MINNESOTA CONSTITUTIONAL STUDY COMMISSION

AMENDMENT PROCESS
COMMITTEE REPORT

This report constitutes committee recommendations to the Constitutional Study Commission. See the Final Report for the Commission's action which in some cases differed from the committee recommendations.

November, 1972

COMMITTEE

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pp.20-24, Multifarious amendments: Of the "possible recommendations" of the Amendment Process Committee on multifarious amendments, the Commission voted to leave unaltered the last sentence of Section 1 of Article SIV, on the theory that judicial deference to legislative judgment would allow revision of an entire article.

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REPORT OF THE AMENDMENT PROCESS COMMITTEE

I. Introduction

The Amendment Process Committee has had two formal meetings, one in April with our research assistant and one in late June, at which time we decided upon the recommendations we now make to the entire Commission.

Two public hearings were held by the Committee, the first in May in Moorhead and the second in June at the State Capitol in St. Paul. The names of individuals and organizations testifying will be found at the end of this report. The substance of their recommendations will be referred to at pertinent points in this paper.

The Amendment Process Committee was given a double task. Our first assignment was to decide whether constitutional change would be better effected through a constitutional convention or by seperate amendments to our present document. Our recommendation in this area must be regarded as provisional, since final decision depends on the amount and immediacy of needed change yet to be recommended by other committees of this Commission. The findings herein presented are based on a preliminary expression of opinion at the June Commission meeting, on the history of constitutional change in Minnesota, on the testimony of experts,

and on the recent experience of other states which have undertaken major overhaul of their constitutional machinery.

The second assignment of this subcommittee was to recommend such changes in Article XIV as would facilitate constitutional revision by either amendment or convention.

In summary, our recommendations are as follows: The Minnesota Constitution should be changed by a comprehensive, phased plan of thorough revision to be submitted to the voters within the next few years. The first priority should be a Gateway Amendment to ease the extremely difficult amending process of Article XIV. Together with the changes recommended by the Form and Structure Committee, Minnesota would then possess the proper machinery with which to effect significant change of an organized nature.

II. RECENT CONSTITUTIONAL CHANGE IN THE 50 STATES

In the last twenty years the United States could be described as a huge experimental laboratory in state constitution-making. Whether by constitutional convention or by amendment, almost every state has been engaged in major constitutional overhaul.

In almost every instance the basic research for legislative decision, for convention action, or for citizen acceptance has been done by a constitutional study commission. The Minnesota Constitutional Commission of 1948 showed other states how basic a tool for constitutional reform such a group of interested citizens and legislators could provide. Now, almost a quarter of a century later, the present Commission has the benefit of

valuable spade work done in our sister states with this same tool.

Need for Reform

No constitution is better than the arrangement which it makes for its own improvement. Even a document which, like our federal constitution, is so basic and flexible as to be "self-revising" by statutory change and legal interpretation, must make provision for meeting extraordinary and unforeseen needs.

State constitutions in the past have been anything but "self-revising". There is sound reason, of course, for their need of more extensive and more continual change. Since states possess all those powers unassigned to the federal government, they must put limits on these broad residual powers. Framers of almost all state constitutions went much further than they needed in this restricting function--hampering future generations with such rigid, outdated provisions that our state charters well deserve the description of "horse-and-buggy" vehicles unable to keep pace with the times. It is small wonder that citizens have looked beyond unresponsive state capitols to Washington for help in solving their social and economic problems.

In the early 1950's President Eisenhower's Commission on Intergovernmental Affairs found that to redress the imbalance in state-federal relations, there was "a real and pressing need" for states to improve their constitutions "to be sure they provide for vigorous and responsible government, not forbid it."

States went speedily to work, using constitutional conventions (so common they became known as "con-con's"), speeded-up amendment projects, constitutional commissions, and Gateway Amendments. Sometime in the two decades between 1950 and 1970, 45 of 50 states took official steps toward modernizing their constitutions. This has been an accelerating process. In the five years between 1966 and 1970 alone, 35 states took action toward general constitutional revision, in addition to the usual piecemeal amending process. Of the remaining 15 states, ten had either held constitutional conventions or established constitutional commissions since 1950.

Thus, during these two decades, Minnesota was one of only five states not "officially" engaged in constitutional modernization. A look at our constitutional history provides an explanation.

III. CONSTITUTIONAL CHANGE IN MINNESOTA

Minnesota is one of only twenty states to operate with its original constitution and one of only eight which has never held a constitutional convention.

There have, however, been joint citizen-legislative efforts toward this goal of complete revision, there has been near-success, and out of its ultimate failure has come an improved document.

The present Constitutional Study Commission clearly regards itself, not as a pioneer, but as another milepost toward basic constitutional reform.

Early Efforts at a Convention

Only fourteen years after acceptance of the compromise document which finally issued from the strife-torn convention(s) of 1857, Governor Horace Austin called for a convention to rewrite "this child of many fathers...this motley collection of inconsistencies".... this document "not adapted to the changed conditions of the people."

The legislature agreed with the Governor's view of needed change. By 1894 it had submitted more than 60 amendments to the people. By 1896 legislators seemed to say: Enough of piecemeal amendments. They asked the people for approval of a constitutional convention call. More voters said "yes" than "no". But non-voters were counted as "no" voters and the constitutional convention call was defeated.

A Revised Amending Process

Having been stymied in one attempt to hold down amendment changes to the 1857 document, the legislators now went to the other extreme of remedy. In the session following defeat of the convention call, the legislature made the amendment process less accessible--almost prohibitively so. To pass hereafter, an amendment would need not only the "yes" votes of all those marking their ballots, but the "yes" votes of all those going to the polls in that election.

