

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**Associated Builders and Contractors of
Michigan, National Federation of
Independent Business, Inc., Senator Edward
McBroom in his official capacity,
Representative Dale Zorn, in his official
capacity, Rodney Davies, Kimberley Davies,
Owen Pyle, William Lubaway, Barbara
Carter, and Ross VanderKlok**

Plaintiffs/Appellants,

v.

**Treasurer of Michigan, Rachael Eubanks, in
her official capacity**

Defendant/Appellee

MSC No. _____

COA No. 369314

Court of Claims Case No.: 23-000120-MB

ORAL ARGUMENT REQUESTED

**THIS CASE INVOLVES AN INVALID
EXECUTIVE ACTION UNDER MCR
7.204(D)(3)(c)**

**EXPEDITED RELIEF REQUESTED
UNDER MCR 7.311(E) BY MARCH 29,
2024**

**Patrick J. Wright (P54052)
Derk A. Wilcox (P66177)
Stephen A. Delie (P80209)**
Mackinac Center Legal Foundation
Attorneys for Plaintiffs/Appellants
140 West Main Street
Midland, MI 48640
(989) 631-0900 – voice
(989) 631-0964 – fax

**PLAINTIFFS/APPELLANTS' BYPASS APPLICATION AND MOTION TO EXPEDITE
PROCEEDINGS**

Pursuant to MCR 7.303(B)(1), 7.305(B)(1), (2), and (4), 7.305(C)(1), and MCR 7.311(E), Plaintiffs/Appellants Associated Builders and Contractors of Michigan, National Federation of Independent Business, Inc., Senator Edward McBroom in his official capacity, Representative Dale Zorn, in his official capacity, Rodney Davies, Kimberley Davies, Owen Pyle, William Lubaway, Barbara Carter, and Ross VanderKlok seek a bypass on their challenge to Defendant Treasurer of Michigan’s determination that the state should use an income tax rate of 4.25% to be the “current rate” to initiate the MCL 206.51(1)(c)¹ formula instead of carrying over the 2023 income tax rate of 4.05%. This error has already led to approximately \$531 million being over appropriated for fiscal year 2023-24² and is causing Michigan’s 4.9 million taxpayers to have too much money withheld from their paychecks. The harm to taxpayers and to Michigan’s ongoing fiscal year 2024-25 budgetary process continues to accumulate every day this error is not rectified.

Further, pursuant to MCR 7.311(E), Plaintiffs seek an expedited review in this Court (and briefing schedule should this Court agree to hear this matter) or, in the alternative, should this Court deny the bypass application, an order requiring the Court of Appeals to hear this matter on an expedited basis.³

Under MCR 7.305(B), the issue involves a substantial question about MCL 206.51(1) – the income tax rate. This issue has significant public interest in that it affects the income tax rate that

¹ 2023 PA 4, which takes effect on February 13, 2024 (*sine die* was November 14, 2023, and Const 1963, art 4, § 27 adds 90 days following the end of legislative session before the act can take effect, since it was not given immediate effect) did not alter the text of MCL 206.51(1).

² <https://www.senate.michigan.gov/sfa/Publications/BudUpdates/EconomicOutlookJan24.pdf> at p. 27 (last visited January 21, 2024).

³ Service of this application and motion was made electronically on Defendant.

over 4.9 million Michigan taxpayers are charged. Further, the suit is against an officer of the state – Treasurer Rachael Eubanks – in her official capacity.

MCR 7.305(B)(4) requires a showing that “a delay in final adjudication is likely to cause substantial harm.” Plaintiffs/Appellants offer two rationales to satisfy this requirement: (1) delay will seriously impact the state budgetary process for a second straight year and could lead to the need to cut over \$530 million dollars in the current fiscal year to balance the budget presuming this Court issues a decision before the budget is enacted for the next fiscal year; and (2) as of January 1, 2024, many individual taxpayers are having too much money withheld from their paychecks – the most the 2024 income tax rate can be is 4.05% and the withholding rate is currently 4.25%.

State budgeting calendar

Each day the courts use to decide this matter is a day that uncertainty taints the budgeting process used by legislative and executive branches. The income tax is a significant revenue source for the state and Michigan’s constitution attempts to have revenues and expenditures balance throughout the budgeting process. If Plaintiffs/Appellants prevail, Michigan’s revenue will be around \$700 million less than was estimated.⁴ Each budget cycle that continues this error will lead to similar overestimations – all of which accumulate.

