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STATE CONSTITUTION REVISION: THE ILLINOIS OPPORTUNITY

Jefferson B. Fordham
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GEORGE A. MILLER LECTURES

Edited by Samuel K. Gove

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FOREWORD

On December 10 and 11, 1969, the George A. Miller Lecture Committee of the University of Illinois at Urbana-Champaign sponsored a two-part lecture-discussion series on problems of state constitutional revision. The timing of the lectures was particularly appropriate because earlier in that week on December 8, the sixth Illinois Constitutional Convention had convened in Springfield.

There is much interest in state constitutional change across the country. Many claim that shortcomings in state constitutions have hindered state governments from coping with their many problems, including those associated with our urban crises. Some states have gone, and others are going, the route of Illinois and convening a constitutional convention to provide a complete review of their constitution. Others are using approaches that provide less extensive reviews.

The lecture-discussion series was aimed at putting the Illinois situation in the national context. Some of the discussion was directed specifically toward Illinois problems, while other parts of it looked at the general picture.

The Institute of Government and Public Affairs wishes to thank the speakers for participating in this important series. Also thanks are extended to Dean John Cribbet of the University of Illinois College of Law who presided at the first night's lecture delivered by Jefferson B. Fordham. The undersigned moderated the second night's panel discussion by George D. Braden, William N. Cassella, Jr., and Milton Rakove.

In publishing these lectures, the Institute hopes that it may present some new insights into the problems facing the delegates to the Illinois Constitutional Convention.

SAMUEL K. GOVE
Director

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LECTURE

STATE CONSTITUTIONALISM IN AMERICA

JEFFERSON B. FORDHAM

I congratulate the people of Illinois upon the opportunity their open constitutional convention affords them for achieving a grand design in the state constitutional order. During the century that has passed since Illinois and other states adopted post–Civil War constitutions, experience has confirmed strongly that, to be viable, a state organic law must be broadly conceived and highly flexible. The role of a state constitution is to provide the basic governmental framework and make the distribution of responsibility and authority for decision-making, which will enable the state to deal, not simply with the perceived problems of today, but also with the as yet undisclosed problems of the future. Surely it is not the office of a state constitution to commit the future by hardening particular policy decisions of the present.

It is rather incongruous, as a matter of political theory, to have, as we do, a national constitution, which is brief and largely general in character, and lengthy state constitutions fraught with policy determinations. I say this because the federal government is one of delegated powers, which, of necessity, must be identified in the organic instrument, whereas residual powers abide in the states. You do not have to spell out the powers of a state legislature; it is enough to say in a constitution that the legislative power is vested in the legislative branch. The power of a state legislature is plenary except as restricted by the federal Constitution, the state constitution, and limitations implicit in the federal system.

In my perspective, it would be difficult to exaggerate the importance of the charge of the Illinois Constitutional Convention of 1969. This statement is premised upon the belief that the states — far from finding themselves well along the road to limbo — have and will continue to bear major responsibilities in the total governmental scheme of things.

A few years ago there was much serious talk to the effect that practically all important decision-making in this country, then and thenceforth, was and would be done at the national level. In this view the states and their legislatures were relegated to a subordinate, insignificant level. Things have changed; such talk is seldom heard these days. There is fresh awareness that, in a huge and complex country such as ours, the responsibilities of government have to be distributed among different levels of government if the total job is to be

manageable. I mean by this, of course, something much more substantial than administrative decentralization. I am referring to distribution of responsibility for policy-making. Beyond this, of course, is the store laid in a democratic society by citizen participation. We are engaged right now in carrying this to the subcommunity level in large urban centers.[1]

We have found that decentralization in the governmental scheme as a whole does not erect jurisdictional barriers. In a given problem area governmental units standing in horizontal, as well as vertical, relationships may have interests which bespeak co operation. Intergovernmental relations are an important factor in responding to problems which do not respect jurisdictional lines.

That the federal government has immense influence over our lives in the spheres both of external affairs and domestic concerns is obvious, but it is no less clear to me that state responsibilities with respect to a congeries of human affairs are of first-rank importance and pervasive influence.

State responsibility for so-called law and order is primary. The principal body of private law is state law. The basic system of criminal justice and law enforcement is the state system. This is emphasized by the Federal Assimilative Crimes Act, through which Congress has borrowed state criminal law for Federal enclaves. It is still true that the responsibility for public education is that of the state. State responsibilities for both utilization and conservation of natural resources are large. Local government is the creature of the state; surely the problems of urban life in this highly urban civilization are of first-rank importance. This is but a start on the list. Local government, in particular, may touch upon the life of the citizen from start to finish. The functions of local units run into the hundreds. To say that these things are relatively inconsequential is to fail to see the woods at all.[2]

What are the basic components of a state constitution? Some years ago in speaking of constitutions more broadly, I said:

A written constitution for a democratic society, which pursues its political ends through representative government, needs but four elements: (1) provision of the basic framework of government; (2) distribution broadly of governmental powers within the designed framework, with secondary power-devolution left to the legislative arm; (3) substantive and procedural guaranties to the individual against the arbitrary exercise of governmental authority — a bill of rights; and (4) provision of machinery for change in the constitution.[3]

I hardly need add that I would apply this to a state constitution.

One is aware, of course, that the way we have been acting over a long period as to state constitutional development tends to condition what we can do; we are somewhat habituated to constitutional specificity, to trying to

[1] See the New York statute with respect to decentralization as to public education in New York City, *New York Laws of 1969*, c. 330.

[2] Jefferson B. Fordham, "The States in the Federal System — Vital Role or Limbo?" *Virginia Law Review* 49(1963): 666, 668.

[3] Jefferson B. Fordham, "The Legal Profession and American Constitutionalism," *The Record of the Association of the Bar of the City of New York* 12 (1957): 518, 519.

perpetuate particular policies by embodying them in state constitutions. I, however, am free to speak with as great detachment as I may choose; and it pleases me to say that any departure, in current state constitutional revision, from the four basic elements mentioned should be grounded upon the most compelling considerations.

I would not suppose, for example, that Reconstruction-Era constitutional provisions on corporations and railroads have any place in the 1970 scheme of things. About all that can be said of them is that they restrict the range of legislative policy-making, thus limiting the freedom of the lawmakers to respond with sensitivity to social need as conditions change.[4]

Human Rights

In 1970 terms, the treatment of human rights in a state constitution is to be undertaken in a very different federal constitutional setting from that of 1870. The pertinent provisions of the Constitution of the United States, as amended, were pretty much the same in 1870 as 1970, with the notable exception of the provisions of the Nineteenth Amendment for woman suffrage, but judicial exegisis during the past sixty years has carried us far.

While the first ten amendments to the federal Constitution, familiarly called the Bill of Rights, were designed as safeguards against action by the national government,[5] the force of nearly all of their safeguards has been rendered effective against state and local governments through interpretation of the due process of law clause of the Fourteenth Amendment. This is true as to substantive matters, such as freedom of speech and assembly, as well as procedural safeguards, such as protection against unreasonable searches and seizures.[6] Whether we explain this on the basis that Fourteenth Amendment due process broadly guarantees fundamental rights as to life, liberty, and property which are more particularly safeguarded against action by the federal government or that Fourteenth Amendment due process incorporates the guaranties of the Bill of Rights, the result, to the extent of the coverage, is the same.

It will be borne in mind that the federal constitutional safeguards of human rights are enforceable in the state, as well as the federal courts, or as Article VI of the federal Constitution lays it down, the state courts are bound by the provisions of that instrument.[7]

[4] In the recent revision of the Constitution of Pennsylvania, such provisions were eliminated.

[5] *Barron* v. *Mayor, etc.*, of Baltimore 7 Pet. 243 (1833).

[6] Most recently the Supreme Court has held that the provision of the Fifth Amendment against double jeopardy "represents a fundamental ideal in our constitutional heritage, and it should apply to the States through the Fourteenth Amendment." *Benton* v. *State of Maryland*, 89 S. Ct. 2056, 2062 (1969).

[7] Of course, a state court ruling against constitutionality rested upon an adequate independent state (nonfederal) ground obviates federal court review on federal grounds.

I believe it fair to say that there has been much greater sensitivity to human rights in the federal courts than in the state courts. What has been done under Fourteenth Amendment due process makes this so perspicuous as to render substantial extrapolation a bore. I will add that the courts of the Union — with their greater detachment from the state governmental establishment and interests and their national orientation — were the obvious recourse of the aggrieved citizen.

What the Supreme Court has done with respect to fairness in legislative representation is the most conspicuous example of federal judicial interposition in default of state action, whether by the state legislature or the state courts.[8] One recalls the frustrations of John B. Fergus, who, back in the twenties, tried in vain to get the Illinois courts to act on malapportionment in the legislature. He sought a writ of mandamus to compel the legislature to reapportion.[9] He sought a writ of quo warranto by way of challenge to the very legal standing of a malapportioned legislature.[10] He was much too far ahead of his time and was bounced unceremoniously out of court.

In these circumstances — marked by broad federal protection — why bother with a declaration or bill of rights in a state constitution? There are several things to be said in response to this question:

1. It may be desired to cover in a state instrument more ground than in the federal. A right to collective bargaining in private employment, recognized by the New Jersey Constitution of 1947, is one example.[11] Pennsylvania, by the way, recently adopted a constitutional amendment, which provides for collective bargaining between policemen or firemen and their public employers and for compulsory arbitration in case of an impasse in negotiations.[12] I must say that I am not persuaded of the wisdom of constitutional provisions on employer-employee relations; I prefer to leave the legislature with wider range in policy-making in this field.

There are those who may wish to have a woman's rights provision in a state constitution.

Then, there are the so-called right-to-revolution clauses, which go back to the days of Madison and Jefferson and which are to be found in a number of state constitutions, including the Illinois Constitution of 1870. What they have added has not been altogether clear. It is noteworthy that, in 1966, the Kentucky Court of Appeals relied upon such a clause to uphold resort to a constitutional revision assembly, established by statute, to put forward for

[8] *Reynolds* v. *Sims*, 377 U.S. 533 (1964) and companion cases. For general information, see Robert G. Dixon, Jr., *Democratic Representation* (New York: Oxford University Press, 1968).

[9] *Fergus* v. *Marks*, 321 Ill. 510, 152 N.E. 557 (1926).

[10] *People* ex rel. *Fergus* v. *Blackwell*, 342 Ill. 223, 173 N.E. 750 (1930). See also *Fergus* v. *Kinney*, 331 Ill. 437, 164 N.E. 665 (1929).

[11] *Constitution of New Jersey*, Art. I, Par. 19.

[12] *Constitution of Pennsylvania*, Art. III, Section 31.

electoral approval proposed amendments to or revisions of the state constitution, even though the constitution expressly provided a convention method of revision.[13] The convention method was slow and depended upon electoral approval.[14] The majority opinion exalted the state bill of rights as something supreme and inviolate, while all else was considered transitory and changeable.

Should a state constitution respond expressly to the widely-asserted need of better recourse for the common man against unfairness and abuse of power in public administration? Does the ombudsman idea deserve constitutional recognition?[15] It seems to me that the importance of the subject gives it a claim to consideration in a state constitutional convention. This is not to say that I am fully persuaded. But constitutional status would accord notable recognition to this special officer, which should fortify him in standing up to all and sundry in the administrative establishment.

Should there be express constitutional recognition of so-called welfare rights? In my view, human interests call strongly for action by organized society; but we are dealing here with positive social policy as to distribution or redistribution of goods and services, or the means to acquire them, and I doubt that we could enunciate a viable constitutional principle on the subject. Thus, I do not suggest that a state go beyond an equal rights provision at this time.

2. As a matter of internal completeness and symmetry, an organic instrument for a major political entity, even a unit in a federal system, calls for declared safeguards of human rights, especially in a system in which there were states before there was a federation or union. The tradition involves a commitment of large psychological value, I suggest, and I favor following it, even though provisions of state bills of rights have not always been liberally interpreted in favor of human rights.

3. As to some matters affecting human rights, it might be desired in a particular state to be more restrictive of government than is the federal Bill of Rights. This could be the case as to aspects of separation of church and state and religious liberty. A state could take a position in the declaration of rights which would not allow of shared time, that is, a program in which pupils in church-related schools would get part of their educational experience in classes on secular subjects in public schools. It is my guess that the Supreme Court of the United States would hold, as has the Supreme Court of Illinois,[16] that shared-time programs are constitutional. But such policies do not relieve the pressure; the cost of education has grown so great that the

[13] *Gatewood* v. *Matthews*, 403 S.W. 2d 716 (Kentucky 1966).

[14] *Constitution of Kentucky*, Section 258.

[15] It was first articulated, as a legal matter, in the Swedish Constitution of 1809. The Swedish experience is examined in Walter Gellhorn, *Ombudsman and Others: Citizens' Protectors in Nine Countries* (Cambridge: Harvard University Press, 1966).

[16] *Morton* v. *Board of Education*, 69 Ill. 2d 38 (1966).

push is toward direct public subsidy of church-related schools, which are carrying part of the responsibility for primary and secondary education.[17]

It is noteworthy that a three-judge federal court, by a two-to-one decision, rendered less than two weeks ago, upheld a Pennsylvania statute which provided for state payment — from an earmarked tax on horse racing — of the actual cost of teachers' service, textbooks, and instructional materials in certain secular courses in nonpublic schools.[18] The majority concluded that the purpose and primary effect of the statute was secular in nature and that incidental benefits to sectarian schools were not enough to violate the establishment clause. Chief Judge Hastie, of the United States Court of Appeals for the Third Circuit, the dissenter, saw the arrangement as a subsidy rather than a genuine purchase of educational services and concluded that the state was supporting a religious enterprise of which secular courses were a part. Beyond that, as he saw it, the state was both inviting political activity by religious groups and state intrusion into the affairs of religious institutions. Review by the Supreme Court is being sought. Meanwhile, the Hastie position is sound, in my opinion, and I make bold to predict that it will prevail. Obviously, if it does, Illinois will be bound by it.

Does the establishment clause of the First Amendment proscribe tax exemption of property used for religious purposes? I mean here property used directly for religious activities as distinguished from business or charitable properties of a religious organization. Bear in mind, of course, that the establishment clause, by interpretation of Fourteenth Amendment due process, is a limitation upon state action. There is an historical argument grounded in general practice from the beginning of the Republic, which substantially supports the exemption. But the evolution of thought in the ongoing business of filling in the content of broad constitutional principles runs the other way. A direct cash subsidy of religion would not stand up. Tax-free provision of governmental services to religion is, in plain economic terms, just as real a subsidy. A test case is pending in the Supreme Court.[19]

Meanwhile, it is clear that exemption is a matter of state choice; a state may tax religious property if it sees fit. With respect to constitutional revision, my suggestion is that a state constitution should permit classification of property for ad valorem tax purposes. This suggestion calls for qualification of the traditional uniformity clause. The policy thrust is along the line that religious property ought to be taxed on a basis that bears some relation to governmental services received, which might well be less burdensome than

[17] See the free school book case, *Board of Education* v. *Allen*, 392 U.S. 236 (1968). (Provides for the loan, mandated by statute, of school books, free of charge to all children in grades seven through twelve upheld as to parochial school pupils.)

[18] *Lemon* v. *Kurtzman*, USDC E. Pa. (38 LW 2329).

[19] *Welz* v. *Tax Commission*, 24 N.Y. 2d 30 (1960); probable jurisdiction noted, 395 U.S. 957 (1969).

taxes on property devoted to other types of uses. Obviously government — the organized public sector — is providing many of t : services necessary or desirable to meet human needs, and it is entirely rational to expect payment for what is rendered, apart from welfare considerations and policy.

Equal rights provisions in a state constitution plainly cover some of the same ground as related federal constitutional provisions, such as the equal protection clause of the Fourteenth Amendment. State commitment to equal rights is, nonetheless, of concern to a state constitutional convention. The principle is too important as a matter of the basic integrity of the social order.

In some states, notably Louisiana, it has been a commonplace to engage in a kind of popular legislation by writing a congeries of policy determinations into the constitution by frequent and often detailed amendments. This is a grave offense to my notions of state constitutionalism in general. I make particular reference to it here because I see a kind of parallel in what is taking place today in the federal courts. Reform in the interest of human welfare is being sought vigorously in the judicial forum. I hardly need say that I believe deeply in liberal interpretation of federal and state constitutions in favor of human rights. What concerns me is something that I expect to explore more fully in a separate published paper. I refer to the great pressure for judicial decision at the constitutional level in default of legislative reform at the statutory level. The ardent advocate is a pragmatist; even if the point I am making occurred to him, it is not likely that he would be deterred by it. My point, of course, is that judicial reform at the constitutional level necessarily constricts the range of legislative choice and decision in the ongoing business of policy-making in a changing social condition. It bypasses, moreover, deliberative processes in policy-making.

The Legislature

Central to state constitutional reform is the legislative institution. I have in mind, you can be sure, the lively contemporary interest in one form or another of participatory democracy, but it is evident enough to me that in large community units there is no effective escape from recourse to representative government. Even New England towns have had to acknowledge this. In populous towns, representative town meetings have replaced the traditional town meeting.

The state legislature — a body with plenary powers — should be seen both as a policy-making organ and as a power-distribution or devolution arm of government. This is patently so as to delegation of authority to local government, absent an expansive constitutional grant of home rule. It is, in fact, true as well of structural arrangements and delegation of authority in the state government.

It does not take a numerous body to do a legislative job. The most

populous state, California, has a bicameral legislature of 120 members, and I have heard the chairman of the state's constitutional revision commission proudly proclaim it to be the best of the state legislatures. What is needed is a substantial representative assembly, which is entrusted with responsibility for policy-making unhampered by rigid time or procedural limitations and which has the freedom to mobilize the staff and other resources it takes to do the job well. If we are to confide broad substantive powers to a legislature, we should not hesitate to accord it autonomy as to internal organization and procedure and treat it as a continuing arm of government working regularly in annual sessions not subject to any limitation as to length of session.

It is my notion that the unicameral structure is better designed for responsible action and genuine political accountability. Now that we are guided by the one-man, one-vote principle for both houses of a bicameral legislature, the permissible range of differences in the representative systems for two houses is considerably narrowed. Some differences can be worked into a unicameral system, in any event, as by having the state covered by single-member districts over which is laid a layer of larger regional districts. Such an arrangement would be calculated to afford regional as well as more local perspective.

The unicameral form is simpler, more visible to the citizen. It fixes institutional and political responsibility. It avoids that third-house mechanism, the conference committee. In contrast, an impasse in the two politically-divided chambers in Pennsylvania has the state in a fiscal crisis at this very moment. It is true that a second house may serve as a brake upon hasty, ill-considered action, but the brake might be applied as well to thoroughly-considered reform measures. The unicameral form is calculated to facilitate a more positive, decisive legislative process, while still subject to ultimate political accountability.

I add only that the matter of structure is not of the highest order of importance. Representatives of character and ability can work well in the bicameral framework, given the scope to which I have already referred.

Apart from the bill or declaration of rights, a state constitution should contain a minimum of limitations upon the legislative power or how that power may be exercised. A traditional type of limitation upon the "how" of legislating, as distinguished from substantive jurisdiction, is the constitutional ban upon special or local legislation. Commonly, such provisions have spelled out a whole list of subjects as to which special or local legislation is proscribed and have ended with a catch-all clause. I would eschew such listing and simply articulate a general prohibition. Local legislation is, of course, one type of special legislation — in practical terms, the most important part of the problem area. It is appropriate to deal with that type in the state constitutional article on local government.

It may be desired to direct a few constitutional mandates to the legisla-

ture. The Illinois Constitution of 1870 ordains that the legislature shall provide a thorough and efficient system of free schools. This establishes the basic policy for the state. Why say more in the organic law?

If legislative redistricting and reapportionment are to be left to the legislature, there should be a constitutional command that the legislature act. I suggest, however, that it would be better to establish intelligible constitutional policies as to redistricting and reapportionment and place their execution in nonlegislative hands. There is an inescapable element of conflict of interest in legislative performance of the function.

I anticipate that there will be laid before the Illinois Constitutional Convention proposals for the initiative and referendum. Recent experience affords no basis for expecting them to originate in civil rights circles. Certainly, not if California's initiated anti–fair-housing constitutional amendment, Proposition XIV,[20] or Akron's compulsory referendum on fair housing measures[21] are any indication. Over time, however, this could be a passing matter; at a later juncture, it might be human rights forces seeking to get adoption by initiative of the policy they espouse. I say "it might," but who knows, for are we not talking about the "great silent majority"?

One recognizes that the initiative affords a means of bringing into decision-focus policy ideas to which a legislature appears insensitive. Likewise, the referendum, as available independently of the initiative, is a means of rejecting a legislative policy determination that does not have sustaining popular support. But neither affords any institutionalized means of gathering facts and opinions, deliberation, and debate. Thus, the indirect initiative, which affords opportunity for legislative consideration, has some appeal.

The Executive

There is a widely-held opinion among students of state government that there should be centralized responsibility and accountability in the executive branch. I embrace this view. It exacts a short ballot calling for the election of a governor and lieutenant governor. It allows, in addition, for an official charged with post-audit, who might be chosen either by popular election or by the legislature.

The logic of this view is that the department heads should be appointed by the governor, without any requirement of advice and consent by a legislative body, and should be removable by him. The advice and consent qualification of executive authority exacts a large price in restriction of executive freedom of action in order to assure some check on unwise appointments.

A limitation upon the successive terms that one may serve as governor

[20] Held invalid in *Reitman* v. *Mulkey*, 387 U.S. 369 (1967).
[21] Held invalid in *Hunter* v. *Erickson*, 89 S. Ct. 557 (1969).

is a declaration of distrust of the democratic process and a built-in scheme for lame-duck leadership. I do not recommend it.

In fiscal matters, planning and execution of both capital and operating budgets are executive functions and include the responsible estimate of revenues against which appropriations are made. On the appropriation side, a governor needs the leverage of the item veto, not just the power to reject an item outright but authority, as well, to reduce it. This power is particularly important under a system of lump-sum or performance budgeting, as distinguished from the old line-item type, since a veto of a lump-sum appropriation for a department or a program would leave no provision for the purpose and would entail further legislative consideration regardless of the timing.

