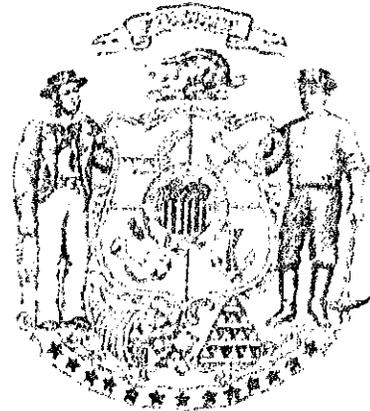


The State of Wisconsin

CONSTITUTIONAL REVISION IN OTHER STATES

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CONSTITUTIONAL REVISION IN OTHER STATES

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CONSTITUTIONAL REVISION IN OTHER STATES*

Missouri adopted a new constitution in 1945. Since then constitutions have been written in Georgia (1945), New Jersey (1947), Hawaii (1959), Alaska (1959) and Michigan (1963). In 1964 New Hampshire held a constitutional convention, while total revision was attempted by means of commissions in Georgia and Oregon. Conventions have been called for 1965 in Rhode Island and Connecticut. In addition, many states have established constitutional commissions.

I. ATTEMPTS AT GENERAL REVISION

A. Missouri

Time and Place Held - Missouri held a constitutional convention in 1943-44. The convention met in Jefferson City, the state capital.

Preparations for Revision - The Missouri Constitution provides that the question of a constitutional convention must be placed on the ballot every 20 years. A convention had been held in 1922-23, but the results of that convention had been disappointing. After an unduly prolonged session, the convention submitted a revised constitution in the form of 21 separate amendments. Only 7 of these were ratified by the voters, and these were of a minor or transitory nature. When the Secretary of State announced that, in accordance with the constitution, the question of a convention would be placed on the ballot in 1942, a campaign to organize sentiment in support of the proposition was undertaken immediately by civic-minded individuals and such groups as the Missouri League of Women Voters and the National Municipal League. The proposition carried largely in the urban areas where most of the work was done.¹

Selection of Delegates - As provided in the former Missouri Constitution, each of the 34 senatorial districts in the state elected one Democratic and one Republican delegate. Fifteen delegates were also elected at large on a nonpartisan ballot.

Procedure of the Convention - Proponents of the 1943-44 convention were resolved to profit by the mistakes of the former convention. Perhaps the most significant failure of that convention had been the failure to keep the voters adequately informed on the nature of the proposed constitutional changes.² Prior to the 1943 convention, factual studies were made by citizens' groups to reveal the inadequacies of some of the provisions of the Missouri Constitution. These studies received widespread publicity throughout the press of the state. The convention committees held public hearings over a 3-month period and all who were interested were invited to appear and present their views.

Serious efforts were exerted to keep the convention nonpartisan in its deliberations. Chairmen and members of the 26 committees - as well as the convention staff - were equally divided between the 2 parties.³

The New Constitution - The convention made no changes in the broad fundamental framework of state and local government. It retained the principles of separations of powers and checks and balances, including the bicameral legislature. It also retained all amendments recently adopted by the voters, with only minor revisions in language. Nonetheless, agreement was quite universal that the new constitution represented a serious and, on the whole, successful effort to correct some of the major defects of the 1875 Constitution.⁴ Attempts of the convention to remedy the problems that are generally held to be prevalent in state constitutions included:

*Compiled by Mary Lou Kendrigan, Technical Assistant.

(1) The language of the constitution was clarified and simplified, providing for a more logical arrangement of subject matter, and eliminating antiquated provisions and much statutory details. The number of articles was reduced from 15 to 12, and the total length by some 11,000 words.

(2) The Governor was given the power to regroup about 70 minor agencies into 10 executive departments, with the Legislature empowered to create 5 more bureaus subject to assignment to a department by the Governor.

(3) A new program was set up for legislative reapportionment to provide for population shifts.

(4) A large degree of local home rule was granted to cities and counties.

(5) The court system was reorganized with substantial judicial rule-making power granted to the Supreme Court. The selection of judges, dubbed the "Missouri Plan," calls for initial appointment by the Governor from a list proposed by a commission composed of judicial, legal and public members. Thereafter, the appointee runs on the basis of this record on a nonpartisan ballot to determine whether he shall be retained in office.⁵

Criticism of the Revision - Although the 1945 Constitution did correct some of the major defects of the 1875 Constitution, some citizens were unhappy that the constitution did not go further. Proponents of a unicameral legislature, of proportional representation, and of a shorter ballot were disappointed in the constitution. The convention also ducked the merit system issue, leaving the Legislature free to continue the spoils system except in penal and eleemosynary institutions. Neither did the convention abandon the idea that a state constitution should be elaborate and detailed. The view persisted that representative organs of government are untrustworthy and must be permitted only a minimum of power.⁶

That it did not make too sharp a break with the past was undoubtedly a help in insuring popular ratification. Observers said that it was the refusal of the convention to insist on radical departures in system, along with its concentration on improving the substance of the state's government, which made approval of the document possible. The work of the convention was overwhelmingly approved by the electorate.⁷

Since the Revision - With the constitution not quite 20 years old, 26 amendments have already been initiated. Twelve of these have been approved by the Legislature - 4 have already been ratified, and 8 more will be presented to the voters in the next election.

Since the Missouri Constitution requires that the question of holding a convention be submitted to the voters every 20 years, it was slated to appear on the ballot not later than 1965. The question was placed on the ballot in November 1962 and was rejected by the voters. A committee appointed by the Governor to study the question and make recommendations for the guidance of the voters opposed a convention. Supporters of a convention argued that the constitution is too long and needs simplification. They felt that some study should be given to the executive and judicial articles, although in the main these underwent careful and constructive revision in the Constitution of 1945. Efforts at revision primarily center around: strengthening the power of the Legislature, elimination of the popular election of minor executives, revising the existing apportionment formula and clarifying home rule provisions.⁸

B. Georgia

Time and Place Held - Georgia is the only state to have successfully employed a commission to effect a complete constitutional revision. In March 1943, the General

Assembly passed a resolution providing for a commission to study the 1877 Constitution and submit a report that would include either proposals for amendment or a new constitution. The report was submitted to the Legislature in January 1945.

