CRC Special Report
Michigan Constitutional Issues

No. 360-14 | A publication of the Citizens Research Council of Michigan | September 2010

Fourteenth in a series of papers about state constitutional issues

Article XI – Public Officers and Employment

In Brief

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 Citizens Research Council of Michigan takes no position on the question of calling a constitutional convention. It is hoped that examination of the matters identified in this paper will promote discussion of vital constitutional issues and assist citizens in deliberations on the question of calling a constitutional convention.

Trust in government officials is key to a thriving democracy, functioning bureaucracy, and a true sense of representation on the part of citizens. Article XI is concerned with public employment and public officers in Michigan, including establishment of the state civil service system. The system has functioned without major challenges over the past 46 years; however, a constitutional convention would be expected to spend some of its time examining the issues of collective bargaining for state employees, automatic funding for the system, and legislative review of civil servant compensation. Also, a convention would be expected to discuss matters that may not have been in the forefront and on the minds of the framers of the 1963 Constitution, including restrictions on employment options for former public officials, personal financial disclosure for public officials, and ethics in state government.

Introduction

Article XI, "Public Officers and Employment", consists of seven sections that lay out rules regarding elective office and public employment in Michigan. Currently the sections relate to the oath of office for public officers (Section 1), terms of office for state and county officers (Section 2), eligibility to hold office as a custodian of public moneys (Section 3), extra compensation for public officers (Section 4), state civil service system (Section 5), merit systems for local governments (Section 6), and impeachment of civil officers (Section 7). It can be expected that these would carry forward to a revised constitution largely unchanged in much the same way that many of these provisions were carried forward from the 1908 Constitution.

Article XI has been the subject of two citizen-initiated amendments, both dealing with Section 5 and the topic of collective bargaining for state employees.[1] A 1978 amendment was adopted by the voters to provide collective bargaining and binding arbitration to state police troopers and sergeants. In 2002, voters rejected a proposal to provide the same collective bargaining rights enjoyed by state police employees to all state classified employees.

[1] Proposal 2010-02 on the November 2010 ballot represents the third contemplated amendment to Article XI. The proposal, if approved by the voters, would add a Section 8 to Article XI to prohibit certain felons from holding elective or appointive office. See CRC Memo 1102 for more details (www.crcmich.org/PUBLICAT/2010s/2010/memo1102.html).

CITIZENS RESEARCH COUNCIL OF MICHIGAN
MAIN OFFICE 38777 West Six Mile Road, Suite 208 • Livonia, MI 48152-3974 • 734-542-8001 • Fax 734-542-8004
LANSING OFFICE 124 West Allegan, Suite 620 • Lansing, MI 48933-1738 • 517-485-9444 • Fax 517-485-0423
CRCMICH.ORG

Constitutional Convention Issues

Despite the relatively few times that Article XI has been considered for amendment, it is likely that a constitutional convention would discuss and review a number of issues pertinent to the topic of public employment, including the state's civil service system (Section 5), post-employment restrictions for former state officials, financial disclosure requirements for public officials, and the establishment of an ethics commission.

State Civil Service

Broadly defined, civil service systems are those where individuals are employed on the basis of merit and performance on competitive examinations. Section 5 creates the Michigan Civil Service Commission and the state's civil service system. The Commission is responsible for fixing rates of employee compensation, regulating the conditions of employment, and administering competitive examinations as a basis for selecting individuals for employment or promotion in the state classified service. While other states provide the foundations for their civil service systems in their constitutions, Michigan is widely considered to have the strongest constitutional system and one that requires no enabling legislation. Constitutional language spells out the organization, funding, composition, powers, and responsibilities of the Civil Service Commission. Because of this detail, the system is largely insulated from political interference, something that marred state bureaucracies in the early 20th century and led to civil service positions being filled because of political patronage as opposed to merit.

