

CITIZENS LEAGUE REPORT

No. 64

**Revision of the Local Government  
Provisions of the State Constitution**

**November 1956**

PROPOSED AMENDMENT TO THE LOCAL  
GOVERNMENT PROVISIONS OF THE  
STATE CONSTITUTION

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October 12, 1956

TO: Board of Directors

FROM: Forms and Structure Committee

SUBJECT: REPORT ON THE PROPOSED AMENDMENT TO THE LOCAL GOVERNMENT  
PROVISIONS OF THE STATE CONSTITUTION

The Forms and Structures of Government Committee in its report to the Board of Directors dated February 23, 1955 reviewed a bill sponsored by the League of Minnesota Municipalities (LMM) proposing an amendment to the local government provisions of the State constitution. The committee recommended that the Citizens League support the bill, but with a change in the language of section 9 of the bill, dealing with the taxing powers of counties and townships. The Board of Directors approved the report and went on record in support of the bill.

In the 1955 session of the legislature, the bill passed the House without a dissenting vote but failed to receive a favorable recommendation from the Senate Judiciary Committee and died in committee in the closing days of the session. Representatives of the City of St. Paul appeared before the subcommittee of the Senate Judiciary Committee and objected to the provisions in the bill providing that before any local law enacted by the legislature could become effective, it would have to be approved by the voters of the locality to which it applied. This referendum requirement would have curtailed the practice of amending the Minneapolis City Charter by acts of the legislature.

In view of the expected opposition from St. Paul and Minneapolis, the Forms and Structures Committee has considered the problem of changing the proposed amendment in such a way that it would not be objectionable to the large cities, but would still effectively curb special legislation.

In April 1956 the committee met with Representatives Harold Anderson and Sally Luther and Senators Donald Fraser and Charles Root, all of Hennepin County. Also, committee representatives met with the Constitutional Revision Committee of the LMM.

The latter committee approved a revision of the 1955 proposal, and the annual convention of the LMM in June 1956 went along with the changes, discussed below. Subsequently the Minnesota State Bar Association endorsed the LMM proposal in principle.

The changes are:

1. The requirement for a referendum by the voters of the locality to which a special law applies has been modified by providing an alternative method of approval in the case of a special law pertaining to a local government

of more than 100,000 population, namely, that such law shall become effective upon approval by such majority of the governing body as the legislature prescribes.

This change should remove the objections to the amendment by the larger cities whose opposition to the bill could prevent submission of the amendment to the voters.

2. Special laws, including those passed as general laws of special application prior to the ratification of the proposed constitutional amendment, may be modified or superseded by a home rule charter or amendment, and may be repealed by the legislature without a local referendum or by such action of the local government as the legislature may prescribe by a general law.

This is a desirable provision. It would permit amendment or repeal of a special law by a home rule charter or amendment of the charter.

3. The provision as to the taxing powers of local government has been eliminated. This change removes a debatable section which aroused opposition because its meaning was uncertain.

**Recommendation:**

The committee recommends that the Citizens League support the submission of the proposed amendment to the voters.

A summary of the proposed amendment as revised is attached.

## A P P E N D I X

### DESCRIPTION OF PROPOSED REVISION OF LOCAL GOVERNMENT SECTION OF CONSTITUTION

#### A. General nature.

The proposal would replace all of the existing sections of the constitution dealing with local government. These cover mainly special legislation ( on local government), home rule for cities and city-county consolidation. In general, it proposes to tighten and make more realistic the restrictions on special legislation, to broaden and make more flexible the provisions for home rule charters, including authorization of county home rule charters for the first time, and to provide somewhat more specifically than the present constitution for the organization of city-counties and for city-county consolidation.

#### B. Special legislation

##### 1. History of present provision

Since 1892 the constitution has prohibited special legislation dealing with local governments. But the legislature may adopt laws which are general in form but special in application, if the criteria used for classifying local units to which each law applies are germane to the purpose of the law. As a result the legislature has classified local units by assessed valuation, population and area, or other criteria. Actually many laws adopted each session violate the special legislation prohibition of the constitution and would be declared invalid if they were tested in court.

The practice of adopting laws which are general in form but special in application has grown in recent years so that if all of these laws were put together, a small volume would now be required for the session's output. There were at least 201 such laws in the 1951 session.