The effect was dramatic. From 1858 to 1898 the voters had accepted almost three-fourths of the submitted changes (72.9%). In the next half century, the acceptance rate dropped to less than one-third (32.5%).

A Convention Is Recommended

In 1947, in proper commemoration of the 90th birthday of our state's constitution, the legislature created the Minnesota Constitutional Commission (MCC), composed of eight senators, eight representatives, a member of the Supreme Court, a member of the administrative branch, and three citizens. Their charge was to study the constitution in "relation to political, economic and social changes which have occurred and which may occur" and to recommend to the next legislature "amendments, if any" necessary to "meet present and probable governmental requirements."

The 1948 Report considerably exceeded the rather modest expectations of the legislative mandate to recommend amendments, "if any," necessary to meet changing times. It found that major changes were needed in 34 sections, minor changes in another 78, and that six new sections should be added.

In view of these extensive changes, the MCC recommended, unanimously, that changes be made by a constitutional convention.

For several sessions, submitting the question of calling a constitutional convention to the voters was a hard-fought issue. The chief factors in failure were the difficult requirement of a two-thirds vote of each house of the legislature; the fact that two of the senators to sign the MCC Report did an about-face and became adamant foes of the convention idea; and fear among rural legislators that the convention would do something about reapportionment, thus endangering their tight legislative control.

The Senate Judiciary Committee was the focus of opposition. In 1949 the House came within eight votes of the necessary two-thirds;

and in 1957 passed the convention call bill by more than two-thirds. In 1955 the House was, according to League of Women Voters observers, all set for final passage of the bill when the Senate committee met and killed the bill. In 1957, the same committee tabled the bill by a nine to nine vote, making House passage academic.

To make the convention idea more palatable to the legislature, citizen groups worked for a so-called "safeguard" amendment that would allow legislators to sit as delegates and require a 60% majority for adoption of a new document. The overwhelming vote by which this amendment passed in 1954 (almost three to one) was interpreted as a mandate to the legislature by friends of the convention idea; to legislative foes of the idea it was at least a warning that citizens were not satisfied with their present constitution.

An Era of Amending Success

Pressured for constitutional reform, both from within and from without, legislative leaders began to put into effect many of the recommendations of the MCC, framing amendments that were significant and far-reaching, some of them reshaping entire articles or major portions thereof. By 1959 Professor G. Theodore Mitau, in a "ten-year's perspective" view of the effect of the MCC (Minnesota Law Review 44:461) found a substantially improved document. He pointed out the "profound debt of gratitude for its professional and scholarly approach and for its lively concern for the possible and the practical. Entire sentences in subsequent amendments can be traced back to the language of the

MCC report; the amendments themselves often serve as substantive implementation of the Commission's prescription."

Aroused citizen interest resulted in the passage of half of these amendments--a marked improvement over the one-third adoption rate which prevailed from 1898 to 1946. Persons and groups which had favored the idea of improvement by convention fell to with a will to achieve improvement by amendment. The League of Women Voters, the political parties, bi-partisan committees devoted money, time and public relations skill in the battle to overcome the obstacle of Minnesota's amending majority.

The record of improved amendments--both as to content and as to passage--continued through the 1960's. Of twelve amendments submitted to the voters in that decade, nine were accepted (75%); failing were the "best-man" amendment (twice) and a reapportionment amendment which would have been unconstitutional after the Baker v. Carr decision of 1962.

Across the nation, amendments were being proposed and accepted with an increasing tempo all during the 60's. Most states have outstripped Minnesota in their drive toward constitutional improvement. In the biennium January 1968 to January 1970, 450 amendments were proposed in the 50 states; about 76% passed. The average of nine per state far exceeds Minnesota's rate of amendment submission. Moreover, entire articles, packages of articles, even whole new constitutions were being adopted in many states.

IV. REVISION BY AMENDMENT OR A CONVENTION?

The foregoing history of constitutional change in Minnesota offers no compelling argument as to whether future change should

be continued by a series of amendments or be attempted all at once in a citizen convention.

On one hand, Minnesota's Constitution has been enormously improved by amendments of recent decades. On the other hand, large numbers of controversial matters remained unresolved twenty years after the legislature began a concentrated effort at reform via amendment.

One argument which inclined members of this committee toward a convention is this great backlog of needs and the time demanded for resolution.

Another argument for a completely rewritten document is that it will, in all likelihood be briefer, more flexible, freer of statutory detail, better written--in a phrase, more organic--than the result of patchwork, skilled though it be.

The most compelling argument for a citizen convention to produce a new document is citizen education in the processes of government. A convention is a dramatic and action-filled event. The news media give wide and interest-filled coverage to matters usually discussed in the comparative isolation of a legislative committee room. A convention interests, it informs, it involves. It opens up decision-making at a time when citizens are feeling removed from, even alienated by, government. It is the healthiest possible exercise for citizen development.

That is why delegates and other citizens of states where new constitutions have been defeated say: We would do it all over again.

Arguments which finally decided the Amendment Process Committee not to recommend a constitutional convention are as follows:

1. The preliminary vote of Commission members at the June meeting indicated no strong sentiment for a constitutional convention. Members of various study committees seemed to feel that the changes they are likely to recommend are attainable by the amendment process. (This reliance on amendments may, of course, be shaken when the full scope of suggested changes becomes apparent to the Commission.)

2. Public testimony likewise revealed no sentiment for a constitutional convention. At the present time, unlike the early 50's, no influential citizens, "good government" groups, or newspaper editors are pushing for a convention. To be successful, a convention effort requires the kind of citizen involvement and concentration that is not now discernible.