Preparation for the Revision - The Georgia Constitution had been written in 1877 and had been amended 296 times. The changes had been so numerous and so frequent that it was inevitable that the document should become cumbersome and that some sections were not in harmony with others, requiring frequent judicial interpretation. Thus the need developed to rewrite the constitution to meet changed conditions and to harmonize the constitutional provisions. However, radical revision was not intended.⁹

Selection of Delegates - The commission consisted of 23 members among whom were the Governor, Attorney General, State Auditor, President of the Senate and the Speaker of the House. In addition, 5 members were appointed by the Speaker, 3 by the President of the Senate, 8 by the Governor and 2 by the Judiciary.

Procedures of the Commission - The commission was divided into 5 subcommittees which held public meetings prior to 2 plenary meetings. In session a total of only 14 days, the commission submitted a new document to the Legislature in January 1945. The General Assembly approved the new constitution which was subsequently ratified by the electorate by a 2 to 1 margin in a comparatively light vote.

The New Constitution - Major changes in the constitution could be classified into 4 general categories:

(1) Correction of abuses in the political system of the state: Among these were the constitutional elimination of the poll tax (abolished by statute earlier in the year), establishment of a uniform literacy test for voters, and termination of tax exemption to favored corporations.

(2) Promotion of efficiency in state government: Included in these were a Supreme Court of 7 justices instead of 6 in order to avoid a tie vote, a state budget system, abolition of the system of allocated state revenue, and authorization of merit and retirement systems for state employes.

(3) Municipal and county provisions: Among these were a mandate to the Legislature to provide optional forms of home rule for adoption or rejection by cities and counties, authorization for local zoning ordinances, and permission to political subdivisions to contract for exchange of services.

(4) Safeguards for the constitution: Veto of amendments by the Governor was prohibited, and any future constitution was required to be submitted to popular vote.¹⁰

Criticisms of the Revision - Criticisms were brought against the Georgia Constitution similar to those leveled against the new Missouri Constitution, specifically, that the revisions did not tackle the controversial issues. The League of Women Voters and other groups were critical of the failures to provide for redistricting of the Legislature, to reduce the number of counties, or to regulate primary elections. In addition - rather than reducing the number of elected administrators - the ballot was made longer by the addition of 2 more elective offices.¹¹

Since the Revision - By 1963, the Georgia Constitution had been amended 381 times. In a message of January 1963, Governor Carl E. Sanders called for revision of the document, asking that a joint committee of the Senate and House be appointed to advise him regarding the establishment of a constitutional revision committee. By that time the Georgia Constitution had grown very long and involved many legislative matters, including local legislation.¹²

Shortly after the Governor's message, the State Senate passed a resolution calling for the creation of a commission and instructing it to report its recommendations by December 1, 1965. The commission, chaired by the Governor, was comprised of 28 members whom the Governor appointed, including legislative leaders; judges; state, county and local officials. Membership included representatives of education, labor, business, communications and agriculture.

The commission reported to the Legislature in 1964. Its proposals would have succeeded in reducing the constitution from 16 to 9 articles, and shortened it to two-thirds its former length. A special session of the Legislature ratified the new document by two-thirds majority of both houses. It was to be presented to the people for their approval or disapproval as a constitutional amendment to replace the 1945 Constitution. However, before it could be submitted to the electorate a federal district court, while rendering appointment decisions, ruled that the procedure used for adopting the new constitution was invalid.¹³

C. New Jersey

Time and Place Held - The New Jersey Constitutional Convention was held June 12 - September 12, 1947 at Rutgers University.

Preparations for the Revision - New Jersey's experience in constitutional revision is especially interesting since several techniques were employed during the 7-year period, beginning in 1940, before revision was finally effected by a limited convention in 1947.

New Jersey's problem was not, as in other states, a constitution that had grown unwieldy from frequent amendment, but, rather, an antiquated document with an amending process that made change virtually impossible. Concerted pressure began in 1940 with the establishment of the New Jersey Committee for Constitutional Convention, a group composed of the state's 2 largest labor organizations, 6 women's groups and 3 other organizations. In 1941 this group, the Governor and several legislators persuaded the Legislature to establish a 7-member commission to study the problem of revision. The commission presented the Legislature with a draft of a new constitution in 1942, and a Joint Legislative Committee was created to hold public hearings. However, the committee recommended that the question of revision be deferred until after the war.

In 1943 continuing public pressure induced the Legislature to hold a referendum on the question of whether the people desired to have the Legislature act as a constitutional convention. The proposal passed, and the Legislature presented a draft to the people in 1944 which followed closely the recommendations of the 1942 Commission. This draft was rejected by the electorate.

In 1947, the Governor petitioned the Legislature to provide for the calling of a convention; and, in response to his request, a referendum was held on the question at the regular election for county officials on June 3. At this time the proposition was ratified by the voters 5-1.¹⁴

Selection of Delegates - On the same ballot on which the voters expressed their preference for or against the proposed convention, they also voted for delegates. Each county was entitled to as many delegates as it had senators and representatives. In 13 of the 21 counties delegates were selected by the party organization on a bipartisan basis. The final party distribution was 54 Republicans, 23 Democrats and 4 Independents, comprising a total of 81 delegates.

