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PROPOSED

AMENDMENTS

TO

MINNESOTA'S CONSTITUTION

1962

League of Women Voters of Minnesota, 15th & Washington Avenues S.E., Minneapolis 14
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INVESTMENT OF MINNESOTA TRUST FUNDS
(Constitutional Amendment #1)

The 1961 Legislature passed a bill to amend the Constitution by relaxing the constitutional provisions governing investment of the permanent trust funds - vote: House, 68-50; Senate 56-0. This bill is to appear as Constitutional Amendment #1 on the November 6, 1962 ballot. Because only the income from investment of principal can be spent, the purpose of the proposal is to enable realization of a greater return on the monies held in trust. Before listing the amendment's provisions a description of the trust funds and their history is in order.

Trust Fund History

Although the proposed amendment does not affect all of the trust funds, in practice they tend to be treated together and will be so considered here.*

1. Permanent School Fund--the only trust fund established by the Constitution (1858). Its principal was originally derived from sale of lands granted to the State by the United States for the use of schools. In 1922 an amendment was adopted dedicating to this Fund 40% of the occupation tax on iron ore; it has been the main source of the millions of dollars which have accrued to the principal. A 1956 amendment directed that 40% of the occupation tax be used for support of the elementary and secondary schools of the state, rather than salted away in the Permanent School Fund for investment use only. All of the proceeds of this Fund are used for elementary and secondary public schools.

2. Swamp Land Fund--established by constitutional amendment in 1881. Derived from the sale of swamp lands held by the State, its income is dedicated half to the public schools and half to public institutions.

3. Internal Improvement Land Fund--originated by a constitutional amendment adopted in 1872, to consist of monies received from the sale of lands donated to the State by the United States for the purpose of internal improvement (roads, canals, etc.). It provided for no appropriation of its income until approved by the electorate, which in 1884 pledged it to the payment of the 1857 defaulted railroad bonds. After these bonds were retired the income was dedicated to the Road and Bridge Fund by an amendment adopted in 1897.

4. Permanent University Fund--established by statute in 1870. An 1896 amendment provided that the Permanent School, Permanent University, and Swamp Land Funds might be invested in bonds of political subdivisions of the state. Upon the passage of the Iron Ore Occupation Tax amendment in 1922 the principal of the University Fund was increased annually by 10% of the occupation tax collections. The 1956 amendment provided that this 10% be spent directly for the general support of the university rather than accrue to the principal of the Permanent University Fund.

A 1914 amendment, recognizing that some school and other public lands were better suited to forestry than to agriculture, set them apart as school forests and provided that the net revenue from timber sales be placed in the respective trust funds. Another source of increment to the funds has been the royalties paid on iron ore mined on the trust fund lands.

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* The Permanent School Fund and the Swamp Land Fund are the two funds affected by Amendment #1.

Changes in Trust Fund Provisions

The development of Minnesota's trust funds reflects changes in thinking regarding purposes and functions of constitutions during the last half of the 19th and early part of the 20th centuries. Constitutions became lengthy and detailed instead of short and confined to fundamental law. Many restrictions were imposed on legislators. This resulted in more and more amendments as conditions changed.

The first trust fund was established by the Constitution and specified only that it be a perpetual fund and that the principal be forever preserved inviolate and undiminished. Not until 1872, when the Internal Improvement Fund was established, were the objects of investment of a fund specified. Investment at that time was restricted to "bonds of the United States, or the State of Minnesota issued since 1860." The 1872 amendment was followed two years later by the amendment to the Permanent School Fund of the clause directing the investment of the principal of that fund in "interest bearing bonds of the United States, or of the State of Minnesota, issued after the year 1860, or of such other state as the legislature may, by law, from time to time direct." In 1886 another amendment was added to Article 8 allowing the permanent school funds to be loaned to the counties or school districts of the state to be used in the erection of county or school buildings. In 1896 another extension of allowable investments of the trust funds was written into the Constitution as Section 6 of Article 8, providing that "The permanent school, permanent university and swamp land funds of this state may be loaned to or invested in the bonds of any county, school district, city, town, or village of this state" upon the meeting of certain conditions. In 1916 the last extension of investment was added to this section to include first mortgage loans secured upon improved and cultivated farm lands of the state.

Modifications that have been made since that time have been in the conditions to be met, such as the percentage of bonded indebtedness to assessed valuation of the political subdivisions, the rate of interest and the term of the bond issue. These limitations have made it difficult for the state to invest the trust funds, and each time a change is needed the constitutional amendment process must be resorted to.

Present Trust Fund Provisions Summarized

In summary: We have four funds, the principal of which "shall forever be preserved inviolate and undiminished," meaning that only the income from investment of the money can be spent, which principal can be invested only in interest-bearing bonds of the United States, of the State of Minnesota and other states, in the bonds of political subdivisions of Minnesota and in first mortgage loans upon improved and cultivated farm lands of Minnesota.

The funds and their principal balances as of June 30, 1961, were:

	Amount Invested plus cash on hand
Permanent School Fund	$231,863,306.79
Permanent University Fund	46,094,427.34
Swamp Land Fund	28,156,594.54
Internal Improvement Land Fund	409,192.54
TOTAL	$306,523,521.21

How Trust Funds are Invested (June 30, 1960)

U. S. Government Bonds	81.4%
Loans to Minnesota Municipalities	1.3%
Minnesota Bonds	.9%
State Certificates of Indebtedness	16.3%
Bonds of other states	.1%

Proposals of Amendment #1

Briefly, the proposed changes are:

1. To combine the Permanent School Fund and the Swamp Land Fund into a single fund;

2. To authorize investment of the fund (computed on the cost price of the stocks or bonds) in:

   (a) Interest bearing fixed income securities of the U. S. and of its agencies, fixed income securities guaranteed in full as to payment of principal and interest by the U. S.,* bonds of the State of Minnesota, of its political subdivisions or agencies, or of other states, with the limit that not more than 50% of any issue by a political subdivision shall be purchased;

   (b) Stocks of corporations on which cash dividends have been paid from earnings for five consecutive years or longer immediately prior to purchase, but not more than 20% of the fund shall be invested in corporate stocks at any given time, nor more than 1% in any one corporation, nor shall more than 5% of the voting stock of any one corporation be owned;

   (c) Bonds of corporations whose earnings have been at least three times the interest requirements on outstanding bonds for five consecutive years or longer immediately prior to purchase, but not more than 40% of the fund shall be invested in corporate bonds at any given time.

3. To modify the provision for preserving the principal of the fund "inviolate and undiminished forever" to this extent: "The principal of the permanent school fund shall be perpetual and inviolate forever; provided, that this shall not prevent the sale of any public or private stocks or bonds at less than the cost thereof to the fund; however, all losses not offset by all gains, shall be repaid to the fund from the interest and dividends earned thereafter." This is considered an important improvement by the state treasurer.

4. To distribute the net proceeds to the different school districts in the state in proportion to the number of scholars in each district between the ages of 5 and 21 years.

   Two changes would be effected by this provision. First, the specification of "net" implies that costs of administration be deducted before distribution is made. Under present provisions, this practice has been ruled unconstitutional.

   Secondly, all of the swamp land fund's proceeds would go to the schools thus eliminating one-half of the income which presently is appropriated to state institutions. In 1960-1961 this income to institutions amounted to $405,619.73. Since it went to many institutions, none benefited greatly.

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* This refers to U. S. agencies as the Federal Housing Administration or the Commodity Credit Corp., whose obligations are not issued by the U. S. Treasury but are fully guaranteed by it.

