

A Comparative Analysis of the Michigan Constitution

Volumes I

Articles V



Citizens Research Council of Michigan

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TABLE OF CONTENTS

CHAPTER V LEGISLATIVE DEPARTMENT

| | Page |
|--|--------|
| A. Legislative Power; Initiative and Referendum | v - 1 |
| B. Apportionment of the Legislature | v - 14 |
| 1. Senate | v - 14 |
| 2. House of Representatives and Apportionment | v - 19 |
| C. Other Legislative Powers and Restrictions | v - 44 |
| 1. Power to Reduce Size of Juries | v - 44 |
| 2. Indeterminate Sentences | v - 45 |
| 3. Regulation of Employment | v - 47 |
| 4. Special Contracts | v - 49 |
| 5. Prison Chaplains; Religious Services | v - 50 |
| 6. Prohibition of Special Divorce Law | v - 51 |
| 7. Prohibition of Lotteries | v - 52 |
| 8. Prohibition of State Paper | v - 53 |
| 9. Appropriations for Local or Private Purposes | v - 54 |
| 10. Prohibition of Legislative Audit of Claims | v - 56 |
| 11. Prohibition of Spec. Law for Sale of Priv. Real Estate | v - 57 |
| 12. Gubernatorial Veto and Item Veto | v - 58 |
| D. Qualifications, Eligibility, Etc. Relative to Legislators | v - 59 |
| 1. Qualifications of Legislators | v - 59 |
| 2. Ineligibility to the Legis. of Other Off. Holders | v - 61 |
| 3. Legislators' Ineligibility to Other Office | v - 62 |
| 4. Legislators' Privilege from Arrest | v - 64 |
| 5. Legislators' Compensation, Mileage and Publications | v - 66 |
| 6. Compensation for Presiding Officers | v - 68 |
| 7. Contested Elections to the Legislature | v - 69 |
| 8. Time of Electing Legislators | v - 70 |
| E. Legislative Sessions and Other Provisions | v - 72 |
| 1. Meeting and Adjournment | v - 72 |
| 2. Meetings Public, Exception | v - 73 |
| 3. Legislative Quorums | v - 74 |
| 4. Elections by the Legis.; Sen. Vote on Confirmation | v - 75 |
| F. Legislative Procedure | v - 77 |
| 1. Bills | v - 78 |
| 2. Style of Laws | v - 81 |
| 3. Laws; Object and Title, Revision, Amendment, Effective Date | v - 82 |
| 4. Bills; Printing; Subject Matter at Special Session; Amendment | v - 89 |
| 5. Bills; Reading, Passage, Vote | v - 93 |
| 6. Senate and House; Journals; Right of Member to Protest | v - 96 |
| 7. Senate and House; Powers | v -100 |
| 8. Local or Special Acts; Referendum | v -105 |
| 9. Referendum on Certain Bills | v -108 |
| 10. Publication of Statutes and Decisions | v -109 |
| 11. Revision of Laws; Compilation | v -111 |

Section Detail

| | Page |
|----------------------------|----------------------------|
| Article V, Section 1 | v - 1 |
| 2 | v - 14 |
| 3 | v - 19 |
| 4 | v - 20 |
| 5 | v - 59 |
| 6 | v - 61 |
| 7 | v - 62 |
| 8 | v - 64 |
| 9 | v - 66 |
| 10 | v - 68 |
| 11 | v - 69 |
| 12 | v - 70 |
| 13 | v - 72 |
| 14 | v - 74 |
| 15 | v -100 |
| 16 | v - 96 |
| 17 | v - 75 |
| 18 | v - 73 |
| 19 | v - 78 |
| 20 | v - 81 |
| 21 | v - 82 |
| 22 | v - 89 |
| 23 | v - 93 |
| 24 | v - 54 |
| 25 | v - 49 |
| 26 | v - 50 |
| 27 | v - 44 |
| 28 | v - 45 |
| 29 | v - 47 |
| 30 | v -105 |
| 31 | v - 57 |
| 32 | v - 51 |
| 33 | v - 52 |
| 34 | v - 56 |
| 35 | v - 53 |
| 36 | See Chapter VI, p. vi - 46 |
| 37 | See Chapter VI, p. vi - 53 |
| 38 | v -108 |
| 39 | v -109 |
| 40 | v -111 |

V LEGISLATIVE DEPARTMENT

A. LEGISLATIVE POWER; INITIATIVE AND REFERENDUM

Article V: Section 1. The legislative power of the state of Michigan is vested in a senate and house of representatives; but the people reserve to themselves the power to propose legislative measures, resolutions and laws; to enact or reject the same at the polls independently of the legislature; and to approve or reject at the polls any act passed by the legislature, except acts making appropriations for state institutions and to meet deficiencies in state funds. The first power reserved by the people is the initiative. Qualified and registered electors of the state equal in number to at least 8 per cent of the total vote cast for all candidates for governor, at the last preceding general election at which a governor was elected, shall be required to propose any measure by petition: Provided, That no law shall be enacted by the initiative that could not under this constitution be enacted by the legislature. Initiative petitions shall set forth in full the proposed measure, and shall be filed with the secretary of state or such other person or persons as may hereafter be authorized by law to receive same not less than 10 days before the commencement of any session of the legislature. Every petition shall be certified to as herein provided as having been signed by the required number of qualified and registered electors of the state. Upon receipt of any initiative petition, the secretary of state or such other person or persons hereafter authorized by law shall canvass the same to ascertain if such petition has been signed by the requisite number of qualified and registered electors, and may, in determining the validity thereof, cause any doubtful signatures to be checked against the registration records by the clerk of any political subdivision in which said petitions were circulated, for properly determining the authenticity of such signatures. If the same has been so signed, the secretary of state or other person or persons hereafter authorized by law to receive and canvass same, determines that the petition is legal and in proper form and has been signed by the required number of qualified and registered electors, such petition shall be transmitted to the legislature as soon as it convenes and organizes. The law proposed by such petition shall be either enacted or rejected by the legislature without change or amendment within 40 days from the time such petition is received by the legislature.

A Comparative Analysis of the Michigan Constitution

v - 2

If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided. If any law so petitioned for be rejected, or if no action is taken upon it by the legislature within said 40 days, the secretary of state or such other person or persons hereafter authorized by law shall submit such proposed law to the people for approval or rejection at the next ensuing general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by the secretary of state or such other person or persons hereafter authorized by law to the electors for approval or rejection at the next ensuing general election. All said initiative petitions last above described shall have printed thereon in 12 point black face type the following: "Initiative measure to be presented to the legislature."

The legislature may prescribe penalties for causing or aiding and abetting in causing any fictitious or forged name to be affixed to any initiative or referendum petition, or for knowingly causing any initiative or referendum petition bearing fictitious or forged names to be circulated

The second power reserved to the people is the referendum. No act passed by the legislature shall go into effect until 90 days after the final adjournment of the session of the legislature which passed such act, except such acts making appropriations and such acts immediately necessary for the preservation of the public peace, health or safety, as have been given immediate effect by action of the legislature. Upon presentation to the secretary of state or such other person or persons hereafter authorized by law, within 90 days after the final adjournment of the legislature, of a petition certified to as herein provided, as having been signed by qualified and registered electors equal in number to 5 per cent of the total vote cast for all candidates for governor at the last election at which a governor was elected, asking that any act, section or part of any act of the legislature, be submitted to the electors for approval or rejection, the secretary of state or other person or persons hereafter authorized by law, shall canvass said petition to ascertain if the same is signed by the requisite number of qualified and registered electors. The secretary of state or such other person or persons hereafter authorized by law may, in determining the validity thereof, cause any doubtful signatures to be checked against the registration records by the clerk of any political subdivision in which said petitions were circulated, for properly determining the authenticity of such signatures. If the secretary of state or such other person or persons hereafter authorized

by law to receive and canvass the same determines that the petition is legal and in proper form and has been signed by the required number of qualified and registered electors, he shall then submit to the electors for approval or rejection such act or section or part of any act at the next succeeding general election; and no such act shall go into effect until and unless approved by a majority of the qualified and registered electors voting thereon. An official declaration of the sufficiency or insufficiency of the petition shall be made by the secretary of state or such other person or persons as shall hereafter be authorized at least 2 months prior to such election.

Any act submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote by the secretary of state. No act initiated or adopted by the people, shall be subject to the veto power of the governor, and no act adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in said initiative measure but the legislature may propose such amendments, alterations or repeals to the people. Acts adopted by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof: Provided, however, If 2 or more measures approved by the electors at the same election conflict, the measure receiving the highest affirmative vote shall prevail. The text of all measures to be submitted shall be published as constitutional amendments are required by law to be published.

Any initiative or referendum petition may be presented in sections, each section containing a full and correct copy of the title and text of the proposed measure. Each signer thereto shall add to his signature, his place of residence, street names and also residence numbers in cities and villages having street numbers, and date of signing the same. Any qualified and registered elector of the state shall be competent to solicit such signatures within the county in which he is an elector. Each section of the petition shall bear the name of the county or city in which it is circulated, and only qualified and registered electors of such county or city shall be competent to sign such section. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same, who shall be required to identify himself by affixing his address below his signature stating that he is a qualified and registered elector and that all the signatures to the attached section were made in his presence, that each signature to the section is the genuine signature of the person signing the same,

and no other affidavit thereto shall be required.

Each section of the petition shall be filed with the clerk of the county in which it was circulated, but all said sections circulated in any county shall be filed at the same time. Within 20 days after the filing of such petition in his office, the said clerk shall forward said petition to the secretary of state or such other person or persons as shall hereafter be authorized by law.

Constitution of 1835 and 1850

The constitution of 1835 (Article IV, Section 1) provided: “The legislative power shall be vested in a senate and house of representatives.” The constitution of 1850 (Article IV, Section 1) set forth that: “The legislative power is vested in a senate and house of representatives.” The constitutions of 1835 and 1850 did not provide for the initiative or referendum.

Constitution of 1908

No change in the 1850 provision was made in carrying it over to the 1908 constitution. In the convention of 1907-08, referendum upon petition by ten per cent of the electors was proposed but defeated.¹ However, authority was granted to the legislature to submit any bill signed by the governor, except appropriation bills, to a referendum vote (Article V, Section 38). Local referendum in the area affected by local or special acts of the legislature was provided for in Section 30 of Article V, and referendum on various local matters was required in various sections of Article VIII.

Amendment of 1913. By legislative concurrent resolution of 1913, a proposal of amendment providing for the initiative and referendum on legislation was submitted to the electorate and adopted at the April election, 1913, by a vote of 219,057 to 152,388.²

Amendment of 1941. In 1941, this section was further amended by a legislative proposal adopted at the April election. The section (as amended in 1913) was not changed substantially thereby, but changes were made in the section which were intended to enable officials concerned to check on various phases of the initiatory petition and referendum processes for accuracy and validity.³ The initiative on

¹ Proceedings and Debates, pp. 1372-1375.

² Article V, Section 19 was altered by the same amendment in order that it would not conflict. The amendment was proposed and adopted at the same time as was the amendment which made the initiative on constitutional amendments direct—see discussion of Article XVIII, Section 2.

³ The 1941 amendment was proposed and adopted at the same time as was the similar supplementary amendment which related to the initiative on constitutional amendments—see discussion of Article XVII, Section 2.

legislation as provided for in this section (under the form as amended in 1913 and continued in the amendment of 1941) is indirect to the extent that the petition is submitted to the legislature.⁴ The legislature, however, cannot effectively veto the measure, since if the legislature rejects it (unchanged), the measure will be submitted to a vote of the electorate. The legislature, however, has the opportunity to submit an alternative proposal.⁵

Statutory Implementation

Section 1 which vests the legislative power is basic to the state lawmaking power in general. The entire body of Michigan statutory law is related to it and an implementation of it.

The provisions of Section 1 which relate to the initiative and referendum for statutes are largely self-executing (as is Article XVII, Section 2 relating to the initiative for constitutional amendments). The duties assigned by this provision to the “secretary of state or such other person or persons hereafter authorized by law” have been given to a board composed of the board of state canvassers and the attorney general.⁶

Judicial Interpretation

The legislature’s power is restricted only by express or necessarily implied limitations in the federal constitution and in the state constitution.⁷ The state constitution is not a grant of power, but a limitation on its exercise. Numerous court decisions have dealt with the extent of legislative power including such matters as the police power and restrictions on delegation of legislative power. The opinions in these cases seem not to have diverged from interpretations of state legislative power in general in other jurisdictions.⁸

⁴ In order for the initiative to be direct, a proposal must be voted on by the electorate—without any legislative consideration.

⁵ For a detailed study of the use of the initiative and referendum for statutes and constitutional amendments to 1940, see J. K. Pollock, The Initiative and Referendum in Michigan, University of Michigan, 1940.

⁶ M.S.A. 6.1474. Other statutory details relating to the initiative and referendum under Article V, Section 1 and Article XVII, Section 2 are in M.S.A. 6.1471-6.1484.

⁷ Attorney General v. Perkins, 73 Mich. 303; Young v. City of Ann Arbor, 267 Mich. 241; In re Palm, 255 Mich. 632; Huron-Clinton Metropolitan Authority v. Board of Supervisors of Five Counties, 300 Mich. 1.

⁸ See cases cited in M.S.A. Volume 1, Constitutions, pp. 283-292; 1959 Cumulative Supplement of same, pp. 100-106.

Procedures relative to petitions for referendum were interpreted in *Thompson v. Secretary of State and Michigan State Dental Society v. Secretary of State*.⁹ *Leininger v. Secretary of State* deals with certain phases of the initiative for statutes as amended in 1941.¹⁰

Other State Constitutions

The legislative power is vested in state legislatures in a relatively uniform manner among the states. Some 26 state constitutions refer to the “legislature;” 19 to the “general assembly;” three to the “legislative assembly;” and two to the “general court.” All states except Nebraska are bicameral and refer to the “upper” house as the senate. The “lower” house, having a larger membership than the senate in each of these states, is known as the house of representatives in most of them. In a few states, the term “assembly,” “general assembly” or “house of delegates” is used.¹¹

Initiative for Statutes. Twenty state constitutions provide for the initiative for statutes, of which 12 provide only for the direct initiative. Six (including Michigan) provide only for indirect initiative, and the remaining two (California and Washington) provide for both under certain circumstances. Even in the states where the initiative is indirect, the proposal may be submitted to the people if rejected by the legislature, as in Michigan.¹²

⁹ 192 Mich. 512; 294 Mich. 503. These cases were decided prior to the changes in this section by amendment in 1941, but would remain authoritative except where the 1941 amendment makes them in part obsolete.

¹⁰ 316 Mich. 644.

¹¹ Index Digest, pp. 642-643; Manual on State Constitutional Provisions, p. 3. On legislative power in general among the states, see Belle Zeller, Editor, American State Legislatures (Report of the Committee on American Legislatures of the American Political Science Association, 1954); J. B. Fordham, The State Legislative Institution, 1959; M. L. Faust, Manual on the Legislative Article for the Missouri Constitutional Convention of 1941; B. R. Abernathy, Constitutional Limitations on the Legislature (University of Kansas, 1959); H. Walker, The Legislative Process (1948).

¹² The legislature in most cases can submit an alternative at the same time, as in Michigan. Information on the statutory initiative and referendum is derived from Index Digest, pp. 553-566 and Manual on State Constitutional Provisions, pp. 119-133.

A Comparative Analysis of the Michigan Constitution

STATUTORY INITIATIVE

| <u>State</u> | <u>Number of Petition Signers</u> | <u>Other Conditions</u> |
|---------------------------------|---|--|
| <u>Direct</u> | | |
| Utah | As determined by law | |
| Idaho | As determined by law | |
| North Dakota | 10,000 | |
| Missouri | 5% vote for governor in two-thirds of congressional districts | |
| Nebraska | 7% of vote for governor | 5% in 2/5 of counties |
| Arkansas | 8% of vote for governor | 4% in 15 counties |
| Colorado | 8% of vote for secretary of state | |
| Montana | 8% of vote for governor | 8% in 2/5 of counties |
| Oklahoma | 8% of vote for officer having most votes | |
| Oregon | 8% of vote for justice of highest court | |
| Alaska | 10% of votes cast in 2/3 of election districts | |
| Arizona | 10% of vote for governor | |
| <u>Indirect</u> | | |
| Massachusetts | 3% of vote for governor | Not more than 25% from one county |
| Ohio | 3% of vote for governor | Supplementary petition by same percentage if legislature rejects |
| South Dakota | 5% of vote for governor | |
| MICHIGAN | 8% of vote for governor | |
| Maine | 10% of vote for governor | |
| Nevada | 10% of vote for justice of highest court | |
| <u>Both Direct and Indirect</u> | | |
| California | 8% of vote for governor—direct 5% of vote for governor—indirect | |
| Washington | 8% of vote for governor —direct if submitted not less than four months before election. —indirect if submitted not less than 50 days before legislative session. | |

A Comparative Analysis of the Michigan Constitution

v - 8

Referendum for Statutes. The constitutions of 22 states provide for the referendum on legislative acts. This includes Maryland and New Mexico in addition to the 20 that also have the initiative for statutes. In all of these states the referendum cannot apply to some forms of legislation, such as appropriation bills and those given immediate effect, as in Michigan. Application of the referendum to parts or sections of a bill and the 90-day period stipulated in the Michigan provision are common to most of these states. There are, in general, more restrictions on the use of the referendum than on the initiative in these states. Seven states, including Michigan, also allow the legislature to submit bills to a referendum vote.

STATUTORY REFERENDUM

| <u>State</u> | <u>Number of Petition Signers</u> | <u>Other Conditions</u> |
|----------------------------|--|---|
| Idaho As determined by law | As determined by law | |
| Utah | 7,000 | 30,000 for emergency measure |
| North Dakota | 10,000 | Not more than one-half from Baltimore or any county |
| Maryland | | Not more than 25% from one county |
| Massachusetts | 2% of vote for governor | |
| Washington | 4% of vote for governor | |
| Arizona | 5% of vote for governor | |
| California | 5% of vote for governor | |
| Colorado | 5% of vote for secretary of state | |
| MICHIGAN | 5% of vote for governor | |
| Missouri | 5% of vote for governor in 2/3 congressional districts | |
| Montana | 5% of vote for governor | 5% in 2/5 of counties |
| Nebraska | 5% of vote for governor | 5% in 2/5 of counties |
| Oklahoma | 5% of vote for officer having most votes | |
| Oregon | 5% of vote for justice of highest court | |
| South Dakota | 5% of vote for governor | |
| Arkansas | 6% of vote for governor | 3% in 15 counties |
| Ohio | 6% of vote for governor | |
| Maine | 10% of vote for governor | |
| Nevada | 10% of vote for justice of highest court | |
| New Mexico | 10% of total votes cast | Including 10% in 3/4 of counties |
| Alaska | 10% of votes cast | Resident in 2/3 of election districts |
| Kentucky* | | |

*Kentucky has the referendum for certain tax legislation.

Comment

Bicameral Legislature. Article V, Section 1 of the present constitution requires a bicameral legislature. The strong and almost universal tradition of bicameralism in the United States seems likely to continue in most states. The question of having one house or two in the legislature is related to the problem of legislative apportionment and reapportionment, but there is little evidence that adoption of a one-house legislature would solve that problem. There could, of course, be more than one basis for apportionment of the seats in a unicameral legislature, as evidenced by the two bases of representation for the delegates to the Michigan constitutional convention of 1961 under Article XVII, Section 4.

Experimentation by a few states with a unicameral legislature was abandoned in the early nineteenth century. Nebraska adopted a unicameral form in 1937, and the Alaska constitution compromised somewhat between the bicameral and unicameral systems by requiring the legislature to meet in joint session for several purposes. The Model State Constitution provides for a unicameral legislature. This provision of the Model seems not to have had great influence upon the framing and revision of state constitutions in recent years.

The issue of unicameralism against bicameralism has been raised in Michigan in recent years and might be considered by the convention.¹³

Legislative Power in General. The power of the Michigan legislature is restricted and limited not only by the initiative and referendum, but by several other sections in Article V which are discussed in Part C of this chapter. The legislature's taxing power and power of making appropriations are also limited substantially by various provisions of the constitution. Many of the more stringent constitutional restrictions on the legislature in Michigan and many other states resulted from intensive and extensive distrust of state legislatures in the nineteenth and early twentieth centuries.¹⁴ In revising the Michigan constitution, a new evaluation might be made of the need for continuing many of the present restrictions on legislative power.

Legislative Auditor. Many states have found that one of the best methods for enhancing the effectiveness of the legislature in exercising its general legislative power is to grant the legislature control over the post-audit of expenditures. The "power of the purse" has traditionally been considered one of the most basic legislative prerogatives. However, in some states, including Michigan, the legislature has been unable to use its "power of the purse" with full efficacy because it lacks control over the post-audit of expenditures. That is, the legislature has been unable to determine whether the funds appropriated have been used in accordance with the policies and purposes set forth in the laws of the state.

¹³ See Council Comments, No. 706, Citizens Research Council, February 18, 1960.

¹⁴ While such restrictions seemed to be a relatively simple method of curtailing misuse of legislative power, many state government specialists point out that these restrictions seem increasingly to have curtailed the effectiveness of state government in coping with complex problems of the present century.

The traditional American concept of separation of powers among the executive, legislative and judicial branches with appropriate checks and balances, would seem to suggest that the post-audit function be vested in the legislative branch. The post-audit is an “after the fact” check on the expenditure of public funds. As such, responsibility for the post-audit function should be separate and distinct from the responsibility for the actual spending of public funds which is vested in the executive branch. The legislative post-audit gives the legislature, the branch of government responsible for appropriating funds, an independent check on the executive branch in its expenditure of the funds that are appropriated.

In fifteen states the legislature has responsibility for the post-audit function. In eleven of these the responsibility is of statutory origin, while in four it is constitutional.¹⁵ The four states which have constitutional provision for legislative auditors are Virginia, New Jersey, Hawaii, and Alaska—the last three being the states which have the most recently framed state constitutions. The Model State Constitution also provides for a legislative auditor.

The New Jersey constitution (Article VII, Section I 6) requires the state auditor to be appointed by the legislature in “joint meeting” for a five-year term; he is required to “conduct post-audit of all transactions and accounts kept by or for all departments, offices and agencies of the State government.” He is required to report to the legislature or any of its committees and perform “such other similar or related duties” as required by law.

