



# CRC SPECIAL REPORT

## MICHIGAN CONSTITUTIONAL ISSUES



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Second in a series of papers about state constitutional issues

### A BRIEF MICHIGAN CONSTITUTIONAL HISTORY

At the November 2, 2010 general election, the voters of Michigan will decide whether to call a constitutional convention to revise the 1963 Michigan Constitution. The question appears on the ballot automatically every 16 years as required by the Constitution. The Constitution provides that a convention would convene in Lansing on October 4, 2011. If the question is rejected, it will automatically appear on the ballot again in the year 2026.

The 1963 Constitution is Michigan's fourth adopted constitution. Only 10 states have revised and adopted a greater number of state constitutions. Michigan was one of 13 states to revise their state constitution between 1948 and 1975. Only two states have gone through the revision exercise in the years since.<sup>1</sup> This paper is designed to explore the regular submission of constitutional revision questions to the voters and the evolution of the constitution that has occurred since Michigan's first constitution was adopted in 1835.

### Michigan Constitutional History

The people of Michigan have adopted four constitutions (1835, 1850, 1908 and 1963), have rejected two (1867 and 1873) and failed to approve the calling of a convention on 11 occasions (most recently in 1994).

#### Early Constitutions

**The Constitution of 1835.** In 1835, the territorial council provided for an election of delegates to a constitutional convention. Ninety-one delegates assembled in Detroit in May and concluded their deliberations in June. The proposed constitution was submitted to the voters of the territory in October 1835, 15 months before Michigan was admitted into the Union. It was overwhelmingly approved (6,299 in favor, 1,359 opposed).

The 1835 Constitution has been praised by many political scientists who claim it to be the best among the four Michigan constitutions. It provided for election of only the Legislature, Governor, and Lieutenant Governor, with other state offices filled by appointment. It was the first state constitution to provide for the appointment of a state superintendent of public instruction. The brevity and simplicity of the document has been acclaimed.

**The Constitution of 1850.** In 1849, the Legislature submitted to the voters the question of calling a constitutional convention to revise the 1835 Constitution. The voters approved the question and 100 delegates were elected in 1850. The delegates convened in June and adjourned in August. The proposed constitution

was twice the length of the Constitution of 1835 and its detailed provisions reflected the prevalent tendency of that period to incorporate into basic law provisions more properly left to statutes. In November 1850, the voters overwhelmingly approved the proposed constitution (36,169 in favor, 9,433 opposed). The 1850 Constitution included the provision that every 16 years, and at other times as provided by law, the question of calling a constitutional convention automatically be submitted to the voters. However, calling a convention required approval of a majority of those voting at the election and not just a majority of those voting on the question.

#### Revision Attempts, 1867-1904

General dissatisfaction with the 1850 document led voters to approve by a three to one margin the calling of a constitutional convention in 1866, pursuant to the 16-year requirement. The 100 delegates were elected in April 1867; convened in Lansing in May; and adjourned in August 1867. The proposed constitution was rejected by the voters in 1868 (71,733 in favor, 110,582 opposed).

In 1873, the Legislature authorized the Governor to appoint an 18-member commission to study the 1850 Constitution and propose amendments and revisions.

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<sup>1</sup> *The Book of the States*, 2009 Edition, Volume 41, The Council of State Governments, Lexington, KY, [www.csg.org](http://www.csg.org).



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The commission submitted its formal report for a revised constitution to the Governor and the Legislature placed it on the ballot. In November 1874, the voters rejected the proposed constitution by a three to one margin (39,285 in favor, 124,034 opposed).

Following the 1874 attempt to revise the 1850 document, the question of calling a constitutional convention was rejected by the voters five times. Legislative action placed the question on the ballot in 1890, 1892, and 1904, and the 16-year constitutional provision submitted the question to the voters in 1882 and 1898. In each instance, the majority of those voting in the election failed to approve the proposal, although in 1892, 1898 and 1904 the majority of those voting on the question gave their approval.

## The Constitution of 1908

In April 1906, the voters approved the question of a general constitutional revision that had been placed on the ballot by legislative action. Ninety-six delegates were elected. The convention convened in Lansing in October 1907 and adjourned in March 1908. The proposed constitution reflected characteristics of the progressive reform movement including home rule for cities. The proposed constitution was approved by the voters in November 1908 (244,705 in favor, 130,783 opposed).

Over the ensuing 53 years, the 1908

Constitution was subject to constant revision. Michigan voters were asked to amend the 1908 Constitution 122 times; of which 66 proposed amendments were adopted and 56 were rejected. By 1960, the Michigan Constitution had grown to 15,323 words. Despite the continuous attention and amendment, a general dissatisfaction with the document created a growing desire to revise the constitution.