Procedures of the Convention - Nine days after the referendum calling for a convention was ratified by the voters, the Governor formally opened the first session. The convention was divided into 9 committees, 5 to consider the substantive provisions of the constitution, and 4 to conduct the business of the convention. The committees held extensive hearings for 2 months, and then presented drafted provisions to the delegates for general debate. The proposition calling for the convention had provided that the delegates would convene on June 12 and conclude their deliberations by September 12. Although this was a tight schedule, a great deal of preparatory research had been conducted during the previous 7 years, and the proposals of the Revision Commission were available as a guide. The convention adjourned on September 10.¹⁵

The New Constitution - By the proposition calling it into session, the convention was prevented from discussing the issue of reapportionment. However, many other changes were made to remedy the constitutional limitations cited by those interested in reform of state constitutions:

(1) The Governor's constitutional position, previously among the country's weakest, was considerably strengthened. His term was extended from 3 to 4 years, and he may succeed himself.

(2) All state agencies except temporary commissions were organized into not more than 20 principal departments.

(3) A 2-year term was provided for assemblymen, with senators serving 4 rather than 3 years. The annual salary for legislators was eliminated from the constitution in favor of legislative determination.

(4) Far-reaching reforms were made in the state's antiquated, top-heavy judicial system. The Supreme Court was made responsible for rules governing the administration, practices and procedures of all courts.

(5) The debt limitation of \$100,000 was increased to one per cent of the general appropriation. Taxation provisions were made more flexible.

(6) A greater measure of home rule was granted to municipalities and counties.

(7) The amending clause was slightly liberalized.¹⁶

Criticism of the Revision - The enabling act prevented the convention from dealing with the issue of apportionment. The major political groups all worked for the constitution's adoption. The only opposition came from groups opposed to a provision continuing constitutional sanction of the 1941 state law permitting use of public funds to transport students to parochial schools.¹⁷

Since the Revision - There have been only 4 amendments to the constitution and none of them have resulted in major revision of the document drafted in 1947.

D. Michigan

Time and Place Held - The most recent constitutional convention was held in Michigan from September 1961 to May 1962 at the Lansing Civic Center. It was the fifth constitutional convention for Michigan.

Preparations for Revision - Michigan voters had rejected a constitutional convention in 1926, 1942, 1948 and 1958. The vote had, however, increased in each succeeding referendum. In 1948 and 1958 a majority of those voting on the question approved, but in each case the favorable vote failed to meet the constitutional requirement of a majority participating in the election.

A financial crisis in the Michigan state government in 1959 dramatized the need for reform and helped focus public attention on emerging constitutional issues. In 1960, with the help of the Jaycees, the League of Women Voters, Citizens for Michigan and other groups, an amendment was passed which would allow a convention to be called if approved by a simple majority of those voting on the question. Facilitated by this amendment, on April 3, 1961 the Michigan electorate approved the call for a constitutional convention by a narrow margin of only 23,000 votes. The Legislature then appropriated \$2 million for the convention and set rules for selection of the delegates.¹⁸

Selection of Delegates - The convention was composed of 144 delegates. Delegates were nominated in a primary election on a partisan basis; and in an election in September 1961, in which only 20 per cent of the registered voters participated, the Republicans won 99 of the 144 seats.

Procedures of the Convention - The ratio of 2 to 1 Republicans to Democrats was recognized in the selection of major convention officers and in the designation of committees and other organizational phases of the convention's activities. Although many delegates thought that political considerations played an excessively important role in deliberations, a number of proposals seeking to divorce delegates from politics were rejected. A majority of the delegates affirmed their belief in a political basis for convention membership.

The staff, which totaled about 70 members, was organized in 3 major divisions: research, drafting and public information; administration and housekeeping; and the police and guide division.

Ten committees were established. Committee leadership in all cases included a Republican as chairman and as first vice chairman, and a Democrat as second vice chairman. There were 10 substantive committees and 4 operational or housekeeping committees. The substantive committees concerned (1) rights, suffrage and elections; (2) legislative organization; (3) legislative powers; (4) executive branch; (5) judicial branch; (6) local government; (7) education; (8) finance and taxation; (9) miscellaneous provisions and schedule; and (10) emerging problems. The operational committees named were on administration, rules and resolutions, style and drafting and public information.¹⁹ (See Table I)

The New Constitution - As in other recent state constitutional conventions, few delegates favored radical departures from well established forms and principles. (See Table II) Major changes include:

(1) The new constitution contains 19,203 words as compared with 21,790 words in the 1908 Constitution. In form and style the new constitution is believed to be far superior to its predecessor.

