

S E C R E S T
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AMENDING MICHIGAN'S CONSTITUTION
THE CONSTITUTIONAL CONVENTION OPTION

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CONSTITUTIONAL LAW AND ITS APPLICATION

- Constitutions as foundation of our democracy and legal system.
- All legislation and government actions measured against them.
- United States Constitution trumps State Constitutions if U. S. Supreme Court or final ruling from a Federal Court of Appeals says so.
- State Constitution as interpreted by State Supreme Court and Court of Appeals.
- State Legislation.
- Local government legislation and actions.

MICHIGAN'S CONSTITUTION OF 1963

Approved by voters in April 1963

Effective January 1, 1964

1963 Constitution Contains 12 Articles (Table of Contents in Handout)

- | | | | |
|-----|-----------------------|------|--------------------------------|
| I | Declaration of Rights | VII | Local Government |
| II | Elections | VIII | Education |
| III | General Government | IX | Finance and Taxation |
| IV | Legislative Branch | X | Property |
| V | Executive Branch | XI | Public Officers and Employment |
| VI | Judicial Branch | XII | Amendment and Revision |

HISTORY OF MICHIGAN CONSTITUTIONS

- 1963 Version is the 4th Constitution for Michigan
- Prior versions approved in 1835, 1850 and 1908
- Michigan Chamber of Commerce summary in Handout

THE AMENDMENT/REVISION OPTIONS

- Piecemeal by Legislature and Voters, Article XII, Section 1 (Handout)
- Piecemeal by Petition and Voters, Article XII, Section 2 (Handout)
- 52 Sections of 1963 Constitution have been amended or added by the legislative and petition piecemeal approaches, some more than once.
- General Revision of Entire Constitution by Constitutional Convention and Voters, Article XII, Section 3 (Handout).
- All 4 Michigan Constitutions from Constitutional Convention Process

THE CONSTITUTIONAL CONVENTION VOTE

- Mandatory ballot question at General Election every 16 years since 1978.
- Should there be a convention to consider general revision of the constitution?
- Answer was No in 1978 and 1994.
- Will be on the November 2, 2010 Ballot.
- Majority of electors voting on Question required for approval.
- Canvass and Certification of Vote by State Canvassers
- Possible Recounts

ELECTING CONVENTION DELEGATES

- Partisan Election within 6 months after certification of vote to hold convention.
- (February 22, 2011 and/or May 3, 2011)
- 1 Delegate for each House and Senate District for a total of 148.
- Constitution does not include delegate qualifications or disqualifications.
 - Not required to be citizen or qualified electorship
 - Legislators could be delegates.
 - Incompatible Offices Act, PA No. 566 of 1978; MCL 15.181 – MCL 5.185.

Subordination of or supervision by one office of another or breach of duty of public office.
Could this be claimed to apply?

ELECTING CONVENTION DELEGATES

- Nominating petitions and primary to meet partisan requirement for election (MCL 168.531 – MCL 168.558).
- Canvassing and possible recounts.
- Elected delegates to convene in Lansing on October 4, 2011 or an earlier date provided by law.

THE CONVENTION PROCESS

- Convention chooses officers and determines own rules.
- Convention judges qualifications, elections and return of its members.
- Convention can appoint and fix compensation of employees and assistants.
- Convention can provide for printing and distribution of its documents.
- Convention can disseminate information about proposed constitution.
- Delegates entitled to compensation for services (\$500 semi-monthly subject to minimum/maximum total amounts of \$1,000/\$7,500, and \$.10/mile for 1 round trip per month from home to Lansing; MCL 2.51 – MCL 2.54.)
- Vacancies filled by Governor from same district and party.
- Adoption of Proposed Constitution or specific Amendments by majority of all delegates elected to and serving in Convention.

VOTING ON A CONVENTION RECOMMENDED CONSTITUTION OR AMENDMENTS

- Submitted to electors not less than 90 days after Convention adjourns.
- Submitted in time and manner provided by Convention.
- Must be approved by majority of qualified electors voting on that issue.
- Takes effect as provided by the Convention.

SUPPLEMENTAL LEGISLATION

Deficiencies in Constitution and current statutes.

Secretary of State Proposals (Handout)

- Require delegates to be citizens and electors.
- Confirms February primary and May general election of delegates in 2011.
- Convene convention early, in July 2011, with Secretary of State to call to order and preside initially.
- Details regarding vacancies, removals and recalls/recounts for delegates.
- Increase mileage allowance for and allow 1 roundtrip per week.
- Apply State Campaign Finance Act to delegates and committees.

TREASURE CHEST OR PANDORA'S BOX

- What should change? Everyone has a wish list/gripe. (See Handout for mine).
- What could change?
- Partisan process and participants.
- Out-of-State Financing and Influences.
- Cost of Convention (28 to 45 million?)
- Unlimited Length of Convention
- Pros, Cons and Opinions on Holding Convention (Handouts)

WHAT'S IN THE CONSTITUTIONAL BOX?

Provisions identified in a State Senate Campaign & Election Oversight Committee Report (Excerpts in Handout) as conflicting with US Supreme Court rulings are:

- Criminal law exclusionary rule, Article I, Section 11
- The voting age of 21 in Article II, Section 1.
- Requiring property ownership for certain votes in Article II, Section 6.
- Regarding the County Board of Supervisors, Article VII, Section 7.
- Legislative apportionment sections in Article IV.

WHAT'S IN THE CONSTITUTIONAL BOX?

In 2006, a Non-Profit Organization called Citizens for Michigan released a document titled Final Recommendations, which in addition to supporting a Constitutional Convention, goes on to identify 62 specific changes that it believed would make Michigan's Constitution a better document.

(Excerpts in Handout)

According to the Michigan Chamber of Commerce and others (Handouts), what might be called the Constitutional Convention Shopping or Wish List of provisions for amendment or repeal could include:

- Legislative and congressional reapportionment.
- Governor appointments of department directors.
- Appointed Judges and College Governing Boards

WHAT'S IN THE CONSTITUTIONAL BOX?

- Abortion rights.
- Term limits.
- Unicameral Legislature.
- Part time Legislature.
- Death penalty prohibition repeal.
- Sales tax cap.
- Graduated income tax prohibition.
- Headlee tax limitations and mandates.

WHAT'S IN THE CONSTITUTIONAL BOX?

- Governor appointment of Secretary of State and Attorney General
- School District consolidation.
- Eliminate Township government.
- Restore affirmative action by state and public universities.
- Remove same sex marriage ban.
- Stem cell research.
- Allow physician assisted suicide.
- Drug legalization.

WHAT'S IN THE CONSTITUTIONAL BOX?

- Remove prohibition on public aid to non-public education.
- School funding and equity.
- Gambling.
- Right of privacy.
- Parental notification rights
- Recall
- State budget process.

ADDITIONAL THOUGHTS

- Issue will soon be on the public's radar.
- Needs vs. wants.
- Careful what you wish for.
- Possible futility of process.
- Litigation of issues under a new Constitution.
- What to do with an old used car/Constitution.
- The value of lawyers in the process.

Questions and Answers



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