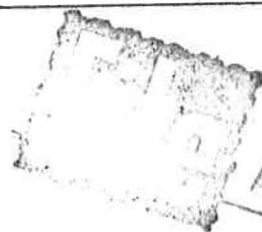


DOORWAY TO CHANGE

A STUDY OF MINNESOTA'S
AMENDING PROCESS



UNDER

B Consolidation
Revision

LEAGUE OF WOMEN VOTERS OF
MINNESOTA

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INTRODUCTION

So far as League members are concerned the vitality of our state Constitution is not a dead issue. When the 1961 State League Convention elected to restudy the Constitution we were restating our belief that Minnesota's basic document needs attention. In 1948 the Minnesota Constitutional Commission recommended 34 major and 78 minor changes as well as six new sections to the Constitution. Since then the League's major efforts have been toward revision by constitutional convention. The stumbling block has been the two-thirds legislative vote required to call a convention. To date not enough legislators have been willing to delegate their revising authority to that other revising body--the constitutional convention.

On the other hand, during the period from 1948-1960, the voters accepted 13 of the amendments to the Constitution proposed by the legislature. The percentage of amendments which were successful at the polls increased markedly, reflecting, in part, greater care by legislators in drawing the amendments and more work by interested citizen groups in getting them passed. Two of these amendments, the highway and judiciary, made major revisions of whole articles. Several of them, particularly the local government amendment, closely followed the recommendations of the 1947 Commission.*

The Minnesota League, aware that the Constitution was being revised, asked itself how long it could persist in working for the convention method of revision. In reviewing the valuable amendments of the past 12 years we were impressed with how much credit for them must go to the 1947 Commission. We were interested to note that appointing constitutional commissions to study and recommend changes to legislatures is becoming another method of revising constitutions. For these reasons the League has recommended another appointed commission be formed to evaluate the important changes still needing to be made. Meanwhile the League hopes to help in this process of re-evaluation by its own study of the Constitution. To this end we begin by examining the amending article itself.

*A three-year study by the National Municipal League on amending constitutions in the 48 states is underway. Final conclusions of this group will help us evaluate the amending method.

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THE AMENDING PROCESS

How Minnesota Amends Its Constitution

If Minnesota chooses to revise its Constitution by amendments, it is necessary to examine the amending process as contained in the Constitution to see if the provisions are adequate or whether changes are needed. A. L. Sturm says, in Methods of Constitutional Revision, "Provisions for amendment (are) so rigid, in some constitutions, as practically to deprive the people of the opportunity to alter their basic law, and, in others so lax as to encourage too frequent change." Where does Minnesota stand in the balance between too rigid and too flexible? How do Minnesota's provisions compare with those of other states?

On amending procedure, the Minnesota Constitution says, in Article XIV, Section 1: "Whenever a majority of both 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 it shall appear, in a manner 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. 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 separately."

Comparison of These Provisions with Other States

Initiation

In Minnesota, initiation of amendments can be by either house of the legislature. This method prevails in most states, with some variations. (New Hampshire is the only state that does not provide for proposal of amendments by the legislature. Revision of its constitution can only be by the convention method.)

Minnesota is one of the fortunate majority of states that requires consideration of amendments by only one session of the legislature. In 13 states, including our neighbor Wisconsin, two consecutive sessions must approve an amendment, with varying majorities, before it is presented to the people. The Indiana LWV is working to change this restrictive provision of the Indiana Constitution.

Another method of initiating amendments, designed to circumvent a recalcitrant legislature, is available to 12 states of the Midwest and far West in addition to Massachusetts in the East. This process, known as the "Initiative," requires a petition to enable a percentage of voters to place an amendment directly on the ballot for ratification. The method has had limited use and limited success and is the subject for study by many protagonists and antagonists. It was proposed by Minnesota's legislature in 1916 but failed to get the voters' approval.

Vote requirement for proposal

In the preponderant number of states, an extraordinary majority of members of the legislature is necessary to submit an amendment to the voters. Minnesota is one of nine states (with consideration of amendments by only one session) that requires a simple majority of members elected to each house (note: Minnesota's Constitution says "a majority of both houses"). The majority in other states is generally 2/3; in some cases, 3/5. It is interesting that our two newest states, Alaska and Hawaii, require a 2/3 majority of each house. Before deliberating on the merits of the varying requirements, we must look at the votes required for popular ratification, since they bear a relationship to each other.

Vote requirement for ratification

All the states, except Delaware, require that amendments proposed by the legislature be submitted to the people for approval or rejection. Only passage by the legislature was necessary to amend state constitutions before 1818, when Connecticut was the first state to ask for popular ratification.