3. Great constitutional difficulties lie in the way of a convention in legislature submission of the convention call to the voters, in voter approval of the call, and in voter ratification of the proposed constitution. Experience shows that obtaining a two-thirds vote in both legislative bodies is almost prohibitive in view of the special interests which have a stake in the present constitution (including, perhaps, legislators themselves). Special interests have been responsible for defeat of new constitutions in several states where the ratifying majority is only 50%, not our difficult 60%.

4. Recent experience of other states with conventions is not encouraging. The following tabulation shows results in the ten states which have attempted to adopt new or substantially new documents between 1966 and the present:

Constitutions Approved	Constitutions Rejected
Hawaii	Arkansas
Illinois	Maryland
Pennsylvania	New Mexico
Montana	New York
	North Dakota
	Rhode Island

Only in New Mexico was the proposed constitution defeated by a narrow margin. The other defeats could only be described as"overwhelming".

It is important to note that five of the six defeated documents were submitted as a single package. Only in North Dakota were there opportunities to choose alternatives (unicameral vs. bicameral legislature; initiative; age of adulthood; lotteries).

The success stories followed a pick-and-choose script. Hawaii submitted the new document in 23 separate packages. Illinois separated out four controversial proposals for a separate vote. Pennsylvania, which held a convention only after voters had accepted major revisions by amendment, divided the convention decisions into eight separate proposals for voter choice.

Thus we conclude that the result of constitutional conventions is much more favorable than suggested by a mere listing of acceptance and rejection.

5. A recent variation on constitutional change by separate amendments seemed to the Amendment Process Committee to offer many of the advantages of both a revising convention and singly submitted amendments.

This new method is orderly. It offers the possibility of thorough-going revision within a reasonable time limit. It engages citizen interest more than piecemeal amendments since it offers a perspective view of a "new" governmental framework.

It allows more leisurely and thoughtful legislative attention. It keeps opposition to controversial matters from defeating an entire document.

This new method is commonly described as "phased, comprehensive" constitutional revision. Here is how it has worked, or is working, in other states:

A constitutional study commission is universally used to make recommendations to the legislature. In California, the legislature submitted Phase I of a pre-planned revision in 1966. This revised the general governmental structure--legislative, executive, judicial--and passed. Phase II was presented in 1968; included in a single package were articles on education, local government, land use and homestead exemption, the civil service, and amendment and revision procedures. Voters evidently thought this a bit much for a single vote of acceptance as the package was narrowly defeated. The same matters were resubmitted in four amendments in the primary and general elections of 1970 and were accepted. The Constitutional Study Commission has now completed its work on Phase III and the legislature is to present these matters at the general election of 1972.

The South Carolina Study Commission has now finished work on its outdated constitution and recommended article-by-article substitution of 17 articles over several years. In preparation for this procedure, the legislature submitted a Gateway Amendment, approved by the voters, allowing a single vote on a whole article and transfer of germane material from one article to another.

In Washington, a study commission has recently recommended eight revised articles, to be submitted in a planned order over the next few elections.

In Indiana in 1970 voters approved three amendments endorsed by a study commission as the first of a series.

In Nebraska which has substantially revised its constitution in the last three general elections a study commission recommended in 1970 a "unified" treatment of remaining changes.

In North Carolina, a study commission recommended extensive editorial changes and ten amendments. The editorial revision and four of the amendments were passed in 1970; the rest are scheduled for upcoming elections.

Professor Mitau (Contemporary Approaches to State Constitutional Revision, p.53) cites the major reforms that were achieved between 1966 and 1968 via the comprehensive, staged procedure: California and Massachusetts in 1966; Wisconsin in 1967; Florida, Iowa, and Pennsylvania in 1968. The only failure was in Idaho in 1966.

Another new method of speedier reform is submission by the legislature of a new document. In Florida, the voters empowered the legislature to act as a revising convention; three amendments, constituting a complete rewrite, were passed by the voters in 1968. In Delaware, where citizens have never had the power to vote on amendments, the legislature gave the first of two necessary approvals to a commission-drafted document in 1970 (the second approval was declared unconstitutional because of a technicality). In 1970, Virginia voters approved a new document, prepared by a study commission, then revised and submitted by the legislature. Oregon voters, on the other hand, rejected in the 1970 election a new constitution on which a study commission had been working for almost ten years and the legislature refining for almost seven.

This method of revision by the legislature merits discussion by this Commission, but seemed to our Committee less suited to execution by a part-time legislature, less in the tradition of independence displayed by the Minnesota voter than a series of amendments; it would necessitate, of course, a constitutional amendment.

A plan of comprehensive, phased amendments is not to be lightly recommended by this Commission nor to be taken as the end of its task. Professor Mitau points out that success requires thorough background studies, broad organizational backing, including both political parties and a range of economic interests; special staff devoted to enlisting support for the amendments; as well as extensive publicity efforts, including endorsement by the media and prominent citizens, fact sheets, publicity releases, and all the panoply of campaign devices, such as stickers and billboards, that we associate with election of candidates.

In spite of the major educational effort required, and in view of the possibility of complete, fairly rapid constitutional improvement, the Amendment Process Committee recommends that the Minnesota Constitutional Study Commission recommend to the 1973 legislature comprehensive constitutional revision through phased amendments. As the first phase of revision we recommend that a new constitutional framework be created through adoption of a "gateway amendment" and a non-substantive amendment which would more logically organize our present constitution and remove obsolete and unnecessary provisions. This first phase would be considered by the 1973 session of the legislature and voted on by the people

at the 1974 general election.