##### 2. Some of the evils of the present system of special legislation.

a. Reliance upon the legislature for special acts weakens local government and tends toward the eventual destruction of home rule.

b. The passage of special laws consumes much of the time of the legislature, time which could more profitably be spent on general legislation policy.

c. There is an increasing tendency to put laws in special form just to avoid the difficulty of persuading the legislature to adopt a general policy; yet many times what is desirable for a single unit would be

good practice as a general law. Conversely, what would not be adopted as a general policy because unsound is adopted when it applies to a single political subdivision.

d. In most cases general legislative deliberation on special bills is almost lacking. A bill passes if it is approved by the legislators from the district affected and the governing body of the local government unit concerned.

### 3. Special legislation under the proposed constitutional amendment

The proposed amendment divides legislation as to local government into three categories:

The first category would be general laws applying to all units of local government.

The second category of such legislation would include any law applying to a class of local governments of the same type, except that the maximum number of such classes would be: counties, six; cities, four; villages, three; school districts, six. Also, any one class would have at least three local governments in it.

For example, cities would be divisible into no more than four groups, but each group would need to contain at least three cities.

The third category of special legislation would include any law applying to any single unit of local government. Any such unit would have to be named specifically. In the case of local governments of 100,000 population or less, the law would not become effective until approved by a majority of the voters of the unit voting on the question of approval. In local governments of more than 100,000 population, the legislature would have authority to provide that such law should become effective upon approval by such majority of the governing body as the legislature prescribed.

The proposed amendment thus would end the subterfuges of present practice; would permit the legislature to pass a special law frankly and openly applying to a single governmental unit, but would subject such a law to the scrutiny of local voters or in places over 100,000 population it could provide for approval by the local governing body. It would thus encourage the use of the home rule charter method where that is available, or in places over 100,000 population would place definite responsibility on the local governing body.

## C. Home rule charters

### 1. Present Provision

The present constitution, adopted in 1896, permits any city or village to adopt a home rule charter for its government as a city consistent with state law. About 82 cities now operate under home rule charters. There is no similar right for counties. The present home rule amendment is very detailed.

### 2. Weaknesses of present provision

a. Anomalous distinctions between procedure on original charter submission and on amendments. An original charter may be submitted without any publication and passes if approved by 57% of those voting at the election; an amendment needs a 60% vote and must be published for four consecutive weeks in a local newspaper.

b. The severity of vote requirements. All other states permit adoption by a bare majority of those voting at the election. Present rules have unquestionably encouraged use of special legislation, especially in the larger cities where the 60% vote is very hard to secure. Furthermore, the constitution requires that the vote be calculated on the basis of those who vote at the election, not just those who vote on the issue.

c. Members of charter commissions are appointed by district judges. In every other home rule state, charter commissions are elected by the voters. The legislature would have the right to change the method of selection of charter commissions.

d. Submission of charter within six months of creation of charter commission. This is universally ignored in practice.

e. Lack of power to abandon or adopt second charter. A city can never do anything to the charter thereafter except to amend it.

### 3. Proposed provisions

Recognizing that under Minnesota doctrine the legislature is supreme and may override the provisions of home rule charters, the proposed amendment more fully guarantees the basic right to frame home rule charters in accordance with law and leaves details for subsequent legislation, even on such matters as the question of majorities required for adoption. The legislature may thus take account of experience and change the law to meet changing needs.

The bill would also permit abandonment of a charter and the return to organization under legislative enabling act. Thus the constitutional amendment would eliminate all of the above-mentioned claimed defects of the present system or would permit their elimination by legislative act.

Furthermore, it would authorize the legislature to provide for county home rule, the need for which is made apparent by the profusion of present special laws for counties.

#### D. City-County consolidation

##### 1. Existing provision

The only present provision is one which authorizes the legislature to organize any city into a separate county if it has 20,000 population. This provision has never been implemented by legislation.

##### 2. Proposed provision

Pursuant to a general enabling act, any city of more than 50,000 population would be permitted to be organized as a city-county under a home rule charter. Approval would require a majority of the voters in the remainder of the county.

In addition, the legislature could also provide for partial or complete consolidation of a county and the principal city of the county under home rule charter. The charter would be prepared by the county charter commission.

#### E. Conclusions

The present constitutional provisions on local government should be completely revised. Piecemeal amendment to existing home rule and special legislation provisions would be inadequate; the details in the present home rule charter provisions are so extensive that nothing short of major revision will suffice. Furthermore all the sections of the constitution primarily concerned with local government should be considered together in order to improve the system of local government in Minnesota.

The legislature should have more power within constitutional limits to make needed adjustments to the system of local government. Finally special legislation cannot be effectively controlled unless there is a more workable home rule charter machinery, and conversely home rule will not be effective unless adequate restrictions are placed on special legislation.