The most common vote requirement for approval of an amendment is a majority of those voting on the question. Very few states (Minnesota is one) require the higher percentage--a majority of those voting in the election. This provision would not be troublesome if all voters who came to the polls voted on the amendments. However, for many reasons--such as a long ballot and the lack of interest or knowledge on the part of the voters--a disproportionate number of voters refrain from voting on constitutional amendments. The voter who does not mark his ballot is counted as voting "no," and a favorable majority becomes difficult to obtain in many instances. Prof. William Anderson in The History of Minnesota's Constitution speaks of the illogic of assuming that a voter who does nothing is opposing an amendment. In Alabama the voter is assumed to approve, unless he strikes out or erases the amendment. This is an equally faulty assumption.

Easy versus Difficult Amendment

Minnesota History

The requirement demanding approval by a majority of those voting at the election has been in effect since an 1898 amendment to this Article. Before that time Minnesota had the easiest amending process in the nation--proposal by a simple majority of both houses and approval by a simple majority of those voting on the question. The easy amending process was the result of a compromise between the Republicans and Democrats who drafted our constitution in 1857. The Republicans gave up their drive for Negro suffrage in exchange for the simpler amending provision, hoping to gain this objective and others by amendment at a later date. (The amendment providing for Negro suffrage was adopted in 1868.) Why Minnesota adopted the more difficult provision in 1898 has not been fully explained, although there is some conjecture that important interests and large businesses favored the change for special reasons. Incidentally, the amendment stiffening the amending process would have failed to pass under our present method, since it did not receive a majority of votes cast in the election!

Years	Number of Amendments Proposed	Number Adopted	Number Rejected	Percentage Adoptions	Percentage Rejections
1858-1898	66	48	18	72.7	27.3
1900-1946	80	26	54	32.5	67.5
1948-1960	26	13	13	50.0	50.0

What the chart means

The chart shows that for about 50 years after the difficult amending process went into effect there was a drastic reduction in the percentage of amendments adopted. It also shows that despite the high percentage of rejections the legislature continued to propose many amendments, not only because more were needed, but because some amendments had to be submitted again and again. There is some thought that other factors besides the difficult amending process may have contributed to the failure of a large percentage of the amendments, especially in the light of recent successes under the same amending requirements. An analysis of the 54 amendments rejected from 1900 to 1946 shows that all but two of them would have passed by a simple majority of those voting on the question. (The two that failed decisively were (1) an amendment to establish a state-owned grain terminal in 1924 and (2) an amendment to encourage a sales tax in 1936.) Of the 54 amendments that failed, about 3/4 of them would have passed under the requirement of a 60% majority of those voting on the question.

Recent Minnesota trends

Since 1948, the trend towards approval of amendments has taken a sharp upturn.* A large share of credit undoubtedly goes to the Minnesota Constitutional Commission of 1947-48 for its thorough and professional job of analyzing and proposing needed changes in our Constitution. All of the 13 amendments approved in the period from 1948 to 1960 not only passed under our present system but passed with more than a 60% majority of those voting on the question. Of the 13 amendments rejected from 1948 to 1960, six received a majority of votes cast on the question. A requirement of a 60% majority of those voting on the question would have resulted in passing two of these proposals. For an analysis of amendments from 1948 to the present see Appendix I.

Other factors involved

Today seven states follow the easy amending process. These states have not proposed an exorbitant number of amendments nor have they passed any greater percentage of those proposed than quite a few other states (see Appendix II). We must conclude that there are other factors involved in the successful passage of amendments, such as care and deliberation in the drafting by the legislature and an informed electorate.

* Actually from 1954-1960 the percentage adopted rose to 78.5% of those proposed by the legislature.

Pros and Cons on Vote Requirements

What vote requirements are desirable and workable in a good amending process? Generally, in a great majority of states, when an extraordinary majority is required for proposal by the legislature the vote for approval by the people is a simple majority of those voting on the amendment. This was the position of the 1947 Minnesota Constitutional Commission whose recommendation was a 2/3 legislative vote and a majority of those voting on the question. Each state constitution has characteristics peculiar to its own situation and care must be exercised not to assume that what is good for another state, or a majority of states, is necessarily (on that basis only) a solution for Minnesota. Informed opinion tends to support the view that the amending process should be more difficult than the ordinary legislative process but not excessively difficult. How this is accomplished is debatable. The mere fact of needing voter approval at all makes the process more difficult.

