



CRC SPECIAL REPORT
MICHIGAN CONSTITUTIONAL ISSUES



No. 360-03

A publication of the Citizens Research Council of Michigan

March 2010

Third in a series of papers about state constitutional issues

AMENDING THE MICHIGAN CONSTITUTION: TRENDS AND ISSUES

In Brief

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

The 1963 Michigan Constitution has been amended 31 times since it went into effect in January 1964, nearly doubling its length and adding to its complexity. Much of the additional length has consisted of changes that could have been made statutorily or that simply elevated statutory provisions to constitutional status.

The modern era of constitutional amendment in Michigan began with the adoption of the initiative in 1913. The 1908 Constitution was amended 69 times in 126 attempts and, by the end of the 1950s, pressure developed to replace the old document with a new one.

The articles of the 1963 Constitution most proposed for amendment have been Article IV (the legislative article), and Article IX (the finance and taxation article). Others subject to frequent amendment have been Articles I (Declaration of Rights), V (Executive Branch), and VIII (Education). In all, there have been 35 amendments to articles out of 80 proposed changes. (Some of the 31 successful proposals amended more than one article.)

Early amendments centered on the powers and structure of government, particularly issues of judicial selection and tenure and the State Officers Compensation Commission.

The period from the mid-1970s to the mid-1990s was dominated by issues arising from the so-called "Tax Revolt." In that period, 15 proposed amendments that would shift, reduce, or limit the growth of taxes were placed before the voters. Of these, 13 were defeated, with only the Headlee Amendment (1978) and Proposal A (1994) being adopted, but they framed the debate on government's claim on economic resources for two decades.

Recent years have seen the rise of amendments flowing from social agendas, such as prohibition of same-sex marriage; prohibition of certain affirmative action programs; and limitations on the expansion of gambling.

A review of the amendment history of the 1963 Michigan Constitution leads to several conclusions:

- Many of the amendments made changes that could have been accomplished by statute and have added significant length and complexity to the document;
- Addition of provisions of a statutory nature can result in "snowballing" of amendments because it becomes necessary to amend the Constitution in order to change detailed language;
- A common theme of amendments, especially since 1992, has been that of weakening the legislature.

With the exception of 1990, Michigan voters have been called upon to consider at least one proposed amendment to the 1963 Michigan Constitution in every even numbered year since 1966, as well as in 1981, 1989, and 1993. The number of proposals

appearing on any one ballot has ranged from one, in several elections, to 10, in 1978.

With the passage of Proposal 08-2 of 2008, the Constitution has been amended 31 times since it went



CITIZENS RESEARCH COUNCIL OF MICHIGAN

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

CRCMICH.ORG

into effect in January 1964. These 31 amendments have increased its length from 19,203 words in the original document to 36,525, a growth of 90.2 percent.¹ While there may be no way of determining the optimum length of a state constitution, constitutional scholars generally agree that it should

¹ Council of State Governments, *Book of the States 1964-65 and 2009*. CRC Calculations.

be brief and sparing in detail as befits a basic document intended to endure and to be accessible to its citizens. Even upon its adoption, the current Michigan Constitution was slightly longer than most state constitutions and, while some of the amendments have made changes that could have been made only by amending the Constitution, most of the changes that have contributed to its growth could have been accomplished

statutorily, either by the legislature or by statutory initiative.

Michigan is one of 18 states that have both legislative and initiative methods of placing proposed constitutional amendments before the voters for their approval. The adoption of the voter initiative early in the life of the 1908 Constitution marks the beginning of the modern era of constitutional amendment in Michigan.

A Century of Constitutional Amendment in Michigan

The Initiative Comes to Michigan

The initiative, in which citizens may circulate petitions that force proposed constitutional amendments (or statutes) onto the ballot, and the referendum, in which legislatures place such issues before the voters, form the basis of constitutional amendment in Michigan. Their arrival, a century ago, created the amendment process now familiar to Michigan voters.