There are three documents that help explain the state budgeting process: (1) the House Fiscal Agency’s January 2019 report “A Legislator’s Guide to Michigan’s Budget Process”;⁵ (2) the Michigan Department of the Treasury’s Office of Revenue and Tax Analysis Division’s

⁴ The entirety of the fiscal 2023-24 judiciary budget was \$355,928,200. 2023 PA 119 at 209.

⁵ https://www.house.mi.gov/hfa/PDF/Alpha/approps_process_report.pdf (last visited January 19, 2024).

November 2022 report on Michigan’s income tax titled “Michigan’s Individual Income Tax 2020”;⁶ and (3) the Senate Fiscal Agency’s January 2023 report “Appropriation Process.”⁷

The Legislature convenes the second Wednesday of the new year, Const 1963, art 4, § 13, which this year was January 10, 2024. Almost immediately, the state budget process begins. The first Consensus Revenue Estimating Conference (CREC), which will be discussed below, occurred on January 12, 2024. Const 1963, art 4, § 31 indicates that it is a goal that revenues equal or exceed appropriations – i.e. that the budget balances:

The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed.

Id.

Const 1963, art 4, § 31 originated from Committee Report 46b at the 1961 Constitutional Convention. 2 Official Record, Constitutional Convention 1961, p 3436. The item had been assigned to the “committee on executive branch.” 1 Official Record, Constitutional Convention 1961, p 1635. When introduced to the convention delegation, the following was set forth to explain the provision:

Sec. b. The second provision is intended to accomplish 2 major points: (a) to focus legislative attention on the general appropriation bill or bills to the

⁶https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Uncategorized/2022/ORTA-Tax-Reports/IIT-report_TY2020-data.pdf (last visited January 19, 2024).

⁷ At the Court of Claims, Plaintiffs/Appellants only referred to the first two items. It can be found electronically at <https://www.senate.michigan.gov/sfa/budgetprocess/appropshandbook.pdf> (last visited January 19, 2024).

exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation; (b) to require the legislature (as well as the governor, by section a) to set forth by major item its own best estimates of revenue. The legislature frequently differs from executive revenue estimates. It seems only proper to require that such differences as exist be specifically set forth for public understanding and future judgment as to the validity of each.

Id. at 1636.

Regarding Const 1963, art 4, § 31, the Notice of Address to the People stated:

This is a new section designed to accomplish two major purposes:

1. To focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation.
2. To require the legislature (as well as the governor by subsequent provision) to set forth by major item its own best estimates of revenue.

2 Official Record, Constitutional Convention 1961, p 3375.

Note that the constitution requires an "itemized statement of estimated revenue by major source in each operating fund." Michigan's income tax is a major source of revenue: "For tax year 2020, Michigan's personal income tax generated \$9.4 billion in state revenues after all credits and refunds were paid." Michigan's Individual Income Tax 2020 at 1. In that year, there were 4,952,798 MI-1040s filed. *Id.* at 11.

Michigan's tax year and fiscal year are different. Michigan's fiscal year runs from October 1 to September 30. MCL 18.1491. The income tax year runs on a calendar basis. MCL 206.24. At the time of filing this document, we are in the 2023-24 fiscal year for the state and the 2024 tax year for income tax filers.

In 1991, Michigan created the revenue estimating conference process – i.e. the CREC process. 1991 PA 72. The CRECs involve both the executive branch and the two chambers of the legislative branch. The process requires the state Treasurer and the House and Senate Fiscal

Agency Directors to come to a consensus on “a forecast of anticipated state revenues” including “State income tax collections.” MCL 18.1367b(3). There are two conferences required by statute. MCL 18.1367b(1). The first occurs in the second week of January, and the second occurs in the third week of May. *Id.* The conference is to “determine its official forecast of economic and revenue variables by consensus among the principals” for “the fiscal year in which the conference is being held and the next 2 ensuing fiscal years.” MCL 18.1367b(4)-(5). Further, the conference “shall also forecast general fund/general purpose revenue trend line projections and school aid fund revenue trend line projections for the next 2 ensuing fiscal years.” MCL 18.1367b(5).

Before the second CREC, other budget activities occur. “At the beginning of the each [legislative] session,” the Governor shall “communicate by message to the legislature . . . information as to the affairs of the state and recommend measures [s]he considers necessary or desirable.” Const 1963, art 5, § 17. This will be done via the State of the State address, which will occur on January 24, 2024. Budget and tax matters are almost always discussed in such speeches.