Legislative vote requirements

Some argue that an extraordinary majority requirement in the legislature limits proposals of amendments to those with wide support and keeps down the number of decisions a voter must make at the polls. Others say that the high majority required weakens the character and quality of amendments because it is necessary to please so many legislators of different persuasions for a favorable vote. It is, in effect, a rule by minority since so few can block a proposal. Another point is made by A. L. Sturm (op. cit.): because most state constitutions contain so much legislative detail (matters of statutory law rather than constitutional law) it would seem consistent to demand a simple majority to change it as with other legislation.

Popular ratification vote

Two arguments can be forwarded in defense of the provision requiring a majority of those voting in an election to ratify an amendment. It can be said that a great deal of voter education and awareness must take place for an amendment to pass. This seems highly desirable considering the importance of amending our basic document. Another favorable aspect of the present method is that a majority of the electorate must approve a change in its constitution. When only a majority of those voting on the question is required it is possible for a small minority of the total voters to pass an amendment. However, logic seems to indicate that decisions on constitutional issues should be left to those who have sufficient interest to be informed and vote on them. There are ways to insure that an adequate number of voters take part. For instance, Nebraska and Hawaii require that the affirmative votes cast on the question be not less than 35% of the total votes cast in the election. The percentage could even be 40%. Another possibility is to require an extraordinary majority of 55% or 60% of those voting on the amendment. This too would reduce the chances that the outcome would have involved too few voters.

Other Amending Provisions

Publication of proposed amendments

All but five states recognize the importance of informing the citizenry in making changes in a constitution by constitutionally requiring publication of proposed amendments. Publication is generally in the daily or weekly press, but Connecticut and Minnesota publish amendments along with the session laws

of the legislature. These are available to the public upon request. North Dakota and Massachusetts require that the full text, plus pro and con arguments, be mailed to each registered voter. If Minnesota were to have such a plan, some form of distribution might be devised through the local election officials since voter registration is not required in every municipality.

Special Elections

In most states, as in Minnesota, amendments are submitted at the next general election. Nine states permit the governor or legislature to call a special election especially for emergencies. Minnesota, according to an attorney general's ruling during the 1961 Legislative Session, may not call a special election under the constitution. If Minnesota law had provided for a special election, the pending debt limit amendment, on which the state building program depends, could have been decided instead of having to wait for the next general election of November 1962.

Limitations on Revision by Amendment

Problems faced by other states in using the amending process to revise their constitutions have to do with restrictive provisions on the number, character, and frequency of proposals. Kansas, for one example, limits to three the number of amendments that may be submitted at any one election, while Vermont may only submit amendments to the people every ten years. (LWV's in both of these states are interested in changing these requirements.) In some states a proposal that is defeated at the polls cannot be re-submitted for three or five years. Most of the states, including Minnesota, require that if two or more amendments are submitted at the same time they must be voted on separately. This situation does not preclude the complete revision of one article by one amendment, as we have seen by the judiciary amendment passed in 1956 or the substantial changes made in the highway article. There is no constitutional requirement that each amendment be limited to a single point. This has been a legislative determination and the courts have stated that issues "may be submitted in a single proposal if they are rationally related to a single purpose." This opinion was cited by Justice Loevinger in the 1960 test* of the legality of Amendment #1 which contained proposed changes to more than one section of Article IV. The decision to approve Amendment #1 as it stood was not unanimous and was based largely on deference to legislative judgment, precedence of action on former amendments, and the time factor.

Nine co-ordinated amendments resulting from a commission study were submitted to the people of New York in 1938 and six were adopted. Georgia, with no restrictions, was able to revise its whole constitution as one amendment in 1943. Oregon passed an amendment in 1960 allowing the legislature to submit a revision of all or any part of the constitution as one amendment.

Rep. Douglas Head of Minneapolis introduced an amendment to Article XIV in the last session of the legislature which provided for an exception to the rule that amendments be voted on separately. The exception, as stated in the bill, is "amendments which are submitted to remove obsolete material from the constitution, to rearrange and consolidate material in the constitution." The bill was not acted upon.

* Fugina vs. Donovan 1104 N.W. 2nd 9 11

Summary of Minnesota's Position

While Minnesota does not have the easiest amending process, neither does it have some of the obstructive restrictions that plague other states. One conclusion is inescapable--the ratio of amendments adopted to those proposed doesn't bear much relationship to the ease or difficulty of the amending provisions. The constitution provides the tools with which to operate; how well they are used depends on the skill of the legislature in the first instance and the judgment of the people in the second. Procedures should be devised which result in as precise reflection as possible of the popular will. In examining the amending process in Minnesota, we would do well to be guided by this statement of W. Brooke Graves in State Constitutional Revision: "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; on the other hand, if the amending process is too easy, then the constitution tends to get out of hand. Ideally, the amending process should be more difficult than the ordinary legislative process, but not impossibly difficult."