5. To establish a board of investment consisting of the governor, the state auditor, the state treasurer, the secretary of state, and the attorney general, to approve any contemplated investment, and to administer and direct the investment of all state funds. There are already two other provisions on the same subject in the Constitution; i.e., Article 8, Section 5, requires approval of loans to counties or school districts for building purposes by a board of investment consisting of the governor, the state auditor, and the state treasurer; whereas Article 8, Section 6, requires the approval by a "board of commissioners designated by law to regulate the investment of the permanent school fund" and the permanent university fund of this state." By statute, the present State Board of Investment consists of the governor, the state auditor, the state treasurer, the attorney general, and a member of the University Board of Regents. The new provisions would take priority over these and would substitute the secretary of state for a member of the Board of Regents.

6. To prohibit the state board of investment from permitting the fund to be used for the underwriting or direct purchase of municipal securities from the issuer or his agent. This means the state would need to buy securities on the open market and would prevent private deals between the state and bond agents.

7. To amend Section 6 of Article 8 to eliminate mention of the Permanent School Fund and the Swamp Land Fund.

Trust Funds not affected by these provisions

This amendment does not affect the present status of the Permanent University Fund. This fund was omitted at the request of the Board of Regents because the Board hopes to handle its own funds in the near future. From 1851 to 1863 the Regents controlled investment of University funds. In 1863, at their request, a law was passed to give the state this authority. An attorney general's opinion in 1955, however, stated that the Board of Regents still has authority to invest the Permanent University Fund as it sees fit, subject only to the limitations of Article 8, Section 6. (They may invest in municipal and school bonds or farm mortgages but have not done so for several decades. No other constitutional provisions govern investment of these funds. Currently they are almost completely in U. S. government obligations.) To date no agreement has been reached between the Regents and the legislature on the transfer of the funds. Because of the uncertainty about who is to handle the funds, it was decided by the legislators to leave the present Permanent University Fund provisions intact.

The amendment also does not affect the investment policies of the Internal Improvement Land Fund.

Reasons for the Proposed Amendment

To produce more income

There are two ways in which the amendment hopefully would increase trust fund earnings: 1) by allowing the investment of trust funds in certain new types of securities, stocks, and bonds now excluded by the constitution; 2) by allowing the Investment Board to sell, at less than cost, stocks and bonds in which trust funds are now invested--with the provision that any net loss in principal resulting therefrom is to be repaid from subsequent earnings.

This second way is important. If the amendment were passed, for example, U. S. government obligations, purchased in the past and bearing low interest rates, could be sold; the proceeds from the sale could be used to buy recent U. S. government obligations which yield as much as 2¼% higher interest.

On the present market, the old bonds would have to be sold at a loss of approximately $25 to 30 million, but the greater return on the new bonds would still make the transaction profitable. Under the present constitution the courts have construed "inviolate and undiminished" to mean that no such sales at less than cost can be permitted because this would result in "diminishing" the principal. Had the proposed amendment been in effect years ago, the currently held low-interest bonds could have been sold before their value declined so markedly, with the double advantage of a smaller loss in their sale and an earlier re-investment of the proceeds in bonds yielding a higher rate of interest.

To Meet the Need for More Income

In addition, the need for the money is much greater because of tremendously increased costs of government caused by rising costs, expanded services, and an exploding population. Education accounts for a larger fraction of state general expenditures than does any other function, and that is the function with which we are primarily concerned in considering the investment of the trust funds. As the number of persons to be educated increases, and as the cost of providing that education continues to increase, the desirability of realizing the highest possible income from the funds set aside to help support public education mounts. In addition, it would seem only common sense to invest the available monies at the highest possible yield.

Recommendations of Study Groups

Minnesota Constitutional Commission Suggestions

That the problem was not a major consideration in 1948 when the Minnesota Constitutional Commission made its intensive study may be inferred from its recommendations, which were that "The principal of the net proceeds of these (all the trust fund) lands, may be invested only in bonds of the United States, the State of Minnesota, and its political subdivisions and bonds of other states as may be provided by law." A note appended states that "The Commission has eliminated the possibility of the investment of the trust funds in farm mortgages and has recommended that the investment of such funds be confined to federal, state, and local bonds." The Commission did recommend specifically that the costs of administration be deducted from the income arising from the investment of these funds before distribution be made to the dedicated purposes (also in proposed amendment). It also recommended not to write into the constitution such provisions as the assessed value against which loans might be made to local governments, the interest rate and duration of such loans, and the distribution of the proceeds of the Permanent School Fund "in proportion to the number of scholars in each township between the ages of 5 and 21." On the last point the Commission recommended simply that the income from the School Fund be appropriated to the public schools. The details should be left to the legislature in each of these matters.

Minnesota Tax Study Commission Suggestions

The Minnesota Tax Study Commission, a legislative interim commission of the 1953 Legislature, made its report in December of 1954. By that time a general decline in interest rates had become more pronounced and the commission commented that "under the existing constitutional limitations on the investment of these funds, not much improvement in the yield can be expected unless there is a general increase in all interest rates." It suggested that the legislature consider the advisability of submitting a constitutional amendment for the purpose of increasing the yield upon the principal of the state's permanent trust funds from (a) the fixed income securities now authorized but which cannot be purchased because of the narrow limitations now prescribed, (see page 2) and (b) investing

a limited portion of all permanent trust funds of the state in other than fixed income securities, providing for proper and adequate safeguards including a competent investment board whose members shall all have had adequate experience in this field of investment (proposed amendment meets these suggestions for the most part).

Professor Rosental's Study

Alek A. Rosental of the School of Business Administration of the University of Minnesota conducted a comprehensive study of the investment policy of Minnesota trust funds in 1955. In it he analyzed the types of investments made by other institutions which have large sums of money to invest for the highest possible return and which must safeguard their funds for depositors or clients. These most comparable institutions include savings banks, life insurance companies, educational endowment funds, private trusts, public and private retirement funds, and other state permanent trust funds. Unlike our trust funds most of these funds are subject to unannounced withdrawal and hence investments must sometimes be sold whether or not the market is especially propitious. The point is stressed that investments such as would be made of the trust funds are not at all speculative in nature, that is, the income would not be dependent upon profits made by buying and selling, but that they are made for long-term interest or dividend yield.

Recent Investment Trends

The trend in recent years in all such financial institutions has been to allow greater latitude in investments. With the exception of state trust funds, investments made by such financial institutions are governed by statute. The result is that there has been a marked decline in the proportion held in government obligations and an increase in corporate stocks and bonds.

The various states' trust funds are still the most rigidly controlled because in many instances their operations are restricted by constitutional provisions. Where possible, the scope of investments has been broadened by statute. Texas, the only state which has larger trust funds than Minnesota, approved a constitutional amendment in 1956 enabling the investment of as much as 50% of its assets in corporate stocks and bonds.

Rosental's Recommendations

Professor Rosental outlined an enlightened investment policy, which would, first, broaden the eligibility provisions regarding securities. It would include among governmental securities those fully guaranteed, although not directly issued, by the Treasury; and corporate securities, which would include bonds, debentures, preferred and common stocks; it would ideally not set percentage limits of the amounts invested in any single type of investment, and would require competent and skilled management to insure adequate diversification of the portfolio, that is, to be sure of having sufficient variety so that capital losses in some would be offset by gains in others.

Investment Department Established

In 1959 the legislature established a department to advise the State Board of Investment in determining the investment policies to be adopted for the various state funds and in implementing these policies through the actual purchase and sale of securities. The Board of Investment is responsible for the investment of the retirement funds as well as the trust funds. In its report to the legislature in February, 1961, the new department said that the Board had made certain exchanges of U. S. government securities which have been beneficial to the trust funds. The largest exchange resulted in increased income to the funds of over

$400,000 per year, or approximately $8,500,000 during the 19½ year period through 1980, the maturity date. Robert E. Blixt, the Executive Secretary, adds, "Additional investment rearranging, under the existing Constitutional restrictions, appears to be very limited in scope. It is evident that a constitutional amendment such as that suggested by the Governor's Committee, is necessary before the beneficiaries of the State Trust Funds can receive a more adequate income."