National Roots

Associated with the Progressive Movement, the roots of the voter initiative in United States are found in the 1880s and 1890s when dissatisfaction with close relationships between legislative bodies and various interests, including railroads and utilities, and frustration in achieving legislative

support for proposed reforms led a number of citizens to form organizations aimed at promoting a means of circumventing those elected bodies to achieve legislative goals. The means chosen was the voter initiative, which, together with the referendum and recall, was expected to give citizens the tools to hold their elected representatives to account.

In 1898, South Dakota became the first state to amend its constitution to provide for the initiative and the referendum. Four years later, Oregon did the same thing and, over the following decade, 13 more states, including Michigan, followed suit. All of the states adopting the initiative and referendum in this period were in the Midwest and Far West, with the exception of Mississippi, whose provisions, adopted in 1912, were declared unconstitutional by state

courts in 1917. Following the end of the Progressive Era, the wind went out of the sails of the direct democracy movement and the only states to adopt the initiative and referendum since then have been Florida in the late-1960s and Mississippi, which restored its process in 1992.

Early Michigan Experience

Movement in Michigan toward adoption of the initiative began in the mid-1890s with the formation of the Direct Legislation Club, which, with the support of Detroit mayor and later Michigan governor, Hazen S. Pingree, pushed for the voter initiative to facilitate adoption of a reform agenda. Their efforts did not meet with success until adoption of the 1908 Constitution, which contained a provision for the initiative that was, however, so restrictive that ever using it was doubtful.

CRC BOARD OF DIRECTORS

EUGENE A. GARGARO, Jr., Chair
JEFFREY D. BERGERON, Vice Chair
NICK A. KHOURI, Treasurer
JOSEPH R. ANGILERI
BETH CHAPPELL
RICK DIBARTOLOMEO

TERENCE M. DONNELLY
RANDALL W. EBERTS
DAVID O. EGNER
INGRID A. GREGG
MARYBETH S. HOWE
DANIEL T. LIS

ALEKSANDRA A. MIZIOLEK
CATHY H. NASH
PAUL OBERMEYER
BRYAN ROOSA
LYNDA ROSSI

JERRY E. RUSH
MICHAEL A. SEMANCO
TERENCE A. THOMAS, Sr.
AMANDA VAN DUSEN
KENT J. VANA

JEFFREY P. GUILFOYLE, President

In 1913, the Constitution was amended to permit the initiative (both constitutional and statutory) and the referendum in essentially the same form as they appear in the 1963 Constitution and direct democracy in Michigan became a reality.

One of the movements prominent in the Progressive Era was the temperance movement. In 1916, anticipating the adoption of the 18th Amendment to the U.S. Constitution, the first successful initiated amendment to the Michigan Constitution was a measure

Providing for prohibition in the state forever of the manufacture, sale, keeping for sale, giving away, bartering or furnishing of any vinous, malt, brewed, fer-

mented, spirituous or intoxicating liquors, except for medicinal, mechanical, chemical, scientific or sacramental purposes.

The amendment passed by a margin of 55 percent-45 percent.

“Forever” lasted only 16 years, because in 1932, anticipating the 21st Amendment to the U.S. Constitution, the second successful initiated constitutional amendment in Michigan established a liquor control commission to “exercise complete control of the alcoholic beverage traffic with the state, including the retail sales thereof.” An electorate, apparently thirsty and weary of organized crime, adopted this amendment by a margin of 68 percent-32 percent. So, the net

effect of the first two successful voter initiatives was to adopt prohibition and then to repeal it.

The third successful initiative, however, had a lasting impact. Also adopted in 1932, this amendment, emblematic of the Great Depression, added a Section 21 to Article X of the 1908 Constitution (the finance article) establishing the 15-mill limit on the property tax rate, which, in modified form, remains in the current Constitution. It was significant in and of itself, but it also signaled the beginning of the use of the constitutional initiative to attempt to shape state and local tax policy. During the 30 years beginning in 1932, of 24 initiated proposed amendments, 10 related to state taxation (four were adopted).

Amending the 1908 Constitution: Summary

Beginning in 1910 and ending in 1961, 126 amendments to the 1908 Michigan Constitution were submitted to the voters. Of these, 69 were approved and 57 were rejected. The success rates of the proposals submitted by the legislature and initiated proposals were dramatically different. Legislatively-proposed amendments were approved 69 percent of the time (59 approved; 26 defeated), while initiated proposals were approved 24 percent of the time (10 approved; 31 defeated).

