Constitution and by the late 1960s, this figure dropped to around 45 percent. Gradually, the amount of state tax revenues dedicated to specific purposes declined and remained in the 40 percent range. The school finance reforms of the mid-1990s (Proposal A of 1994) increased the level to closer to 60 percent and the level has slowly grown since that time. Today, the state's FY2025 Annual Comprehensive Financial Report suggests that about 68 percent (32 percent through the Constitution and 36 percent via state law) of the total state tax revenue ($40 billion FY2025) is earmarked and outside of the full control of the Michigan Legislature.

State Revenue Limit

In addition to the restrictions placed on individual taxes and the disposition of certain tax proceeds, Article IX also contains an overall state revenue limitation that applies to each fiscal year (Section 26), set to a fixed percentage (9.49 percent) of state personal income. This state revenue limit was added to the 1963 Constitution as part of the Headlee Amendment in 1978, which added ten new sections (25 through 34) to Article IX and amended section 6.

Section 26 authorizes an adjustment in the revenue limit when programs are transferred between governmental levels by constitutional amendment. Proposal A of 1994 transferred a substantial amount of school finance responsibility from the local level to the state. However, Proposal A did not specify that an adjustment in the revenue limit was authorized, and the revenue limit remained unchanged at 9.49 percent of state personal income

Since the transfer of the majority of education funding responsibility to the state in 1994, the revenue cap has been exceeded in three years. The first time was in Fiscal Year (FY)1995, following the full implementation of the new school financing system that relied on increased state taxation in exchange for a reduction in local property taxes. The revenue limit was also exceeded in FY1999 and FY2000, due in large measure to the strength of the state economy and attendant revenue collections.[g]

Since the early 2000s, however, state revenues have fallen well below the constitutional limit as a result of both economic and employment challenges facing the state between 2000 and the end of the Great Recession and tax policy changes that have generally reduced state revenue collections. For FY2025, the state collected $46.9 billion in revenue that was subject to the limit; an amount that fell $11.4 billion (or about 20 percent) below the calculated cap set in the Constitution. It is unlikely that the current revenue limit will be a relevant constraint on state revenue growth in the coming decades given this gap.

Delegates to any constitutional convention would face an important decision on Michigan's long-standing but increasingly irrelevant revenue limit. Should the provisions establishing the limit simply be eliminated? Or should a new limit be established to better reflect today's fiscal reality. A new limit could be based on a recalibrated measure of revenue as a percentage of personal income or, as some have proposed, on a combination of inflation and population growth. Whatever is decided could have far-reaching implications for Michigan's state budget and tax structure.

State Borrowing

The establishment of provisions to limit state borrowing in the interest of protecting the credit of the state has been a topic of discussion at every constitutional convention since 1835. The topic of borrowing is covered extensively in the 1963 Constitution, including limits on the type of borrowing the state can engage in, requirements for voter approval of long-term borrowing, and a limitation as to the amount of debt that may be issued. The basic limitation on state debt is contained in Section 12, "No evidence of state indebtedness shall be issued except debts authorized pursuant to this constitution." A constitutional convention would likely examine the state's borrowing experience as it relates to several constitutional provisions authorizing the issuance of debt.

General Obligation Debt

Sections 15 and 16 provide limitations on the issuance of long-term general obligation debt, for which the full faith, credit, and taxing powers of the state is pledged to ensure repayment. Section 15 provides that the state may borrow money pursuant to an act passed by two-thirds of the members in each chamber of the legislature and subject to voter approval as to the purpose of the debt, the amount, and the method of repayment. Section 16 (discussed

g In each year the cap was exceeded, the amount was less than the one percent threshold included in Section 26 that requires pro-rata taxpayer refunds of the excess revenue. The excess revenue was deposited in the state's rainy day fund.

further below) provides the state with the authority to issue debt for the purposes of making loans to school districts. As of September 30, 2025, a total of $591 million in general obligation debt was outstanding.[1]

Voter Approval

The Section 15 requirement for voter approval has been interpreted by the courts to apply only to general obligation debt. In contrast, voter approval is not required to authorize borrowing that is backed by dedicated revenue collected by the state and its agencies, such as transportation-related debt financed by state fuel and vehicle registration taxes. A total of $25.7 billion in non-general obligation debt was outstanding as of September 30, 2025. Voter-approved debt only represents two percent of the total long-term outstanding state debt at the end of FY2025. A constitutional convention might consider whether to retain the voter approval requirement for general obligation debt and, if so, whether voter approval requirements should be expanded to other forms of non-general obligation state.

