

An Analysis of Proposal 1 of 2022

A constitutional amendment to modify legislative terms limits and create personal financial disclosure requirements for elected state officials

By James Hohman

Introduction

On Nov. 8, 2022, Michigan voters will decide whether to approve Proposal 1 and amend the state constitution. The amendment would modify Michigan's term limits — the number of years individual politicians can serve in office. The current limits were established by a citizen-led initiative in 1992 that amended the constitution. Proposal 1 was placed on the ballot by members of the Michigan Legislature and would create new financial disclosure requirements for elected officials serving in the state's legislative and executive branches of government.

This policy brief describes the proposed changes in detail but takes no position on Proposal 1. It provides an analysis of the practical effects of the proposed adjustments to term limits and new financial reporting requirements that may answer some questions voters have about the proposal. The brief also includes summaries of the main arguments for and against modifying term limits. The exact text that would modify the Michigan Constitution about term limits and create new financial disclosure requirements for elected officials is provided in the appendix.

Changes to Legislative Term Limits

The Michigan Constitution currently allows people to serve as legislators for three terms in the House of Representatives and two terms in the Senate. With House terms lasting two years and Senate terms lasting four, the maximum amount of time a person can serve as a legislator is 14 years.¹

Proposal 1 would eliminate these separate limits for each chamber and replace them with an overall maximum term limit of 12 years. This lengthens the amount of time a legislator can serve in a single chamber but shortens by two years the total amount of time a legislator could potentially be in office.

There are 15 states with legislative term limits.² Terms range from the eight years someone can serve in Nebraska's unicameral Legislature to the 24 years allowed in Louisiana and Nevada. Those states permit legislators to serve for 12 years in each of their legislative chambers.³

Proposal 1 would establish the same term limits for Michigan that are used in Oklahoma, California and Arkansas.

ABOUT THE AUTHOR

James Hohman is director of fiscal policy at the Mackinac Center.

Graphic 1: Legislative Term Limits in the U.S.

State	House Limit	Senate Limit	Total Service Limit
Arizona	8	8	
Arkansas	-	-	12
California	-	-	12
Colorado	8	8	-
Florida	8	8	-
Louisiana	12	12	-
Maine	8	8	-
Missouri	8	8	-
Montana	8	8	-
Nebraska	-	-	8
Nevada	12	12	-
Ohio	8	8	-
Oklahoma	-	-	12
South Dakota	8	8	-
Michigan current	6	8	-
Michigan with Proposal 1	-	-	12

Source: National Conference of State Legislatures

States vary in the type of limit placed on legislative terms. Ten states allow people to run again for a legislative office after they reach their limit on consecutive terms, according to the National Conference of State Legislatures.⁴ These states require elected officials to seek office in another chamber or take a break (typically for two years) from their legislative service before running for office again.

Michigan's current term limits do not allow for this and prohibit people from running for legislative office again once they have reached the limit. Four other states — Missouri, California, Oklahoma and Nevada — do the same. Proposal 1 does not change that policy.

Proposal 1 also does not amend the term limits that apply to the governor, lieutenant governor, secretary of state or attorney general. Elected officials are limited to two four-year terms in those executive branch positions.⁵

Analysis of Proposed Term Limits

When Michigan's term limits took effect in 1992, incumbent lawmakers could only serve for a further six years in the House and eight years in the Senate. Few lawmakers have since made it to the 14-year maximum.

The Library of Michigan maintains a database of all lawmakers who served in the state Legislature, going back all the way to the state's founding in 1837.⁶ This data can be used to calculate how long lawmakers served under the current term limits and assess what the likely effects of Proposal 1 will be on legislator tenure.

The chart below shows the number of legislative sessions served by the 582 lawmakers elected after term limits went into effect. These sessions are two years long, so elected representatives who max out their term limits would serve a total of seven two-year, legislative sessions.* The chart does not include current officeholders because they have not yet been affected by term limits.