The subjects of the proposals ranged widely, but also reflected the periods during which they were offered. Progressive Era reforms included woman suf-

frage, authorization of the statutory initiative and referendum and the recall (all legislatively proposed) and creation of a state civil service (proposed by initiative). Non-partisan election of the judiciary was proposed by initiative and rejected by the voters, but when it was proposed by the legislature several years later, it was adopted. Other amendments were responsive to the need for massive infrastructure investments brought about by urbanization and the proliferation of the automobile, such as bonding authority for drainage districts and highway construction (legislatively proposed) and the dedication of gas and weight tax revenues (initiatory).

The initiative was used in two significant amendments (dedicating gas and weight taxes to highway purposes in 1938 and dedicating a significant portion of the state sales tax to schools and local government in 1946) to limit the latitude of the legislature in budgetary determinations. By the late-1950s, about 70 percent of state revenues were earmarked, hampering the ability of the state to deal with a budget crisis at that time. Reducing the proportion of constitutionally-dedicated taxes became one of the leading arguments in favor of revising the Michigan Constitution.

Among initiated proposals re-

jected by the voters were compulsory school attendance, authorization of an income tax, and county home rule.

In the decade beginning in 1951, 18 proposed amendments were adopted, while only three were

rejected, a success rate of 86 percent. Along with 51 previous amendments, these new provisions gave the Constitution the appearance of a patchwork quilt of trivia and excessive detail, which provided for far too many executive branch agencies, ex-

cessive earmarking of taxes, and a system of legislative representation skewed toward rural interests. These issues, among others, led a number of groups to support the calling of a constitutional convention.

Amending the 1963 Constitution

The 31 amendments to the 1963 Constitution have resulted from 68 attempts, which began in November 1966 with an unsuccessful proposal to lower the minimum voting age from 21 to 18. The first successful attempt came in August 1968 with the passage of three legislatively-proposed amendments that established the

Judicial Tenure Commission, required the legislature to establish a State Officers Compensation Commission, and prescribed a method of filling judicial vacancies.

The first use of the initiative to amend the 1963 Constitution came in 1970 with the passage of Proposal C (anti-parochial),

which prohibited direct or indirect state aid to non-public schools and pupils. This came in reaction to legislation passed in 1970 that provided that the state would pay a portion of the salaries of lay teachers teaching secular subjects in non-public schools.

Table 1
1963 Michigan Constitution: Amendment Approval Rate by Article (1964-2008)

Article	Joint Resolutions			Initiative Petitions			Total		
	Attempts	Adopted	Percent Adopted	Attempts	Adopted	Percent Adopted	Attempts	Adopted	Percent Adopted
I	4	4	100.0	3	3	100.0	7	7	100.0
II	2	0	0.0	1	1	100.0	3	1	33.3
III	0	0	0.0	0	0	0.0	0	0	0.0
IV	20	4	20.0	4	3	75.0	24	7	29.2
V	2	1	50.0	3	1	33.3	5	2	40.0
VI	3	3	100.0	0	0	0.0	3	3	100.0
VII	0	0	0.0	0	0	0.0	0	0	0.0
VIII	1	1	100.0	4	1	25.0	5	2	40.0
IX	16	8	50.0	13	2	15.4	29	10	34.5
X	1	1	100.0	0	0	0.0	1	1	100.0
XI	0	0	0.0	2	1	50.0	2	1	50.0
XII	0	0	0.0	1	1	100.0	1	1	100.0
<i>Total</i>	49	22	44.9	31	13	41.9	80	35	43.8

Note: 80 attempts to amend specific articles in 68 proposals

Neither legislative joint resolutions nor initiative petitions enjoyed a better than 50 percent overall success rate. If, however, Article IX is excluded, initiative petitions were successful 61.1 percent of the time. If Article IV is excluded, joint resolutions were successful 62.1 percent of the time.