Committee to study and recommend

Late in 1959 the Committee on Investment of State Trust Funds was organized at the request of the governor "to study the investment policy of the four permanent trust funds of this state, with a view to setting forth recommendations on how to improve the rate of return on invested assets." Its report shows a continuation of the same trend pointed out by Mr. Rosental four years earlier. As of June 30, 1960, the trust funds had an investment of 81.4% of total assets in U. S. governmental obligations. The remaining 18.6% was invested in state and municipal bonds including those of the State of Minnesota and its subdivisions. The report showed the average interest rate on total assets of the four funds was 2.78%. This rate of return is low compared with other types of investments as shown in the table below.

Comparison of Yields
Various Objects of Investment

Type	Period	Rate
Minn. Trust Funds, Govermental obligations	6/30/59 to 6/30/60	2.78%
Mutual savings banks, real estate mortgages	1959	4.57%
Average yields, high grade (Aaa) corporate bonds (Moody's)	1959	4.38%
Moody's average yield, preferred stocks	1959	4.78%
Moody's common stock average (200 stocks)	1950-1959	4.80%

There are many other factors to be considered in the development of a sound investment policy, but most of them are beyond the scope of this review and need not be considered in deciding whether or not the proposed constitutional amendment is sound and worthy of support. Suffice it to say in summary of the Governor's Committee report that securities other than government obligations have been yielding a higher rate of return during the last 15 years, that the trend has been for legislatures to relax restrictions on investments of fiduciary institutions during this period, that in the management of the state trust funds the paramount consideration must continue to be the safety and preservation of principal, and that even a 1% differential in yield amounts to $3,000,000 per year on a principal of $300 million.

Committee on Trust Funds' Recommendations

In the suggested revisions of Article 8 of the Constitution, the Governor's Committee on the Investment of State Trust Funds specifies 14 types of investments to be authorized, setting detailed conditions for eligibility. In addition, they add the prudent man clause, common to many investment statutes, as follows: "Be it further provided, however, that any investments under this Article shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived." Finally they removed the management of the Permanent University Trust Fund from the State Board of Investment and gave it back to the Board of Regents. The Committee's recommendations are more detailed than proposed Amendment #I.

Economic Considerations

Since hindsight is so much better than foresight, it is easy to see that investments in corporate securities made fifteen, ten and even five years ago were made at a favorable time--a time of general economic expansion. Whether or not the trend will continue and how to cope with it is primarily the business of the investment managers, and need not concern us too much in considering the amendment. Some signs have developed, however, which point toward a slowing-down of corporate earning power. Among them are increased competition resulting in cutting of prices with consequent lowering of profits, forcing companies to produce more and more goods in order to maintain earnings at a static level. Common industrial stocks are yielding only 3%, whereas high-grade bonds can be bought to yield 4½%. Unless we stand on the threshold of another wave of business expansion, dividends on common stocks are likely to fall below the 3% level, in which case they would not necessarily produce a bit better yield than do the fixed interest-bearing securities of the United States at the present time.

Two assumptions in large part govern our economy today. They are (1) that the United States will never again have another great depression and (2) that inflation is here to stay. Therefore, as long as the supply of printed money continues to increase, it probably behooves us to do what we can to get our share of the devalued dollar income. At the same time we might look toward placing greater safeguards than this proposed amendment delineates to hang onto the number of dollars we already have as the principal balance of the trust funds. As long as we assume that we shall never experience another great depression, we perhaps need not worry about default on corporate bonds and subsequent loss to the principal of the funds.

What are the criteria for judging the merits of this proposed amendment, and how well does it meet them?

1. Does it meet the definition of fundamental law which properly belongs in the Constitution?

   No. It contains too much detail which ideally ought to be left to the discretion of the legislature. It does eliminate a substantial amount of old clutter but adds some new clutter. The Model State Constitution (1948) does not specify any objects of investment. Investments which should be allowed at any particular time can be classified as measures of temporary importance which are better not cast into permanent form by constitutional provision.

In addition, why should the composition of the Investment Board be frozen by constitution? And why should the legislature not be trusted to prohibit such things as the use of the fund for the underwriting or direct purchase of municipal securities from the issuer or his agent?

2. Is it sufficiently general in scope to be a good amendment, or would it only serve to add to the haphazard, patchwork mending of our present constitutional faults?

No, to the first part of the question. The proposed amendment would affect only two of the four trust funds--the Permanent School Fund and the Swamp Land Fund. It would have no effect at all on investment of the Permanent University Fund as discussed earlier on page four. The amendment also does not propose to disturb the present investment policies of the Internal Improvement Fund. At first glance, that this was not included is logical, as it is contained in a different article of the constitution (4). But it could and should have been included in this proposal under the Supreme Court Decision (Fugina v. Donovan, 1960, N.W. 2d 911) stating that "Proposed constitutional amendments that might be submitted separately may be submitted in a single proposal if they are rationally related to a single purpose, plan, or subject..."

Thus, it is not general enough in scope and it would make for patchwork mending of the constitution's faults.

3. Does it preserve the intent of our founding fathers to perpetuate the trust funds inviolate and undiminished?

The proposed amendment provides (1) "Within limitations prescribed by law, to secure the maximum return thereon consistent with the maintenance of the perpetuity of the fund. ." and (2) "The principal of the permanent school fund shall be perpetual and inviolate forever; provided, that this shall not prevent the sale of any public or private stocks or bonds at less than the cost thereof to the fund; however, all losses not offset by all gains, shall be repaid to the fund from the interest and dividends earned thereafter." These statements should protect the principal of the fund. As stated earlier this last provision will allow the sale of United States' bonds yielding low interest rates. These sales will mean a temporary loss to the principal which will be offset by increased earnings from more lucrative investments. The provision does recognize the original intent of keeping the funds intact as well as the need to increase the interest earnings.

Two other points might stand examination on this criteria of perpetuating the trust funds. They are the proportions of the fund to be allowed in corporate investment and the criteria of eligibility for purchase. As far as the percentages are concerned, they seem to follow the trend established by similar fiduciary institutions. The procedure is that the investments would be made gradually over quite a long period of time, so that the maximum allowable proportions would not be reached in the near future, thereby reducing the risk of the new investments and of market changes.

Five years does not seem to be a very long period on which to judge the behavior of a corporation in the long run. As the market and economic conditions change, such eligibility requirements might well be subject to change, which is a reason for their inappropriateness in the basic law. The legislature would have the power to make the requirements more, but not less, stringent.

4. Is the purpose for which the amendment has been proposed a worthy one?

Yes. It has been pointed out that on account of inflation the effective income from the investment of these funds has been stationary in the face of increased principal and under present policies and continuation of inflation can be expected to decline. Proposals for investment follow present practices of conservative investment groups such as life insurance companies and college endowment funds. These groups are currently earning considerably more on their investments than are Minnesota's trust funds.

APPENDIX A — MINNESOTA TRUST FUNDS

Permanent School Fund and Swamp Land Fund

	Present, 1961	Amendment Proposed for 1962 General Election
STRUCTURE	Separate trust funds, although subject to same provisions except for use of income derived	Combine into a single fund
INVESTMENT	Interest bearing bonds of the U.S., of Minnesota or of other states; bonds of Minnesota political subdivisions	(1) Interest bearing fixed income securities of the U.S. and its agencies, fixed income securities guaranteed by the U.S., bonds of Minnesota, of other states, and of Minnesota subdivisions; (2) corporation stock not to exceed 20% of the fund; (3) corporate bonds, not to exceed 40% of the principal of the fund.
PRINCIPAL	"Shall be perpetual and forever preserved inviolate and undiminished."	Shall be perpetual and inviolate forever, except that stocks or bonds may be sold at less than the cost to the fund, but such sales resulting in net loss to the fund shall be repaid to the fund from the interest and dividends earned subsequently.
ADMINISTRATIVE COSTS	Not deductible from income derived from investment of principal, before distribution.	Proceeds available for distribution to schools would be investment income less the costs incurred in obtaining it.
USES		
Permanent School Fund	Income distributed to the different townships of the state in proportion to the number of scholars in each Twp between the ages of 5 and 21 years.	Net interest and dividends shall be distributed to the different school districts of the state in proportion to the number of scholars in each district between the ages of 5 and 21 years.
Swamp Land Fund	One-half of proceeds shall be appropriated to the common school fund of the state;	Net interest and dividends shall be distributed to the different school districts of the state, etc., as immediately above.
	The other one-half shall be appropriated to the educational and charitable institutions of the state.	This clause abolished by omission.
Permanent University Fund		No changes proposed in this amendment.
Internal Improvement Land Fund		No changes proposed in this amendment.

