

342.341  
w7a

RETURN TO  
LEGISLATIVE  
REFERENCE LIBRARY  
MADISON 2, WISCONSIN

WISCONSIN - LEGISLATIVE REFERENCE LIBRARY

The constitutional convention in Wisconsin

1960

Brief no.85

## BRIEF NO. 85 THE CONSTITUTIONAL CONVENTION IN WISCONSIN

Prepared by the Wisconsin Legislative Reference Library, May 1960

## EVENTS LEADING TO THE FIRST CONSTITUTIONAL CONVENTION

Beginning in 1839, 3 years after Wisconsin became a territory, efforts were made to persuade the territorial legislature to determine if the people wished to establish a state. There was considerable reluctance to seek statehood, partly because the federal government paid a substantial part of the costs of territorial government. Finally in April 1846, a successful referendum was held and the people voted 12,334 to 2,487 to become a state. Congress, meanwhile, enacted enabling legislation which was signed by President Polk on August 6, 1846.

The same act approved January 31, 1846, which provided for the referendum, also set forth that the Governor should allot to a convention to form a State Constitution one delegate from each county for every 1,300 inhabitants or fraction thereof, with each county having at least one and no county having 2, unless it had over 1,950 people. These delegates were elected at the next annual election. They were to meet in Madison on the 1st Monday in October, 1846 at noon and elect one of their number as president. They also could appoint one or more secretaries, a doorkeeper, messenger, fireman and printer. The pay was \$2 a day plus 10¢ a mile to and from the convention. The act also authorized the convention to submit the Constitution to a vote of the people and to provide how the vote should be taken.

The convention elected 125 delegates but only 95 attended the first meeting of the group which met from October until December 16, a total of 10 weeks and 2 days. One delegate never did show up. Their Constitution provided within itself that the document be submitted to a vote of the people in April 1847 when it was defeated 14,119 to 20,231. It is unnecessary here to discuss the reasons for the rejection of the document.

## THE SECOND CONSTITUTIONAL CONVENTION

Because Wisconsin wished to participate in the 1848 presidential campaign, proceedings for a new convention were rushed. On September 27, 1847 Governor Dodge called a special session of the legislature to arrange for a new convention. This special session met from October 18 to 27. The act provided for a convention of 69 to be elected November 29 and to begin work December 15. Few of the participants in the first convention were elected to the second.

The convention ended February 2 and the referendum by the people was held March 13, 1848. The vote was 16,417 for and 6,174 against the new Constitution. On April 8, 1848 the Governor issued a proclamation setting forth the result and on May 29, 1848, Congress formally admitted Wisconsin to the Union.

Provision for the referendum by the people was contained in Article XIV, section 9 of the new Constitution which set forth when the election would be held, and who could vote.

## THE WISCONSIN CONSTITUTION TODAY

Wisconsin's Constitution was the first and only Constitution ever approved by the people of this state. Only 7 states, the New England states and Delaware, have older Constitutions. Thus our

Constitution is the oldest west of the Atlantic coastal states.

In terms of length, the Wisconsin Constitution is one of the shorter documents; 8 states, Connecticut, Iowa, Kansas, Maine, Maryland, Rhode Island, Tennessee and Vermont, have shorter documents. The shortest Constitution is that of Rhode Island with 6,650 words; the longest that of Louisiana with 201,423 words. Wisconsin's Constitution now has approximately 10,720 words.

As is pointed out elsewhere, 920 attempts to amend the Constitution were initiated between 1849 and 1957. Of these, 63 were finally approved by the people, but 2 were declared unconstitutional so the net changes are 61. An additional amendment was approved by the voters in April, 1960, and another will be submitted to the voters in November, 1960. Although the percentage of success is very low it must be remembered that there is a great deal of duplication in efforts to make changes. The last time that an effort was made to eliminate the restriction on sheriff's term of office, for example, in 1956 represented the 4th change referred to the people since 1922 and the 23rd time a proposal for change had been initiated since 1877.