Arguments in favor of requiring voter approval of a broader range of state debt emphasize its importance as a safeguard against the state becoming over-leveraged and potentially subject to defaults. It is argued that taxpayers, regardless of the nature of the borrowing, ultimately finance the debts of the state in the form of higher taxes or special charges and therefore should have a voice in it.

Opponents of requiring expanded voter approval contend that long-term borrowing is a critical financial tool of the state and widely used to support various transportation, housing, and infrastructure projects. Because of the complex and extensive use of long-term borrowing, requiring voter approval would hamstring state officials and delay public service delivery. Arguments against voter approval also center on the fact that revenue-dedicated debt is authorized by the state legislature, which safeguards the public interest.

Short-Term Borrowing

In addition to the long-term general obligation borrowing authorized by Sections 15 and 16, Section 14 allows the state to issue short-term debt (less than one year) backed by the full faith and credit of the state, commonly referred to as "cash flow borrowing." This type of borrowing is used to help manage the cash needs that result from timing differences between receipts and outlays. Section 14 limits cash flow borrowing to "15 percent of undedicated revenues received by the state during the preceding fiscal year" and requires repayment by the end of the fiscal year.

The State of Michigan relied more heavily on short-term borrowing during the 2000s to address cash flow challenges. Today, however, that reliance has greatly diminished. Still, a constitutional convention would likely examine whether the 15 percent cap should be revised in some way.

Loans to School Districts

Section 16 provides that the state may borrow for the purpose of making loans to school districts, a provision that is statutorily implemented as the School Bond Qualification and Loan Program (SBQLP). Provision for this program was first introduced to the Michigan Constitution by amendment in 1955 and further amended in 1960. The 1963 Constitution continued the provisions in effect with minor modification.

The SBQLP lets school districts borrow from the state the difference between what their debt levy generates and the amount needed to make their annual bond payments. When adopted, the idea was to allow growing school districts to bond for more than their existing tax bases could support with the expectation that over time their tax bases would grow and eventually the bonds and the state loans would be repaid. In practical terms, by capping the maximum millage rate that can be levied and extending the repayment over a longer period of time, the SBQLP allows school districts to borrow using the state's credit rating. It is attractive for school districts because it allows for reduced millage levies in the near term in exchange for repaying the loans over a longer period, thus affecting future taxpayers.

A constitutional convention may wish to address several issues related to the SBQLP. First, the very structure of the program has been criticized as contributing to urban sprawl. While the program could be justified in the 1950s, as school districts struggled to provide space to "baby boomers," population growth in the state has reached a plateau. Districts currently in the circumstances for which the program is intended are on the urban fringes and subsidized loans create further affordability for those moving out from urban, developed areas.

Although the SBQLP is structured to help growing districts, it is not statutorily implemented to serve only such districts. Today, the primary constituency is school districts with relatively low property wealth. Some of these districts are effectively enabled to "game" the system by perpetually borrowing with no real expectation of retiring the debt. Once sufficient borrowing has occurred to get a district to the maximum required millage rate, the further incurrence of debt comes at no additional cost to existing taxpayers. It simply prolongs the repayment periods, affecting future taxpayers.

Even if the focus of the SBQLP has shifted to helping the state's poorer districts manage their debt costs, it has proven unable to help some of the state's poorest school districts. The tax bases of some districts are sufficiently low, that it would be unrealistic to expect that their state loans could ever be repaid, given a realistic expectation of tax base growth. Thus, relatively poor districts have been turned away, while wealthier districts, with stronger tax bases, have benefited from the program.