The Governor is required to submit a balanced budget with accompanying appropriation bills to the legislature:

The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state. Proposed expenditures from any fund shall not exceed the estimated revenue thereof. On the same date, the governor shall submit to the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills to provide new or additional revenues to meet proposed expenditures. The amount of any surplus created or deficit incurred in any fund during the last preceding fiscal period shall be entered as an item in the budget and in one of the appropriation bills. The governor may submit amendments to appropriation bills to be offered in either house during consideration of the bill by that house, and shall submit bills to meet deficiencies in current appropriations.

Const 1963, art 5, § 18. Pursuant to the Management and Budget Act, this budget must be submitted within 30 days of the legislature convening for the year. MCL 18.1363(1). Thus, it should be submitted by February 10, 2024.

This budget must include estimates “of anticipated revenues by state funds.” MCL 18.1363(2). In presenting this budget, “Recommendations for expenditures from each state operating fund shall not exceed the estimated beginning balance of such fund plus the fund's estimated revenue.” MCL 18.1348.

The Legislature’s Appropriations subcommittees typically deliberate on the proposed budget in February and March. A Legislator’s Guide at 8. The subcommittees then report their initial budget recommendations to their respective full Appropriations Committees at the end of March or in early April.

Const 1963, art 9, § 21 requires an “annual accounting for all public moneys, state and local.” The Director of Treasury “shall publish a comprehensive annual financial report” within 6 months of the end of the fiscal year. MCL 18.1494.⁸ It is to be issued by or before March 31st of each year (fiscal year end plus six months). This is the closing of the books for the previous fiscal year.

The Appropriations committees usually report out their general budget bills in April. A Legislator’s Guide at 8. The House and Senate then vote on the initial versions of their budgets typically in late April or early May. *Id.*

⁸ For reasons that are not entirely clear, Treasury titles it “Annual Comprehensive Financial Report,” and this same report is occasionally referred to as the State of Michigan Annual Comprehensive Financial Report. We have chosen CAFR as our acronym.

The second CREC report is issued in the third week of May. The House Fiscal Agency states: “January consensus revenue estimates become the basis for the executive budget proposal that is presented to the Legislature in February. May consensus revenue estimates become the basis for the final legislative appropriation bills presented to the Governor in June.” A Legislator’s Guide at 10.

In June, there are final floor votes. *Id.* at 8.

General appropriation bills are required to be presented to the Governor by July 1. MCL 18.1365. At this point, the Governor may line-item veto particular expenditures. Const 1963, art 5, § 19. The budget bills are then signed into law and become effective on the first day of the new fiscal year.

Should there be a need to reduce expenditures to balance the budget that cannot be addressed during the traditional budget process, cuts can be implemented through negative supplemental appropriation bill passed by the Legislature and signed into law by the Governor. Or cuts can be implemented through an executive order with the approval of the House and Senate Appropriation Committees: “The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based.” Const 1963, art 5, § 20.

The legislative budget process requires time, good information, and compromise. Michigan’s constitution has sought to facilitate budgeting by providing the legislative and the executive branches with the best information possible about revenues and expenditures at the earliest stage possible. The amount of estimated revenue from the income tax is a vital factor in budgeting. Negotiations and compromises made before this important factor is accurately

projected can lead to budgetary decisions that will require significant adjustments in a compressed timeframe.

Individual taxpayers

There are around 4.9 million taxpayers in Michigan. An employer who overwithholds income tax from an employee's wages becomes exposed to liability for a demand for repayment of the overwithholding. Mich Admin Code, R 206.22. As a result, Michigan employers may face demands for repayment of overwithholdings. Mich Admin Code, R 206.23. For employees earning income reported on IRS Form 990, individual estimated taxes are due on April 15, 2024. MCL 206.301.

In *Taxpayers Allied for Constitutional Taxation v Wayne County*, 450 Mich 119 (1995), this Court allowed declaratory future relief in a Headlee challenge. This Court held that a contrary ruling would unnecessarily burden the court system: "It would present the judicial system with numerous individual and class actions for refunds each year, without any offsetting benefit in terms of enhancing the fiscal integrity of the [taxing authority]." *Id.* at 128.

For those same reasons, this Court should resolve this matter as expeditiously as possible. Millions of taxpayers are affected and if Plaintiffs/Appellants were to prevail, an earlier decision could prevent the administrative challenges of millions of refunds and/or untold potential legal challenges.

Relief Requested

Plaintiffs/Appellants request that this Court accept this bypass application on an expedited basis. By statute, the budget for fiscal year 2024-25 is required to be completed by July 1, 2024. MCL 18.1365. But the harm to the budgetary process increases each day that this matter is unresolved. Plaintiffs/Appellants suggest a final decision by March 29, 2024. This date has the

benefit of giving individual estimated tax filers a couple of weeks before their first payments are due and further gives the principals of the CREC process 5-6 weeks to incorporate an income tax rate correction into their revenue forecasts.