The Judiciary

Illinois achieved judicial reform in 1962 by constitutional amendment. This development was notable; there was brought into being a simple, three-level system of constitutional courts, with centralized administrative authority in the state supreme court. The reform is widely regarded in legal circles as very advanced and constructive. I do not suggest that the amendment is beyond review in the Illinois Convention; some changes may be proposed. But in my overview of constitutional revision, I regard the judicial posture in Illinois to be so well-considered that I am refraining from talking about the judicial branch.

Finance

Since a state legislature has the nonfederal residuum of legislative power in our system, its taxing power, absent express limitations, is sweeping. Why impose limitations? I do not know.

Taxation is not simply a means of raising funds for the support of government. It serves, at the same time, to distribute the burden. More than that, taxation and appropriation together perform a function of redistributing economic substance to advance the objects of public policy. In the light of all this and in the face of critical need of public revenue for education and whatnot, the case for unfettered legislative power with respect to taxation is a strong one. I have a notion that, before long, federal leverage may be applied to influence state tax policy and that it may be toward an income tax keyed to the federal levy. If Congress is to begin sharing revenues with the states and the local units, it would be rational to move toward coordination of tax policy.

So long as local government is dependent, in large part, upon ad valorem property taxation, a constitutional requirement as to uniformity in assessment and levy is in order, subject to such degree of legislative classification as may well be desired. I certainly would not recommend a uniformity clause applicable to all forms of taxation. I can testify that such a clause

has been an instrument of regression in Pennsylvania and an obstacle to the raising of adequate public revenue.

I would abandon constitutional debt limitations for state and local government. Let the legislature bear the responsibility for the needed prudence exercised by adoption of statutory policies and by subsequent legislative oversight.

There are to be found in a number of state constitutions provisions dedicating particular revenues to particular purposes. Especially noteworthy, at this time, are constitutional dedications of gasoline and motor vehicle license tax revenues to highway — and, in some instances, airport — purposes. Simply from the standpoint of fiscal decision-making, such a commitment denies the legislature the discretion to allocate revenues both with a broad overview and with sensitivity to developing needs. It is extremely bad constitutionalism; it is, moreover, a conspicuously objectionable example of dedication. It favors the private automobile willy-nilly with all the enormous public outlay it takes for operating surfaces for motor vehicles and all the ecological and other problems generated in the use of trucks and automobiles. It seems plain enough that public revenue should be left open to appropriation by the legislature to serve the public interest, broadly perceived, to the best advantage. Highways are but one component of the social circulatory system; other elements, such as mass transit, must be considered in the planning and achieving of a sound, balanced system.

The Suffrage

I imagine that the Illinois Convention's most lively concern with respect to the suffrage will relate to the voting age. The question of whether the age should be lowered is a serious one. This is a new era. Young people, many of whom are under twenty-one, the traditional age of majority, are exerting an active voice in a great range of public issues at all levels of community. And, of course, young males under twenty-one, in large numbers, have been in active military service.

Speaking generally, I have a notion that state reduction of the voting age will be gaining in acceptance in the years ahead. Meanwhile, I am not convinced that it will be wise.

The contention that a person who is old enough to be required to serve in the military forces is old enough to vote is something short of compelling. Of course, males in their late teens provide a pool of persons generally qualified physically and mentally for military duty. Experience validates this. Their capacity to bear political responsibilities is hardly to be determined by the same standards. Justice Holmes said that the life of the law is experience. He might have said with equal force that it is experience which enables the individual to achieve maturity as a social being. I do not recall

having seen an infant prodigy in the social sciences. Experience and maturation vary with the individual, but, in general terms, it cannot be said that an eighteen-year-old — who may still be in high school, who in many states at least cannot even make an irrevocable contract, and who is not ready to bear adult economic and social responsibilities — is yet mature enough to vote.

The more weighty consideration on the side of a lower voting age is the demonstrated concern and involvement of youth in this troubled period. They are better informed about public affairs than earlier student generations, and they are participating in the actions and passions of their times in ways other than voting. I grant that these things are not to be taken lightly.

Local Government

Let me conclude with but a brief reference to my area of special concern as a student of law and public affairs — local government. I defer to others, yet to speak under these auspices, for treatment which is adequate in reach and depth.

I do commend for constitutional articulation a broad grant of home rule powers to counties and to cities of substantial population. My approach to home rule is to give the affected local units, those which adopt home rule charters, the full sweep of authority a state legislature might devolve upon them, subject to the overriding authority of the legislature to be exercised by general law. Constitutional provision for a real and regional governmental jurisdiction and arrangements for intergovernmental cooperation are desirable to afford maximum flexibility in fitting responsibility to changing community configurations and needs. My views on home rule are articulated more fully in the *Model Constitutional Provisions for Municipal Home Rule*, put forward by the American Municipal Association some years ago.

In this area of concern I renew the suggestion, of general application, that the dynamics of our society urgently call for organic political instruments that afford great flexibility in policy development and execution.

PANEL DISCUSSION

THE 1870 ILLINOIS CONSTITUTION DISSECTED

GEORGE D. BRADEN

My assignment for this part of the panel discussion is to tell you what I found upon dissection of the present Illinois Constitution. I must first enter two caveats to what follows. First, I did not in fact dissect all of the Illinois Constitution. My coauthor, Professor Rubin G. Cohn, dissected the bill of rights, the judicial article, and the revenue article. Second, I cannot tell you in fifteen or twenty minutes all that I found. For the complete autopsy, I must refer you to our analysis.[22]

Upon dissection of the Illinois Constitution I found a mess. It must be conceded, of course, that once I have said that the Illinois Constitution is a mess, I have made a value judgment. Unless, that is, I mean that the Constitution is incomprehensible and unreadable. Except for that drafting monstrosity, Section 34, Article IV, "Special Laws for City of Chicago," this is not the case. What then is the value structure that I use in asserting that the Illinois Constitution is a mess? I would argue that a state constitution is a mess if (1) it unnecessarily and improperly limits the government; (2) it contains statutory material; and (3) it unnecessarily freezes the structure of local government. I hasten to point out that two of my three value judgments have subsidiary values — *unnecessarily* and *improperly* — expressed, and thus we are off and running on a mighty slippery road. But since, for the moment, I am in the groves of academe, and logical positivism is dead anyway — or is not "in" these days — I assume we can all slip and slide along together.

Now, in what way does the Illinois Constitution improperly or unnecessarily limit the government? First, and foremost, there are improper fiscal limitations on the government. There are absolute limitations on the incurring of local debt and conditional limitations on the incurring of state debt. In 1870 in Illinois, there was undoubtedly a felt need for these restrictions because of the internal improvement scandals of the preceding two or three generations. Today, these restrictions are not only unnecessary, they are actually counterproductive, to use one of the newer bits of bureaucratese. The fact is that the limitations do not prevent the incurring of debt; they simply

[22] George D. Braden and Rubin G. Cohn, *The Illinois Constitution: An Annotated and Comparative Analysis* (Urbana: Institute of Government and Public Affairs, University of Illinois, 1969).

force the use of devices that are either expensive or inefficient, or both. On the state level, authorities proliferate. They borrow money to build buildings, toll roads, recreational facilities, and the like. These authorities do not enjoy the credit rating of the state, and the result is that they have to pay a higher rate of interest than the state would have to pay on full faith and credit bonds. On the local level, special districts, each with borrowing power, proliferate and jobs proliferate. This is both inefficient and expensive.

The other type of fiscal limitation is in the taxing power. Here, I am tempted to say, after the tenth reading of the tax sections of the Illinois Constitution, "it's spinach, and the hell with it." My best guess is that the 1870 drafters really were not trying to impose improper limitations on the government. I suspect that they were trying to do two things: assure fairness in taxation and cure some procedural abuses that had crept into the system. The latter is more legislative than constitutional and it became an improper limitation only because it is so difficult to amend the Constitution. (Let me note, parenthetically, that I am referring not to the specific difficulty of obtaining the vote of a majority of those voting in a general election or two-thirds of those voting on an amendment, but to the difficulty of getting the legislature or the public interested in technical amendments to technical constitutional provisions.)

As to fairness in taxation, the 1870 drafters used such words as a "tax in proportion to the value" of property, and, as to franchise and privilege taxes, "uniform as to the class upon which it operates." This was all right then, for they were thinking of the types of tax with which they were familiar. Unfortunately, they were too specific, for clever lawyers and judges, clever or not so clever, carried the words over to other taxes and created unnecessary limitations which the drafters probably had not envisioned. The recent Illinois supreme court opinion upholding the income tax, is, I might say with my tongue just barely touching my cheek, a brilliant example of strict construction of the Constitution. The justices have, in effect, gone back to the beginning and read the language in accordance with the true principles that guided the 1870 drafters.[23] Of course, the Convention could go the supreme court one better and simply drop all reference to state taxing power and rely on the courts to use the due process clause to preserve fairness in taxation. That, however, is not the type of convention action that some are worried about.

The other major type of improper limitation on government is by way of excessive control over the legislative process. The debates of the 1870 Convention reveal a great distrust of the legislature. In general, the delegates believed that the legislature was corrupt in several respects. It feathered its own nest and that of local officials; and it granted special privileges and

[23] *Thorpe et al.* v. *Mahin*, 43 Ill. 2nd 36, 250 N.E. 2d 633 (1969).

immunities. Out of this generally held opinion came several restrictions. There was the extensive prohibition on special legislation, principally embodied in Section 22 of Article IV, but sprinkled also here and there throughout the Constitution. There were various attempts to assure honesty and integrity, such as the oath required of legislators, prohibitions on dual-office holding, conflict of interest provisions, restrictions on compensation via the fee system, and even some general restrictions that do not appear on their face to be related to the integrity of the legislative process.[24]

Finally, there were several restrictions added to the rules for the enactment of legislation. These include the bill-reading requirement, the limiting of a bill to a single subject, the prohibition on revision or amendment by reference, and some of the restrictions on the appropriations process. These are all examples of naive do-gooders trying to prevent legislative skullduggery. It is my *guess* that none of these restrictions ever prevented any skullduggery. I *know* that they provided lawyers with lovely devices for attacking legislation and that, over the years, the courts aided and abetted lawyers in what I call an irrelevant exercise in limiting government. It is irrelevant because the person attacking the legislation couldn't care less about the legislative process — he simply does not like the substance of the legislation.

In all fairness to the 1870 drafters, I should note that most of these restrictions on the legislative process produce a judicially enforceable limitation on government only if the courts follow the "journal entry rule." Under this rule, the courts will examine the legislative journals to see if the constitutional procedure has been followed. Under what is called the "enrolled bill rule," the legislature alone enforces the rule, for the courts accept as conclusive a certification by the proper legislative officers that a bill was duly passed. I am not sure that the Illinois courts had decided prior to 1870 which rule they would follow. I strongly suspect that the 1870 delegates would have opted for the journal entry rule, so strong was their disapproval of the legislature. In any event, the Illinois courts have followed that rule. I should also note that the most mischievous of these restrictions are the one subject to a bill requirement and the amendment by reference prohibition, and both of them are operative without reference to the legislative journals.

My second characterization of a constitutional mess, the one without a subsidiary value judgment, is the inclusion of statutory material. Need I say more? Well, yes, I think I should note that there are two types of statutory material — that which everybody concedes is statutory and that which is statutory because one thinks that it is really not appropriate to limit the government in this way. (Thus, another subsidiary value judgment has

[24] For examples of general restrictions, see Braden and Cohn, *op. cit.*, pp. 226–27, 454–55, and 457.

crept in.) The first type is exemplified by Article XIII on warehouses. Even the 1870 delegates themselves recognized this.

Just before the Committee rose, a delegate offered an additional section, as follows: "This act shall be deemed a public act and shall be in force from and after its passage." (Debates 1627.)

The proposal was voted down. As the convention proper was subsequently about to refer the Warehouse Article to the Committee on Revision and Adjustment, another delegate offered an additional section, reading: "Be it enacted by the people of the State of Illinois, in Convention assembled." The proposal was ruled out of order.[25]

The second type is exemplified by most of the sections in Article XI on corporations. I personally do not think that the legislature should be prohibited from allowing noncumulative voting for corporate directors, or creating a state bank, or allowing less than double liability for bank stockholders, or requiring banks to publish only annual statements, and so on. Nor, for that matter, do I think there is any need to prohibit lotteries or the employment of convict labor in a constitution. Thus, at some point a limitation on government becomes "statutory" only because in someone's judgment it ought not be a constitutional limitation at all, which is to say that the matter ought to be left to the legislature. The Illinois Constitution has several provisions that approach the true statute, several that are sort of in the middle, and several, such as those on lotteries and convict labor, that are "statutory" by subjective fiat.

My third characterization of a constitutional mess is the unnecessary freezing of the structure of local government. I do not propose at this point to enter into an extensive discussion of home rule. The essence of the home rule debate turns on whether or not local units should have a constitutionally protected power to set up their own forms of government. In the absence of a home rule provision, the legislature can provide for complete home rule or limited home rule, or, in the absence of a prohibition of local legislation, it can theoretically deny any home rule. I wish simply to note that, except for the geography of counties and the choice of having or not having township government, the structure of county government is fairly well frozen in the 1870 Constitution. Obviously, the structure of the state government, within fairly narrow limits, must be frozen. In the case of local governments, I see no good reason for freezing the structure. The key issue to be decided is who *controls* structure — the state or the people of the local units, or both in some combination. The extent to which home rule ought to be constitutionally guaranteed is debatable, and reasonable people can disagree on that extent. My point about a mess is that, under the existing Constitution, no one except the people of the whole state by constitutional amendment

[25] Braden and Cohn, *op. cit.*, p. 555.

or convention can do much about county government. Without passing judgment on the vision of the delegates to the 1870 Convention, I would say the result has been a mess.

Having covered my three elements of messiness, I should stop. But, I would not want to leave the impression that I think everything else in the Constitution is "hunky dory." Since I am a student and not a practitioner of government, I am naturally "gung-ho" for the short ballot — the shorter the better — for statewide executive officers. Indeed, for years I had been touting the Connecticut Constitution as the best in the country, but last July "Mr. State Constitution," that is, John Bebout, turned on me and muttered that Connecticut still had a long ballot including, particularly, an elected comptroller with pre-audit powers. I now bow to John and *his* favorite constitution — New Jersey's — for which, as a matter of fact, he personally can take a great deal of credit.

It seems appropriate, also, to note that, by virtue of the adoption of a new article in 1962, Illinois has just the opposite of a mess insofar as the judicial system is concerned. Nevertheless, since I have carefully pointed out the value judgments involved in passing on the merits of a constitution, I must note that I do not favor the election of judges, particularly by partisan elections.

Finally, I must concede that in characterizing various constitutional provisions as "bad" and in setting forth what I think is "good," I am exercising a freedom that delegates to a constitutional convention do not possess. Constitution-making is part of the process of government, and government is the art of the possible. For a variety of reasons, it is not possible to change everything for the good, to say nothing of the best. It is possible, however, for the 1970 Convention to propose a constitution that will be accepted by the people and that, when next dissected, will surely not be called a "mess."

STATE CONSTITUTIONAL REFORM: TRENDS AND COUNTERTRENDS

WILLIAM N. CASSELLA, JR.

"Removing specific constitutional obstacles to state action" was cited by the recent American Assembly on "The States and the Urban Crisis" as the primary objective of constitutional reform today. This purpose is very different, indeed, from that which motivated most state constitutional reformers during the greater part of our history. Their goal more often than not was to place restriction on action by agencies of state government.

In 1776 the Continental Congress urged each colony to adopt a constitution where there was "no government sufficient to the exigency of their affairs." Whether framed and proclaimed by Revolutionary conventions or Colonial legislatures, the peculiar circumstances of the American Revolution were responsible for the negative preoccupation reflected in the original constitutions. This point was emphasized in an early twentieth century appraisal which said:

> . . . American state government, in its essential principles, was not originally designed for efficient, constructive public work, but was the product of temporary and peculiar conditions growing out of revolt against Great Britain. In their natural antipathy to leadership by a royal agent, the revolutionists rejected leadership altogether. In their fear of the British crown and the royal governor, they came to fear all power, even if exercised by their own agents. Instead of making the executive authority responsible, therefore, they shackled it. Knowing that royal agents could not be entrusted with authority, they came to the conclusion that no one could be entrusted with authority. Their ideal of government was a negative one and in seeking after a government powerless to do harm they set up one weak in power for good. This principle of negation, of preventing evil by dividing the powers of government into numerous parts is the chief source of the wastefulness, irresponsibility, and inefficiency which characterize the present system of government.[20]

The division of powers was professed in virtually all original state constitutions, but with few exceptions in practice they followed a system of near legislative supremacy. The pre-Revolutionary legislatures had been seen as the people's bulwark against royal and proprietary tyranny and thus retained an undue share of popular confidence as the first constitutions were framed.

As the original draftsmen of state charters concentrated their fire on

[20] *The Constitution and Government of the State of New York: An Appraisal*, transmitted to the New York State Constitutional Convention by the New York State Constitutional Convention Commission (Albany: Bureau of Municipal Research, 1915), p. 2.

executive tyranny, the first wave of reform was an attack on legislative supremacy. Jefferson was a most articulate spokesman of that point of view.

> All the powers of government, legislative, executive and judiciary, result to the legislative body. The concentrating of these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. 173 despots i.e., legislators would surely be as oppressive as one.[27]

Jefferson became the first serious advocate of constitutional reform when he drafted a model constitution for Virginia in 1783. His draft stressed broadening the electorate and an effective division of powers — the two tenets of positive reform — but his recommendations were unheeded and the original constitution endured until 1830.

The strain upon state governments in wartime, the interstate bickering during the period of the Confederation, and the ineffectiveness of legislatures in dealing with state problems caused a rapid decline in public confidence in the legislature as the supreme instrument of state government. Individual legislators as the determined representatives of local or private interests against dominent colonial executives had served a most useful role. However, this extreme localism continued when the executive was all but nonexistent. The result was a neglect of the general interests of the state. Logrolling for local favors and legislating for private benefit of land speculators were common. Taxation was highly discriminatory and the public credit was extended for speculative purposes.

The Executive Veto

Reaction against the abuses of legislative supremacy was generally in the form of restricting legislative power. Suggestions that this be done by a more effective system of checks and balances met with but limited enthusiasm. In New York there had been a popularly elected governor since the time of independence. However, his powers were diluted by a council of appointments, which shared the appointing power, and a council of revision, which shared the veto power.

Massachusetts governors from the start had the veto which could be overridden by a two-thirds vote of the legislature. Gradually, as other original states made their governors popularly elected and new states were admitted, the executive veto was adopted primarily as a negative device to check the legislature rather than as a positive instrument to strengthen the hand of the governor.

Limiting Legislative Powers

Although state constitutional reform efforts were mainly focused upon

[27] Thomas Jefferson, *Notes on the State of Virginia*, edited by William Peden (Chapel Hill: University of North Carolina Press, 1955), p. 120.

preventing the abuses of legislative power, they were also motivated by a general distrust of government. Indeed, practices of the late eighteenth and early nineteenth centuries were so blatantly corrupt that the demand for restraint is certainly understandable.

> With the gradual decline . . . in the prestige of state legislatures, the constitutional limitation[s] upon their powers were steadily increased. . . . The record of legislative folly and corruption in the American states is spread upon their constitutions in the form of a stream of amendments designed to check the abuse of legislative powers. The power to pass special and local acts, the power to tax and to grant tax exemptions, the power to invest the public money, loan the public credit, and dispose of the public resources in general, all were subjected to a series of restrictions ever increasing in number and stringency.[28]

The outrageous discrimination in the granting of early nineteenth century bank charters by the New York legislature was the cause of increasingly rigid constitutional limitations. First in the Constitution of 1821 an extraordinary majority in each house was required to grant a charter, but one commentator relates: "The only effect of the restrictive clause in the constitution has been to increase the evil by rendering necessary a more extensive system of corruption. . . ."[29]

The obvious next step came in the 1846 Constitution, which prohibited outright the granting of special charters and the requirement that corporations and associations must be formed under general law. For every abuse, the remedy seemed to be a constitutional restriction or prohibition.

Procedural Limitations

Reformers were not content to restrict the substantive powers of the legislature; they also injected procedural limitations which were motivated by the feeling that the less time the legislature was in session the less harm it would do. They tried to give a positive twist to the argument, for example, "With less frequent legislative sessions, the more important matters will occupy the attention of the legislators, and individual members will recognize the futility of advancing pet schemes of a merely personal or local interest."[30]

The original almost universal practice of holding annual sessions was replaced by constitutional provisions permitting only biennial regular sessions frequently limited to a specific number of days.

This development illustrates how yesterday's reforms have become the target of today's reformers who are advocating unlimited annual sessions.

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[28] Arthur N. Holcombe, *State Government in the United States* (New York: The Macmillan Company, 1916), p. 119.

[29] Jabez D. Hammond, *History of Political Parties in New York* (Syracuse: Hall, Mills and Co., 1852), Vol. I, p. 337.

[30] Paul S. Reinsch, *American Legislatures and Legislative Methods* (New York: The Century Co., 1913), p. 132.

A Popularly Elected Governor, but a Plural Executive

The ambivalence of reformers has been particularly apparent in the constitutional role of the executive. A rational method of checking legislative supremacy would be to strengthen the executive. To an extent, the adoption of the executive veto with the requirement of extraordinary legislative majorities to set it aside strengthened the executive's position. Certainly, the most significant reform during the nineteenth century was making the governor popularly elected. Popular election was provided in only 5 of the original 13 states. In the others he was chosen by the legislature. But popular control of the executive went much further. Indeed, the plural executive in fact was the result, with a total of 435 executive officers — by the most recent count — elected in the 50 states, or an average of 8.8 per state.

