

Ballot Proposal #1 of 2010



CONSTITUTIONAL CONVENTION

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Ballot Proposal 10-01
November 2010 General Election
Placed on the ballot by Constitutional requirement

Complete to 10-14-10

THE CONTENT OF THE BALLOT PROPOSAL:

The following is the official language as it will appear on the ballot.

A PROPOSAL TO CONVENE A CONSTITUTIONAL CONVENTION FOR THE PURPOSE OF DRAFTING A GENERAL REVISION OF THE STATE CONSTITUTION

- Shall a convention of elected delegates be convened in 2011 to draft a general revision of the State Constitution for presentation to the state's voters for their approval or rejection?

Yes ☐

No ☐

FISCAL IMPACT: Proposal 1 on the November 2, 2010, ballot will offer Michigan voters the opportunity to decide whether or not a constitutional convention should be held. If voters approved a convention, it is estimated that it could cost roughly \$45.0 million.

Adjusting the 1962 convention costs for inflation, the estimated cost of conducting the convention alone is estimated to be in the range of \$13.5 to \$14.5 million. This would cover the costs of delegate salaries, staff salaries, rent, printing, etc. However, it should be noted that simply adjusting for inflation does not take into account other factors that may have an affect on the actual cost of a convention. For example, technological innovations could create greater efficiencies that could ultimately reduce the present day cost of a constitutional convention. On the other hand, the 1962 convention lasted just over seven months; some estimates note that a constitutional convention held today could last well over a year, leading to significant increases in the cost of the convention.

In addition, the state of Michigan would need to hold three separate statewide elections:

- A statewide primary to select delegate candidates.
- A statewide general election to elect the delegates to the convention.

- o A statewide election to ratify the document produced by the delegation.

The combined cost of the three elections is estimated to cost more than \$30.0 million. The Department of State–Bureau of Elections has estimated that a statewide election costs approximately \$2,000 per voting precinct. With 5,200 precincts in the state, a single statewide election would cost approximately \$10.4 million. Whether it would be possible to hold one or more of these elections concurrently with another scheduled election, thereby reducing costs, is yet to be determined.

BACKGROUND INFORMATION:

Article XII, Section 3, of the State Constitution of 1963 says that "the question of a general revision of the constitution" must be submitted to the voters in 1978 and every 16th year after that (1994, 2010, 2026, etc.). The voters rejected the calling of a constitutional convention by large margins in 1978 and 1994.

If a majority of voters decide in favor of a convention, delegates would have to be selected at an election not later than six months after the proposal was certified. The voters in each of the 110 House of Representatives districts would elect a delegate and the voters in each of the 38 State Senate districts would elect a delegate, for a total of 148 delegates. The election is to be a partisan election. The elected delegates would then convene in Lansing ("the seat of government") on the first Tuesday in October after the election, or earlier if provided by law. (This would be Tuesday, October 4, 2011.) Delegates would be compensated as provided by law.

Any proposed new constitution or amendment adopted by the constitutional convention would need the approval of a majority of all delegates elected to and serving in the convention. The proposed constitution or amendments would then go before the voters 90 days or more after the adjournment of the convention.

Currently, there is no statutory language in place to implement this section of the constitution. If the 2010 ballot proposal passes, the legislature would have to enact laws for the election of delegates and to provide funding for the convention, among other things.

What would a convention do? The Citizens Research Council in a series of papers about revising the state constitution has said: "A state constitutional convention elected by the people is free to fashion any kind of document it pleases, subject only to restraints imposed by the United States Constitution as the supreme law of the land and subject, of course, to having its work ratified by the state's electors. While Michigan's history with constitutional revision has tended to incrementally build on existing constitutions, nothing would bind a 2011 constitutional convention to such an approach." (February 2010 research paper)

This means a constitutional convention could produce a vastly new document, or could make just a few substantive amendments, or could simply eliminate obsolete provisions and provisions that have been found to violate the U.S. Constitution. Or a convention could decide to make no changes at all.

What issues might be addressed? Commentators have noted that a constitutional convention could address a large number of controversial and complicated issues. These could include decisions about:

- o The length of term limits for legislators (if any); the length of legislative sessions; a part-time versus a full-time legislature; the number of legislators and whether to have a unicameral or bicameral legislature; and the method of determining legislative salaries.
- o The method of apportioning legislative and congressional districts.
- o The appointment versus the election of judges, of university trustees, and of the attorney general and secretary of state.
- o The direct appointment of all state department heads by the governor versus appointments by commissions.
- o Continuing the prohibition on the death penalty or allowing that penalty.
- o Continuing the prohibition on a graduated income tax or allowing such a tax.
- o The restoration of affirmative action programs by state government and public universities.
- o Allowing same-sex marriage or domestic partner arrangements, or continuing the current ban.
- o Allowing public financing of private schooling (directly or through vouchers) or leaving the current prohibition in place.
- o The nature of restrictions on stem cell research, on physician-assisted suicide, and on abortion.
- o The structure of local government, such as whether to consolidate local units, eliminate township government, move more functions to regional or county governments, or whether to give local units more authority to raise their own taxes.
- o The number and organization of school districts.
- o School financing, including whether there should be equal funding for all districts or whether local districts should be allowed to raise additional funds.
- o The role (if any) of a state board of education and of the state superintendent, including whether the superintendent should be a gubernatorial appointee.
- o University autonomy and financing.
- o The revision of tax limitations (upward or downward) and of restrictions on state mandates to local units of government.
- o Whether to continue or revise the earmarking of tax revenues for specific purposes.
- o Reexamining the citizen rights of recall, referendum, and initiative.