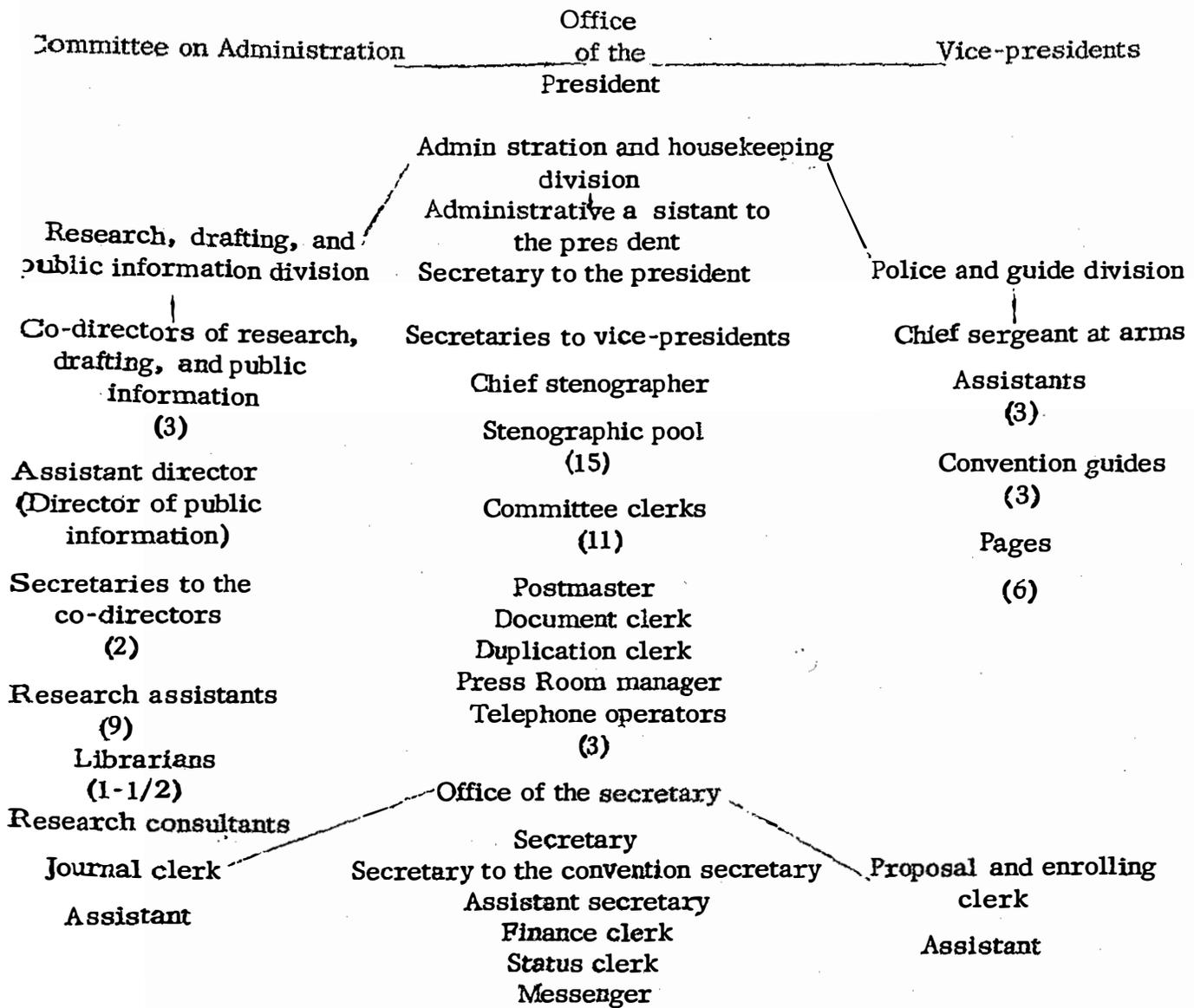
(2) The number of state elected officials was reduced from 6 to 4 - the Governor, Lieutenant Governor, Secretary of State and Attorney General. The terms for these offices were increased from 2 to 4 years.

(3) Provision was made for the election of the Governor and Lieutenant Governor on the same ballot.

(4) Administrative agencies were required to consolidate the more than 120 boards, commissions and other agencies into no more than 20 executive departments.

(5) The new judicial structure comprises a 5-tiered, unified court system, with the judicial power of the state vested exclusively in one court of justice. The justice of peace courts are abolished. Judges are to be elected in nonpartisan elections.

TABLE I. CONVENTION ORGANIZATION CHART



Source: Albert L. Strum, Constitution - Making in Michigan 1961-62. U. of Michigan 1963.

Source: Office of the president of the convention.

Issue	Rank Given by All Respondents	Rank Given by Elected Republicans	Rank Given by Elected Democrats	Rank Given by Defeated Republicans	Rank Given by Defeated Democrats
Legislative reapportionment	1	1	1	2	1
Tax and debt limits	2	3	2	1	3*
Earmarking of revenue	3	2	4	5*	5*
Four-year term for Governor	4	8	6	4	2
Reorganization of county and township government . .	5	6*	5	13*	5*
Strengthening governor's powers	6	11	3	8*	3*
County home rule	7	6*	7	10*	7
Unified judicial organization and administration . . .	8	5	10	3	9*
Limit on number of executive departments	9	4	8	7	12*
Appointment of judges	10	9	13*	5*	12*
Short ballot	11	12	9	13*	9*
Modification of education provisions	12	13	11	10*	11
Elimination of statutory detail	13	10	12	15	8
Strengthening legislative staff	14	14	13*	12	16
Modification of civil service	15	15	16	16	14
Addition of new personal and property rights	16	17	15	8*	15
Unicameral legislature	17	16	17	17	18
Reduction of voting age	18	18	18	18	17

* In these cases of tie rankings, the next number in sequence of ranking is omitted.

Source: "Profile of Candidates and Delegates, Michigan Constitutional Convention, 1961-62," Institute of Public Administration, University of Michigan, 1962, p. 20. As printed in Albert Lee Strum, Constitution-making in Michigan 1961-62.

(6) The traditional pattern of local government was essentially retained, but county home rule was strengthened.

(7) Consideration of apportionment was the outstanding issue and tended to color the thinking of various delegates on other matters. The new constitution included an apportionment plan based on area and population; the "area" factor of this plan was by a federal district court held to be in violation of the U.S. Constitution (Beadle v. Scholle, 377 U.S. 990). The new constitution also establishes an apportionment commission, composed of 12 members, to ensure the reapportionment of both houses every 10 years.²⁰

Criticism of the Revision - The new constitution has been called a "bundle of compromises." Concessions occurred within party delegations as well as between groups. On some issues alignment of forces and votes was determined on a partisan basis, others involved geography, and some developed from a desire to maintain political advantage.

First, the constitution has been criticized on the basis of its length. Although this document is much better written and somewhat shorter than the previous constitution, it is half again as long as the new basic laws of Alaska and Hawaii and the 1947 New Jersey Constitution. The delegates, well aware of the standards of brevity advocated by authorities on constitutions and constitution making, nevertheless wrote into the constitution many provisions of a statutory nature. The desire of every special interest group for constitutional status, prestige and sanction for its particular function and program is believed by some observers to account for much of the verbiage. There were many delegates who contended that unless reforms were written into the constitution, they would never be achieved.