We further recommend that the 1973 Legislature authorize the creation of an adequately staffed and financed legislative-citizen commission which would have as its primary responsibility the in-depth study and recommendation of amendments to be considered in a second phase. This second phase of the revision would be considered in the 1975 legislative session and submitted in the next election.

In subsequent years we recommend that the Legislature and voters have the benefit of background study and recommendations afforded by a similar constitutional study commission, and that the revision continue in a phased orderly manner.

V. A GATEWAY AMENDMENT FOR MINNESOTA

Many states, facing up to the need for thorough-going revision of old constitutions, have encountered their first opposition in the revising sections of these very documents. As the first step to reform, they have had to amend the revising article.

Illinois was the first to do so, in 1950. Between 1870, the year in which the last of its three constitutions was adopted, and 1946, Illinois tried on five occasions to ease its extraordinarily difficult amending process. All efforts failed, owing to the high ratification majority which was one of its targets. In 1950, legislators and interested citizens joined in an all-out effort to pass what came to be known as The Gateway Amendment, since it would open up pathways to badly needed change.

Voters passed the amendment, three to one.

Since then, state after state has opened the way to constitutional reform by the kind of Gateway Amendment needed to solve its particular problems. These amendments have usually done one or more of the following: (1) eased the legislative procedure for putting an amendment on the ballot, either by lowering the majority from 2/3 to 1/2 or by making passage in one session sufficient; (2) allowed revision of an entire article; (3) permitted submission of more than one article at an election; (4) lowered the majority needed to ratify an amendment or a new constitution; or (5) permitted the legislature to act as a convention.

The Amendment Process Committee is convinced that Article XIV of the Minnesota Constitution will make it extremely difficult, if not almost impossible, to effectuate the number of changes this Commission will recommend to the 1973 legislature.

The members of this Committee agree with W. Brooke Graves, who in his definitive State Constitutional Revision says:

> "If a state constitution is to serve its proper purposes, the door must be open to change by reasonable procedures. Where the amending process is too difficult, such as the requirement of an extraordinary popular vote, the document tends to get out of date. . . Ideally, the amending process should be more difficult than the ordinary legislative process, but not impossibly difficult." **(emphasis ours)**

The members of this Committee feel that Minnesota's amending process is not a "reasonable procedure", indeed, that it is almost "impossibly difficult". As the Appendix to this report will show,

if our state had originally operated under the present amending difficulty, change after change which has facilitated the operation of state and local government would have gone down to defeat.

We therefore believe that Minnesota should join the many states which have recently opened their constitutional doors to thorough-going reform by passing, at the 1974 election, our own version of a Gateway Amendment, the notable feature of which will be to reduce the "requirement of an extraordinary popular vote".

The many changes to be recommended by the various committees of this Commission will be uniformly facilitated by concentrating on the passage of such a Gateway Amendment in 1974.

We present below the various questions to be answered in changing the provisions of Article XIV, in the order in which we considered them, and with the pertinent arguments and data which helped us to our decisions, in order that the Commission may have full opportunity to question, modify, reject, or accept our recommendations. Where the three members of this Committee have had different opinions, we have so indicated.

VI. RECOMMENDED CHANGES IN ARTICLE XIV, Section 1 (AMENDMENTS)

A. Submission by Legislature to Voters

Comment: This is the one step of constitutional revision at which Minnesota is more permissive than most states. One authority points out that an extraordinary legislative majority for submission limits amendments to those with greatest support but also weakens quality of amendments, because

it becomes necessary to please so many legislators with different viewpoints.

Present Provision: A majority of each house; passage in only one session.

Other States: 17 other states require only a majority vote of the legislature, but ten of these require passage in more than one session, 18 states require 2/3, 9 states require 3/5. The other 6 states have miscellaneous requirements, e.g., a majority in two sessions or 2/3 in one session.

MCC: A 2/3 vote of each house.

Model Constitution: A majority of all members (not of both houses).

Testimony: A majority favored by the League of Women Voters. 2/3 favored by Representative Donald Fraser. Although Dr. Mitau did not address himself to the legislative majority in his testimony to the Commission, his article in the Minnesota Law Review favors a 2/3 vote of the legislature: "While obviously slowing down the rate of submission, such a formula would enhance submitted amendments' chances with the voting public."

Recommendation: The majority of the Committee feels a majority of the legislature is sufficient. The chairman feels 3/5 would be a help in selling an easier amendment process to the voters and would also, as Dr. Mitau argues, enhance chances of passing future amendments.

B. Submission of Amendments by Initiative

Comment: Proponents of initiated amendments argue that, while not often used and very seldom successful, citizens should have access at some point to changing their basic charter of government (see comment of Model Constitution below).

Present Provisions: Minnesota, of course, makes no provision for initiative either for statutes or amendments. In 1916, during the Progressive Reform era, when initiative, referendum, and recall were being widely advocated, an amendment allowing initiated measures was voted on and defeated in Minnesota.

Other States: 14 other states provide for initiated amendments. In addition, Illinois' new constitution provides for the initiative on matters pertaining to the legislative article, on the theory that the legislature is more likely to be unresponsive on questions relating to its own composition and function.

MCC: No mention of the initiative.

Model Constitution: Allows initiative both for statutory and constitutional legislation. "Some way should be provided by which the people may directly effect constitutional change without depending on existing governmental institutions. No extensive use is either expected or hoped for...The initiative is merely a salutary counterweight to refusal by the legislature... to take popularly desired action."