The evolution of reform dogma on executive selection can be illustrated by successive constitutional changes made in New York. In its first constitution, only the governor was popularly elected, with his appointing powers shared with a council of appointment composed of four senators. This was originally proposed by John Jay who considered the council as a device for approving or rejecting gubernatorial appointments. Legislators did not see it that way. The legislative members individually were to have equal status with the governor and thus be in a position to dictate appointments. This thinly veiled mechanism of legislative domination was replaced in the Constitution of 1821 by straight legislative appointment, which in turn was shortly subjected to bitter attack. It was contended that the "bosses" known as the "Albany Regency" had practically taken out of the hands of the legislature and the governor the selection of high public officers. . . ."[31]

Control of patronage by this "invisible" government led to demands for a new constitution in 1846.

> It was the clamor for the abolition of the Albany Regency and the widespread agitation against official despotism of European monarchs which reached our shores that the convention of 1846 made the secretary of state, comptroller, treasurer, attorney general, state engineer, and the judges elective by popular vote. The one was aimed at the abuse of legislative power, the other aimed at the abuse of executive power. Both sought to accomplish their ends by giving to the electorate a larger share of power.[32]

This position came under vigorous attack almost seventy years later as New York prepared for its 1915 Constitutional Convention:

> It is true, the proceedings of the convention of 1846 record a demand that these high officers be made responsible to the people by the establishment of popular election, but it is likewise true that abolition of certain evils was uppermost in the minds of the delegates. They evidently assumed that by transferring the right of election from the legislature to the people the irresponsible and unofficial boss system, which had hitherto controlled the choice in fact, would disappear, on the

[31] New York State Constitutional Convention Commission, *op. cit.*, p. 30.
[32] *Ibid.*

general theory that leadership is not essential to intelligent operations in such matters. That which was a historical accident then became a dogma, namely, that all high officers, no matter what their duties, must on democratic principles, be elected by popular vote. And the theory has been carried to such a great length that a governor of a western state solemnly declared not long ago that the appointment of the state veterinarian by the chief executive savored of monarchy.[33]

A proposal to shorten the ballot won approval in the 1915 Convention but was rejected by the voters. Ten years later, following the recommendation of a special commission headed by former Governor Charles Evans Hughes and supported by the then Governor Alfred E. Smith, the secretary of state, treasurer, and state engineer were made appointive, leaving only the attorney general and the controller, as well as the governor and lieutenant governor, elected. Proposals in the 1938 and 1967 Constitutional Conventions to take these two officers off the ballot met with little support. Actually, New York has gone further than most states in reversing the nineteenth century "reform" which had so drastically lengthened the ballot.

Three constitutions adopted since World War II are the "short ballot" models. The only state executive officer elected in New Jersey is the governor; in Alaska, the governor and the secretary of state, who is the constitutional stand-in for the governor; in Hawaii, the governor and the lieutenant governor.

An Elected Judiciary

Popular election was also the nineteenth century reform prescription for judicial selection. It was in keeping with the prevailing view that the judiciary, as well as the legislative and executive branches, should be accountable to the people. No doubt popular election was an improvement over the original practice of a judiciary chosen by and therefore dependent upon the legislature. However, unlike legislative or executive elections, the election of judges has seldom evoked significant popular interest and has generally been characterized by voter indifference which has permitted almost complete partisan domination of the judiciary in many states.

Twentieth century judicial reform has called for an appointed judiciary. Most reform proposals have been variations of the Missouri Plan, which provides for gubernatorial appointment from nominations made by a nonpartisan selection commission composed of laymen and lawyers. Upon the expiration of his first term, the judge then runs for election without opposition, providing the electorate with an opportunity to remove him. It is said that he runs against his record rather than against a political opponent. The American Judicature Society and the American Bar Association have strongly advocated this method of judicial selection and it is gaining acceptance.

[33] *Ibid.*, p. 31.

Direct Legislation and the Recall

The early twentieth century reforms which most explicitly expressed dissatisfaction with the operation of representative government at the state level were the initiative and referendum first adopted in South Dakota in 1898 and now included in the constitutions of twenty-three states.

The advocates of these reforms were careful to assert, as did Charles A. Beard in 1912, that "it is the practice of representative government as it now prevails in the United States, rather than its theory" which should be considered when the initiative and referendum are appraised.[34]

The third member of this popular reform triumvirate was the recall of elected officers in a special election initiated by popular petition, but it has gained considerably less acceptance.

Broadening the Franchise

Although for more than 150 years the thrust of most state constitutional reform has been to prevent or correct some abuse, the positive rationale was almost always expressed in terms of making government truly responsible to the electorate. Thus reformers have justified popular election of a whole retinue of executive officers, the major and minor judiciary, direct legislation, and popular recall of unpopular officials. The emphasis upon the role of the electorate did come at a time when the franchise was being greatly broadened. Indeed, this was the most significant series of constitutional reforms which extended from the time of independence into the twentieth century with the gradual elimination of property qualifications and restriction because of sex or color.

Urban-Rural Conflict and Home Rule

Since 1850, intense urban-rural conflict has been a fact of life in the American states. One reform which grew directly out of this conflict was constitutional home rule. The cities, particularly the larger ones, resented domination by rurally controlled legislatures. Prohibition of local legislation was the first constitutional measure to prevent some of the more blatant abuses such as "ripper" bills which abolished exsisting local governments for purely partisan purposes. However, the more drastic reform was to give municipalities substantial control of their own "property affairs and government." The first constitutional home rule provision was included in the Missouri Constitution of 1875 and applicable only to the city of St. Louis. Shortly, this became standard reform dogma and has been adopted in various forms in well over half the states. Like so many reform measures, it has had consequences unforeseen by its originators and is presently in the

[34] Charles A. Beard and Birl E. Shulta, *Documents on the Statewide Initiative, Referendum, and Recall* (New York: The Macmillan Company, 1912), p. 33.

process of reappraisal as new patterns of intergovernmental relations are emerging.

Frequency of Change

The foregoing panorama of state constitutional reform only shows the more conspicuous objects in a very detailed and complicated picture. In fact, it is more ambitious than wise for one to attempt such a portrayal, but any consideration of future reform needs to be placed in the perspective of almost two centuries of constitution-making, an art which generally has not improved with age. The reformers of each generation have contributed to the ever growing corpus of state constitutional law the legal prescriptions to right the wrongs of their predecessors and prevent transgressions by their successors. Jefferson thought that governments tend to grow away from the needs and wishes of the people and therefore advocated frequent revision of constitutions. He was the originator of the provision which at regular intervals automatically submits to the voters the question of calling a constitutional convention. This provision now exists in eleven states.

During the nineteenth century there was a much greater willingness on the part of the states to call conventions and adopt the new documents proposed by them. The results showed marked similarities to the reconstruction of eighteenth century houses in the Victorian era. Simple, classic lines were obscured by the addition of elaborate adornments — heavy cornices, gables, cupolas, and so on.

It is significant that the 1965 Connecticut Constitution is very similar in form and substance to its 1818 predecessor and is one of the shortest in the nation. The Connecticut Constitution, in both the old and the new version, is distinguished for the fact that it has avoided adding various new provisions which to many seemed meritorious at the moment but which in time have proved otherwise. Actually, the most unfortunate aspect of constitutional revision experience has been the willingness to add new provisions and the unwillingness to remove outdated sections. Many of the latter were adopted as important reforms to meet problems of another generation. Frequently, some special interest for good or ill has developed a special attachment to these provisions, making it extremely difficult to remove them even though now they may obstruct the operation of the state in meeting current problems. It is problems of this sort that require the most careful scrutiny of those who have revision responsibilities.

An illustration of the problem is provided by the prohibitions against gifts or loans to private persons or corporations by the state or its subdivisions in the New York Constitution (Article VII, Section 8, and Article VIII, Section 1). The prohibitions were inserted in the last half of the nineteenth century to guard against overexpansion of public credit for railroad develop-

ment, especially subsidies by local governments to promote the building of spur lines, many of which were never warranted by economic considerations. Now these provisions present a very real problem as the state endeavors to cooperate with the private sector to continue faltering rail passenger service, particularly within the greater New York region. The legal restrictions have necessitated the outright purchase of the Long Island Railroad by the state and a long-term lease arrangement with the Penn Central for improvement of the New Haven line.

Protection Dies Hard

Among perennial opponents of constitutional reform are the elected local officers who are named in constitutions: assessors, attorneys, auditors, clerks, commissioners, constables, coroners, elisors, public weighers, jailors, marshals, ordinaries, superintendents of the poor, rangers, recorders, registers of deeds, registrars of voters, registers of wills, road commissioners, sheriffs, surveyors, tax collectors, and treasurers. It is understandable that they oppose giving up this protection, which found its way into constitutions as part of the early and mid-nineteenth century preoccupation with keeping government responsible to the people by having executive and judicial officers of state and local government directly elected. Thus, again, it can be seen that the reform of an early era has become a stumbling block in meeting organizational and operational needs of today.

The Changing Agenda of Reform: Fewer Dogmas

For those of us who are involved in organizations which help set the agenda of reform by publication of model constitutions, charters, and laws, it is a sobering thought to realize that some of our most cherished reform prescriptions may within a generation become an impediment rather than an aid to making government more responsible and responsive.

For example, the dogmatic civil service provision, an essential of the reform agenda of only a few years ago, was not endorsed in the latest edition of the *Model State Constitution*[35] as it was in the previous one.

Drastic changes in the provisions for state-local relations were labeled by some as a repudiation of "home rule," a fundamental part of the traditional reform creed. The new edition endorses a formula which encourages maximum initiative at both the state and local levels but recognizes that in the last analysis the broader interests of the state must take precedence.

The initiative and referendum are no longer considered as priority items of a reform program and are now included only as an appendix to the *Model State Constitution*.

Model-building is characterized by some of the same restraints as the actual

[35] National Municipal League, *Model State Constitution* (New York: National Municipal League, 1963).

process of constitutional revision. In both endeavors it is much more difficult to take something out of a constitution than it is to put something in. The obstacles presented by vested interests in existing constitutional language are not easily overcome. Today's reformers must be very sure to heed the words of the late Justice Benjamin Cardezo: "A constitution states, or ought to state, not rules for the passing hour, but principles for an expanding future."[36]

If we believe that states do have a significant role in an "expanding future," the direction of constitutional reform should be obvious. We must be wary of measures whose purpose is simply to correct abuses. Their potential for ultimate harm may outweigh their immediate benefits. Each reform measure must be judged as to whether or not it enhances the capacity of the state to act.

[36] Benjamin N. Cardezo, *The Nature of the Judicial Process* (New Haven: Yale University Press, 1921), p. 24.

POLITICS AND CONSTITUTION-MAKING IN ILLINOIS

MILTON L. RAKOVE

Long before the 116 delegates, who were elected by a small percentage of the mostly disinterested sovereign voters of the State of Illinois, met in Springfield to write a new constitution for the state, they had already become the recipients of a great deal of well-meaning advice as to how they should conduct themselves in their deliberations.

The newly elected Founding Fathers of Illinois have been told to be vigorously virtuous, eminently above board, always open, conscientiously representative, completely nonpartisan, and above all totally nonpolitical. They have been advised that their sole concern should be the interests of all the people of Illinois without regard to local, sectional, regional, ethnic, racial, religious, or economic concerns. And they have been warned that the watchdogs of the public interest, the representatives of the mass media, would be hovering over their shoulders as they met in open convention, in the full glare of the public eye, ready to expose to a concerned electorate any violation of their public trust.

It should be said publicly, what most of the delegates must know privately, that most of this well-meaning advice should be discounted and ignored by the delegates if they have any hope of writing a constitution that has any chance of being adopted by the sovereign voters of the State of Illinois. If the Founding Fathers of this country — or their descendants down to the fifth generation — had followed such advice they would still be sitting in Independence Hall in Philadelphia, trying to write a workable constitution for the new republic they were founding. We can all be thankful that those Founding Fathers locked the doors and windows; posted a guard outside to keep busybodies away; and bargained, wheeled, dealed, and horsetraded with each other. In general, they conducted themselves as practical politicians who had to write a political document that could be accepted by, or at least put over on, a divided, selfish, and generally apathetic and uninformed populace.

The delegates in Springfield surely must recognize, too, that Illinois is not one state made up of a homogeneous mass of public-spirited, concerned citizens. Illinois is at least three states — the City of Chicago, the suburbs of Chicago ranging into some of the communities in Cook County's neighboring counties, and the rest of Illinois, Downstate.

Indeed, if one is to be realistic about the makeup of Illinois, the state is divided into much more than three separate parts. For the facts of life are that each of these separate parts of the state are fragmented into numerous subdivisions, divided along racial, ethnic, religious, economic, and political lines.

There is no such entity as the City of Chicago; neither is there an area called the suburbs, nor a subdivision of Illinois called Downstate, except in the most vague and general sense. The City of Chicago is a kaleidoscope of separate communities inhabited by diverse peoples ranging from the high-rise Gold Coast fringe along Lake Michigan, through the deteriorating neighborhoods, into the black belts of the inner city's West and South Sides, to the middle-class white neighborhoods of the Northwest and Southwest Sides. Chicago's suburbs encompass a spectrum of communities from Kenilworth to Hometown, with the Skokies, Park Forests, Streamwoods, Park Ridges, Glencoes, and Hazelcrests in between these two economic and social extremes. What is called "Downstate" ranges geographically from the towns on the Wisconsin border to the communities south of the Mason-Dixon line to the Tri-Cities on the Iowa border, and encompasses a social, cultural, and economic potpourri that includes the microcosm of Chicago that is East St. Louis, the southern town of Cairo, and the prosperous farm communities of central Illinois.

All of these peoples and all of these diverse communities have different interests, aspirations, and needs. The divergent interests of these groups sometimes coincide as members of the body politic of the State of Illinois, but they more often serve to divide and fragment the people of the state. A close look at the character of each of the three major subdivisions of the State of Illinois would document the social, cultural, and political differences that differentiate these three areas from each other.

Chicago

Chicago, with three and a half million people, about one-third of the population of the state, is Catholic, nationality-ethnic, and black.

Settled originally by the Catholic Irish and Germans; inundated by successive waves of Poles, Bohemians, Italians, Lithuanians, and Jews; and overwhelmed since 1940 by a massive migration of southern blacks; Chicago might have been a classic example of the melting pot that is America in the twentieth century.

It might have been an example, except for the fact that the cliché is not very relevant for Chicago. For in Chicago and its environs the "melting pot" has not "melted." The ethnic, racial, and religious divisions among the polyglot population of the city have remained fairly rigid and have perpetuated themselves into the second and third generations of the children of the original immigrants.

Chicago developed as a city of nationality neighborhoods and has remained so until this very day. The sons of the Irish tavern-owners, policemen, and firemen have segregated themselves from their Polish neighbors even as they moved up into the upper economic and social echelons of the practice of law and medicine. Their fathers remained aloof from the non-Irish immigrants, and the sons and daughters have separated themselves, not only from the East Europeans, but also from the Irish who have not made it in the new world. The Poles and Italians, the Bohemians and Lithuanians, and the Germans and the Jews have all maintained their social and cultural distances from each other. And all of these groups have maintained a rigid wall between themselves and the exploding black population and the less important Puerto Rican–Mexican elements of the city.

Politics in Chicago today remains, to a considerable extent, a bargaining process among the leaders of these fairly self-contained and self-directed ethnic communities. Chicagoans do not identify themselves with their city as an ancient Athenian would with his *polis*, an imperial Roman with his world capital, or even a modern Parisian, Londoner, Florentine, or Berliner with his community. Chicagoans think socially, culturally, economically, and, as a consequence, politically, in terms of their neighborhoods or the ethnic groups rather than in terms of their city.

The political leadership of the city is drawn from these ethnic, parochially oriented neighborhoods. Those political leaders reflect and represent the local prejudices, narrow outlooks, and indigenous aspirations of their home bases. The Anglo-Saxon, white Protestant, Western European, middle-class ethos and concept of government has little or no meaning to the lower-class, peasant-descended, East and South European, heavily Catholic population of the city. Good government means services, favors, and concessions on a local basis rather than fiscally conservative, nonpartisan, normally righteous, community-oriented, city-wide concern.

The influx of a million blacks into the city has fragmented the population even more deeply than the ethnic divisions. The division between two and a half million whites and one million blacks has added another dimension to the ethnically separated city. In one sense, it has unified the ethnic whites on a single political issue: blocking the movement of the blacks into white neighborhoods. But, at another level, the rapid growth of the black population and the steady spread of the black ghetto has opened a wide chasm within the city's body politic between the nonwhite and white populations of the city. Race has begun to replace nationality as the major factor in the politics of the city. And the blacks, even more than the ethnic whites, refuse to identify themselves socially, culturally, or politically on a communal basis with a city which keeps them penned in a ghetto and forces them into a separate but not equal life within the city.

A third factor in Chicago's politics is religion. In the largest Roman Catholic diocese in North America, no political decision can be made without due consideration for the feelings and aspirations of the majority Catholic population of the city. It is with good reason that the State of Illinois annually awards license plate Number 1, not to the Governor, but to the Roman Catholic Archbishop of Chicago. The influence of the hierarchy and the many parishioners of the Church of Rome is always present in decision-making in the politics, law, educational policy, and cultural life of the city.

This is not to say that that influence is necessarily bad or necessarily good — merely that it is so. Roman Catholic power in Chicago has contributed mightily to the growth and development of the city and to its problems. If, as Christ told his people, his Father's house has many rooms, so does his Roman Catholic Church in Chicago have many factions. Some of the most liberal as well as some of the most conservative proposals and pressures in the life of Chicago have emanated from the many-splendored, broad-based, variegated Roman Catholic clergy and laity of the city.

In contrast to the dominant Catholic religious community, the Protestant and Jewish communities, with the exception of powerful business leaders, are weak and ineffectual. This is not to say that they are ignored or are not consulted, but that their political influence is nowhere near so great as that of the Roman Catholic community. Since most of the Protestants in the city are now the blacks, they can be dealt with politically on the basis of race rather than religion. Since most of the Jews have fled the city for the suburbs, except for residence in a few fringe areas, they can be easily ignored, although recognized and tolerated in the political decision-making in the city.

To sum up, the politics of Chicago is affected most by three major factors — the nationality makeup of its white population, the race issue stimulated by the exploding black population, and the religious dominance of the city's life by the Roman Catholic leadership and population.

Suburbia

Chicago's suburbs, like the city, are also undergoing radical change. The black migration into Chicago has stimulated a massive exodus of white middle-class and working-class citizens. While the black population of the city doubled between 1950 and 1960 — going from 400,000 to 800,000 — the total population dropped 2 percent. In the same period, the population of the suburban area of Cook County increased by 71 percent.

The face of the suburban area of Cook County is being altered in two major ways. First, many new development suburbs have sprung up where farmers' fields once graced the landscape. Second, the old, established, close-in suburban cities and villages are undergoing a transformation.

Chicago's working-class and lower middle-class, ethnic, heavily Catholic,

white population is leaving the city for new tract-development suburbs. New, fairly homogeneous population centers are being established by the fleeing working class and lower middle-class white Democrats from the city.

Contrary to popular mythology, these fleeing Democrats are not becoming Republicans in their new communities. Isolated from surrounding established towns, in close proximity physically to other emigrant Democrats like themselves, and relatively untouched by established Republican-dominated suburban organizations, most of the former city Democrats are retaining their traditional affiliation with the Democratic Party nationally.

However, on local issues they have tended to become relatively nonpartisan, as homeowners and taxpayers without regard to any formal party affiliation or doctrine. Traditional Democratic New Deal liberalism or Republican hostility to welfare-state measures and governmental activity in a broad range of programs are both relatively meaningless to these new suburbanites. Their primary concerns are with administrative, not political, matters at the local level. Taxes, sanitation, flood control, schools, zoning, and property values occupy whatever time they have to devote to public affairs. Appeals to their civic-mindedness on an ideological basis fall on deaf ears. They are practical, pragmatic, self-centered, narrowly oriented and concerned, and nonideological politically insofar as local problems and issues are concerned. As for the city which they left, the county of which they are a part, the state which spawned them legally, and the nation which guides their ultimate destinies — those are matters of relatively little concern in comparison to their immediate local problems. Their major interests are to make sure that blacks do not follow them into their new communities, and to keep their taxes down even if it means unsatisfactory and inadequate local services and facilities.

These are not Jeffersonian New England town-meeting communities governed by Anglo-Saxon ideas of what the good society should be. They are, rather, first- and second-generation Eastern and Southern Europeans, influenced by their peasant and proletarian backgrounds and dominated by still-retained prejudices and fears of the strangers beyond the fence.

In contrast, the old established cities and villages of Chicago's suburban hinterland are undergoing a significant political transformation. These communities are attracting upper-middle-class city Democrats moving in search of good schools, safe streets, clean government, and all the other trappings of the middle-class American dream.

Most of these new suburbanites are the newly-arrived middle class in America. Their fathers were laborers, small businessmen, and skilled tradesmen. They are doctors, lawyers, teachers, corporations junior executives, and successful businessmen. Their wives are college graduates and their children are born to the upper middle class. The Catholics and Jews among

them have assimilated as much as possible the dominant Protestant middle-class values of white America, in the pattern described by Will Herberg in *Protestant, Catholic, Jew*. They have not left their faiths, but they have adapted socially, culturally, and often politically to what they believe are American traditions.

Unlike the city emigrants to the development suburbs, they have retained their Democratic liberalism, applied it to local community problems, and combined it with their new-found Anglo-Saxon Protestant concepts of conservative, antimachine, nonpartisan, well-run local government. They are hybrids, fusing the old with the new, the untried with the true, that which they are with that which they would like to be. They are Ortega y Gassett's revolting twentieth century masses who pursue culture, politics, recreation, and community life with a passion not seen in their newly discovered conservative communities for many years.