ARGUMENTS ADVANCED FOR AND AGAINST THE PROPOSAL:

Arguments For:

Michigan government is "broken" and "dysfunctional" and its outdated constitutional structure is one key element in its inability to effectively and efficiently perform basic functions. Thoroughgoing institutional reform is the only way to fix it.

Commentators say that the current constitution was revised nearly 50 years ago, in part at least, because the structure of government was considered so outdated that government

leaders were unable to deliver services effectively within the resources available. The same holds true today. The state government faces a chronic structural deficit, and the Legislature routinely is only able to pass a balanced budget at the last minute. Moreover, recent budgets were only balanced due to federal largesse (provided as part of efforts to stimulate the national economy) and this has simply postponed a fiscal day of reckoning that will demonstrate the fundamental weakness of state institutions. The fiscal situation for local government is just as bad, if not worse.

Since going into effect in 1963, Michigan's constitution has been amended numerous times (over 30). The constitution, say some critics, has become unwieldy and, in some cases, incoherent. It contains provisions that are obsolete or that have been ruled unconstitutional. It contains provisions of such length and specificity that they should be in statute rather than in a basic structural document. Today's constitution contains nearly twice as many words as the original. It contains provisions added over time that do not fit well together, including those governing taxes and revenue.

What a constitutional convention offers is a chance to review the document comprehensively and to make changes while looking at the whole picture. This provides an opportunity to create a modern document adequate to meet today's challenges. Piecemeal amendments are less likely to accomplish this. Amendments proposed through petition drives are more likely to reflect the narrow interests of the well-organized and to ignore how proposed new language will fit with existing provisions. A constitutional convention could decide to target a few areas for revision (the structure of local government, government finance and taxation, school funding and governance, term limits, length of legislative sessions, redistricting, etc.), but even then it would do so in the context of the document as a whole. This would help make the constitution more coherent and ultimately make Michigan government more effective.

Fears that a convention could be "hijacked" are groundless. Any document produced must be approved by a majority of delegates. It must then be approved, as a whole, by the voters. Any one amendment could lead to its defeat. Prudent delegates are not likely to waste their time on amendments that would doom their efforts to failure. Critics say a convention could "paralyze" or handcuff government leaders. But supporters of convention say it is the current paralysis that makes a convention necessary.

Arguments Against:

The state constitution is not fatally flawed. There is no constitutional crisis. The structure of the constitution is not the cause of the state's economic woes, of the bankruptcy of auto companies, of the collapse in the housing market, of the epidemic of foreclosures. It is not the reason that the legislature finds it so difficult to reach consensus on raising revenue or making budget cuts.

In any case, there exists already a practical means to amend the constitution, either piece by piece or comprehensively. The legislature can propose constitutional amendments. Citizens can propose amendments by petition. Moreover, there does not at present appear to be any consensus on what is wrong with the 1963 constitution or on what changes should be made. Absent the constitutional requirement that the question be put on the ballot periodically, it is not likely there would be any great groundswell of support

for putting a convention before the voters this year. This is not the time to be wasting scarce tax dollars on the expense of electing delegates and financing the activities of a convention.

Even if the constitution is in need of an overhaul, given the current political climate -- the extreme political divisions, the outpourings of public anger, the general lack of trust (and more) -- is it likely a constitutional convention could successfully produce a document that addresses fundamental questions? Or that it could produce a comprehensive document that would achieve majority approval at the polls? Isn't it likely that a convention could turn into a series of futile debates over "hot button" issues that would further inflame and divide the public while accomplishing little? The 1961-62 constitutional convention is said to have been the result of reform efforts by leading civic organizations and after the laying of much groundwork and yet the new constitution was only very narrowly adopted. The same civic support and energy appears lacking today.

Some who agree that the constitution needs revising are nevertheless fearful of what a constitutional convention might produce. They fear a "runaway" or "hijacked" convention that alters the constitution in radical ways. When would these elections for delegates be held and what is the turnout likely to be? Will the convention be representative of the state as a whole?

There are also concerns that the very fact that a constitutional convention, which could last a year or more, was in session would keep state government leaders from being able to make important decisions at what is a critical time in the state's history. Attempts by a newly elected governor and legislature to address fundamental questions on taxes and spending and the operation of state government would be stymied by demands that they wait until the constitutional convention had completed its work. The uncertainty could also impede economic development efforts because business decisions might be put on hold as well.

ADDITIONAL INFORMATION:

The Citizens Research Council of Michigan has put together an extensive examination of the issues related to the drafting of a new constitution. They are available at:

<http://www.crcmich.org/PUBLICAT/2010s/2010/rpt360.html>

Legislative Analyst: Chris Couch
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.