Testimony: The Minnesota Civil Liberties Union strongly advocates inclusion of the initiative for amendments.

Recommendations: The Committee does not feel the initiative would be worth the fight. It is almost uniformly unsuccessful; ten initiated amendments voted on between 1968 and 1970; all failed. To include this alternative in a Gateway Amendment would increase its controversial aspects. The method has often been used in emotional, temporary high-pressure. situations. One authority points out that the one-man, one-vote decisions have taken care of the dangers the initiative was intended to overcome.

C. Proper Content of an Amendment--"Multifarious" Amendment Question

Other States: The experience of other states is obviously of little use in this judicial question, but it is worth noting that other states have encountered the same problem, since several Gateway Amendments have specifically provided that an entire article may be amended and submitted to the voters as a single question. (For what it is worth, we add that 30 states prohibit multifarious amendments. In addition, two states limit the number of articles that can be amended at one election.)

MCC: This body recommended liberalizing the restriction on multifarious amendments by the following wording: "No proposal for the amendment or alteration of this constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted."

Legislative History: An amendment deleting this entire sentence, thereby allowing the legislature complete discretion in framing amendments, was rejected by the voters in 1948, receiving only 25% of favorable votes.

Model Constitution: No limits are put on legislative discretion in framing amendments.

Judicial Interpretation: The courts have made several rulings on multifarious amendments, but have never been asked to rule on whether revision of an entire article is constitutional.

Whether or not an amendment is multifarious is a question for judicial interpretation, said the Supreme Court in Winget v. Holm, 187 Minn.78 (1932). The court has the power to direct the Secretary of State to refrain from preparing and distributing ballots containing several constitutional amendments to be voted on together.

The court has, on more than one occasion, proved very liberal in allowing multiple changes within one amendment: taxation of national banks and on income tax (Winget v. Holm); extending the legislative session and allowing legislators to run for other offices (Fugina v. Donovan 259 Minn.35 (1960); lowering the voting age and setting the age for holding office (Opatz v. St.Cloud, Minn.Mar.18,1972).

The court has said that the purpose of the provision of Article XIV preventing multifarious amendments is to prevent deceit of the public, to allow freedom of choice, and to prevent "logrolling".(Fugina)

An amendment will not be found unconstitutional simply because its provisions might have been submitted separately. (Winget)

However, the changes must be rationally related in purpose, plan or subject. (Fugina)

If the changes made by an amendment are relatively equal in importance the court will scrutinize them more closely than if relatively unequal in importance. (Fugina)

The courts "owe great deference to the judgment of the legislature as to matters within its purview." (Fugina) Again, "If we can reasonably sustain what the legislature intended to do, it should be done." (Opatz)

Nevertheless, in Fugina the court warned that "the logical relationship between the propositions is somewhat remote, and perhaps as remote as is possible." The court went on to say that its approval of an amendment lengthening the session and allowing legislators to run for other offices "does not necessarily imply that it would be proper to present as a single proposed amendment a provision for extending the term of the legislature and a provision establishing the basis of representation. We intimate no opinion as

to whether or not these propositions might properly be joined, but use this merely as an illustration of propositions whose significance might require separate submission to the voters even though the present proposal is held proper."

Possible Recommendations: If the Commission pursues the path of phased, comprehensive revision, we will undoubtedly need to amend an entire article at one time. The question of multifarious amendments is therefore highly crucial to the entire Commission; and this Committee urges that the fullest possible attention of the fine legal minds on this Commission be directed to this question.

One approach is to leave unaltered the language of the last sentence of Section 1, Article XIV. This might be termed the bold, but expedient approach. We are daring more; but if we succeed, we would avoid the danger of losing a constitutional amendment to other parts of the article by including a controversial change in this sentence.

The Committee inclines to this approach. We count on judicial deference to legislative (and Commission) judgment. Perhaps no one would challenge the attempt to amend an entire article; if not, a second attempt might be even more acceptable to the court. If, on the other hand, a challenge was presented, and the court acceded to the challenge, a special session of the legislature might be called to rearrange the amendments. To expedite such a solution, an early

test case might be arranged. (If the flexible session amendment passes, the amendment could be passed in the first year so that the court case would be decided by the second year, giving a guide to the kind of amendments the legislature might propose.

A second approach would be to delete the sentence on multifarious amendments. This might prove as unappealing to the voters as it did in 1948, and would lose the other improvements we make in the article. On the other hand, an educational campaign might convince the voter that to proceed with constitutional improvement, this deletion is needed.

Or we might go the route of the MCC, being even more specific by adding the word "article" to their suggestion: "No proposal for the amendment or alteration of this constitution which is submitted to the voters shall embrace more than one article or general subject and the voters shall vote separately for or against each proposal submitted."

D. Majority Required to Ratify an Amendment

Comment: The chief roadblock to expeditious revision by amendment is that provision of Article XIV which requires the approval of a majority of everyone who votes in the election.

Present Provision: .."said amendments shall be submitted to the people for their approval or rejection at any general election and if it shall appear, in a manner

to be provided by law, that a majority of all the electors voting at said election shall have voted for and ratified such alterations or amendments, the same shall be valid to all intents and purposes as a part of this constitution."

Constitutional History: The history of this provision is involved and interesting. Originally, both the Republican and Democratic constitutional conventions had included an extremely difficult amending process. In the final conference committee which evolved one constitution out of the two party documents, the amending provision became involved with what historians regard as the central theme of the conventions--Negro suffrage. The Republicans, who favored such suffrage, knew it was too explosive to be guaranteed in the constitution, and wanted it to be submitted as a separate proposal along with the constitution at the ratification election. The Democrats refused. Republicans then proposed that the difficult amending process be eased on this one question, allowing Negro suffrage to be approved by a majority who voted on the issue, not in the election. Inexplicably, the Democrats countered with the proposal that this change apply to all amendments. And so it was decided. (An interesting footnote: The one word of commendation of the compromise constitution that was uttered in the Republican debate was: "It can be easily changed.")