Articles Frequently Subject to Amendment

Of the 12 articles in the 1963 Michigan Constitution, five (I, IV, V, VIII, and IX) have been the subject of 87.5 percent of the proposed amendments, with Articles IX (finance) and IV (legislative) leading by a wide margin. **Table 1** shows the number of times each article has been proposed for amendment, the means of proposal, and the success rate. (Note that, while the Constitution has been proposed for amendment 68 times, several of the proposed amendments related to more than one article, which explains the 80 times articles have been proposed for amendment and the 35 times articles have been amended.)

Article I (Declaration of Rights)

Seven amendments have been proposed to Article I and all seven were successful. The first four, proposed by the legislature, dealt with criminal procedure:

- Proposal A (1972) Trial by jury of fewer than 12 jurors in misdemeanor cases
- Proposal K (1978) Permit courts to deny bail under certain circumstances in violent crimes
- Proposal B (1988) Rights for victims of crimes

Public Act 219 of 1999 changed the numbering of ballot proposals from letters to 3 or 4 numbers: the first two digits are the last two digits of the year of election and the next digit(s) indicates the order in which the question was filed to appear on the ballot.

- Proposal B (1994) Limiting criminal appeals

The last three were placed on the ballot by initiative petition and reflect the ideological struggles of the last several years:

- Proposal 04-2 (2004) Recognizing only an agreement between one man and one woman as “a marriage or similar union for any purpose”
- Proposal 06-2 (2006) Banning certain governmental affirmative action programs
- Proposal 08-2 (2008) Legalizing human embryonic stem cell research

Article IV (Legislative Branch)

There have been 24 proposals to amend Article IV, with only seven being approved by the voters. Of the 20 legislative proposals, four were adopted, two of which dealt with the State Officers Compensation Commission (SOCC):

- Proposal 2 (1968) Require the legislature to create the SOCC
- Proposal A (1972) Permit the legislature to authorize a state lottery
- Proposal A (1982) Reforming legislative immunity from civil arrest and process during legislative sessions
- Proposal 02-1 (2002) Require the legislature to act affirmatively on SOCC proposals

The 16 legislative proposals to amend Article IV that were rejected by the voters include seven whose purposes were not aimed directly at legislative powers or structure. Four were tax limita-

tion proposals (1980, 1981, 1989, and 1993); one would have increased the sales and use taxes (1989); one was a proposal to lower the minimum drinking age to 19 (1980); and one would have established a railroad redevelopment authority (1978). Of the nine that were aimed at legislative powers and structure, two dealt with legislators being appointed or elected to other offices (1968 and 1972); two dealt with legislative approval of administrative rules (1984 and 1986); and others dealt with the SOCC (1986); powers of the lieutenant governor (1980); civil immunity for legislators (1980); establishment of the State Library of Michigan in the legislature (1986); and lowering the minimum age of legislators from 21 to 18 (1976).

Initiated proposals to amend Article IV have succeeded in three of four attempts:

- Proposal D (1978) Increase the minimum drinking age from 18 to 21
- Proposal B (1992) Term limits for legislators
- Proposal 04-1 (2004) Require voter approval of the extension of gambling and certain new state lottery games

The one defeated initiated proposal would have required two-thirds legislative approval of statutes intervening in municipal concerns of general purpose local governments (2000).

Article V (Executive Branch)

Two of the five proposed amendments to Article V were adopted; a legislative proposal:

- Proposal M (1978) Replace the State Highway Commission with the State Transportation Commission

And an initiated proposal:

- Proposal B (1992) Term limits for the governor, lieutenant governor, attorney general, and secretary of state.

The defeated attempts to amend Article V include a legislative proposal restricting the powers of the lieutenant governor (1980); and initiative petitions that would have given constitutional status to the Department of State Police (1982) and that would have provided for the election of the Public Service Commission (1982).

Article VIII (Education)

Of the five proposals placed on the ballot to amend Article VIII, three have dealt with aid to non-public schools. The successful proposals were an initiated proposal:

- Proposal C (1970) Prohibit direct or indirect aid to non-public schools

And a legislative proposal:

- Proposal A (1998) Change the word “handicapped” to the word “disabled” in Section 8

The defeated proposals were all the result of initiated petitions. Two were attempts to remove the prohibitions against vouchers imposed by Proposal C of 1970 (1978 and 2000). One provided for local school board responsibilities as a part of a much larger tax proposal (Smith-Bullard, 1980).