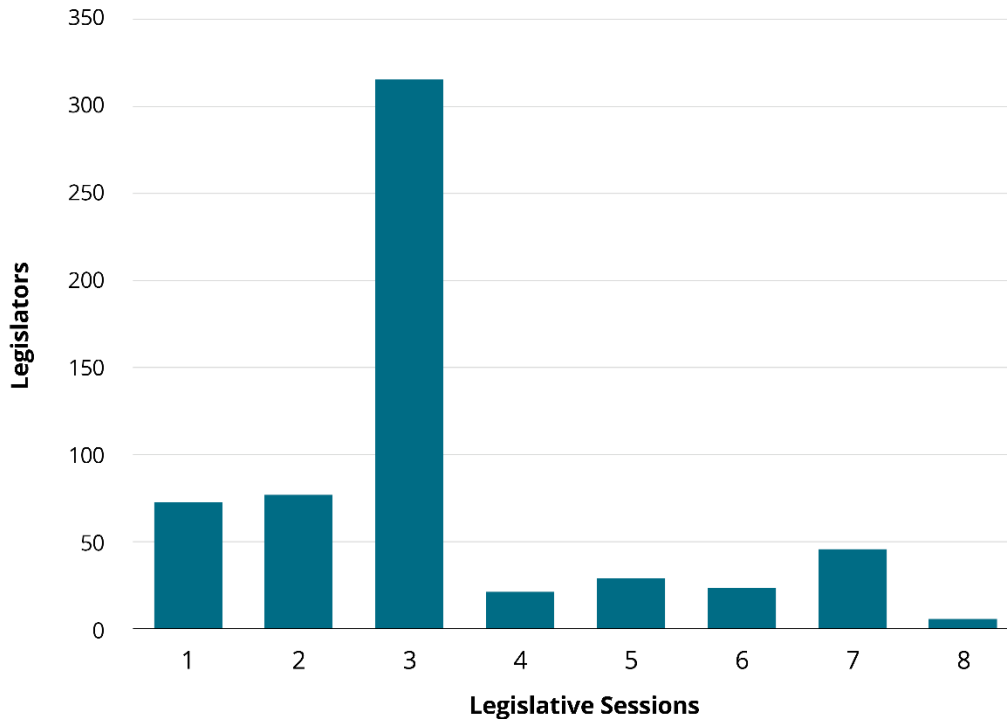
The data show that the vast majority of state lawmakers do not reach the maximum number of sessions allowed under term limits. Four out of five lawmakers over this period served for three legislative sessions or fewer. The most common length of service is three sessions, or six years, with 54% of lawmakers serving for this length of time.

The vast majority of legislators get elected to only one chamber. Just 89, or 15%, served in both the House and the Senate over the period. An even smaller portion served the full amount of time allowed under current term limits. Only 48 elected representatives, fewer than one in 10, served the maximum 14 years.

* Four lawmakers served for more than seven legislative sessions over this period. They served partial legislative terms, filling vacancies created by lawmakers resigning their office in the middle of the term. Serving a partial term

does not count against a person's term limits if the partial terms lasts less than half the total term.

Graphic 2: Legislative Sessions Served by Michigan Legislators Since 1992



Source: Library of Michigan

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Legislators who served fewer than six years, or three legislative sessions, tend to have lost their reelection campaigns, either at the primary level or in the general election to candidates from opposing parties. About a quarter of lawmakers were voted out of office like this since term limits took effect in Michigan. Elected lawmakers who served exactly six years tend to get term limited out of the House and do not to run for a position in the Senate.

While incumbent lawmakers are generally successful at getting reelected, only a small number of House members make it into the Senate. There are fewer opportunities to run for Senate, with 110 seats in the House compared to only 38 in the Senate. Senate terms last for two legislative sessions, leaving half as many opportunities to run for one of those seats. And with an eight-year maximum, there is less turnover in the Senate due to term limits. These three factors combine to mean there are only 13% as many chances

to run for the Senate compared to seeking a seat in the House. Not coincidentally, a similar proportion of House members make it into the Senate. In other words, it is rare for legislators elected to the House to find a spot in the Senate after their term is up.

All of this means that most legislators are term limited out of office by the limit of three terms in the Michigan House of Representatives. Just over half — 52% — of all the legislators elected to office since 1992 were termed out in this manner. The limit of two terms in the Michigan Senate affects only a small number of elected officials.