This easier amending majority remained in the constitution until 1898. In those forty years, 66 amendments

were proposed and 48 passed. According to a League of Women Voter's publication: "Why Minnesota adopted the more difficult provision in 1898 has not been fully explained, although there is conjecture that important interests and large businesses favored the change for special reasons." *

Ironically, the amendment of 1898 providing the more difficult ratifying majority would not have passed under its own provisions, since it did not receive a majority of the votes cast at the election(less than 28%)

Other States: Minnesota is one of only four states which now require that amendments receive approval from everyone voting at the election. (One of the four makes the provision a little easier by providing that the majority be, not of all electors, but of those voting for Governor.)

Majority voting on proposal.....	42 states
Majority voting in election.....	4 "
No voter approval.....	1 "
2/3 voting on proposal.....	1 "
3/5 voting on proposal.....	1 "
Either 3/5 voting on proposal or a majority of electors**.....	1 "

**Experience in Illinois shows that 3/5 is somewhat easier to achieve than a majority of electors, but by no means dramatically so.

MCC: Majority of those voting on the proposal. "This change would restore a provision of the original constitution, and it takes account of the fact that, on the average, one-third of the voters at a general election fail to vote on constitutional amendments, thus in effect defeating such amendments by inaction."

*Professor William Anderson in his History of the Constitution of Minnesota says that because of the belief that the liquor interests favored the change in order to prevent adoption of a prohibition amendment this became known as "the brewers' amendment."

Model Constitution: A majority of those voting on the question.

Testimony: Of the nine persons or organizations testifying before the Commission, in person or by letter, all favored a change from the present majority required to pass a constitutional amendment (two of these in answer to a question). A simple majority of those voting on the proposal was suggested by the League of Women Voters, Secretary of State Arlen Erdahl, Congressman Bill Frenzel, and Congressman Don Fraser; 55% was suggested by former Representative Jack Morris; the others, Professor Frank Sorauf, Dr. Mitau, the MCLU, and the St. Paul Chamber of Commerce made no recommendation as to amount of the majority.

Arguments for Retaining Present Provision: Some authorities say "a constitution ought not to be too easy to amend." A difficult provision for amending demands a great deal of voter awareness and keeps a minority from changing the constitution. We know that at least one member of this Commission feels a constitution ought to be difficult to amend. At least one member, and perhaps others, feel that we have been doing very well in passing amendments since 1948 and there is no reason to change.

Arguments for Changing the Present Provision: (For the most part, these are taken from the testimony of those appearing before the Commission.)

1. An enormous amount of effort is expended by ad hoc committees set up to pass amendments and by such organizations as the League of Women Voters,

which speaks of the great amount of time and energy (and money, we know) needed to capture the attention of every voter with amendment information.

The League says it is necessary to spend as much time explaining the process, and the necessity for voting, as in explaining the amendment.

2. The present provision gives undue weight to the non-participating voter. To count all non-votes as no votes is unrealistic. Many who fail to vote would favor the amendment if they understood it. Comparison of precincts with voting machines and precincts voting by paper ballot proves that many voters simply fail to find the amendments on voting machines.

3. The difficult majority now used makes legislators wary of putting on the ballot as many amendments as they know the constitution needs. They fear jeopardizing a favored amendment by more controversial ones.

4. The difficult ratifying vote wastes time and money. Since 1920 alone, 10 amendments which were rejected when first submitted were finally adopted-but only after being resubmitted, some as many as four and five times. Minnesota had to vote 30 times to finally adopt these 10 amendments, which were generally quite non-controversial.

5. The present majority is undemocratic. A minority can thwart the will of the majority. A citizen's vote is diluted in the same way as it is under an unfair reapportionment. It does not seem fair or sensible

that 13 amendments which have received from 75% to 85% "yes" votes should not have been adopted.

6. State constitutions, which are more detailed and contain more statutory material than the federal constitution, need flexible, not rigid, amending procedures. States recently revising their constitutions have recognized this; and made it easier by many different provisions, for citizens to change their basic charters.

Recommendations: The Amendment Process Committee is unanimous in agreeing that the present amending majority is unfair, unworkable, and will impede implementation of the work of this Commission. Two of the members felt that voters should be able to change their basic document by a simple majority of those voting on the question. One member felt that to require 55% would be fair enough, would guard against passage of an ill-advised amendment by an energetic minority, and would help sell an amended Article XIV to the voters.

E. Submission of Amendments at a Special Election

Comment: It is generally believed that submission of amendments at a special election would make them easier to pass. There may also be times (as with the debt limit that held up the building program a few years ago) when an amendment needs action more quickly than at the next general election.

Present Provision: Not allowed under the present constitution. (This has never been the subject of a court case, but an attorney general's opinion agrees "no".)

Other States: 25 states allow for special elections on amendments although how many amendments are so submitted is impossible to say. Some states present amendments at primary as well as general elections. In 1966 Louisiana and West Virginia voters turned down amendments providing special elections for amendments; Nebraska adopted such a change in 1968.

MCC: Added a provision for special elections on amendments, provising that such election not be called at the same time or within thirty days of a general election.

Model Constitution: Specifies either a general or special election, neither of which may be held less than two months after legislative adoption of the amendment.