#### THE CONSTITUTIONAL PROCEDURES FOR CHANGING THE CONSTITUTION

Article XII of the 1848 Constitution sets forth 2 ways for changing the Constitution. The first manner is by the adoption of a change by 2 successive legislatures and approval by the people. This is the procedure which has been used exclusively to this point. At one time the final step was accomplished by act, but because it is believed that the Governor is not involved in this determination, it has been done exclusively by joint resolution in recent years. It is estimated that 920 amendments to the Constitution were proposed to the Wisconsin State Constitution from 1849 through the 1957 legislative session. Ninety-six of them have been submitted to the people and 64 have been approved by the latter although 2 were subsequently declared unconstitutional.

Section 2 of Article XII provides an alternative method of changing the Constitution although it has never been used. This is the convention method. It has a series of steps.

1. Legislature passes a joint resolution referring to the people the question of whether a convention shall be called.
2. The voters decide at the referendum if a convention should be called.
3. If they vote "yes", the legislature by joint resolution provides for the calling of such convention.
4. If the legislature provides for the election of delegates to a convention, such an election is held. It is not clear whether the legislature could sit as the convention itself.
5. The convention meets, deliberates, prepares its proposal and within the proposal provides when and how the proposal shall be ratified by the people.
6. The voters vote on the proposal.

7. The proposal presumably goes into effect when approved by the electors. It is assumed that the Board of Canvassers must canvass the vote, and whether a constitutional revision or even an amendment goes into effect before such canvass has never been determined. If the vote was very close and the Board of Canvassers reversed the decision, it might be necessary to rescind some actions taken on the basis of the apparent vote. This may be an academic issue, but it could happen.

#### PROPOSALS TO USE THE CONVENTION METHOD INITIATED SINCE 1907

We do not know how many times a constitutional convention has been proposed since 1848. It has, however, been initiated many times in recent years. Following is a list of the proposals introduced since 1907 with notes regarding each effort.

- 1907 AJR 21 Introduced by Mr. T. H. Miller (Rep.) La Crosse Co. Provided for the submission of this question to the electors at the next election for members of the legislature "Shall a constitutional convention be held?"  
Adopted by the assembly 60 to 32;  
nonconcurrent in by the senate 15 to 13.
- AJR 26 Introduced by Mr. Edward J. Berner (Soc. Dem.) Milwaukee Co. Provided for the submission of the following question to the next general election for senators and assemblymen "Shall a constitutional convention be called for the purpose of revising the Constitution of the State of Wisconsin?"  
Indefinitely postponed. No roll call.
- 1909 AJR 19 Introduced by Mr. Fred Brockhausen (Soc. Dem.) Milwaukee Co. Question exactly like AJR 26 of 1907.  
Indefinitely postponed. No roll call.
- AJR 45 Introduced by Mr. Fred Zimmerman (Rep.) Milwaukee Co. Question exactly like AJR 21 of 1907.  
Indefinitely postponed, 57 to 27.
- 1911 AJR 20 Introduced by Mr. Frank Weber (Soc. Dem.) Milwaukee Co. Question same as AJR 26 Of 1907.  
Engrossment and 3rd reading refused 40 to 48.
- 1913 AJR 41 Introduced by Mr. C. D. Rosa (Rep.) Rock Co. Pointed out that 28 joint resolutions amending the Constitution were introduced in 1909 and 53 in 1911 and proposed a convention in these words:

"Resolved, That the question of a 'convention' or 'no convention' be submitted to the electors of this state at the next general election to be held in November, 1914; that said questions shall be taken by ballot and on ballots separate from the general ballot, and shall be deposited in a separate ballot box to be provided at the respective voting precincts for that purpose; that such ballot shall contain the words 'for convention' and 'against convention' and that the returns and canvass of votes cast on said question shall be made in all respects as the returns and canvass of votes for presidential electors; that it shall be the duty of the state canvassers to make proclamation of the result of such election, and that if

a majority of all the votes cast on that subject at such election shall be in favor of a constitutional convention, it shall be the duty of the next legislature to provide for the calling of said convention, and be it further

Resolved, That it shall be the duty of the secretary of state to give notice to the electors of the state of the passage of these resolutions, by incorporating them in the notice to be given by him for a general election in November, 1914."

Adoption refused 35 to 54.