Second, although the state's fiscal problems were a major reason for the approval of a convention, the convention retained many of the features of the 1908 Constitution that had been subject to criticism, particularly in the area of taxation. Changes were made to liberalize the procedure for long-term borrowing and pertaining to financial administration. Under the 1908 Constitution, the state was authorized to borrow a maximum of \$250,000 to meet deficits in revenue. This ceiling on the state's borrowing power was considered a major contributing factor in the 1959 fiscal crisis. A new section gives the state much greater flexibility in meeting cash crises in the general fund by authorizing short-term borrowing up to an amount not exceeding 15 per cent of the state's undedicated revenues during the preceding fiscal year, which would be approximately \$70 million based on current revenues. The method of and procedure for long-term borrowing is also substantially improved in the new document. However, critics object to the retention in the new constitution of the 15 mill limitation on property taxes, restrictions on the taxing power exemplified in the prohibition of a graduated income tax, and continued earmarking of public revenues. These features, they believe, restrict legislative discretion in providing for the state's financial needs.

Third, on the whole, the structure, procedure and powers of the Michigan Legislature in the new legislative article retained the same basic pattern provided in the 1908 Constitution. Although there were a few innovations, delegates generally were unwilling to accept drastic changes, such as a unicameral lawmaking body. Provisions of the new document continue to incorporate many limitations on legislative discretion, evidencing a continuing fear that lawmakers would abuse broader powers.²¹

The constitution was presented to the voters on April 1, 1963. It was submitted as a single proposal embodying the entire constitution to be accepted or rejected as a whole. The new document was approved by a margin of 7,424 votes in a total vote of 1,614,296.

E. New Hampshire

Time and Place Held - The fifteenth New Hampshire Convention met in May 1964 in Concord at the State Capitol.

Preparations for Revision - Prior to the 1964 elections, the New Hampshire Legislature could not propose constitutional amendments. Thus, the only way the constitution could be amended was by initiative or constitutional convention. The constitution provides that a referendum on the question of holding a convention should be submitted to the voters every 7 years. As the electorate often votes "yes," this was the eighth such convention to be called in the twentieth century. The people had previously adopted 22 amendments recommended by the conventions, but only 4 of these had been considered of major importance.

The last convention had been in 1959. That convention had submitted 20 proposals to the electorate; 4 were adopted. These provisions included an amendment to stop mileage payments to state legislators after 90 days, and an amendment to increase the minimum amount of damage claims in civil suits for which a jury trial can be demanded.

For the first time the 1963 Legislature set up a commission to study the constitution of the state and recommend to the constitutional convention such amendments as are needed.

Results of the Convention - Although the study commission made suggestions for revisions similar to suggestions in other states, the only significant revision that the convention recommended was a proposal to permit 60 per cent of the State Senate and House, voting separately, to propose constitutional amendments. This recommendation was approved by the electorate in last November's election. Consequently, constitutional amendments can now be proposed by all 50 of the state legislatures.²²

F. Oregon

Time Held - Oregon attempted, unsuccessfully, an interesting experiment in constitution making. In 1961 a Constitutional Revision Commission was established to draft a new constitution. This new constitution was placed before the Legislature in 1963. It was the product of one-and-a-half years of work.

Preparation for Revision - The Oregon Constitution is well over 100 years old and has never been comprehensively revised. It was ratified in 1859 when Oregon became a state. Following earlier, unsuccessful proposals for constitutional conventions, a constitutional amendment was adopted in 1959 which authorized the Legislature itself to submit a revised constitution to the people for their approval or rejection.

The Commission Members - The commission was composed of 17 members, drawn from all branches of the state government and private life. Included in the membership were 2 former Governors (of opposing parties), a former State Treasurer, 2 justices of the state Supreme Court, and one circuit judge, as well as 3 newspaper publishers and a leader in the League of Women Voters.

The New Constitution - The commission stated that the proposed constitution was a "framework to be regarded as a whole, rather than a set of isolated recommendations," and requested that the document be accepted or rejected as one document rather than section by section. The new constitution failed, however, to gain the approval of the Legislature. It was ratified in the House by the required two-thirds majority, but the Senate, after adopting amendments, approved it by 17 to 13, less than the needed two-thirds majority. Legislative reapportionment provisions were the major areas of dispute.²³

Although the revision was unsuccessful, it is significant to note the major revisions agreed to by the commission:

(1) The proposed constitution was about half as long as the present constitution which contains about 26,000 words. Much of the material of statutory character in the present constitution would have been transferred to the statutes, including such matters as earmarking of highway revenues, methods of voting, and outstanding bond issues.

(2) The Governor would be the only elected constitutional officer and would serve a 4-year term without limit as to re-election. (The executive branch at present consists of 5 elected officials, elected for 2-year terms.) The executive branch would be reduced from more than 100 boards and commissions to not more than 20 major departments.

(3) The Legislature would hold annual rather than biennial sessions as at present and would continue to consist of 2 chambers, with 4-year Senate terms and 2-year House terms.

(4) An apportionment formula was established based on population with consideration for "political, natural or other appropriate boundaries, and community of needs and interests by reason of geography, economy, transportation and communication."

(5) The new proposal provided for a unified system of state courts headed by the Supreme Court, which would have supervisory power over the other courts. Judges, who must be lawyers, were to be initially appointed by the Governor. At the first general election more than 2 years after the appointment, the judge would run on his record for a "yes" or "no" vote on the question of his retention. Each 6 years thereafter he would again be required to submit to a similar decision by the voters.²⁴

In 1965 major constitutional revision will be attempted by means of a constitutional convention in Rhode Island and Connecticut. Both of these states are among the 7 states whose constitutions do not provide for calling a convention. The other states in which this is true are Arkansas, Louisiana, Massachusetts, Pennsylvania and Texas. In these states provisions by statute, opinions of attorneys general, or court decisions have established that the Legislature has the authority to call the convention in the absence of any constitutional provision.

G. Rhode Island

Time and Place Held - On November 3, 1964, Rhode Island voters approved the calling of the state's first unlimited convention in 122 years by a margin of more than 2 to 1. The convention opened in Providence in December 8, 1964, but is not expected to complete its work for several months. The results of the convention must be submitted to the electorate for approval.