The Hawaii constitution (Article VI, Section 8) requires the legislature “by a majority vote of each house in joint session” to appoint an auditor for an eight-year term. The legislature may remove the auditor at any time for cause by a “two-thirds vote of the members in joint session.” The description of his major duties is similar to the New Jersey provision, but he is also required to post-audit the accounts of the political subdivisions of the state. He is further required to “certify to the accuracy of all financial statements” by accounting officers, report his “findings and recommendations” to the governor as well as to the legislature and perform additional duties “as may be directed by the legislature.”

The Alaska provision (Article IX, Section 14) is brief, but comprehensive. It requires the legislature to appoint “an auditor to serve at its pleasure.” He must be a certified public accountant, and he “shall conduct post-audits as prescribed by law and shall report to the legislature and to the governor.”¹⁶

¹⁵ In four other states the legislature shares control of the post-audit function with the executive branch. See Chapter VI, Table II, p. 5.

¹⁶ The provision of the Model State Constitution is similar to the Alaska provision except that it does not require the auditor to be a certified public accountant.

The Virginia provision (Article V, Section 82) is also brief. It requires an “Auditor of Public Accounts” to be elected “by the joint vote of the two houses” for a four-year term. “His powers and duties shall be prescribed by law.”

An auditor general elected by the people is provided for in the Michigan constitution (Article VI, Section 1; see discussion in Chapter VI, “The Executive Department,” pp. 1-8). The auditor general is responsible by statute for the post-audit function and other duties not related to post-audits. The auditor general is generally considered at the present time to be a part of the executive branch of state government and he has a number of ex officio duties in the executive branch, such as serving on the state administrative board.

The Michigan “Little Hoover” Committee (Staff Report No. 11) recommended in 1951 that the elective office of auditor general be abolished, to be replaced by a legislative auditor general appointed by a joint legislative audit committee subject to the approval of each house “voting separately.” This officer would serve at the pleasure of the legislature for not longer than 15 years, subject to removal only after public hearing. The Citizens Committee (a supplement to the “Little Hoover” Committee) recommended that the term of office be ten years, and that the auditor be subject to removal by a “two-thirds vote of each house voting separately.”

The staff report further recommended that the legislative auditor general be required to conduct post-audits of “all transactions or accounts of all agencies of the state,” to conduct investigations and to report to the legislative audit committee as required. It was further recommended that an independent accounting firm audit the state’s departments and agencies and review the program of the legislative auditor general every five years. The Citizens Committee further recommended that a post-audit of each state agency be conducted at least once every three years.

Legislative Council. Many state legislatures, including Michigan’s, do not have adequate expert staff assistance for their members and committees. Lack of adequate staff and facilities, particularly for legislative research among the states, seems often to have resulted in legislators being overly dependent upon executive departments and interest groups for information and analysis of material bearing upon the formulation of legislative policy. Approximately three-quarters of the states have a legislative council or its equivalent whereby a legislative committee (usually a permanent joint committee) is responsible for the development and maintenance of research staff (responsible only to the legislature) whose duty it is to supply the legislators with background material and information useful in developing legislative policy.

Most legislative councils do not have constitutional standing.¹⁷ While legislative councils can be established by any state legislature without constitutional authorization, their potential importance in enhancing the effectiveness of the legislature's power has been felt to warrant the inclusion in the Missouri and Alaska constitutions, as well as in the Model State Constitution, of provisions for an agency of this type. Some consideration might be given to a provision of this type in the Michigan constitution.¹⁸

Initiative and Referendum. If the present self-executing provisions for the use of the initiative and referendum for statutes are to be continued in a revised constitution, little revision would seem necessary. Changes in procedure were made by the 1941 amendment which refined this procedure and added safeguards. Only one statute (Public Act No. 1, 1949) has been initiated by petition. This was adopted at the November, 1950, election. Petition for referendum has been used for seven legislative measures, six of which were defeated at the polls. The legislature, under authority of Article V, Section 38, has submitted two measures to a referendum, one of which was adopted, and the other defeated. That the statutory initiative and referendum by petition have not been used frequently is not fully indicative of their influence or impact on legislation. The possibility that the initiative or referendum for statutes might be used would tend to have some influence upon the normal law-making process.¹⁹

The convention may wish to consider the possibility of removing from the present provision some of the detail, leaving this to be provided by law.

Use of the statutory referendum petition is restricted to the extent that the legislature orders immediate effect for a substantial portion of all bills passed, although a two-thirds vote in each house is required for this by Article V, Section 21. While legislative discretion for such action in emergencies is desirable, this device can be used by the legislature to forestall referendum by petition. Possible solutions for this problem would be to make determination of the necessity for immediate effect a judicial question by a specific constitutional provision, or to allow referendum by petition after an act had taken immediate effect.

¹⁷ In 1933, a legislative council was established in Michigan by statute but this was repealed before its potential value could be accurately determined. Michigan is the only state which has discontinued a legislative council after one was established. E. F. Staniford, Legislative Assistance (University of California, 1957), pp. 12-15. The Legislative Service Bureau is an important aid to the Michigan legislature, but it is not a substitute for a legislative council.

¹⁸ B. Zeller, Editor, American State Legislatures, pp. 124-162; S. Scott, Streamlining State Legislatures (University of California, 1956); The Council of State Governments, Legislative Councils (Organization, Staff and Appropriations, 1959).

¹⁹ With little extra effort those who initiate measures can write them into the constitution by amendment. This would appear to be one reason for the lack of use of the initiative for statutes.

B. APPORTIONMENT OF THE LEGISLATURE

By

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1. Senators; Number, Term; Districts

Article V: Section 2. The senate shall consist of 34 members. Senators shall be elected for 2 years and by single districts. Such districts shall be numbered from 1 to 34, inclusive, and shall consist of the territory within the boundary lines of the counties existing at the time of the adoption of this amendment, as follows: First through fifth, eighteenth, twenty-first, Wayne county; nineteenth, Lenawee and Monroe counties; tenth, Jackson and Hillsdale counties; ninth, Calhoun and Branch counties; sixth, Kalamazoo and St. Joseph counties; seventh, Cass and Berrien counties; eighth, Van Buren, Allegan and Barry counties; fourteenth, Ingham and Livingston counties; twelfth, Oakland county; eleventh, Macomb county; twentieth, Tuscola, Sanilac and Huron counties; thirteenth, Genesee county; fifteenth, Clinton, Shiawassee and Eaton counties; sixteenth and seventeenth, Kent county; twenty-third, Muskegon and Ottawa counties; twenty-fifth, Mecosta, Montcalm, Gratiot and Ionia counties; twenty-second, Saginaw county; twenty-fourth; Bay, Midland and Isabella counties; twenty-sixth, Newaygo, Oceana, Mason, Lake and Manistee counties; twenty-eighth, Osceola, Clare, Gladwin, Arenac, Iosco, Ogemaw, Roscommon, Crawford, Oscoda and Alcona counties; twenty-seventh, Missaukee, Wexford, Benzie, Grand Traverse, Kalkaska, Leelanau and Antrim counties; twenty-ninth, Charlevoix, Emmet, Cheboygan, Otsego, Montmorency, Alpena and Presque Isle counties; thirtieth, Chippewa, Mackinac, Luce, Schoolcraft, Alger, Menominee and Delta counties; thirty-first, Marquette, Dickinson, Iron and Gogebic counties; thirty-second, Baraga, Keweenaw, Houghton and Ontonagon counties; thirty-third, Washtenaw county; thirty-fourth, Lapeer and Saint Clair counties. Each of the 34 districts shall elect 1 senator. Counties entitled to 2 or more senators shall be divided into senatorial districts as herein provided equal to the number of senators to be elected; said districts shall be arranged in as nearly as may be an equal number of inhabitants and shall consist of convenient and contiguous territory; and said districts shall be arranged during the year 1953, by the board of supervisors in such counties assembled at such time and place as prescribed by law.

Constitutions of 1835 and 1850

The Michigan constitution of 1835 provided for a senate, equal to one-third of the size of the house of representatives. Since the house size could range from 48 to 100 members, the senate could consist of 16 to 33 members, depending on the actual size of the house. Each senator was to be elected for two years. Terms were staggered, and one-half of the membership was chosen each year (Article IV, Sections 2, 5). Provision was made for not less than four nor more than eight senatorial districts, with each district electing an equal number of senators, annually. Counties were not to be divided in forming senatorial districts and districts were to be contiguous (Article IV, Section 6).

In the constitution of 1835, the legislature was given responsibility for providing for an enumeration of the inhabitants in 1837, 1845, and each tenth year thereafter. At the first session after the state enumeration as well as the first session after the enumeration by the United States, the legislature was to “apportion anew the representatives and senators among the several counties and districts, according to the number of white inhabitants.” (Article IV, Section 3) Thus, the legislature was to be reapportioned every five years.

In the 1850 constitution as amended the number of senators was fixed at 32. All 32 were elected at the same time for two-year terms from single member districts. Only counties entitled to two or more members could be divided (Article IV, Section 2). The 1850 constitution also contained a provision (Article XIX, Section 4) for at least one senator from the Upper Peninsula.

The 1850 constitution provided that the legislature was to provide by law for an enumeration of the inhabitants in 1854 and every ten years thereafter. At the first session after each such enumeration and after each enumeration by the authority of the United States, the legislature was to “rearrange the senate districts and apportion anew the representatives among the counties and districts, according to the number of inhabitants, exclusive of persons of Indian descent who are not civilized or are members of any tribe” (Article IV, Section 4).

Constitution of 1908

The original provisions in the 1908 constitution for the senate were similar to the provisions in the 1850 constitution. The 1908 provision continued a 32-member senate, elected for two-year terms by single districts and continued the prohibition against dividing a county unless it was entitled to two or more senators. The requirement for a periodic rearrangement of the senatorial districts among the counties and districts according to the number of inhabitants was also continued.

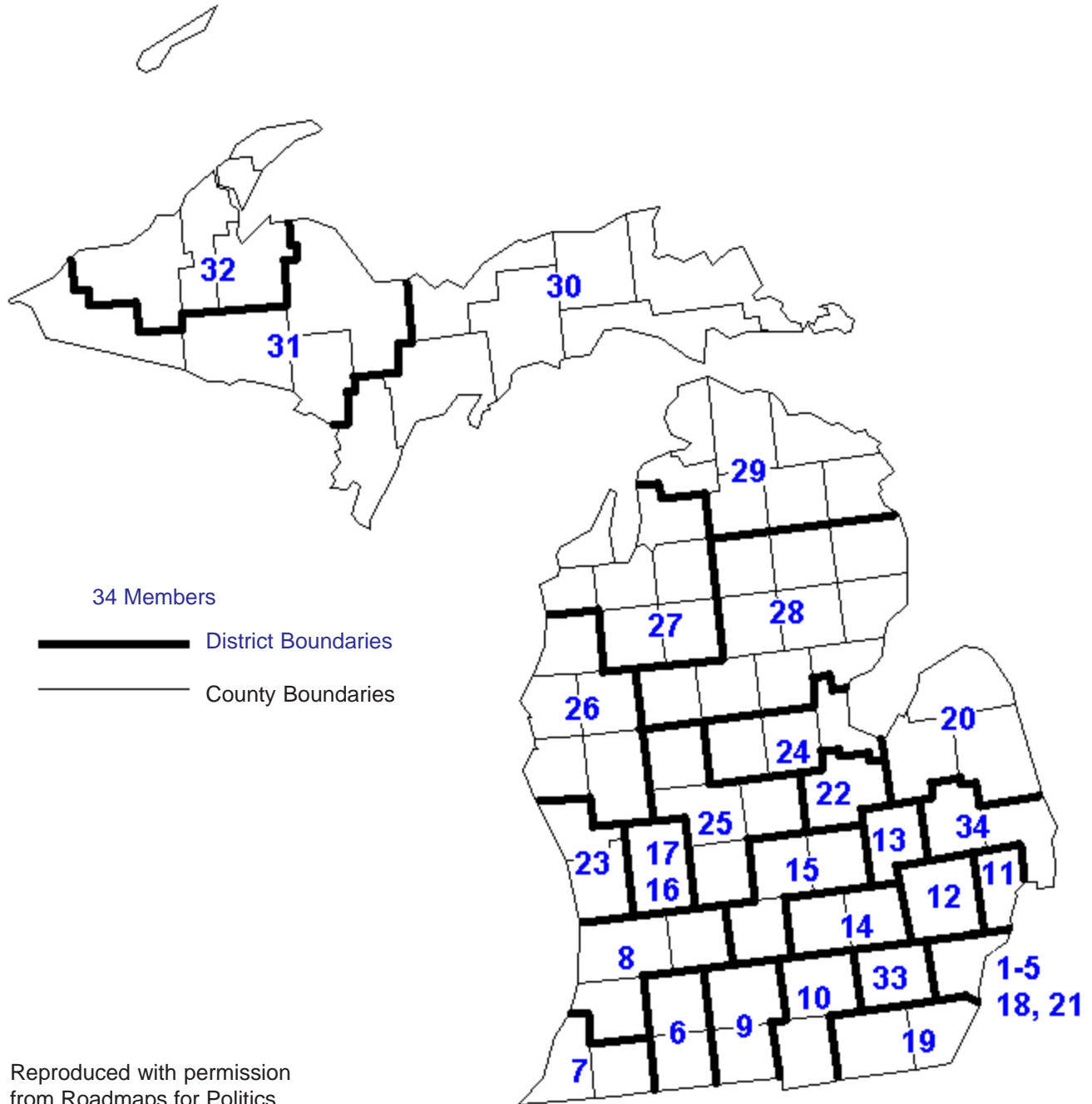
However, the 1908 provision eliminated the 1850 requirement for a state census and for a rearrangement every five years. The 1908 provision required a rearrange-

ment every ten years, following the federal decennial census. The 1908 provision also omitted as unnecessary the exclusion of uncivilized Indians. Finally, the 1908 provision dropped the 1850 provision requiring that one senator be elected from the Upper Peninsula at all times.

Amendment in 1952. At the November election in 1952 the voters approved an amendment to Sections 2, 3, and 4 of Article V which had been placed on the ballot by initiative petition. The amendment to Section 2 changed the provisions for establishing senatorial districts and the amendment of Section 4 deleted from it the 1908 provision for periodically rearranging senatorial districts. The text of Section 2 as amended in 1952 appears on page 14. A comparison of the 1908 provision and the 1952 amendment shows the following:

1. The size of the senate was increased from 32 members to 34 members.
2. The provisions that senators be elected for a two-year term and by single districts each of which shall elect one senator were continued.
3. The 1952 amendment defined the senatorial districts in the constitution by enumerating the county or counties that were to comprise each senatorial district. The original 1908 constitution provided that the legislature should by law arrange the senatorial districts among the counties and districts.
4. The 1952 amendment froze permanently in the constitution the composition of senatorial districts. No provision was made for periodic rearrangement of senatorial districts in the 1952 amendment. The original 1908 provision called for the legislature by law to rearrange the senate districts each ten years among the counties and districts according to the number of inhabitants.
5. The 1908 provision prohibited the division of counties in forming senatorial districts unless the county was equitably entitled to two or more senators. The 1952 amendment provided that any county entitled to two or more senators should be divided by the board of supervisors in the year 1953 into single member districts containing “as nearly as may be an equal number of inhabitants” and consisting of “convenient and contiguous territory.” The 1952 amendment also apparently froze these districts—that is, there is no provision for the boards of supervisors to rearrange the districts within the county after the year 1953.

MAP 1
MICHIGAN
SENATORIAL DISTRICTS
1954



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A Comparative Analysis of the Michigan Constitution
v - 18

Judicial Interpretation

There has been a major state supreme court test of Section 2 (Scholle v. Secretary of State, 360 Mich. 1, 1960). In 1959 a mandamus action was brought in the state supreme court seeking to command the secretary of state, as the chief election official in Michigan, not to issue 1960 election notices for state senators. The plaintiff sought to have Sections 2 and 4 of the Michigan constitution as amended in 1952 declared invalid in that plaintiff and other citizens of Michigan are denied equal protection of the laws and due process of law as guaranteed by the U.S. constitution and the Michigan constitution. Plaintiff further sought to have the senate elected at large until such time as a valid senate apportionment act was adopted by the legislature in accordance with the provisions of the 1908 constitution, Sections 2 and 4, prior to their amendment in 1952. The plaintiff alleged that the senate districts formed in the 1952 amendment were wholly arbitrary, having no correlation between population and representation, between area and representation, or between political units and representation. Therefore, the plaintiff contended, the method of division of senate districts is arbitrary and capricious and denies equal protection and due process of law.

The case was decided in April, 1960. The majority opinion dismissed the request for mandamus on the grounds that the U.S. supreme court is the final authority on interpretations of the U.S. Constitution and that the U.S. supreme court had not construed the equal protection and due process clauses to prohibit a state constitutional amendment which establishes districts substantially unequal in voting power for election of state senators. The case has been appealed to the supreme court of the United States and is now pending before that body.

Other State Constitutions

The provisions of other state constitutions concerning senates are discussed at the end of Part B, together with their provisions for houses of representatives and apportionment.

Comment

See the discussion at close of this Part B.

2. Representatives; Number; Term; Districts; Apportionment

Article V: Section 3. The house of representatives shall consist of not more than 110 members. Representatives shall be chosen for 2 years and by single districts except as otherwise provided herein, which shall contain as nearly as may be an equal number of inhabitants and shall consist of convenient and contiguous territory. The ratio of representation for representative districts shall be the quotient obtained by dividing the total population of the state as

determined by the latest or each succeeding official federal decennial census by 100. Each county, or group of counties forming a representative district, shall be entitled to a separate representative when it has attained a population equal to 50 per cent of the ratio of representation, and in addition thereto, shall be entitled to 1 additional representative for each additional full ratio of representation. In every county entitled to more than 1 representative, the board of supervisors shall assemble at such time and place as shall be prescribed by law, divide the same into representative districts, which shall contain as nearly as may be an equal number of inhabitants and shall consist of convenient and contiguous territory, equal to the number of representatives to which such county is entitled by law, and shall cause to be filed in the offices of the secretary of state and clerk of such county a description of such representative districts, specifying the number of each district and the population thereof according to the latest or each succeeding official federal decennial census: Provided, That no township or city shall be divided in the formation of a representative district, except that when a city is composed of territory in more than 1 county, it may be divided at the county line or lines: Provided further, That in the case of cities hereafter organized or created or territory annexed to an existing city, the territory thereof shall remain in its present representative district until the next apportionment: And provided further, That when any township or city contains a population which entitles it to more than 1 representative, then such township or city shall elect by general ticket the number of representatives to which it is entitled; except that when such township or city shall be entitled to more than 5 representatives, then such township or city shall be divided into representative districts containing as near as may be an equal number of inhabitants and consisting of convenient and contiguous territory, but with not less than 2 nor more than 3 representatives in any 1 district: Provided, That the average number of inhabitants per representative in such districts shall be as nearly equal as possible.

Section 4. Within the first 180 days after the convening of the first regular session, or after the convening of any special session called for that purpose, following January 1, 1953, and each tenth year thereafter, the legislature shall apportion anew the representatives among the counties and districts in accordance with section 3 of this article, using as the basis for such apportionment the last United States decennial census of this state: Provided,

however, That should the legislature within the first 180 days, after the convening of the first regular session, or after the convening of any special session called for that purpose, following January 1, 1953, and each tenth year thereafter, fail to apportion anew the representatives in accordance with the mandate of this article, the board of state canvassers, within 90 days after the expiration of said 180 days, shall apportion anew such districts in accordance with the provisions of this article and such apportionment shall be effective for the next succeeding Fall elections.

Constitutions of 1835 and 1850

The constitution of 1835 provided for not less than 48 nor more than 100 members of the house of representatives, chosen annually; each organized county was to receive at least one representative, but each newly organized county was not to receive a separate representative until it attained a population equal to the ratio of representation (Article IV, Sections 2, 4).

As was the case with the senate, the legislature was to apportion anew the representatives among the several counties and districts, according to the number of white inhabitants. The house was to be reapportioned every five years following the state census and the federal census.

The 1850 constitution as amended in 1869 provided for not less than 64 nor more than 100 members, elected for two-year terms from single-member districts. The districts were to contain, as nearly as possible, an equal number of inhabitants, “exclusive of persons of Indian descent who are not civilized or are members of any tribe,” and were to consist of convenient and contiguous territory (Article IV, Section 3).

The 1850 constitution prohibited dividing cities or townships in forming representative districts and further required that when any city or township was entitled to more than one representative, the election was to be at large. The 1850 provision authorized “each county hereafter organized...to a separate representative when it has obtained a population equal to a moiety of the ratio of representation.” This marked a significant departure from the 1835 provision which apparently required a full ratio of representation. The term “moiety” means one-half and the 1850 provision authorized each county to have a separate representative when it attained one-half of a full ratio of representation. The 1850 constitution provided that in counties having more than one representative, the board of supervisors should divide the county into single-member districts.

The 1850 constitution also provided (Article XIX, Section 4) that until entitled to more by its population, the Upper Peninsula was to have three members of the house of representatives, to be apportioned among the several counties by the legislature.

The 1850 constitution provided that in the session following the state census in 1854 and every ten years thereafter and following the federal census the legislature should “apportion anew the representatives among the counties and districts, according to the number of inhabitants, exclusive of persons of Indian descent who are not civilized or members of any tribe.” Thus, as in the case of the rearrangement of senate districts, the house was to be reapportioned every five years.

Constitution of 1908

The 1908 constitution carried over the 1850 provisions, as amended, with only two changes: 1) the exclusion of Indians was omitted; and, 2) the requirement for a state census was eliminated; thus reapportionments were to be conducted every ten years following the federal decennial census. The provisions of the 1908 constitution were amended in 1928 to authorize cities in more than one county to be divided at the county line in forming districts and to provide that newly incorporated cities or annexed areas should remain in their present district until the next apportionment.