Local Government Finance

Throughout Michigan's history, local governments have relied relatively heavily on the property tax as a source of revenues. As the primary source of local revenue, and the only type of tax available to many types of local government, the overlapping jurisdictions cause individual tax levies to stack up and lead to high overall tax rates for some property taxpayers. The result was a mounting property tax burden, heavily weighted by millages levied for school operating purposes.

Responses to curb the increasingly heavy property tax burden came on several fronts. First, a series of amendments to the state Constitution embedded details of the tax's mechanics and tax rate and base limitations. Second, state aid to Michigan's local governments grew to compensate local governments for taxes formally collected at the local level or for new laws that preempted local collection of a tax. The role of state aid has also broadened, supplementing property tax revenues reduced by tax limitations. Third, legislation to authorize collection of non-property taxes, such as local income taxes was enacted. However, few municipalities have adopted these alternate sources. Even for those which did, there has been insignificant reduction of the property tax burden. Each of these developments is explored below.

Detail and Complexity

The many amendments to the state constitutional provisions affecting property taxes and their administration have added a significant amount of detail to Article IX. Sections 3, 4, 5, 6, and 31 of Article IX relate to varied aspects of property taxation.

The detail provided, however, is still not enough to streamline or simplify an already complex property tax system. The state Constitution does not provide enough clarification for the meaning of terms leaving governments and taxpayers wrangling over the meaning and their application to specific situations. Moreover, the language has not adapted to changing times. Tax administration has been further complicated by tax limitations layered on top of existing provisions. Eliminating some of the complexity of the property tax system would be a welcome goal for a constitutional convention.

Local Tax Limitations

The property tax is among the least popular of the major taxes because: 1) taxpayers know exactly how much they pay as it is paid in one or two lump-sum payments each year; 2) the tax base is often the primary asset of residents and businesses (i.e., individuals' homes and the buildings in which the businesses are located); and 3) the amount levied is not linked to changes in income.

Dissatisfaction with the amount of burden and the unpredictability of annual changes placed on taxpayers by the property tax led to the creation of several limitations in Article IX. Taxes can be limited by controlling growth of the tax base or the tax rate applied to the base. Michigan voters have attempted both methods of limiting property taxes.

Tax Rate

The first limit to property tax millages came in 1932 when the 1908 Michigan Constitution was amended to create a 15-mill aggregate limit on all jurisdictions levying property taxes. The 15-mill limitation was retained and a new separate 18-mill limit was introduced when the 1963 Constitution was adopted. The 18-mill limit eliminated the need for county tax allocation boards as the millage cap could be raised from 15 to 18 mills with a local vote. A separate provision was added allowing voters to increase the limitations up to 50 mills for up to 20 years (Section 6).

The principal shortcoming of these tax limitations is that so many millages are excluded that the limits are rendered virtually meaningless. The 15, 18 and 50 mill limitations apply only to operating millage levied by *unchartered* counties and *unchartered* townships. Debt service millages levied by local units are excluded, as are operating millages imposed by the state and any school district, city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law. Because of these exclusions, aggregate property taxes levied on some parcels of property by far exceeded the constitutional 50-mill limit in Section 6.

Actions to remedy the shortcomings of the tax limitations of the original 1963 Constitution were made through a constitutional amendment in 1978 commonly referred to as the Headlee Amendment (Proposal E). First, the Headlee Amendment created a requirement for local governments to obtain voter approval for the levy of new taxes or for increasing the rate of an existing tax above that which was authorized at the time the amendment (Section 31) was adopted. Additionally, a provision to reduce property tax rates when revenues exceeded a certain threshold was established. If the property tax base[h] of existing property (exclusive of new construction and improvements) in a taxing unit increases more rapidly than the rate of inflation (as measured by the Consumer Price Index), the maximum authorized property tax rate for the taxing unit is reduced so that the total tax levy on existing property is no greater than the prior year levy adjusted for the growth in inflation. This limitation is applied to the taxing unit as a whole not to specific parcels of property within that taxing unit.