Thus, the primary impact of Proposal 1, which allows legislators to serve 12 years total in either chamber, would loosen the term limits that most commonly affect lawmakers. Instead of being limited to three terms in the House, elected officials would be able to serve six terms. That effectively doubles the allowable

time served for all but the small number of officials elected to both chambers.

Those few officials would have their potential service time limited by two additional years. Instead of being allowed to hold office for 14 years combined between the House and Senate, they could serve a maximum of 12 years. But, if historic trends hold, this will affect fewer than one in 10 legislators.

If voters pass Proposal 1, there may be even fewer politicians seeking to win seats in both the House and Senate, however. A secondary effect of the proposed changes is that elected officials will likely be less willing to seek office in both chambers. If they want to stay in office as long as possible, the easiest path will be to stay in the chamber to which they were first elected. For instance, it seems unlikely that many incumbent House members would risk their position for a seat in the Senate when term limits apply equally to both. Similarly, senators who have already won a seat would be unlikely to pursue a position in the House.

Some of this can be seen in California's experience after changing its term limits in 2012. The state had term limits that allowed people to serve three two-year terms in its Assembly and two four-year terms in the Senate. Then it enacted a 12-year limit in either chamber. While no one has reached the 12-year limit yet, Assembly members are serving longer in that chamber. There are currently 37 of its 80 members, 46%, who have served for more than six years.⁷

Arguments For and Against Modifying Term Limits

Supporters of Proposal 1 argue that the six-year term limit for the House encourages members to seek Senate seats when they become available, instead of focusing "on the serious work of legislation in the chamber where they were elected."⁸

It is no surprise that many House members set their eyes on a Senate seat. Under the current term limits

system, the way for legislators to serve in office as long as possible is to win three elections in the House and two in the Senate. Politicians running for these offices work hard to win their elections and tend to run for reelection. Furthermore, the majority of legislators, since term limits were put in place, left office because they were termed out, not because they opted not to run or failed to win reelection. This suggests that the most legislators would serve for longer than the current limits allow if given the chance.

Proponents of Proposal 1 also argue that legislators with more experience are better at meeting constituents' needs. The job of a legislator, they argue, is not just to pass legislation but to advocate for the people they represent. For example, a resident may have a complaint about how, say, the state government is applying wetland regulations to his or her property. The constituent's legislator might advocate on their behalf with the state's administrative branch. These types of disputes can take years to resolve, and legislators with more experience are more likely to produce satisfactory results for their constituents, supporters of Proposal 1 say.

Proposal 1 would likely result in lawmakers having, on average, more experience. Those who serve in leadership positions would also likely hold those roles for longer periods. Since term limits began, four out of 11 House speakers have served for more than a single term. Seven of the House speakers held the role for just two years before running up against term limits.

This is seen in California's experience after it changed to 12-year term limits. Its current Assembly leader served two terms before being selected as Assembly Speaker and has served in that role since 2016.⁹

Proponents of the current term limits, on the other hand, argue that offering opportunities for legislative leaders to hold their positions longer is not beneficial. Patrick Anderson, one of the advocates for Michigan's current term limits, says that powerful and connected

leadership is a detriment to good governance.¹⁰

Seasoned politicians are more likely to use their experience and power to obtain perks for themselves and their districts, not necessarily to pass good and popular legislation, according to Anderson.

He adds that more entrenched legislative leadership comes at the cost of newer legislators. Their influence would likely be weakened if the proposal is adopted.

Proponents of the current term limits also argue that these limits better serve the populace. Creating more turnover helps ensure that aspiring legislators better reflect their constituents' current interests.¹¹

Shorter terms for legislators prevent against lawmakers becoming so-called career politicians, who are often accused of focusing on advancing their own political careers at the expense of representing their constituents. The current term limits mean more people who have lived and worked alongside their constituents in their community will run for office. These lawmakers, proponents of the current term limits argue, are better equipped to represent the interest of their constituents.