The 1908 provisions were as follows:

The house of representatives shall consist of not less than sixty-four nor more than one hundred members. Representatives shall be chosen for two years and by single districts, which shall contain as nearly as may be an equal number of inhabitants and shall consist of convenient and contiguous territory; but no township or city shall be divided in the formation of a representative district, except that when a city is composed of territory in more than one county, it may be divided at the county line or lines: And provided, That in the case of cities hereafter organized or created or territory annexed to an existing city, the territory thereof shall remain in its present representative district until the next apportionment. When any township or city shall contain a population which entitles it to more than one representative, then such township or city shall elect by general ticket the number of representatives to which it is entitled. Each county, with such territory as may be attached thereto, shall be entitled to a separate representative when it has attained a population equal to a moiety of the ratio of representation. In every county entitled to more than one representative, the board of supervisors shall assemble at such time and place as shall be prescribed by law, divide the same into representative districts equal to the number of representatives to which such county is entitled by law, and shall cause to be filed in the offices of the secretary of state and clerk of such county a description of such representative districts, specifying the number of each district and population thereof according to the last preceding enumeration. (Article V, Section 3, amended in 1928)

At the session in nineteen hundred thirteen, and each tenth year thereafter, the legislature shall by law rearrange the senatorial districts and apportion anew the representatives among the counties and districts according to the number of inhabitants, using as the basis for such apportionment the last preceding United States census of this state. Each apportionment so made, and the division of any county into representative districts by its board of supervisors, made thereunder shall not be altered until the tenth year thereafter. (Article V, Section 4)

Amendment in 1952. As indicated in the analysis of Section 2, an amendment placed on the ballot by initiative petition was approved by the voters in November, 1952. This amendment revised Sections 3 and 4 as they pertain to the house of representatives. The text of Sections 3 and 4 as amended appears on pages 18, 19, and 20.

There were a number of significant changes in the 1952 amendments regarding apportionment of the house of representatives.

1. The 1908 provision called for a range of membership from 64-100, while the 1952 amendment provided for not to exceed 110 members.
2. The practice under the 1908 provision was to determine the ratio of representation by dividing the population of the state by the actual size of the house (100). The use of a factor equal to the maximum possible number of members to determine the ratio of representation together with allocating seats to “moiety” counties, resulted in the constitutional maximum of 100 seats being fewer than the number actually required to fulfill entirely the population formula. This was resolved by first allocating seats out-state with Wayne County receiving the seats that were left.

The 1952 amendment provided for a house of not to exceed 110 members with the full ratio of representation determined by dividing the population of the state by 100. Thus, the maximum number of seats exceeded by 10 the figure used in determining the full ratio. As a result, even after allocating seats to moiety counties, enough seats were left (in 1953) to provide Wayne County with the number of seats to which it was entitled under full ratios of representation.

3. In the 1952 amendment the term “moiety” was replaced by the term “50 per cent of the ratio of representation.” “Moiety” had a rather vague meaning and although apparently intended to mean a major part or 50 per cent or more, the meaning of the term had been modified by legislative applications. In 1925 Livingston County had been considered a “moiety” county and given a representative with only 42 per cent of a full ratio of representation.
4. Under the 1908 provision any city or township entitled to two or more representatives could not be districted—all the representatives had to be elected at large.

The 1952 amendment provided that if a city or township were entitled to more than five representatives, then it should be divided into representative districts with each district electing not more than 2 nor less than 3 representatives with each district containing as nearly as may be an equal number of inhabitants per representative and consisting of convenient and contiguous territory. A city or township entitled to two to five representatives would elect them at large.

The 1952 amendment did not change the original provision that counties entitled to more than one representative were to be divided into representative districts equal to the number of representatives to be elected.

5. The 1952 amendment provided that in 1953 and each tenth year thereafter “the legislature shall apportion anew the representatives among the counties and districts in accordance with section 3 of this article, using as the basis for such apportionment the last U.S. decennial census of this state.” This provision was similar to the original 1908 provision. However, the 1952 amendment included the requirement that should the legislature fail to reapportion following January, 1953, and each tenth year thereafter within 180 days after the convening of the first regular session or special session called for that purpose, the responsibility for apportioning would be placed in the board of state canvassers.

Thus, the 1952 amendment placed a time limit within which the legislature must act and, if it fails to act within the stipulated period, the responsibility is shifted to the board of state canvassers (see Article III, Section 9) which has 90 days in which to act. The significance of this change is that the board of state canvassers can be compelled to act by mandamus, while under the previous provision the legislature could and did refuse to reapportion house seats and could not be forced to act.

Judicial Interpretation

There have been several decisions by the Michigan supreme court on Section 3 of Article V. The court has held that the legislature may exercise fair and reasonable discretion to pass a statute which compiles as far as practicably possible with constitutional requirements. The legislature has some discretion in determining whether the districts “contain as nearly as may be an equal number of inhabitants and shall consist of convenient and contiguous territory.” The legislature may create districts of counties contiguous only through navigable water.²⁰

In regard to moiety or the 50 per cent ratio, the court has held that where a county has less than a moiety, but is surrounded by counties having more than a moiety, the county lacking a moiety could be joined to one of the contiguous moiety counties to form a district as a matter of legislative necessity. This can be done even though the county lacking the moiety might have been joined to other counties contiguous by water.²¹

²⁰ Stenson v. Secretary of State, 308 Mich. 48.

²¹ Ibid.

A Comparative Analysis of the Michigan Constitution v - 25

The court has also held that the constitution does not prohibit joining a township and a city in a representative district.²²

Opinions of the Attorney General

The attorney general has ruled that a city that is not entitled to more than five representatives nor located in more than one county may not be divided into representative districts by the board of supervisors (Opinion of the Attorney General, October 14, 1953, No. 1717).

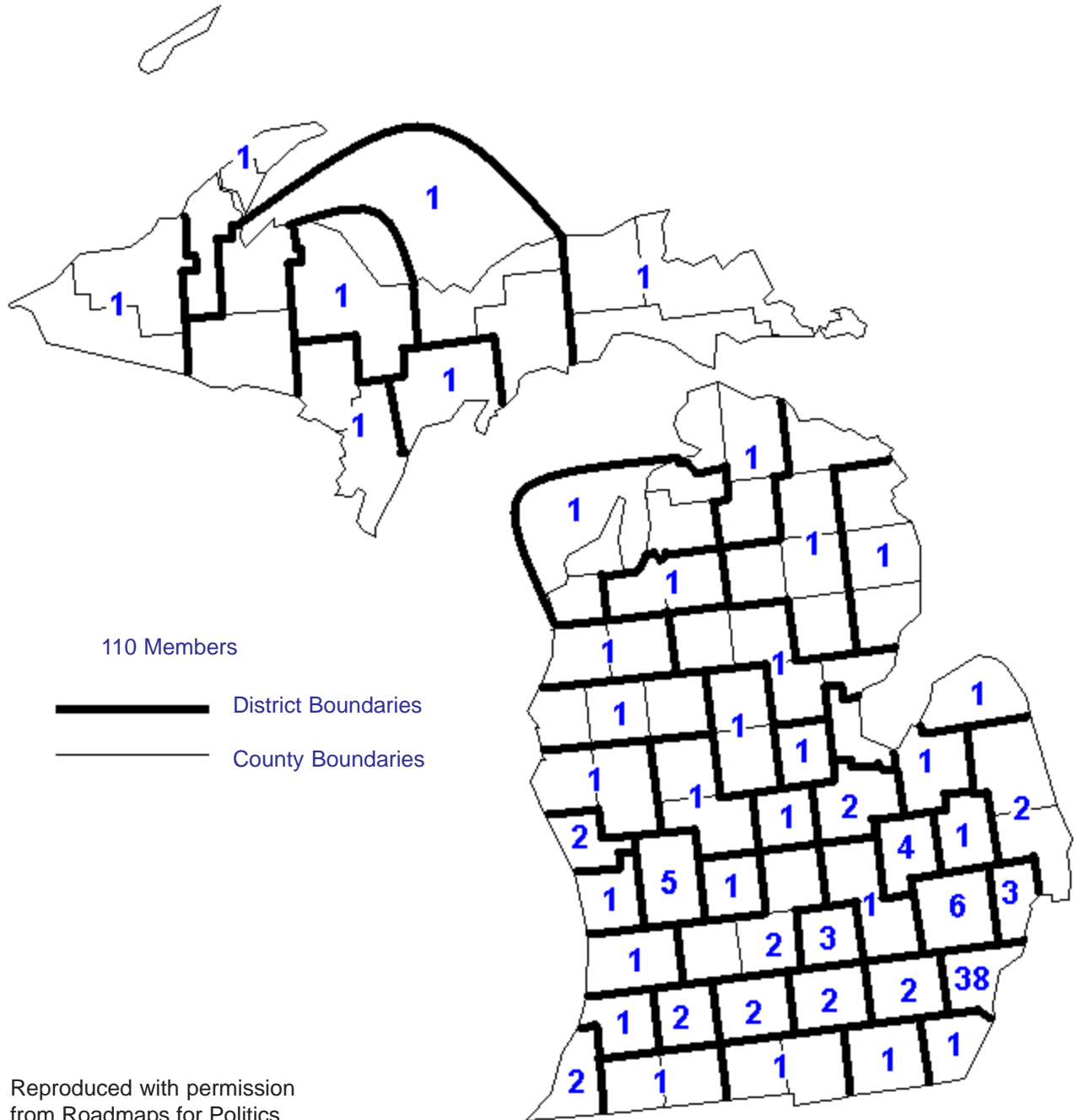
Statutory Implementation

In accordance with the requirements of Section 4, the legislature reapportioned the house of representative districts in 1953. The maximum possible number of seats (110) was used. The 1953 apportionment, which is still in effect today, is shown on the map on the following page.

²² City of Lansing v. Ingham County Clerk, 308 Mich. 560.

A Comparative Analysis of the Michigan Constitution
v - 26

MAP 2
MICHIGAN
REPRESENTATIVE DISTRICTS
1954



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A Comparative Analysis of the Michigan Constitution
v - 28

Other State Constitutions

Table 2 at the end of this Part B shows the provisions in other states for size and apportionment of state legislatures.

Size

State senates range in size from 17 in Delaware and Nevada to 67 in Minnesota. The most popular sizes are 33, 35, 40, and 50 members, with four states having senates of each of these sizes. The average size is 38.

Houses of representatives vary in size from 35 in Delaware to 400 in New Hampshire. Seven states have houses containing 100 members. The average size is 119.

Bases of Apportionment

A variety of bases of apportioning state legislatures are prescribed by the constitutions of the 50 states. These bases of apportionment are described briefly for each state in Table 2. While there are many variants, the bases can be narrowed down to six major types as shown in Table 1 below.²³

Table 1
STATE LEGISLATIVE APPORTIONMENT BASES

| <u>Basis</u> | <u>Senates</u> | <u>Houses</u> | <u>Total</u> |
|---------------------------------------|----------------|---------------|--------------|
| Population (including one unicameral) | 20 | 12 | 32 |
| Population, but with weighted ratios | 1 | 7 | 8 |
| Combination of population and area | 17 | 28 | 45 |
| Equal apportionment for each unit | 7 | 1 | 8 |
| Fixed constitutional apportionment | 4 | 1 | 5 |
| Apportionment by taxation | <u>1</u> | <u>0</u> | <u>1</u> |
| Total | 50 | 49 | 99 |

Population. While 32 chambers among the states use population as the basis of representation, only nine states use population for both houses (a total of 18 houses). In the other 14 states (Nebraska included) only one house is based on population. It should be noted that the definition of “population” varies widely among these states.

Population With Weighted ratios. The eight chambers in this category, including Michigan’s house of representatives, allow a county or district a representative when it has a stipulated portion of a ratio. For one of these eight houses a two-thirds ratio is stipulated, while for the other seven houses a one-half ratio is provided.

²³ The table is reproduced with permission from Baker, Gordon E., State Constitutions: Reapportionment, State Constitutional Studies Project, No.2, National Municipal League, New York, 1960. Other information in this section on bases of apportionment is summarized from this source. This document is a valuable source of current information on state legislative apportionment.

Population and Area. The 45 chambers that are apportioned on a combination of population and area utilize a variety of combinations. In a number of these, each county or other political unit is entitled to at least one representative with the remaining representatives apportioned on the basis of population. In others no county can have more than a specified number of or percentage of representatives. And some houses are based on a classified and graduated system; e.g., counties within a certain population range are entitled to one representative, counties with three times that population may be entitled to two representatives, etc.

Equal Apportionment to Each Unit. In six states each county receives one member in the senate and in one state each county has two senate seats. Vermont gives each inhabited town one house member.

Fixed Constitutional Apportionment. Five legislative bodies, including Michigan's senate, have their districts specified in the state constitution and the districts can be changed only by constitutional amendment.

Apportionment Based On Direct Taxes. In New Hampshire the senate districts are determined "by the proportion of direct taxes paid by the said districts."

Apportioning Agency

In 42 of the states (including Michigan) the legislature is the primary agency specified in the constitution for apportioning one or both houses. Six of these states (California, Illinois, Michigan, Oregon, South Dakota, and Texas) provide for alternative procedures if the legislature fails to act. In Washington, reapportionment is specifically provided for by either the legislature or by initiative. In Michigan the legislature has the first responsibility to reapportion; if it does not act the state board of canvassers can act. The voters can initiate a constitutional amendment for reapportionment, as was done in 1952, at any time. Only two states (Delaware and Maryland) make no constitutional provision for periodic reapportionment.

Provision for apportionment by non-legislative officials is made in six states (Alaska, Arizona, Arkansas, Hawaii, Missouri, and Ohio).

Term

Legislative terms are two or four years. Senators in 35 states serve four-year terms. In the other 15 (including Michigan and Nebraska) they serve for two years. House members serve four-year terms in only four states (Alabama, Louisiana, Maryland, and Mississippi).

Terms of Office*

| <u>Senate</u> | <u>House</u> | <u>Number of States</u> |
|---------------|--------------|-------------------------|
| 4 years | 4 years | 4 |
| 4 years | 2 years | 31 |
| 2 years | 2 years | 15 |

*Council of State Governments, The Book of the States, 1960-61, page 37. See also Chapter VI of this publication re governor's term.

Comment

Legislative apportionment has been one of the most controversial areas in Michigan's constitution. Proper apportionment is one of the basic problems in a representative government.

The two bases commonly used in apportioning American state legislatures are population and area. As mentioned before, population is used in varying degrees by most states in establishing districts for either or both houses of their legislatures. Many people believe that population is the only defensible basis for representation in both houses of the legislature. Opponents of this point of view usually accept population as the basis for representation in one house but contend that it should not be the basis for both houses. They suggest that one of the advantages of a bicameral legislature is that the two houses can represent different interests. They feel that area or counties should be given consideration in the apportionment of at least one branch of the legislature.

Senate. There will undoubtedly continue to be considerable controversy as to whether the present apportionment of the senate should be continued; whether additional members should be allocated to the more populous areas; or whether the senate should be apportioned on a straight population basis.

Whatever basis of apportionment is chosen, a decision will have to be made as to whether the districting should be frozen into the constitution or some provision made for periodic reapportionment of the senate. If senate districts are to continue to be frozen into the constitution, consideration might be given to providing for periodic re-districting within a county entitled to two or more members.

House. The major issue in the provision for the house of representatives appears to be on the phrase "ratio of representation." Should a county, or group of counties, be entitled to a representative when it has attained a population equal to 50 per cent of the ratio of representation (the present provision), or should a county, or group of counties, be required to have a full ratio or more nearly a full ratio (60%, 75%, 85%, etc.) of representation before being entitled to a representative?

Even though a single county might receive a representative when it attains a half (or some other portion) of a ratio, should groups of counties be required to achieve a full ratio?

Term. Another area for consideration is the length of term, particularly for senators. Thirty-five of the states have four-year terms for senators. An increase in terms for legislators will probably be related to the executive term.

Apportionment. Consideration might be given to making the new apportioning effective for the election in the second year following the decennial census (1972,

A Comparative Analysis of the Michigan Constitution
v - 32

1982, etc.) rather than for the election four years after the census as now provided (1964, 1974, etc.). This would minimize the mal-distribution of house seats resulting from population shifts.

There has been no opportunity to determine the effectiveness of the present provision for the board of state canvassers to reapportion if the legislature should fail to do so.

Table 2

CONSTITUTIONAL PROVISIONS FOR APPORTIONMENT OF STATE LEGISLATURES AND SUPPLEMENTARY DATA

| State | Basis of Apportionment ¹ | | Apportioning Agency ¹ | Size of Legislature ¹ | | Apportionment required ¹ |
|---------|--|---|---|----------------------------------|-------|--|
| | Senate | House ² | | Senate | House | |
| Alabama | Population, except no district more than one member. | Population, but each county at least one member. | Legislature. | 35 | 106 | Every ten years. |
| Alaska | Population (civilian), 24 districts. | Population (civilian) plus area based on population ratios in election districts. | Apportionment board | 20 | 40 | Every ten years. |
| Arizona | Prescribed by constitution. | Votes cast for governor at last preceding general election, but not less than if computed on basis of election of 1930. | No provision for senate; redistricting for house by county boards of supervisors. | 28 | 80 | Fixed in constitution. After every gubernatorial election (every 2 years). |

| <u>State</u> | <u>Basis of Apportionment</u> ¹ | | <u>Apportioning Agency</u> ¹ | <u>Size of Legislature</u> ¹ | | <u>Apportionment required</u> ¹ | |
|--------------|--|--|---|---|--------------|--|--------------------|
| | <u>Senate</u> | <u>House</u> ² | | <u>Senate</u> | <u>House</u> | <u>Senate</u> | <u>House</u> |
| Arkansas | Fixed at districts then established (Nov. 1956) | Each county at least one member; remaining members distributed among more populous counties according to population. | Board of apportionment (governor, secretary of state, and attorney general). Subject to revision by state supreme court. | 35 | 100 | | Every ten years. |
| California | Population, exclusive of persons ineligible to naturalization. No county, or city and county, to have more than one member; no more than three counties in any district. | Population, exclusive of persons ineligible to naturalization. | Legislature or, if it fails, a reapportionment commission (lieutenant governor, controller, attorney general, secretary of state, and superintendent of public instruction). In either case, subject to a referendum. | 40 | 80 | | Every ten years. |
| Colorado | Population ratios. | Population ratios. | Legislature. | 35 | 65 | | Every ten years. |
| Connecticut | Population, but each county at least one member. | Prescribed by constitution: two members from each town having over 5,000 population; others, same number as in 1874. | Legislature for senate, no provision for house. | 6 | 279a | | After each census. |

Constitution total of house members may vary according to population increase.

| <u>State</u> | <u>Basis of Apportionment</u> ¹ | | <u>Apportioning Agency</u> ¹ | <u>Size of Legislature</u> ¹ | | <u>Apportionment required</u> ¹ |
|--------------|--|--|---|---|--------------|---|
| | <u>Senate</u> | <u>House</u> ² | | <u>Senate</u> | <u>House</u> | |
| Delaware | Districts specifically established by constitution. | Districts specifically established by constitution. | No provision. | 17 | 35 | None required at regular intervals. |
| Florida | Population, but no county more than one member. | Population, i.e., 3 to each of 5 largest counties, 2 to each of next 18, 1 each to others. | Legislature. | 38 | 95 | Every ten years. |
| Georgia | Population, but no county or senatorial district more than one member. | Population, i.e., 3 to each of 8 largest counties, 2 to each of next 30, 1 each to others. | Legislature. | 54 | 205 | May be rearranged at any time within limitations of constitution. |
| Hawaii | Districts specified by constitution. | Population. | Governor. | 25 | 51 | Every ten years. |

| <u>State</u> | <u>Basis of Apportionment</u> ¹ | | <u>Apportioning Agency</u> ¹ | <u>Size of Legislature</u> ¹ | | <u>Apportionment required</u> ¹ | |
|--------------|--|--|--|---|--------------|--|-------------------|
| | <u>Senate</u> | <u>House</u> ² | | <u>Senate</u> | <u>House</u> | <u>Senate</u> | <u>House</u> |
| Idaho | One member from each county. | Total house not to exceed 3 times senate. Each county entitled to at least one representative, apportioned as provided by law. | Legislature. | 44 | 59 | None. | Every ten years. |
| Illinois | Fixed Districts based on area. | Population. | Legislature or, if it fails, a reapportionment commission appointed by the governor. | 58 | 177 | Fixed. | Every ten years. |
| Indiana | Male inhabitants over 21 years of age. | Male inhabitants over 21 years of age. | Legislature. | 50 | 100 | | Every six years. |
| Iowa | Population, but no county more than one member | One to each county, and one additional to each of the nine most populous counties. | Legislature. | 50 | 108 | | Every ten years. |
| Kansas | Population. | Population, but each county at least one. | Legislature | 40 | 125 | | Every five years. |

| <u>State</u> | <u>Basis of Apportionment</u> ¹ | | <u>Apportioning Agency</u> ¹ | <u>Size of Legislature</u> ¹ | | <u>Apportionment required</u> ¹ |
|---------------|--|--|---|---|--------------|---|
| | <u>Senate</u> | <u>House</u> ² | | <u>Senate</u> | <u>House</u> | |
| Kentucky | Population. | Population, but no more than two counties to be joined in a district. | Legislature. | 38 | 100 | Every ten years. |
| Louisiana | Population. | Population, but each parish and each ward of New Orleans at least one member. | Legislature. | 39 | 101 | Every ten years. |
| Maine | Population, exclusive of aliens and Indians not taxed. No county less than one nor more than five. | Population, exclusive of aliens and Indians not taxed. No town more than seven members, unless a consolidated town. | Legislature. | 33 | 151 | Every ten years. |
| Maryland | Prescribed by constitution; one from each county and from each of six districts constituting Baltimore city. | Prescribed by constitution; population, but minimum of 2 and maximum of 6 per county. Each of the Baltimore districts as many members as largest county. | No provision. | 29 | 123 | Never reapportioned unless by constitutional amendment change. Formerly every ten years. Constitutional amendment adopted in 1950 froze districts as they were in the decade of the 1940's. |
| Massachusetts | Legal voters. | Legal voters. | Legislature. | 40 | 240 | Every ten years. |

| State | Basis of Apportionment ¹ | | Apportioning Agency ¹ | Size of Legislature ¹ | | Apportionment required ¹ | |
|-------------|--|---|--|----------------------------------|-------|--|----------------------------|
| | Senate | House ² | | Senate | House | Senate | House |
| Michigan | Prescribed by constitution | Population. | Legislature or, if it fails, state board of canvassers apportion house. | 34 | 110 | Fixed. | Every ten years. |
| Minnesota | Population, exclusive of non-taxable Indians. | Population exclusive of non-taxable Indians. | Legislature "shall have power." | 67 | 131 | Every ten years and after each state census. | |
| Mississippi | Prescribed by constitution | Prescribed by constitution, each county at least one. Counties grouped into three divisions, each division to have at least 44 members. | Legislature "may." | 49 | 140 | May after each federal census. | |
| Missouri | Population. | Population, but each county at least one member. | House: secretary of state apportions among counties; county courts apportion within counties. Senate: by commission appointed by governor. | 34 | 157 | Every ten years. | |
| Montana | One member from each county. | Population, but each county at least one member. | Legislature. | | | | After each federal census. |
| Nebraska | Unicameral legislature—population excluding aliens | Unicameral legislature—population excluding aliens | Legislature "may." | | | | From time to time. |

| <u>State</u> | <u>Basis of Apportionment</u> ¹ | | <u>Apportioning Agency</u> ¹ | <u>Size of Legislature</u> ¹ | | <u>Apportionment required</u> ¹ |
|----------------|---|--|---|---|--------------|--|
| | <u>Senate</u> | <u>House</u> ² | | <u>Senate</u> | <u>House</u> | |
| Nevada | One member from each county. | Population. | Legislature. | 17 | 47 | Every ten years. |
| New Hampshire | Direct taxes paid. | Population. | Legislature. | 24 | 400 | From time to time. Every ten years. |
| New Jersey | One member from each county. | Population, but at least one member from each county. | Legislature. | 21 | 60 | Every ten years. |
| New Mexico | One from each county. | At least one member for each county and additional representatives for more populous counties. | Legislature "may." | 32 | 66 | Every ten years. |
| New York | Population, excluding aliens. No county more than 1/3 membership, nor more than 1/2 membership to two adjoining counties. | Population, excluding aliens. Each county (except Hamilton) at least one member. | Legislature. Subject to review by courts. | 58 | 150 | Every ten years. |
| North Carolina | Population, excluding aliens and Indians not taxed. | Population, excluding aliens and Indians but each county at least one member. | Legislature. | 50 | 120 | Every ten years. |

| <u>State</u> | <u>Basis of Apportionment</u> ¹ | | <u>Apportioning Agency</u> ¹ | <u>Size of Legislature</u> ¹ | | <u>Apportionment required</u> ¹ |
|--------------|--|--|--|---|--------------|--|
| | <u>Senate</u> | <u>House</u> ² | | <u>Senate</u> | <u>House</u> | |
| North Dakota | Population. | Population. | Legislature. | 49 | 113 | Every ten years, or after each state census. |
| Ohio | Population. | Population, but each county at least one member. | Governor, auditor, and secretary of state, or any two of them. | 33 | 139 | Every ten years; each biennium. |
| Oklahoma | Population. | Population, but no county to have more than seven members. | Legislature. | 44 | 121a | Every ten years. |
| Oregon | Population. | Population. | Legislature, or failing that, secretary of state reappoints subject to supreme court review. | 30 | 60 | Every ten years. |
| Pennsylvania | Population, but no city or county to have more than 1/6 of membership. | Population, but each county at least one member. | Legislature. | 50 | 210 | Every ten years. |