They have left the city behind, but most of them work there, have attachments there, and are concerned with its problems, unlike the old settlers in the new communities. They will probably never go back, but they think they will. In the meantime, they are in the process of urbanizing their new communities, even while they are adapting to them. They are a disturbing force in these old communities, partially adaptive, partially disruptive, accepting the values but challenging them at the same time. They are in the process of creating a new, more partisan politics in the once tranquil, administratively oriented, nonpartisan Republican-established suburbia of Chicago. They are Democrats who have half-adopted some of the better tenets of Republicanism and are forcing their neighbor Republicans to rethink and reevaluate their own party principles and their communal values.

These suburban communities are the opposite of the development suburbs, where politics is negligible and administration is all important. In the old suburban communities, nonpartisan administrative matters are becoming increasingly political and intertwined with county, state, and national political directions and ideologies.

Downstate

Illinois, like many other American states, has traditionally been divided between a major industrial city and a rural hinterland. Like most other such American states, the marriage of the two parts has not been a union of compatible partners, but rather a shotgun wedding of contending parties.

In contrast to Catholic, ethnic, black Chicago, Downstate has traditionally been white, Protestant, small-town, Republican, and conservative. It is the land of the Lions, the home of the Kiwanis, the territory of the Elks. The sanctity and validity of traditional white, Protestant, conservative rural America guides the outlook and the aspirations of the majority of its population, except for a few industrialized small cities.

The state government at Springfield has been the private province of this part of Illinois. Chicago, the colossus of the North, with its blacks, Catholics, Jews, crime, delinquency, and corruption, has always been regarded as the Babylon of Illinois, a place to visit but not to live. In truth, there has usually been as much crime, delinquency, and corruption proportionately in the towns of downstate Illinois as in Chicago, but this fact has been conveniently overlooked by the local citizenry.

Castigating the Northern colossus has been a way of life for generations in rural Illinois. Protecting the state government from undue influence by the big city slickers has been a self-appointed holy mission. Exploiting the urban masses financially and politically in the interests of the rural section of the state has been regarded as proper. If this differentiation violated the state constitution, deprived Chicago's citizens of a fair share of the state's revenues, discriminated against Chicago's children in providing equal educational opportunity, and denied equal representation or consideration for their interests to Chicago's population, it was all being done in the name of the sanctity of the real American values which happened to coincide with the interests of the economic and political leadership of the downstate areas.

The major problem in this struggle has been a steady growth of population and political and economic power in Cook County, in Chicago, and in its suburban ring. Cook County, with over 5 million people, has a population equal to all the other 101 counties and a disproportionate share of the industry and wealth. Keeping some balance in the state's politics and economics against the growing power of the giant northern county is, of necessity, a major political consideration. The success with which downstate Illinois has accomplished this task is a testament to the tenacity, ingenuity, and dedication of downstate Illinois' political leadership.

Downstate Illinois has many problems of its own, some similar to those in Cook County and many different. Saving the towns from deterioration, keeping industry from leaving, bringing in new industry, offering young people adequate opportunity at home, trying to compete culturally with the big urban area, and maintaining and protecting a way of life and traditional values are of major concern to the residents of downstate Illinois. Like their northern counterparts in Chicago, downstate politicians not only represent but also reflect the aspirations, needs, and values of their constituents. Like their big-city counterparts, their behavior and policies are based on a mixture of self-interest and honest belief in the value of what they defend. And who is to say that they are not partially correct in what they do, that what they strive to maintain is not in the best interests of their constituents and of the state?

Conclusion

We live, in the state of Illinois, in a political community of over 10 million heterogeneous people, organized in racial, religious, ethnic, economic, and po-

SPEAKERS

SPEAKERS

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PROPOSED CONSTITUTION

OF

ALABAMA

Report of the Constitutional Commission

MAY 1, 1973

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FINAL REPORT
OF THE
ALABAMA CONSTITUTIONAL COMMISSION

TO: His Excellency, George C. Wallace, Governor of Alabama;
The Honorable Jere Beasley, President of the Senate; and
The Honorable G. Sage Lyons, Speaker of the House of Representatives:

The Alabama Constitutional Commission submits herewith its final report.

The Commission was created by Act No. 753, approved September 12, 1969 (Acts 1969-70, Vol. II, p. 1330) and continued by Act No. 95, approved May 11, 1971 (Acts 1971, Vol. I, p. 165). The original members were appointed in January, 1970. M. Leigh Harrison, former Dean, now Professor, at the University of Alabama Law School, was retained as Research Director. Other staff assistants and expert consultants have been employed from time to time.

The Commission and its staff have worked continuously since its organization. It has held regular and numerous working meetings, all of which were open to the public. Advertised public hearings were held in Decatur, Birmingham, Montgomery and Mobile. Citizen participation at those meetings has been of important assistance to the Commission.

The members of the Commission are representative of the state and its various political and economic interests. Differences among members have often been great and vigorously expressed. This report reflects, in some instances, a close majority vote, but many important decisions were reached by unanimous vote. The Commission has concluded that the 1901 constitution, with its 327 amendments, is obsolete and should be replaced with a constitution that is more adequate for the citizens of the state and for their government, both state and local.

An interim report was made by the Commission to the Governor and the Legislature on May 4, 1971. Amendments were recommended in five general areas, embodied in ten separate bills. The Senate Committee on Constitution and Elections favorably reported all of the proposed bills, some with minor amendments. The House Committee was unable to complete hearings and consideration of all of the bills, but reported the amendment providing for annual sessions of the legislature. This was passed by the legislature (Act No. 1264, Regular Session 1971), but was defeated at the general election in November 1972. The Commission renews its recommendation for annual sessions of the legislature in this report.

The Commission's statutory mission was broadly defined (Sec. 2, Acts 1969, p. 1330):

> "The Commission shall consider and investigate the necessity for and the extent and nature of desirable amendments to or general revision of the Constitution of 1901 of Alabama, and the appropriate procedures for submission and adoption of such amendments or revisions."

The Commission carefully considered both the extent of the revisions needed, and the various ways in which the changes might be accomplished.

The present constitution provides several choices with respect to the manner of accomplishing a general revision of the constitution:

1. A Constitutional Convention could be called to do the work. This is recognized as a cumbersome and expensive method. Two, possibly three, elections would be involved; one for a vote as to whether there shall be a convention; the second, an election of delegates to the convention; and third, a vote by the people on the proposals of the convention. Under the 1901 constitution this last step is not required, but it would be desirable. Other variations of the convention method would be possible. Media coverage of a convention would provide a more adequate "public education process" and therein lies an advantage of the convention method over the other options available.

2. A Commission, with the assistance of qualified consultants could propose a new constitution and submit it to a convention. The convention could make a final judgment or could submit it to the people for ratification.

3. A Commission can do the research, study and drafting, and submit its product to the legislature for its determinotion as to what further steps should be taken. The legislature is free to adopt all or any part of the proposed revision for direct submission as amendments; it could submit the entire draft of the revised constitution for ratification; or it may call a convention to review the draft with whatever changes the legislature may make.

4. A combination of the legislative and convention methods is currently being used in Texas in redrafting their constitution. A constitutional amendment was adopted, providing that a constitutional revision commission be created, which would report to the legisloture, after which the members of the legislature are to be convened as a constitutional convention, which will submit a revised constitution for ratification.

The third method is the one followed by this Commission. A vast amount of research of relevant publications has been accomplished. Members of the Commission have studied the issues and debated the questions. Proposed drafts have been written and re-written. The final report, a complete revision of the 1901 constitution with its amendments, is herewith submitted to the Alabama legislature. The legislature has several choices. The Commission's proposal may be approved, altered or rejected. The results of the study and deliberations of the legislature may be submitted to the voters of Alabama for approval in its entirety, or on an article by article basis.

The nature of the proposed constitution is such that each of tne principal articles is self-contained, and therefore could be adopted separately without affecting other articles of the present constitution.

The Commission believes that there may be doubts under Article XVIII of the present constitution whether more than

one article could properly be submitted directly by the legislature, as one amendment, or at least whether an entire new constitution could be so submitted. Any doubts as to this might be resolved by an advisory opinion of the Supreme Court, or the Commission's revision of the amending article could be submitted first as a separate amendment.

In view of the fact that a complete revision of the constitution is proposed, consideration of the proposed changes by the legislature will necessarily require a substantial amount of the time of committees and of each house. The Commission therefore suggests that a more thorough consideration could be given, without distraction from important regular legislative matters, if the draft could be considered by the legislature at a special session called solely for that purpose. The necessary amendment to the amending article, and possibly one or two independent articles, such as the judicial article, could, in the meantime, be submitted by the regular session, thus paving the way for submission of the rest of the revised constitution in whatever manner the legislature may decide.

Respectfully,

CONRAD M. FOWLER

May 1, 1973 Chairman

BASIC REASONS WHY THE CONSTITUTION OF 1901 SHOULD BE COMPLETELY REVISED

Alabama Governor, Emmet O'Neal, in an address to the Legislature on January 15, 1915, said: "Many of the provisions of our present antiquated fundamental law constitute insuperable barriers to most of the important reforms necessary to meet modern conditions and to secure greater economy and efficiency in the administration of every department of the state government.

"At that time (1901) the necessity of reforming the sufferage was the paramount issue which engaged the attention of our people and hence when the constitutional convention of 1901 assembled, little consideration was given to other matters of reform. This is conclusively shown by the fact that the Constitution of 1875, which had been framed to meet conditions which can never again recur, was practically re-adopted. No real or permanent progress is possible in Alabama, until the present fundamental law is thoroughly revised and adapted to meet present conditions."

Subsequent events have established the accuracy of the analysis by Governor O'Neal. The Alabama Constitution is the second longest in the nation. It contains in excess of ninety-five thousand words. It has been amended three hundred twenty seven times. Its terms provide undue constraints upon each of the three branches of state government and upon local government.

State legislatures were still electing United States Senators in 1901. Not until 1912 and the adoption of the 17th Amendment did voters begin the popular election of U. S. Senators. Women were not accepted into full citizenship and given the right to vote until nineteen years after the Constitution was ratified. The Model-T Ford was not yet on the drawing board when this constitution was approved.

One hundred forty amendments were adopted between 1901 and 1960. From 1960 until present date one hundred eighty

seven amendments have been approved by the voters of Alabama. That 57% of the amendments have been approved in the past thirteen years is substantial evidence that the restraints of the '01 document have become an intolerable obstruction to the operation of a modern state.

Voters of Alabama, in increasing numbers, question the logic of expensive state wide elections on amendments of purely local interest. One hundred three amendments providing for local tax increases for schools, hospitals, public buildings and other purposes have been approved. Thirty amendments provide for the utilization of county or municipal funds and credit for economic development. Thirty four amendments deal with the transition of county officials from a fee system to a salary arrangement. There are fifty eight additional amendments of local significance. Only ninety nine of the three hundred twenty seven amendments have state wide importance.

Seventeen amendment elections have been held since January, 1960. Elections are costly. The amendment election held January, 1972 cost the state and the counties $411,108.08. The election in December, 1939 cost $438,612. Had the draft now proposed by the Constitutional Commission been adopted in 1901 there would be one hundred sixty seven fewer local amendments to the Constitution and at least one half of the amendments of state wide significance would have been unnecessary.

A state constitution should set forth the limitations on and the separation of the powers of the three branches of government. Provision should be made for the appropriate distribution of authority and responsibility between the state and local government. It is evident that the 1901 Constitution reflects a distrust felt by citizens of that era. As a consequence the '01 document has many inadequacies. The Constitutional Commission proposes a document that is much more appropriate for the times in which we live.

Tremendous social, political, population, and economic changes are abroad in the land. These changes have fostered constitutional revision efforts in many states over the past three decades. Complete new constitutions have been adopted since

REASONS FOR REVISION

World War II in twelve states: Missouri, Georgia, New Jersey, Alaska, Hawaii, Michigan, Connecticut, Florida, Illinois, North Carolina, Virginia, and Montana. Maryland and Pennsylvania are in process of adopting complete revisions, article by article. Similar revisions have been proposed or are under study in Louisiana and Texas.

THE PRINCIPLES ON WHICH THE PROPOSED REVISION ARE BASED

The Commission has approached the recognized necessity for a general revision of the constitution with some basic principles in mind.

First, the fundamental and historic assurances of individual liberty and limitations on state power reflected in the Bill of Rights should be preserved, and in places strengthened.

Second, the basic structure of the state government, embodying the principle of separation of powers, should be preserved.

Third, undue and unnecessary restrictions on the power and discretion of the legislature to deal with changing conditions and needs should be removed.

Fourth, the greatly increased responsibilities of the governor as chief executive of the administrative branch should be recognized and supported by adequate authority.

Fifth, the responsibility and authority of the courts, constituting one of the three independent branches of government, must be restated and strengthened.

Sixth, more authority, flexibility and initiative should be granted to local government. Home rule should be encouraged under the general control of the legislature.

Seventh, detailed provisions, legislative in character, should be omitted. The constitution should be limited to a declaration in plain and simple language providing for the basic principles and the structure of state and local governments.

ALABAMA CONSTITUTIONAL COMMISSION

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Research Director, M. Leigh Harrison, Professor, School of Law, University of Alabama

Mr. Goodwyn, as President of the Senate, and Mr. Fite, as Speaker of the House, served until January 12, 1971 on which date they were succeeded by Lieutenant Governor Beasley and Speaker Lyons.

Mr. Stakely resigned from the Commission on March 22, 1971, Judge Hand on September 27, 1971. Representative Ellis was appointed to succeed Mr. Stakely on August 1, 1972 and Judge Hodnette was appointed to succeed Judge Hand on August 15, 1972.

CONSTITUTIONAL COMMISSION ACKNOWLEDGEMENTS

The following were appointed to the Commission in June of 1971: Senator Pierce, Senator Foshee, Representative O'Daniel and Representative St. John.

ACKNOWLEDGEMENTS

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A number of people have appeared before the Commission to give advice and information. We cannot list all who have made a contribution but the Commission would like to thank in particular the following:

Robert B. Highsaw, Director, Bureau of Public Administration, University of Alabama

James D. Thomas, Professor, Department of Political Science, University of Alabama

James W. Webb, Montgomery

John E. Bebout, Institute for Urban Studies, University of Houston, Houston, Texas

David B. Walker, Assistant Director, Advisory Commission on Intergovernmental Relations, Washington, D. C.

H. Vernon Eney, Chairman, Constitutional Convention Commission, State of Maryland

Research Director M. Leigh Harrison has done a monumental work in gathering information, analyzing data, and preparing drafts for the consideration of the Commission. Our esteem for Mr. Harrison, always high, has been enhanced.

Joseph F. Johnston has performed service above and beyond the call of duty. He has spent many hours in the preparation of this final report. He deserves a particular expression of thanks.

SUMMARY OF PRINCIPAL CHANGES EMBODIED IN THE PROPOSED CONSTITUTION

This summary points out in brief and non-technical terms the important changes and new provisions included in the revised constitution. It will not attempt to describe every change in language, nor the numerous relatively unimportant or essentially legislative provisions of the present constitution which would be deleted. These will be discussed in the commentaries on the draft of the revised constitution.

ARTICLE I

DECLARATION OF RIGHTS

This part of the 1901 Constitution has been generally regarded as unduly verbose, containing many things not properly a part of a Bill of Rights. The Article has been considerably shortened, and a number of unnecessary sections are deleted. All of the historic and basic rights of individuals and limitations on governmental power are retained and several relatively substantial new protections and safeguards are proposed.

The due process clause (present Sec. 6) is now applicable by its terms only to defendants in criminal prosecutions. The draft broadens this to say that "no person" shall be deprived of life, liberty or property without due process of law, adopting the phraseology of the United States Constitution, with its substantive as well as procedural applications.

The present constitution prohibits waiver of indictment by a person charged with crime, except by a plea of guilty. The draft would authorize the legislature to permit waiver of grand jury action.

Another change is the addition of an equal protection clause, not contained in the present constitution.

The provisions of present section 6 as to venue in criminal

cases have been eliminated as unnecessary. The legislature may provide by law for a change of venue on motion of the state or the defendant.

The provision for mandatory bail in present section 16 has been broadened to allow courts to dispense with bail if reasonably satisfied that the defendant will appear.

A new provision has been added, conforming to the holding of recent U. S. Supreme Court decisions, requiring jury trials in all cases where imprisonment for more than six months may be imposed.

The legislature is authorized to provide for six-man juries in both civil and criminal cases and to provide for less than unanimous verdicts in civil cases.

The present prohibition of suits against the state is dropped, and the legislature is authorized to provide for suits against the state and its political subdivisions.

The eminent domain provisions are revised. The right of property owners to collect consequential damages from municipalities and corporations having the power of eminent domain, now recognized under present section 235, is extended to provide for such recovery from the state.

ARTICLE II

DISTRIBUTION OF POWERS OF GOVERNMENT

The substance of the present provisions for separation of powers into legislative, executive and judicial branches is retained.

ARTICLE III

LEGISLATIVE DEPARTMENT

Several substantial changes are proposed with respect to the legislature.

SUMMARY OF CHANGES

The most fundamental change, providing for regular annual sessions, was recommended by the Commission in its 1971 interim report, and approved by the legislature (Act No. 1264). This proposal was rejected by the voters at the general election in November 1972. After full and careful consideration of the arguments advanced against this amendment, the Commission decided to renew its recommendation. It is confident that upon reconsideration, especially in the light of the entire revised legislative article, which was not presented with the narrow proposal for annual sessions and a legislative salary commission, the people of Alabama will recognize the desirability, even the necessity, of the change.

It is proposed that regular sessions be held annually. These sessions would be limited to thirty legislative days, instead of the present thirty-six, within ninety calendar days. Special sessions would be reduced from thirty to twenty days within forty-five calendar days. The beginning date of regular sessions would be moved up from May to the first Tuesday in February.

With annual sessions it is proposed that members of the legislature be placed on an annual salary, to be recommended by an independent commission, eliminating the present unsatisfactory system which imposes on the legislature the burden of fixing its own compensation in the form of per diem, travel and expense allowance. The commission's recommendations would be effective unless changed or rejected by the legislature. Changes in pay could not apply to any legislator during the term for which he was elected.

Several revisions are proposed in the procedures for enactment of bills, in the interest of efficiency and expedition. The requirement that the presiding officer of each house sign all bills, after they have been read at length, is eliminated, and the secretary or clerk of the originating house would certify bills to the governor. New provisions are added prohibiting the passage of any other legislation in the last three days of a session until the general appropriation bill has been enacted, and for carry-over of general appropriation acts if new ones are not enacted.

An important technical change is proposed in the definition of general laws, which would be defined as laws applicable to the whole state or to all counties, municipalities or other units in a class. The legislature would be authorized to classify areas or districts including at least two counties or municipalities, but could not establish more than eight classes based on population.

The purpose of this is to eliminate the use of so-called general laws of local application for the purpose of avoiding the notice and other requirements for local legislation. Local acts would be facilitated by reducing the required publication of notice from four weeks to two.

A related change is designed to prevent the enactment of local laws dealing with a subject covered by a general law, with the resulting confusion and uncertainty as to legislative policy.

The legislature would be required to adopt a code of ethics governing conflicts of interest for legislators, state employees and non-judicial officers.

ARTICLE IV

REPRESENTATION

Important changes are proposed as to apportionment for election of the legislature, and as to congressional redistricting. The state would be divided into districts for both the House and Senate, and each district would have to consist of "compact and adjoining" territory, with the ratio of the number of legislators to population as nearly equal as practicable.

A commission on reapportionment is established and directed to submit plans for both reapportionment and redistricting to the legislature promptly after each decennial census. These plans would automatically become law if the legislature fails to adopt a plan at its next session. The supreme court would be authorized to review the reapportionment or redistricting plan on the petition of any voter.

SUMMARY OF CHANGES

ARTICLE V

EXECUTIVE DEPARTMENT

There is a considerable stream-lining and updating of this article, including a number of changes in the procedures of the governor's office.

The non-policy making offices (state auditor, secretary of state, state treasurer, commissioner of agriculture and industries, and sheriffs) are eliminated from constitutional status, but no change is automatically made in their method of election or functions, which are fixed by statute. The constitutional officers in the executive department would consist only of the governor, the lieutenant governor and the attorney general. Each would be allowed to succeed himself for one term.

Qualifications for the three executive officers are changed from seven years residence to three years as qualified voters, and the minimum age lowered from thirty to twenty-five.

The governor is given authority to reorganize executive departments and agencies whose heads are appointed by him, subject to legislative rejection or modification. He is also given new authority to bring actions for judicial enforcement of compliance with the constitution and laws, and to fill vacancies in state offices when not otherwise provided by law.

A provision, now contained in a statute, is added requiring the governor to submit a budget at the beginning of each regular session of the legislature.

Changes are made in the times for executive consideration of bills. The governor would have seven calendar days to act, while the legislature is in session, and twenty days if the legislature adjourns within the seven days.

Pocket vetoes are eliminated.

If an executive amendment is rejected, instead of the present resulting veto, the bill would go back to the governor for approval or veto, but no further executive admendments would be permitted.

Substantial changes are made in the provisions for succession of governor and lieutenant governor. Non-policy making officers are eliminated from the line of succession. The automatic succession upon twenty days' absence is eliminated, and a procedure established for determining the inability of the governor to perform his duties because of physical or mental disability or absence from the state. It is provided that the governor may himself declare his physical disability.

ARTICLE VI

JUDICIAL DEPARTMENT

The proposed judicial article makes substantial changes in the field of court administration, the selection and tenure of judges, and in the system of inferior courts.

The article gives constitutional sanction and permanence to the actions of the 1971 legislature in authorizing the Supreme Court to make rules for appellate and trial courts in civil cases, and in providing for centralized court administration. The article would extend the Court's rule making power to criminal procedure.

The article provides for a unified judicial system in line with most recent constitutions, but retains the present system of probate courts.

No material changes are made in the present jurisdiction of the Supreme Court and Court of Appeals as now constituted. The original jurisdiction of the Supreme Court is enlarged to include questions of state law certified by federal courts.