B I B L I O G R A P H Y

Board of Investment, State of Minnesota, 1960 Report of the Executive Secretary, February 28, 1961.

Committee on Investment of State Trust Funds, Report, 1960.

League of Women Voters of Minnesota, Dollars and Sense, January, 1955.

Minnesota Constitutional Commission, Report, October 1, 1948.

Minnesota Tax Study Commission, Report entitled Minnesota's Tax Structure, December, 1954.

Minnesota Statutes Annotated, Volume 2, State Constitution.

Rosental, Alek A., Investment Policy of Minnesota Trust Funds, School of Business Administration, University of Minnesota, January, 1956.

State Auditor of Minnesota, Quarterly Report for the period ended 6/30/61.

THE DEBT AMENDMENT
(Constitutional Amendment #2)

During the final days of the 1961 special session, legislators hurriedly passed a state debt amendment, with the Senate voting 37-22 and the House 86-36. While there was reluctance among some of those who voted for the bill, the overriding argument was need to annul the old debt limit of $250,000 in order for the state's $33 million building program to proceed. League members now must decide whether the proposed amendment is good enough to substitute for the admittedly outdated constitutional provisions, or whether, at the sacrifice of delaying state building construction, they would prefer that the legislature propose an improved amendment next session. What we decide will surely affect the vote outcome next November.

The legislators' compulsion to act resulted from a state supreme court warning issued in April of 1960. In Naftalin vs. King the court warned that in the future it would declare present methods of financing debt unconstitutional. Despite the $250,000 debt limit, which was written into the original constitution in 1857, current state indebtedness stands at $192,737,903.24 (June, 1961).

Outstanding Bonds and Certificates of Indebtedness
As of June 30, 1961

Minnesota Seaway Property Conservation	$ 4,000,000.00
Minnesota State Parks	367,500.00
Minnesota Aeronautics	5,050,700.00
Minnesota School Aid (Debt service Loan Fund)	4,468,333.34
University, Teachers Colleges and State Building	126,401,369.90
Rural Credit Deficiency Fund Certificates of Indebtedness	9,000,000.00
TOTAL	$149,287,903.24
Trunk Highway Bonds	43,450,000.00
TOTAL OUTSTANDING INDEBTEDNESS	$192,737,903.24

Debt Defined

A definition of debt is: the amount the state is bound to pay in excess of its current revenues, or an obligation secured by the full faith and credit of the state. Debt is discharged from general tax revenues.

History of the State Debt

Problems with the low debt ceiling began early in the state's history. When hospitals for the mentally ill and other public institutions were to be erected in the 1870's, it was thought necessary to pass an amendment to the constitution to authorize additional borrowing for this purpose. Two unfortunate constitutional amendments were passed by the voters to allow the state to borrow more than the $250,000 limit. First, a debt amendment was passed to help build railroads early in the state's history. The railroads defaulted and left the state arguing for 25 years on how the money was to be repaid. Secondly, in 1922 the legislature created a Rural Credit Bureau to make loans for farm relief. Nine million dollars of indebtedness still remains as a result of unwise loans to farmers.

Besides using constitutional amendments to circumvent the rigid constitutional debt provisions, the legislature found a method to evade them without recourse to the slow and expensive amendment process. This has involved the issuance of certificates of indebtedness which are payable from special funds rather than from the general revenue. In operation, this has meant the state levies a tax which goes into a special fund, which, in turn, is used to repay the certificates. Because the supreme court allowed this method of getting around the debt limit some 80 years ago, later court tests continued to permit it on the basis of those earlier favorable decisions. This continued until the Naftalin-King case when Justice Dell pointed out the credit of the state is actually pledged when the certificates of indebtedness are issued, and that the special fund, used to pay the debt, is the result of taxes levied generally against the property of the state. In other words, the certificates are actually state debt. The legislature must act to make the debt constitutional.

Another consequence of the low debt ceiling is that the state has had to borrow from the state trust and retirement funds rather than from private investors. The rate of interest paid has been higher than it would have been if the state could have sold its certificates of indebtedness on the open market where competition for such securities tends to bring the going interest rate down. The fact that income from interest earned on such an investment is not subject to federal and state income taxes is of benefit to many private investors (they can afford to lend at a lower rate of interest and still come out well), but this feature is of no added benefit to state trust funds because they are already tax exempt. It is estimated that a change in the state's method of borrowing, which the proposed amendment would permit, could save the state thousands of dollars annually in interest on short term certificates alone and millions of dollars over a period of years on the entire state financing program.

Problems Created by the Warning

The legislature borrowed no additional money for building construction in the last session awaiting passage of this proposed amendment. Meanwhile, because the constitutionality of the certificates is in question, the state has been unable to get more than a double A credit rating. If Minnesota's debts were to become constitutional beyond any doubt, the state's rating could become a triple A and this would, of course, reduce interest costs.

Another problem waiting to be solved because of the court's warning involves the present status of the state trust and retirement funds. The state has borrowed from these funds against the certificates of indebtedness. If the certificates are ruled unconstitutional, this jeopardizes the status of these borrowed funds.

Proposed Constitutional Amendment

In response then to the court's warning and the urgent need to borrow for building, legislators have suggested changes in Article 9, Sections 5, 6, and 7. (Note Amendment #2 and the present Article 9, Minnesota Constitution.)

Section 1 of the Amendment rewords Sections 5, 6, and 7.

Section 5--The proposed wording omits the first part of the present Section 5 which defines the limit and the procedure for acquiring and financing debt. It retains the outdated phrase "the state shall never be a party in carrying on works on internal improvements," which reflected 19th century ideas on the role of a state. It also retains the portion on the excise tax on motor fuels and the highway user fund, which would appear more logically in Article 16 on highways.

Section 6, Subdivision 1: The state would be allowed to contract public debt by levying taxes on real and personal property and for purposes outlined in the next subdivision.

Subdivision 2: Outlines four purposes for which public debt may be contracted and provides for a three-fifths vote by the members of each legislative branch as the one requirement for the incurring of debt. Currently the constitution allows debt only for extraordinary expenditures (up to $250,000 and by two-thirds vote of members of each branch), for emergencies, and for rural credits to farmers (no longer done in practice).

Subdivision 3: Allows certificates of indebtedness for short time borrowing in anticipation of taxes and provides for emergencies when revenues are less than expected.

Subdivision 4: Specifies bonds as the form to be used to incur debt (except as in subdivision 3). Maturing date shall be for no longer than 20 years; purpose of debt must be specified in each law. The treasurer is to maintain a special fund for debt repayment from money the auditor raises by levying on all property a tax sufficient to pay each year's principal and interest costs. Funds from other sources may be appropriated by the legislature to the state bond fund.

Section 7: Exceptions are given to the above rules for incurring public debt. "Debt" is defined, and in so doing projects payable from revenues other than taxes are eliminated as debt (e.g., tollbridges and toll roads).

Section 2 of the Amendment repeals Section 14 of Article 9. Section 14, passed in 1872, allowed a special debt increase to finance the building of certain state hospitals and a state prison.

Section 3 of the Amendment states the wording of the amendment as it will appear on the ballot.