A 1940 amendment to the 1908 Michigan Constitution created the civil service system after the Michigan legislature gutted a statutory system in the late 1930s. The 1961 Constitutional Convention considered many issues surrounding the civil service system; however, no major substantive changes were made in the 1963 Constitution and most of the language from the 1908 document was folded into the new constitution. Despite the historical stability of Section 5 and its non-controversial language, a constitutional convention is likely to review a number of civil service-related issues, including collective bargaining for state employees, automatic funding for the Civil Service Commission, and the legislature's role in setting civil service pay rates.

Collective Bargaining

Prior to 1980, it was widely held that a constitutional amendment to Section 5 was a necessary precursor to establish collective bargaining for state classified employees. It was only after a 1978 amendment that state police personnel gained access to collective bargaining. At that time, the vast majority of state workers did not have access to a collective bargaining process, and it was believed that establishing collective bargaining would constitute a delegation of the Civil Service Commission's constitutional authority to set pay rates of classified workers.[2] This contrasted with the experience in the private sector and local governments in Michigan, where employee-employer relations had been governed by collective bargaining for many years.[3] While organized state employee groups participated in "meet and confer" dis-

[2] For background, see CRC Memorandum No. 1068, "State Constitutional Issues on the November General Election Ballot – II, Proposal 02-03: Collective Bargaining and Binding Arbitration for State Employees," September 2002.

[3] Municipal, county, university, and other types of public employees are covered by the Public Employment Relations Act (PERA), Public Act 379 of 1965.

cussions with their employer (the State of Michigan) and entered into memoranda of understanding concerning conditions of employment, the Civil Service Commission was responsible for setting employee compensation (subject to modification by the Michigan legislature) per Section 5.

In 1980, the Civil Service Commission, through rule, authorized collective bargaining for the majority of classified employees. However, the collective bargaining agreements reached between employee groups and the State of Michigan are subject to the Commission's review, modification, and approval. The Commission's approval is deemed necessary to fulfill the Section 5 requirement that the Commission set pay rates.

Michigan state government has operated under its current system of collective bargaining for state employees for nearly three decades; however, the Commission's authority to establish this unique form of collective bargaining has not been challenged in the courts. Given that a 1978 constitutional amendment authorized only enlisted state police personnel to participate in the collective bargaining process, it would be appropriate to clarify the rights of other groups of state employees in a constitutional convention.

Civil Service 1% Appropriation

Section 5 also includes a provision for an automatic appropriation of one percent of classified payroll for the operation of the civil service system. This provision effectively insulates the Civil Service Commission's operations from the oversight and accountability reviews that accompany the annual appropriations process. In state Fiscal Year 2008-09, the aggregate state classified payroll was $4,781.2 million and the one percent guarantee appropriation amounted to $47.8 million for the Fiscal Year 2009-10 budget.

A constitutional convention could be expected to review the unique funding guarantee provided in Section 5 in light of the limitations it places on legislative discretion for allocating public funds and the state's fiscal challenges over the past decade. It could be argued that the civil service system is well enough established that the automatic appropriation is no longer necessary. Supporters of the automatic appropriation would argue that the guarantee is necessary to safeguard the independence of the system from undue political intrusion, a situation that led to the constitutional amendment creating the civil service system in 1940.

Legislative Review of Civil Service Pay Recommendations

Section 5 provides the Michigan legislature with limited control over civil service pay rates approved by the Civil Service Commission. Currently, the legislature is authorized to reject or reduce increases in compensation rates for state employees for the next fiscal year only if a measure to accomplish this receives approval from two-thirds of the members in each house. The legislature has never successfully rejected or modified the pay increases recommended by the Civil Service Commission, although attempts have been made (most recently in 2010). While the legislature has limited control to set classified pay rates, it has absolute authority, subject to gubernatorial veto, to set appropriation levels for state agencies and departments. In this sense, the legislature is able to directly influence the aggregate level of personnel spending in any single state agency or department.