Article IX (Finance and Taxation)

As might be expected, the finance and taxation article has attracted the most attention from those interested in amending the 1963 Constitution. Despite the attention, however, the success rate has not been high. Of 29 proposals, only 10 (34 percent) have passed. Even this is somewhat misleadingly high in that six of the ten successful amendments were designed to enshrine various natural resources trust funds and the Veterans’ Trust Fund in the Constitution, beyond the reach of the legislature, meaning that the other 23, most of which were taxing and spending limitations, had a success rate of only 17 percent.

The success rate in amending Article IX has not been high and there has not been a taxing and spending limitation proposal on the ballot since 1994. Nevertheless, the number and potential significance of the proposals to amend Article IX warrant a somewhat more detailed review than for the other articles.

The proposals to amend Article IX can be grouped into five categories: 1) Tax and spending limitations (tax shift, tax reduction, tax growth limitation); 2) Greater progressivity; 3) Tax increase; 4) Revenue dedication; and 5) Finance. Some of the proposals encompassed categories 1 and 4, but will be covered here in accordance with their primary purpose.

Note: Solid bullets denote the successful amendments. Hollow bullets denote the unsuccessful attempts to amend Article IX.

Tax and Spending Limitations

The use of the ballot to attempt to limit state and local taxes, which began with the 15-mill property tax limit in 1932, reached full flower in the two decades from the mid-1970s to the mid-1990s. Fifteen proposals reached the ballot during this period, but only two passed, one initiated proposal and one legislative proposal:

- Proposal E (1978), the eponymous Headlee Amendment², was an initiated proposal which limited state revenue to a fixed percentage of state personal income, created new property tax limitations, and provided for payments to local units of government for state mandates.
- Proposal A (1994) was a legislative proposal that provided for a dramatic shift of funding of school operations from the property tax to the state sales tax, a modified acquisition valuation system for determining taxable property values, and differential taxation of business and residential property. (Proposal A could not be considered by the voters solely on its merits because the legislature had passed a statute with similar provisions involving increasing the income tax instead of the sales tax, which was to go into effect in the event

²Richard Headlee was an insurance executive and later gubernatorial candidate.

Proposal A was rejected.)

A target, if not the principal target, of every proposed tax limitation proposal was the property tax. The dilemma faced by those wishing to reduce the property tax, however, was the overarching role played by that tax in financing local government, the services of which, especially public safety and education, are among those most valued by the public. The least disliked tax, the sales tax, is levied by the state and may not be levied by local government under the current Constitution. As a consequence, the majority of tax limitation proposals proposed a shift from reliance on the locally-levied property tax to the state-levied sales tax. This approach did not find favor with the voters until Proposal A was adopted—although the voters were not offered the choice of Proposal A or the status quo.

Unsuccessful tax shift proposals have included five legislative proposals:

- Proposal C (1980) Reduce property tax; increase state sales tax from 4 percent to 5.5 percent
- Proposal A (1981) Reduce local homestead and local individual income taxes; increase sales tax and reduce state income tax credits
- Proposal B (1989) Reduce property taxes; increase state sales tax from 4 percent to 6 percent
- Proposal A (1992) Modified acquisition value system for determining taxable value for property tax

- Proposal A (1993) Modified acquisition value system for determining taxable value for property tax; reduce property tax for school operations; create foundation plan for school support; increase sales tax from 4 percent to 6 percent (foreshadowed successful Proposal A of 1994)

There were four unsuccessful initiated tax shift proposals:

- Proposal C (1972) Limit property tax for school, county and township purposes; establish state tax program for school support (Would have resulted in overall tax increase)
- Proposal H (1978) Eliminate property tax for school operations; require legislature to establish a program of state taxation to support K-12 education
- Proposal A (1980) Reduce property tax; shift the burden to state taxes (Overall, net tax increase)
- Proposal C (1992) Exempt property tax from portion of school operations; institute modified acquisition value system of determining taxable value (Would have resulted in significant reduction in property taxes)