Recommendation: The Amendment Process Committee believes that because time may be of the essence in some cases, the Legislature should be able to provide for a special election by a two-thirds vote. In so doing, we are not encouraging the placement of amendments on special elections...only providing for the contingency in which a time factor might be critical in revising a constitutional provision.

VII. RECOMMENDED CHANGES IN ARTICLE XIV, Sections 2 and 3 (CONSTITUTIONAL CONVENTION)

If the Commission decides that the Constitution should be revised by amendments, then the question arises: Shall we also advise changes in the provisions on a constitutional convention, such as we would recommend if we were to propose revision by a

The following comparison of our provisions for a convention reveal that while we are more flexible in this revising procedure than in the approval of amendments, Minnesota still makes it very difficult to call a convention to ratify it. In general, members of the Amendment Process Committee feel that it should be somewhat more difficult to adopt a new constitution than to accept an amendment.

A. Submitting the Question of Calling a Convention to the Voters

Present Provision: 2/3 of the members of each house.

Other States: Majority of each house....26 states
2/3 of each house.....20 "
3/5 of each house..... 2 "
Petition by people..... 1 "
Automatic each 10 yrs..... 1 "
If not otherwise submitted by the legislators, periodic submission to the voters every ten or twenty years is provided in 11 of the above states)

MCC: Mandatory submission every 20 years or at any time by a 2/3 vote of each house.

Model Constitution: Majority of all members (not of each house). If not otherwise submitted, question must appear on ballot every 15 years.

Recommendation: A 3/5 vote of each house, no periodic submission, though it may be deemed undemocratic to

recommend against both initiated amendments and mandatory submission of the convention question.

B. Vote by People on Question of Holding a Convention

Present Provision: Majority of all those voting in the election, as for amendments.

Other States: Majority voting on proposal....34 states
Majority voting in election....12 states
No vote provided..... 3 "
Majority voting in election or 3/5 voting on proposal..... 1 "

MCC: Majority voting on the proposal

Model Constitution: Majority voting on the proposal.

Recommendation: A 3/5 majority of those voting on the proposal. We also recommend that a special election may be provided for this purpose if approved by 2/3 of the legislature (as is recommended for amendments).

C. Ratification of the New Constitution

Present Provision: 3/5 of those voting on the proposal (changed in 1954 from a majority of those voting in the election).

Other States: Majority voting on proposal....26 states
Majority voting in election.... 9 "
No provision(although legislature uniformly provides)..... 13 "
3/5 voting on proposal..... 1 "
Majority of electors or 3/5 on proposal..... 1 "

MCC: Majority voting on proposal

Model Constitution: Majority voting on proposal. (Also specifically provides that document may be submitted as a whole or in parts or with alternatives.)

Recommendation: 3/5 of those voting on the proposed constitution. We also recommend that the proposal be submitted in a special election to be held not less than 60 days or more than six months after the adjournment of the convention, as determined by the convention itself. This is the recommendation of the MCC, the Model Constitution, and of many states.

VIII SUMMARY OF RECOMMENDATIONS:

In summary, the recommendations of the Amendment Process Committee are as follows:

The Committee recommends that the constitutional revision recommended by the Constitutional Study Commission be implemented through a series of phased amendments. As the first phase of the revision, the Committee recommends that a new constitutional framework be created through adoption of a "gateway amendment" and a non-substantive amendment which would more logically organize our present Constitution and remove obsolete and unnecessary provisions. The Committee recommends that this first phase be considered by the 1973 session of the legislature and submitted to the people for a vote at the 1974 general election.

The Committee further recommends that the 1973 legislature authorize the creation of an adequately staffed and financed legislative-citizen commission which would have as its primary responsibility an in-depth study and recommendation of amendments to be considered in a second phase. This second phase of the revision would be considered in the 1975 legislative session and submitted to the voters at the next election.

In subsequent revision of the constitution, the Committee recommends that the legislature and the voters continue to have the benefit of background study and recommendations of a similar constitutional study commission and that the revision continue in a phased, orderly manner.

In drafting the above-mentioned "gateway amendment":

The Committee recommends retention of the present provision in Article XIV, Section 1 requiring a simple majority of the legislature to submit a proposed constitutional amendment to the voters.

The Committee recommends against inclusion of a provision allowing the submission of amendments through the initiative.

The Committee recommends no change in the provision in Article XIV, Section 1, which requires that amendments be submitted separately to the voters.

The Committee recommends that the present requirement in Article XIV, Section 1 that a proposed amendment must be approved by a majority of those voting in the election be reduced to a majority of those voting on the question.

The Committee recommends an addition to Article XIV, Section 1, to provide that amendments be allowed consideration at a special election if approved by a two-thirds majority of the Legislature.

The Committee recommends that the legislative requirement for submission of a constitutional convention in Article XIV, Section 2, be reduced from a two-thirds majority of both houses to a three-fifths majority of both houses.

The Committee recommends an amendment to Article XIV, Section 2, to change the popular majority required to approve a constitutional convention call from a majority voting in the election to three-fifths of those voting on the question.

The Committee recommends against mandatory periodic submission of the question of calling a constitutional convention.

The Committee recommends a change in Article XIV, Section 3, to provide that a special election may be held to consider a proposed constitution not less than 60 nor more than 180 days following the convention's adjournment.