The application of the limitation to the entire taxing unit, and not the individual parcels of property, allowed property taxes levied on some properties within a unit to rise more than the rate of inflation because others were decreasing or growing at slower rates. At times, the reduction in taxes from the unit-wide rollback in the tax rate was not sufficient to offset the growth in a property owner's tax bill because of appreciation of their properties. The unit-wide application also perpetuated the year-to-year unpredictability for individual property owners.

h From 1978 until adoption of Proposal A in 1994, the tax base was defined as state equalized value, measured at no more than 50 percent of each parcel's true cash value

Property Tax Base

After repeated attempts to control property taxation by limiting tax rates, the adoption of a constitutional amendment referred to as Proposal A of 1994 amended Section 3 to introduce a restriction on growth of the tax base for individual parcels. The value of a property used to determine its tax base was limited to an annual increase in value of no more than the rate of inflation or five percent. Taxable value became the new measure of tax base rather than the state equalized value. Property value is reset and assessed at its true cash value when ownership transfers.

Introduction of taxable value as the new tax base created a system in which properties that are alike in every way, could be taxed at different amounts depending on the year in which ownership was attained.

Overlapping Limitations

A constitutional convention would likely address how Michigan's property tax limitations overlap. Because each introduction of a new limitation was made without eliminating or amending the existing property tax limitations already in the Constitution, administration of these limitations is complex.

Neither the 1978 tax limitations in the Headlee Amendment nor the 1994 amendments in Proposal A altered the 15/18/50 mill limitations on local government millages. Proposal A of 1994 excluded school operating taxes from the 15/18 mill tax limitations, but did not amend those limitations to reflect the change. Because the excluded school operating millages were levied at different tax rates, the limitations that now apply to unchartered counties and unchartered townships vary, which creates such confusion at sufficient levels as to become unenforceable.

Proposal A of 1994 also did not amend the Headlee Amendment's property tax limitations, nor did it specify how the Headlee Amendment's provisions should be applied to the new measure of taxable value and the reset ("pop ups") in property value occurring upon a change in ownership. Since the Great Recession (2007-2009), the these limitations have had a compounding effect. There is a greater overall limitation than either Headlee or Proposal A may have intended to achieve individually. To overcome the effect of these limitations, local governments have incentives to develop new property.[2] The pace of tax rate increases is faster in the period since the Great Recession, further illustrating the irrelevance of the tax rate limitations.[3]

Convention delegates may be encouraged to simplify the property tax limitations in this Article. However, the detail required to calculate and administer these property tax limitations would be better written into statute rather than in constitutional language. This would also allow for ongoing clarifications should they be needed in the future.

Taxable Value

The use of taxable value for calculating property taxes, based on a non-uniform tax base, may capture the attention of a constitutional convention. Challenges to the modified value acquisition systems of valuing property (such as taxable value in Michigan and Proposition 13 in California) have been made on the grounds that they violate principles of uniform taxation. However, they have been upheld using the justification that states have a rational interest in neighborhood preservation, continuity, and stability.[4] Constitutional convention delegates might consider whether those types of policy issues should be addressed through Michigan's tax code or whether they should be addressed through other statutes, to avoid sidestepping the tax principles of uniform taxation.

If so, convention delegates might further ask whether a taxable value system of valuing property should be applied to all classes of property, or solely to residential property? The consequences of applying taxable value to non-residential properties are: 1) revenue loss for the state and local governments; and 2) the provision of tax advantages to businesses that have owned the land and buildings longer than other competing businesses. Ownership of residential properties tend to transfer much more frequently than that of commercial and industrial properties; and ownership in each of those classes transfer more frequently than that of agricultural properties. It could be argued that the use of taxable value as the tax base for non-residential properties is detrimental both to governmental finance and to economic development.

State Shared Revenues

A secondary response to local government's reliance on property taxes as the primary source of local government revenues has been the development of an patchwork system of sharing state revenues with local governments.

The state provides a broad range of financial support to its local units of government—cities, villages, townships, counties, school districts, and community colleges. Just over one-half of all state-levied taxes, fees and other charges are paid to local units of government.[5] The majority of this is required by Sections 8, 10, and 11 of Article IX in payments to school districts, cities, villages, and townships.

