

SENATE JOINT RESOLUTION Y

May 26, 2010, Introduced by Senators McMANUS and CROPSEY and referred to the Committee on Judiciary.

A joint resolution proposing an amendment to the state constitution of 1963, by adding section 15a to article IV, to create a joint federalism commission to examine the constitutionality of certain actions by the federal government.

Resolved by the Senate and House of Representatives of the state of Michigan, That the following amendment to the state constitution of 1963, to create a joint federalism commission to examine the constitutionality of certain actions by the federal government, is proposed, agreed to, and submitted to the people of the state:

ARTICLE IV

SEC. 15A. (1) THE JOINT FEDERALISM COMMISSION IS CREATED

1 WITHIN THE LEGISLATIVE COUNCIL.

2 (2) THE COMMISSION SHALL CONSIST OF THE FOLLOWING MEMBERS:

3 (A) FIVE SENATORS APPOINTED BY THE SENATE MAJORITY LEADER IN A
4 MANNER THAT PROPORTIONALLY REFLECTS THE CAUCUS AFFILIATIONS OF THE
5 CHAMBER AND INCLUDES AT LEAST TWO MEMBERS FROM THE SENATE JUDICIARY
6 COMMITTEE. THE SENATE MAJORITY LEADER, THE SENATE MINORITY LEADER,
7 THE MAJORITY AND MINORITY FLOOR LEADERS OF THE SENATE, AND THE
8 SPEAKER PRO TEMPORE OF THE SENATE SHALL NOT BE APPOINTED TO THE
9 COMMISSION.

10 (B) FIVE REPRESENTATIVES APPOINTED BY THE SPEAKER OF THE HOUSE
11 OF REPRESENTATIVES IN A MANNER THAT PROPORTIONALLY REFLECTS THE
12 CAUCUS AFFILIATIONS OF THE CHAMBER AND INCLUDES AT LEAST TWO
13 MEMBERS FROM THE HOUSE JUDICIARY COMMITTEE. THE SPEAKER OF THE
14 HOUSE OF REPRESENTATIVES, THE MINORITY LEADER OF THE HOUSE OF
15 REPRESENTATIVES, THE MAJORITY AND MINORITY FLOOR LEADERS OF THE
16 HOUSE OF REPRESENTATIVES, AND THE SPEAKER PRO TEMPORE OF THE HOUSE
17 OF REPRESENTATIVES SHALL NOT BE APPOINTED TO THE COMMISSION.

18 (C) THE GOVERNOR AND THE ATTORNEY GENERAL SHALL EACH APPOINT
19 ONE NONVOTING MEMBER WHO SHALL ATTEND COMMISSION MEETINGS AND
20 PROVIDE INSIGHT AND OPINIONS FROM THOSE OFFICES.

21 (3) THE MEMBERS FIRST APPOINTED TO THE COMMISSION SHALL BE
22 APPOINTED WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

23 (4) MEMBERS OF THE COMMISSION SHALL SERVE FOR A PERIOD OF TWO
24 YEARS OR THE REMAINDER OF THEIR TERM OF OFFICE, WHICHEVER IS LESS.
25 A MEMBER OF THE COMMISSION SHALL DISCHARGE THE DUTIES OF HIS OR HER
26 POSITION IN A NONPARTISAN MANNER, WITH GOOD FAITH, AND WITH THAT

1 DEGREE OF DILIGENCE, CARE, AND SKILL THAT AN ORDINARILY PRUDENT
2 PERSON WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES IN A LIKE
3 POSITION.