A substantial change is proposed with respect to inferior courts. The article would abolish all inferior and special courts after a period of three years, and substitute one unified court of limited jurisdiction to be known as the District Court. The legislature is authorized to designate the geographical and substantive jurisdiction of this court on a uniform basis. It is prohibited from the exercise of equity jurisdiction.

SUMMARY OF CHANGES

In addition to the abolition of Justices of the Peace effected by Amendment No. 323 (January 1972), the new article would transfer and absorb into the unified system all the various special and limited jurisdiction courts which have been created by local acts, including Juvenile Courts. The Commission concluded that where there is a need for a specialized court such as Juvenile or Family, it would be better to establish it as a department or division of either the District or Circuit Court, keeping it within the unified system for all purposes.

New administrative provisions would prohibit the judges of any court in the state, including the inferior (district) judges from engaging in the practice of law; establish a judicial compensation commission to recommend compensation of all judges to the legislature, and provide for the administration of the system by the Chief Justice.

Judges would continue to be elected. The Commission submits an alternative proposal which would require that all judicial elections be on a non-partisan basis. Incumbent judges would be permitted to go on the ballot by filing a declaration of candidacy.

Vacancies in all courts would be filled by appointment from panels selected by independent commissions. Judicial nominating commissions are established for the appellate courts and in each circuit for the circuit and district courts. Probate Judges are not affected. A judge appointed to fill a vacancy would serve until the January following the next general election held after he has completed one year in office. At that time there would be an open election for a full term.

The term of office for all judges is fixed at six years.

The article directs the legislature to provide a retirement and pension system for judges, and prohibits the election or appointment of any person to judicial office after reaching the age of seventy, except supernumerary judges who are not entitled to a pension.

Finally, a system for determining questions of disability, violation of canons of ethics, or other disqualification is estab-

lished with a Judicial Inquiry Commission to conduct investigations and a special "Court of the Judiciary" to hear complaints filed by the Commission. This procedure was established by Amendment No. 317, adopted in January 1972. The draft would revise that amendment so as to separate the investigatory and prosecuting functions from the adjudicatory responsibilities.

ARTICLE VII

SUFFRAGE AND ELECTIONS

The lengthy, involved and largely obsolete provisions of this article of the 1901 constitution (many have been held to be in violation of the U. S. Constitution) have been greatly reduced and simplified. The voting age is fixed at eighteen, and residence and registration requirements, spelled out at great length in the present constitution, would be left up to the legislature. The present list of thirty-three disqualifying crimes is eliminated for every "felony involving moral turpitude," or mental incompetence. The right to vote would be restored upon restoration of civil and political rights.

ARTICLE VIII

TAXATION AND DEBT LIMITATION

Extensive changes are proposed both as to state and local taxes and debts.

The present prohibition against the use of taxes by state and local governments for "works of internal improvement" is abolished, and the state and its subdivisions would be authorized to use the taxing and borrowing power for public purposes. Their use for industrial development would be subject to special limitations.

"Earmarking" or permanent appropriation of new or increased state taxes for any purpose would be prohibited, and the legislature authorized to terminate existing earmarkings.

SUMMARY OF CHANGES

The provisions of the ad valorem tax amendment (No. 325) adopted in May 1972 are carried forwa. d, except the limitation of all ad valorem taxes to one and one-half percent of the market value of property taxed, which would be repealed. The Commission concluded that this limitation is impractical. The provision of present section 214, limiti.g state ad valorem taxes to 6.5 mills, would be retained.

The 1972 changes provide for classification of property for ad valorem taxation into three classes (1) utilities, (2) unclassified, and (3) agricultural, forest and residential. Tax rates are required to be uniform in each county and municipality, but the ratio of assessed to market value is fixed at 30% for utilities, 25% for property generally and 15% for agricultural, forest and residential property. The legislature is authorized to change these ratios for any class and for any county, within the range of 15% to 35%.

In order to simplify income tax returns, the legislature would be authorized to define income by reference to Federal tax laws.

Constitutional limits on the rate of local taxes would be abolished. All authorizations of tax rates allowed to local governments by the 1901 constitution and its amendments would be continued. Local taxes in excess of present authorizations would be permitted without limit, provided that a four step procedure is followed:

(1) A public hearing must first be held,

(2) followed by proposal of the tax by the local governments,

(3) which would be approved by an act of the legislature, and

(4) finally approved by the voters in the area. This provision was a part of the 1972 Amendment.

The present debt limitation provisions are substantially changed.

So-called special revenue bonds are eliminated and the full

faith and credit of the state required to be committed to all state debts.

Temporary borrowing by the state in anticipation of current revenues is permitted, not to exceed one-tenth of five-year average tax receipts.

The legislature could authorize bonds to finance capital projects or to refund obligations, not exceeding a total of 1¾ times the five-year average tax receipts. In addition, the legislature could authorize bonds, to which the full faith and credit of the state would be committed, for revenue producing capital projects up to the amount of five-year average annual tax receipts, provided that the revenues are pledged, and that prior to enactment the governor file with the legislature engineering estimates that revenues will be sufficient to amortize the debt. Such acts would require a two-thirds vote of each house.

The legislature would be authorized, by a 60% vote of all members, to create debt in excess of the normal limit of 1¾ times annual tax revenue, subject to approval by the voters of the state.

All bonds would be required to be retired on a schedule not exceeding thirty years beginning not later than three years after issue.

These provisions are designed not only to eliminate the necessity for frequent constitutional amendments but to strengthen materially the state's credit.

The present county debt limitation of 3½% of assessed value, and the municipal limit of 20%, would be eliminated. Counties and municipalities would be allowed to incur debts which are general obligations or are payable in whole or in part from taxes only for capital purposes. The debts would have to be payable in not over 30 years, and be approved by the voters. This provision is designed to prevent the present practice of financing by warrants without a vote of the people.

The legislature would, however, retain its present authority to permit counties and cities to borrow up to the anticipated

annual revenues without a vote for current operating expenses in anticipation of current taxes, and a vote is not required in specified cases, viz., loans payable within a year in an amount not exceeding one-fourth of five year average revenues, refunding bonds, special assessment bonds, and special revenue bonds payable solely from an industrial project.

All present amendments permitting the pledge of the public credit of particular counties or municipalities to industrial development bonds would be repealed at the end of five years, to avoid preferring one locality over another. Further constitutional amendments for this purpose would be eliminated and the legislature empowered to authorize counties and municipalities to incur debt in aid of industrial or commercial development subject to these safeguards:

1. The bond issue must be approved by a vote of its qualified electors; and

2. At the same time the voters must approve a special tax reasonably estimated to be sufficient to pay the principal and interest on the bonds in the event that the proceeds of the industrial project are insufficient.

A special exception from the election requirement would be provided in the case of relatively small bond issues by a county or a municipality for particular capital improvements subject to these safeguards:

(a) The issue shall not exceed one-fifth of the five year average annual tax revenue of the county or municipality;

(b) The bond issue shall have been approved by a three-fifths vote of the governing body after a public hearing, of which notice shall have been published;

(c) After the publication of an additional notice that the bond issue has been approved, the voters shall have a limited time (30 days) within which to file a petition asking for an election. If as many as five percent of the qualified electors sign the petition, then the bond issue would require the approval of the qualified electors;

(d) The total limit on bonds issued without an election under this amendment would be one percent of the assessed value of taxable property.

ARTICLE IX

LOCAL GOVERNMENT

In this article, as in other parts of the draft, substantial changes are proposed in the direction of more authority and responsibility in local government.

The present procedures for changing county boundaries would be modified to require the legislature to provide uniform procedures for such changes with the consent of the people involved, and for changes by local law published in each county affected.

The legislature is directed to provide optional plans of local government for both counties and municipalities.

Home rule charters could be adopted by counties and cities after two years from the adoption of the article, in accordance with procedures established in the article.

Under the present constitution counties and cities have only the powers and functions specifically allowed them by legislative act. It is proposed to reverse this as to local governments which adopt a home rule charter or other plan of local government prescribed by the legislature. Under these conditions, those local governments would be allowed to exercise full legislative power to the extent permitted by their charters and not inconsistent with the general law of the state.

ARTICLE X

EDUCATION

The present general mandate to the legislature to provide for public schools and institutions of higher learning is con-

tinued. A state board of education is given general supervision of public schools. The board is to be elected as the legislature determines. The board is to appoint the superintendent and may be authorized by the legislature to fix his compensation.

A new section is added, prohibiting members of the legislature from serving on the board of trustees of any state college or university.

It is proposed to give constitutional status to the Commission on Higher Education, which was established by statute in 1969. It would be responsible for advising the governor and the legislature on all education beyond the secondary level. The composition of the Commission, and its functions and authority, would be left to the legislature.

ARTICLE XI

PUBLIC OFFICERS

Several changes are proposed in the provisions as to public officers.

Present Section 280, prohibiting dual office holding, is revised to omit the exemptions for postmasters, justices of the peace, constables, and commissioners of deeds. Exemption is added for delegates to constitutional conventions and members of statutory bodies having only advisory powers. The legislature would be authorized also to exempt military personnel from the prohibition.

The present list of disqualifying crimes (Section 60) is replaced by a general disqualification of these convicted of a felony involving moral turpitude.

The prohibition against changes in compensation during term of office is retained, but an exception is allowed for provision by general law for adjustments based on cost of living.

The legislature would be authorized to change the basis of compensation of county officers from fees to salary, with the approval of the voters in the county.

ARTICLE XII

IMPEACHMENTS

Several changes are made in the procedures for impeachment of public officers. Judges are exempted from legislative impeachment because they are subject to removal under the judicial article. A two-thirds vote of the Senate would be required for conviction. Only a majority is now required. The legislature would be authorized to provide for the trial of impeachments by a special tribunal. Officers impeached by the House would be disqualified from acting until acquitted. The disqualification from office upon impeachment, now limited to the term for which the officer was serving, would be broadened to prohibit the person convicted from ever holding any public office.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

This article carries forward, in revised and simplified language, the present provisions as to condemnation of property, and a much shortened version of the homestead exemption provisions.

A new section is added, declaring that it is the policy of the state to conserve and protect its "natural resources and scenic beauty." It directs the legislature to provide for the abatement of air and water pollution, and unnecessary noise.

ARTICLE XIV

AMENDMENTS

Substantial changes are proposed in the machinery for constitutional amendments.

The present requirements of a three-fifths vote of the members of each house is retained, but the requirement of

reading at length on three separate days in each house is reduced to one.

In order to avoid the heavy cost of special elections, amendments would be required to be submitted at general elections, unless the legislature by separate bill declares that an emergency requires a special election.

Ballots on amendments would be required to contain a short statement of the effect of the amendment, to be prepared by the attorney general, instead of the present requirement that ballots contain statements of the "substance or subject matter."

The notice requirement is shortened from four weeks to one publication in a newspaper of general circulation in each county, and, in addition, the short ballot statement would be published once in every newspaper in the state. The legislature is authorized also to provide for publications of proposed amendments or summaries by radio and television.

The procedures for constitutional conventions would be radically revised. The legislature would be authorized to limit a convention to specific sections or subjects, and to limit the duration of a convention. A convention's proposals would have to be approved by the voters.

SECTIONS OF 1901 CONSTITUTION OMITTED

A large number of provisions in the 1901 Constitution have been omitted from the revision. The substance of many other sections has been carried forward in modified or amended form. Provisions which have been left out entirely are either clearly obsolete, essentially legislative in character, or both, and serve only as obstacles to the ability of the legislature to deal with new problems and changing conditions. Practically all of these legislative or regulatory provisions are duplicated by Code provisions, so that omission from the new constitution would not leave any important regulatory gaps requiring immediate attention.

PROPOSED CONSTITUTION

PREAMBLE

We, the people of the State of Alabama, in order to establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God do ordain and establish the following Constitution and form of government for the State of Alabama.

ARTICLE I

Declaration of Rights

That the great, general, and essential principles of liberty and free government may be recognized and established, we declare that:

Section 1.01. The Equality and Rights of Man.

All men are equally free and independent; they are endowed by their Creator with certain inalienable rights; among these are life, liberty and the pursuit of happiness.

Section 1.02 Freedoms of Religion, Speech, Press, Assembly and Petition.

No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for redress of grievance.

Section 1.03 Due Process and Equal Protection.

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws.

Section 1.04 Searches and Seizures.

The people shall be secure in their persons, houses, papers,

and possessions from unreasonable seizure or searches, and no warrants shall be issued to search any place or to seize any person or thing without probable cause, supported by oath or or affirmation.

Section 1.05 Rights of the Accused.

(a) **In general.** In all criminal prosecutions the accused has a right to be heard by himself and counsel, or either; to be informed of the accusation, and to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have a speedy, public trial; to testify in all cases, on his own behalf, if he elects to do so; and he shall not be compelled to give evidence against himself.

(b) **Indictment.** No person shall be held to answer for a felony unless on the presentment or indictment of a grand jury, provided, however, that the legislature may by law dispense with a grand jury in any but offenses punishable by death or life imprisonment, if the defendant waives his right to an indictment.

(c) **Bail.** Excessive bail shall not be required and all persons before conviction shall be bailable by sufficient sureties, except for offenses punishable by death or life imprisonment in which the proof is evident or the presumption great. The court may dispense with bail and prescribe other reasonable conditions for release pending trial, if reasonably satisfied that the defendant will appear when directed.

(d) **Trial by Jury.** A right of trial by an impartial jury of the county or district in which the offense was committed shall exist in all cases of felony and offenses punishable by imprisonment for more than six months, provided the legislature may provide for a change of renue on motion of the state or the defendant. The accused may expressly waive his right to trial by jury with the consent of the state and the court.

(e) **Punishment.** Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted.

(f) Former Jeopardy. No person shall, for the same offense, be twice put in jeopardy of conviction; but courts may, for reasons fixed by law, discharge juries from consideration of any case, and no person shall gain an advantage by reason of such discharge of the jury.

Section 1.06. Right of Trial by Jury.

The right of trial by jury as heretofore enjoyed in civil cases shall remain inviolate. In both civil and criminal cases, qualifications and number of jurors, not fewer than six, shall be fixed by law. In civil cases, the legislature may provide by law for a less than unanimous verdict.

Section 1.07 Habeas Corpus.

The privilege of the writ of habeas corpus shall not be suspended.

Section 1.08 Imprisonment for Debt.

No person shall be imprisoned for debt.

Section 1.09 Treason.

Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

Section 1.10 Civil Actions.

(1) No person shall be barried from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party.

(2) All courts shall be open; and every person, for any injury done him, in his lands, goods, person or reputation, shall have a remedy by due process of law, and right and justice shall be administered without sale, denial or delay.

Section 1.11. Right to Sue the State.

The legislature may by law direct in what manner, in what courts, and in what cases suits may be brought against the state and its political subdivisions.

Section 1.12 Right to Bear Arms.

Every citizen has a right to bear arms in defense of himself and the state.

Section 1.13 Forbidden Legislation.

No ex post facto law, nor any law impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the legislature.

Section 1.14 Eminent Domain.

Private property shall not be taken or damaged except for public use, or to secure to persons or corporations the right of way over the lands of others pursuant to general law, and unless just compensation is first made therefor.

Section 1.15 Suspension of Laws.

No power of suspending laws shall be exercised except by the legislature.

Section 1.16 Subordination of Military Power.

The military shall be held in strict subordination to the civil power.

ARTICLE II

Distribution of Powers of Government

Section 2.01. Powers of Government.

The powers of the government of the state shall be divided

into three departments: the legislative, the executive, and the judicial. No department shall exercise powers properly belonging to another.

ARTICLE III

The Legislative Department

Section 3.01. Legislative Power.

The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives.

Section 3.02. Election and Terms of Office of Senators and Representatives.

Senators and representatives shall be elected for a four-year term on the Tuesday succeeding the first Monday in November. The legislature may change the time of holding elections. The terms of office of the senators and representatives shall commence on the day after their election.

Section 3.03. Election to Fill Vacancy in Senate or House of Representatives.

Whenever a vacancy occurs in either house of the legislature the governor shall issue a writ of election to fill such vacancy for the remainder of the term. All expenses of the election shall be paid by the state. If a legally qualified candidate for election to the vacancy is unopposed when the last date for filing for places on the ballot has passed, the the election shall not be held, and a certificate of election shall be issued in the manner provided by law.

Section 3.04. Qualifications of Senators and Representatives.

Senators shall be at least twenty-five years of age, and representatives twenty-one years of age at the time of their election. They shall have been citizens of this state and resi-

dents of their respective districts for one year next before their election. They shall reside in their respective districts during their terms of office.

Section 3.05. Appointment to Office of Profit.

No senator or representative shall, during the term for which he shall have been elected, be appointed to any office of profit under this state, which shall have been created or the emoluments of which shall have been increased by the legislature during such term. A cost of living adjustment of the salary attached to an office, permitted by the provisions of this constitution, shall not be considered an increase in the emoluments of such office.

Section 3.06. Organizational Session.

The legislature shall convene on the second Tuesday in January next succeeding their election ar ' shall remain in session for not longer than ten consecutive days, unless a longer period is required for the determination of contested elections. No business shall be transacted at such sessions except the organization of the legislature, the election of officers, the appointment of committees, the introduction of bills, the ascertainment and decluaration of the results of the election of state officers, the determination of contested elections for such offices, and the judging of the election and qualifications of the members of the legislature.

Section 3.07. Election of Presiding Officers and Determination of Qualification of Members.

The senate, at the beginning of each organizational session, and at such other times as may be necessary, shall elect one of members president pro tempore thereof, to preside over its deliberations in the absence of the lieutenant-governor; and the house of representatives, at the beginning of each organizational session, and at such other times as may be necessary, shall elect one of its members as speaker; and the president pro tempore of the senate and the speaker of the house of representativs shall hold their offices respectively until their successors are elected

and qualified. Each house shall choose its ow officers and shall judge of the election and qualification of its nbers.

Section 3.08. Procedure for Election by Legislature.

In all elections by the legislature the members shall vote publicly, and the votes shall be entered on the journal.

Section 3.09. Time and Length of Legislative Sessions.

Regular sessions of the legislature shall be held annually and shall be limited to thirty legislative days within a period of ninety calendar days. The legislature shall convene in regular sessions on the first Tuesday in February, unless the day of meeting is changed by law. Special sessions of the legislature convened in the manner provided by this Constitution shall be limited to twenty legislative days within a period of not more than forty-five calendar days.

Section 3.10. Legislation in Special Session.

When the legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by a vote of two-thirds of each house.

Section 3.11. Compensation Commission for the Members of the Legislature.

(a) Members of the legislature shall receive an annual salary to be determined in accordance with the provisions of this section. No change in the compensation or expense allowance of members of the legislature shall be made except in accordance with the provisions of this section.

(b) A state compensation commission is hereby created which shall recommend the salary, expense allowance, and other compensation of the members of the legislature. The commission shall consist of five members. The governor, president of the senate, speaker of the house, attorney general, and chief justice of the supreme court shall each appoint one member.

(c) The terms of the commissioners shall be five years. Of

the initial appointees, the governor and attorney general shall each appoint one for two years; the president of the senate and speaker of the house shall each appoint one for four years; and the chief justice shall appoint one for five years. No member of the commission shall hold ony other public office.

(d) The members of the commission shall elect one of their number as chairman at their first meeting and every four years thereafter. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(e) The commission shall submit a report to the legislature on the first day of the regular session which convenes in the odd-numbered years preceding the quadrennial election of members of the legislature. The recommendations of the commission shall become law unless rejected or altered by act of the legislature within fifteen legislative days after submission.

(f) No change in salary, expense allowance or other compensation shall apply to any legislator during the term for which he was elected.

Section 3.12. Compensation of Officers and Employees.

The legislature shall prescribe by law the number, duties, and compensation of the officers and employees of each house, and no payment shall be made from the state treasury or be in any way authorized to any person except to an acting officer or employee elected or appointed in pursuance of law.

Section 3.13. Quorum and Adjournment.

A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as each house may provide. Neither house shall, without the consent of the other, adjourn for more than three days.

Section 3.14. Powers of Each House to Make Rules.

Each house shall have power to determine the rules of its

proceedings and to punish its members and other persons for contempt or disorderly behavior in its presence; to enforce obedience to its rules and processes; to protect its members against violence or offers of bribes or corrupt solicitation; and with the concurrence of two-thirds of the house, to expel a member, but not a second time for the same offense. A member expelled for corruption shall not thereafter be eligible to either house, and punishment for contempt or disorderly behavior shall not bar prosecution for the same offense.

Section 3.15. Privileges of Members of Legislature.

Members of the legislature shall, in all cases except treason, felony, violation of their oath of office, or breach of peace be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house shall not be questioned in any other place.

Section 3.16. Form of Bills.

(a) Every bill, except general appropriation bills, general revenue bills, and bills adopting a code or revision of statutes, shall be confined to one subject and matter properly connected therewith, and the subject shall be briefly and clearly expressed in the title.

(b) No law shall be revived or amended by reference to its title only, but the oct revived or the section amended shall be re-enacted and published at length.

Section 3.17. Journal of Proceedings.

Each house shall keep a journal of its proceedings and cause the same to be published as soon as practicable. A record vote, with the yeas and nays entered on the journal, shall be taken on any question on the demand of one-tenth of the members present. Any member of either house shall have the right to protest against any act or resolution and have the reason for his protest entered on the journal.

Section 3.18. Enactment of Laws.

No law shall be enacted except by bill, and no bill shall become a law unless, prior to its passage:

(a) It has been referred to a standing committee of each house, acted upon by such committee in session, and reported, which facts shall affirmatively appear upon the journal of each house. A majority of either house may discharge a committee from the consideration of a bill and consider the same is if reported.

(b) It has been read by its title on three different days in each house and on its final passage it has been read at length in each house.

(c) A vote has been taken on it in each house, the name of each member voting for and against recorded in the journal, and except as otherwise provided in this Constitution, a majority of each house be recorded as voting in its favor.

Section 3.19. Amendments and Conference Reports.

No bill shall be so altered or amended on its passage through either house as to change its original purpose. No amendment to a bill or report of a committee of conference, shall be adopted by either house, except in the manner required in subparagraph (c) of section 3.18.