DRAFT LANGUAGE FOR "GATEWAY AMENDMENT"

A bill for an act

Proposing an amendment to the Minnesota Constitution, Article XIV; regulating the procedure for amending the Constitution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to the Minnesota Constitution, Article XIV is proposed to the people. If the amendment is adopted the Article shall read as follows:

ARTICLE XIV

Constitutional Revision

Constitutional Amendments. Section 1. Whenever a majority of ~~both~~ each of the houses of the legislature shall deem it necessary to alter or amend this Constitution, they may propose such alterations or amendments, which proposed amendments shall be published with the laws which have been passed at the same session, and said amendments shall be submitted to the people for their approval or rejection at any general election~~;--and~~. If proposed by an affirmative vote of two-thirds of the members of each of the houses of the legislature, the alteration or amendment may be submitted to the people for their approval or rejection at a special election called for such purpose not less that 30 nor more than 60 days after passage of the proposal unless a general election shall be held within that period. If it shall appear, in a manner to be provided by law, that a majority of all the electors voting upon the question at ~~said~~ any election shall have voted for and ratified such alterations or amendments, the same shall be valid to all intents and purposes

as a part of this Constitution. If two or more alterations or amendments shall be submitted at the same time, it shall be so regulated that the voters shall vote for or against each seperately.

Constitutional Conventions. Sec. 2. Whenever ~~two-thirds~~ three-fifths of the members elected to each ~~branch~~ house of the legislature shall think it necessary to call a convention to revise this Constitution, they shall recommend to the electors to vote at the next ~~election for members of the legislature,~~ general election for or against a convention;. If proposed by an affirmative vote of two-thirds of the members of each house of the legislature, the question of calling a convention to revise this Constitution may be submitted to the people for their approval or rejection at a special election called for such purpose not less than 30 nor more than 60 days after passage of the proposal unless a general election shall be held within that period. ~~and~~ If a three-fifths majority of all the electors voting upon the question at ~~said~~ any election shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the House of Representatives, who shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid. Section 9 of Article IV of the Constitution shall not apply to election to the convention. Any convention called to revise this constitution shall submit any revision thereof by said convention to the people of the State of Minnesota for their approval or rejection at ~~the next general~~ a special election held not less than ~~90 days after the adoption of such revision;~~ 60 days nor more than 180 days after adjournment of the convention, and, if

it shall appear in the manner provided by law that three-fifths of all the electors voting on the question shall have voted for and ratified such revision, the same shall constitute a new constitution of the State of Minnesota. Without such submission and ratification, said revision shall be of no force or effect.

~~Submission to people of revised constitution drafted at convention.--Sec. 3.--Any convention called to revise this constitution shall submit any revision thereof by said convention to the people of the State of Minnesota for their approval or rejection at the next general election held not less than 90 days after the adoption of such revision; and, if it shall appear in the manner provided by law that three fifths of all the electors voting on the question shall have voted for and ratified such revision, the same shall constitute a new constitution of the State of Minnesota. Without such submission and ratification, said revision shall be of no force or effect.--Section 9 of Article IV of the Constitution shall not apply to election to the convention.~~

Section 2. The proposed amendment shall be submitted to the people at the 1974 general election. The question to be submitted to the people is:

"Shall the Minnesota Constitution be amended to provide for the submission of constitutional amendments and the question of calling a constitutional convention to the people at special elections in certain instances, to alter the majority required for submission and approval of the calling of a constitutional convention, to alter the method of computing an affirmative vote upon a proposed amendment

or convention, and to provide for the submission of a new constitution to the voters for their approval or rejection at a special election to be set by the constitutional convention?

Yes _____

No _____

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Ruth Herring, Moorhead League of Women Voters
State Representative Doug Sillers, Moorhead

St. Paul Hearing, June 1, 1972

Jack Morris, St. Paul
Professor Frank J. Sorauf, University of Minnesota
Secretary of State, Arlen Erdahl
Dr. G. Theodore Mitau, Chancellor, Minnesota State College System
Mrs. Mary Ann McCoy, President, Minnesota League of Women Voters
Matthew Stark, President, Minnesota Civil Liberties Union

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P. K. Peterson, Chairman, Public Service Commission, Nov.4, 1971
Rudolph Hanson, Attorney, Albert Lea, December 18, 1971
Congressman Bill Frenzel, April 18, 1972
Congressman Don Fraser, January 25, 1972
Matthew Stark, President, Minnesota Civil Liberties Union Feb.29,1972

APPENDIX: Pertinent Facts on Amendments Submitted to the Minnesota Constitution

Under the amending majority of our original Constitution, prevailing from 1857 through the election of 1898 and requiring only a majority of those voting on the proposal, 66 amendments were submitted. Of these, 48 (73%) passed. Had the present majority of all electors been required to pass an amendment during those years, 29 of the 48 successful amendments would have failed.

Between 1900, when the more difficult amending process went into effect, and 1972, 118 amendments were submitted. Of these, 69 were rejected. Of the 69 rejected amendments, 60 would have passed under the terms of our original amending provision.

Twenty amendments which are now part of our Constitution had to be submitted and resubmitted before acceptance, thus requiring lost time for needed reforms, wasted political energy, and the expense of ballot submission. Ten amendments were submitted two times before final acceptance; five amendments three times; three amendments four times; two amendments five times.

From 1857 through 1972, 13 amendments have received more than 50% yes votes, but less than 55%. (This is 11% of submitted amendments.)

A list of the 188 amendments submitted to the Constitution has been compiled by Senate Intern Christine Bennett and can be consulted in the Judiciary Committee Office. The table gives:

the year of submission;
content of amendment;
adoption or rejection;
yes and no votes;
total vote at election;
yes vote as a percentage of total votes cast at election;
yes vote as percentage of total vote on amendment
percentage of fall-off.