This brief and motion would constitute Plaintiffs/Appellants' merits arguments. The Treasurer could be given until February 6, 2024, to respond. Any reply would be due February 12, 2024. An argument date of March 4, 2024, would give this Court 25 days to decide this matter.

In the alternative, Plaintiffs/Appellants seek any other expedited timeline that this Court deems appropriate.

Further in the alternative, if this Court were to deny the bypass, then Plaintiffs/Appellants would seek an order requiring a decision by the Court of Appeals at a date certain that this Court deems appropriate.

Date: January 23, 2024

/s/ Patrick J. Wright
Patrick J. Wright (P54052)
Mackinac Center Legal Foundation
Attorneys for Plaintiffs/Appellants

committee on legislative organization, and then to the executive branch in the regular schedule.

I mentioned Monday night, and tried to bring this up yesterday, and the reason that I am introducing this motion is primarily because we haven't yet settled on a legislature, and here we are going to be dealing with problems which will be very pertinent to our considerations on the executive branch. It would seem in a proper, logical order that the legislative organization, once settled, would make possible more expeditious handling of the other committee proposals, and I would therefore urge your consideration of moving to legislative organization proposals so as to alleviate some unnecessary discussion with regard to the executive branch proposals. That is all I care to say on this, Mr. President.

VICE PRESIDENT HUTCHINSON: The question is upon the motion by Mr. Faxon that the agreed orders in committee of the whole be changed, and that the committee of the whole next consider the legislative organization proposals instead of the executive branch proposals as previously ordered. All those in favor of the motion will say aye. Opposed will say no.

The motion does not prevail.

DELEGATES: Division.

VICE PRESIDENT HUTCHINSON: A division is called for. Is the division supported? It is supported. All those in favor of Mr. Faxon's motion will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and total the vote.

SECRETARY CHASE: The vote on Mr. Faxon's motion to change the order of consideration in committee of the whole, the yeas are 43; the nays are 83.

VICE PRESIDENT HUTCHINSON: The motion does not prevail. Are there any further motions or resolutions?

SECRETARY CHASE: None on file, Mr. President.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: No special orders.

VICE PRESIDENT HUTCHINSON: General orders of the day. The gentleman from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

VICE PRESIDENT HUTCHINSON: The question is upon the motion to resolve into committee of the whole. All those in favor will say aye. Opposed will say no.

The motion prevails. The committee will convene and Mr. Millard will preside.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN MILLARD: The committee will be in order. Is there anything on the calendar, Mr. Secretary?

SECRETARY CHASE: Item 1 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 46**, A proposal pertaining to the executive budget and item veto. Amends article VI.

Following is Committee Proposal 46 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE GOVERNOR SHALL SUBMIT TO THE LEGISLATURE, NOT LATER THAN 21 CALENDAR DAYS AFTER THE CONVENING OF EACH REGULAR SESSION, OR AT A TIME FIXED BY LAW, A BUDGET FOR THE ENSUING FISCAL PERIOD SETTING FORTH IN DETAIL ALL PROPOSED EXPENDITURES AND ESTIMATED REVENUE OF THE STATE. PROPOSED EXPENDITURES SHALL NOT EXCEED ESTI-

MATED REVENUE. ON THE SAME DATE, THE GOVERNOR SHALL CAUSE TO BE SUBMITTED TO EACH HOUSE OF THE LEGISLATURE GENERAL APPROPRIATION BILLS TO EMBODY THE PROPOSED EXPENDITURES AND ANY NECESSARY BILL OR BILLS FOR NEW OR ADDITIONAL REVENUES TO MEET PROPOSED EXPENDITURES. THE AMOUNT OF ANY GENERAL FUND SURPLUS CREATED OR DEFICIT INCURRED DURING THE LAST PRECEDING FISCAL PERIOD SHALL BE APPROPRIATELY ENTERED AS AN ITEM IN THE BUDGET AND IN THE APPROPRIATION BILLS. THE GOVERNOR, PRIOR TO FINAL ACTION OF THE LEGISLATURE THEREON, MAY CAUSE TO BE SUBMITTED TO THE LEGISLATURE ANY AMENDMENTS TO THE GENERAL APPROPRIATION BILLS, AND SHALL CAUSE TO BE SUBMITTED ANY BILLS TO MEET DEFICIENCIES IN CURRENT APPROPRIATIONS.