**Attempts to Revise the Constitution of 1908.** Between 1926 and 1961, there were five referenda on the question of revising the 1908 Constitution. The first effort, pursuant to the 16-year requirement, was rejected by the voters in November 1926 (119,491 in favor, 285,252 opposed). The next vote on calling a convention in November 1942, again pursuant to the 16-year constitutional requirement, was rejected by the voters. It received approval by a majority of those voting on the question (468,506 yes, 408,188 no), but not a majority of those voting in the election.

In November 1948, the Legislature submitted the question of general constitutional revision to the voters. Although the majority of the votes on the question favored the proposal as they had in 1942, it failed due to the constitutional provision requiring a majority of votes cast in the election.

In 1958, the 16-year requirement again placed a ballot proposal for a general constitutional revision

before the voters. This effort also failed. Once again, it lacked the necessary majority of votes cast in the election, although the proposal received the majority of votes on the issue (821,282 in favor, 608,365 opposed). In 1958, 2,341,829 votes were cast in the election, but only 1,429,647 (or 61 percent) voted on the question of calling a convention.

In effect, failure to vote on the ballot question was counted as a vote against the calling of a convention under this provision.

It is significant that the vote favoring constitutional conventions increased with each successive revision attempt between 1926 and 1958, with substantial favorable majorities of those voting on the issue achieved in 1948 and 1958. The next step in the effort to call a constitutional convention was to change the requirement for calling a convention from a majority of electors voting in the election to a simple majority of those voting on the question.

**Gateway Amendment and the April 1961 Referendum.** In 1960, leading civic organizations in Michigan developed an initiative proposal to amend the 1908 Constitution to simplify the calling of a constitutional convention. It provided for approval of a convention call by a simple majority of those voting on the issue, and altered the basis of representation by authorizing one convention delegate from each state House and Senate district. The pro-

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posal called for submission of the question of general constitutional revision at the 1961 spring election, specified time limits for electing delegates and specified when and where the convention should convene. The gateway amendment was approved by the voters in November 1960 (1,312,215 in favor, 959,527 opposed).

Pursuant to the new amendment, the question of a general constitutional revision was submitted to the voters in April 1961. The proposal was approved by a margin

Michigan prior to the 1961-62 constitution convention was similar in many ways to Michigan today. The state was hard hit by a national recession in the late 1950s. Residents had a growing sense that state government was dysfunctional: unable to manage available resources and efficiently deliver services. The following were some of the issues that citizens considered before deciding whether to convene a constitutional convention:

**Legislative Branch Issues.** Political control of the legislature was a primary issue. Under the 1908 Constitution, Southeast Michigan had a growing sense of under representation. The three southeastern Michigan counties of Wayne, Oakland, and Macomb had about 48 percent of the state's population, but only 26 percent of the senate seats and 43 percent of the house seats.

Southeast Michigan does not suffer the same sense of under representation under the 1963 Michigan Constitution. A legislative issue to be considered today is the fact that apportionment provisions

of only 23,421 votes (596,433 in favor, 573,012 opposed). It is noteworthy that if the former constitutional requirement of a majority of those participating in the election had applied, the proposal would have failed.

## Michigan Constitutional Convention of 1961-62

Delegates to the 1961 Constitutional Convention were nominated in July 1961 and the 144 delegates were elected in September on a partisan ballot from single-member districts, one each from the 110

## Constitutional Issues in 1960

in the 1963 Constitution were ruled in violation of the U.S. Constitution and Michigan provides for reapportionment and redistricting through the legislative process.

**Executive Branch Issues.** In 1961, a common sense existed that the executive branch was ineffectual and needed changes. Executive officers were elected every two years. The direct election of eight officers limited the administrative control of the governor. The executive branch was divided and subdivided into 120 administrative agencies. The 1940 amendment that gave the civil service system constitutional status left the governor and the legislature with little direct control over compensation of the state's workforce.

While the executive branch is selected and organized differently under the 1963 Constitution, Michigan's elected leaders today continue to seek ways to streamline state government, including examination of the number of state departments, the role of boards and commissions, and setting pay and benefit levels of the executive branch employees.

House and 34 Senate districts. The convention convened in October 1961 and after seven months of work, recessed. On August 1, 1962, the final document of 19,203 words was approved by the convention for submission to the voters on April 1, 1963. (The 1963 Michigan Constitution now has 35,858 words.<sup>2</sup>) The new Constitution was approved in a very close vote (810,860 in favor, 803,436 opposed) and took effect January 1, 1964.

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<sup>2</sup> The Book of the States.

**Judicial Branch Issues.** The method of selecting judges to the state Supreme Court and lower court levels was a primary issue awaiting the 1961 constitutional convention. Additionally, the fractured judicial system, with justices of the peace and municipal courts for example, created uncertainty in the minds of many forced to enter the court system.

The 1963 Constitution unified the state judiciary into "one court of justice" but did not change the method of selecting Supreme Court justices. The method of selecting Supreme Court justices would likely again be an issue if a constitutional convention is convened in 2011. Also, some may desire to align court funding from a single source to be consistent with the state's role in administering the lower courts under the "one court of justice" concept.