Three proposals, all initiated and all defeated, would have resulted in significant tax reduction and, while tax increases would have been technically possible, adoption would have been seriously impeded:

- Proposal J (1978) Reduce

property tax assessment ratio from 50 percent to 25 percent of true cash value and place other limits on state finances (First “Tisch” proposal³)

- Proposal D (1980) Roll back assessments; reduce the assessment ratio; institute a modified acquisition value system of determining taxable value; limit the power of the legislature to impose taxes (Second “Tisch” proposal)
- Proposal C (1984) Roll back newly adopted taxes, subject to restoration by voter approval; stringent supermajority or voter approval requirements for new taxes (“Voter’s Choice”)

Tax growth limitations have sought not to shift the burden from one tax to another or to reduce government taxing and spending, but to place limits on growth. The successful Headlee Amendment was such a provision. A somewhat similar initiated proposal failed two years before the adoption of the Headlee Amendment:

- Proposal C (1976) Limit state taxes to 8.3 percent of state personal income

Greater Tax Progressivity

Some proposals have attempted to alter the base or rate of state taxes to move toward greater progressivity in the tax system. The only proposal to pass was an initiated proposal:

- Proposal C (1974) Eliminate

³ Robert Tisch was a drain commissioner from Shiawassee County

sales tax on food and prescription drugs

Three issues on the ballot, all unsuccessful, proposed to remove the prohibition against the graduated income tax. One was a legislative proposal:

- Proposal I (1968)

The two initiated proposals were:

- Proposal D (1972)
- Proposal D (1976)

Tax Increase

One unsuccessful legislative proposal was aimed primarily at raising taxes:

- Proposal A (1989) Increase sales tax rate from 4 percent to 4.5 percent; dedicate the new revenues to local schools

Revenue Dedication

Attempts to limit the budgetary latitude of the legislature by constitutionally restricting various revenue sources to certain programs have met with marked success. The successful proposals have all been the result of legislative joint resolutions:

- Proposal M (1978) Allocate at least 90 percent of gasoline tax revenues to road purposes, with the remainder available for other purposes

Beginning in 1984 a series of five amendments was initiated placing a great deal of statutory language in Article IX resulting in the elevation to constitutional status of a number of relatively minor funds related to natural resources, state parks and recre-

ation, and veterans, thereby removing them from legislative discretion. The proposals and the funds they protected are:

- Proposal B (1984) Natural Resources Trust Fund
- Proposal P (1994) State Parks Endowment Fund
- Proposal C (1996) Veterans' Trust Fund
- Proposal 02-2 (2002) Recreation Land Acquisition Fund
- Proposal 06-1 (2006) Conservation and Recreation Legacy Fund; Non-Game Fish and Wildlife Trust Fund; Game and Fish Protection Trust Fund

Two attempts to dedicate state revenues have failed. The first was a legislative proposal:

- Proposal A (1974) Prohibit the use of motor fuel revenues for highway road patrols; limit non-highway uses to 1/18 of total revenues

The second was initiated:

- Proposal 02-4 (2002) Reallocate most tobacco settlement revenues to organizations, both public and private, dealing with health care

Finance

One non-revenue related amendment, a legislative proposal, was adopted:

- Proposal C (1978) Authorize the deposit of state funds in savings and loan associations and credit unions, in addition to banks

Other Articles

Article II (Elections) has been amended once, a meaningless attempt to limit the terms of members of the Michigan Congressional delegation. This portion of the term limits amendment has since been ruled unconstitutional by the U.S. Supreme Court in a 1995 Arkansas case:

- Proposal B (1992) Limit terms of Michigan members of the U.S. House of Representatives and U.S. Senate and to provide incentives to incumbents to voluntarily limit their terms if amendment ruled invalid

Two legislatively-proposed amendments to lower the minimum voting age from 21 to 18 (1966, 1968) were rejected by the voters.⁴

Article VI (Judicial Branch) has been amended three times by means of legislative proposals:

- Proposal 1 (1968) Establish Judicial Tenure Commission
- Proposal 3 (1968) Define manner of filling judicial vacancies
- Proposal B (1996) Establish qualifications for judicial offices

Article X (Property) has been amended once as the result of a legislative proposal:

- Proposal 06-4 (2006) Re-

⁴ These rejections became moot with the adoption of the 26th Amendment to the U. S. Constitution in 1971, which reduced the minimum voting age nationally to 18.