Sec. b. GENERAL APPROPRIATION BILLS FOR THE SUCCEEDING FISCAL PERIOD SHALL BE ACTED UPON BEFORE EITHER HOUSE OF THE LEGISLATURE SHALL PASS ANY OTHER APPROPRIATION BILL, EXCEPT BILLS SUPPLEMENTING APPROPRIATIONS FOR THE CURRENT YEAR'S OPERATION. ANY BILL WHICH WILL REQUIRE AN APPROPRIATION TO CARRY OUT ITS PURPOSE SHALL BE CONSIDERED AN APPROPRIATION BILL. ONE OF THE GENERAL APPROPRIATION BILLS AS ENACTED BY THE LEGISLATURE SHALL CONTAIN AN ITEMIZED STATEMENT OF ESTIMATED REVENUE BY MAJOR SOURCE, THE TOTAL OF WHICH SHALL NOT BE LESS THAN THE TOTAL OF ALL APPROPRIATIONS PROPOSED IN THE GENERAL APPROPRIATION BILLS.

Sec. c. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items; and the part or parts approved shall be the law; and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Sec. d. NO APPROPRIATION SHALL BE DEEMED A MANDATE TO SPEND. THE GOVERNOR SHALL REDUCE EXPENDITURES OF EXECUTIVE AGENCIES WHENEVER IT APPEARS THAT ACTUAL REVENUES FOR A FISCAL PERIOD WILL FALL BELOW THE REVENUE ESTIMATES ON WHICH APPROPRIATIONS FOR THAT PERIOD WERE BASED, SUCH REDUCTIONS IN EXPENDITURES TO BE MADE IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY LAW. THE GOVERNOR'S POWER TO REDUCE EXPENDITURES SHALL NOT APPLY TO THE LEGISLATIVE AND JUDICIAL BRANCHES OR TO THOSE SERVICES FOR WHICH FUNDS ARE MANDATED BY THIS CONSTITUTION.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 46:

The purpose and intent of this proposal are to establish a constitutional executive budget process for the orderly management of the state's fiscal affairs. The executive budget system is common to 41 states, by statutory or constitutional provisions. Michigan has had some features of this type of system by statute since 1919. The responsibility of the executive for formulating, presenting, and eventually administering a periodic budget is recognized as a part of good management in public business. Executive budget provisions similar to those proposed herein are included in 3 of the 4 most recently adopted state constitutions (Missouri, Alaska, Hawaii) and are a key feature of the model state constitution. The 4 sections here proposed are deemed by this committee to embody minimum and basic essentials of an executive budget:

Explanation—Matter within [] is stricken, matter in capitals is new.

- 1) executive preparation and submission of the budget to the legislature;
- 2) embodiment of the executive budget in bill form for legislative consideration;
- 3) legislative action on the appropriation bills and enactment of fiscal policy, subject to executive veto, including the item veto; and
- 4) executive administration of appropriations and expenditures in accordance with legislative directives.

The present constitution does not clearly and completely embody the essential principles of an executive budget system. Provisions in the newer state constitutions, the emphasis on the executive budget in the majority of states, and the thinking among students of governmental finance have combined with the fundamental importance of budgeting in the conduct of responsible government to impel this committee to propose these 4 provisions for inclusion in the state constitution.

Sec. a. The first sentence of the proposal establishes that the governor shall prepare and present to the legislature a budget for the ensuing fiscal period. Twenty-one calendar days, or 3 weeks, give adequate time for preparation, and if sessions are to start as now on the second Wednesday in January, would mean (a) time for reappraisal of forecasts for the new year's conditions and (b) budget submission sometime between January 29 and February 4. This 21 day period also gives time for getting out of the way the normal organizational aspects of the legislature. Budget submission may be changed to "a time fixed by law", if it should appear at some future time that this was desirable, or that a different timing was more appropriate in the case, for example, of a governor elect. It is further required that the budget set forth proposed expenditures and revenue in detail, and that proposed expenditures not exceed estimated revenue, whether from existing or proposed new revenue sources.

To be a true executive budget, the proposed expenditures and estimated revenue must also be presented to the legislature in bill form for legislative action. This is the reason for the requirement that on the same date, bills embodying the budget plan and any proposed new revenues be introduced. Introduction in each house will allow a subsequent joint or concurrent consideration by the appropriate committees of each bill or its component parts, as may be determined by the legislature.