- 1915 AJR 21 Introduced by Mr. F. L. McGowan (Rep.) Adams-Marquette Co. Proposed that the question "Shall a constitutional convention be called for the purpose of revising or changing the Constitution of the State of Wisconsin" be submitted to the electors of this state at the next general election for members of the legislature, held in November, 1916". The resolution further provided that the ballots be in the form and marked as provided in subsection 8 of section 38 of the statutes, the votes canvassed and returned as in such election and results determined and published as provided by law. It also provided that the Secretary of State give notice of the election.  
Indefinitely postponed. No roll call.
- SJR 19 Introduced by Senator G. B. Skogmo (Rep.) 10th Dist.  
Identical with AJR 21 of same year.  
Indefinitely postponed. No roll call.
- 1917 AJR 23 Introduced by Mr. F. B. Metcalfe (Soc. Dem.) Milwaukee Co. Identical with AJR 21 of 1915 but updated.  
Indefinitely postponed. No roll call.
- SJR 18 Introduced by Senator G. B. Skogmo (Rep.) 10th Dist.  
Identical with his 1915 proposal but updated.  
Indefinitely postponed 20 to 12.
- 1919 AJR 14 Introduced by Mr. E. W. Knoppe (Soc.) Milwaukee Co.  
Same as AJR 23 of 1917.  
Indefinitely postponed 57 to 33.
- 1921 AJR 15 Introduced by Mr. Julius Kiesner (Soc.) Milwaukee Co.  
Same as AJR 21 of 1915 but updated.  
Indefinitely postponed, 59 to 40.
- 1923 SJR 16 Introduced by Senator J. J. Hirsch (Soc.) 6th Dist.  
Same as AJR 21 of 1915 but updated.  
Adoption refused. No roll call vote.
- AJR 7 Introduced by Mr. Julius Kiesner (Soc.) Milwaukee Co.  
Same as AJR 21 of 1915 but updated.  
Adopted by assembly without roll call vote;  
nonconcurrent in by senate 17 to 11.
- 1933 SJR 33 Introduced by Senator Polakowski (Soc.) Milwaukee Co.  
Identical with AJR 39 of same year.  
Rejected 16 to 13 on reconsideration after having been adopted 17 to 15.

1933 (Cont.)

AJR 39 Introduced by Mr. Edward H. Kiefer (Soc. Dem.) Milwaukee Co. Provided "...that this legislature deems it necessary to call a convention to revise the constitution of this state and that it herewith recommends to the electors of said state to vote for a convention. Be it further

Resolved, That the question of calling a constitutional convention be submitted to the voters at the next general election to be held in November, 1934."

Rejected 45 to 39.

1935 AJR 37 Introduced by Mr. Edward H. Kiefer (Soc. Dem.) Milwaukee Co. Same as AJR 39 of 1933 but updated.

Adopted by assembly without roll call vote; nonconcurrent in by senate 17 to 9.

1947 AJR 82 Introduced by Mr. F. S. Pfennig (Rep.) Kenosha Co. Provided "...that the question of whether the legislature shall at its regular session in 1949 provide for the calling of a constitutional convention to revise or change the Wisconsin Constitution be submitted to the electors at the general election to be held in November, 1948 and that on the referendum ballot there shall be printed the following question:

'Shall the legislature at its regular session in 1949 provide for the calling of a constitutional convention to revise or change the Wisconsin Constitution?

For:  Against:

Adopted by assembly 48 to 25; refused to reconsider 29 to 43; nonconcurrent in by senate without roll call.

1949 AJR 6 Introduced by Mr. Richard J. Steffens (Rep.) Winnebago Co. Same as AJR 82 of 1947.

Rejected by assembly 90 to 5.

PROPOSALS FOR STUDIES OF THE NEED FOR A CONSTITUTIONAL CONVENTION  
Since 1949 there have been no proposals to call a constitutional convention but 3 proposals to study the need for a constitutional convention have been introduced.

1949 Bill No. 222, A. By Mr. Gade (Dem.) Racine Co. and Mr. Huber (Dem.) Milwaukee Co.

This proposal would have created a committee of 9 appointed by the Governor and including representation of labor, business, agriculture, the general public and at least one from the faculty of the university of Wisconsin law school. An appropriation of \$5,000 was made for the study but members of the committee were to receive expenses only. It was charged with studying "the need for revision of the State Constitution in view of present day requirements"

Indefinitely postponed 68 to 24.