Background on Revision - This is the state's first unlimited convention in 122 years. The state has had limited conventions, such as the one in 1944 to simplify absentee voting for soldiers, but this is the first convention which is unrestricted in the subject matter that it may consider.

Proposed Revisions - Issues that the convention is expected to consider include:

- (1) Preparation of a new reapportionment article;
- (2) Extension of the Governor's term from 2 to 4 years;
- (3) Bracketing of Governor and Lieutenant Governor in elections;

- (4) The question of which offices should be elected and which appointed;
- (5) The item veto;
- (6) Judicial election and retirement;
- (7) Elimination of a constitutional provision restricting legislators' pay to \$300 per year; and
- (8) Provisions for a state lottery.²⁵

H. Connecticut

Time and Place Held - On January 5, 1965, the Connecticut General Assembly approved a bipartisan bill which provided for a constitutional convention to meet on July 1, 1965 in Hartford to draft permanent changes in the framework of the constitution. The proposal was immediately signed by the governor.

Background on Revision - Connecticut has had only one successful constitutional convention in history. That was in 1818, when the present constitution was adopted. A second convention was held in 1902, but the voters rejected its recommendations in a state-wide referendum.

The present convention is the result of a special session of the Assembly that had been ordered by a federal court to redistrict the state in accordance with the United States Supreme Court's "one man, one vote" ruling.

Organization of the Convention - The bill calling for the convention provided for 2 special elections. Delegates to the convention will be elected June 15 and a referendum on the body's recommendations will be held on December 14. Work of the convention must be completed by November 1. The bill also calls for 84 delegates to be divided equally between the 2 major parties. Delegates to last year's state political conventions will nominate the delegates. Fourteen delegates, 7 from each party will be elected from each of the state's 6 Congressional Districts.

Proposed Revisions - The purpose of the convention will be to consider:

- (1) Changes in the number of Senators and Representatives;
- (2) The creation of a mandatory system for reapportionment of the Assembly every 10 years.
- (3) The substitution of annual legislative sessions for the present biennial sessions.

The convention will not deal with the drawing of new House and Senate lines. This was left to the General Assembly.²⁶

II. THE CONSTITUTIONS OF ALASKA AND HAWAII

In addition to the constitutional conventions that have been held to revise constitutions, Alaska and Hawaii, in anticipation of statehood, drew up constitutions by means of conventions. The documents that resulted are significant in that they indicate the trends in modernization of constitutions. It must be pointed out, however, that the situation was somewhat different in that these conventions were free to start from the beginning and were not faced with quite the same pressures that are in existence at a convention which attempts revision of a constitution presently in effect.

A. Alaska

In anticipation of statehood, Alaska held a constitutional convention in 1955. At the time of its adoption the constitution that emerged was hailed as coming closer to carrying out the classic pattern of "separation of powers" as represented in the Federal Constitution than any other state in the Union. This separation of powers is achieved in the Alaska Constitution through 3 strong departments.

(1) The Executive - The Governor and the Secretary of State are the only 2 elected executives and they are tied together on the ballot in the same way as candidates for President and Vice President. The number of major departments is limited to 20, with virtually the entire responsibility for administration of the state government in the hands of the Governor. Another gubernatorial power lies in the system for reapportioning the new state's legislative districts. Each 10 years the Governor must provide for reapportionment on the advice of a board representing the state's 4 major districts. These changes do not require the approval of the Legislature, but they are subject to review by the courts.

(2) The Legislature - The constitution placed no serious obstacles in the paths of legislative enactments.

(3) The Judiciary - The judiciary is organized under the Supreme Court. Three years after appointment the judges of the Superior and Supreme Courts appear on a non-partisan ballot, subject to approval or disapproval by the voters.²⁷

B. Hawaii

The Hawaii Constitution, drafted in 1950 by a convention of 63 delegates, incorporates many of the features advocated by constitutional reformers. These provisions include:

(1) A short ballot - only the Governor and the Lieutenant Governor are elected;

(2) A 4-year term for Governor and Lieutenant Governor;

(3) Annual session of the Legislature;

(4) A unified court system, with the chief justice as the administrative head and an administrative director serving him. Judges are appointed by the Governor, limited only to approval by the Senate and by fixed terms;

(5) Legislative apportionment is to be handled by the Governor, with the Supreme Court empowered to correct and compel him. The formula used is to be the same as that used for the United States House of Representatives; and

(6) Home rule for cities and counties.²⁸

III. REVISION COMMISSIONS IN THE 1960'S.

The commission is a more recent development in constitutional revision than the convention. The use of commissions has increased with a growing awareness of the complexity of state government and the need for study and recommendations by persons qualified to make professional judgments. The 1960's have seen commissions in operation in 11 states, including Wisconsin. The recommendations of the Rhode Island commission have led to the present constitutional convention in that state. Wisconsin's commission is covered in LRB-65-2. The work of the commissions in the other 9 states is briefly summarized in the following pages.²⁹

A. Florida - Florida's Constitution was ratified in 1885 and has been amended more than 120 times. It contains some 35,000 words. A 37-member constitutional review committee was originally established in 1955 by joint action of the Governor and Lieutenant Governor.

The revision effort which made the most headway was the rewriting of many articles by the 1957 Legislature for submission to the people in the 1958 election. The Florida Supreme Court, however, rejected the revision on the basis that the articles were drawn together with a provision requiring the acceptance or rejection of the entire package. The court said that any revision of the constitution would have to be on an article by article basis.

The 1958 Legislature set up a permanent revision commission consisting of 5 members appointed by the Governor.

Efforts continue to get an entirely new constitution. In 1963 the Legislature approved a proposed amendment which would permit the Legislature to present wholesale revision of the constitution to the people on the basis whereby popular approval of any one of a series of amendments would be tied to approval of all. This amendment was not approved by the electorate however.