Personal Financial Disclosure Requirements for Elected Officials

Proposal 1 would require people elected to state offices to file a report annually with the state about their personal finances. These disclosures would be mandatory for everyone elected to the House and Senate, as well as the governor, lieutenant governor, secretary of state and attorney general.

The report includes:

- A description of their financial assets and liabilities.
- A description of their sources of income.
- A list of their positions with businesses, nonprofits and schools.[†]
- “Agreements or arrangements with respect to future employment.”
- A list of gifts received by lobbyists.
- A list of travel paid by lobbyists.
- “Payments made by a lobbyist or lobbyist agent to a charity in lieu of honoraria.”[‡]

The specific amounts of assets owned, liabilities owed and income earned by candidates are not required to be disclosed — only a description of them is mandated. So, for example, if a candidate earned \$150,000 a year at a law firm and had \$500,000 invested in Disney stock, the only requirement would be to list the law firm as a source of income and disclose ownership of shares of Disney.

Still, such details may be required of elected officials through statute. Proposal 1 directs the Legislature to “further implement” these financial disclosure requirements “with appropriate legislation.” Through statute, then, lawmakers could etch out more precisely what is required for them and their colleagues to disclose, including more specific details about income, assets and liabilities.

States typically require officeholders to file personal financial disclosures that cover their income, their business or any gifts received, and their support from lobbyists. But there are no standard disclosure policies. The National Conference of State Legislatures has an

[†] The proposal exempts positions with “religious, social, fraternal, or political entity, or positions that are solely of an honorary nature.”

[‡] This language requires some interpretation. The intention seems to be to cast a wide net to ensure that any payments an elected official receives from any

lobbyist are disclosed. As elected officials do not know all of the activities of a lobbyist, it is possible that lobbyists make payments to charities that officials are never made aware of, but would be, nevertheless, responsible for disclosing.

overview of requirements used in the various states for readers who may want to scan other state policies.¹²

Only Michigan and Idaho do not require personal financial disclosures of people elected to a state office.

Effects of Personal Financial Disclosures

There are concerns that officeholders may seek to use their political power and influence to enrich themselves. And to that extent, personal financial disclosures can identify what an elected official's direct financial interests are. Whether personal financial disclosures are effective at identifying corruption is a different question. Unfortunately, this issue has not been studied closely.

The academic literature on personal financial disclosures tends to focus on the federal level, but it does show that members of Congress tend to increase their personal wealth while in office.

There is, to the best of my knowledge, just a single academic paper on the relationship between personal financial disclosure requirements at the state level and corruption. It is part of a dissertation from a Harvard Business School doctoral candidate who found that state disclosures did not affect referrals for and prosecutions of corruption.¹³ Author Alexandra Scherf suggested that state officials control disclosure rules, so they may write them in order to avoid their use in corruption referrals and prosecutions.¹⁴ She did, however, find that local government official disclosures resulted in more referrals and prosecutions when they were available in publicly accessible, online databases rather than only through specific requests.¹⁵

Perhaps the best evidence Scherf uses in the paper to demonstrate that personal financial disclosures help people identify corruption is that federal prosecutors said so. She interviewed 47 federal prosecutors and 32 of them said that they were "very useful" for supporting corruption investigations, and only three said that they were not at all useful.¹⁶

She also notes that there is a difference among states based on the reasons that compelled them to put disclosure data online. States that do so in an attempt to improve services and transparency for the public had more corruption referrals than states that did the same in response to corruption scandals. Proposal 1 could be seen as a desire to improve services rather than a response to a scandal and may then be more likely to result in more referrals.

As Scherf's research suggests, having an accessible, online database for these disclosures could help people identify potential corruption or conflicts of interests in legislator activities.

Proposal 1's financial disclosure requirements may also improve compliance with existing rules that prevent legislators from voting on issues that present a conflict of interest. For instance, Article IV, Section 10 of the Michigan Constitution prohibits legislators and state officers from being "interested directly or indirectly in any contract with the state or any political subdivision thereof," and state statutes define the rules to enforce this standard.¹⁷ Personal financial disclosures may help identify these conflicts of interest.