Use of Debt Controls in the USA

Will Minnesotans be making it too easy for legislators to borrow against the future by adopting Amendment #2? In 1842 in Rhode Island a constitutional provision to prevent accumulation of state debt appeared for the first time. Disastrous state borrowing experiences between the years 1830-1890 resulted in a number of states following this example. Today all but four states-Connecticut, New Hampshire, Tennessee and Vermont-have debt control provisions in their constitutions.

Common Types of Restrictions on Borrowing

a. A maximum on the amount of debt. This may be absolute (as in our present constitution); limits range from $50,000 - $2,000,000. In most states a limit can be bypassed by popular vote. A few states limit borrowing to a percentage of assessed valuations or a percentage of yearly state appropriations. B. U. Ratchford in American State Debts (1941) subscribes to a plan whereby the state debt is set at a sum not to exceed the average state revenue over the preceding five years. Such a plan is flexible by expanding or contracting with revenues. It exerts a steady pressure. It does not decline sharply in periods of depression. It leaves little room for misinterpretation by the courts. (Amendment #2 sets no limit, absolute or otherwise.)

b. Constitutional amendment or a referendum. These are used when the debt exceeds a limit. Twenty states require an amendment, twenty a referendum. (Amendment #2 would require neither.)

c. Extraordinary majorities in the legislature. Where legislatures are permitted to borrow without popular approval several states require an extraordinary two-thirds or three-fourths majority vote of the legislature. (Amendment #2- three-fifths of legislators of each house.)

d. Specify purpose for which debt incurred. About one-half the states require this. (Amendment #2 does this.)

e. Specify number of years for bond retirement. Twenty-one states demand this and an additional five require a tax to be levied at the time loans are approved to pay the principal and interest. (Amendment #2 - 20 years retirement. Also provides for auditor to levy tax each year to pay principal and interest on state bonds due within the fiscal year.)

f. Prohibition against lending the state's credit for benefit of individuals or private enterprises. (Amendment #2 limits debt to "public debts." Our present constitution, Article IX, Section 10, prohibits giving or loaning credit of state to aid individuals, associations, or corporations.)

What the Experts say about Debt Controls

Arguments in favor of controls

In the states where the legislature has had wide discretion in determining borrowing policies, the debts are larger than where borrowing is limited by constitutional amendment or by referendum (see Table 1). The Tax Foundation, in Constitutional Debt Control in the States (1954), summarizes its position by concluding that constitutional debt limitations tend to keep down state debt despite loopholes discovered by state officials and the courts. It recommends limitations which can be flexible enough to accommodate demonstrated capital needs. It believes referendum or amendments discourage officeholders from succumbing to the temptation to provide programs which will be paid for by others later on. Also controls are valuable in providing increased public discussion and presentation of the facts by civic-minded groups. Other advantages seen are that debt controls protect investors in government obligations; they have a beneficial effect upon the credit of the state and its bond quality; they make it difficult or impossible for debt service costs to become so high that essential services have to be curtailed.

Arguments against strict controls

One finds a general tendency for experts to worry less about debt controls since the end of World War II than prior to this time. Anderson, Penniman, and Weidner, in Government in the Fifty States (1960), say "Students of public finance formerly worried a great deal about the borrowing and debts of state and local governments...today the difference is so great, and men think in utterly different terms about debt, that state and local indebtedness no longer cause as much concern...being widely distributed, state and local bonds issue at such low rates of interest that the tax burden to support the debt is proportionately smaller."

W. Brooke Graves, in American State Government (1946), says flatly, "constitutional restrictions on the borrowing power of states have been numerous, some are drastic, but the record shows they have not been very effective in holding down the total amount of state debt." In addition he believes former abuses of state credit by legislators should not be held against them today, that referendums violate the principle of the short ballot, and the voters' tendency is to pass them in order to let others meet the payments of debts.

In State Constitutional Revision (1960) edited by Mr. Graves, Frank Landers, director of the budget division, Michigan State Department of Administration, says less arbitrarily that it's true that limits don't limit; they simply make fiscal powers more cumbersome, but sometimes they do stop runaway borrowing. The evidence is not conclusive.

The most recurring objection to strict debt controls has been that governments find techniques for getting around them (in Minnesota by issuing certificates of indebtedness). Also some states have created a special authority, as an agency or commission, with power to issue bonds. These special authorities create non-guaranteed, long-term debt, with funds to repay this debt coming from a special fund. Courts have usually allowed this kind of weakening of debt control.

Comparisons

In the Minnesota Constitutional Commission's recommendations of 1948, no limit was placed on the amount of debt the legislature could incur, but a two-thirds vote of the legislators was specified. Other suggested provisions meet those of the proposed amendment. Three fairly recent constitutions, those of Hawaii, New Jersey, and Alaska, all include constitutional debt control provisions stricter than Amendment #2. The first two have flexible debt limits with recourse to a large legislative majority or a popular referendum if the debt exceeds the limit. Alaska demands a majority of those voting on the question for all debts passed by law.

Minnesotans View Amendment #2

Senator Donald O. Wright, Minneapolis, Chairman of the Senate Tax Committee, who voted against the amendment, believes there should be an absolute debt limit beyond which the state could not incur debt without submitting the matter to a referendum in the form of a constitutional amendment. He is concerned with accumulating public debt and mentioned the federal debt structure as an example of this. In addition, Senator Wright believes Section 6, Subdivision 2 (a) is too loosely drawn and should have been followed by language which could have made it clear that the state and its political subdivisions must use borrowed funds only for recommended governmental activities.

Senator Gordon Rosenmeier, Little Falls, who also opposes the amendment, does so principally for the following two reasons: first, because it would open the use of state credit for loans to any agency or political subdivision (this had not been in the original Senate bill); secondly, he wanted more study of the possible alternative of a cash basis for all future building. Senator Rosenmeier did not list in his objections to the amendment the fact that there is no debt limit or popular referendum requirement.

Representative Roger Noreen of Duluth, one of the authors, feels that the philosophy of no debt limit for capital improvement purposes is one that is not new to Minnesota, as the state has in effect been operating for a great number of years without any legal debt limit.* He feels that the legislature has not incurred capital debt unwisely under the present situation even though many large building programs have been passed and built. Mr. Noreen believes that a specific debt limit of some large dollar amount without limitation as to purpose would permit borrowing for current expenditures which he believes is highly undesirable. He feels that with the recent supreme court decision it is absolutely imperative that this amendment be passed.

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* In other words, despite a $250,000 debt limit, the current debt is about 193 million dollars due to the evasive device of the certificates of indebtedness.

State Treasurer Val Bjornson would very much like to see the amendment passed, even though he would have preferred an amendment in which state debt was based on a percentage of assessed valuation rather than no debt limit. He is, however, satisfied with the amendment and feels it would be a great tragedy for the state of Minnesota if the amendment does not pass, since the state building program would come to a halt. He noted another proposed debt limit amendment to the constitution could not be voted upon by the people until the next general election in 1964.

As with most public questions the case for or against strict constitutional debt controls is not clear cut. The most important consideration involves how far we feel we can trust our Minnesota legislators to decide what are necessary capital expenditures and how much debt we can afford.

CONSTITUTIONAL DEBT CONTROL PROVISIONS

Present	Proposed
1. $250,000 absolute debt limit.	1. No debt limit.
2. 2/3 legislative vote for incurred debt.	2. 3/5 legislative vote.
3. Amendment to constitution required to spend more than $250,000.	3. Amount of debt depends on legislature entirely.
4. Purposes for which debt may be incurred are to defray extraordinary expenditures.	4. Purposes: a. To acquire and improve public land and buildings and other improvements of a capital nature. b. To provide money to be appropriated or loaned to any agency or political subdivision of the state for the raasons in (a). c. As authorized in any other section of the constitution. d. For temporary borrowing. e. For refunding outstanding bonds of the state or its agencies and for refunding certificates of indebtedness. f. For emergencies.
5. Purpose of debt must be specified.	5. Purpose of debt must be specified.
6. 10 years for bond retirement.	6. 20 years.
7. Exceptions to the above rules for contracting debt are war, invasion or insurrection and the rural credit system.	7. Exceptions - war, invasion, insurrection and temporary borrowing.