B. Kansas - The Legislature in 1957 established a commission consisting of 21 members, to be appointed by the Governor. A progress report was submitted in 1959. The recommendations included home rule for cities, short ballot, joint election of Governor and Lieutenant Governor, 4-year terms for elective officials, reapportionment, taxation and finance. Amendments following the commission's recommendations concerning home rule for cities and continuity of government in case of attack were approved by the Legislature and ratified by the electorate at the November 1960 election.

In 1961 the Governor appointed a Commission on Revision of the Constitution. The report of the second commission, published at the end of 1962, made 5 specific recommendations: (1) revision of the executive article, including adoption of the short ballot principle - reducing the number of state-wide elective offices from 9 to 3 and increasing the length of terms from 2 to 4 years; (2) revision of the legislative article, including a provision for automatic apportionment; (3) revision of the article on taxation and finance; (4) changing the amendment procedure slightly; and (5) adding a provision to facilitate co-operative relationships among the several units and levels of state government.

To date, the only amendments that have been approved by the electorate were (1) abolition of a 2-term constitutional limitation on the office of sheriff; and (2) removal of a \$200 personal property tax exemption from the constitution, providing instead that "all household goods and personal effects not used for the production of income shall be exempted from taxation."

C. Kentucky - The last convention in Kentucky, held in 1891, was the result of continuous effort over a period of more than 20 years on the part of those who saw the need for such a convention. Three times in the past 30 years the people of Kentucky have voted against calling a constitutional convention. A referendum in 1960 had called for a limited convention that would have been restricted to only 12 subjects. There was a spirited nonpartisan campaign. Both parties endorsed the convention call, and both nonpartisan and partisan workers were actively promoting the convention. Although the referendum was defeated, each election has shown an increasing number of voters sufficiently interested in the question to cast ballots on it and a growing percentage of favorable votes.

In addition to the attempts at calling a convention, Kentucky has also attempted revision by means of commissions. In 1950 the General Assembly created a constitutional review commission on a permanent basis to carry forward the work begun by a temporary group that had been appointed by the Governor in 1949. The commission reported in 1952, 1954 and 1956. Each report recommended 2 amendments to the constitution and explained why these were considered necessary. Of the proposed amendments, none was adopted.

Then, in 1956, the General Assembly abolished the commission and transferred its functions to the Legislative Research Commission, whose duties, in this respect, were to correspond to those of the Constitutional Review Commission. However, the commission did not report on the constitution in either 1958 or 1960. In 1960 the present Constitutional Revision Committee was created as an agency of the Legislative Research Commission.

As recommended by the Governor, the Legislature gave first passage in the 1962 session to a proposal to call a convention in 1965. This convention would have been limited to 8 areas of revision: the judiciary, compensation of public officers and employes, succession to the governorship, the Railroad Commission, the Legislature, amendment of the constitution, incompatibility of offices, and industrial promotion and development. The proposal did not pass the 1964 session.

The 1962 session also increased the commission from 7 to 38 - one for each Senate district - and granted \$40,000 per year for its work.

D. Maine - Governor John H. Reed, pursuant to action by the 1961 Legislature, appointed a 10-member Constitutional Commission to study the Maine Constitution in detail and submit recommendations to the Legislature. The Legislature's action was taken as an alternative to a proposal of the Governor for a general constitutional convention to consider amendments or general revision. Included in the commission were legislators and former legislators, the State Historian and other citizens. The commission released 4 reports in 1962-63.

Among the substantive changes proposed were a new due process clause, a guarantee of equality of treatment, and reduction of the voting age from 21 to 20. Also under the proposals, "paupers" would no longer be denied the right to vote, and residence requirements for voting would be reduced. Justices of the peace would be eliminated from the constitution as elective officers but appointed by the Governor under statutory authorization. The item veto would be authorized. Probate judges would be appointed by the Governor rather than elected. Provisions for determining the election of the Governor would be clarified, as would several provisions relating to his powers. As of this time, none of these recommendations has become law.

E. Massachusetts - The movement to revise the constitution has been going on for some years. Numerous town meetings have gone on record in favor of holding a constitutional convention. In September 1962 the Massachusetts Council for Constitutional Reform, a state-wide, citizens' group was formed for the purpose of improving the state constitution both by amendment and by general revision by means of a convention. Its immediate objective was to seek legislative approval for amendments providing for a 4-year term for the Governor, strengthening the executive branch, and tax reform. If these objectives are not realized members have said that they would circulate petitions for a convention.

In 1962 the General Court provided for a commission to make studies and prepare drafts of proposed amendments. The commission, composed of 5 Senators, 5 Representatives and 8 persons appointed by the Governor, will be continued until March 1967.

F. New York - In 1957 a temporary commission of 15 was established by joint action of the Governor and Legislature in preparation for a future constitutional convention. After the defeat in 1958 of a referendum to hold a convention, the Legislature established a commission in 1959 for the purpose of revision and simplification of the constitution.

Under the terms of the New York Constitution the defeat of the convention proposal in 1958 means that another similar referendum cannot be held until 1978. The 1959 commission was established as an attempt to modernize the constitution, which had expanded from 3,000 words in 1777 to over 45,000 words in 1959.

In 1962, 2 of the commission's recommendations were ratified by the voters. These amendments had the effect of shortening the document by some 4,000 words. The commission recognizes that many difficult problems remain to be solved.

G. Pennsylvania - Pennsylvania has made periodic attempts to revise its constitution for more than half a century. The most recent attempt was in 1963. In that year a referendum for a convention was given strong support by a nonpartisan state-wide citizens' movement that published and distributed literature, held public meetings and advertised on radio and television. The convention was endorsed by the present Governor and at least 4 former Governors - both Democrats and Republicans. Nonetheless the referendum was defeated in November 1963.