Approval Rates by Decade

In the first three decades of the life of the 1963 Constitution, approximately one-third of the proposed amendments were adopted, whether proposed by joint resolution (34.4 percent) or initiative petition (33.3 percent). Since 1993, however, over three-quarters of the proposals have been adopted by the voters, with 100 percent of the legislative proposals adopted and 42.9 percent of the initiatives passing. All of the amendments proposed in 2004, 2006, and 2008 were adopted.

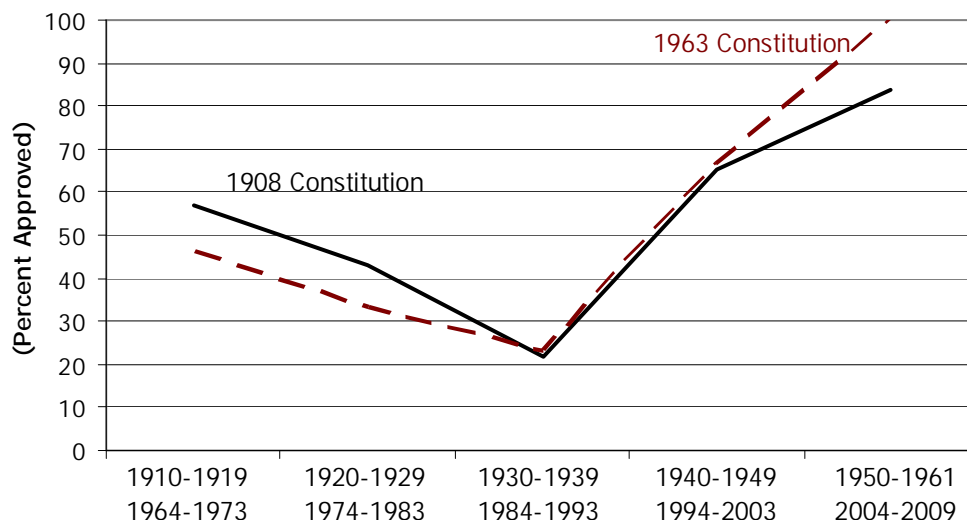
Table 2
Approval Rate by Decade (1964-2008)
1963 Michigan Constitution

Decade	Joint Resolutions			Initiative Petitions			Total		
	Attempts	Adopted	Percent Adopted	Attempts	Adopted	Percent Adopted	Attempts	Adopted	Percent Adopted
1964-1973	10	5	50.0	3	1	33.3	13	6	46.2
1974-1983	12	4	33.3	12	4	33.3	24	8	33.3
1984-1993	10	2	20.0	3	1	33.3	13	3	23.1
1994-2003	8	8	100.0	4	0	0.0	12	8	66.7
2004-2008	2	2	100.0	4	4	100.0	6	6	100.0
Total	42	21	50.0	26	10	38.5	68	31	45.6

Compared to amendment of the 1908 Constitution, amendment of the 1963 Constitution has been less frequent. In a 51-year period from 1910 to 1961, 126 amendments were proposed to the 1908 document, an average of about 25 per decade, with 69 approved, an average of about 14 per decade. In the 42 years between 1966 and 2008, about 17 amendments per decade have been proposed to the 1963 Constitution, with about eight being adopted.

As the 1963 Constitution has aged, the approval rate of proposed amendments has followed a pattern strikingly similar to that of the 1908 version.

Chart 1
Approval Rate by Decade (1910-2009)



strict the use of eminent domain

Article XI (Public Officers and Employment) has been the target of two initiated proposals, one of which was successful:

- Proposal G (1978) Grant Michigan state troopers and

A number of conclusions may be drawn from a review of the experience to date in amending the 1963 Michigan Constitution.