1951 Bill No. 246, A. Introduced by Mr. Huber (Dem.) Milwaukee Co., Mr. Lourigan (Dem.) Kenosha Co., Mr. Molinaro (Dem.) Kenosha Co. and Mr. Proxmire (Dem.) Dane Co.

1951 Bill No. 246, A. (Cont.)

This proposal created a nonpartisan interim commission of 15 composed as follows:

1. One from the executive branch of state government selected by the Governor.
2. One member of the supreme court selected by the chief justice.
3. 4 senators, 2 from each party, selected by the committee on committees.
4. 4 assemblymen, 2 from each party, selected by the speaker.
5. One citizen member each from the fields of law, education, industry, agriculture and labor selected by the legislative members of the commission.

It was to receive appropriations of \$5,000 on July 1, 1951 and 1952. Its charge was to "study and consider the State Constitution in relation to a modern and future Wisconsin society and shall recommend in a report to the next regular session of the legislature revisions of the Constitution deemed to be necessary."

Indefinitely postponed due to sine die adjournment without roll call vote.

1957 Bill No. 396, S. Introduced by Senator Wilkie (Dem.) Dane Co. and Senator Moser (Dem.) Milwaukee Co.

This proposal created a nonpartisan commission of 17 members, the composition of which was the same as the 1951 commission except that it had 2 more citizen members and no law school representation was required.

Its charge was the same as in 1951 and it was to receive an appropriation of \$10,000.

Indefinitely postponed without a roll call.

Bill 495, A. Introduced by Mr. C. J. Schmidt (Dem.) Milwaukee Co., Mr. Hardie (Dem.) Jackson and Trempealeau Cos. and Mr. Molinaro (Dem.) Kenosha Co.

This proposal was the same as Bill No. 396, S.

Indefinitely postponed 59 to 30.

1959 Bill No. 372, S. Introduced by Senator Wilkie (Dem.) Dane Co., Senator Moser (Dem.) Milwaukee Co., Senator Zaborski (Dem.) Milwaukee Co., Senator Stalbaum (Dem.) Racine Co. and Senator Maier (Dem.) Milwaukee Co.

This proposal was essentially the same as the 1957 proposal except that the 7 citizen members were to be appointed by the Governor and the appropriation was increased to \$10,000 for 1959 and \$10,000 for 1960.

Indefinitely postponed without a roll call.

SJR 94, S. Introduced by the Joint Committee on Finance. Near the end of the first segment of the trifurcated session of 1959 all of the studies which had been proposed to that time were screened and those considered desirable were integrated into this joint resolution. Paragraph (6) of the proposal provided that the Judiciary Committee of the Legislative Council should study the subject matter of Bill 372, S. which related to a commission to determine the need for a constitutional convention.

1959 SJR 94, S. (Cont.)

Adopted by the senate without a roll call vote;  
concurring in by the assembly 83 to 0.

#### THE GOVERNOR'S STUDY COMMISSION OF 1960

On April 26, 1960 the Governor appointed a 15-member temporary commission to make a recommendation as to the need and desirability of revising the Constitution. In his press release the Governor suggested a series of problems for the commission to consider in addition to the broad recommendation on the need for revision.

These questions include:

1. Are there provisions which should be statutory instead of constitutional?
2. Are there provisions which are archaic and could be eliminated?
3. Are there ways in which existing provisions could be simplified and clarified?
4. Is there an advantage to a complete overhaul as compared to piecemeal amendment?
5. Is the Constitution a clear-cut embodiment of public policies expressing the enduring purposes of the state?
6. Is there a way of revising the Constitution apart from holding a convention, which might be preferable?

Justice Thomas E. Fairchild and Attorney G. Burgess Ela were made cochairmen and Professor David Fellman of the university political science faculty was made secretary. The commission is composed of one Supreme Court Justice, the Attorney General, a law school dean, 2 law school faculty members, 2 political scientists, 7 practicing attorneys and 1 representative of the League of Women Voters.

#### PROBLEMS OF REVISION OF THE CONSTITUTION BY CONVENTION

1. Once the convention has been called no machinery exists for determining how their results are incorporated into the Constitution. There is some feeling that agreement by the convention constitutes acceptance, but the weight of authority seems to be that the founding fathers assumed that the process used to get agreement on the 1848 Constitution would be followed, namely that the electors would vote on it.