Advocates of a system of state aid might argue that the collection and distribution of state revenues to local governments lessens the reliance on the property tax and diversifies the finances of local governments. It creates greater equity and efficiency in the financial system by distributing funds in manners different than the origins of the tax collections. When funded in accordance with statutory intent, it has allowed local governments to keep property tax rates lower. Furthermore, collecting taxes by the state is more efficient than would be the case if each local government collected taxes independently.

Alternatively, critics might suggest that state aid has perpetuated an inefficient provision of local government services. How the state aid is distributed to local governments allows them to operate independently rather than seeking economies and efficiencies through consolidation and joint service provision. It was after the state began cutting statutory state revenue sharing in the early 2000s that local governments intensified their efforts to seek efficiencies in the provision of services through tools such as intergovernmental collaboration. For example, when the state was unable to maintain existing levels of school aid, the dialogue related to school district consolidation intensified.

A constitutional convention might begin an examination of intergovernmental finances by asking whether all the specific requirements that the state provide aid to its local governments should remain in the constitution. A complete elimination of these provisions would free the state legislature to focus on state services (including aid to local governments through a statutory system of sharing state revenues if the legislature so chooses). Alternatively, state aid could be replaced with a funding structure system that would allow different areas of the state to focus on regional needs.

If a constitutional convention chooses to address the provisions of state aid to local governments, it may also look at the safeguards that were inserted into the Constitution to protect against erosion of state aid. Separate amendments have attempted to prevent diminution of state aid and transfers of responsibility for service delivery without adequate state funding to meet those increased local costs.

Sections 29 and 30 of the Headlee Amendment were thought to be necessary because a companion section, Section 26, limits state government revenues in any given year to a fixed percentage of total personal income. Drafters of the Headlee Amendment anticipated that state policymakers might attempt to mitigate the effects of the revenue limit by shifting to units of local government responsibility for programs previously funded by the state or reduce the amounts shared with local governments to retain more funds for other state priorities.

State Spending Paid to Local Governments

Section 30, added to Article IX by the 1978 Headlee Amendment, requires the state to maintain the level of state spending paid to local governments at a level at least equal to what was paid in 1978. Since adoption of Proposal A in 1994, when the state assumed primary responsibility for funding school operations, state spending to local governments has been well in excess of the Section 30 funding requirement.

However, the details of this provision became an issue in the post-Proposal A years. Section 30 creates the minimum level of revenue to be shared with *all* local governments. Because Proposal A significantly increased the amount of state funding sent to local school districts, thereby enabling the state to reduce funding for other types of local governments and still remain above the minimum threshold. Should the convention delegates review the application of the revenue limit in Section 30, they may consider allowing the revenue limit to adjust when significant changes in state-local revenue distributions occur.

State Mandates on Local Governments

Section 29 requires the state to pay in subsequent years at least the same proportion of costs for activities or services required of units of local government as it paid in 1978, the year in which the amendment took effect.

The history of Section 29 suggests that, if it is desirable to extend such a provision into a new constitution, changes will be needed to make it work better. First, notwithstanding a few lawsuits that have been filed to challenge funding changes by the state, the provisions of Section 29 have been wholly disregarded. A process for identifying mandates and providing disbursements to fund state requirements for local governments was never implemented. The system created to identify existing mandates fell apart. Mandates were enacted without sufficient funding.

Additionally, it will be necessary to provide greater definition to the types of legislative directives that would warrant the accompaniment of state funding. State and local officials have tended to define the concept of "activities and services required of units of Local Government by state law" differently. While the local government officials tend to look upon such requirements as any law or regulation that causes activities and services to be provided as state mandates, state officials, and the courts, have used a much narrower definition that defines mandates to include only those laws and regulations that apply to all local governments of a type (i.e., all school districts, all counties, etc.).

A number of states have laws, both constitutional and statutory, obligating state funding accompany any state laws that mandate local government services and activities.[6] A constitutional convention may address mandates in one of three ways: 1) examine the provisions of other states with similar limitations for best practices with the goal of strengthening the restrictions on unfunded mandates; 2) eliminate requirements for state funding of local government mandates thereby leaving open the possibility of statutory enactment of a mandate funding requirement; or 3) amend the current provision to improve its effectiveness.