Provision is then made that the surplus created or deficit incurred during the previous fiscal period be included in the budget and appropriation bills for the next year. The words, "appropriately entered as an item" are used to avoid excess language while conveying the meaning that any surplus of the preceding fiscal year shall be a credit to estimated revenues, while any deficit of the preceding fiscal year would be a corresponding initial charge against expenditures.

The next requirement of the section does 2 things: (a) it allows the introduction of executive amendments to general appropriation bills prior to final action of the legislature (final passage by both houses) to cover contingencies such as omissions, oversights or emergency situations that may arise; (b) it requires the executive to cause bills for deficiencies expected to occur in current appropriations to be submitted. The further intent of both provisions is to emphasize initial executive responsibility for all matters relating to budget preparation and submission in bill form for legislative consideration.

Sec. b. The second provision is intended to accomplish 2 major points: (a) to focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation; (b) to require the legislature (as well as the governor, by section a) to set forth by major item its own best estimates of revenue. The legislature frequently differs from executive revenue estimates. It seems only proper to require that such dif-

ferences as exist be specifically set forth for public understanding and future judgment as to the validity of each.

Sec. c. This provision repeats verbatim the existing provision for the so called item veto, article V, section 37. It is deemed to be an integral part of an executive budget process.

Sec. d. The last provision contains a statement of policy in its first sentence that is in line with commonly accepted thinking in the field of governmental finance. It would also cover situations in which unforeseen efficiencies and economies might become possible. The second sentence requires executive control of expenditures in accordance with statutory directives "whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based."

Legislative directives for expenditure reductions in the past few years have not been adopted by the executive office because they were believed to be unconstitutional. The legislature, as the initiator of fiscal policy, should be able constitutionally to direct that expenditure reductions shall be made under specified conditions. This provision would remove any question as to the constitutionality of legislative control over general fiscal policy of the state, and would require current action to minimize impending year end deficits.

The final sentence protects the separation of powers doctrine by preventing executive reduction of expenditures for the coordinate legislative and judicial branches. In actual fact, expenditures for these 2 branches account for less than 1 per cent of the general fund, general purpose spending, the vast bulk of which is in the area of the executive branch. It would also prohibit the governor from making reductions in funds dedicated by the constitution for specific purposes.

Following is the minority report to Committee Proposal 46 as offered and the reasons submitted in support thereof:

Mr. Marshall, Miss Hart and Mrs. Daisy Elliott, a minority of the committee on executive branch, submit the following minority report to Committee Proposal 46:

A minority of the committee recommends that the following be included in the constitution:

Sec. a. THE GOVERNOR SHALL SUBMIT TO THE LEGISLATURE, AT A TIME FIXED BY LAW, A BUDGET FOR THE ENSUING FISCAL PERIOD SETTING FORTH IN DETAIL ALL PROPOSED EXPENDITURES AND ESTIMATED REVENUE OF THE STATE. THE GOVERNOR SHALL ALSO CAUSE TO BE SUBMITTED TO EACH HOUSE OF THE LEGISLATURE GENERAL APPROPRIATION BILLS TO EMBODY THE PROPOSED EXPENDITURES AND ANY NECESSARY BILL OR BILLS FOR NEW OR ADDITIONAL REVENUES TO MEET PROPOSED EXPENDITURES.

Sec. b. Strike all of section b of the committee proposal.

Sec. c. LEAVE AS IS IN THE COMMITTEE PROPOSAL.

Sec. d. Strike all of section d of the committee proposal.

Mr. Marshall, Miss Hart and Mrs. Daisy Elliott, a minority of the committee on executive branch, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 46:

One of the driving forces, if not the primary reason behind Michigan citizens calling a constitutional convention was the need to rid the state's constitution of the administrative detail that is limiting the discretion of the legislature and governor to such an extent that they cannot adjust and meet the needs of a changing society. Thus, it was hoped that steps would be taken to rid the new con-

Explanation—Matter within [] is stricken, matter in capitals is new.

measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. *** If two-thirds of the members elected to and serving in that house pass the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house ** for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. ** The vote of each house shall be entered in the journal with the votes and names of the members voting thereon. ** If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become * law ** as if he had signed it. ***

This is a revision of Sec. 36, Article V, of the present constitution to clarify and change existing language regarding the executive veto. It provides as follows: (1) The governor shall have 14 days in which to consider a bill, and his 14-day period for consideration and approval will not be affected by whether or not the legislature adjourns its session. (2) If during that period he signs the bill, it becomes law. (3) If during that period he does not sign the bill, and the legislature has adjourned its session, the bill does not become law. (4) If during that period he does not approve, he must send it back to the house of origin, if the legislature is still in session, for consideration of his veto. (5) If during that period he neither approves nor returns the bill with a veto message, the legislature continuing in session, it becomes a law as if he had signed it.