4 (5) IF A VACANCY OCCURS ON THE COMMISSION, THE MEMBER SHALL BE
5 REPLACED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

6 (6) THE FIRST MEETING OF THE COMMISSION SHALL BE CALLED BY THE
7 SENATE MAJORITY LEADER NOT LATER THAN 60 DAYS AFTER THE EFFECTIVE
8 DATE OF THIS SECTION. AT THE FIRST MEETING, THE COMMISSION SHALL
9 ELECT FROM AMONG ITS MEMBERS CO-CHAIRPERSONS FROM EACH HOUSE WHO
10 SHALL SERVE AS COMMISSION CHAIRPERSON ON AN ALTERNATING MONTHLY
11 BASIS, AS WELL AS OTHER OFFICERS AS IT CONSIDERS NECESSARY OR
12 APPROPRIATE. AFTER THE FIRST MEETING, THE COMMISSION SHALL MEET FOR
13 AT LEAST 10 REGULAR MONTHLY MEETINGS PER YEAR. THE ACTING
14 CHAIRPERSON MAY CALL ONE ADDITIONAL MEETING PER MONTH. A
15 REPLACEMENT MEETING MAY BE CALLED IF A QUORUM IS NOT PRESENT AT A
16 MEETING.

17 (7) FIVE OR MORE MEMBERS OF THE COMMISSION CONSTITUTE A QUORUM
18 FOR THE TRANSACTION OF BUSINESS AT A MEETING OF THE COMMISSION. A
19 MAJORITY OF THE MEMBERS PRESENT ARE REQUIRED FOR OFFICIAL ACTION OF
20 THE COMMISSION WHEN A QUORUM IS PRESENT. A MEMBER WHO MISSES MORE
21 THAN TWO REGULAR MONTHLY MEETINGS IN A YEAR SHALL BE REPLACED
22 WITHIN THIRTY DAYS.

23 (8) MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT
24 COMPENSATION. HOWEVER, MEMBERS OF THE COMMISSION MAY BE REIMBURSED
25 FOR REASONABLE AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE
26 OF THEIR OFFICIAL DUTIES AS MEMBERS OF THE COMMISSION SUBJECT TO
27 AVAILABLE APPROPRIATIONS.

1 (9) THE COMMISSION SHALL MONITOR ACTIONS OR PROPOSED ACTIONS
2 OF THE FEDERAL GOVERNMENT TOWARD THIS STATE THAT REQUIRE OR WOULD
3 REQUIRE THE STATE OR A STATE OFFICER TO ENACT OR ENFORCE A
4 PROVISION OF FEDERAL LAW THAT VIOLATES THE STATE CONSTITUTION OF
5 1963 OR THAT LIES OUTSIDE THE FEDERAL GOVERNMENT'S ENUMERATED
6 POWERS AND INTRUDES ON THE SOVEREIGNTY RESERVED TO THE STATES BY
7 THE NINTH AND TENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION,
8 OR WHERE THE STATE CAN BE DENIED ORDINARILY AVAILABLE FEDERAL
9 FUNDING FOR NOT ADOPTING CERTAIN LAWS OR REGULATIONS. THE
10 COMMISSION SHALL ALSO MONITOR MEMORANDA OF AGREEMENT, MEMORANDA OF
11 UNDERSTANDING, COMPACTS, OR OTHER SIMILAR BINDING AGREEMENTS WITH A
12 NONGOVERNMENTAL ORGANIZATION OR UNIT OF GOVERNMENT LOCATED OUTSIDE
13 THIS STATE, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL GOVERNMENT
14 OR ITS AGENTS.

15 (10) THE COMMISSION SHALL STUDY AND CONSIDER THE
16 CONSTITUTIONALITY OF SPECIFIC ACTS, ORDERS, LAWS, STATUTES,
17 REGULATIONS, MEMORANDA OF AGREEMENT, MEMORANDA OF UNDERSTANDING,
18 RULES, AND OTHER ACTIONS BY THE FEDERAL GOVERNMENT INCLUDING THE
19 LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES AS DETERMINED BY A
20 VOTE OF THE COMMISSION. A DETERMINATION ON THE CONSTITUTIONALITY OF
21 SUCH ACTIONS MAY BE VOTED UPON AT ANY SUBSEQUENT COMMISSION MEETING
22 DURING THE LEGISLATIVE SESSION. IF A MEMBER OF THE HOUSE OF
23 REPRESENTATIVES OR SENATE WHO IS NOT A MEMBER OF THE COMMISSION
24 OBTAINS THE SIGNATURES FROM ONE HALF OF THE MEMBERS FROM THE
25 MEMBER'S HOUSE OF THE LEGISLATURE ON A PETITION STATING THAT AN
26 IDENTIFIED ACTION OR PENDING ACTION BY THE FEDERAL GOVERNMENT IS
27 UNCONSTITUTIONAL, THE COMMISSION SHALL STUDY THE ISSUE AND VOTE

1 UPON ITS CONSTITUTIONALITY WITHIN A 90-DAY PERIOD. A MEMBER OF THE
2 HOUSE OF REPRESENTATIVES OR SENATE SHALL ONLY PETITION THE
3 COMMISSION IN SUCH A MANNER ONCE PER LEGISLATIVE SESSION.