The Constitution requires the governor to submit the upcoming pay rates, approved by the Civil Service Commission, at the same time the executive budget is presented to the legislature, which occurs in early February in most years. The legislature has a relatively narrow window to decide whether to reject or reduce the pay raises, as it must act within 60 calendar days following receipt of the governor's executive budget (early April), whereas the legislature has until the start of the new fiscal year (October 1) to complete its work on the budget. Furthermore, the legislature only can reduce proposed increases "uniformly," meaning that reductions must apply to all classes of employees affected by the increases. Also, the legislature is not permitted to reduce rates below those currently in effect.

A convention is likely to consider the issues surrounding legislative control of civil service pay rates, especially in light of state fiscal challenges and the role played by employee compensation. Some argue that the legislature should have more direct control over civil service pay given the legislature's

sole constitutional authority for making appropriations and raising the necessary revenue to support those appropriations. This might include a longer period to deliberate and act on the Civil Service Commission recommendations or the ability to reduce compensation rates below those in effect at the time the increases were transmitted to the legislature. A convention also might review the vote threshold (two-thirds in each chamber) required to modify or reject pay rates and consider a lower limit to make it easier to get the requisite votes.

Ethics Laws

A constitutional convention might want to consider introduction of ethics provisions to the state constitution. These might include restrictions on when former state officials can engage in lobbying, personal finance disclosure for elected state officials, and creation of an ethics commission with meaningful enforcement powers.

Post-Office Restrictions on State Officials

Section 54 of Article IV and Section 30 of Article V of the 1963 Constitution contain term limitations for both legislators and certain popularly-elected executive branch officials.[4] Voters approved term limits in November 1992 and they took effect for terms beginning on or after January 1, 1993.[5] Given Michigan's strict, lifetime limitations, many former, term-limited officials seek employment within the private sector dealing with the issues and policy matters on which they previously worked as elected officials. Former officials might become lobbyists or government affairs representatives with trade associations, businesses, or non-profits immediately following their tenure in public office.

A convention might consider whether Michigan's Constitution should have a "revolving door" restriction that prescribes the amount of time that has to pass before former public officials can appear before bodies (legislative and/or executive) that they just left. Such "cooling off periods" are intended to make sure that elected officials are not using their current positions to advocate or advance the interests of an individual or group for which they might work following their time in public office. Currently, Michigan does not require, in any material way, a "cooling off period" before former elected public officials can work as lobbyists.[6]

Many states have adopted "revolving door" restrictions, either statutorily or constitutionally. In some cases, restrictions only apply to former legislators, while in other states the restrictions also apply to elective and appointive executive branch personnel.[7] According to the National Conference of State Legislatures (NCSL), there is some form of restriction on former legislators in 31 states. Generally, the "cooling off period" ranges from one year to two years before individuals can take a position that involves direct interaction with the legislature in a particular state.[8]

If a convention opts to keep term limits in their current form and in light of the consequences of Michigan's strict term limit provisions, it is likely that a constitutional convention would discuss the advantages and disadvantages of restricting the post-office options of former public officials. Proponents of "revolving door" laws argue that they are necessary to ensure that elected officials are not beholden to certain interests while in office. Some contend that these laws promote a greater sense of public trust in government and its officials. Opponents say that "cooling off periods" are unfair to legislators because they limit

[4] Service in the Michigan House of Representatives (two-year terms) is limited to three terms and service in the Michigan Senate (four-year terms) is limited to two terms. Executive branch officials (governor, lieutenant governor, secretary of state, and attorney general) are limited to two four-year terms for each office.

[5] The constitutional issues surrounding Michigan's term limit provisions were covered in an earlier report in this series, "Article IV: Legislative Branch", May 2010.

[6] Public Act 472 of 1978, as amended, prohibits former members of the Michigan House of Representatives or the Michigan Senate who resign from office from becoming a paid lobbyist for the remainder of the term of office from which the person resigned.