^a Constitutional number of house members may vary according to population increase.

| <u>State</u> | <u>Basis of Apportionment</u> ¹ | | <u>Apportioning Agency</u> ¹ | <u>Size of Legislature</u> ¹ | | <u>Apportionment required</u> ¹ |
|----------------|---|--|---|---|------------------|--|
| | <u>Senate</u> | <u>House</u> ² | | <u>Senate</u> | <u>House</u> | |
| Rhode Island | Qualified voters, but minimum of 1 and maximum of six per city or town. | Population, but at least one member from each town or city, and no town or city more than 1/4 of total, i.e., 25. | Legislature "may" after presidential election. | | | May after any presidential election. |
| South Carolina | One member from each county. | Population, but at least one member from each county. | Legislature. | | | Every ten years. |
| South Dakota | Population. | Population. | Legislature, or failing that, governor, superintendent of public instruction, presiding judge of supreme court, attorney general, and secretary of state. | | Every ten years. | |
| Tennessee | Qualified voters. | Qualified voters. | Legislature. | | | Every ten years. |
| Texas | Qualified electors, but no county more than one member. | Population, no county more than 7 representatives unless population greater than 700,000, then 1 additional representative for each 100,000. | Legislature, or if fails to act, legislative redistricting board (ex officio) shall proceed. | | | Every ten years. |

| <u>State</u> | Basis of Apportionment ¹ | | <u>Apportioning Agency</u> ¹ | Size of Legislature ¹ | | Apportionment required ¹ | |
|---------------|--|--|---|----------------------------------|--------------|-------------------------------------|--------------|
| | <u>Senate</u> | <u>House</u> ² | | <u>Senate</u> | <u>House</u> | <u>Senate</u> | <u>House</u> |
| Utah | Population. | Population, but each county at least one member, with additional representatives on a population ratio. | Legislature. | 25 | 64 | Every ten years. | |
| Vermont | Population, but each county at least one member. | One member from each inhabited town. | Legislature apports senate; no provision for house. | 30 | 246 | Senate—or after each state census. | |
| Virginia | Population. | Population. | Legislature. | 40 | 100 | Every ten years. | |
| Washington | Population, excluding Indians not taxed and soldiers, sailors, and officers of U.S. Army and Navy in active service. | Population, excluding Indians not taxed and soldiers, sailors, and officers of U.S. Army and Navy in active service. | Legislature, or by initiative. | 49 | 99 | Every ten years. | |
| West Virginia | Population, but no two members from any county, unless one county constitutes a district. | Population, but each county at least one member. | Legislature. | 32 | 100 | Every ten years. | |

| <u>State</u> | <u>Basis of Apportionment</u> ¹ | | <u>Apportioning Agency</u> ¹ | <u>Size of Legislature</u> ¹ | | <u>Apportionment required</u> ¹ | |
|--------------|--|--|---|---|--------------|--|------------------|
| | <u>Senate</u> | <u>House</u> ² | | <u>Senate</u> | <u>House</u> | <u>Senate</u> | <u>House</u> |
| Wisconsin | Population. | Population. | Legislature. | 33 | 100 | | Every ten years. |
| Wyoming | Population, but each county at least one member. | Population, but each county at least one member. | Legislature. | 27 | 56 | | Every ten years. |

¹ The Book of the States, 1960-61, council of State Governments, pp. 37, 54-58.

The term "house" means the lower house of the legislature. In some states it is called the assembly or house of delegates.

C. OTHER LEGISLATIVE POWERS AND RESTRICTIONS

1. Power to Reduce Size of Juries

Article V: Section 27. The legislature may authorize a trial by a jury of a less number than 12 men.

Constitutions of 1835 and 1850

The 1835 constitution did not have a provision of this type. The 1850 constitution (Article IV, Section 46) originated this provision in language identical with the present provision. Article VI, Section 28 of the 1850 constitution limited the effect of this provision by restricting trial by a jury of less than twelve men to “all courts not of record.”

Constitution of 1908

This provision was carried over from the 1850 constitution without change, as was the related part of Article II, Section 19, which guaranteed the right of an accused in a criminal prosecution to a trial by an impartial jury, “which may consist of less than twelve men in all courts not of record.” This provision limits the effect of Section 27 to minor courts (not of record). Article II, Section 13, states that the “right of trial by jury shall remain,” but may be waived in civil cases unless demanded by one of the parties.

Judicial Interpretation

No recent problem of interpretation has arisen under Article V, Section 27, and the related provision of Article II, Section 19. However, under the identical provisions of the 1850 constitution, it was held that trial by a jury of less than twelve was restricted to courts not of record.²⁴ Under the 1850 provision, it was also held that a law permitting a verdict by a jury of less than twelve, if any of the jurors was un-

²⁴ People v. Luby, 56 Mich. 551; Robison v. Wayne Circuit Judges, 151 Mich. 315. In the Robison case, a law establishing a juvenile court with limited criminal jurisdiction was held unconstitutional insofar as it authorized a six-man jury in the juvenile court, which was a court of record.

able to continue to serve for valid reasons, was unconstitutional since it delegated to the trial court its discretion in the matter and denied the litigant's right to an unanimous jury verdict.²⁵

Statutory Implementation

Present statutes provide for juries of less than twelve only in justice of the peace courts. In those courts, the jury is made up of six; and in civil cases by agreement of the parties, less than six.

Other State Constitutions

Two other states—Colorado and Wyoming—have similar provisions. Nine states in addition to these have provisions whereby a jury may have less than twelve, in general for minor offenses and in courts of minor jurisdiction. Some of these provisions specify a number, such as five or six in certain instances.²⁶

Comment

This provision, because of the restrictive provision of Article II, Section 19, seems not to have had an important influence in the state's court system. Some consideration might be given to extending the permissive effect of Section 27 to courts of record. Revision of Section 27 would be related to revision of Article II, Sections 13 and 19. If any form of this provision is retained, any intended restrictions on the power granted should be made clear in the provision. A comprehensive section dealing with all phases of jury procedure might be more appropriate in a revised judicial article.

2. Indeterminate Sentences

Article V: Section 28. The legislature may provide by law for indeterminate sentences, so called, as a punishment for crime, on conviction thereof, and for the detention and release of persons imprisoned or detained on said sentences.

²⁵ *McRae v. Grand Rapids, L. & D.R. Co.*, 93 Mich. 399.

²⁶ Index Digest, p. 582.

A Comparative Analysis of the Michigan Constitution v - 46

Constitutions of 1835 and 1850

The constitution of 1835 did not contain a provision of this type. This provision originated in 1903 as an amendment to the constitution of 1850 (Article IV, Section 47). Before this amendment was adopted, the Michigan supreme court had held that a law of the type later authorized in the amendment was a legislative invasion of the judicial function. After the adoption of the amendment, an indeterminate sentence law pursuant to it was upheld.²⁷

Constitution of 1908

This provision was carried over from the 1850 constitution, as amended, with only a minor change in punctuation. It has not been amended since the 1908 constitution went into effect.

Statutory Implementation

Statutory provisions relating to indeterminate sentences appear in the code of criminal procedure (Public Act 175 of 1927).²⁸ In some instances, it is specified in the law, but more often the minimum sentence is at the discretion of the court. The maximum sentence is specified by law. If certain conditions are complied with, the parole board has discretion to release a prisoner on parole when the minimum sentence has been served, less time allowed for good behavior.

Judicial Interpretation

Judicial discretion in imposing sentences may be exercised except insofar as it is curtailed by statutes pursuant to this section.²⁹ Granting and revocation of paroles may be made purely administrative functions of the parole board by statute.³⁰ This

²⁷ In re Campbell, 138 Mich. 597; In re Manaca, 146 Mich. 697. It was held in People v. Cook, 147 Mich. 127, that the legislature could confer discretion in matters relating to paroles in the governor, wardens, prison boards and the board of pardons.

²⁸ M.S.A.28.1080-28.1081. Responsibility in this area has been given to the parole board in the department of corrections, M.S.A. 28.2302-28.2315.

²⁹ In re Southard, 298 Mich. 75.

A Comparative Analysis of the Michigan Constitution

v - 47

provision has been held not in conflict with the due process clause of the federal constitution (Article VI, Section 2, and the 14th amendment in particular).³¹

Other State Constitutions

Only five state constitutions have provisions relating to indeterminate sentences, one of which (Florida) prohibits them. Maryland and Nevada have provisions similar to the Michigan provision.³²

Comment

If it is considered necessary to retain a provision of this type, this matter might be dealt with in a comprehensive provision relating to such matters as pardons, reprieves, and commutations of sentences.

3. Regulation of Employment

Article V: Section 29. The legislature shall have power to enact laws relative to the hours and conditions under which men, women and children may be employed.

Constitutions of 1835 and 1850

There was no provision of this type in the constitutions of 1835 and 1850.

Constitution of 1908

Section 29 originated in the constitution of 1908. This provision was proposed in the convention by the committee on the legislative department at the suggestion of Mr. Fairlie and the state labor commissioner. It was noted in the convention that

³⁰ In re Casella, 313 Mich. 393.

³¹ In re Holton, 304 Mich. 534.

³² Index Digest, p. 344. Indeterminate sentences, however, are related to a system of paroles with which the constitutions of 14 states deal. Index Digest, pp. 341-342. See discussion of Article VI, Section 9.

court decisions in other states had voided laws regulating the working conditions of women and children as violating “freedom of contract.” This provision was intended to safeguard existing and future legislation of this kind in Michigan. A motion to add the word “men” to the provision was defeated 44 to 29.³³ This word, however, was added to Section 29 in 1920 by adoption of an amendment proposed by the legislature.

Statutory Implementation

Federal law relating to the subject matter of Section 29 has tended to have increasing effect in this area for several decades. However, some comprehensive Michigan statutes pertaining to hours and conditions of employment continue in effect.³⁴

Judicial Interpretation

A statute passed in 1909 soon after this provision went into effect relating to employment of women was upheld in *Withey v. Bloem*.³⁵ The legislature may classify by type or types of employee in legislating in regard to maximum hours of employment.³⁶

Other State Constitutions

Only a few states have provisions resembling Section 29 in its full subject matter, but a sizable number of other state constitutions have provisions authorizing the legislature to provide for the health and safety of various types of employees or all employees, or specifically restricting males under a certain age or females from dangerous or unsuitable occupations.³⁷

³³ Proceedings and Debates, pp. 1003-1005.

³⁴ In particular, see M.S.A. 17.19-17.47, 17.241-17.308.

³⁵ 163 Mich. 419.

³⁶ *Grosse Pointe Park Fire Fighters Association v. Village of Grosse Pointe Park*, 303 Mich. 405.

³⁷ Index Digest, pp. 591-594. For general constitutional provisions relating to health and welfare, see ibid., pp. 518-519, 531.

Comment

The circumstances that gave rise to this provision gradually evaporated in the years following adoption of the 1908 constitution. If any other provision is made relating to the state's general power in the fields of health, welfare, etc., some consideration might be given to combining this provision with it in one section.

4. Special Contracts

Article V: Section 25. Fuel, stationery, blanks, printing and binding for the use of the state shall be furnished under contract or contracts with the lowest bidder or bidders who shall give adequate and satisfactory security for the performance thereof. The legislature shall prescribe by law the manner in which the state printing shall be executed and the accounts rendered therefor; and shall prohibit all charges for constructive labor. It shall not rescind nor alter such contract, nor release the person or persons taking the same or his or their sureties from the performance of any of the conditions of the contract. No member of the legislature nor officer of the state shall be interested directly or indirectly in any such contract.

Constitutions of 1835 and 1850

The constitution of 1835 did not contain a provision of this kind. This provision originated in the 1850 constitution (Article IV, Section 22).

Constitution of 1908

This provision was carried over from the 1850 constitution substantially rephrased, but retaining the same meaning and effect.

Statutory Implementation

Detailed statutes have implemented this provision pursuant to its mandatory features.³⁸

³⁸ M.S.A. 4.251-4.273, 4.315, 4.316, 4.371-4.381, 3.391-3.404.

Opinions of the Attorney General

Various opinions of the attorney general have restated the restrictions set forth in this provision.³⁹

Other State Constitutions

The constitutions of approximately 18 states contain provisions similar to, and dealing with, much of the subject matter of Section 25.⁴⁰

Comment

This section is representative of detailed restrictions imposed upon the organs of government—particularly the legislature—in many state constitutions framed in the middle and late nineteenth century. Such restrictions reflect popular distrust of the organs of government in that period, and represent a rigid and somewhat ponderous remedy for potential abuse of political discretion. Consideration might be given to deletion of most or all of this section. The subject matter of Section 25 would be at the discretion of the law-making process, if the section were deleted.

5. Prison Chaplains; Religious Services

Article V: Section 26. The legislature may authorize the employment of a chaplain for each of the state prisons; but no money shall be appropriated for the payment of any religious services in either house of the legislature.

Constitutions of 1835 and 1850

There was no provision of this type in the constitution of 1835. This provision originated in the constitution of 1850 (Article IV, Section 24). It allowed the legislature to authorize “a chaplain for the state prison.”

³⁹ In particular, opinions of February 19, 1941, March 17, 1944, and August 2, 1948.

⁴⁰ Index Digest, pp. 794-795.

Constitution of 1908

Except for the change “a chaplain for each of the state prisons” – this provision was carried over from the 1850 constitution intact. This provision is definite in purpose and appears not to have given rise to major problems of interpretation.

Other State Constitutions

The constitution of Washington has a provision similar to the Michigan provision in regard to prison chaplains. The Washington constitution states that provisions relating to religious freedom are not to be so construed as to forbid statutory authorization of a prison chaplain. A provision similar to the latter part of Section 26 can be found in the Oregon constitution.⁴¹

Comment

The provision as it relates to prison chaplains would seem to be unnecessary, since chaplains of this type or other types have not been interpreted in any other state jurisdiction (or in the federal system) as violative of the right to religious freedom or to the principle of separation of Church and State.

The second part of this provision is unusual among state constitutions, and consideration may be given to the question of whether this prohibition of the legislature is sufficiently important as to warrant its continuance in the fundamental law.

6. Prohibition of Special Divorce Law

Article V: Section 32. Divorces shall not be granted by the legislature.

Constitutions of 1835 and 1850

The constitution of 1835 (Article XII, Section 5) had a provision similar to the present provision with additional permission to the legislature to authorize the

⁴¹ Index Digest, pp. 669, 772, 773. These state constitutions appear to put a somewhat more literal emphasis on factors involved in separation of Church and State than do most other constitutions.

A Comparative Analysis of the Michigan Constitution v - 52

“higher courts” to grant divorces “under such restrictions as they may deem expedient.” In the 1850 constitution (Article IV, Section 26), the provision was the same as the present provision.

Constitution of 1908

This provision was carried over from the 1850 constitution unchanged.

Judicial Interpretation

The effect of this provision is to prevent divorces by special law. A general divorce law is not prohibited by Section 32.⁴²

Other State Constitutions

The constitutions of approximately 40 states have similar provisions or provisions having similar effect.⁴³

Comment

A provision of this type also reflects nineteenth century distrust of the legislative branch in many states; it might be considered unnecessary in a revised constitution, particularly if it could be covered by the prohibition against special acts.

7. Prohibition of Lotteries

Article V: Section 33. The legislature shall not authorize any lottery nor permit the sale of lottery tickets.

Constitutions of 1835 and 1850

The constitutions of 1835 (Article XII, Section 6) and 1850 (Article IV, Section 27) had similar provisions.

⁴² See *Teft v. Teft*, 3 Mich. 67; *DeVuist v. DeVuist*, 228 Mich. 454. General statutes on divorce and related matters are in M. S .A. 25.81-25.201.

⁴³ Index Digest, p. 359.

Constitution of 1908

This provision was carried over from the 1850 constitution unchanged. The provision has not been amended since the adoption of the 1908 constitution. A proposal of amendment by an initiative petition – intended to permit the legislature to modify the prohibition for “non-profit, charitable organizations” was defeated by a vote of 944,388 to 903,303 in the November, 1954, election.

Judicial Interpretation

Statutory authorization of pari-mutuel betting on horse races has been upheld as not violative of Section 33.⁴⁴ Numerous and varied forms of games of chance have been interpreted as falling under the prohibition of Section 33. A lottery has been held to involve three essential elements – consideration, prize and chance.⁴⁵

Other State Constitutions

The constitutions of approximately 35 states contain provisions of this type or of similar effect. Some of the other states have constitutional exceptions to the prohibition of lotteries, particularly for non-profit and charitable organizations.⁴⁶

Comment

The subject matter of Section 33 is controversial and the question of “charitable” lotteries will probably be raised in the convention.

8. Prohibition of State Paper

Article V: Section 35. The legislature shall not establish a state paper.

⁴⁴ Rohan v. Detroit Racing Association, 314 Mich. 326.

⁴⁵ See cases cited under M.S.A. 28.604; in particular, Sproat-Temple Theatre Corp. v. Colonial Theatrical Enterprise, 276 Mich. 127; Society of Good Neighbors v. Mayor of Detroit. 324 Mich. 22; Eastwood Park Amusement Co. v. Mayor of East Detroit. 325 Mich. 60.

⁴⁶ Index Digest, pp. 487-488.

Constitutions of 1835 and 1850

The constitution of 1835 did not have a provision of this type. The 1850 constitution (Article IV, Section 35) originated this provision. In 1902, an amendment was adopted which eliminated the second sentence of the original provision which provided that every newspaper in the state was entitled to a sum of not more than \$15 for publishing the general laws of any legislative session within 40 days of their passage.

Constitution of 1908

This provision carried over the 1850 provision, as amended, without change. Section 35 has not been amended since the 1908 constitution went into effect. No difficulty has arisen relative to its interpretation.

Other State Constitutions

This provision appears to be unique among state constitutions.⁴⁷

Comment

There has been a strong tradition in the United States against the establishment of official newspapers of the type prohibited by Section 35. A detail of this type might therefore be considered unnecessary and unsuitable for constitutional status.

9. Appropriations for Local or Private Purposes

Article V: Section 24. The assent of two-thirds of the members elected to each house of the legislature shall be requisite to every bill appropriating the public money or property for local or private purposes.

Constitutions of 1835 and 1850

The 1835 constitution did not contain a provision of this type. The 1850 constitution (Article IV, Section 45) originated this provision.

Constitution of 1908

This provision was carried over from the 1850 constitution unchanged.

⁴⁷ Index Digest, p. 987.

Judicial Interpretation

Such matters as the administration of the workmen's compensation act and an act of 1927 for collection of a gasoline tax and its distribution to counties and municipalities for highway purposes were held to be for public rather than private purposes.⁴⁸

Opinions of the Attorney General

The attorney general has held that legislative appropriations to assist private veterans' organizations in their activities are for private purposes and require a two-thirds vote.

Other State Constitutions

The constitutions of four other states have a provision similar to Section 24. The Alaska constitution forbids appropriations except for public purposes. In Texas appropriations for private or individual purposes are forbidden; in Illinois appropriations are not allowed in private bills.⁴⁹

Comment

Section 24 is a safeguard against possible misuse of this type of local or private bill, while at the same time allowing a degree of flexibility under special circumstances through the requirement of the extraordinary vote in each house. There may be circumstances where what is allowed by this provision might impinge upon what seems to be definitely prohibited in Article V, Section 34 which states that "the legislature shall not audit nor allow any private claim or account." Some consideration might be given to clarifying factors in any area of possible conflict between Sections 24 and 34, if the substance of both provisions is to be retained. Revision of this provision should probably be related also to consideration of Article V, Sections 30 and 31 and Article X, Section 12 which forbids the grant of state credit to any "person, association or corporation, public or private." Private and special or local acts might be considered for treatment in one comprehensive section or provision in a revised constitution.

⁴⁸ Mackin v. Detroit-Timken Axle Co., 187 Mich. 8; Moreton v. Secretary of State, 24 Mich. 584.

⁴⁹ Index Digest, pp. 25-26.

10. Prohibition of Legislative Audit of Claims

Article V: Section 34. The legislature shall not audit nor allow any private claim or account.

Constitutions of 1835 and 1850

The constitution of 1835 did not have a provision of this type The 1850 constitution (Article IV, Section 31) originated this provision.