Section 3.20. Duty to Deliver Bills.

When a bill has been passed by the house in which it originated, it shall be the duty of the secretary or clerk of that house to deliver such bill immediately, and in no case later than twenty-four hours, to the other house where it shall receive first reading not later than the next legislative day after delivery. When a bill has been passed by both houses, it shall be returned immediately by the secretary or the clerk of the originating house. The secretary or clerk of the house in which the bill originated shall attest its passage and forthwith, and in no case later than six days, deliver the bill to the governor and enter the fact upon the journal.

Section 3.21. Revenue Bills.

All bills for raising revenue shall originate in the house of representatives, but may be altered, amended, or rejected by the senate.

Section 3.22. Appropriation Bills.

(a) The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for the public debt, and for the public schools and educational institutions. The salary of no officer or employee shall be increased in any such bill, nor shall any appropriations be made therein for any officer or employee unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

(b) If general appropriation bills for each of the expenses stated in paragraph (a) of this section have not been passed before the last three legislative days of a regular session, no other legislation shall be finally passed until such appropriation bills have been passed.

(c) If the legislature at any regular session fails to pass general appropriation bills as defined in paragraph (a), the appropriations for the next succeeding fiscal year for such expenses shall be the same as the appropriations in effect at the end of the legislative session, unless thereafter changed by act of the legislature.

Section 3.23. Payment of Appropriations.

No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in the manner provided by law.

Section 3.24. Appropriations to Charitable Institutions.

No appropriations shall be made to any charitable or educa-

tional institution not under the absolute control of the state, except by a vote of two-thirds of all members elected to each house.

Section 3.25. Private Pension Laws.

The legislature shall not enact any special or private law granting any pension.

Section 3.26. Releasing Obligation Owed to State, County or Municipality.

No obligation or liability of any person, association, or corporation held or owned by this state or by any county or other municipality thereof, shall ever be remitted, released, or postponed or in any way diminished, by the legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; provided that this section shall not prevent the legislature from providing by general law for the compromise of doubtful claims.

Section 3.27. Corporations.

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws, provided, however, that public corporations wholly owned and controlled by the state may be created and dissolved, or their charter amended, by special act.

Section 3.28. General Laws Defined.

A general law within the meaning of this constitution is a law which in its terms and effect applies either to the whole state, without excepting any county, political subdivision or geographical district, or to all such subdivisions of the state in a class. In the enactment of general laws, the legislature may classify geographical areas or districts involving two or more counties or municipalities on the basis of criteria reasonably related to the subject of the law. The legislature shall establish classes of counties and muncipalities based on population, but

not more than eight classes of each shall be in effect at any one time. No county or municipality shall be exempt from any general law applicable to counties or municipalities in its class.

Section 3.29. Limitation on Enactment of Local Laws.

No special, private, or local law sholl be enacted concerning any matter when a general act deals with the same subject matter and is applicable, even though such special, private, or local law may differ from the applicable general law. No special, private or local law shall be enacted in any case when the relief sought can be given by any court of this state. The courts, and not the legislature, shall judge whether the matter of such law i dealt with by an applicable general act, or whether the relief sought can be given by any court. The legislature shall not indirectly enact any such special, private, or local law by the partial repeal of a general law.

Section 3.30. Procedure for Enacting Local Laws.

No special, private, or local law shall be enacted unless a notice setting forth the intention to introduce it and the substance of the contemplated law shall have been published once a week for two weeks in the county or counties where the law is to be applicable in the manner provided by law prior to the introduction of the bill. Proof by affidavit of publication of such notice with a copy of the text thereof shall be filed with the legislature upon the introduction of the bill and, after passage of the bill, set forth in the journal.

Section 3.31. Conflict of Interest.

A code of ethics, which shall include penalties for violation, prohibiting conflict between public duty and private interest, shall be prescribed by law for all members of the legislature, state employees and non-judicial officers.

Section 3.32. Continuity of Government in Emergencies.

In order to insure continuity of state and local government operations in periods of emergency only, resulting from disasters occurring in this state, the legislature may provide by law for

prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and enact other laws necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section, elections shall always be called as soon as possible to fill any vacancies in elective offices temporarily occupied under any legislation enacted pursuant to the provisions of this section.

ARTICLE IV

Representation

Section 4.01. Composition of Senate and House of Representatives.

The number of senators shall be not more than thirty-five and the number of representatives shall be not more than one hundred six.

Section 4.02. Legislative Districts.

The state shall be divided by law into districts for the election of members of the Senate and into districts for the election of members of the House of Representatives. Each district shall consist of compact and adjoining territory, and the ratio of the number of legislators in each district to the population of such district shall be as nearly equal among districts as practicable.

Section 4.03. Legislative Reapportionment Procedure.

(a) Reapportionment of senatorial and house of representative districts shall be accomplished as soon as practical after official publication of each decennial census of the United States. A commission on legislative reapportionment, consisting of five members, shall be established no later than the first day of February in each year following the year in which the decennial census of the United States is officially reported. The lieutenant

governor, attorney general, and chief justice of the Alabama Supreme Court shall, by a majority vote, appoint all members of the commission and shall certify their names to the officer designated by law.

(b) No commission member shall hold an elected office in the state. Not more than one member of the commission shall be appointed from any congressional district. The members of the commission shall select one of their number as chairman. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(c) It shall be the duty of the legislature to appropriate sufficient funds for the compensation and expenses of the commission and staff oppointed by the Commission.

(d) No later than ninety days after the commission has been certified, or the population data for the state as determined by the census has become available, whichever is later, the commission, by a majority vote of its membership, shall adopt a reapportionment plan for the senate and house and shall submit it to the governor, the lieutenant governor and speaker of the house. If the commission plan is reported to such officials before the expiration of the first ten legislative days of the first regular session of the legislature held after the appointment of the commission, such plan shall become law if the legislature does not adopt a reapportionment plan at such session. If the commission plan is not reported until after the expiration of the first ten legislative days of such legislative session, and if the legislature does not adopt a reapportionment plan at such session, the governor shall, as soon as practicable after the commission plan has been reported, call a special session of the legislature to adopt a reapportionment plan. If the legislature does not adopt a reapportionment plan at such special session, the commission plan shall become law.

(e) The supreme court shall have original jurisdiction, upon the petition of any qualified voter of the state, to review the new reapportionment law. If the supreme court holds invalid a reapportionment plan enacted by the legislature, then the com-

mission plan shall become law if it complies with the requirements of this constitution. If the supreme court finds the commission plan invalid, the court shall issue an order remanding the plan to the commission and directing the commission to reapportion the state in a manner not inconsistent with such order. When the court finally approves a reapportionment plan, such plan shall remain in effect until the adoption under this section of a reapportionment plan after the next United States decennial census.

Section 4.04. Congressional Redistricting.

The state shall be divided by law into congressional districts for the election of the members of the United States House of Representatives under the same procedure, under the same commission, and according to the mandate of the preceding section prescribing the manner of reapportioning senate and house representative districts.

ARTICLE V

Executive Department

Section 5.01. Executive Power and the Executive Department.

The principal executive power of this state shall be vested in a governor. The executive department shall include the governor, a lieutenant governor and an attorney general.

Section 5.02. Election and Term of Office of Executive Officers.

The governor, lieutenant governor and attorney general shall be elected by the electors of the state at the same time and places appointed for the election of members of the legislature. The governor, lieutenant governor, and attorney general shall hold their respective offices for a term of four years, commencing on the first Monday after the second Tuesday in January next succeeding their election and until their successors

shall be elected and qualified. Each of said officers shall be eligible to succeed himself in office, but no person shall be eligible to succeed himself for more than one additional term.

Section 5.03. Election Returns.

The returns of every election for governor, lieutenant governor and attorney general shall be sealed and transmitted by the returning officers to the seat of government and directed to the speaker of the house of representatives, who shall open and publish the votes in the manner prescribed by law. The person having the higest number of votes for any one of said offices shall be declared elected; but tf iwo or more shall have the highest and an equal number of votes, the legislature by joint vote shall choose one of said persons without delay. Contested elections shall be determined by both houses in the manner prescribed by law.

Section 5.04. Qualifications of Governor and Lieutenant Governor.

The governor and lieutenant governor shall be at least twenty-five years of age when elected and shall have been qualified voters in this state for three years prior to their election.

Section 5.05. Compensation and Place of Residence of Governor.

The governor shall receive a salary to be prescribed by law and shall reside in the state capital.

Section 5.06. Legislative Responsibilities of Governor.

(a) **Special sessions.** The governor may by proclamation on extraordinary occasions convene the legislature at the seat of government or at a different place if the seat of government shall become dangerous. He shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

(b) **Messages to the Legislature.** The governor shall from time to time give to the legislature information of the state

of the government. Within five days after the convening of each regular session of the legislature, he shall transmit to it a budget setting forth his financial program for each of the fiscal years which will have begun before the next regular session. The governor shall also account to the legislature, as may be prescribed by law, for all money received and paid out by him or by his order; and at the commencement of each regular session he shall present to the legislature estimates of the amount of money required to be raised by taxation for all purposes.

(c) **Veto.** Every bill passed by the legislature shall, before it becomes a law, be presented to the governor unless otherwise provided by this Constitution. If the legislature is in session the bill shall become law if the governor signs or fails to veto it within seven calendar days of presentation. If the legislature adjourns sine die before presentation or during such seven day period, the bill shall become law if the governor signs or fails to veto it within twenty calendar days of presentation. When the governor vetoes a bill, he shall, within seven calendar days of presentation, return it to the secretary or clerk of the house in which the bill originated, unless the legislature shall, by final adjournment, prevent such return. The bill shall be reconsidered and if a majority of the members elected to each house vote for the passage of the bill it sholl become law.

(d) **Executive amendments.** The governor may, within seven calendar days after a bill has been presented to him return such bill to the house in which it originated, with recommendations for its amendment. If both houses approve such amendment, the bill as amended shall become law. If either house refuses to approve such amendment, or fails to act thereon before the end of the session, then the bill shall again be sent to the governor and acted on by him as if it were before him for for the first time, but no further amendment to such bill can be recommended by the governor. In all cases above set forth, the names of the members voting for and against the bill, or amendments thereto, shall be entered on the journal.

(e) **Appropriation bills.** The governor shall have power to approve or disapprove any item or items of any appro-

priation bill embracing distinct items, and the part or parts of the bill 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 bills over the executive veto; and he shall in writing state specifically the item or items he disapproves, setting the same out in full in his message, but in such case the enrolled bill shall not be returned with the governor's objection.

Section 5.07. Executive and Administrative Powers of the Governor.

(a) Execution of laws. The governor shall be responsible for the faithful execution of the laws. He may by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate or restrain violation of any constitutional or legislative power, duty or right by an officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceeding against the legislature.

(b) **Information.** The governor may require information in writing, under oath, from the officers of the executive department, and all officers and managers of state institutions, on any subject relating to the duties of their respective offices or the condition, management and expenses of their respective departments or institutions. Any such officer or manager who makes a wilfully false report or fails without sufficient excuse to make a required report on demand, is guilty of an offense for which he may be removed.

(c) **Executive reorganization.** Except for organizational arrangements specified in this Constitution, the governor may make such changes in the organization of the executive department or in the assignment of functions among its units as he considers necessary for efficient administration. If such changes affect existing satutory law, they shall be set forth in executive orders, which must be submitted to the legislature within the first ten calendar days of a regular or special session, and shall become effective, and shall have the force of law at the end of such regular or special session unless specifically modified

or disapproved by a majority elected to each house. The governor shall not, however, make changes which would become effective later than ninety days before the end of his administration. For the purpose of this subsection the term "executive department" shall include only those departments, bureaus, and agencies whose director or head is appointed by, and serves at the pleasure of, the governor.

(d) **Commander-in-chief.** The governor shall be commander-in-chief of the armed forces of this state, except when they are called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion.

(e) **Power to fill vacancies.** The governor shall have power to fill vacancies in all offices of the state for the filling of which the Constitution or laws make no other provision.

Section 5.08. Executive Clemency.

The governor shall have power to grant reprieves and commutations to persons under sentence of death. The legislature may provide for and regulate the administration of pardons, paroles, remission of fines and forfeitures, and may authorize the courts having criminal jurisdiction to suspend sentence and to order probation. A pardon shall relieve from civil and political disabilities unless specifically provided otherwise therein.

Section 5.09. Succession to the Office of Governor.

(a) **Removal, death or resignation of governor.** In case of the governor's removal from office, death, or resignation, the lieutenant governor shall become governor.

(b) **Removal, death, or resignation of governor and lieutenant governor.** If both the governor and lieutenant governor be removed from office, die or resign, the unexpired term of the governor and lieutenant governor shall be filled by a special election, except when such unexpired term is less than one year in which case a new governor and lieutenant governor shall not be elected until the next regular gubernatorial election. In the event of such vacancy the office of governor shall be held and

administered by the speaker of the house of representatives, the president pro tempore of the senate or the attorney general, in that order, until the new governor is elected and qualified.

(c) **Vacancies due to disability or absence.** When the governor is unable to discharge the duties of his office by reason of physical or mental disability, or when the duties are not being discharged by reason of his absence from the state, the power and authority of the office shall, until the governor returns to the state or is restored to his mind, or relieved from other disability, devolve in the order herein named upon the lieutenant governor, the speaker of the house of representatives, the president pro tempore of the senate or the attorney general. If any of the officers in the line of succession be under any of the disabilities herein specified, the office of the governor shall be administered in the order named by such of these officers as may be free from such disability. If the governor's disability or absence does not terminate within six months the office of governor shall be vacant as if the governor had died.

(d) **Failure of governor to qualify.** If the governor-elect fails to qualify, the lieutenant governor-elect shall qualify and exercise the duties of governor until the governor-elect qualifies. In the event that both the governor-elect and the lieutenant governor-elect fail to qualify, the speaker of the house, the president pro tempore of the senate or the attorney general shall, in the order named, administer the office until the governor-elect or the lieutenant governor-elect qualifies, or until the office of governor has been filled by an election and the newly elected governor has qualified. If both the governor-elect and the lieutenant governor-elect fail to qualify within six months of the beginning of their terms of office, the unexpired terms of the governor-elect and the lieutenant governor-elect shall be filled by a special election.

Section 5.10. Procedure for Determination of Incapacity of Governor.

(a) If the governor or acting governor shall appear to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the

supreme court upon the request in writing by the attorney general, the president pro tempore of the senate, and the speaker of the house, or any one of them, not next in succession to the office of governor, to ascertain the truth of the charges. If he is adjudged to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the officer next in succession to perform the duties of the office until the disability is removed or until the governor returns to state. If the incumbent denies that the disability of the governor, or other person entitled to administer the office, has been removed, the supreme court shall ascertain the truth concerning the same. If the disability has not continued for more than six months, and has been removed, the court shall so decree, and the office shall be restored to him. The supreme court shall prescribe the method of taking testimony and the rules of practice in such proceedings.

(b) The physical disability of the governor to perform his his duties may also be established by his written declaration to that effect transmitted to the officer next in line of succession and to the attorney general. If the physical disability of the governor is removed within six months, he may resume his office by notifying the acting governor and the attorney general. Any question concerning the governor's ability to resume his office shall be decided by the supreme court.

Section 5.11. Compensation of Acting Governor.

The lieutenant governor, speaker of the house, president pro tempore of the senate or attorney general, while administering the office of governor, shall receive the same compensation as that prescribed by law for the governor and no other.

Section 5.12. Lieutenant Governor.

(a) **Duties.** Lieutenant Governor shall be ex officio president of the senate, but shall have no right to vote except in case of a tie.

(b) **Salary.** The salary of the lieutenant governor shall be as prescribed by law.

(c) **Removal for insanity.** In case the lieutenant governor shall become of unsound mind, such unsoundness shall be ascertained by the supreme court upon the suggestion of the governor, and if found to be insane, his office shall be vacant.

Section 5.13. Attorney General.

(a) **Qualifications.** The attorney general shall be at least twenty-five years of age. He shall have been a qualified voter, and licensed to practice law, in this state for three years prior to his election.

(b) **Removal for insanity.** In case the attorney general shall become of unsound mind, such unsoundness shall be ascertained by the supreme court upon the suggestion of the governor, and if found to be insane, his office shall be vacant.

Section 5.14. State Seal.

There shall be a seal of the state, which shall be used officially by the governor, and the seal now in use shall continue to be used until another shall have been adopted by the legislature. The seal shall be called, "The Great Seal of the State of Alabama."

ARTICLE VI

The Judicial Department

Section 6.01. Judicial Power.

(a) Except as otherwise provided by this constitution, the judicial power of the state shall be vested exclusively in a unified judicial system which shall consist of a supreme court, a court of appeals, a trial court of general jurisdiction known as the circuit court, a trial court of limited jurisdiction known as the district court, and a probate court.

(b) The legislature may create judicial officers with authority to issue warrants and may vest in administrative agencies established by law such judicial powers as may be reasonably

necessary as an incident to the accomplishment of the purposes for which the agencies are created.

Section 6.02. The Supreme Court.

(a) The supreme court shall be the highest court of the state and shall consist of one chief justice and such number of associate justices as may be prescribed by law.

(b) The supreme court shall have original jurisdiction (1) of cases and controversies as provided by this Constitution, (2) to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction, and (3) to answer questions of state law certified by a court of the United States.

(c) The supreme court shall have such appellate jurisdiction as may be provided by law.

Section 6.03. Court of Appeals.

The court of appeals shall consist of such number of judges and division as may be provided by law. It shall exercise appellate jurisdiction under such terms and conditions as shall be provided by law and by rules of the supreme court. The court of appeals shall have no original jurisdiction except that it shall have power to issue all writs necessary or appropriate in aid of its appellate jurisdiction.

Section 6.04. Circuit Court.

(a) The state shall be divided into judicial circuits. For each circuit, there shall be one circuit court having such divisions and consisting of such number of judges as shall be provided by law.

(b) The circuit court shall exercise original general jurisdiction in all cases except as may otherwise be provided by law. The circuit court may be authorized by law to review decisions of state administrative agencies and decisions of inferior courts. It shall have authority to issue such writs as may be necessary or appropriate to effectuate its powers, and shall have such other powers as may be provided by law.

Section 6.05. District Courts.

The district court shall be a court of limited jurisdiction and shall exercise uniform original jurisdiction in such cases, and within such geographical boundaries, as shall be prescribed by law.

Section 6.06. Probate Court.

There shall be a probate court in each county which shall have such jurisdiction as may be provided by law.

Section 6.07. Qualifications of Judges.

Judges of the supreme court, court of appeals, circuit court and district court shall be licensed to practice law in this state and have such other qualifications as the legislature may prescribe. Judges of the probate court shall have such qualifications as may be provided by law.

Section 6.08. Prohibited Activities.

(a) No judge of any court of this state shall, during his continuance in office, engage in the practice of law or recieve any remuneration for his judicial service except the salary and allowances authorized by law.

(b) No judge, except a judge of a probate court, shall seek or accept any non-judicial elective office, or hold any other office of public trust, or make any contribution to or hold any office in a political party or organization, or campaign for any candidate, except himself, for political office.

(c) The supreme court shall adopt rules of conduct and canons of ethics, not inconsistent with the provisions of this constitution, for the judges of all courts of this state.

Section 6.09. Judicial Compensation.

(a) A state judicial compensation commission is hereby created which shall recommend the salary and expense allowances for all the judges of this state except for judges of the probate court. The commission shall consist of five members;

one shall be appointed by the governor, one by the president of the senate, one by the speaker of the house, and two by the governing body of the Alabama state bar.

(b) Members of the judicial compensation commission shall serve for terms of four years. Any vacancy on the commission shall be filled in the same manner in which such position was originally filled. The legislature shall appropriate sufficient funds for the expenses of the Commission.

(c) No member of the commission shall hold any other publice office, or office in any political party, and no member of the commission shall be eligible for appointment to a state judicial office so long as he is a member of the commission and for two years thereafter.

(d) The commission may submit a report to the legislature at any time within the first five calendar days of a regular session. The recommendations of the commission shall become law unless rejected by a joint resolution or altered by act of the legislature at the session to which the report is submitted. No change in salary or expense allowance shall apply to any judge during the term for which he was elected or appointed except as permitted by this constitution.

Section 6.10. Administration.

The chief justice of the supreme court shall be the administrative head of the judicial system. He shall submit budget recommendations to the governor and the legislature for state appropriations for the entire unified judicial system, exclusive of the probate courts. He may appoint an administrative director to serve at his pleasure and to supervise the administrative operation of the judicial system. The chief justice may assign appellate and trial judges for temporary service in any court.

Section 6.11. Power to Make Rules.

The supreme court shall make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts. These rules may be changed by an

act of the legislature adopted by a two-thirds vote of each house.

Section 6.12. Number of Circuit and District Judges.

(a) The supreme court shall establish criteria for determining the number and boundaries of judicial circuits and districts, and the number of judges needed in each circuit and district. If the supreme court finds that a need exists for increasing or decreasing the number of circuit or district judges, or for changing the boundaries of judicial circuits or districts, it shall, at the beginning of any session of the legislature, certify its findings and recommendations to the legislature.

(b) If a bill is introduced at any session of the legislature to increase or decrease the number of circuit or district judges, or to change the boundaries of any judicial circuit or district, the supreme court shall, within three weeks, report to the legislature its recommendations on the proposed change. No change shall be made in the number of circuit or district judges, or the boundaries of any judicial circuit or district unless authorized by an act adopted after the recommendation of the supreme court on such proposal has been filed with the legislature.

(c) An act decreasing the number of circuit or district judges shall not affect the right of any judge to hold his office for his full term.

Section 6.13. Selection of Judges.

(a) All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts.

Alternative Subsection (a):

All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts. The legislature shall provide for the election of all judges except probate judges on a non-partisan basis, without designation of any political affiliation. Nominations for judicial office shall be in the manner prescribed by law. Any incumbent judge may become a candidate for re-election by filing a declaration of candidacy at the time and in the manner prescribed by law.