TABLE 1

PER CAPITA TOTAL OUTSTANDING STATE DEBT AND TAX REVENUE
Fiscal Year 1953

Constitutional Amendment			Popular Referendum			Legislative Act		
State	Debt (End of Year)	Tax Revenue	State	Debt (End of Year)	Tax Revenue	State	Debt (End of Year)	Tax Revenue
Average[a]	$ 43.24[b]	$ 65.96	Average[a]	$ 49.46	$ 69.16	Average[a]	$ 77.18[c]	$61.44
Alabama	23.77	51.58	S. Carolina	64.68	72.52	Delaware	313.02	72.44
Arizona	3.07	82.36	Arkansas	67.96	55.55	Massachusetts	86.53	65.82
Colorado	11.57	76.53	California	57.13	94.44	Maryland	91.16	64.37
Florida	21.90[d]	77.26	Idaho	2.05	64.82			
Georgia	19.71	61.13	Illinois	39.48	56.57	Connecticut	121.06	63.21
Indiana	5.79	67.87	Iowa	11.85	65.46	Mississippi	37.74	52.22
Louisiana[e]	75.33	101.95	Kansas	2.27	68.45	New Hampshire	58.71	51.17
Michigan[e]	52.23	85.02	Kentucky	3.47	47.00	Tennessee	33.95	56.54
Minnesota[e]	37.19	74.57	Maine	72.48	63.78	Vermont	11.66	74.04
Nebraska	2.30	44.64	Missouri	4.77	51.09			
Nevada	4.50	84.44	Montana	74.29	60.53			
N. Dakota[e]	51.55	74.37	New Jersey	83.14	36.41			
Ohio[e]	56.45	57.96	New Mexico	36.68	93.08			
Oregon[e]	82.72	79.62	New York	63.16	73.40			
Pennsylvania[e]	89.25	55.72	No. Carolina	62.49	68.07			
South Dakota[e]	21.78	55.91	Oklahoma	58.08	88.37			
Texas	11.07	53.28	Rhode Island	66.63	67.60			
Utah	2.02	66.41	Virginia	9.95	52.87			
West Virginia[e]	132.79	64.32	Washington	97.29	105.41			
Wisconsin	1.53	71.34	Wyoming	14.02	86.60			

a. Obtained by dividing total debt and tax revenue of states in each group (in each column) by their combined population
b. Average debt, excluding states specified by footnote (e), is $11.82
c. Average debt, excluding Delaware, is $71.97
d. Non-guaranteed debt only.
e. Veterans' bonus authorized by constitutional amendment.

Reprinted from Constitutional Debt Control in the States, The Tax Foundation, 1954

B I B L I O G R A P H Y

Anderson, William and Lobb, Albert J., A History of the Constitution of Minnesota, 1921.

Anderson, William and Penniman, Clara and Weidner, Edward, Government in the Fifty States, 1960.

Graves, W. Brooke, American State Government, 1946.

Graves, W. Brooke, State Constitutional Revision, 1960.

King, Stafford, Quarterly Report of State Auditor of Minnesota, June 30,1961.

Kumm, Harold F., The Constitution of Minnesota Annotated, 1924.

Ratchford, B. U., American State Debts, 1941.

Constitutional Debt Control in the States, The Tax Foundation, Inc., 1954.

Court Decision, Arthur Naftalin, Commission of Administration of State of Minnesota, Respondent, v. Stafford King, State Auditor of the State of Minnesota, Appellant. No. 37968, Supreme Court of Minnesota, April 1, 1960.

Debt Limitations and the State Building Program in Wisconsin, Prepared by the Wisconsin Legislative Reference Library, 1956.

Minnesota Constitutional Commission Report, 1948.

Model State Constitution, 5th edition (revised 1948), Prepared by Committee on State Government, National Municipal League, New York.

National Civic Review

"Finance through Public Corporations in Georgia," April, 1958, p. 188

"Book Review of 'Tax Rates and Debt Limitations in Nine States,'" May, 1958, p. 258 (published in Cheyenne, Wyoming).

"Proposed Amendment in Idaho," December, 1960, p. 613.

"Constitutional Amendments in Mississippi," February, 1961, p. 94.

LENGTH OF SESSION AMENDMENT
(Constitutional Amendment #3)

At the 1962 general election Minnesota voters will approve or reject a proposed constitutional amendment to permit legislators to stay in session 120 days rather than 90 legislative days every other year. Since 1888 Minnesota's Constitution has limited the state legislative session to 90 days every odd-numbered year. About 25 years ago, the legislature began extending the session by "covering the clock," thus prolonging the last legislative day by some 72 hours. More recently the sessions have been prolonged by the governors calling a special session immediately after the 90 days have lapsed. In 1959 the session lasted 138 legislative days and in 1961, 108. That the state legislature needs additional time to do its work is hardly debatable. But whether this time should come in the form of additional hours, days, or sessions is a matter which probably will be debated in the coming months.

Proposed Amendment

In addition to permitting legislators to stay in sessin 30 more legislative days, the amendment would also increase from 20 to 30, the number of days before the end of the session when new bills must have the written consent of the governor in order to be introduced. The amended section 1 of Article IV would read:

> Section 1. The legislature shall consist of the Senate and House of Representatives. The senate shall be composed of members elected for a term of four years and the house of representatives shall be composed of members elected for a term of two years by the qualified voters at the general election.*
>
> The legislature shall meet at the seat of government in regular session in each odd-numbered year at the time prescribed by law for a term not exceeding 120 legislative days; and no new bill shall be introduced in either branch, except on the written request of the governor, during the last 30 days of such sessions.

A special session of the legislature may be called as otherwise provided by this constitution.**

The 1959 Amendment

A 1959 proposal to lengthen the legislative session was rejected at the polls in 1960. It would have allowed the legislature to extend the next regular 90-day session to a maximum of 30 additional days. It also provided that, after the 70th day of the session, introduction of new bills would be authorized by the joint rules of the house and senate rather than by the governor. Many people feel the amendment was opposed not so much for the change in sessional limitation as for a third provision which allowed a legislator to hold another government position, providing he resigned his legislative job. The League took no stand on the amendment principally because we believed that under the present constitution voters are to vote separately on unrelated provisions.

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* The legislator's terms of office are not contained in the present Section 1, Article IV. (Note: Minnesota Constitution)

** This refers to Article V, Section 4. The power to call a special session continues to remain with the governor.

Where the League Stands

In 1955 the Minnesota League adopted a current agenda item on constitutional revision which included a position to support "adequate time for consideration of legislation by the legislature." Now League members must decide whether this particular amendment provides a satisfactory solution to the problem.

Minnesota History

Surprisingly, Minnesota's 1858 constitution originally contained what many would consider an ideal provision! "The legislature...shall meet...at such times as shall be prescribed by law." In 1860 voters approved an amendment restricting the annual sessions to 60 days. In 1873 voters rejected biennial 70-day sessions; four years later they approved biennial 60-day sessions. A proposal to remove the time limit was turned down in 1881. The present section providing for biennial 90-day sessions was adopted in 1888. It is interesting to note no proposed amendment to change this time limit passed the legislature until 1959, despite much use of the "clock covering device." The 1961 proposal passed each house easily (House 93-24, Senate 57-2).

National Trends

Minnesota's change from a flexible to a restrictive provision followed the national pattern with regard to legislative sessions. Early legislatures, considered the bulwark of democracy, were rarely restricted; annual sessions were standard. But as a result of unwise and even dishonest legislative action more and more states began to restrict the powers of legislators. By 1900 most states had biennial sessions and this trend did not reverse itself until after World War II. At that time only five states provided for annual sessions.