Determining the ease or difficulty of the amending process, in the last analysis, is a matter of political opinion, according to Professor Anderson who says (perhaps with tongue in cheek), "that amending process is too difficult which prevents a favored amendment from passing, and that process is too easy which permits the passage of an amendment to which one is opposed."

APPENDIX I

26 Proposed Amendments to the Minnesota Constitution 1948 - 1960

#	Year	Subject of Amendment	A or R	Yes Vote	No Vote	Total Vote at General Election	Yes Vote Percent of Total
1	1948	reapportionment of gasoline tax	R	534,538	539,224	1,257,804	42.49
2	"	permit vote on 2 or more amendments at one time	R	319,667	621,523	"	25.41
3	"	permit 2/3 of legis. to call a const. conv. without vote by people	R	294,842	641,013	"	23.44
4	"	bonus for veterans of World War II	A	664,703	420,518	"	52.84
1	1950	1% of occupation mining tax for vet's bonus fund	A	594,092	290,870	1,067,967	55.62
2	"	new fund for a forestry management program	R	367,013	465,239	"	34.37
3	"	reap. of gasoline tax	R	420,530	456,346	"	39.37
1	1952	change in loan requirements for trust funds	R	604,384	500,490	1,460,326	41.38
2	"	60% vote of people on rev. const. by convention	R	656,618	424,492	"	44.96
3	"	clarify voter's qualific.	R	716,670	371,508	"	49.07
4	"	allow legis. to extend probate court jurisdiction	R	646,608	443,005	"	44.27
5	"	reap. of motor vehicle tax	R	580,316	704,336	"	39.73
1	1954	allow legis. to extend probate court jurisdiction	A	610,138	308,838	1,168,101	52.23
2	"	stockholder liability	A	624,611	290,039	"	53.47
3	"	60% vote of people on revised const. by conv.	A	638,818	266,434	"	54.69
4	"	vacancies in elective offices	A	636,237	282,212	"	54.46
1	1956	revision of judiciary article	A	939,957	307,178	1,443,856	65.10
2	"	reap. of gasoline & motor vehicle taxes, revision of highway article	A	1,060,063	230,707	"	73.41
3	"	diversion of occupation mining tax from permanent funds to current school needs	A	1,084,627	209,311	"	75.12

#	Year	Subject of Amendment	A or R	Yes Vote	No Vote	Total Vote at General Election	Yes Vote Percent of Total
1	1958	revision of provisions relating to home rule and local government	A	712,552	309,848	1,178,173	60.47
2	"	4 year terms for state constitutional officers	A	641,887	382,505	"	54.48
3	"	permit legislators to hold other elective offices	R	576,300	430,112	"	48.91
1	1960	permit legislators to hold other elective offices; lengthening of legislative session	R	763,434	501,429	1,577,509	48.39
2	"	reapportionment of legislative districts	R	600,797	661,009	"	38.08
3	"	continuity of government	A	974,486	305,245	"	61.77
4	"	waive 30 day residence for moving voter; remove obsolete Indian provisions	A	993,186	302,217	"	62.32

= Amendment number on ballot; year = election year; A or R = adopted or rejected

Mitau - "Constitutional Change by Amendment," pp 482-483
Adapted from Minnesota Law Review - January 1960

APPENDIX II CONSTITUTIONAL PROVISIONS FOR AMENDMENTS (1954) Sturm - Methods of Constitutional Revision - 1954
and NUMBER OF AMENDMENTS FOR EACH STATE (1953)

State	Legislative Vote Required for Proposal	Vote Required for Ratification	Consider- ation by 2 sessions	Total Proposed	Amendments Adopted	Time of Popular Referendum
Alabama	3/5 of members elected to each house	Majority on proposal	No	181	95	Next gen. elec. or spec. elec. to be held within 3 months
Arizona	Majority of members elected to each house	Majority on proposal	No	87	35	Next gen. elec. or spec. elec. called by legislature
Arkansas	Majority of members elected to each house	Majority on proposal	No	---	42	Next gen. elec. for senators & repres.
California	2/3 of members elected to each house	Majority on proposal	No	482	272	As legislature prescribes
Colorado	2/3 of members elected to each house	Majority on proposal	No.	140	56	Next. gen. elec. for general assembly
Connecticut	Maj. vote in house, 1st passage; 2/3 mem. each house, 2nd passage	Majority voters at town meetings	Yes	63	47	At special town meetings
Delaware	2/3 of members elected to each house	No requirement for popular vote	Yes	41	21	No requirement of popular vote
Florida	3/5 of members elected to each house	Majority on proposal	No	140	89	Next. gen. elec. or spec. elec. called under emer'y prov.
Georgia	2/3 of members elected to each house	Majority on proposal	No	101	83	Next general election
Idaho	2/3 of members elected to each house	Majority of the electors	No	96	58	Next general election