Constitution of 1908

This provision was carried over from the 1850 constitution unchanged. It is related to Article VI, Section 20 which requires the board of state auditors to “examine and adjust all claims against the state not otherwise provided for by general law.”⁵⁰

Judicial Interpretation

The legislature in its power of appropriation or authorization of payment has been restricted by this provision in special instances where charges of violation of this prohibition were sustained.⁵¹

Other State Constitutions

The constitutions of approximately ten states have provisions similar to Section 34, several of which make an exception for authorization of claims under previous authority of law.⁵²

Comment

Revision of Section 34 would be related to consideration of Article VI, Section 20 and the function of the court of claims established by statute. Some consideration might be given to deleting this provision, if it is thought desirable to grant the legislature greater flexibility in this area, or if improper action by the legislature

⁵⁰ The court of claims established under statutory authority has wide jurisdiction in the area of claims.

⁵¹ Bristol v. Johnson, 34 Mich. 123; Graves v. Bliss, 235 Mich. 364.

⁵² Index Digest, p. 973.

relating to private claims were considered to be unlikely. As pointed out in the comment on Section 24 above, if this provision is retained, clarification might be in order regarding possible conflict or difficulty in interpretation if a bill “appropriating the public money or property for local or private purposes” passed by a two-thirds vote of the legislature pursuant to Article V, Section 24 were also interpreted as auditing or allowing a private claim. The safeguard against possible abuse in this area in Article V, Section 24 (if retained in the revised constitution) would appear to be adequate if Section 34 were eliminated.

11. Prohibition of Special Law for Sale of Private Real Estate

Article V: Section 31. The legislature shall not authorize by private or special law the sale or conveyance of any real estate belonging to any person.

Constitutions of 1835 and 1850

There was no provision of this type in the 1835 constitution. The 1850 constitution (Article IV, Section 23) originated this provision. In addition to the language of the 1908 provision (with slight change of punctuation) after a semi-colon, the 1850 provision continued—“nor alter any road laid out by commissioners of highways or any street in any city or village, or in any recorded town plot.”

Constitution of 1908

This provision was carried over from the 1850 constitution with slight change in punctuation but the final clause of the 1850 provision was included in Article VIII, Section 27 of the 1908 constitution. This provision does not appear to have caused any recent problem of interpretation.

Other State Constitutions

The constitutions of three states including Michigan have specific provisions of this type. In addition, the Louisiana constitution provides that illegal disposition of private property shall not be given effect by local or special law.⁵³

⁵³ Index Digest, p. 786.

Comment

This provision might be considered to be an unnecessary detail reflecting an overly jaundiced attitude toward the exercise of legislative responsibility. Possible abuse in this area is not only restrained by the two-thirds vote requirement for special acts in Section 30, but it would also be a probable violation of the due process clauses of the Michigan constitution (Article II, Section 16) and the federal constitution. Consideration might be given to eliminating Section 31. Disposition of this provision, if it is not eliminated, should probably be considered in relation to the revision of Article XII on eminent domain.

12. Gubernatorial Veto and Item Veto

Article V: Sections 36 and 37.

See VI EXECUTIVE DEPARTMENT, part E—The Governor's Relations With the Legislature. These sections are discussed therein—pp. vi-46 - vi-55.

D. QUALIFICATIONS, ELIGIBILITY AND OTHER
PROVISIONS RELATIVE TO LEGISLATORS

1. Qualifications of Legislators

Article V: Section 5. Each senator and representative shall be a citizen of the United States, at least twenty-one years of age, and a qualified elector of the district he represents, and his removal from the district shall be deemed a vacation of the office. No person who has been convicted of subversion or of a felony involving a breach of public trust shall be eligible for either house of the legislature.

Constitutions of 1835 and 1850

The constitutions of 1835 (Article IV, Section 7) and 1850 (Article IV, Section 5) had provisions almost identical with one another in phraseology and had the same meaning and effect. Senators and representatives were required to be citizens of the United States and qualified electors in the respective counties and districts which they represented; removal from such was to be deemed a vacation of their office.

Constitution of 1908

The original form of Section 5 resembled the 1835 and 1850 provisions closely and had the same effect. In respect to representation, reference to counties was omitted, and “district” alone was specified.

Amendment in 1956. A legislative proposal of amendment to Section 5 was ratified at the November, 1956, election. This amendment inserted the 21 year minimum age requirement, and added the last sentence of the present form of Section 5 relative to denying eligibility to the legislature to those “convicted of subversion or of a felony involving a breach of public trust.” Section 5 in its original and amended form has caused slight problem of interpretation.⁵⁴

Other State Constitutions

The constitutions of 18 states including Michigan specifically require legislators to be U.S. citizens. In 14 states, legislators are required to be citizens of the state; in three of these this requirement must be met only at the time of election while in the

⁵⁴ For some details relating to residence in a district, see Opinion of the Attorney General, February 14, 1959.

others the period of time for state citizenship ranges from two to five years.

Most states have an age requirement for the “lower house” of which a minimum age of 21 years is the most common. Most states also have an age requirement for the senate ranging from 21 to 30 with 25 years the most common minimum requirement.

The constitutions of almost all states including Michigan require a legislator to be a qualified elector (or voter), or inhabitant, or resident of the district or county he represents. The constitutions of most states also require a legislator to be a voter, resident or inhabitant of the state, in most cases for a specified period of time. Twelve states including Michigan have a specific provision whereby a legislator’s removal from his district removes him from his office.

The Michigan provision as it relates to subversion is evidently unique. Oklahoma makes anyone convicted of a felony ineligible to legislative office. In several states, persons convicted of any infamous crime, perjury, or embezzlement are also ineligible.⁵⁵

Comment

Some may feel that there is no compelling reason for the requirement that legislators be qualified electors or residents in the districts they represent, since this restriction could be considered a limitation on the voters’ freedom of choice with respect to their legislators. The most important reason for this requirement would probably be to enhance each legislator’s concern for local interests. This might, however, be considered a matter on which the voters could appropriately exercise discretion if this restriction were removed.

⁵⁵ Index Digest, pp. 667-668. The U.S. constitution requires a senator to be at least 30 years of age and for nine years a U.S. citizen as well as an inhabitant of his state; a representative must have attained 25 years of age, been a U.S. citizen for seven years and an inhabitant of his state.

2. Ineligibility to the Legislature of
Other Office Holders

Article V: Section 6. No person holding any office under the United States or this state or any county office, except notaries public, officers of the militia and officers elected by townships, shall be eligible to or have a seat in either house of the legislature; and all votes given for any such person shall be void.

Constitutions of 1835 and 1850

The 1835 constitution (Article IV, Section 8) excluded office holders under the United States or “this state,” but did not specifically exclude county officers from eligibility to the legislature. Exceptions from the exclusion were made for officers of the militia, justices of the peace, associate judges of the circuit and county courts and postmasters.

The 1850 constitution (Article IV, Section 6) made county officers ineligible to the legislature and originated the substance of the present form of this provision. The words “or this state,” however, were omitted by mistake in the engrossed copy of the 1850 constitution.

Constitution of 1908

This provision was carried over from the 1850 constitution without major change except for inclusion of the formerly omitted words.

Judicial Interpretation

A person elected to the legislature was held not to be precluded from candidacy for a county office, but his election to such office would vacate his legislative seat.⁵⁶

⁵⁶ Lodge v. Wayne County Clerk, 155 Mich. 426. This would undoubtedly be true for any legislator elected or appointed to one of the offices excluded from legislative eligibility by this provision. Numerous opinions of the attorney general have held various state and county office holders ineligible to the legislature under this provision. An opinion of July 7, 1958, held that a legislator elected a member of a local school board vacates his seat in the legislature.

Other State Constitutions

The constitutions of almost all states make most or all of those holding office under the United States ineligible to the legislature. Approximately 12 states exclude only those holding a lucrative federal office. Some states except postmasters (or some postmasters), or other specific office holders such as the military from this exclusion.

The constitution of a majority of the states exclude all or most state office holders from eligibility to the legislature, although many of these exclude only those holding lucrative positions. The exceptions listed in the Michigan provision are not unusual among state constitutions. Few state constitutions resemble the Michigan provision in specifying county office holders as excluded from legislative eligibility.⁵⁷

Comment

Consideration might be given to modifying the present restriction in order that all or most of the officers excluded could be candidates for the legislation without resigning. The more important feature to be preserved would be the prohibition against dual office holding once the legislator has taken office. This prohibition might be extended so that no one holding any governmental office or position (particularly having remuneration) would be allowed a seat in the legislature.

3. Legislators' Ineligibility to Other Office; Prohibition of Interest in Contracts

Article V: Section 7. No person elected a member of the legislature shall receive any civil appointment within this state or to the senate of the United States from the governor, except notaries public, or from the governor and senate, from the legislature, or any other state authority, during the term for which he is elected. All such appointments and all votes given for any person so elected for any such office or appointment shall be void. No member of the legislature shall be interested directly or indirectly in any contract with the state or any county thereof, authorized by any law passed during the time for which he is elected, nor for 1 year thereafter.

⁵⁷ Index Digest, pp. 662-3, 665-6. Approximately one-fourth of the states make those holding office under some other state or nation ineligible to the legislature.

Constitutions of 1835 and 1850

The constitution of 1835 (Article IV, Section 19) provided that no legislator “shall receive any civil appointment from the governor and senate, or from the legislature, during the term for which he is elected.” The 1850 provision (Article IV, Section 18) originated substantially the present form of this provision, including that part of it which relates to contracts.

Constitution of 1908

This provision was carried over from the 1850 constitution with slight change of punctuation and phraseology. The words “except notaries public” were added to the 1908 version.

Judicial Interpretation

This provision is relatively clear in its restriction of legislators from appointment to the offices covered in the provision. Although prohibiting election of a legislator by the people to such offices would seem not to have been clearly intended by the framers of this provision, it has been interpreted to have that force.⁵⁸

Other State Constitutions

The constitutions of 16 other states have provisions resembling Section 7 in its comprehensive prohibition of a legislator’s being appointed to other state office during the term for which he is elected. The effect of Section 7, as interpreted, to preclude election of legislators to other state offices during the term for which elected is common to only a few state constitutions, but nine states prohibit election of any legislator to an office created, or whose emoluments were increased, during his term of office. The constitutions of 30 states prohibit appointment of legislators to other state offices created or whose emoluments were increased during such term.

The effect of Section 7 as it relates to appointment (or election) of a legislator to the United States Senate appears to be common to only one other state (Minnesota) which precludes any legislator during the term for which he is elected from holding any office under the United States, except that of postmaster.⁵⁹

⁵⁸ Attorney General ex rel. Cook v. Burhans, 304 Mich. 108. See cases and opinions cited under this section in M.S.A., Vol. 1.

⁵⁹ Index Digest, pp. 663-666.

The constitutions of nine other states have provisions similar to that part of Section 7 which prohibits legislators from having an interest in contracts with the state. The constitutions of seven other states have provisions similar to Section 7 in prohibiting legislators from having an interest in contracts with a county.⁶⁰

Comment

Consideration might be given to modifying this provision in the direction of greater flexibility. There may be merit in the features of some other state constitutions which merely prohibit a legislator from being appointed to a remunerative office created, or whose emolument was increased, during his term of office. Whatever is retained or revised of the subject matter in Sections 5, 6 and 7 relating to the eligibility of legislators may be considered suitable for treatment in one comprehensive section of the revised constitution. Whatever is retained or revised in the subject matter of Section 7 relative to state and county contracts might be embodied in a general provision dealing with such matters, or conflicts of interest in general, for all state officers, if it is determined that discretion in this area should not be granted to the lawmaking process.

4. Legislators' Privilege From Arrest

Article V: Section 8. Senators and representatives shall in all cases, except for treason, felony or breach of the peace, be privileged from arrest during sessions of the legislature and for 15 days next before the commencement and after the termination thereof. They shall not be subject to any civil process during the same period. They shall not be questioned in any other place for any speech in either house.

Constitutions of 1835 and 1850

The constitution of 1835 (Article IV, Section 9) had a provision similar to the present provision, except that the substance of the last sentence of the present provision was not present. The constitution of 1850 (Article IV, Section 7) introduced the provision relative to legislators not being questioned in any other place.

⁶⁰ Index Digest, pp. 667,794, 167-168.

A Comparative Analysis of the Michigan Constitution v - 65

The language making legislators not subject to any civil process was identified more particularly and exclusively with the words “during the session of the legislature, or for fifteen days. . . before. . . and after . . . each session.”

Constitution of 1908

This provision was rephrased substantially from the 1850 provision in order to make privilege from arrest and immunity from civil process more specifically effective for the same period of time.

Judicial Interpretation

Immunity of legislators from arrest does not apply to criminal matters.⁶¹

Other State Constitutions

The constitutions of a large majority of the states, like the U.S. constitution, have provisions similar in general to the Michigan provision, except that the constitutions of less than one-half of the states (17) grant immunity to legislators from civil process.⁶²

Comment

The original purpose of provisions dealing with the subject matter of Section 8 was to safeguard legislators from possible harassment by the executive branch or the judiciary. This form of limited immunity may seem to be less necessary at the present time, but its long-standing tradition and possible occasional efficacy would appear to warrant its continuance. Although legislators may well be “questioned in any other place” by their constituents or others for speeches in the legislature, the implication is that they are not to answer for such before any other tribunal as is more accurately specified in some state constitutions, such as those of Alaska and Hawaii.

⁶¹ In re Wilkowski, 270 Mich. 687.

⁶² Index Digest, pp. 643-645, 651. The Model state Constitution limits legislative immunity to that in the last sentence of the Michigan provision.

5. Legislators' Compensation, Mileage and Publications

Article V: Section 9. The compensation and expenses of the members of the legislature shall be determined by law: Provided, That no change in compensation or expenses shall be effective during the term of office for which the legislature making the change was elected. Each member shall be entitled to one copy of the laws, journals and documents of the legislature of which he is a member, but shall not receive, at the expense of the state, books, newspapers or perquisites of the office not expressly authorized by this constitution.

Constitutions of 1835 and 1850

The constitution of 1835 (Article IV, Section 18) provided that legislators receive a compensation to be "ascertained by law." No increase in it was allowed during their term of office, and it was never to "exceed three dollars a day."

The constitution of 1850 had a long provision relating to this matter in Article IV, Section 15. Three dollars per day was specified "for actual attendance and when absent on account of sickness." The legislature was permitted, however, to allow extra compensation not exceeding two dollars per day during a session to members from the upper peninsula. When convened in extra session they were to receive three dollars a day for the first 20 days "and nothing thereafter." They were entitled to "ten cents and no more for every mile actually traveled" to and from the legislature on the "usually traveled route," and for stationery and newspapers not more than "five dollars for each member" for any session. The last sentence of the 1850 constitution had the same meaning and effect as the last sentence of the present provision.

Constitution of 1908

Original Provision. As it came from the convention of 1907-08, Section 9 specified that legislators receive \$800.00 for the regular session, and \$5.00 per day for the first 20 days of an extra session "and nothing thereafter." Members were entitled to "ten cents per mile and no more for one round trip to each regular and special session" by the usually traveled route. The last sentence of the original provision was the same as the last sentence in the present form of Section 9 as amended. In the address to the people, the convention noted their careful attention to this matter and explained at some length their decision to raise the effective compensation of

legislators with the hope that it would “induce a stronger class of men to accept service in the, legislature.”⁶³

Amendment in 1928. A legislative proposal of amendment to this section was approved by the voters 441,114 to 417,419 in November, 1928, whereby the compensation of legislators was established at three dollars per day for each day of their two-year term. The compensation of legislators “shall be three dollars per diem during the term. . . and. . . no further compensation than as specified . . . for service. . . in extra session.” The other parts of this section remained unchanged from the original version.

Amendment in 1948. Another amendment to Section 9 proposed by the legislature was approved in November, 1948, by a vote of 911,473 to 587,691. This amendment revised Section 9 to its present form and made the compensation and expenses of legislators to be determined by law. The final sentence of the section remained again as it had been. This and other provisions dealing with compensation are related to Article XVI, Section 3 which deals with extra compensation and increase or decrease in salaries.

Judicial Interpretation and Opinions of the Attorney General

Although various problems of interpretation arose concerning the previous forms of Section 9, there has not been serious difficulty with the present form. An opinion of the attorney general disallowing social security coverage to legislators as violative of this provision and of Article XVI, Section 3 was reversed by a subsequent opinion of the attorney general.⁶⁴

Other State Constitutions

The constitutions of many states continue to specify inflexibly the amount of compensation that legislators shall receive. However, the constitutions of approximately 20 states provide for the determination of such compensation by law, usually with the stipulation that a change in compensation will not be effective for the term in which this change is made. Details of the type outlined in the last sentence of Section 9 are not uncommon among state constitutions. Details relating to expenses of legislators—like those in the previous form of this Michigan provision—are also not unusual among state constitutions.⁶⁵

⁶³ Proceedings and Debates, p. 1420.

⁶⁴ Opinions of August 19, 1953, and September 8, 1954.

⁶⁵ Index Digest, pp. 645-650. The Model State Constitution leaves the matter of legislators' annual compensation to be determined by law, the amount to be neither increased nor diminished during the term for which they are elected. The U.S. constitution requires legislators' compensation to be ascertained by law.

Comment

The basic flexibility in Section 9 as amended appears to present no problem for revision. Consideration might be given to deleting some or all of the details in the last sentence of Section 9 insofar as they may be deemed unnecessary. A revision of Section 9 might be expanded to include like provision for the presiding officers of both houses. (See discussion of Section 10—following.)

6. Compensation for Presiding Officers

Article V: Section 10. The president of the senate and speaker of the house of representatives shall be entitled to the same compensation and mileage as members of the legislature and no more.

Constitutions of 1835 and 1850

The constitution of 1835 did not have a provision specifically relating to this subject matter. The 1850 provision (Article IV, Section 17) originated the substance of the present provision; the words “per diem,” were inserted between “same” and “compensation.”

Constitution of 1908

The only change in carrying this provision over from the 1850 constitution was the deletion of the words “per diem” in connection with “compensation.” Section 10 has not been amended since the adoption of the 1908 constitution nor has it caused any important difficulty in its interpretation.⁶⁶

Other State Constitutions

Section 10 is one of a few state constitutional provisions that are highly restrictive in limiting the compensation of the president of the senate (usually as in Michigan,

⁶⁶ An Opinion of the Attorney General, December 7, 1948, held that under Sections 9 as amended and 10, the legislature could provide a larger amount for expenses of the speaker than for other legislators. The lieutenant governor receives \$3,500 additional compensation for his services on the state administrative board. Both presiding officers now receive \$1,000 for expenses in addition to the regular allowance for legislators.

the lieutenant governor) and the speaker of the house to the same compensation as legislators. The constitutions of approximately 20 states provide that the compensation of presiding officers be fixed by law. In many other states where this compensation is not fixed by law, the president and the speaker are allowed extra or additional compensation. Some constitutions specify that the president and the speaker shall receive the same compensation.⁶⁷

Comment

There would appear to be no compelling reason for retaining the substance of Section 10. Consideration might be given to combining the subject matter of this provision with a revision of Section 9, and to allowing the compensation (and expenses) of the presiding officers also to be determined by law without restriction of the amount to that for legislators. If it is determined that the lieutenant governor is not to preside over the senate, consideration might be given to providing that the president of the senate and the speaker of the house receive the same compensation (and expenses). Compensation for the lieutenant governor might more appropriately be provided for in the executive article of the revised constitution. (See discussion of Article VI, Section 21.)

7. Contested Elections to the Legislature

Article V: Section 11. In case of a contested election, compensation and mileage shall be paid only to the person declared to be entitled to a seat by the house in which the contest takes place.

Constitutions of 1835 and 1850

The constitution of 1835 did not have a provision of this type. The 1850 constitution (Article IV, Section 29) had a provision similar to the present Section 11. The words “per diem” appeared in connection with “compensation.”

Constitution of 1908

This provision, somewhat rephrased and with the words “per diem” deleted, was carried over from the 1850 provision. This provision has not been amended since the adoption of the 1908 constitution nor has it caused any serious difficulty of interpretation.

⁶⁷ Index Digest, pp. 658, 685-686. The Model State Constitution and the U.S. constitution leave such matters to be determined by law.

Other State Constitutions

This provision is unusual, if not unique among state constitutions.⁶⁸

Comment

This provision might be considered unnecessary in a revision of the constitution. There would appear to be scant justification for doing what is prohibited by Section 11, even if this provision were not in the constitution. A relatively trivial detail of this variety could be provided for by law if determined to be necessary in the absence of a constitutional provision.

8. Time of Electing Legislators

Article V: Section 12. The election of senators and representatives, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, nineteen hundred ten and on the Tuesday succeeding the first Monday of November of every second year thereafter.

Constitutions of 1835 and 1850

The constitution of 1835 (Article IV, Sections 4 and 5, and Amendment 3) provided for annual election of all representatives and one-half of the senators (whose terms were two years). As amended, the legislators were to be elected on the first Tuesday of November. The 1850 constitution (Article IV, Section 34) originated the substance of the present provision except that 1852 was specified rather than 1910.

Constitution of 1908

This provision was carried over from the 1850 provision with slight change except for the substitution of the year 1910 for 1852. Section 12 has not been amended nor has it caused any serious difficulty of interpretation.

Other State Constitutions

Provisions of state constitutions relating to election of legislators naturally are influenced by the respective terms of office for legislators in the various states. In 35 of the states, senators are elected for four-year terms. In most of these the sen-

⁶⁸ Index Digest, pp. 638-639.

ate is divided into two classes with one-half of them elected every two years. The time of election as specified in the Michigan provision is the most common time specified among the states.⁶⁹

Comment

Except for updating the base year for such elections to be specified in the revised constitution, there would seem to be little need for change in the time of election specified in this provision, even if the term of office, particularly for senators, were extended to four years. If the senate term is extended, a revision of this provision or that relating to the term of office for senators might divide the senate into two classes with one-half of the senators to be elected each two years. One-half of the senators to be elected the first time under such a provision would have only two-year terms in order to start the process properly.

⁶⁹ Index Digest, pp. 639, 645. See Table III in Chapter VI, Part A and discussion of Article IV, Sections 2 and 3.

E. LEGISLATIVE SESSIONS AND OTHER PROVISIONS

1. Meeting and Adjournment of Legislature;
Prohibition of Bill Carrying Over

Article V: Section 13. The legislature shall meet at the seat of government on the second Wednesday in January of each year and at no other place or time unless as provided in this constitution; and each such annual regular session shall adjourn without day, at such time as shall be determined by concurrent resolution, at twelve o'clock noon. No motion, bill or resolution pending in one session of any term shall carryover into a later regular session.