4 (11) IF AT ANY TIME THE COMMISSION FINDS AN ACTION BY THE
5 FEDERAL GOVERNMENT THAT VIOLATES OR IS IN CONFLICT WITH THE UNITED
6 STATES CONSTITUTION OR USURPS THE POWERS RESERVED TO THE STATES,
7 THE MAJORITY VOTING MEMBERS OF THE COMMISSION SHALL INTRODUCE A
8 BILL OR BILLS TO DECLARE THE FEDERAL ACTION NULL AND VOID AND
9 UNENFORCEABLE AS IT APPLIES TO THIS STATE. THE BILL OR BILLS SHALL
10 BYPASS ALL LEGISLATIVE COMMITTEE HEARINGS AND BE SENT DIRECTLY TO
11 THE FLOOR CALENDAR FOR CONSIDERATION BY THE ORIGINATING HOUSE BY A
12 RECORD ROLL CALL VOTE WITHIN 10 SESSION DAYS OR AT LEAST FIVE DAYS
13 BEFORE THE END OF SESSION IF FEWER THAN 10 SESSION DAYS REMAIN.
14 UPON PASSAGE OF THE BILL BY THE ORIGINATING HOUSE, THE BILL SHALL
15 BE SENT TO THE OPPOSITE HOUSE AND DIRECTLY TO THE FLOOR CALENDAR
16 FOR A RECORD ROLL CALL VOTE BY THE OPPOSITE HOUSE WITHIN 10 SESSION
17 DAYS OR AT LEAST FIVE DAYS BEFORE THE END OF SESSION IF FEWER THAN
18 10 SESSION DAYS REMAIN. THE BILL OR BILLS MAY REQUIRE ACTION ON THE
19 PART OF THE ATTORNEY GENERAL, WHO, IF REQUESTED BY EITHER HOUSE OF
20 THE LEGISLATURE, SHALL INTERVENE AND APPEAR FOR THE PEOPLE OF THIS
21 STATE IN THE SUPREME COURT OR ANY OTHER COURT OR TRIBUNAL.

22 (12) THE COMMISSION SHALL MONITOR AND EXAMINE ALL MEMORANDA OF
23 UNDERSTANDING, MEMORANDA OF AGREEMENT, COMPACTS, OR SIMILAR BINDING
24 AGREEMENTS BETWEEN THIS STATE AND THE FEDERAL GOVERNMENT, OTHER
25 UNITS OF GOVERNMENT LOCATED OUTSIDE THIS STATE, OR NONGOVERNMENTAL
26 ORGANIZATIONS. PROPOSED LANGUAGE FOR ALL SUCH AGREEMENTS MUST BE
27 FORWARDED TO THE COMMISSION AND FORMALLY RECEIVED. THE COMMISSION

1 MAY REJECT OR APPROVE THAT LANGUAGE WITHIN 90 DAYS. THOSE
2 AGREEMENTS SHALL NOT BE LEGALLY ENTERED INTO OR HOLD THE FORCE OF
3 LAW UNTIL THEY HAVE BEEN FORMALLY APPROVED BY THE COMMISSION OR 90
4 DAYS HAVE PASSED WITHOUT BEING FORMALLY REJECTED BY THE COMMISSION.

5 (13) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT ANY
6 LEGISLATOR FROM INTRODUCING LEGISLATION ON ANY ISSUE THAT GOES
7 THROUGH THE NORMAL LEGISLATIVE PROCESS.

8 Resolved further, That the foregoing amendment shall be
9 submitted to the people of the state at the next general election
10 in the manner provided by law.