Alternative Tax Sources

The decline in state shared revenues coupled with a contraction of the property tax base because of economic uncertainty has fed the desire among local government officials for alternative funding sources to supplement or replace the property tax.

As was detailed in the analysis of Article VII[7], one way in which the state has weakened the Michigan Constitution grant of home rule powers to local governments was by limiting their ability to levy local taxes. Article VII, Section 7 provides that "Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law." Additionally, Article VII, 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." Unlike many other states with strong home rule provisions that do not limit their local governments in this way, Michigan laws require an authorizing state law for local governments to levy taxes other than property taxes. Public Act 243 of1964 prohibits any new non-property taxes for cities and villages if they were not in place prior to 1964.[8]

Cities have local-option income taxes at their disposal and counties are authorized to levy a few minor taxes, but neither villages, townships, special authorities, nor school districts currently can use funding sources other than property taxes. Independent of the article on local government, a constitutional convention might opt to include authorization for alternative funding sources for local governments in Article IX. In doing so, they might consider whether the current provisions related to the sales tax when taken together prohibit local governments from levying sales taxes.

Local Sales Tax Prohibition

Local government officials and proponents of providing regional services have explored the possibility of local-option sales taxes in Michigan. The sales tax rate limitation in Section 8 appears to not permit local sales taxes. The primary impediment arises from a conclusion that the local taxes would be subject to the aggregate 6 percent rate limitation provided in the section. The current constitutional language is unclear whether the rate limitation was intended to apply only to a state sales tax or also to a local sales tax. According to a 1970 state Attorney General opinion, the Legislature can only authorize a local sales tax by amending the state Constitution, since the voters who ratified the Constitution intended to preempt the sales tax "as a state sales tax."[9] Furthermore, even if the state were to yield part of its current taxing authority to local governments, revenues collected from local sales taxes would be subject to these same dedication requirements found in sections 8, 10, and 11 (discussed earlier).[10]

It is worth noting that the wording of Section 8 stands in contrast to that of Section 7 which prohibits "the state or any of its subdivisions" from imposing a graduated income tax. These two sections, when read together, suggest that when the drafters of the 1963 Constitution intended to limit not only state legislative authority, but also the authority of units of local government, they clearly expressed that intent.

Although the issue has been addressed by the Attorney General (which has the effect of law until modified by the courts), the courts have not ruled on the legality of local sales taxes. Given the tight statutory and constitutional constraints on local government revenue-raising options, and the growing fiscal challenges facing local governments, a constitutional convention will likely consider the authority for local-option sales taxes.

Other Headlee Amendment Issues

Beyond the state and local government tax and revenue limitations established by the Headlee Amendment that are discussed above, a constitutional convention may direct its attention to other constitutional issues created by that amendment. For instance, Section 25 serves as a preamble to Sections 26 through 34, the purposes of which are apparent upon reading the sections. Section 33 provides definition for several of the significant terms fundamental to the Headlee Amendment's limitations. This practice is commonly left to the legislature in other parts of the constitution, as can be seen by the number of times the drafters used the term "as defined by law." Section 34 directs the legislature to statutorily implement Sections 25 through 33, a role that defaults to the legislature in any case because the Michigan Constitution is not self executing. These sections serve no other purposes. Convention delegates may wish to begin their task by cleaning these sections out of the constitution.

Definition of a "Tax"

Section 31 provides that "Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above the rate authorized by law or charter when this section is ratified…" Although Section 33 defines a number of other terms contained in the Headlee Amendment, it does not define the term "tax." As a result, the courts have had to play a very important role in differentiating taxes from fees and from special assessments, especially ad valorem special assessments. If a constitutional convention opts to continue the tax limitations created by the Headlee Amendment, it could serve a vital role in providing greater definition and clarifying the extent to which local governments can or cannot use these funding tools to, at times, circumvent the intent of the limitation.