Today there are 19 states, plus Puerto Rico, Guam, and the Virgin Islands, where legislatures meet annually. Nine of these states require that the alternate session be devoted solely to budget consideration. The 50 states and their restrictions on the length of session, as shown in The Book of the States, 1960-61, are listed on the next page.

ANNUAL SESSIONS

	Restriction on session length
Alaska	none
Arizona	63 C*
Georgia	40 C
Massachusetts	none
Michigan	none
Nevada	60 C*
New Jersey	none
New York	none
Rhode Island	60 L*
South Carolina	none

ANNUAL, BUT ALTERNATE YEAR IS A BUDGET SESSION

	Restriction on session length
California	120 C[1]
	30 C
Colorado	120 C*
Delaware	90 L
	30 L
Hawaii	60 C[2]
	30 C
Kansas	60 L*
	30 C
Louisiana	60 C
	30 C
Maryland	90 C
	30 C
Pennsylvania	none[3]
West Virginia	60 C[3]
	30 C[3]

BIENNIAL SESSIONS

Alabama	36 L	New Mexico	60 C
Arkansas	60 C	North Carolina	120 C*
Connecticut	150 C[4]	North Dakota	60 L
Florida	60 C[5]	Ohio	none
Idaho	60 C*	Oklahoma	none
Illinois	none[6]	Oregon	none
Indiana	61 C	South Dakota	60 C
Iowa	none[7]	Tennessee	75 C*
Kentucky	60 L	Texas	120 C*
Maine	none	Utah	60 C
Minnesota	90 L	Vermont	none
Mississippi	none	Virginia	60 C*[8]
Missouri	150 C[4]	Washington	60 C
Montana	60 C	Wisconsin	none
Nebraska	none	Wyoming	40 C
New Hampshire	none		

C - Calendar Days L - Legislative Days

* - Indirect restriction on session length-legislators' pay ceases but session may continue

1. Exclusive of Saturdays and Sundays.
2. Governor may extend any session for not more than 30 days. Sundays and holidays excluded in computing number of days of any session.
3. Must be extended by governor until general appropriation passed; may be extended by 2/3 vote of legislature.
4. Approximate length.
5. Length of session may be extended by 30 days, but not beyond September 1, by 3/5 vote of both houses.
6. By custom legislature adjourns by July 1, since all bills passed after that day are not effective until July 1 of the following year.
7. Custom and pay limit session to 100 calendar days.
8. May be extended up to 30 days by 3/5 vote of each house but without pay.

Special Sessions

It is interesting to note that during the years 1958 and 1959 26 states were using special sessions to complete their work. These special session lengths ranged from 1 day to 81 days. There were 13 states with a special session lasting 10 days or longer. Of these 13 states, 9 states met biennially; the other 4 states met annually but reserved one session for budget considerations.*

* The Book of the States 1960-61

Recommendations on Length of Session

Intergovernmental Relations Commission

Because amending constitutions demands special effort, and, since voters often are reluctant to alter the status quo, it is not surprising that most states do not follow the recommendations of groups which have studied sessional limitations. One such group is the Commission on Intergovernmental Relations (often referred to as the Kestnbaum Commission). Suggested by President Eisenhower, the Commission was directed by Congress to examine the role of the national government in relation to the states and their political subdivisions. In its 1955 Report, the commission suggested that "...self-imposed constitutional limitations make it difficult for many states to perform all of the services their citizens require, and consequently have frequently been the underlying cause of state and municipal pleas for federal assistance." One of the limitations cited was that on frequency and length of sessions. Removing such limitations "would be an important step toward strengthening state government," advised this commission of congressional and civic leaders.

American Assembly

A second group started by President Eisenhower, when he headed Columbia University, is the American Assembly. The Assembly is a program of continuing conferences on "the major problems which confront America" and consists of representatives of business, labor, agriculture, the professions, political parties and government. The Eighth Assembly considered the problems of state governments and in its report, The Forty-eight States: Their Tasks as Policy Makers and Administrators, recommended that "The legislature should meet annually without limits on the length or scope of its deliberations."

Council of State Governments

A similar recommendation came from the Council of State Governments, an organization established by the states themselves in 1933 to promote interstate cooperation. The Council's Committee on Legislative Processes and Procedures, in its 1946 report on Our State Legislatures, advised "Restrictions upon the length of legislative sessions should be removed."

APSA Report

Another committee which studied legislative problems was the Committee on American Legislatures of the American Political Science Association. This committee was composed of political science professors and professional legislative and congressional personnel. In its 1954 report, American State Legislatures, the committee strongly denounced sessional limitations for intensifying "all evils associated with legislative halls. Taking advantage of the short time for deliberation, a strong minority may thwart the interest of the majority through delaying tactics...The restrictions on length of sessions are the real reasons for bad laws-not extended periods of discussion."

The committee suggested that, "No state constitution protects the interest of all the people when the question of length and frequency of legislative sessions is a forbidden topic for legislative determination...to freeze into a state constitution a restriction upon the length and frequency of legislative sessions is a reactionary and negative approach to a problem that requires the most positive and constructive analysis and remedy."

Political Science Honor Society

A second political science group interested in this matter is Pi Sigma Alpha, National Political Science Honor Society, which is sponsoring a series of studies on major governmental problems. State Constitutional Revision, edited by W. Brooke Graves and published in 1960, is the first in the series. In the section titled "The Legislative Article," Charles W. Shull of Wayne University says in part, "Legislation has become a matter of continuous concern in state government, and it is obvious that state legislative problems do not have an incidence or life limited to the first 60 or 90 days in each biennium." He later adds "...there would seem to be no valid reason today for any limitations on the duration of regular and special sessions of state legislatures, let alone including such limitations in state constitutions."

Karl Bosworth's Report

Lest the experts appear too unanimous in their praise of the unlimited session, Karl Bosworth of the University of Connecticut in a research report to the Eighth American Assembly qualifies his endorsement of the continuous and unlimited session: "Although limitations on legislative sessions may seem to be the cause of the unseemly rush of business in the last days of limited sessions, the formal limits probably only slightly aggravate the situation. Some decisions get delayed in all legislatures. In those without a formal time limit, a closing date is normally agreed upon among the leaders, thus forcing compromise and decision on the remaining bills. An important advantage of the unlimited session is that the closing date can be revised when stalemates prevent the enactment of bills destined to pass either in the regular session or a special session called for the purpose.

"Some have suggested that state legislatures, like city councils, be in practically continuous session, taking recesses between relatively short meeting periods. This could be the eventual development in some states. But the contrary and generally prevailing view is that both the governmental administrators and others likely to be affected by state policy changes need closed seasons on legislation in which they can get along with their existing policies. Administrators, too, need some escape from legislators' importunities on administrative details."

Model State Constitution

Still another recommendation comes from the National Municipal League through its Model State Constitution. The tentative draft of the 6th Model, which is to be formally adopted at the Municipal League's conference in December 1961, reads: "Sessions. The legislature shall be a continuous body during the term for which its members are elected. It shall meet in regular sessions annually as provided by law. It may be convened at other times by the governor, or, at the request of a majority of the members, by the presiding officer of the legislature."

Alaska, Hawaii, Puerto Rico

Of the three new state constitutions, only Hawaii does not include an unrestricted section as counseled by the above groups. Alaska and Puerto Rico have annual unlimited sessions, while Hawaii has a 60-day session in odd-numbered years and a 30-day budget session in even-numbered years.