(b) The office of a judge shall be vacant if he dies, resigns, retires, or is removed. Vacancies in any judicial office except probate judge shall be filled by appointment by the governor from a list of three nominees submitted by the appropriate judicial nominating commission. If the governor fails to appoint any of the nominees within thirty days after the list of nominees is submitted, the commission which selected the nominees shall appoint one of the nominees to fill the vacancy. Vacancies occurring in the office of judge of the probate court shall be filled by appointment or election as provided by law.

Section 6.14. Judicial Nominating Commissions.

(a) An appellate court nominating commission is hereby established to nominate and submit to the governor names of persons for appointment to vacancies in the supreme court and court of appeals. The commission shall consist of seven members, one of whom shall be the chief justice or acting chief justice of the supreme court, who shall serve as chairman, three shall be members of the state bar appointed by the governing body of the Alabama State Bar, two shall be citizens who are not lawyers appointed by the governor, and one a citizen who is not a lawyer appointed by the attorney general.

(b) There shall be one nominating commission for each judicial circuit. In circuits consisting of one county, the commission shall consist of five members, two of whom shall be appointed by the members of the bar residing in the county, two by the governing body of the county, and one who shall be the chairman, by the chief justice or acting chief justice of the supreme court. In circuits consisting of more than one county, the commission shall consist of five or more members, the chairman of which shall be appointed by the chief justice or acting chief justice of the supreme court, and one member of which shall be appointed by the governing body of each county and one member by the bar of each county in the circuit.

(c) The terms of the members of the judicial nominating commission shall be concurrent with the term of the chief justice of the supreme court. Any vacancy on a commission shall be filled in the same manner in which the position was

originally filled Members of all judicial nominating commissions shall be appointed within ninety days after the adoption of this section of the constitution.

(d) No member of any nominating commission shall receive any compensation for his services, but shall be allowed necessary travel expenses incurred in the performance of duty. No member of any commission except the chief justice shall hold any other public office, or office in any political party, and no member of any commission shall be a nominee of a commission so long as he is a member and for two years thereafter.

Section 6.15. Tenure of Office.

(a) The term of office of each judge of a court of the judicial system of this state shall be six years.

(b) A judge appointed to fill a vacancy under the provisions of Section 6.13(b) shall serve an initial term lasting until the first Monday after the second Tuesday in January following the next general election held after he has completed one year in office. At such election such judicial office shall be filled for a full term of office beginning at the end of the appointed term.

(c) A law reducing the number of judges of the supreme court or court of appeals shall be without prejudice to the right of the judges affected to seek retention in office. The reduction shall become effective when a vacancy in the affected court occurs.

Section 6.16. Retirement.

The legislature shall provide by law for the retirement of judges, including supernumerary judges, with such conditions, retirement benefits, and pensions for them and their dependents as it may prescribe. No person shall be elected or appointed to a judicial office after reaching the age of seventy years, provided that a judge over the age of seventy may be appointed to the office of supernumerary judge if he is not eligible to receive state judicial retirement benefits.

Section 6.17. Judicial Inquiry Commission.

(a) A judicial inquiry commission is created consisting of

seven members. The supreme court shall appoint one supreme court or court of appeals judge and two judges of the circuit court as members of the commission The governor shall appoint two persons who are not lawyers and the governing body of the Alabama state bar shall appoint two members of the state bar to serve as members of the commission.. The commission shall select its own chairman. The terms of the members of the commission shall be four years. A vacancy on the commission shall be filled for a full term in the manner the original appointment was made.

(b) The commission shall be convened permanently with authority to conduct investigations, receive or initiate complaints concerning any judge of a court of the judicial system of this state. The commission shall file a complaint with the court of the judiciary in the event that a majority of the members of the commission decide that a reasonable basis exists, (1) to charge a judge with violation of any canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to charge that the judge is physically or mentally unable to perform his duties. All proceedings of the commission shall be confidential except the filing of a complaint with the court of the judiciary. The commission shall prosecute the complaints.

(c) The supreme court shall adopt rules governing the procedures of the commission.

(d) The commission shall have subpoena power and authority to appoint and direct its staff. Members of the commission who are not judges shall receive per diem compensation and necessary expenses only. The legislature shall appropriate funds for the operation of the commission.

Section 6.18. Court of the Judiciary.

(a) The court of the judiciary is created consisting of one judge of the supreme court or court of appeals, who shall be selected by the supreme court, and shall serve as chief judge of the court of the judiciary, two judges of the circuit court, who shall be selected by the supreme court, and two members of the

state bar, who shall be selected by the governing body of the Alabama state bar. The court shall be convened to hear complaints filed by the judicial inquiry commission. The court shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his duties.

(b) A judge aggrieved by a decision of the court of the judiciary may appeal to the supreme court. The supreme court shall review the record of the proceedings on the law and the facts.

(c) The supreme court shall adopt rules governing the procedures of the court of the judiciary.

(d) The court of the judiciary shall have power to issue subpoenas. The legislature shall provide by law for the expenses of the court.

Section 6.19. Disqualification.

A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary.

Section 6.20. Continuation of Courts.

All courts in existence at the time this article of the constitution becomes effective shall retain their powers for three years, unless sooner terminated by act of the legislature.

ARTICLE VII

Suffrage and Elections

Section 7.01. Qualifications for Voting.

Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his residence. The legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting.

Section 7.02. Disqualifications.

No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

Section 7.03. Regulation of Elections.

The legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.

ARTICLE VIII

Taxation and Debt Limitation

Section 8.01. Limit on Powers to Tax and Lend Credit.

The State of Alabama and its political subdivisions shall use their power to tax and lend their credit only for public purposes, except as otherwise permitted by amendments to the Constitution of 1901 at the time this section is adopted or as herein otherwise permitted.

Section 8.02. Delegation of Taxing Power.

The power to levy taxes shall not be delegated to individuals or private corporations or associations.

state bar, who shall be selected by the governing body of the Alabama state bar. The court shall be convened to hear complaints filed by the judicial inquiry commission. The court shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his duties.

(b) A judge aggrieved by a decision of the court of the judiciary may appeal to the supreme court. The supreme court shall review the record of the proceedings on the law and the facts.

(c) The supreme court shall adopt rules governing the procedures of the court of the judiciary.

(d) The court of the judiciary shall have power to issue subpoenas. The legislature shall provide by law for the expenses of the court.

Section 6.19. Disqualification.

A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary.

Section 6.20. Continuation of Courts.

All courts in existence at the time this article of the constitution becomes effective shall retain their powers for three years, unless sooner terminated by act of the legislature.

Section 8.03. State Taxes on Income.

(a) A state tax on income shall be levied only on net income and shall not exceed the rate of five per cent.

(b) A resident individual or a corporation organized under the law of this state shall be allowed to deduct from gross income the amount of federal income tax paid or accrued within the taxable year. A nonresident individual or foreign corporation shall be allowed to deduct only that amount of federal income tax paid or accrued in the taxable year on income received from sources within the state to be determined in accordance with such laws as the legislature may enact.

Section 8.04. Imposition of Income Tax with Reference to Federal Law.

Except as prohibited by this Constitution, the legislature in enacting laws taxing income, may define income by reference to provisions of the laws of the United States as they then exist or may prospectively be enacted, with such modification as may be prescribed by the law of this state.

Section 8.05. State Inheritance and Estate Taxes.

The legislature may provide for the assessment, levy and collection of a tax upon inheritances and for the levying of estate taxes not to exceed in the aggregate the amounts which may by any law of the United States be allowed to be created against or deducted from any similar tax upon inheritances or taxes on estates assessed or levied by the United States on the same subject.

Section 8.06. Dedicated Funds.

No proceeds of any state tax hereafter levied by the legislature, or derived from an increase in the rate of taxes now imposed, shall be dedicated to any special purpose, except when required by the federal government for state participation in federal programs. Any dedication of taxes for special purposes existing at the time of the ratification of this section shall continue until terminated by act of the legislature.

Section 8.07. Limitation on State Ad Valorem Toxation.

State ad valorem taxes shall not be levied in excess of six and one-half mills on the assessed value of property in any one taxable year, except for taxes required to pay bonds issued after the ratification of section 8.11 of this article.

Section 8.08. Assessment and Classification of Property for Ad Valorem Taxation.

(a) All taxable property within this state, not exempt by law, shall be divided into the following classes for the purposes of ad valorem taxation:

Class I. All property of utilities used in the business of such utilities.

Class II. All property not otherwise classified.

Class III. All agricultural, forest and residential property.

(b) With respect to ad valorem taxes levied by the state, all taxable property shall be forever taxed at the same rate, and such property shall be assessed for ad valorem tax purposes according to the classes thereof as herein defined at the following ratios of assessed value to the fair and reasonable market value of such property:

Class I. 30 percentum.

Class II. 25 percentum.

Class III. 15 percentum.

(c) With respect to ad valorem taxes levied by counties, incorporated cities or towns, or other taxing authority, all taxable property shall be forever taxed at the same rate, and such property shall be assessed for ad valorem tax purposes according to the classes of property defined in paragraph (a) herein and at the same ratios of assessed value to the fair and reasonable market value thereof as fixed in paragraph (b) herein, provided, however, that the legislature may vary the ratio of assessed value to the fair and reasonable market value as to any class of property as defined in paragraph (b) herein, and provided, further, that the legislature may fix a uniform ratio of assessment

of all property within a county defined in paragraph (a) herein as Class II and III and may fix a different ratio of assessment for property defined in paragraph (a) as Class I. Such ratios as herein authorized may vary among counties so long as each such ratio is uniform within a county.

No class of property shall have a ratio of assessed value to fair and reasonable market value of less than 15 percentum nor more than 35 percentum.

(d) Wherever any constitutional provision or statute provides for, limits or measures the power or authority of any county, incorporated city or town, or other taxing authority to levy taxes, borrow money, or incur indebtedness in relation to the assessment of property therein for state taxes or for state and county taxes such provision shall mean as assessed for county or incorporated city or town taxes as the case may be.

Section 8.09 Exemptions from Ad Valorem Taxation.

(a) The following property shall be exempt from all ad valorem taxation: the real and personal property of the state, counties, incorporated cities or towns, and property devoted exclusively to religious, educational or charitable purposes.

(b) The legislature may provide for other exemptions from ad valorem taxation.

Section 8.10. Taxation.

Except for taxes levied by the States, taxes presently permitted by the constitution of 1901 as amended, and taxes required for the payment of bonds issued after the ratification of section 8.12 of this article, no ad valorem taxes on real or personal property shall be levied unless the tax shall have been (1) approved by the authority having power to levy the tax after a public hearing on the proposal, (2) thereafter approved by an act of the legislature, and (3) subsequently approved by a majority of the electors of the area in which the tax is to be levied who vote on the proposal.

Section 8.11. State Debt Limitation.

No debt or other obligation payable in whole or in part from

taxes shall be contracted by or in behalf of the state except as provided herein and the full faith and credit of the state shall be pledged to all debt incurred under this section.

(a) **Temporary borrowing.** The legislature may authorize debts to be contracted to meet deficits in the revenue in anticipation of the collection during the then current fiscal year of state taxes and within appropriations for such fiscal year in an amount not exceeding one-tenth of the average annual tax receipts of the state for the five fiscal years immediately preceding. Such debt shall mature and be paid from such tax collections within the current fiscal year.

(b) **Debts to finance capital projects or to refund previous obligations.** The legislature may authorize debts to be contracted: (1) to finance a capital project which is to be specified in the authorizing act, or (2) to refund a previous obligation of the state. The total principal amount of debts so authorized together with all debts or obligations of the state, payable in whole or in part from taxes, shall not exceed one and three-fourths times the average annual revenue receipts of the state for the immediately preceding five fiscal years. An act authorizing such debt shall require for its passage a vote of three-fifths of the members elected to each house.

(c) **Additional debt.** The legislature may authorize debt in excess of the limit provided in paragraph (b) by an act passed by a vote of three-fifths of the members elected to each house and approved by a majority of the electors of the state voting on the question.

(d) **Bonds to finance revenue producing capital projects.** The legislature may authorize the issuance of general obligation bonds of the state to finance or refinance specified revenue producing projects (including the enlargement or improvement thereof), which are owned and controlled by the state or by one of its institutions or agencies, to an amount not exceeding the average annual tax revenues of the state for the immediately preceding five fiscal years; and such bonds shall not be included in determining the limitation on debt contained in paragraph (b), provided that:

(1) the bonds shall be secured by a pledge of the net revenues derived from rates, fees or other charges of the projects;

(2) before any such bonds shall be authorized, the governor shall file with the clerk of the house and secretary of the senate his opinion, based on responsible engineering and economic estimates attached thereto, that the anticipated net revenues to be pledged to the payment of the principal and interest on such bonds will be sufficient to meet such payments and to provide such reserves as the act authorizing such bonds may require; and

(3) the act authorizing such bonds shall be adopted by a vote of two-thirds of the members elected to each house.

(e) **Retiring debt.** All bonds authorized under paragraphs (b), (c), or (d) above shall mature serially in annual or more frequent installments, beginning not later than three years from the date of issue and ending within the estimated useful life of the project as stated in the authorizing act or thirty years from date of issue, whichever is shorter The principal and interest on all such bonds shall be a first charge on the general revenues of the state and, unless sufficient funds are appropriated in each fiscal year for the payment of such principal and interest, there shall be set aside from the first tax revenues received during each fiscal year and each succeeding fiscal year a sum sufficient to pay such principal and interest.

Section 8.12. Procedure for Incurring County and Municipal Debt

(a) Except as hereinafter permitted, no county or incorporated city or town shall contract or incur any debt or obligation pledging its full faith and credit, or payable in whole or part from taxes unless (1) such debt or obligation shall be incurred or contracted for the purpose of making one or more capital improvements, (2) shall mature within the estimated useful life of such capital improvements or thirty years whichever is the shorter and (3) shall have been approved by a majority vote of

the electors of such county or incorporated city or town voting at an election held in the manner prescribed by law.

(b) The limitation on incurring a debt or obligation provided by subdivision (a) hereof shall not apply to the following:

(1) Obligations incurred for current operating expenses in any fiscal year which do not exceed the anticipated income of that year available for such purposes.

(2) Temporary loans to be paid within one year, made in anticipation of the collection of taxes, not exceeding one-fourth of the average annual general revenues (exc'uding state and federal grants) of such county, incorporated city or town, for the preceding five fiscal years.

(3) The renewal, refunding or reissue of obligations lawfully issued.

(4) Obligation to procure funds to pay for public improvements, the cost of which is to be assessed, in whole or in part, against the property abutting on or served by such improvements.

(5) Obligations of a public corporation created by any county or incorporated city or town, even though property, whether or not capable of producing income, may have been transferred to such public corporation by a county or an incorporated city or town with or without consideration.

Section 8.13. Exception to Election Requirements for Obligations to Finance Small Capital Projects.

(a) Notwithstanding the provisions of the constitution requiring an election for incurring debts or obligations, a county or an incorporated city or town may incur a debt or obligation without an election in an amount not exceeding one-fifth of its average annual tax revenue paid into its general fund, and, in the case of a county, also its public building, road and bridge fund, for the last five preceding fiscal years, to finance a capital project, if approved by three-fifths of the members of its governing body after a public hearing, of which at least ten days notice has been given by publication. Notice of approval by the

governing body shall be published within seven days after approval.

(b) In the event that five percent of the number of electors who were qualified to vote in such county in the last general election, or in such incorporated city or town in the last municipal election, within thirty days following publication of the notice of approval, file a written petition with the governing body for an election, the debt or obligation shall not be incurred unless approved by a majority of the electors voting on the question at an election.

(c) The total principal amount of all debts or obligations incurred without an election and outstanding under this section shall never exceed one percent of the assessed value of taxable property in the county or incorporated city or town.

Section 8.14. General Obligation Indebtedness of Counties and Municipalities for Industrial Development.

(a) No county or incorporated city or town authorized by any amendment to the constitution of 1901 to incur obligations, payable in whole or in part from taxes, for industrial or commercial development shall incur obligations under such authority later than five years after the adoption of this amendment.

(b) The legislature may authorize any county, incorporated city or town, or other subdivision to incur obligations, payable in whole or in part from taxes, for industrial or commercial development, provided that: (1) the obligations shall be approved by a vote of a majority of the electors of the county, incorporated city or town, or other subdivision voting in on election thereon; and (2) the electors simultaneously authorize the levying of a special tax reasonably estimated to be sufficient to pay the obligations if revenues pledged are insufficient. The type of tax, its possible duration and maximum rate shall be set out on the ballot to be used at such election.

ARTICLE IX

Local Government

Section 9.01. Counties.

(a) The state shall be divided into political subdivisions called counties; and the present boundaries of the several counties shall continue until changed in accordance with the provisions of this article.

(b) The legislature shall by general law prescribe procedures for the creation, abolition, consolidation, merger, and change of boundaries of counties, and shall provide for payment or appointment of the public debt of each county affected by a change, provided that no such change shall be made without consent of a majority of the electors voting on the proposal within each county affected.

(c) The legislature may, by local law adopted by a vote of two-thirds of each house, change the boundary between adjoining counties, provided that the change shall have been approved by the governing bodies of each county prior to the enactment of such law.

(d) No new county shall be formed with an area of less than six hundred square miles, and no county shall be reduced below that area by a change of boundaries.

(e) No courthouse or county site shall be removed, nor shall any branch courthouse be established or abolished, unless such proposal is first submitted to a vote of the electors of the county or counties to be affected and is approved by a majority of those voting upon such proposal. An election under this section on the issue of moving, establishing or abolishing a courthouse or branch courthouse shall not be held at more frequent intervals than every four years.

Section 9.02. Muncipalities

The legislature shall provide by general law for the incorporation, government, merger and change of boundaries of cities and towns, and for the annexation of unincorporated territory to

incorporated cities and towns, which are referred to as municipalities in this article. When any municipality is abolished, provisions shall be made for the protection of its creditors.

Section 9.03. Optional Plans of Government for Counties and Municipalities.

The legislature shall provide by general law optional plans of local government for counties and municipalities. A county or municipality may adopt or repeal a prescribed plan of local government by referendum in accordance with such conditions and procedures as the legislature shall provide by general law.

Section 9.04. County and Municipal Home Rule Charters.

Upon the expiration of two years following the adoption of this article, a county or municipality shall have the right and power to frame, adopt, amend or repeal a home rule charter by the following procedure:

1. Upon resolution approved by the governing body of a county or municipality, or upon petition of ten per cent of the number of electors who were qualified to vote in such county in the last general election, or in such municipality in the last municipal election, filed with the governing body and a copy filed with the probate judge, the question of the creation of a commission to frame a home rule charter, or charter amendments, shall be submitted to the electorate not less than forty-five days nor more than ninety days after the filing of the petition at a general election, if one is to be held during such period but if not, at a special election. An affirmative vote of a majority of the electors voting on the question shall authorize the creation of the commission.

2. The resolution or petition to have a charter commission may include the names of seven commissioners, to be listed at the end of the ballot, so that an affirmative vote on the question is a vote to elect the persons named. Otherwise, the resolution or petition shall designate the method by which the members of the charter commission shall be chosen.

3. Any proposed charter, or charter amendment, shall be

published by the commission and submitted to the electorate not less than forty-five days nor more than ninety days after publication at a general election, if one is to be held during such period, but if not, at a special election. The procedure for publication shall be prescribed by resolution of the charter commission. The governing body of the county or municipality shall appropriate money to provide for the reasonable expenses of the commission and for the publication of its proposals.

4. Any election pursuant to the provisions of this section shall be conducted in the manner provided by law for holding other county and municipal elections. The cost of any such election shall be paid out of the general funds of the county or municipality.

5. A home rule charter or charter amendment shall become effective if approved by a majority of the electors voting thereon. The charter may provide for direct submission of charter revisions or amendments initiated by petition or by resolution of the governing body of a county or municipality.

6. An election on the issue of the creation of a charter commission shall not be held at more frequent intervals than every two years.

Section 9.05 County and Municipal Powers of Government.

Any county or municipality which adopts a home rule charter, or plan of local government prescribed by the legislature, after the ratification of this article of the constitution, may exercise all legislative power of government not inconsistent with its charter, this constitution, or the general law of the state.

Section 9.06. Conflicting County and Municipal Ordinances.

In the event of conflict between a municipal ordinance and a county ordinance, the municipal ordinance shall prevail within the municipality, unless otherwise provided by a county charter or general law.

Section 9.07. Municipal Franchises.

No franchise or license shall be granted by any municipality

for a period longer than thirty years.

Section 9.08. Responsibility for County Roads.

The county's responsibility for the construction and maintenance of county roads shall not hereafter be delegated to a state agency unless the delegation is approved by a vote of the electors of the county.

Section 9.09. Muncipal Streets.

No person, firm, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys, or public places of any municipality for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of the municipality.

ARTICLE X

Education

Section 10.01. Maintenance and Support of Public Schools and Educational Institutions.

The legislature shall provide for the maintenance and support of public schools open to all children in the state and shall establish, organize and support such other public educational institutions, including public institutions of higher learning, as may be desirable.

Section 10.02 State Board and Superintendent of Education.

(a) General supervision of the public schools in Alabama shall be vested in a state board of education, which shall be elected in such manner as the legislature may provide.

(b) The chief state school officer shall be the state superintendent of education, who shall be appointed by the state board of education and serve at its pleasure. The authority and duties of the superintendent of education shall be determined by the

state board of education according to such regulations as the legislature may prescribe.

Section 10.03. Board of Trustees for the University of Alabama.

(a) The state university shall be under the management and control of a board of trustees which shall consist of two members from the congressional district in which the university is located, one from each of the other congressional districts in the state, the superintendent of education, and the governor, who shall be ex officio president of the board. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be elected and confirmed as hereinafter required. Each elected member shall hold office for a term of twelve years.