Illinois	2/3 of members elected to each house	Majority of electors voting in elec. or 2/3 voting on proposal	No	24	10	Next general election for general assembly
Indiana	Majority of members elected to each house	Majority of said electors	Yes	37	18	Not specified
Iowa	Majority of members elected to each house	Majority on proposal	Yes	23	20	As general assembly prescribes
Kansas	2/3 of members elected to each house	Majority on proposal	No	66	40	Next general election for representatives
Kentucky	3/5 of members elected to each house	Majority on proposal	No	37	15	Next general election for house of reps.
Louisiana	2/3 of members elected to each house	Majority on proposal	No	347	302	As legislature prescribes
Maine	2/3 of members elected to each house	Majority on proposal	No	93	75	Next bien. Sept. town meetings
Maryland	3/5 of members elected to each house	Majority on proposal	No	87	69	Next general election
Massachusetts	Maj. of members elected sitting in joint session	Majority on proposal	Yes	98	81	Next general state election
Michigan	2/3 of members elected to each house	Majority on proposal	No	110	55	Next spring or autumn general election
Minnesota	Majority of members elected to each house	Majority in election	No	158	76	Any general election
Mississippi	2/3 vote of each house	Majority qualified electors	Insertion after referendum	---	35	An election
Missouri	Majority of members elected to each house	Majority on proposal	No	7	4	Next gen. elec. or spec elec. called by Gov.
Montana	2/3 of members elected to each house	Majority on proposal	No	41	26	Next general election for legis.

Nebraska	3/5 of members elected to legislature	Majority on proposal	No	110	65	Next general election for legis.
Nevada	Majority of members elected to each house	Majority on proposal	Yes	92	56	As legislature prescribes
New Hampshire	-----	---	---	194	105	---
New Jersey	3/5 of members elected to each house	Majority on proposal	Contingent on size of vote	0	0	Next general election
New Mexico	Majority of members elected to each house	Majority on proposal	No	76	27	Next gen. election or special election
New York	Majority of members elected to each house	Majority on proposal	Yes	144	110	As legislature prescribes
N. Carolina	3/5 of members elected to each house	Majority of votes cast	No	104	80	Next general election
N. Dakota	Majority of members elected to each house	Majority on proposal	No	109	63	Any statewide elec. or spec. elec. called by governor
Ohio	3/5 of members elected to each house	Majority on proposal	No	132	66	Next gen. elec. or spec. elec. prescribed by general assembly
Oklahoma	Majority of members elected to each house	Majority at election	No	110	36	Next gen. election or special election
Oregon	Majority of members elected to each house	Majority on proposal	No	206	92	Next general elec. or special election
Pennsylvania	Majority of members elected to each house	Majority on proposal	Yes	77	53	As general assembly prescribes
Rhode Island	Majority of members elected to each house	3/5 on proposal	Yes	56	32	Next April town meetings

South Carolina	2/3 of members elected to each house	Majority on proposal	After 342 pop. approval	215	Next gen. elec. for representatives	
South Dakota	Majority of members elected to each house	Majority on proposal	No	119	57	Next general election
Tennessee	Maj. - 1st passage; 2/3 mem. elected to each house - 2nd passage	Majority at election for governor	Yes	24	0	As legislature prescribes
Texas	2/3 members elected to each house	Majority on proposal	No	197	110	As legislature prescribes
Utah	2/3 members elected to each house	Majority on proposal	No	81	52	Next general election
Vermont	2/3 of senate, maj. of house 1st passage; maj. of both houses, second passage	Majority on proposal	Yes	120	40	As general assembly prescribes
Virginia	Majority of members elected to both houses	Majority on proposal	Yes	30	23	As general assembly prescribes
Washington	2/3 of members elected to each house	Majority on proposal	No	56	28	Next general election
W. Virginia	2/3 of members elected to each house	Majority on proposal	No	47	27	Next general election
Wisconsin	Majority of members elected to each house	Majority on proposal	Yes	87	56	As legislature prescribes
Wyoming	2/3 of members elected to each house	Majority at election	No	36	18	Next general election
Alaska	2/3 of members elected to each house	Majority on proposal	No			
Hawaii	2/3 maj. of each house or maj. vote at each of two successive sessions	Majority on proposal	Contingent on notice to governor			Next general election

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