Minnesota Constitutional Commission

The Constitutional Commission of Minnesota, established by the state legislature in 1947, compromised the sessional ideal with Minnesota tradition. Its Report advised that the legislature be a "continuous body" meeting in January of each odd-numbered year and "at other times as prescribed by law." While sessions would be limited to 90 legislative days, the legislature would have power by concurrent resolution to extend the session within the first 75 days. Introduction of bills would be restricted after the 70th day "unless consent is given by concurrent resolution upon an important matter of general interest," thus removing this power from the governor and placing it with the legislature. Since governors have been rather automatically consenting to the legislature's request to have new bills introduced after the 70th day, this recommendation is less important. The MCC proposal also would empower the legislature to call itself into special session.

The Pros and Cons of Annual Sessions

For annual sessions

1. There is the difficulty of anticipating financial needs for a biennium. It is hard to imagine a private business, with a budget the size of the State of Minnesota, which is required to plot its income and appropriations two years in advance.

2. New laws need not wait two years to pass the legislature. Poor laws need not wait two years to be corrected.

3. The legislature could be more independent of the executive branch. One example: with biennial sessions the governor must be given some authority to change budget figures depending, for one thing, on changes in anticipated revenue. With annual sessions the legislature would be involved in these annual adjustments of spending to income.

4. Legislation has increased greatly in volume and complexity. A few of the expanding areas of state concern are: welfare, education, health, and local government. With the increase of population as well as the number of state duties the increased complexity of legislation is obvious.

Against annual sessions

1. The biennial session receives more public attention. Since state government already receives far too little attention, any reduction of this would be unfortunate.

2. Annual sessions would certainly require pay increases for legislators. These salary increases would need to be high enough to convince capable people to leave their regular employment a number of months each year.

3. Laws should receive the thought between sessions that biennial sessions provide. Normally a number of legislative interim commissions are appointed by the legislature to study state governmental problems between sessions. Legislators on a commission often become experts in their assigned field and carry the ball in getting legislation passed at subsequent sessions. Would they have the time for interim commission study if they met annually in session? The Legislative Research Council, established in 1947, is comprised of a paid professional staff to do research on legislative problems. Unfortunately, funds have never been provided to permit them enough staff for the amount of research needing to be done. Unless the legislature is willing to provide greatly increased funds for the LRC, legislators will continue to rely heavily on the interim commissions for research.

Alternate Budget Session

Should Minnesota have alternate sessions which would be restricted to drawing the budget? W. Brooke Graves in State Constitutional Revision comments, "...the effort to establish a barrier between fiscal and policy questions is a little ridiculous, since it is impossible to consider either without reference to the other." In the same book, speaking of the governor's responsibility toward fiscal matters, Louis E. Lambert writes, "If annual full-scale sessions are not acceptable, a brief budget-appropriation session in even-numbered years will allow the budget period to be kept to one year and thus permit greater precision in estimating revenues and expenditures."

Interestingly, the 1949 Idaho Legislature, where the regular session is constitutionally limited to 61 days, had an alternate budget session without revising the constitution. It made appropriations for only one year forcing the governor to call a special session in 1950.

Split Sessions

A few states, including Wisconsin, divide their sessions into two parts - one for organization and introduction of bills, and the other for consideration and passage of laws - with a recess period between in which legislators can confer with constituents and study and weigh arguments on bills. American State Legislators says "Certainly the states that have experimented with the 'split session' have not achieved in practice the advantages claimed for it, particularly with respect to the early introduction of bills with substance and the elimination of the rush at the end of the session. However, in California with some 5,000 bills introduced in the first 16 days of a 120-day session, the period of recess (which may last as long as six weeks) is used to advantage by the office of legislative counsel to prepare short digests and a subject-matter index of the introduced bills."

Calling Special Sessions and Limiting Agenda

The question arises whether the legislature should have the power to call special sessions. Amendment #3 would not alter the present provision which allows only the governor to give the call. While only 14 states now permit their legislatures to call special sessions, most political experts recommend that the legislature as well as the governor should have this right. According to The Book of the States, "Recent years have seen some marked development, as in Alaska and Hawaii, toward granting the legislature power to call itself into special session." Nor is any mention made in the proposed amendment on the subject of control of the agenda in special sessions. The Minnesota Constitutional Commission would have allowed the governor to limit the agenda if he desired - a power the constitution does not allow him. This is pertinent since recent governors have wished they could limit special sessions to certain subjects.

Some Reactions to Amendment #3

Authors of Amendment #3 were Reps. Popovich, Wozniak, Cina, Dirlam and Duxbury. Reps. George French, a lawyer from Minneapolis, and Carl Iverson, a farmer from Ashby, both voted against the proposal. They feel the present session length is long enough to get the work done, and that even with longer sessions controversial issues would be crowded to the end of the calendar with each side hoping the other would weaken under the pressure of time. During sessions where no strong divisions of opinion exist they feel the 90 days have been adequate. Secondly, they feel the caliber and/or the diversity of legislators

would suffer if they were required to be away from their regular jobs for longer periods. Mr. Iverson believes the farmers and small businessmen would be less likely to run. Mr. French feels the "professional politician rather than the capable person sent to the legislature by his neighbors to represent them" would find time to serve.

Representative Donald Wozniak from St. Paul, an author of the bill, believes that the 120 legislative day plan is the best that can pass the legislature at this time. He does not favor annual sessions, particularly in Minnesota where the fiscal year ends on June 30th. The legislature need only plan 1½ years in advance and if corrections need to be made in budget planning, the legislature can make them the last six months. Mr. Wozniak would have preferred dividing the session first, into an organizational period of drafting and introducing bills and secondly, the regular session.

Senator Edward Novak, lawyer from St. Paul, who favored the bill, admitted that the tendency to postpone divisive issues until the end will persist. He thinks, however, the legislators will plan their time better with a specified number of days than they do presently when they rely on a special session which can run on indefinitely. Senator Novak had hoped for a provision limiting to the first 90 days legislation on local affairs. This would have allowed major statewide issues to receive the total attention of legislators during part of the session. He does not believe the longer sessions would affect the caliber of the legislators.

A newspaperman, who covers the legislature, felt Amendment #3 a pretty good compromise, and that if it passes, the legislators would experiment with it a few sessions, thus precluding change for a time. If it does not pass, they would probably re-propose a similar amendment. He believes that while they feel something needs to be done they are not ready for more than this now. Rural legislators, he believes, prefer annual sessions; business and professional men the longer biennial session.

Practical Problems

In deciding what we in the League want to write into our constitution on the subject of the session's length some practical considerations include:

1. Do we feel the 120-day provision is a solution that will offer more than temporary relief?

2. If we feel this is not the best provision, do we reject it, or do we accept it as a stopgap believing it is unlikely the legislators will propose either annual or unlimited sessions in the near future?

3. Are Minnesota voters prepared to accept annual or unlimited sessions and the salary increases any lengthening of the session would involve? Could they be sold on this by an intensive campaign?

4. If Amendment #3 were rejected by the voters, would legislators delay a third proposal to lengthen the session for several sessions?

B I B L I O G R A P H Y

The American Assembly, Graduate School of Business, Columbia University, The Forty-eight States: Their Tasks as Policy Makers and Administrators, Final edition, December, 1955.

Anderson, William and Lobb, Albert J., A History of the Constitution of Minnesota, 1921.

The Commission on Intergovernmental Relations, Report, June, 1955.

The Constitutional Commission of Minnesota, Report, 1948.

The Council of State Governments, The Book of the States, 1960-61.

The Council of State Governments, Our State Legislatures (rev. ed.), 1948.

Graves, W. Brooke, Ed., State Constitutional Revision, (sponsored by Pi Sigma Alpha, National Political Science Honor Society), 1960.

League of Women Voters of Minnesota, The State You're In (rev. ed.), 1958.

Mitau, G. Theodore, "Constitutional Change by Amendment: Recommendations of the Minnesota Constitutional Commission in Ten Years' Perspective," Minnesota Law Review 44, January, 1960.

National Municipal League, Model State Constitution (rev. ed.), 1961.

Zeller, Belle, Ed., American State Legislatures (Report of the Committee on American Legislatures, American Political Science Association), 1954.