2. There is a lack of information on the composition of the convention and its methods of procedure. This was debated in the convention of 1846, and the decision was made to omit the detail as to how many delegates were to be selected, and how they were to proceed.

3. There is an erroneous assumption in the stated procedure that the delegates to the convention could come to the convention "cold" and through their own efforts evolve an acceptable revision. The convention must be adequately staffed and much groundwork must be done. Prior to the adoption of the Hawaiian Constitution a voluminous study was made of the trends in constitutions.

4. There is a fundamental problem of the objectives of a Constitution pointed up by the Governor in creating the temporary commission on the need for constitutional reform in April 1960. Granting that certain provisions do not adapt themselves to modern operations,

it is important to make certain that changes made to fit present conditions are not in turn restrictive on future operations.

5. What is the official Constitution? In 1957 a check of the Constitution revealed that a whole series of differences in punctuation, and in some cases in words, have crept into the Constitution. The document is currently published in the biennial statutes and Blue Book, but there is nothing to indicate what is the official version of the document.

ARGUMENTS FOR AND AGAINST A CONSTITUTIONAL CONVENTION

For

Against

- |  |   |
|--|---|
| <p>1. In the 112 years that the Constitution has been in effect life has changed so much that there is need to modernize the document.</p> <p>2. The tremendous number of amendments proposed indicates that the document needs overhauling.</p> <p>3. The amending process is inadequate to make substantial change.</p> <p>4. Piecemeal amendment supported by special interest groups tends to incorporate detail into the Constitution rather than basic changes.</p> <p>5. An over-all review of the Constitution at periodic intervals is valuable even though no changes are proposed.</p> <p>6. The partisan approach which results from piecemeal amendment is to be abhorred.</p> <p>7. Many states have had at least one over-all review of their Constitution. New Hampshire has had 14, Georgia 12, Vermont 11, Louisiana 10, New York 8 and Illinois 5.</p> <p>8. In some states the question of calling a periodic convention is mandatory. They include Iowa every 10 years, Maryland every 20 years, Michigan every</p> | <p>1. The Constitution having survived 112 years is therefore obviously adequate.</p> <p>2. The use of the amending process reveals that an orderly process of change is available and has been used.</p> <p>3. The restraints in the amending process result in more deliberate action.</p> <p>4. Piecemeal amendment permits the people to vote on specific items which would be lost in a package.</p> <p>5. A constitutional convention is a costly process which may run to half a million dollars. The Constitution should stand the test of time and not require review.</p> <p>6. Partisanship is one of the few ways to develop concerted action for or against a proposition. The constitutional conventions of 1846 and 1847 were distinctly partisan.</p> <p>7. Many states are still using their original Constitutions. Arizona, Colorado, Idaho, Maine, Minnesota, Montana and other western states are among them.</p> <p>8. Periodic review of the question of calling a convention is unnecessary and costly. Most states permit the legislature by simple or 2/3</p> |
|--|---|

16 years, Missouri every 20 years, New Hampshire every 7 years, New York every 20 years, Ohio every 20 years, Oklahoma every 20 years and Hawaii every 10 years. In New Hampshire it is the only way to amend the Constitution.

majority to determine if the question of calling a convention is proper.

9. A constitutional convention would provide a group of people with a single purpose while initiations of amendments through the legislature constitute only a relatively small part of the legislature's work.
  10. To revise the Constitution adequately by amendment would take too long.
  11. The requirement that each proposition be submitted to the voters as a separate item under the amending process would require that the people pass on literally scores of specific questions before a comprehensive revision could be completed.
  12. The submission of specific questions to the voters by piecemeal amendment might result in some parts being approved and others rejected so that the end product might not work.
  13. If a Constitution is not kept up to date, it will be circumvented to accomplish the needed ends.
9. The proposals of nonlegislative theorists may be impractical.
  10. Time is not important when a century-old document is under consideration.
  11. The people should have a chance to pass on each item rather than being required to accept the bad with the good in a package deal.
  12. If the people are not convinced that all parts of a whole are necessary for an effective result they should be privileged to reject part.
  13. Even the most modern Constitution is susceptible to judicial interpretation to determine its application in terms of present-day activities.