The time for consideration by the governor has been extended from 10 to 14 days in accordance with testimony by former governors that some additional time is desirable.

The two-thirds vote of the legislature to override the governor's veto is retained.

Referendum on certain bills.

Sec. 34. Any bill passed by the legislature and approved by the governor, except a bill appropriating money, may *** provide that it will not become * law unless approved by a majority of the electors voting thereon.

No change from Sec. 38, Article V, of the present constitution except for improvement in phraseology.

Publication of laws.

Sec. 35. All laws enacted at any session of the legislature shall be published in book form within 60 days after * final adjournment of the session, and shall be distributed in the manner ** provided by law. The prompt publication of * judicial decisions **** shall be provided * by law. All laws and judicial decisions shall be free for publication by any person.

No change from Sec. 24, Article V, of the present constitution except for the insertion of the words "and serving" to clarify the method of computing a majority provided in Sec. 14 of this Article.

General appropriations; priority.

Sec. 31. The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed.

This is a new section designed to accomplish two major purposes:

1. To focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation.

2. To require the legislature (as well as the governor by a subsequent provision) to set forth by major item its own best estimates of revenue.

The legislature frequently differs from executive estimates of revenue. It is proper to require that such differences as exist be specifically set forth for public understanding and future judgment as to the validity of each.

Laws imposing taxes.

Sec. 32. Every law which imposes, continues or revives a tax shall distinctly state the tax *****.

This is a revision of Sec. 6, Article X, of the present constitution. It requires a distinct and clear statement of any tax imposed upon the citizens of this state.

The section eliminates the requirement that tax laws specify "the objects to which (the tax) is to be applied". This has been judicially construed to mean "the purpose for which the money is to be spent". In a complex system of taxation, when the proceeds of one general tax may be devoted to many different purposes, this seems obsolete.

Also deleted is the present statement that "it shall not be sufficient to refer to any other law to fix such tax". This eliminates the possible question of the legislature's right to refer to income determined for federal tax purposes. It is not the intention of the section, however, to permit any delegation of the power to fix a tax or tax base to another legislative authority.

Bills passed; approval and veto by governor.

Sec. 33. Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days

TABLE III—ARTICLES AND SECTIONS OF 1963 CONSTITUTION TO 1908 CONSTITUTION WITH COMMITTEE PROPOSAL REFERENCE

The Committee Proposal number and section are as re-referred to the committee on style and drafting.

* Created by the committee on style and drafting.