**Educational Issues.** Besides deciding whether to appoint or elect the state board of education and the state superintendent of public instruction, attention was directed at the system of higher education.

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Fragmented control of the several state universities and the special powers and privileges accorded to the University of Michigan, Michigan State University, and Wayne State University were the primary educational issues.

Today, the autonomous university system remains a contentious issue. Some may argue that language should be included to define a minimum level of funding for education in addition to the current provisions requiring the legislature to “maintain and support a system of free public elementary and secondary schools...”

**Local Government Issues.** Disagreement over whether perceived changes caused by increasing urbanization, and improvements in transportation and communication especially, required a re-definition of the role of existing governmental units was an issue in 1961. The

discussion focused on whether reform could eliminate duplication, waste, and inefficiency, while retaining democratic and responsible government. Some contended that the current governmental system did not provide an adequate structure for meeting area-wide or metropolitan problems that usually extend beyond the present political boundaries.

The 1963 Constitution did not introduce any major reforms to Michigan's structure of local government and these issues remain core to conversations about potential reforms to enable local governments to better provide services in an increasingly global economy.

**Finance and Taxation Issues.** Because Michigan had just come through a severe recession and had struggled to maintain balanced state budgets, several finance and taxation issues were at the fore-

front for voters deciding to call a constitutional convention. Electors were considering whether graduated income taxes should be authorized; how to free the legislature from restrictions on taxing and spending powers created by high levels of revenue dedications or earmarking; whether the state's limitations on borrowing should be altered; if there was a need to remove or raise property tax limitations to increase local taxing power; and whether to continue existing provisions requiring a uniform rule of taxation.

Although state and local taxation has evolved significantly since the early 1960s, electors are again confronted with the constitutional issues of graduated income taxes, excessive tax earmarking, state and local tax and spending limitations, and the uniform rule of taxation when considering the need for a 2011 constitutional convention.

## CRC's Con-Con Papers

The Citizens Research Council of Michigan was extensively involved in analyzing the 1908 Michigan Constitution and assisting the 1961 constitutional convention. Some of the research papers about these topics are available on the CRC website. To view these papers, go to:

*Michigan Constitutional Issues*, CRC Report 201, June 1960, [www.crcmich.org/PUBLICAT/1960s/1960/rpt201.pdf](http://www.crcmich.org/PUBLICAT/1960s/1960/rpt201.pdf)

*A Primer on State Government Organization in Michigan*, CRC Report 203, October 1960, [www.crcmich.org/PUBLICAT/1960s/1960/rpt203.pdf](http://www.crcmich.org/PUBLICAT/1960s/1960/rpt203.pdf)

*A Comparative Analysis of the Michigan Constitution* (Vol. 1 & Vol. II), CRC Report 208, October 1961, [www.crcmich.org/PUBLICAT/1960s/1961LIST.HTM#208](http://www.crcmich.org/PUBLICAT/1960s/1961LIST.HTM#208)

*The State Constitution: Its Nature and Purpose*, CRC Memo 202, October 1961, [www.crcmich.org/PUBLICAT/1960s/1961/memo202.pdf](http://www.crcmich.org/PUBLICAT/1960s/1961/memo202.pdf)

*Constitutional Aspects of State-Local Relationships - I: Municipal and County Home Rule for Michigan*, CRC Memo 203, October 1961, [www.crcmich.org/PUBLICAT/1960s/1961/memo203.pdf](http://www.crcmich.org/PUBLICAT/1960s/1961/memo203.pdf)

*Constitutional Aspects of State-Local Relationships - II: Metropolitan Government*, CRC Memo 205, November 1961, [www.crcmich.org/PUBLICAT/1960s/1961/memo205.pdf](http://www.crcmich.org/PUBLICAT/1960s/1961/memo205.pdf)

*State Ballot Issues – A General Revision of the Laws*, CRC Council Comments 737, October 1962, [www.crcmich.org/PUBLICAT/1960s/1962/cc0737.pdf](http://www.crcmich.org/PUBLICAT/1960s/1962/cc0737.pdf)

*A Digest of the Proposed Constitution*, CRC Report 213, November 1962, [www.crcmich.org/PUBLICAT/1960s/1962/rpt213.pdf](http://www.crcmich.org/PUBLICAT/1960s/1962/rpt213.pdf)

*An Analysis of the Proposed Constitution*, December 1962, [www.crcmich.org/PUBLICAT/1960s/1962/apc01-11.pdf](http://www.crcmich.org/PUBLICAT/1960s/1962/apc01-11.pdf)

Other papers have not yet been put in electronic format on the CRC website (Starting at [www.crcmich.org/PUBLICAT/1960s/1960LIST.HTM](http://www.crcmich.org/PUBLICAT/1960s/1960LIST.HTM)). If you wish to review papers that are listed but not available online, please contact [crcmich@crcmich.org](mailto:crcmich@crcmich.org) to request a copy.