Role of the Court of Appeals

Section 32 provides that "Any taxpayer of the state shall have standing to bring suit in the Michigan Court of Appeals to enforce provisions of Sections 25 through 31…" The drafters' notes do not indicate why the authors of the Headlee Amendment chose the Court of Appeals as the forum in which taxpayers could bring original enforcement actions. As such, it cannot be determined whether the drafters anticipated the difficulty that that choice would produce. Presumably, the drafters hoped to expedite the process of challenging government actions by eliminating one level of court hearings, the circuit courts that usually have full dockets, and one set of appeals.

The Court of Appeals has been reluctant to play the role that the Headlee Amendment created for it. In the most notable case, a lawsuit was filed in 1980 in the Michigan Court of Appeals on behalf of seven taxpayers, including Donald Durant, a resident of the Fitzgerald School District.[11] The essence of the lawsuit was that state officials had reduced the proportion of educational costs paid by the state to a level below that required by the Headlee Amendment. Over the next 17 years, the *Durant* case would beat a well-worn path between the Court of Appeals and the Supreme Court, often due to the Court of Appeals recalcitrance in carrying out its assigned role. The Court of Appeals essentially refused to consider *Durant* on its merits, choosing instead on two separate occasions to dismiss the case on technical grounds. While it is true that the case raised a number of complex factual issues, the court was not without options for dealing with them.[12]

The court's recalcitrance stems from the fact that the Court of Appeals is an appellate court. It was not established to handle complicated factual issues, which are often at the heart of taxpayer lawsuits, but to resolve issues of law raised on appeal from trial courts. Given the purpose that the Court of Appeals serves, the decision to assign to it responsibility to hear taxpayer lawsuits was arguably ill advised.

Should provisions of the Headlee Amendment be carried forward to a new document, a constitutional convention would likely be called upon to decide whether a unique legal process is needed for challenging government tax and finance actions.

Public Pension and Other Post-Employment Benefits

Both state and local public pension plans and retirement systems in Michigan enjoy considerable constitutional protections under Section 24. Specifically, this section establishes the "accrued financial benefits" of each plan or system as a contractual obligation of the unit of government administering the benefit program. Furthermore, the section prohibits the benefits from being "diminished or impaired" by the governmental unit. Section 24 also requires the governmental unit to fully fund the actuarial costs of retirement benefits earned during a fiscal year in that same year. This provision prohibits this funding from being used to finance "unfunded accrued liabilities" in the pension system resulting from investment losses, demographic changes, or changes in actuarially assumptions (e.g. mortality rates) on which contributions are based. Additional funding beyond the contribution to cover earned financial benefits would be required to cover any unfunded liabilities.

Two public policy issues arise in Section 24 that a convention might consider. First, a convention might consider whether the state's constitution should contain an explicit protection for public pension benefits or if such protection should be left to statutory law and decisions of the courts. Second, the term "accrued financial obligations" has been interpreted by the Michigan Supreme Court to be limited to pension benefits, but not other post-employment benefits (OPEBs), i.e., primarily health care benefits. The disparate constitutional treatment of pension benefits versus OPEBs would likely garner some attention during a convention.

In practice, the State of Michigan has made a significant change in its funding of OPEB benefits since the question of holding a constitutional convention last appeared on the ballot in 2010. Beginning in FY2012, the state began to pre-fund OPEB benefits in the year they were earned in the same manner as financial benefits under the state's pension systems.[13] Prior to FY2012, OPEB benefits were financed on a "pay as you go" basis in the fiscal year in which health care premiums and other OPEB benefit costs owed to existing retirees. Local governments have mixed experience in attempting to pre-fund

OPEBs. A constitutional convention would likely consider whether the state's current practice should be enshrined in a new constitution to apply to all governments.

The constitutional protections of public pensions from being "diminished or impaired" are understood to prevent state government, or its subdivisions, from reneging on benefits previously earned based on services rendered. This does not prevent a unit of government, as the employer, from modifying the level of future benefits offered to its employees prospectively.