Constitutions of 1835 and 1850

The 1835 constitution (Article IV, Section 21) provided that the legislature meet on the first Monday in January every year “and at no other period, unless otherwise directed by law, or provided for in this constitution.” Section 7 of the schedule, however, specified that the first meeting of the legislature be at Detroit on the “first Monday in November next, with power to adjourn to any other place.”

The 1850 constitution (Article IV, Sections 32 and 33) required the legislature to meet at the seat of government on the first Wednesday in January, 1851, and on the same date in every second year thereafter, and at “no other place or time” unless as provided in the constitution, and shall “adjourn without day at such time as the legislature shall fix by concurrent resolution.” Section 32 required the legislature to adjourn at 12 o'clock noon on the final day of adjournment.

Constitution of 1908

Original Provision. As it came from the convention of 1907-08, this provision was identical in meaning and effect to the 1850 provisions (Sections 32 and 33) except for minor changes in phraseology and the updating of the base year to 1909. The two sections of the 1850 constitution were combined into one (Section 13) of the 1908 constitution.

Amendment of 1951. A legislative proposal of amendment to Section 13 was approved by the voters 405,570 to 176,873 at the April, 1951, election. This amendment changed Section 13 to its present form, provided for annual sessions of the legislature, changed the time for the legislature to meet, and added the last sen-

A Comparative Analysis of the Michigan Constitution v - 73

tence of the amended version relative to motions, bills and resolutions not carrying over to a later regular session. Section 13 in its original or amended form has not caused serious difficulty of interpretation.

Other State Constitutions

The constitutions of most states specify a date early in January for the legislature to meet. Thirty state constitutions provide for biennial legislative sessions, while the remainder provide for annual sessions or leave some discretion in the matter to the law-making process. The 12 o'clock noon requirement for sine die adjournment appears to be unique among the states. The Michigan provision which forbids a motion, bill or resolution pending in one session to be carried over to a later regular session is unusual among state constitutions.⁷⁰

Comment

There appears to be no major problem for revision of Section 13 in view of its relatively recent amendment. The detail relating to adjournment without day at 12 o'clock noon which applies only to annual regular sessions might be considered unnecessary. If it were thought desirable to make the legislature a continuous body for its duration, the last sentence should be deleted. There may be some doubt as to when a legislator's term of office begins. It might be interpreted as January 1 under Article XVI, Section 1, or the second Wednesday in January under Article V, Section 13. Consideration might be given to clarification of this matter.

2. Meetings Public. Exception; Restriction on Separate Adjournment

Article V: Section 18. The doors of each house shall be open unless the public welfare requires secrecy. Neither house shall, without the consent of the other, adjourn for more than 3 days, nor to any other place where the legislature may then be in session.

Constitutions of 1835 and 1850

The 1835 constitution (Article IV, Section 14) had a provision similar in effect to the 1908 provision with slightly different phraseology. The last part of the 1835 provi-

⁷⁰ Index Digest, pp. 670-674. The Model State Constitution provides that the legislature shall be "a continuous body" during the term; "shall meet in regular sessions annually as provided by law" and may be convened by the governor, or, on request of a majority of members, by the presiding officer.

sion had the extra but clarifying words “than that” in the sequence “to any other place than that where the legislature may then be in session.” The 1850 provision (Article IV, Section 12) originated the present form of this provision.

Constitution of 1908

This provision was carried over unchanged from the 1850 constitution. It has not been amended and little difficulty has arisen with respect to its interpretation. An opinion of the attorney general of March 27, 1958, held that the day on which one house adjourns without the consent of the other is not to be computed in the three days, but that the day to which the adjournment is made is to be included in the three days allowed.

Other State Constitutions

The constitutions of most states have provisions similar to Section 18 in its requirement that sessions of the legislature not be held in secret and in the specified exception to that rule.⁷¹ Most state constitutions resemble the Michigan provision as it relates to a three-day limit on adjournment, or adjournment to another place, by one house without the consent of the other. Several other states leave a limit of two days, or two days, Sundays excepted, for such adjournment, while the Missouri constitution is unique in providing more than three days for such adjournment—in Missouri the limit is ten days.⁷²

Comment

This provision would seem not to require extensive revision. There is good reason to continue the general requirement of open legislative sessions. The desirability of continuing the exception to this requirement might be questioned. If the three-day limit were extended, provision could be made that one house having adjourned without the consent of the other could be recalled by majority vote of the other house after three days. The wording of the 1835 provision “nor to any other place than that where the legislature may then be in session” might be preferable to the present language in clarifying the meaning of this phrase.

3. Legislative Quorums; Power to Compel Attendance

Article V: Section 14. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may prescribe.

⁷¹ Index Digest, p. 660.

⁷² Index Digest, pp. 621-622.

A Comparative Analysis of the Michigan Constitution

v - 75

Constitutions of 1835 and 1850

The 1835 provision (Article IV, Section 10) was similar to the present provision except for slight variation in punctuation and phraseology. Section 10 of the 1835 constitution had the additional sentence at the end: “Each house shall choose its own officers.”

The 1850 provision (Article IV, Section 8) was identical with the present provision.

Constitution of 1908

This provision was carried over unchanged from the 1850 constitution. It has not been amended since the adoption of the 1908 constitution. This provision has not caused serious difficulty of interpretation with respect to quorums and compelling attendance of members in either house of the legislature.⁷³

Other State Constitutions

The constitutions of most states resemble Section 14 in specifying a majority of each house as constituting a quorum. The constitutions of approximately one-fourth of the states require a quorum to consist of a majority of members elected to each house or its equivalent. Almost all state constitutions have a provision similar to Section 14 as it relates to the power of a smaller number to adjourn from day to day and compel attendance of absentees.⁷⁴

Comment

This provision has been common to all three Michigan constitutions and its substance would appear to present little problem for revision.

If joint sessions of the two houses were prescribed for some legislative purposes in the revised constitution, consideration might be given to adding a general provision relative to organization and procedure for joint sessions of the legislature.

4. Elections by the Legislature; Senate Vote on Confirmation

Article V: Section 11. In all elections by either house or in joint convention the votes shall be given viva voce. All votes on nominations to the senate shall be taken by yeas and nays and published with the journal of its proceedings.

⁷³ In regard to determination of such matters for a joint convention or session of both houses, see *Wilson v. Atwood*, 270 Mich. 317.

⁷⁴ *Index Digest*, pp. 668-669.

Constitutions of 1835 and 1850

The 1835 provision (Article IV, Section 13) was the same as the present provision in meaning and effect with slight difference in phraseology. The 1850 provision (Article IV, Section 11) originated the phraseology of the present provision except for an additional comma—and *viva voce* was italicized.

Constitution of 1908

This provision was carried over from the 1850 constitution with only slight change in punctuation. Section 17 has not been amended since the adoption of the present constitution. The specific provisions of Section 17 have not caused difficulty of interpretation. This provision as it relates to “votes on nominations to the senate” has not been interpreted to require the senate to confirm or reject gubernatorial appointments (or more literally, nominations), during the pertinent session, although the provision continues—“shall be taken by yeas and nays.” This provision seems then merely to specify how the vote will be taken, if and when the senate may decide to act on such nominations or appointments.⁷⁵

Other State Constitutions

Section 17 as it relates to *viva voce* elections and confirmation of appointments is not unusual among state constitutions.⁷⁶

Comment

There appears to be little need for revision of this provision if its continuance is thought desirable. If any officer, such as a legislative auditor, were made elective by the legislature, such election would undoubtedly be more appropriate by the legislature in joint session. Joint session and joint convention have the same meaning, but joint session is the more usual term and might be considered preferable to the presently specified “joint convention.” No specific legislative vote is required by this provision for elections or for confirmation of appointments. If it were thought desirable to specify the type of majority to be required for such purposes—of those present in (present and voting if a quorum), or of those elected to, each house and/or in joint session—this could be further provided.⁷⁷ The 1835 provision specified “nominations made to the senate” which appears to express more clearly the meaning intended.

⁷⁵ Opinions of the Attorney General of December 29, 1950, and May 22, 1951, held that the governor could reappoint a person to the same office if that person’s appointment had not been acted upon by the senate, or if the person had been appointed before the session of the legislature and the senate had not acted upon the appointment, the person nominated could continue in office. See discussion of Article VI, Section 10.

⁷⁶ Index Digest, pp. 637-638. Action is taken on gubernatorial nominations or appointments in joint legislative session in Alaska.

⁷⁷ Senate rules have long specified that the majority required is a majority of those elected to the senate (18).

F. LEGISLATIVE PROCEDURE

By
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Introduction

The present constitution empowers each house of the legislature to determine its own rules of procedure (Article V, Section 15), but then sets forth certain procedures relating to legislation with which the legislature must comply. These constitutional legislative procedures are set forth in Sections 15, 16, 19, 20, 21, 22, 23, 24, and 30 of Article V. The consideration of those sections will next be undertaken. Because a number of these sections contain a number of different procedural rules, several have been sub-divided. So that the constitutional requirements for legislative procedure might be more understandable, the following listing sets forth these constitutional requirements in summary form in a logical sequence of procedure.

Rules of Legislative Procedure in Article V

References are to section numbers in the present constitution. The arrangement of the sections parallels the steps in legislative procedure.

Sec. 15. Each house, except as otherwise provided in the constitution, shall . . . determine the rules of its proceedings.

Sec. 19. All legislation by the legislature shall be by bill and may originate in either house of the legislature.

Sec. 21. No bill shall embrace more than one object, which shall be expressed in its title.

Sec. 20. The style of the laws shall be: The People of the State of Michigan enact.

Sec. 22. No bill shall be altered or amended on its passage through either house so as to change its original purpose.

Sec. 21. No law shall be revised, altered or amended by reference to its title only; but the act revised and the section or sections of the act altered or amended shall be re-enacted and published at length.

Sec. 22. No bill shall be passed or become a law at any regular session of the legislature until it is printed and in the possession of each house for at least five days. No bill shall be passed at a special session of the legislature on any other subjects than those expressly stated in the governor's proclamation or submitted by special message.

A Comparative Analysis of the Michigan Constitution
v - 78

Sec. 23. Every bill shall be read three times in each house before the final passage thereof.

Sec. 15. Neither house shall adopt any rule that will prevent a majority of the members elected from discharging a committee from the further consideration of any measure.

Sec. 16. The yeas and nays of the members of either house on any question shall be entered on the journal at the request of one-fifth of the members present.

Sec. 23. No bill shall become a law without the concurrence of a majority of all the members elected to each house. On the final passage of all bills, the vote shall be by yeas and nays and entered on the journal.

Sec. 16. Any member of either house may dissent from and protest against any act, proceeding or resolution which he may deem injurious to any person or the public, and have the reason for his dissent entered on the journal.

Sec. 21. No act shall take effect or be in force until the expiration of 90 days from the end of the session at which the same is passed, except that the legislature may give immediate effect to acts making appropriations and acts immediately necessary for the preservation of the public peace, health or safety by a two-thirds vote of the members elected to each house.

1. Bills

Article V: Section 19. All legislation by the legislature shall be by bill and may originate in either house of the legislature.

a. Legislation by Bill

Sec. 19, Part a. "All legislation by the legislature shall be by bill."

Constitutions of 1835 and 1850

Neither the 1850 constitution (IV-13) nor the 1835 constitution (IV-15) limited legislative action to bills. Until the 1908 constitution, the legislature used concurrent and joint resolutions in the lawmaking process to such an extent that the constitution writers deemed they had abused the power. See the address to the

people by the constitutional convention of 1907 in connection with their discussion on Article V, Section 19, of the 1908 constitution.

Constitution of 1908

As originally adopted, this section of the constitution of 1908 read: “All legislation shall be by bill.” The phrase, “by the legislature,” was inserted by amendment in 1913, when the initiative provisions in the constitution were first placed there, and was thought necessary in connection therewith.

Judicial Interpretation

The supreme court, in holding invalid an earlier initiative petition, a 1947 effort to initiate a fair employment practices law, interpreted the constitution to require initiated statutes to contain a title, an enacting clause, and to set forth in full the text of the statute initiated, in the same manner as a bill. *Leininger vs. Secretary of State*, 316 Michigan 644.

However, legislation by the initiative was considered by the senate in 1949 (Senate Journal 23 of 1949, page 177) not to be a bill, and thus not subject to the procedural requirements of a bill. Such determination was made in the course of enactment of the only initiative statute ever received by the legislature, the colored oleo amendment to a 1901 act relating to deception in the sale of imitation butter.

Other State Constitutions

Michigan and 21 other states require that all legislation shall be by bill only.⁷⁸ The Model State Constitution provides that “The legislature shall pass no law except by bill.”⁷⁹ The federal constitution includes no requirement on this subject.

Comment

A bill is a proposal to add to, or to change, or to repeal, the statute law, introduced by a member of the legislature into the house of which he is a member. It is not a resolution. When a proposed law is introduced and during the course of its enactment, it is called a bill. If it becomes a law, it is called an act. In form, a bill contains all of the requirements of an act. It must have a title, an enacting clause, and it must set forth the full text of sections to be added or amended, making proper

⁷⁸ Index Digest, pp. 600-601

⁷⁹ Model State Constitution, Article III, Section 313.

reference to existing sections of law. If it proposes new law, it must set forth the complete text of the new law as proposed. Bills to repeal existing law must make proper reference thereto.

Resolutions are still used in the legislature, but they are not utilized in the lawmaking process. They do not have the effect of law, and are no part of the law. Resolutions receive the respect of the courts. They are used almost exclusively to govern internal matters within the legislature. A senate resolution is the expression of the senate alone. A house resolution is the expression of the house alone. A concurrent resolution expresses the joint action of both houses in matters of internal concern to the legislature as a whole, as for example, the determination of the legislature to adjourn.

Joint resolutions are the resolution form used to accomplish those matters in which the legislature has a constitutional function outside the lawmaking process, and which are entitled to all of the formalities of bills during the course of legislative consideration. Whenever the legislature proposes a constitutional amendment, it does so by joint resolution. Whenever the legislature ratifies an amendment to the Constitution of the United States, it does so by joint resolution. In these matters, the approval of the governor is not required. Any matter in which the governor's approval is not required, a matter in which he has no right of veto, but which is entitled to the respect of law, and which is deposited with the secretary of state, is the proper subject of a joint resolution.

b. Origin of Bills

Sec. 19, Part b. “. . . and may originate in either house of the legislature.”

Constitutions of 1835 and 1850

This phrase remains unchanged from the original constitution of 1835 (IV-15) and it was carried through the constitution of 1850 (IV-13).

Constitution of 1908

The 1908 constitution did not change the wording of this section and it has not been amended since.

Other State Constitutions

About half the state constitutions provide that all bills can originate in either house. Twenty states require that revenue bills originate in the lower house and one state, Georgia, has a similar requirement for appropriation measures. The

upper houses are, in all instances, given amendatory powers, though the Kentucky constitution prohibits the introduction of any new and extraneous matter into revenue bills.⁸⁰

The requirements of the Constitution of the United States (I-7) that all bills for raising revenue by the congress of the United States shall originate in the house of representatives were thought desirable by the writers of the federal constitution to insure that all tax measures should spring from the representatives directly elected by the people. The senate of the United States was not originally popularly elected. The house of representatives was.

Comment

Since both houses in the Michigan state legislature have always been elected directly by the people, there never was any compelling reason why revenue measures should not as properly originate in the state senate as in the house of representatives. In Michigan practice, tax bills as frequently originate in the senate as in the house. Appropriation bills, on the other hand, have for many years been divided between the houses. Any appropriation bill may, of course, be introduced in either house. But by general agreement, the house of representatives will move on appropriation bills within the categories of general government, regulatory services, public safety and defense, welfare, agriculture, conservation and recreation, and appropriations out of restricted funds. The senate will move first on bills within the categories of higher education, mental health, public health, adult corrections, and deficiency appropriation bills if necessary. School aid appropriation measures have a history of moving in either house initially, as do capital outlay bills. Appropriations to meet the state debt are continuing in nature, so that an appropriation bill for that purpose does not need to be acted upon annually.

The reason for division of the appropriation categories between the houses is to equalize work load and to shorten the length of the session. Both houses may thus be working on different areas of appropriations at the same time.

2. Style of Laws

Article V: Section 20. The style of the laws shall be: "The People of the State of Michigan enact."

Constitutions of 1835 and 1850

The Michigan constitution of 1835 (IV-22) set forth the form as follows: "Be it enacted by the senate and house of representatives of the State of Michigan." In 1850

⁸⁰ Index Digest, pp. 600-601.

(IV-48) the constitution writers proposed the present form.

Constitution of 1908

There was no debate on this section in the 1907-08 convention.

Judicial Interpretation

This is an enacting clause, which must appear in every bill (People vs. Dettenthaler, 118 Michigan 595) and in every initiated statute (Leininger vs. Secretary of State, 316 Michigan 644). Absence thereof is fatal to enactment.

Other State Constitutions

The Michigan provision here departs from the national pattern. Over two-thirds of the states give the power of enactment to the legislative body; the typical wording is, "Be it enacted by the legislature (or general assembly) of the state of" Most of the remaining states are similar to Michigan in that the power of enactment is in the name of the people.⁸¹

Comment

It is usual for state constitutions to set forth the enacting clause for legislation. Michigan's form was obviously motivated by the democratic principle that it is the people who make the laws, even though acting through their chosen representatives, the legislature.

3. Laws; Object and Title, Revision, Amendment, Effective Date

Article V: Section 21. No law shall embrace more than one object, which shall be expressed in its title. No law shall be revised, altered or amended by reference to its title only; but the act revised and the section or sections of the act altered or amended shall be reenacted and published at length. No act shall take effect or be in force until the expiration of 90 days from the end of the session at which the same is passed, except that the legislature may give immediate effect to acts making appropriations and acts immedi-

⁸¹ Index Digest, p. 602.

ately necessary for the preservation of the public peace, health or safety by a two-thirds vote of the members elected to each house.

a. Object and Title

Article V: Sec. 21, Part a. “No law shall embrace more than one object, which shall be expressed in its title.”

Constitutions of 1835 and 1850

The 1835 constitution contained no such provision, but the constitution of 1850 contained the identical phrase (IV-20).

Constitution of 1908

There was no debate at the 1907-08 convention on this provision, but it is likely that it had unanimous support, since a major purpose of that convention was to build further constitutional safeguards against legislation ill-considered by the legislature.

Judicial Interpretation

Every bill shall have a title which shall fairly state the object of the bill. The supreme court said in *Loomis vs. Rogers* (197 Michigan 265) that if an act centers to one main object or purpose which the title comprehensively declares, though in general terms, and if the provisions in the body of the act not directly mentioned in the title are germane, auxiliary, and incidental to that purpose, the requirements of this section are met. The purposes of this limitation on legislative procedure are to prevent the passage of acts without the legislators being aware of their intention and effect, and to challenge the attention of those affected by the act to its provisions (*Commerce-Guardian Trust and Savings Bank vs. State*, 228 Michigan 316).

No bill shall embrace more than one object. The supreme court said (*Commerce-Guardian Trust and Savings Bank vs. State*, 228 Michigan 316) that the purpose of this provision is to prevent action by the legislature obtained by combining diverse subjects in one bill to secure the favorable votes of members who might oppose certain of them if acting on them separately. It is designed to prevent so-called riders. The court also has held that legislative restriction on appropriations of state funds does not add a second object to a bill (*Lewis vs. State*, 352 Michigan 422).

Other State Constitutions

Forty of the 50 state constitutions, including that of Michigan, contain a general rule that each bill embrace only one object. Nearly all of these require that the

object be expressed in the title.⁸² A few others have miscellaneous provisions, most of which are variations of the general rule. New York and Wisconsin, for example, apply the restriction to private and local bills. Approximately thirteen of the 40 state having the general rules then make specific exceptions to the rule; ten states exclude appropriation bills from the general rule. Alaska is unique in excluding appropriation bills from the general prohibition and then specifically prohibiting non-appropriation “riders” from appropriation bills (Article II, Sec. 13). Eight states (there is some overlapping) exclude bills dealing with revision, codification, etc. of statutes. The Model State Constitution was the source of the Alaska provision; and the Model also excludes “bills for the codification, revision or rearrangement of existing laws.

Comment

The title must be broad enough to cover the provisions of the act. If it is not sufficiently broad, those portions of the act outside the scope of the title will fall. A title more broad than the act is valid; but the title must express a single object.

b. Revision and Amendment

Sec. 21, Part b. “No law shall be revised, altered or amended by reference to its title only; but the act revised and the section or sections of the act altered or amended shall be re-enacted and published at length.”

Constitutions of 1835 and 1850

The constitution of 1835 contained no like limitation on the legislative process. The constitution of 1850 contained the identical language (IV-25).

Constitution of 1908

There was no debate during the 1907-08 convention on this provision; it was retained in toto.

Other State Constitutions

Thirteen state constitutions, including that of Michigan, specifically prohibit revision of acts by reference to title only. The Model State Constitution is silent on this point. It is the practice in the Congress of the United States to amend

⁸² Index Digest, pp. 603-604.

laws by reference to their title only and to set forth only the amendatory language in the bill.

Comment

Michigan practice, requiring bills to set forth the text of the whole section to be amended, is salutary in that it places the proposed amendment in context.

Even so, it does not assure a consistency within the amended law itself. Unless the bill drafter familiarizes himself with the whole statute to be amended, all sections consistently necessary of amendment may not be incorporated in the bill. To the same effect, if attention is not properly given to the title of the act being amended, necessary title amendments to the act are sometimes overlooked.

c. Effective Date

Sec. 21, Part c. “No act shall take effect or be in force until the expiration of 90 days from the end of the session at which the same is passed”

Constitutions of 1835 and 1850

The constitution of 1835 contained no such provision. The constitution of 1850 contained a like provision (IV-20).

Constitution of 1908

The 1908 constitution carried over the provision from the 1850 constitution omitting the word “public” before “act.”

Since the adoption of the referendum by initiative petition in 1913, the 90-day provision has a further significance. In the mechanics of the referendum by initiative petition as, set forth in Article V, Section 1, the 90-day rule is repeated, so that it now appears twice in the constitution. During that 90 days before an act becomes effective a referendum on the act may be initiated.

Opinion of the Attorney General

An act not given immediate effect becomes effective on the 91st day after final adjournment of the session of the legislature at which it was enacted. Sundays and holidays are counted, but the day of adjournment is not (Opinion of Attorney General, April 10, 1945).