[7] Craig Holman, "Revolving Door Restrictions by State, 2005", February 2005, Public Citizen. www.publiccitizen.org/documents/Revolving%20in%20States.pdf

[8] Peggy Kerns, "Revolving Door Laws", January 2009, National Conference of State Legislatures. www.ncsl.org/default.aspx?tabid=15312

employment opportunities after relatively short careers in public office. Furthermore, they argue that most legislators have good character and qualifications and these individuals would make good lobbyists without breaching the public trust while in office.

Personal Financial Disclosure for Elected Officials

Personal financial disclosure laws require public officials to make certain personal financial records available for examination by the general public. Such laws are different and separate from campaign finance laws that apply to office seekers. The former deals directly with the records of an elected official as a private citizen whereas the latter set of laws focus on financial records of a specific campaign.

According to the NCSL, Center on Ethics in Government, only three states (Idaho, Michigan, and Vermont) do not require state legislators to make their personal financial records available. Forty-five states require elected officials to release annual reports of their personal finances, while two states (North Carolina and North Dakota) only mandate reports during an election year. In terms of content, states vary considerably as to the information that they require to be reported, but most require personal income information and 31 states require financial data about legislators' spouses and dependents. The NCSL also points out that some state personal disclosure laws cover connections with state agencies (31 states) and/or lobbyists (18 states). [9]

According to a 2007 study by The Center for Public Integrity, only four states (Idaho, Michigan, Utah, and Vermont) do not require any public disclosure of financial information by their governors.[10] Whether financial disclosure requirements for public officials should be in statutory or constitutional law is a matter for debate. All states with such requirements include them in statute and a convention could consider whether to include such reporting requirements in the Michigan Constitution.

Ethics Commission

In 1973, Governor Milliken signed the State Ethics Act (Public Act 196 of 1973), which established the Michigan State Board of Ethics. The Board determines the ethical conduct of classified or unclassified state employees and public officers of the executive branch of Michigan state government who are appointed by the governor or another executive department official. The Board does not have jurisdiction over state elected officials in Michigan (legislative, judicial, executive) or employees and elected officials at the various levels of local government. Despite the existence of the Board, no single body handles ethics issues for all public employees in the state. A constitutional convention would likely consider creating such a body for Michigan and defining its powers and duties in the state's Constitution, in much the same way that other states have done.

According to the NCSL, 40 states (including Michigan) have independent ethics oversight commissions and in 35 of these states (excluding Michigan) the commission has jurisdiction over legislators.[11] In addition to public officials, some of these bodies have jurisdiction over lobbying laws also. The commissions vary in size, but usually consist of between 5 and 12 private citizens appointed by legislators or other state officials. Their powers and duties also vary but generally consist of the authority to review public officials' financial disclosure statements, to accept and investigate ethics complaints, and to regulate lobbyists.

In addition to the Michigan State Board of Ethics, other entities in Michigan exercise power to investigate ethics complaints of public officials. For example, both legislative chambers have committees with jurisdiction over ethics matters, the Senate Government Operations Committee and the

[9] National Conference of State Legislatures, www.ncsl.org/programs/ethics/fd_home.htm

[10] The Center for Public Integrity, *States of Disclosure,* www.projects.publicintegrity.org

[11] Nicole Casal Moore and Peggy Kerns, *Legisbrief Vol. 14, No. 23*, "State Ethics Commissions", National Conference of State Legislatures, April/May 2006.

House Constitutional Law and Ethics Committee. The 1963 Constitution creates the Judicial Tenure Commission (Article VI, Section 30), which has jurisdiction over all Michigan courts and is responsible for promoting the integrity of the judicial process and preserving public confidence in the court system.[12]

[12] www.jtc.courts.mi.gov/

Conclusion

Article XI does not contain any obsolete or non-functioning sections. While it has been the subject of a two amendment attempts over the years (one successful and one not), the article and its various provisions dealing with "Public Officers and Employment" have served Michigan citizens well. Since the adoption of the 1963 Constitution, nothing in Article XI has risen to the level of "crisis" and the current provisions can be expected to serve the voters well for some time to come. However, should a convention be called, convention members would be expected to deliberate the issues surrounding the state's civil service system and ethics in the public sector.