Still, most legislators are not going to be subject to corruption allegations. While corruption is always a possibility, it seems rare. The only allegation of corruption in recent memory was when a state legislator allegedly sought a bribe from unions to change his vote on a labor issue, though this case was dismissed in court.¹⁸ It is unlikely that personal financial disclosures would have been useful in identifying corruption in that case. The allegation was that he was raising money for his campaign, and campaign finance is already subject to different disclosure rules.

Personal financial disclosures would only be beneficial to help identify one kind of corruption: when elected officials take action that benefits their own personal, pecuniary interests. There are many other types of corruption, however. Elected officials can pass

legislation or take executive action in exchange for cash, gifts or campaign contributions, for example. They can give friends and family privileged and compensated positions in public office. Or they can use their position and status to avoid or minimize penalties if they violate the law or obtain other special favors or privileges in the legal system.

In fact, these other types of legislator impropriety seem more common. One legislator was pulled over for drunk driving and attempted (unsuccessfully) to use his status as an elected official to avoid arrest and charges.¹⁹ There have been scandals involving inappropriate sexual relationships between legislative members and their misuse of public resources.²⁰ In short, there are a number of ways that legislators can misbehave that have nothing to do with using their office for personal financial gain.

Proposal 1's disclosure requirements are unlikely to prevent these forms of corruption. Personal financial disclosures would only be a piece of a puzzle to help identify positions where lawmakers pass laws or encourage executive actions that give them direct financial benefits.

As Bradley Smith, Mackinac Center Board of Scholars member and former commissioner to the Federal Election Commission, observed, “[Personal financial disclosure requirements’] main function is to create a vague appearance of corruption where it doesn’t exist.” That is, disclosing financial sources imply that a candidate has loyalties elsewhere and will legislate to his or her narrow self-interest, regardless of their actual motivations.

Personal financial disclosures stem from a desire to expose and reduce corruption. Whether they do so is an open question. There may be additional consequences besides their intended effect. People generally want to keep their personal finances secret. The disclosures may then be an unattractive feature of holding office that repels some people from running. However, it's not as if

states have a dearth of open government offices without candidates running for them.

Conclusion

Proposal 1 makes important changes to Michigan's term limits and adds personal financial disclosure requirements for elected officials.

The most practical effect of the term limits change would be to allow House members to serve longer. Fewer than one in 10 legislators have met the maximum service time allowed under the current term limits established in 1992. The majority of legislators, 52%, leave office due to the three-term House limit. Changing to a 12-year maximum would double the allowable length of service for most members. This point is bolstered by California's experience with the same changes to term limits a decade ago.

It would also likely lead to a rise in the average level of experience in the Legislature. Leadership positions would likely be held for longer periods, too.

Michigan is one of two states that do not require officeholders to report on their personal finances. Academics have not done much work to analyze the effects of these disclosures. One study failed to find an effect of state disclosures on corruption. However, the author did find that prosecutors prefer to have them available when investigating legislator impropriety.

Financial disclosure can help identify the personal interests of office holders. This can theoretically be useful to identify a kind of corruption where legislators vote or encourage executive action for their own personal financial gain.

These disclosures may also discourage some people from running for office. Not many are likely to be scared away, however. All but one other state requires some level of personal finance disclosure, but very few state offices are left without candidates seeking to win them.

Appendix: Text Changes of Constitutional Amendment, Proposal 1 of 2022

ARTICLE IV

Sec. 10. **(1)** No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. ~~The legislature shall further implement this provision by appropriate legislation.~~

(2) By April 15, 2024, and by a date each year thereafter as prescribed by state law, each member of the legislature, the governor, the lieutenant governor, the secretary of state, and the attorney general shall electronically file an annual financial disclosure report with the department of state that complies with this section. A report required to be filed under this section must include information regarding all of the following:

(a) Description of assets and sources of unearned income.

(b) Sources of earned income.

(c) Description of liabilities.

(d) Positions currently held as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any organization, corporation, firm, partnership, or other business enterprise, nonprofit organization, labor organization, or educational or other institution other than the state of Michigan. The positions required to be disclosed under this subdivision do not include positions held in any religious, social, fraternal, or political entity, or positions that are solely of an honorary nature.