Many of the amendments have been essentially statutory provisions placed into the Constitution. Some provisions, such as term limits, limitations on bail and trial by jury, and filling judicial vacancies, whether or not good public policy, probably fit with the nature of a basic document. Other amendments, such as the minimum drinking age, the Headlee Amendment and, in particular, the voluminous amendments to Article IX relative to natural resource and veterans' trust funds are certainly statutory in nature, in the sense that the policies embodied in the provisions could have been adopted statutorily, either by the legislature or by means of the statutory initiative. The statutory initiative offers substantial protection against amendment or repeal but has been used sparingly. More frequent use could have relieved the Constitution of a large amount of detail and complexity.

Between the purely constitutional and purely statutory

sergeants the right to collective bargaining and binding arbitration

A similar proposal regarding classified state employees was rejected in 2002.

Finally, Article XII (Amendment and Revision) has been amended once

Conclusions

amendments are amendments with essentially statutory language that have been placed in the Constitution because the amended provisions themselves were statutory in nature. An example is Proposal A of 1994, the aims of which could not have been accomplished statutorily under the existing language of Article IX, Section 6, which itself was already detailed and statutory in nature in that it limited the sales tax rate and dedicated revenue to specific purposes.

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

Addition of essentially statutory material to the Constitution can

by means of initiative petition:

- Proposal B (1992) Provide for severability of any unconstitutional provisions of the term limits amendment

No attempts have been made to amend Article III (General Government) or, perhaps surprisingly, Article VII (Local Government).

create a "snowball effect." Using the example of the trust fund amendments to Article IX, the provisions are so detailed that they will likely require amendment, thereby adding more statutory material and further exacerbating the problem. Indeed, Section 35, adopted in 1984 was amended in 1994 and 2002. Section 35a, adopted in 1994, was amended in 2002, and Section 37, adopted in 1996, was also amended in 2002. More statutory material will likely engender greater need for amendment, and so on.

A common theme of amendment, especially since 1992, has been that of weakening the legislature. One method adopted for weakening the legislature in the Constitution is that of simply removing from legislative purview certain subjects viewed as worthy of protection from alteration by statute. The trust fund amendments to Article IX constitute the wordiest example of this approach, but other examples include: Requiring voter approval of any expansion of gambling; specifying what can be recognized as "marriage or similar union" for any purpose; restric-

tions on the use of eminent domain; and specifying the minimum drinking age.

A variation on this approach is the extensive and complex set of limitations on taxing and spending, ranging from the revenue limit and state mandate funding requirement in the 1978 Headlee Amendment to the taxable value limit and extraordinary majority legislative voting requirement for exceeding statutorily determined millage limits in Proposal A of 1994. Other restrictions adopted in this area have included eliminating the sales tax on food and prescription drugs and the requirement that at least 90 percent of gasoline tax revenues be allocated to general road purposes. And, it may be noted that the limits on property taxation in the original 1963 Constitution found their way into the 1908 Constitution by means of amendment.

It should be noted that many of these restrictions came about as

the result of legislative joint resolution.

These amendments, as restrictive as they may be with respect to their specific subjects, do not strike at the heart of the legislative process. The one amendment that has done so is Proposal B of 1992, which instituted among the nation's most restrictive set of term limits for elected state officials, particularly legislators. Whether Proposal B was intended by its framers to weaken the legislature may be debatable, but clearly a case can be made, and has been, that such has been its effect.

Amendment experience with the 1963 Constitution can be divided into three periods. At the risk of oversimplification, the first period began in 1966 and extended to the mid-1970s. This period was dominated by amendments having to do with the power and structure of government—Judicial Tenure Commission; filling judicial vacancies; trial by jury; and

SOCC, for example.

The second period, from the mid-1970s to the mid-1990s, was dominated by proposed tax and spending limitations, which, although most were defeated by wide margins, framed the debate over the appropriate claim of government on the economic resources of the state for two decades.

The third period, from the mid-1990s to the present, has seen the rise of proposals designed to advance various social agendas: Restrictions on the expansion of gambling; limiting marriage to unions between one man and one woman; banning certain affirmative action programs, and, of somewhat lesser moment, changing the word “handicapped” to “disabled” in Article VIII.

It is likely that future amendments to the Michigan Constitution will continue to reflect the concerns and fashions of the times in which they are adopted.