Other State Constitutions

There are four general methods by which state constitutions prescribe the time at which general acts take effect. A few states use the date on which the act is printed

or circulated, and a few others leave it entirely for the legislature in its discretion to prescribe the date of effect in the bill. Most states, however, set the date by reference to either the date of passage or the date of adjournment. They may, as does Tennessee, for example, stipulate a number of days (40 in this instance) after passage, or as does Illinois, set a given date (here July 1). Over a third of the states indicate the date by a provision setting a number of days after the adjournment of the session at which the act was passed; most of these states, including Michigan, use a 90-day period.⁸³

Comment

The obvious purpose of this provision was to provide time for communication of the law throughout the state before it became effective. The 1850 constitution directed the speedy publication of public acts (IV-36) and the 1908 constitution (V-39) says that they shall be published in book form within 60 days after the final adjournment of the session. Thus it is intended that the complete text of the statute in permanent form shall be available a month before it becomes effective.

This provision does not prevent the legislature from providing a different effective date in an act, which effective date is further into the future than the 90 days following final adjournment of the session at which the act is passed. But if the legislature desires to fix an effective date which might fall within the 90-day period, it must give the bill immediate effect. (See below.)

When this provision was written, communication was much slower than now. The legislature met only once in a two-year term and its laws had a chance to prove their worth before another session came around to make further amendment. Now the legislature meets annually. Its sessions are becoming more lengthy. It is not uncommon now to have laws subjected to amendment within only a couple of months after they have become effective, and sometimes even before. In view of this, and in view of our faster communication, it may be that laws should be immediately effective, unless the legislature fixes a different effective date.

d. Immediate Effect

Sec. 21, Part d. “. . . except that the legislature may give immediate effect to acts making appropriations and acts immediately

⁸³ Index Digest, pp. 604, 615-16.

necessary for the preservation of the public peace, health or safety by a 2/3 vote of the members elected to each house.”

Constitutions of 1835 and 1850

The 1835 constitution contained no provision on the matter. From a constitutional standpoint all laws were immediately effective as soon as approved by the governor (or passed over veto), as is the case of laws passed by the Congress of the United States. In 1838 the legislature passed a general law that its acts would become effective 30 days after approval, which time was amended to 60 days by the revised statute of 1846. The 1850 constitution contained the provision that no public act take effect until 90 days from the end of the session at which the act was passed, but authorized the legislature to direct another effective date, including immediate effect, by a two-thirds vote of the members elected to each house, on any public act (IV-20).

The 1850 provision apparently permitted immediate effect of local and private acts even without the two-thirds vote, for the provision was “no public act shall take effect” etc. And under the 1850 constitution, before the days of municipal home rule, the legislature enacted literally hundreds of local acts at each regular session. These were too often given immediate effect.

Constitution of 1908

The convention of 1907-08 set as one of its major goals the slowing up of legislation and the placing of limitations on the immediate effect power of the legislature. The constitution revisers of 1907-08 thought that there would be few immediate effect acts under the new constitution. During the 1961 regular session 75 acts were ordered to take immediate effect out of a total of 241 enacted, more than 31 per cent.

In 1907 debate on this provision centered around a proposed amendment that immediate effect votes should be by a record roll call—yeas and nays. That proposed amendment was not adopted. It was pointed out that legislative practice at that time actually required a count in order to establish the required two-thirds vote. Such is still the case. In the senate, the secretary actually counts those who favor immediate effect to ascertain the constitutional two-thirds in a rising vote. In the house, the two-thirds vote is counted in a division of the house, members voting on the voting machine. And, on any immediate effect vote a record roll call may be ordered by one-fifth of those present. The amendment to Article V, Section 1

adopted in 1913 providing for a referendum by initiative petition duplicates these exceptions to the 90-day rule, there stating again that appropriation acts and acts immediately necessary for the preservation of the public peace, health or safety may be given immediate effect.

Other State Constitutions

A total of 28 states have some type or types of exceptions to the general rule as to when laws shall take effect. Seven states exclude acts in which the legislature has explicitly stated a date of effect other than that normally used for laws; three of these, including the newest state constitution (i.e., that of Alaska), require a two-thirds vote of the members elected to each house. Twenty states exclude emergency legislation, New Mexico and Michigan being the only two states requiring; a two-thirds vote in both houses. Twelve states, including Michigan, exclude appropriation bills; Michigan is apparently the only state wherein a two-thirds vote is necessary. A few other states have miscellaneous exceptions.⁸⁴ The Model State Constitution provides only that no act shall become effective until published, as provided by law.⁸⁵

Comment

The present constitution sets forth the categories into which legislative acts must fall in order to be eligible for immediate effect. Those categories are four. An act may be given immediate effect by a two-thirds vote if it (1) makes an appropriation, or (2) preserves the public peace, or (3) preserves the public health, or (4) preserves the public safety. If an act does not meet at least one of those requirements, legislative votes for immediate effect are subject to attack as nullities.

The most recent instance where the immediate effect action of the legislature was construed as a nullity occurred toward the end of the 1961 session. The legislature had passed a bill making a uniform June election date for all primary and fourth class school districts and had ordered the act to be effective immediately. The governor had signed the bill. But his signature approving the bill came so late that

⁸⁴ Index Digest, p. 616.

⁸⁵ Article III, Section 314.

it was impossible for registration school districts affected by the act to comply in 1961. The attorney general found none of the four immediate effect categories into which the act would fit and ruled the immediate effect action was a nullity.

4. Bills; Printing; Subject Matter
at Special Session; Amendment

Article V: Section 22. No bill shall be passed or become a law at any regular session of the legislature until it has been printed and in the possession of each house for at least five days. No bill shall be passed at a special session of the legislature on any other subjects than those expressly stated in the governor's proclamation or submitted by special message. No bill shall be altered or amended on its passage through either house so as to change its original purpose.

a. Printing

Sec. 22, Part a. "No bill shall be passed or become a law at any regular session of the legislature until it has been printed and in the possession of each house for at least five days."

Constitutions of 1835 and 1850

This provision is new in the constitution of 1908. Neither prior constitution contained anything similar.

Constitution of 1908

This constitutional provision was a major improvement in legislative procedure, in the opinion of the constitution writers of 1907-08. In its address to the people, the convention said of this provision: "It was inserted to prevent hasty and careless legislative action, also to deal effectively with so-called snap legislation. (It) means much greater publicity in legislative proceedings. Time is thus provided whereby the people may become acquainted with proposed legislation, and to petition, or remonstrate, before a bill is passed."

As introduced into the 1907-08 convention, the proposal was for a ten-day possession by each house in its consideration of a bill. In committee of the whole, amendments were offered but not adopted which would have required a ten-day possession

only in the house of origin. When the proposal emerged from the committee on phraseology; the provision had been reduced to five days' possession before passage in each house.

Other State Constitutions

Only two other states (New York and Nebraska) set a minimum time period during which the legislature must have a bill until it can be passed. A few states limit the actions of the legislature during the last few days of the session. Almost a third of the states require printing of the bills before passage.⁸⁶ The Model State Constitution requires that no bill shall become a law unless it has been printed and upon the desks of the members in final form at least three legislative days prior to final passage.

Comment

The five-day period cannot commence to run in the house of origin until the bill is printed. On each legislative day, announcement is made of the bills which have been printed and placed upon the files of the members since the last such announcement and indicating the day of receipt of the printed bills. This information is entered in the journal to evidence the start of the five-day period. When a bill is passed by the house of origin, it is transmitted to the other house and receipt of the bill in that other house is entered upon its journal, thus evidencing the start of its required five days of possession.

The constitution does not require that every bill which is introduced be printed; but, of course, unless a bill is printed, it cannot be passed, and it cannot be passed until five days after it has been printed. The rules in each house provide that all bills shall be printed upon introduction unless otherwise ordered by the house of origin.

This provision does not mean that amendments to a printed bill must be printed, or that the bill lie over for five days after the last of its amendments is printed. It does not mean that an unprinted bill cannot be substituted for a printed bill on the same subject.

This provision is applicable only during regular sessions of the legislature. Regular sessions are the annual sessions which commence on the second Wednesday in

⁸⁶ Index Digest, pp. 608-609.

January and continue until the legislature adjourns itself without day.

b. Subject Matter at Special Session

Sec. 22, Part b. “No bill shall be passed at a special session of the legislature on any other subjects than those expressly stated in the governor’s proclamation or submitted by special message.”

Constitutions of 1835 and 1850

The 1835 constitution contained no such provision. Nor does the Constitution of the United States. Under the 1835 constitution, as is the case in the Congress of the United States, the legislative branch could be specially reconvened, but once convened it could consider anything it chose.

The 1850 constitution limited consideration in special session to subjects submitted by the governor, and limited compensation of legislators in special session to 20 days (IV-15).

Constitution of 1908

In 1907-08, this limitation of subject matter in special session was considered in connection with the provision that in regular sessions all bills shall be printed and in possession of each house for five days before final passage. The address to the people argued that the governor’s proclamation as to subject matter assured the same publicity in special session that the five-day rule assured in regular session.

Other State Constitutions

Half the state constitutions explicitly prohibit the legislature, while in special session, from acting on matters other than those for which the session was called or those set forth in the governor’s special message. In a fifth of the states the legislature can consider other matters; restrictions vary.⁸⁷ The constitution of the United States and the Model State Constitution place no restriction on subject matter which can be dealt with at special sessions.

Comment

The governor is empowered to convene the legislature “on extraordinary occasions” (VI-7). These are special sessions as contrasted with the regular sessions of the

⁸⁷ Index Digest, pp. 676-77.

legislature which convene on the second Wednesday of January in each year.

At special sessions the governor has much tighter constitutional control than he does in regular sessions. This tighter control stems from this provision. He may control the subject matter of the session. Any enactment outside the scope of his call (and the call may be broadened by special messages) is a nullity.

The governor's control does not extend to limiting consideration to particular bills. It extends only to subject matter. But it is not unheard of that the governor extend the scope of a special session in exchange for support on a particular measure.

c. Amendment of Bills

Sec. 22, Part c. "No bill shall be altered or amended on its passage through either house so as to change its original purpose."

Constitutions of 1835 and 1850

Neither the constitution of 1835 nor the constitution of 1850 contained this rule.

Constitution of 1908

In its address to the people, the convention of 1907-08 intended this provision to be air tight, for they said: "The provision that no bill shall be altered on its passage so as to change its original purpose is included so that by no possibility can the publicity secured by the five-day rule be nullified or evaded."

Other State Constitutions

Twelve states other than Michigan provide that a bill cannot be altered or amended on passage through either house to change the bill's original purpose.⁸⁸ There is no comparable provision in the Model State Constitution.

Comment

This is the rule of germaneness, written into the constitution, and it requires prompt challenge to any offered amendment. Once the house has accepted the amendment, it is too late. Indeed, once the house has taken any action on the amendment, it is too late to challenge germaneness.

Further, the determination as to whether any particular amendment is germane is left to the presiding officer at the time the issue is raised, and apparently the pre-

⁸⁸ Index Digest, p. 605

siding officer cannot raise the issue himself. His ruling of germaneness is subject to appeal to the whole house. In practice, unless both houses are equally sanguine in defending against intrusion of matters by amendment not germane, the rule of germaneness, however strong on paper, proves weak in practice.

Every session will furnish examples of instances where the original purpose of the bill is changed; where a bill defeated in committee will be tacked onto a bill reported to the floor, or where a bill defeated in one house will be tacked onto successful legislation in the other. This is accomplished either because the sponsors or defenders of the successful bill are not alert to object, or because they willingly permit the riders to be attached.

Such procedure would be fatally defective, except that after a bill is finally passed, and before it is presented to the governor for his approval, the legislature may amend its title. If the title as amended expresses a single object, even though phrased in broad terms in order to accommodate all those amendments tacked to the bill, the requirements of Article V-21 are satisfied. The courts look to the title of the act to test its constitutionality on this point (Opinion of Attorney General March 15, 1956, No. 2541).

The purpose of this limitation on legislative procedure is to permit a member, by timely challenge to any offered amendment, to raise the point of germaneness. If an offered amendment is not within the scope of the title of the bill as then written, the amendment is out of order. Thus the constitutional requirements of a single object in any bill may be safeguarded. Riders may be kept off.

5. Bills; Reading, Passage, Vote

Article V: Section 23. Every bill shall be read three times in each house before the final passage thereof. No bill shall become a law without the concurrence of a majority of all the members elected to each house. On the final passage of all bills, the vote shall be by yeas and nays and entered on the journal.

a. Reading of Bills

Sec. 23, Part a. "Every bill shall be read three times in each house before the final passage thereof."

Constitutions of 1835 and 1850

This provision originated in the 1850 constitution (IV-19). Since legislation under that constitution could be by joint resolution as well as by bill, the provision read that every bill and joint resolution shall be read three times, etc.

Constitution of 1908

The only revisions were aimed at making this Section consistent with Section 19 (prohibiting legislation by the legislature in any but bill form).

Other State Constitutions

Over 30 state constitutions, including that of Michigan, require all bills to receive three readings in each house.⁸⁹ In practice, this occurs in all states but five.⁹⁰ Various states permit the waiving of the requirement in the case of emergency legislation.⁹¹ The Model State Constitution (Article III, Section 314) requires readings on three separate days.

Comment

This is a provision having a well recognized meaning in parliamentary law. It does not mean that every bill must be read literally word by word three times. It means that every bill shall be considered three different times before it is finally passed. That the convention of 1907-08 so understood its meaning is evidenced by their rejection of an amendment which would have inserted the words "in full" after the word "read."

The rules of the house and senate each provide that the first and second readings shall be by title only, and at the time of introduction. They provide that the third reading shall be in full unless unanimously ordered otherwise.

Every bill is three times considered in each house. It is considered by a standing committee, by the committee of the whole house, and upon final passage. At all three considerations it is subject to amendment, to defeat, to delay. On all three occasions it is subject to attack or defense by the whole system of parliamentary maneuver and debate.

⁸⁹ Index Digest, p. 607.

⁹⁰ Book of the States 1960-61, p. 51.

⁹¹ Index Digest, p. 607.

The word-by-word reading of a lengthy bill (occasionally there is one as long as 700 pages) would be time-wasting and uninformative. The phrase “read three times” never meant that.

b. Bills; Passage; Vote

Sec. 23, Part b. “No bill shall become law without the concurrence of a majority of all the members elected to each house. On the final passage of all bills, the vote shall be by yeas and nays and entered on the journal.”

Constitutions of 1835 and 1850

The constitution of 1835 contained no provision corresponding to the requirements of this section. The constitution of 1850 contained a provision similar to the present provision. It included the requirement that no joint resolution could become a law without the concurrence of a majority of all the members elected to each house. But it did not require final passage of joint resolutions to be on a yea and nay vote as was required in the case of bills. The joint resolution provided a method for passing laws without a record roll call, and perhaps this explains why joint resolutions were frequently used in the law-making process under the 1850 constitution.

Constitution of 1908

The 1908 constitution merely omitted from the 1850 section the phrase “and joint resolutions” for the purpose of consistency, since all legislation must now be by bill.

Other State Constitutions

Twenty-five states require a majority of members elected for approval of a bill; Michigan is in this group. Alaska and Arkansas require a majority of the members of each house, and Hawaii and Tennessee demand a majority of members to which the house is entitled. Four states require a majority of members present and two more use the criterion of present and voting. Kentucky and Virginia require two-fifths of the members elected and a majority of the members voting. Colorado demands a majority of the members elected to each house, the vote to be taken on two separate days in each house. New Hampshire ties the majority to the number present.⁹²

About two-fifths of the constitutions (including that of Michigan) require that the yeas and nays on final passage be entered in the journal. A few states require the

⁹² Index Digest, p. 609.

names of those voting for and against the measure to be entered in the journal.

Comment

This is the rule of the constitutional majority. Without this limitation on the legislative process it would be possible to enact legislation by a majority of a quorum in each house. The constitution defines a quorum (Article V-14) as a majority of each house. In a house of 110 members a quorum is 56, and but for this provision requiring a concurrence of a majority of all of the members elected, a bill could be passed at a session where only 56 members were present by an affirmative vote of 29. The effect of this constitutional provision is to require 56 affirmative votes in the house and 18 in the senate for the passage of any bill.

On bills appropriating public money or property for local or private purposes (Article V-24), creating new courts (Article VII-1), providing for the incorporation or regulation of banks and trust companies (Article XII-9) , or repealing local or special acts in effect January 1, 1909, a two-thirds vote of the members-elect in each house is required.

Without this provision requiring a public record in the legislative journal as to how each member voted on every bill, it would be possible to adopt legislation without revealing how each member voted, as is the case in the Congress of the United States.

This provision, requiring the concurrence of a majority of all the members elected to each house in order to pass a bill, is construed as requiring 56 votes in the house and 18 in the senate, even though there be vacancies in the membership of the house or the senate.

The provision that on the final passage of all bills, the vote shall be by yeas and nays and entered on the journal is construed as requiring a roll call vote on final passage, with the names of those voting for and against the bill being entered upon the journal.

6. Senate and House; Journals;
Right of Member to Protest

Article V: Section 16. Each house shall keep a journal of its proceedings and publish the same, except such parts as may require secrecy. The yeas and nays of the members of either house on any question shall be entered on the journal at the request of one-fifth of the members present. Any member of either house may dissent from

and protest against any act, proceeding or resolution which he may deem injurious to any person or the public, and have the reason for his dissent entered on the journal.

a. Journals

Sec. 16, Part a. “Each house shall keep a journal of its proceedings and publish the same, except such parts as may require secrecy. “

Constitutions of 1835 and 1850

The constitutions of 1835 and 1850 each contained the identical provision. The Constitution of the United States contains a similar provision.

Other State Constitutions

Forty-five states, including Michigan, require each house to keep a journal of its proceedings. Thirty-five states, including Michigan, require that it be published, although the time at which it is to be published varies—e.g., daily in one state; at end of session or adjournment in eight states. Five states specify that journals may be published at discretion of the legislature or upon request of one-third or one-fifth of the members. Seventeen states, including Michigan, make the exception of parts as may require secrecy, and one state excepts executive sessions.

Comment

Legislative journals do not include a verbatim transcript of what takes place on the legislative floor; nor even a summary of debate. Journals record only the actions of the house and senate. Matters other than actions of the body are incorporated in the journals only by express consent.

So far as can be ascertained, no part of the journals of the legislature have failed to be published under the secrecy provision. Prior to 1950 it was customary for the senate to consider and confirm or reject nominations to office submitted to the senate by the governor in executive session, from which all persons other than the members and officers of the senate were excluded; but the journals of the executive sessions were published in the permanent bound volume of the senate journals. While the journals of proceedings from day to day are available the day following, the executive journal was withheld until the end of the session.

This provision ties in with the provisions of Section 18 of this Article, that the doors of each house shall be open unless the public welfare requires secrecy.

b. Yeas and Nays on the Journal

Sec. 16, Part b. “The yeas and nays of the members of either house on any question shall be entered on the journal at the request of one-fifth of the members present.”

Constitutions of 1835 and 1850

A similar rule is found also in each of the prior Michigan constitutions—1835 - IV-12; 1850 - IV-10. In 1850, however, the minority required to force the yeas and nays was increased from the 1835 requirement of one-fifth of the members present to one-fifth of the members elected.

Constitution of 1908

In the present constitution the requirement was reduced again to the traditional one-fifth of the members present.

Other State Constitutions

State constitutional provisions on this subject fall into three categories. First, 22 states require a minimum number of members to request that the yeas and nays be entered on the journal. In four states one member can request it; in ten states, two members are necessary; in four states four are required; and in four more, five members requesting it are necessary. Second, 18 states give a minimum percentage of the members present who must make the request and one state requires a percentage of those elected. One state requires one-fifteenth of those present, three use one-tenth, four use one-sixth, and 10 states, including Michigan, use one-fifth of those present. Louisiana requires one-fifth of those elected to make such a request. Finally, four states set different requirements for the two houses of the legislature. Vermont and Maryland require five in the house or one in the senate, Illinois requires five in the house or two in the senate, and South Carolina requires ten in the house or five in the senate.⁹³ The Model State Constitution and the federal constitution provide that one-fifth of those present may request that the yeas and nays be entered on the journal.⁹⁴

⁹³ Index Digest, pp. 679-680.

⁹⁴ Article III, Section 3.13 and Article 1, Section 5 (3), respectively.

Comment

This is a constitutional rule of legislative procedure which makes it possible for a minority of only 20 per cent of those present to place on record any vote. Thus, as few as four senators can force a record vote if only a simple quorum of 18 is present.

The power of one-fifth of the members present to place on record the vote on any question by yeas and nays is interpreted within the legislature as broad enough to cover the vote on any motion, on any resolution, and on any amendment, so long as the house is not acting in committee of the whole. While acting as a committee of the whole house, no journal is kept, and the actions of the committee of the whole appear in the journal only as a report from that committee. However, it is in order for the requisite number of members to demand the yeas and nays on the question of concurring with the recommendations made by the committee of the whole as soon as the committee has risen and the report of its activities made, so that it is possible to place every member on record on any question coming before the house.

While a technical interpretation of this right by one-fifth might require that the demand for a record roll call by yeas and nays be made prior to any vote on the question, in practice the device is often used to get another vote on a question without going through the procedure for a reconsideration of the vote. For example, if after little or no debate on a question it is put to a voice vote and appears to fail, its sponsors then demand a division and carry on debate. If upon the division, which is done by a rising vote without record, the question still fails, its sponsors are in practice permitted to demand the yeas and nays, thus permitting still further debate.

c. Right of Member to Protest

Sec. 16, Part c. "Any member of either house may dissent from and protest against any act, proceeding or resolution which he may deem injurious to any person or the public, and have the reason for his dissent entered on the journal."

Constitutions of 1835 and 1850

The constitutional right of a legislator to protest on the record has been a rule of legislative procedure written into all three Michigan constitutions—1835 - IV-12; 1850 - IV-10; 1908 - V-16.

Constitution of 1908

This provision was carried forward from the 1850 constitution without change. The only change from the 1835 constitution to the 1850 constitution was a very minor change in wording.

Other State Constitutions

Thirteen states in addition to Michigan guarantee the right of protest and the right to have the reasons therefor entered in the journal.⁹⁵

Comment

The right of protest is granted only to those who dissent, not to those who support. This provision has not, however, been narrowly construed. It has been accorded those who vote against, even though they find themselves in the majority with the act, proceeding, or resolution defeated. While a strict construction of the wording would seem to require the protest to be based on some conceived injury to the public or to any person resulting from such act, proceeding, or resolution, in practice it has allowed any statement, however tangential, which any member may feel impelled to make in explanation of his “no” vote.