(e) Agreements or arrangements with respect to future employment, a leave of absence while serving as a legislator or state officer, continuation or deferral of payments by a former or current employer other than the state of Michigan, or continuing participation in an employee welfare or benefit plan maintained by a former employer.

(f) Gifts received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law.

(g) Travel payments and reimbursements received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law.

(h) Payments made by a lobbyist or lobbyist agent to a charity in lieu of honoraria.

(3) The financial disclosure report required under subsection (2) must be filed with the department of state in a form and manner prescribed by state law. The department of state shall make the report available to the public online.

(4) The legislature shall further implement this section by appropriate legislation. Legislation implementing this section must not limit or restrict the application of subsections (2) and (3).

(5) If legislation implementing this section is not enacted by December 31, 2023, a resident of this state may initiate a legal action against the legislature and the governor in the Michigan supreme court to enforce the requirements of this section.

Sec. 54. ~~(1) No~~ **A person shall may not** be elected to the office of state representative ~~more than three times. No person shall be elected to the office of~~ **or** state senate ~~more than two times. Any person appointed or elected to fill a vacancy in the house of representatives or the state senate for a period greater than one half of a term of such office, shall be considered to have been elected to serve one time in that office for purposes of this section. This limitation on the number of times a person shall be elected to office shall apply to terms of office beginning on or after January 1, 1993.~~ **senator for terms or partial terms that combined total more than 12 years. However, this limitation does not prohibit a person elected to the office of state senator in 2022 from being elected to that office for the number of times permitted at the time the person became a candidate for that office.**

(2) This section ~~shall be~~ **is** self-executing. Legislation may be enacted to facilitate operation of this section, but ~~no~~ **a law shall must not** limit or restrict the application of this section. ~~If any part of this section is held to be invalid or unconstitutional, the remaining parts of this section shall not be affected but will remain in full force and effect.~~

Endnotes

- 1 Mich Const Art IV, § 54.
- 2 “The Term-Limited States” (National Conference of State Legislatures, Nov. 12, 2020), <https://perma.cc/5AM6-ZFJR>.
- 3 “The Term-Limited States” (National Conference of State Legislatures, Nov. 12, 2020), <https://perma.cc/5AM6-ZFJR>.
- 4 “The Term-Limited States” (National Conference of State Legislatures, Nov. 12, 2020), <https://perma.cc/5AM6-ZFJR>.
- 5 Mich Const Art. V, § 30.
- 6 “Michigan Legislative Biography Database” (Library of Michigan, 2022), <https://perma.cc/3P5A-S9ME>.
- 7 Data provided to the author by California State Library Communications Manager Alex Vassar.
- 8 “Voters for Transparency and Term Limits” (Yes on Prop 1, 2022), <https://perma.cc/8ZSJ-48WN>.
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- 12 “Financial Disclosure” (National Conference of State Legislatures, 2022), <https://perma.cc/56GJ-LL5G/>
- 13 Alexandra Scherf, “Essays on Enforcement and Disclosure” (Harvard University, April 2021), <https://perma.cc/M6Z2-556S>.
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- 16 Alexandra Scherf, “Essays on Enforcement and Disclosure” (Harvard University, April 2021), 37, <https://perma.cc/M6Z2-556S>.
- 17 Mich Const Art. IV, § 10; MCL § 15.301-310.
- 18 Hayley Harding, “Ex-State Rep. Inman Can Faces [sic] Bribery, Extortion Charges Again, Court Rules” (The Detroit News, July 10, 2022), <https://perma.cc/35JN-9U3P>.
- 19 Beth LeBlanc, “Jones Gets Two Years’ Probation on Drunken Driving, Resisting Arrest Convictions (The Detroit News, March 17, 2022), <https://perma.cc/RPS8-UEEM>.
- 20 For instance, see: “Todd Courser Resigns, Cindy Gamrat Expelled from Michigan House in Wake of Sex Scandal” (MLive.com, Sept. 11, 2015), <https://perma.cc/864R-9AVK>.

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