1963		1908		Committee Proposal	1963		1908		Committee Proposal	1963		1908		Committee Proposal
Preamble		Preamble		14	Art.	Sec.	Art.	Sec.		Art.	Sec.	Art.	Sec.	
Art.	Sec.	Art.	Sec.											
I	1	II	1	15-1	IV	24	V	21	121	VI	11	VII	8	93a
I	2	none		26	IV	25	V	22	105	VI	12	VII	9,23	93b
I	3	II	2	15-2	IV	26	V	21	121	VI	13	VII	10	93c
I	4	II	3	15-3	IV	27	V	22	105	VI	14	VII	11	93d
I	5	II	4	15-4	IV	28	V	23	104	VI	15	VII	13	94a
I	6	II	5	15-5	IV	29	V	21	121	VI	16	VII	14,23	94b
I	7	II	6	15-6	IV	30	V	22	105	VI	17	none		96a ¹
I	8	II	7	15-7	IV	31	V	30	119	VI	18	VII	12	96g
I	9	II	8	15-8	IV	32	V	24	41	VI	19	VII	17	96a
I	10	II	9	15-9	IV	33	X	6	46b	VI	20	VII	19	96b
I	11	II	10	15-10	IV	34	V	36	53	VI	21	VII	9	96c
I	12	II	11	15-11	IV	35	V	38	70	VI	22	none		96l
I	13	II	12	15-12	IV	36	V	39	113	VI	23	VII	20	96d
I	14	II	13	15-13	IV	37	none		24	VI	24	VII	23	96e
I	15	II	14	15-14	IV	38	XVI	5	108	VI	25	IX	6	96h
I	16	II	15	15-15	IV	39	XVI	5	122	VI	26	VII	15,16,21	96i
I	17	II	16	15-16	IV	40	XVI	11	122	VI	27	VII	6,11	96n
I	18	II	17	15-17	IV	41	V	33	27	VI	28	none		95
I	19	II	18	15-18	IV	42	VIII	30	100	VI	29	VII	18	96o
I	20	II	19	15-19	IV	43	XII	9	87					
I	21	II	20	15-20	IV	44	V	27	5	VII	1	VIII	1	81a
I	22	II	21	15-21	IV	45	V	28	99	VII	2	none		89
I	23	none		15-1	IV	46	none		106	VII	3	VIII	2	81b
II	1	III	1,2,3	58a	IV	47	V	26	20	VII	4	VIII	3	81c
II	2	none		58b	IV	48	XVI	7	111	VII	5	VIII	4	81d
II	3	none		58c	IV	49	V	29	109	VII	6	VIII	5	81e
II	4	III	1,8	58d	IV	50	none		110	VII	7	VIII	7	81f
II	5	V	12	58e	IV	51	none		127	VII	8	VIII	8	81g
		VI	1		IV	52	none		126	VII	9	VIII	9	81h
		VII	2,9,14		IV	53	VI	1	125	VII	10	VIII	13	81j
		VIII	3,18						78	VII	11	VIII	12	81i
		XI	2,3,6,7,16		V	1	VI	2		VII	12	VIII	14	81k
II	6	III	4	58f	V	2	none		2	VII	13	none		81n
II	7	III	9	58h	V	3	none		71b	VII	14	VIII	15	81l
II	8	III	8	58g	V	4	none		71b	VII	15	none		85c
II	9(12*)	V	1	118b	V	5	none		71b	VII	16	VIII	26	86a
					V	6	none		71g	VII	17	VIII	16	82a
III	1	I	2	10	V	7	VI	10	71e	VII	18	VIII	17,18	82b,c
III	2	IV	1,2	21	V	8	VI	3	71d	VII	19	VIII	19	82e
III	3	VI	11,12	18	V	9	VI	1	71c	VII	20	none		82d
III	4	XV	1,2,3	19	V	10	IX	5	71g	VII	21	VIII	20	83a
III	5	none		128	V	11	IX	7	71f	VII	22	VIII	21	83b
III	6	X	14	101	V	12	VI	4	3	VII	23	VIII	22	83c
III	7	S	1	44a	V	13	VI	6	7	VII	24	VIII	23	83e
III	8	none		96k	V	14	VI	9	16	VII	25	VIII	25	83f
					V	15	VI	7	8	VII	26	VIII	25	83d
IV	1	V	1	118a	V	16	VI	8	9	VII	27	VIII	31	88a
IV	2	V	2	80a	V	17	VI	5	4	VII	28	VIII	31	88b
IV	3	V	3	80b	V	18	none		46a	VII	29	VIII	28	85a
IV	4	none		80c	V	19	V	37	46c	VII	30	VIII	29	85b
IV	5*	none			V	20	none		46d	VII	31	VIII	27	86b
IV	6	V	4	79	V	21(13*)	VI	1	71a	VII	32	none		57
IV	7	V	5	32	V	22	VI	13	17	VII	33	IX	8	42e
IV	8	V	6	112	V	23	VI	21	75	VII	34	none		84
IV	9	V	7	120	V	24	none		77	VIII	1	XI	1	1
IV	10	V	7	115	V	25	VI	19	71b	VIII	2	XI	9	30
		V	25		V	26	VI	16,17	59,60	VIII	3	XI	2,6	47
IV	11	V	8	33	V	27	VI	18	72	VIII	4	XI	10	93a
IV	12	V	9,10	28	V	28	none		71h	VIII	5	XI	3,4,5,7,8,16	93b
IV	13	V	13	116	V	29	none		71i-71A					
IV	14	V	14	34	VI	1	VII	1	90	VIII	6	none		98c
IV	15	none		102c	VI	2	VII	2,23	91a	VIII	7	none		98d
IV	16	V	15	102a	VI	3	VII	2	91b	VIII	8	XI	15	13
IV	17	none		102b	VI	4	VII	4	91c	VIII	9	XI	14	31
IV	18	V	16	114	VI	5	VII	5	91d					
IV	19	V	17	117	VI	6	VII	7	91e	IX	1	X	2	50
IV	20	V	18	103	VI	7	VII	6	91f	IX	2	X	9	54
IV	21	V	18	103	VI	8	none		92a	IX	3	X	3,4,7,8	51
IV	22	V	19	35	VI	9	none		92b	IX	4	none		51
IV	23	V	20	29	VI	10	none		92c	IX	5	X	3,5	52
										IX	6	X	21	56