The rules of the house (present house rule 11) seem to require any member who desires to protest to “reserve” that right at the time of voting. Thus before a vote is completed it is known how many protests there will be. The senate has no such “condition precedent” to the exercise of the constitutional privilege and it is apparently in order in the senate to enter a protest at any time after the vote, be it on the same or any subsequent legislative day. It is customary, however, to enter protests immediately, and sometimes imprudently in momentary anger or disappointment. Occasionally such statements have degenerated into personal attack and in such cases they are usually expunged (house rule 11). Sometimes the right of protest has been used to carry on debate after the act, proceeding, or resolution has been voted upon when debate has been cut off before the vote through the ordering of the previous question.

7. Senate and House; Powers

Article V: Section 15. Each house, except as otherwise provided in this constitution, shall choose its own officers and determine the rules of its proceedings, but shall not adopt any rule that will prevent a majority of the members elected from discharging a committee from the further consideration of any measure. Each house shall judge of the qualifications, elections and returns of its members, and may, with the concurrence of two-thirds of all the members elected, expel a member. The reasons for such expulsion shall be

⁹⁵ Index Digest, p. 655.

entered upon the journal, with the names of the members voting on the question. No member shall be expelled a second time for the same cause.

a. Officers and Rules of Proceeding

Sec. 15, Part a. “Each house, except as otherwise provided in this constitution, shall choose its own officers and determine the rules of its proceedings.”

Constitutions of 1835 and 1850

In 1835, these provisions were split between two sections. Article IV-10 ended with the sentence, “Each house shall choose its own officers.” Article IV-11 started with the sentence, “Each house shall determine the rules of its proceedings.” In 1850, the provision was brought together in the same section, Article IV-9. The exception in the 1908 provision was not found in either of the earlier constitutions.

Constitution of 1908

The phrase, “except as otherwise provided in this constitution,” was added for consistency. The constitution provides that the lieutenant governor shall be president of the senate, and thus the senate cannot choose all of its officers. The excepting clause may also be interpreted to modify the power of the house to determine its rules.

Other State Constitutions

The majority of states authorize each house to choose its own officers. Several states specify certain officers. Almost all states authorize each house to determine rules of its proceeding, although several make exceptions in the constitution. Alaska requires each house to adopt uniform rules of procedure. The Constitution of the United States directs that the house of representatives shall choose its speaker and other officers, and that the senate shall choose its other officers (other than a president) and also a president pro tempore.

Comment

The senate by its rules elects a president pro tempore to preside in the absence of the lieutenant governor, a secretary, and a sergeant at arms who is the chief police officer of the senate. These constitute its officers. The house by its rules elects a

speaker (an officer mentioned in the constitution in Article V-10), a speaker pro tempore, a clerk, a sergeant at arms, a postmaster, and an assistant postmaster.

Each house customarily adopts rules governing its procedure at the opening of the first regular session in every term. The two houses also adopt joint rules and joint convention rules. Statute provides that the rules of the preceding legislature remain the temporary rules of a new legislature until new rules are adopted.

b. Discharging a Committee

Sec. 15, Part b. “(Neither house shall) adopt any rule that will prevent a majority of the members elected from discharging a committee from the further consideration of any measure.”

Constitution of 1908

This provision was new in the constitution of 1908. There was a very strong suspicion of the committee system in the convention of 1907-08. There was a widely held belief that committees were easily influenced by powerful interest groups, if not corrupted by them, and one way to wrench away the power of such groups would be to empower the majority in the house or senate to take from a committee the further consideration of any measure.

Other State Constitutions

Michigan is apparently unique in expressly prohibiting any rule that would prevent the majority from exercising the power of discharging a bill from committee.⁹⁶

Ten states require that a bill be returned by the committee before it can be considered for final passage. Two of these states (Virginia and Kentucky), however, and two additional states (Hawaii and Missouri) have discharge provisions in the constitution. Hawaii provides that one-third of the members of either house can vote to release a bill from committee. The Kentucky constitution sets a “reasonable time” period and provides that any member can call up a bill. The Missouri constitution requires an affirmative vote of one-third of the members elected. The Virginia constitution seems to require approval of a majority of those voting (which must include at least two-fifths of the membership) in each of the two houses.⁹⁷ The

⁹⁶ Index Digest, p. 606.

⁹⁷ Idem.

Model State Constitution (Article III, Section 312) provides that one-third of all the members of the legislature can relieve a committee of consideration of a bill.

Comment

Such discharge is often attempted but rarely successful. It has succeeded on only two or three occasions during the whole period in which this constitutional provision has been effective.

There are reasons why this device is so seldom successful. Legislators realize as soon as they get into the work of a legislative session that the committee system is indispensable. Without the use of committees to screen proposed legislation, the legislative process would be unmanageable. There would be no way to bring order out of chaos with many bills operating in direct conflict with others. There would be no way to move forward on a legislative program. The committee system is an essential element in legislative organization. It is essential in every legislature and in Congress.

This constitutional provision was intended to assure the right of the majority in the house or senate to overcome a minority controlling one of its committees. For that purpose it is wholesome. But legislators view it as a weapon for attack upon the committee system. And they rise to the defense of the committee system. To defend the committee system they routinely vote down, usually by party votes, motions to discharge their committees.

The composition of a committee is determined by the parliamentary majority. The majority party by rule can determine what committees there shall be, their size, and their political composition. The majority leadership (speaker of the house or committee on committees in the senate) appoints these committees. To discharge a committee from consideration of a measure is viewed as an attack upon the integrity of the committee and an attack upon the majority itself. So a motion to discharge is almost never successful. In the minds of some legislators, a motion to discharge is in the same category as a motion of no confidence against the government in parliamentary systems.

Nevertheless, indirect methods usually accomplish the purpose. The senate rules (present rule 24), for example, permit the senate by a majority of those voting to change the reference of a bill to a committee either on the day it is introduced or on the next succeeding legislative day. This has the effect of discharging a committee from further consideration of a bill. It takes from the first designated committee and assigns to another, even against the will of the first committee. But it is not considered a motion to discharge. Instead the rule was motivated by other considerations. Its purpose is to permit the senate to determine which of its committees shall consider a bill as against the wishes of the lieutenant governor, who makes the initial assignment. There are several ways to get around a recalcitrant commit-

tee if it is not doing the will of the parliamentary majority. Many a committee, by taking a position and holding to it against every pressure, is doing the will of the majority of the house. The committees take the blame, thus relieving other members from the pressures.

c. Each House Shall Judge Its Own Members

Sec. 15, Part c. “Each house shall judge of the qualifications, elections and returns of its members, and may, with the concurrence of two-thirds of all the members elected, expel a member. The reasons for such expulsion shall be entered upon the journal, with the names of the members voting on the question. No member shall be expelled a second time for the same cause.”

Constitutions of 1835 and 1850

Both of the earlier constitutions contained a limitation on the power of each house to expel a member which was not carried over into the 1908 constitution. That limitation was that neither house could expel a member “for any cause known to his constituents antecedent to his election.”

Otherwise, the provision has remained substantially the same from the beginning.

Other State Constitutions

The constitutions of almost all the states resemble Section 15 in making each house of the legislature the judge of its members’ qualifications, elections and returns, and in its provision for expulsion of members. This is also true of the Model State Constitution and the U.S. Constitution. The provision in the last sentence of Section 15 that no member be, “expelled a second time for the same cause” is not as generally provided for among the states, but is not uncommon among them.⁹⁸

Comment

There are two distinct matters within these provisions. One is expulsion of a member. The other is exclusion from membership. The exclusion process refers to a member-elect and his qualifications for office. To expel a member, a two-thirds vote of all the members elected is required, and in computing the vote necessary to expel, it is probable that the member involved must be counted in the total number. To exclude a member-elect, judging him unfit for membership, requires only a simple majority of the members of the body. The power of the body to judge of the qualifi-

⁹⁸ Index Digest, pp. 662, 650-651.

cations of its members, under a situation where no expulsion process is required, has been established in Michigan by two cases in the senate in 1951 and one case in 1955. It would appear likewise that to judge upon the elections and returns of members requires only a majority vote and not a two-thirds vote. Each house has the sole constitutional power to recount the vote in election contests involving members of the legislature, by virtue of this provision.

8. Local or Special Acts; Referendum

Article V: Section 30. The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act, can be made applicable shall be a judicial question. No local or special act, excepting acts repealing local or special acts in effect January 1, 1909 and receiving a two-thirds vote of the legislature shall take effect until approved by a majority of the electors voting thereon in the district to be affected.

Sec. 30, Part a. "The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question."

Constitutions of 1835 and 1850

The only relevant section in the constitution of 1835 provided that "the legislature shall pass no act of incorporation, unless with the assent of at least two-thirds of each house" (XII-2).

The constitution of 1850 required a two-thirds vote of the members elected to each house to appropriate public money or property for local or private purposes (IV-45). It also prohibited the formation of corporations, except for municipal purposes, by special act (XV-1).

Constitution of 1908

The convention of 1907-08 was convinced that there had been abuse by the legislature in the area of local legislation. Before municipal home rule, the legislature was called upon to amend municipal charters. It had granted those charters and only

the legislature could amend them. Acts governing school districts, too, were often special and local in character, such as creating a school district and providing its powers and duties.

Other State Constitutions

A majority of states restrict in some way the use of special or local laws. Some prohibit it where general legislation has been or can be applied. Five states including Michigan stipulate this and make the determination of whether a general law is applicable a judicial question. Others forbid special or local laws in certain specified cases. Six others forbid local or special laws or local legislation in instances where the courts can provide relief.⁹⁹ The provision in the Model State Constitution (Article III, Section 3.12) is almost exactly the same as the Michigan provision.

Comment

This provision, together with the home rule provisions in the constitution, lifted a burdensome load of private and local legislation out of the legislature.

There may be some skepticism about whether this provision completely shut the door on special legislation, affecting a single city, or a single county. There is an increasing body of statute law applicable to any city or any county having a population in excess of a certain number, or within sometimes rather narrow limits.

The courts have recognized the legality of such legislation if there is some reasonable relation between the population limitations and the problem sought to be controlled or eradicated by the legislation. Certainly legislation for metropolitan areas and legislation for rural areas must be tailored differently in some categories.

b. Referendum in Local or Special Acts

Sec. 30, Part b. "No local or special act, excepting acts repealing local or special acts in effect January 1, 1909 and receiving a two-thirds vote of the legislature shall take effect until approved by a majority of the electors voting thereon in the district to be affected."

Constitutions of 1835 and 1850

There was no comparable provision written into either the 1835 or the 1850 constitution.

⁹⁹ Index Digest, pp. 939-940.

Constitution of 1908

In the 1908 constitution as originally adopted, the excepting clause was not there. The language read “No local or special act shall take effect until approved by a majority of the electors voting thereon in the district to be affected.” The legislature is without power to pass a local act where a general act can be made applicable. But assuming a general act cannot be adapted and a local act is necessary, even then the legislature can in effect only recommend. It can pass the local act and submit it to local referendum. Thus all power was taken from the legislature to enact a local act and make it effective.

There were a great number of local acts on the statute books, adopted by the legislature before 1909. There are still some. Almost every session the legislature is called upon to repeal special school laws. In their determination to stop the legislature in the field of local legislation, the constitution writers in 1907 made it impossible even for the legislature to repeal those special acts which were on the books. This in a sense discouraged the removal of special acts when the purpose of the constitutional provision was to encourage the replacement of special acts by general laws.

Amendments Since 1908. As a result, in 1913 the constitution was amended. The legislature was then re-invested with a limited power. It could repeal, but not amend, any local act enacted under the old constitution, without submitting the repeal to a local referendum. But it could do so only by a two-thirds vote in each house. Thus, a simple majority of legislators could not take from a locality its local act.

The legislature still cannot amend any local act, no matter of what vintage, except the same be submitted to local referendum. In the case of municipal charters, however, this is no longer necessary. Under the home rule provisions, the legislature has enacted general laws permitting any city or village to amend its own charter without coming to the legislature.

Other State Constitutions

Michigan is apparently the only state requiring approval by voters in the district affected by the special or local act in all cases. The Alaska constitution requires approval of acts necessitating appropriations by the local subdivision.¹⁰⁰

¹⁰⁰ Index Digest, p. 940.

9. Referendum on Certain Bills

Article V: Section 38. Any bill passed by the legislature and approved by the governor, except appropriation bills, may be referred by the legislature to the qualified electors; and no bill so referred shall become a law unless approved by a majority of the electors voting thereon.

Constitutions of 1835 and 1850

This power did not exist in the legislature under earlier constitutions.

Constitution of 1908

This provision was inserted to make explicit the right of the legislature to submit bills approved by it to the people.¹⁰¹ It was approved in its final form only after long debate and complicated parliamentary procedures.¹⁰²

Other State Constitutions

Apparently nine states authorize some type of referendum by legislative action. One state specifically prohibits referenda on anything except constitutional amendments.¹⁰³

Comment

In all three constitutions, 1835, 1850, and 1908, the legislative power of the state is vested in a senate and house of representatives. Being so vested, the legislature is without power to delegate any part of it, except as authorized to do so by the constitution.

Here is a power to delegate. A part of the legislative responsibility may be relinquished to the people through this provision.

Only in the matter of appropriation is the legislature limited. It cannot renounce responsibility as to any appropriation by passing the question on to the people.

It should be noted that the wording strictly construed would suggest that the legislature might refer an act to referendum only after (1) the bill has been passed and

¹⁰¹ Proceedings and Debates, II, pp. 1372-1376.

¹⁰² Ibid., p. 1424.

¹⁰³ Index Digest, p. 562.

(2) approved by the governor. In practice the referendum section is made a part of the act itself.

It should also be noted that the power of the legislature to submit its acts to referendum is broader than the power of the people to initiate a referendum by petition. The legislature may submit tax measures to referendum. The people may not force a referendum on a tax measure through the initiative (Article V-1). Neither may they initiate a referendum on an appropriation bill.

10. Publication of Statutes and Decisions

Article V: Section 39. All laws enacted at any session of the legislature shall be published in book form within 60 days after the final adjournment of the session, and shall be distributed in such manner as shall be provided by law. The speedy publication of such judicial decisions as may be deemed expedient shall also be provided for by law. All laws and judicial decisions shall be free for publication by any person.

a. Publication of Laws

Sec. 39, Part a. "All laws enacted at any session of the legislature shall be published in book form within 60 days after the final adjournment of the session."

Constitutions of 1835 and 1850

The 1835 constitution did not touch upon the subject. The 1850 constitution directed "the speedy publication of all statute laws of a public nature."

Constitution of 1908

It was left to the 1907-08 convention to specify 60 days. The present constitution is couched in phrases perhaps thought to be self-executing. Present law places in the secretary of state the responsibility of publishing the statutes.

b. Distribution of Laws

Sec. 39, Part b. "... and shall be distributed in such manner as shall be provided by law."

A Comparative Analysis of the Michigan Constitution v - 110

Constitution of 1908

The 1850 constitution (IV-36) did not direct the distribution of the laws. This clause is therefore new.

Statutory Implementation

The statute providing for distribution is Act 44 of 1899, and there were earlier statutes on the subject. It was evident, therefore, that the legislature needed no prodding by constitutional provision to perform this function. And the legislature has kept the statutes distribution law up to date, having amended it substantially in 1958 (Act 161 of 1958).

Other State Constitutions

Only five state constitutions require the distribution of the laws. Missouri gives the governor the responsibility.¹⁰⁴

c. Publication of Judicial Decisions

Sec. 39, Part c. "The speedy publication of such judicial decisions as may be deemed expedient shall also be provided for by law."

Constitutions of 1835 and 1850

The 1850 constitution contained a like directive (IV-36).

Constitution of 1908

It should be noted that the present constitution provides for the publication of all acts of the legislature within 60 days after the adjournment of the session at which they are enacted. In the case of judicial decisions, however, the directive is much less explicit. Only such judicial decisions as may be deemed expedient need be published. And they are to be published speedily. There is no constitutional directive as to their distribution.

Statutory Implementation

The present statute on the subject is Act 385 of 1927, as amended. The act prior thereto was Act 168 of 1879. The law provides for the publication, by contract, and

¹⁰⁴ Index Digest, p. 597.

the distribution and sale of decisions of the supreme court.

d. Free Publication

Sec. 39, Part d. “All laws and judicial decisions shall be free for publication by any person.”

Constitutions of 1835 and 1850

This provision (IV-36), which originated in the 1850 constitution, was carried over verbatim into the 1908 constitution.

Constitution of 1908

Opinions of the Attorney General

The text of a decision is not subject to copyright. But the attorney general ruled in 1955 (March 4, 1955, No. 1976) that the text of the syllabi, headnotes, footnotes, indexes, and references, of which the court reporter and the publisher are the authors, as they appear in the official reports and in the advance sheets, are subject to copyright.

Laws may be published by any person without permission from the state, said the attorney general in 1956 (No. 2452 April 13, 1956).

Other State Constitutions

Michigan, New York and Nevada are apparently the only states that require in the constitution that all laws shall be free for publication.¹⁰⁵ Only Michigan and New York require freedom of publication of judicial decisions.¹⁰⁶ The Model State Constitution has no provision in either case.

11. Revisions of Laws; Compilation

Article V: Section 40. No general revision of the laws shall hereafter be made. Whenever necessary, the legislature shall by law provide for a compilation of the laws in force, arranged without alteration, under appropriate heads and titles. Such compilation shall be prepared under the direction of commissioners, appointed by the governor, who may recommend to the legislature the repeal of obsolete laws and shall examine the compilation and certify to its

¹⁰⁵ Index Digest, p. 597.

¹⁰⁶ Ibid., p. 213.

correctness. When so certified, the compilation shall be printed in such manner as shall be prescribed by law.

a. General Revision Prohibited

Sec. 40, Part a. “No general revision of the laws shall hereafter be made. Whenever necessary, the legislature shall by law provide for a compilation of the laws in force, arranged without alteration, under appropriate heads and titles.”

Constitutions of 1835 and 1850

There was no comparable provision in the 1835 constitution. The constitution of 1850 (Article XVIII, Section 15) provided that the legislature in joint convention should appoint a person to compile, without alteration, acts or parts of acts in force. The law so arranged was to be submitted to two commissioners appointed by the governor for examination and if approved by them as to accuracy, was to be printed in such manner as prescribed by law.

Constitution of 1908

The committee on miscellaneous provisions recommended that the entire section of the 1850 constitution be eliminated from the new constitution; they felt that the legislature should have complete power “to provide for compilations or revisions, in their discretion and judgment.”¹⁰⁷ The convention, however, felt that the prohibition against general revisions should be retained.

Other State Constitutions

Seven states as well as the Model State Constitution (Article III, Section 313) authorize revisions.¹⁰⁸ Michigan is apparently the only state that prohibits it.

Comment

We must differentiate between a general revision, which is prohibited; a compilation, which is specifically authorized; and a codification, which is not prohibited and so therefore allowable.

A general revision of the laws would include within a single legislative act all of the statute law of the state. It would facilitate the alteration of the statutes to make them consistent one part with another. It would perhaps remove from the statutes

¹⁰⁷ Proceedings and Debates, p. 476.

¹⁰⁸ Index Digest, p. 598; Alaska constitution, Article II, Section 13.

that which is obsolete or obsolescent. But its danger lies in unseen changes in the law brought about by rephrasing and rearrangement. A general revision of the laws is law itself, supplanting earlier statute.

Before the 1850 constitution, there were several general revisions. The last one was accomplished in 1846. While much in the Revised Statutes of 1846 has a history of enactment prior thereto, it was all re-enacted at that time. The revision of 1846 is, however, the effective statute in force, in wording and form as therein appears, unless subsequently amended by the legislature.

A compilation, on the other hand, is not itself the statute law. Instead it is a bringing together by arrangement and indexing all of the then existing statutes. The earlier statute stands. If through error or oversight, or by deliberate design, a particular act is not included in the compilation, it is nevertheless still law. In the case of a general revision, however, an act not included would be repealed, unless saved by a provision in the revision itself.

A codification is a revision, but it is limited and special in scope, rather than general. A codification of laws, if it is not to infringe this constitutional provision, must be an act codifying the laws relating to a single subject. Thus, a codification of the laws relating to elections; a codification of the laws relating to drains; a codification of laws relating to motor vehicles; a codification of school laws; and by way of most recent example the revised judicature act of 1961 have been enacted. These codifications are not general revisions.

The 1961 session of the legislature has submitted an amendment to the constitution, to be voted upon in November, 1962, which would again allow a general revision of the laws. Article V, Section 40, would read as follows: "The legislature shall provide by law for the general revision of the statutes at such time and in such manner as it shall determine."

The language in the amendment is so phrased as to suggest that the legislature could pass a law providing for the appointment of revisers, who would then proceed to revise; i.e., to rewrite the statute law. If the result of their work was submitted to the legislature in the form of a single bill for consideration and enactment, the evils of a codification (hidden changes in law) would be a thousand times compounded.

b. Compilations

Sec. 40, Part b. "Such compilation shall be prepared under the direction of commissioners, appointed by the governor, who may recommend to the legislature the repeal of obsolete laws and shall

examine the compilation and certify to its correctness. When so certified the compilation shall be printed in such manner as shall be prescribed by law.”

Constitutions of 1835 and 1850

The 1850 constitution (XVIII-15) provided different mechanics. There the legislature in joint convention appointed a compiler, who took his work to two commissioners appointed by the governor. If upon examination the two commissioners certified the compilation to be correct, the compilation was then printed as prescribed by law.

Constitution of 1908

Statutory Implementation

The latest compilation is the compiled laws of 1948. This was brought about by an act of the legislature of 1943, directing the compilation, which was there described as the Compiled Laws of 1945. Difficulties arising out of shortages during World War II, then in progress, together with a very great increase of volume in legislative acts, delayed the completion of the work.

Earlier compilations had not been kept current with the result the 1948 compilation had to be done from the ground up, so to speak. Deeming it wise to avoid that situation in the future, the 1943 act provided for a continuing compilation commission. The legislature was persuaded to make annual appropriations to keep the type of the 1948 compilation set up, and as sections are amended from time to time to reset the type for those sections, all this in order to permit a reasonably prompt compilation when one is ordered.

In 1958, the compilation commission set up in 1943 was abolished. Its work of keeping the type up to date was transferred to the legislative service bureau. When another compilation is ordered by the legislature, the legislative service bureau will do all the work in connection therewith, except those functions of recommendation, examination, and certification which only commissioners appointed by the governor may constitutionally do.

As previously indicated, this language would be stricken if the proposed amendment to be voted on in November, 1962, is adopted.