At one time, this safeguard was also thought to shield public pension income from taxation by state and local governments. However, in 2011, the legislature enacted changes to state law which ended the long-standing exemption of all public pension benefits from the state's income tax and bringing greater equity to the treatment of both public and private pension and retirement benefits under the state's tax code. Late in 2011, the Michigan Supreme Court ruled that while the pension benefit itself was constitutionally protected, the legislature could alter the tax treatment of those paid benefits. Again, a constitutional convention would likely consider whether this issue should be revisited in a new constitution.

Although the majority of states provide some form of constitutional protection for their pensions, Michigan is somewhat unique in that it is one of only seven states where participants in the public pension plans have a guaranteed right to a benefit and that accrued financial benefits cannot be diminished or eliminated, pursuant to constitutional law. In all other states, legal protections are provided through state laws or the courts have ruled that there are safeguards based on due process or federal constitutional provisions that protect contracts.[i]

While public pensions enjoy considerable legal protections from infringement by the government, OPEBs do not according to opinions rendered by the Michigan Supreme Court. In 2005, it was determined that health care benefits do not constitute "accrued financial benefits" as the term is used in Section 24. In effect, the Supreme Court ruled that health care benefits are not protected by the Constitution from diminishment or impairment in the way that pension benefits are protected.[14]

Options to diminish or impair OPEBs relate to changes in the cost-sharing arrangements between employers and employees/retirees. As the costs of post-retirement benefits continue to rise (both at the aggregate and at the per-retiree level), and state and local governments face growing fiscal challenges to finance these benefits and other public demands, it is likely that public employers will be pressured to shift more of the costs of previously promised benefits to retirees or current employees. This can occur by requiring retirees or employees to pick up larger shares of the benefit costs, either in retirement or during their active working years.[j] A constitutional con-

i The other six states are: Alaska, Arizona, Hawaii, Illinois, Louisiana, and New York. State Higher Education Executive Officers Association, Understanding State Pension Challenges: A Primer for SHEEOS, September 2019.

j For example, recent statutory changes to the state-administered retirement program covering public school employees vention may decide to review, and possibly clarify, the degree to which the Michigan Constitution should protect certain OPEBs from being diminished or impaired. A convention also might consider whether the state's constitution should contain language to require the state and local governments to pre-fund these benefits at a certain level, similar to the state's practice adopted in FY2012.

Constitutional Sections of Statutory Nature

A constitutional purist might begin by asking how much of the current Article IX belongs in a constitution and how much should be left to legislative discretion and contained in state law. This line of thinking suggests that a constitution should not be an elaborate document. It should be relatively compact and economical in its general arrangement and draftsmanship. Details, including those provisions related to finance and taxation, should be avoided and matters appropriate for legislation should not be incorporated into the organic document. As was detailed above, much of Article IX either limits the ability to tax or dedicates revenues to specific purposes.

The most obvious example of purely statutory language in the Constitution is found in Sections 35 and 35a and 37-42 of Article IX, placed in the Constitution in a series of five amendments, totaling some 3,118 words (or about nine percent of the Constitution), from 1984 to 2006. These amendments lifted language directly from existing statutes and placed it in the Constitution to prevent the legislature from using balances in various funds for purposes other than those for which those balances were created.

Conclusion

The role of a state constitution in serving as a limitation on the governmental power of the state is exercised most overtly in matters of tax and finance. Drafters of the 1963 Constitution provided the legislature with a "power of the purse" that is bound by constitutional limitations on the type of taxes that may be employed, the rates at which certain taxes may be levied, and the purposes for which certain tax revenue may be used. Subsequent amendments to the Constitution added further limitations to this foundational legislative power. As a result, should a constitutional convention be called, the delegates may devote a significant amount of time related to Article IX finding a proper balance on a critical question: what limitations and restrictions related to fiscal matters need to be incorporated into the new constitution and which are best left to the legislature's discretion through its powers to amend state law.

(Public Act (PA) 75 of 2010) requires current school employees to contribute three percent of their salary to cover retiree health care costs. The required charge is intended to partially offset the employer's costs associated with provided the benefit. It should be noted that a constitutional challenge to PA 75 was initiated by a group of school employees, citing the protections provided under Article IX, Section 24 to health care benefits and arguing that the new, mandatory employee contribution constitutes an impairment of the benefits.

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