In 1957 a Commission on Constitutional Revision had been established. Its report in 1959 rejected the idea of a convention but proposed a series of changes to be accomplished by piecemeal amendment. These proposals - some 204 in number - were considered in the legislative sessions of 1959 and 1961. A few made some progress, but only one - to permit the Governor to succeed himself - found its way to a place on the ballot. This was defeated at the polls in November 1961.

In 1962 proposals prepared by the Pennsylvania Bar Association were introduced into the General Assembly in the form of 14 draft amendments. This was done on the theory that it would be easier to secure their adoption than to obtain a convention. They were not reported out of the House committee to which they were referred. But in the event of failure of the 1963 referendum, they were expected to be introduced in the next session of the Legislature.

Officials in Harrisburg cite the financial restrictions as the greatest constitutional handicap. The debt limitation is \$1,000,000. The constitution also prohibits the state from lending to local governments. In turn, these governments cannot go into debt beyond 7 per cent of their assessed value of taxable property. The state's debt limit has caused the creation of several authorities, including the General State Authority, which now have a debt of about \$3.1 billion combined. Local governments are estimated to have created 1,500 local authorities to bypass their debt limitations.

H. Texas - Although the Texas Constitution contains no specific provision for calling a constitutional convention, repeated efforts have been made since 1917 to obtain one. As a result of repeated amendment, the present document is now more than 3 times the length of the new Alaska Constitution or of the Model State Constitution. Of the constitution's 17 articles, only 6 have gone unchanged.

In 1959 an appropriation of \$50,000 was made to the Legislative Council to enable it to do the staff work for a study of the constitution and of needed changes. An advisory committee created to supervise and direct the study presented a preliminary report in January 1961 and a final report in March. The committee recommendations called for only non-substantive changes, eliminating repetition, clarifying ambiguities and providing for a more logical arrangement of contents. This proposal was defeated in the Legislature. As to

substantive changes, the committee disagreed with a Legislative Council's report that had indicated no need for such changes and recommended a study of all available materials on the constitution. This study would be undertaken by a constitutional commission, which would be empowered to make specific recommendations concerning constitutional revision. This recommendation also was defeated in the 1961 session.

It is felt that a new or drastically revised constitution appears to be far in the future for Texas.

I. West Virginia - In 1957 a 48-member commission was established by the Legislature. The commission made a decision in favor of amending the present constitution rather than seeking general revision by means of a convention.

Only 3 of the commission's recommendations have been thus far submitted to a popular vote. Two of these (one adding a preamble to the constitution and one expressly authorizing amendments to embrace the provisions of more than one article) were approved in 1960. The third, which sought to make a complete revision of the executive article, was rejected by a vote of more than 2 to 1 in November 1962. At its final plenary session in November 1962, the commission adjourned sine die, subject only to further instructions from the Governor or the Legislature. Its final report was filed in March 1963.

FOOTNOTES

- ¹ Tess Loeb, "Constitution by Convention," National Municipal Review (January 1944), p. 14.
- ² Charlton F. Chute, "The New Constitution of Missouri," State Government (July 1945).
- ³ Loeb, op. cit., p. 15.
- ⁴ Charlton F. Chute, "How to Get a New Constitution," National Municipal Review (March 1947), pp. 124-129.
- ⁵ Peter Wyden, "New Missouri Constitution Helps Sweep Away Cobwebs in Government," Christian Science Monitor (October 17, 1950).
- ⁶ Willard Shelton, "Missouri Modernizes," Chicago Sun (February 19-22, 1945).
- ⁷ William L. Bradshaw, "Missouri's Proposed New Constitution," American Political Science Review (February 1945), pp. 61-65.
- ⁸ Martin Faust, "Constitutional Convention in Missouri," Business and Government Review (March - April, 1962), pp. 15-24.
- ⁹ "25 Study Georgia's Basic Law," National Municipal Review (January 1944), p. 12.
- ¹⁰ "Georgia Voters Adopt a New Constitution," National Municipal Review (September 1945).
- ¹¹ Albert B. Saye, "Georgia's Proposed New Constitution," American Political Science Review (June 1945), pp. 459-463.
- ¹² "Georgia Appoints Revision Commission," National Civic Review (May 1963), pp. 262-263.
- ¹³ State Government (Winter, 1965), p. 53.
- ¹⁴ Bennet Rich, "A New Constitution for New Jersey," American Political Science Review (December 1947), p. 1126.

Footnotes -- Continued

- ¹⁵ Ibid, p. 1148.
- ¹⁶ Rich, op. cit., pp. 1126-1130.
- ¹⁷ Roy Elmendorf, "New Constitution Adopted in Jersey," New York Times (November 5, 1947).
- ¹⁸ Albert L. Sturm, "Making a Constitution," National Civic Review (January 1964), pp. 14-26.
- ¹⁹ Albert L. Sturm, Constitution-Making in Michigan, 1961-1962, Institute of Public Administration, The University of Michigan (1963), pp. 78-102.
- ²⁰ George Romney, "Michigan's New Constitution," State Government (Winter, 1964), pp. 2-7.
- ²¹ Sturm, National Civic Review, op. cit., pp. 24-26.
- ²² "State Government News," Council of State Government (July 1964), p. 3.
- ²³ W. Brooke Graves, "State Constitutions and Constitutional Revision, 1961-63," The Book of the States 1964-65, The Council of State Governments (1964), p. 8.
- ²⁴ "A New Constitution for Oregon," Oregon State Bar's Committee on Constitutional Revision, Portland (March 1963).
- ²⁵ "State Government News," Council of State Government (January 1965).
- ²⁶ Ibid.
- ²⁷ William Egan, "The Constitution of the New State of Alaska," State Government (Autumn, 1958), p. 212.
- ²⁸ Proceedings of the Constitutional Convention of Hawaii, Attorney General's Office and the Public Archives (Honolulu 1960), p. x.
- ²⁹ See Book of the States, 1960-61; 1962-63; and 1964-65. Also State Constitutional Revision in Nebraska and Other States, Nebraska Citizens Council Inc., 1961.

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