(b) When the term of any member of such board shall expire, the remaining members of the board shall, by secret ballot, elect his successor; provided, that any trustee so elected shall hold office from the date of his election until his confirmation or rejection by the senate, and, if confirmed, until the expiration of the term for which he was elected, and until his successor is elected.

(c) At every meeting of the legislature the superintendent of education shall certify to the senate the names of all who have been so elected since the last session of the legislature, and the senate shall confirm or reject them, as it shall determine is for the best interest of the university. If it rejects the names of any members it shall thereupon elect trustees in the stead of those rejected.

(d) In case of a vacancy on said board by death or resignation of a member, or from any cause other than the expiration of his term of office, the board shall elect his successor, who shall hold office until the next session of the legislature.

(e) No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

Section 10.04. Board of Trustees for Auburn University.

(a) Auburn University shall be under the management and control of a board of trustees. The board shall consist of two members from the congressional district in which the institution is located, one from each of the other congressional districts in the state as the same were constituted on the first day of January, 1961, the state superintendent of education, and the governor, who shall be ex officio president of the board.

(b) The trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for a term of twelve years, and until their successors be appointed and qualified. The board shall be divided into three classes, as nearly equal as may be, so that one-third may be chosen quadrennially.

(c) Vacancies occurring in the office of trustees from death or resignation shall be filled by the governor, and such appointee shall hold office until the next meeting of the legislature. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be appointed as herein required.

(d) No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such. No employee of Auburn University shall be eligible to serve on its board of trustees.

Section 10.05. Members of Legislature Ineligible to Serve on Board of Trustees.

No member of the legislature shall be eligible to serve as a member of the board of trustees of any state college or university.

Section 10.06. Commission on Higher Education.

There shall be a Commission on Higher Education which shall have the responsibility of advising the governor and the legislature on education beyond the secondary level. The membership, duties, and procedures of the Commission shall be provided for by law.

Section 10.07. Exemption of Mobile County.

The provisions of this article and of any act of the legislature passed in pursuance thereof for educational purposes, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw portions of the funds to which said county shall be entitled for school purposes and to make reports to the superintendent of education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the legislature.

ARTICLE XI

Public Officers

Section 11.01. Dual Officeholding.

No person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this state; nor shall any person, except a notary public, hold two offices of profit at one and the same time under this state. Service of a delegate to a constitutional convention or as a member of a statutory body having only advisory powers shall not be considered an office of profit as the term is used in this constitution. The legislature may by general law exempt persons in the state military forces or in the military service of the United States from the provisions of this section.

Section 11.02. Disqualification by Conviction of Crime.

No person convicted of a felony involving moral turpitude whose civil and political rights have not been restored shall be eligible to hold any office of trust or profit in this state.

Section 11.03. Compensation of Public Officers.

(a) The rate of compensation of any officer holding any civil office of profit under this state, or any county or municipality thereof, who is elected or appointed for a fixed term, whether

such officer may be removed at the pleasure of the authority electing or appointing him or only upon impeachment, shall not be increased or diminished, during the term for which he shall have been elected or appointed, either by the imposition of new, different, and additional duties, or otherwise.

(b) Nor shall the expense allowance of any such officer be increased or decreased during his term except by general law applying to all similar public officers.

(c) Any increase or decrease in the compensation of officers who are members of any court, board, commission, or similar body, whose terms do not run concurrently, shall become effective as to all such members thereof immediately after the expiration of the term or terms of office of the member or members whose term or terms first expire.

(d) Notwishstanding the provisions of this section, the legislature may by general law provide for adjustments, up or down, in the compensation of such officers based on the United States Bureau of Labor Statistics Consumer Price Index or other appropriate cost-of-living criteria.

Section 11.04. Method of Changing the Basis of Compensating County Officials.

The legislature may, by general or local law, change the method or basis of compensating any officer of a county, including the judge of probate, sheriff, tax assessor, tax collector, clerk of the circuit court, and register, and may place such officers on a salary. In the event that a county officer is placed on a salary, all fees, allowances, and commissions collected by him shall be paid into the county treasury. No law shall be effective to change the method of compensating any county officer during the term for which he shall have been elected or appointed, nor shall any such law become effective in a county until it has been approved by a majority of the electors of the county who vote thereon at a referendum election held for such purpose.

Section 11.05. Civil Service.

(a) The legislature shall provide by law for appointments

and promotions in the civil service of the state according to merit, fitness, and efficiency, to be determined, so far as practicable, by competitive examination. The legislature shall provide adequate financial support for a program of personnel management in the state service.

Section 11.06. Oath of Office.

All members of the legislature, and all officers, executive and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation:

"I, . . . , solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

The oath may be administered by the presiding officer of either house of the legislature, or by any officer authorized by law to administer an oath.

ARTICLE XII

Impeachments

Section 12.01. Impeachment of State Officers.

(a) The governor, or acting governor, and all state officers, except judges, who are elected on a statewide basis, shall be subject to impeachment by the house of representatives for willful neglect of duty, corruption in office, or the commission of any offense, while in office, involving moral turpitude.

(b) Unless otherwise provided by law, impeachment by the house of representatives shall be tried by the senate. No person shall be convicted by the senate sitting as a court of impeachment without the concurrence of at least two-thirds of the members present. The legislature may provide for the trial of im-

peachments by a special tribunal of seven judges appointed by the supreme court from the judges of the state.

(c) When the governor or acting governor is impeached, the chief justice, or one of the associate justices of the supreme court, to be selected by it, shall preside over the senate when sitting as a court of impeachment.

(d) If at any time when the legislature is not in session, a majority of all the members elected to the house of representatives shall certify in writing to the speaker of the house their desire to meet to consider the impeachment of the governor or acting governor, it shall be the duty of the speaker of the house to summon the members of the house to assemble at the capitol to consider the impeachment of the governor or acting governor. If the house of representatives prefers articles of impeachment, the lieutenant governor or president pro tempore of the senate shall summon the members of the senate to assemble at the capitol for the purpose of organizing as a court of impeachment, unless the legislature has provided for the trial of such official by a special tribunal.

(e) An officer impeached by the house of representatives shall be disqualified from performing any official duties until he has been tried and acquitted. He shall be removed from office upon conviction.

Section 12.02. District Attorneys and Sheriffs.

District attorneys and sheriffs may be removed from office for any of the causes specified in section 12.01(a), by the supreme court, under such regulations as may be prescribed by law.

Section 12.03. County and City Officers.

All county officers and officers of incorporated cities and towns may be removed from office for any of the causes specified in section 12.01(a) of this article by a court having jurisdiction to try felony cases in the county or district in which such officers hold their office. The legislature shall provide by law the method of proceeding under this section, provided that the right of trial by jury and appeal in such cases shall be secured.

This section shall not apply to the judge of any court who may be removed by procedures provided by the judicial article.

Section 12.04. Penalties Upon Conviction.

Judgments in cases arising under the three preceding sections shall not extend beyond removal from office and disqualification to hold any office of honor, trust or profit under the state. But the person convicted, or acquitted, shall be subject to criminal punishment according to law.

ARTICLE XIII

Miscellaneous Provisions

Section 13.01 Eminent Domain.

In proceedings for the taking of property for public use, the right of appeal from any preliminary assessment of damages may not be denied but such appeal shall not deprive the condemnor of a right of entry, provided the amount of damages assessed shall have have been paid into court in money, and an adequate bond shall have been given, in not less than double the amount of the damages assessed, to pay such damages as the property owner may sustain; and the amount of damages in all cases of appeals shall on demand of either party be determined by a jury according to law.

Section 13.02. Protection of Environment.

It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and and water pollution and of excessive and unnecessary noise.

Section 13.03. Exemption of Homesteads.

The legislature shall provide by law for the exemption of homesteads, of a value of not less than two thousand dollars, from forced sale for the payment of debts.

PROPOSED CONSTITUTION

ARTICLE XIV

Amending the Constitution

Section 14.01. Procedure.

(a) The legislature may propose an amendment to this constitution in the manner required for the enactment of legislation if, on its final passage, the amendment is read at length in each house and three-fifths of all the members elected to each house approve it.

(b) Proposed amendments shall be submitted to the electors of the state at the next general election following the notice required by this section, provided, that the legislature may, by separate bill enacted in the manner required for proposing an amendment, call a special election for submission of an amendment. The act must declare that an emergency exists necessitating the submission prior to the next general election, and shall not be effective unless approved by the governor within seven days after it has been submitted to him. If a special election on a proposed amendment is called, other amendments may be submitted at the same election.

(c) Notice of the election on all proposed amendments shall be given by a single proclamation of the governor. The notice, with the full text of all proposed amendments shall be published once in every county, in a newspaper of general circulation, not more than thirty nor less than ten days before the day of the election. The ballot statement of each amendment shall also be published once not less than three nor more than ten days before the election in each newspaper in the state which is authorized by law to publish such notices at public expense. In addition to the required publication in newspapers, the legislature may provide for the publication of the proposed amendments or the ballot statements thereof by other means, including radio and television.

(d) Elections upon proposed amendments shall be held as provided by law. A proposed amendment shall become part of the constitution if approved by a majority of electors voting on the proposal.

(e) The revision of an entire article or articles or the addition of one or more new articles may be proposed as a single amendment.

Section 14.02 Form of the Ballot.

The ballot submitting an amendment to the constitution shall contain a summary or short statement clearly indicating its effect. It shall be the duty of the attorney general to prepare such statement in such language as shall create no prejudice for or against the proposed amendment.

Section 14.03. Constitutional Convention.

(a) The legislature may by a vote of a majority of the members elected to each house adopt an act calling for a convention to propose a general revision of, or specific amendments to this constitution. If a convention is called for the consideration of a specific amendment, or amendments, the convention shall have no power to propose amendments on other subjects. No convention shall be held unless the question of holding the same as limited by the legislature shall be first submitted to a vote of the electors of the state and approved by a majority of the electors voting on the proposal.

(b) The act calling the convention shall provide for the election of delegates and may limit the period of time during which the convention can meet, provided that the duration of the convention may be extended, by act of the legislature, adopted in the manner required for legislation, after the convention convenes.

(c) No act of the legislature calling a convention for the purpose of revising or amending the constitution shall be repealed after the electors of the state have approved the holding of a convention.

(d) The legislature shall provide for the submission of the proposal of the convention to a vote of the electors of the state. If a majority of electors voting on any such proposal vote in favor of it, the proposal thus approved shall become effective on the date designated therein.

Section 14.04. Method of Voting.

All votes of the legislature upon proposed revisions of, or amendments to this constitution and upon bills calling a convention for the purpose of altering or amending the constitution of this state, shall be taken by yeas and nays and entered on the journals. No act of the legislature passed in accordance with the provisions of this article, proposing revisions of, or amendments to this constitution, or calling a convention for the purpose of altering or amending the constitution, shall be submitted for the approval of the governor, but shall be valid without his approval.

Commentaries on the PROPOSED CONSTITUTION

PREAMBLE

We, the people of the State of Alabama, in order to establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God do ordain and establish the following Constitution and form of government for the State of Alabama.

Comment: Present preamble unchanged.

ARTICLE I

Declaration of Rights

That the great, general, and essential principles of liberty and free government may be recognized and established, we declare that:

SECTION 1.01 THE EQUALITY AND RIGHTS OF MAN.

All men are equally free and independent; they are endowed by their Creator with certain inalienable rights; among these are life, liberty and the pursuit of happiness.

Comment: Present section 1. No basic change.

SECTION 1.02 FREEDOMS OF RELIGION, SPEECH, PRESS, ASSEMBLY AND PETITION.

No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for redress of grievance.

Comment: Present sections 3, 4 and 25 combined, without

substantive change. The wording of the First Amendment to the U. S. Constitution has been adopted.

SECTION 1.03 DUE PROCESS AND EQUAL PROTECTION.

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws.

Comment: The due process clause is taken from present section 6. The equal protection clause is taken from the Fourteenth Amendment to the U. S. Constitution.

This broadens the due process provisions of the 1901 Constitution, in that the only use there of the term "due process" is in sections 6 and 13, both of which deal with judicial procedure. However, the Alabama Supreme Court has broadly construed the clause, applying it to civil cases and administrative proceedings, generally in conformity with judicial applications of the Fourteenth Amendment to the U. S. Constitution. See, e.g. *Pike v. Southern Bell Tel. & Tel. Co.*, 263 Ala. 59, 81 So.2d 254 (1955).

The Constitution of 1875 had an equal protection clause (Sec. 2), but this was dropped in 1901, obviously because of the discriminatory provisions as to elections and the franchise. Here again our Supreme Court has read a requirement of equal protection, or a prohibition against unreasonable discrimination, into the constitution by implication. See *McLendon v. State*, 179 Ala. 54, 60 So. 392 (1912).

Since every case under the state constitution involving asserted denial of due process or equal protection would also involve possible application of the U. S. Constitution, it is desirable to conform the language of the state to the federal constitution.

SECTION 1.04 SEARCHES AND SEIZURES.

The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizure or searches, and no

warrants shall be issued to search any place or to seize any person or thing without probable cause, supported by oath or affirmation.

Comment: Present section 5, unchanged.

SECTION 1.05 RIGHTS OF THE ACCUSED.

(a) IN GENERAL. In all criminal prosecutions the accused has a right to be heard by himself and counsel, or either; to be informed of the accusation, and to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have a speedy, public trial; to testify in all cases, on his own behalf, if he elects to do so; and he shall not be compelled to give evidence against himself.

Comment: Present section 6. No change of substance. The venue provisions have been deleted and the jury trial clause has been transferred to section 5(d).

(b) INDICTMENT. No person shall be held to answer for a felony unless on the presentment or indictment of a grand jury, provided, however, that the legislature may by law dispense with a grand jury in any but offenses punishable by death or life imprisonment, if the defendant waives his right to an indictment.

Comment: This is a substitute for present section 8, and Amendment 37. Under amended section 8, indictment by a grand jury may not be waived except by a plea of guilty. The revision would permit waiver of indictment, and consequent trial on information or otherwise, except in capital or life imprisonment cases. The detailed provisions requiring advice of counsel and statement in open court on waiving indictment when pleading guilty found in present section 8 as amended have been omitted. These requirements are fully covered by the Code (Title 15, Secs. 260-266).

(c) BAIL. Excessive bail shall not be required and all persons before conviction shall be bailable by sufficient sureties,

except for offenses punishable by death or life imprisonment in which the proof is evident or the presumption great. The court may dispense with bail and prescribe other reasonable conditions for release pending trial, if reasonably satisfied that the defendant will appear when directed.

Comment: Present section 16 has been broadened to allow courts discretion to dispense with bail.

(d) TRIAL BY JURY. A right of trial by an impartial jury of the county or district in which the offense was committed shall exist in all cases of felony and offenses punishable by imprisonment for more than six months, provided the legislature may provide for a change of venue on motion of the state or defendant. The accused may expressly waive his right to trial by jury with the consent of the state and the court.

Comment: This is a substitute for the jury requirement provision of present section 6, and present section 11 as applied to criminal cases. These provisions have been expanded to comply with recent decisions of the United States Supreme Court holding that a jury trial must be provided in any case where imprisonment for more than six months is authorized. *Baldwin v. New York*, 399 U.S. 66 (1970); *Duncan v. Louisiana*, 391 U.S. 145 (1968).

A number of states including New York, Michigan, Ohio, Virginia, and New Mexico permit a change of venue on the motion of either party.

(e) PUNISHMENT. Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted.

Comment: Present section 15. No change.

(f) FORMER JEOPARDY. No person shall, for the same offense, be twice put in jeopardy of conviction; but courts may, for reasons fixed by law, discharge juries from consideration of any case, and no person shall gain an advantage by reason of such discharge of the jury.

Comment: Present section 9. No change.

SECTION 1.06 RIGHT OF TRIAL BY JURY.

The right of trial by jury as heretofore enjoyed in civil cases shall remain inviolate. In both civil and criminal cases, the qualifications and number of jurors, not fewer than six, shall be fixed by law. In civil cases the legislature may provide by law for a less than unanimous verdict.

Comment: Present section 11 concerning jury trials applies to both criminal and civil cases. Proposed sec. 1.05(d) applies only to criminal cases and this section continues the right of trial by jury in civil cases. The phrase "as heretofore enjoyed" is added only to indicate that the right to jury trials in civil cases is subject to traditional common law limitations. *City of Mobile v. Gulf Development Co.*, 277 Ala. 431, 171 So.2d 35 (1965); *Tillery v. Commercial National Bank of Anniston*, 241 Ala. 653, 4 So.2d 125 (1941).

The Alabama constitutional provisions concerning a jury trial have been interpreted to require a jury of twelve and a unanimous verdict. *Kirk v. State*, 247 Ala. 43, 22 So.2d 431 (1945-. The draft would permit the legislature to provide by law for a less than unanimous verdict. The Federal Constitution does not require a jury of twelve, and it is permissible for a state to provide for a jury of six members. *Williams v. Florida*, 399 U. S. 78 (1970).

SECTION 1.07 HABEAS CORPUS.

The privilege of the writ of habeas corpus shall not be suspended.

Comment: Present section 17, with an unnecessary clause eliminated.

SECTION 1.08 IMPRISONMENT FOR DEBT.

No person shall be imprisoned for debt.

Comment: Present section 20. No change.

SECTION 1.09 TREASON.

Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

Comment: Present section 18. No change.

SECTION 1.10 CIVIL ACTIONS.

(1) No person shall be barred from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party.

(2) All courts shall be open; and every person, for any injury done him, in his lands, goods, person or reputation, shall have a remedy by due process of law, and right and justice shall be administered without sale, denial or delay.

Comment: Present sections 10 and 13 combined.

SECTION 1.11 RIGHT TO SUE THE STATE.

The legislature may by law direct in what manner, in what courts, and in what cases suits may be brought against the state and its political subdivisions.

Comment: This is a substitute for present section 14 which prohibits suit against the state.

SECTION 1.12 RIGHT TO BEAR ARMS.

Every citizen has a right to bear arms in defense of himself and the state.

Comment: Present section 26. No change.

SECTION 1.13 FORBIDDEN LEGISLATION.

No ex post facto law, nor any law impairing the obligations of contracts, or making any irrevocable or exclusive grants of

of special privileges or immunities, shall be passed by the legislature.

Comment: This is section 22 of the present constitution omitting the last clause: "and every grant or franchise, privilege, or immunity shall forever remain subject to revocation, alteration, or amendment." The deletion of this clause leaves the section substantially as it was in the 1875 Constitution. The Alabama Supreme Court held that without the last clause the prohibition of irrevocable grants is directed only at exclusive franchises. *City of Bessemer v. Birmingham Electric Co.*, 248 Ala. 345, 27 So.2d 565 (1946). Under the draft, therefore, if a legislative franchise is not exclusive it may be made irrevocable except in limited situations under the state's police powers.

Municipal franchises are limited to thirty years by Article IX, Section 9.07 (Present sec. 228).

SECTION 1.14 EMINENT DOMAIN.

Private property shall not be taken or damaged except for public use, or to secure to persons or corporations the right of way over the lands of others pursuant to general law, and unless just compensation is first made therefor.

Comment: This section is a substitute for present section 23. Present section 235 dealing with condemnation procedures, is carried forward in Article XIII, Miscellaneous Provisions (section 13.01).

The following material contained in present section 23 has been deleted: (1) the provision forbidding discrimination between corporations and individuals. Such a rule is unnecessary because of the equal protection clause. (2) The prohibition against taxation or forced subscription for railroads or other corporations or individuals. This is covered by the restriction of taxation to public purposes in Article VIII, Sec. 8.01.

The proposed section also makes one substantive change from the present constitution. The right to collect consequen-

tial damages from municipalities and others vested with the power of eminent domain which is provided by present section 235 is brought into this section and broadened to include such recovery from the state. See *Finnell v. Pitts*, 222 Ala. 290, 132 So. 2 (1930).

Tit. 19, sec. 56-68 of the Code provides that the owner of land which is not adjacent to a public land, may acquire a right of way to the nearest public road, but no right of way can be established through any person's yard, garden or curtilage without the consent of the owner.

SECTION 1.15 SUSPENSION OF LAWS.

No power of suspending laws shall be exercised except by the legislature.

Comment: Present section 21. No change.

SECTION 1.16 SUBORDINATION OF MILITARY POWER.

The military shall be held in strict subordination to the civil power.

Comment: Present section 27. The first half of the present section, prohibiting the maintenance of a standing army, is eliminated as unnecessary.

ARTICLE II

Distribution of Powers of Government

SECTION 2.01. POWERS OF GOVERNMENT.

The powers of the government of the state shall be divided into three departments: the legislative, the executive, and the judicial. No department shall exercise powers properly belonging to another.

Comment: This is a substitute for sections 42 and 43 of the

present Constitution. No change in substance is involved.

The changes in language here and in the Judicial Article are not intended to bar the establishment of administrative boards having powers which to some extent cut across executive, legislative and judicial lines. See *Ex parte Darnell*, 262 Ala. 71, 76So2d 770 (1954). Authority to vest judicial powers in such agencies is specifically granted in the Judicial Article, VI, Sec. 6.01.

ARTICLE III

The Legislative Department

SECTION 3.01. LEGISLATIVE POWER.

The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives.

Comment: Present section 44. No change.

The Commission considered and debated at length the advisability of proposing that a unicameral legislature be substituted for the traditional two houses. There was strong minority support for the change.

Some of the principal reasons for a unicameral legislature may be briefly indicated.

The historic difference in the basis of representation in the two houses, one on the basis of local population and the other on the basis of political units, has been substantially modified by the decisions of the United States Supreme Court requiring the election of state senators as well as representatives on a population basis. *Reynolds v. Sims*, 377 U.S. 533 (1964). Although the court does permit some weight to be given to the preservation of the integrity of political subdivisions and applies a less strict standard for state legislative districts than for congressional districts, *Mahan v. Howell* U.S. (Feb. 1973), the ultimate requirement for both houses of a state

legislature is reasonable equality of population. *Swann v. Adams*, 385 U.S. 440 (1967).

A one house legislature would be much more economical, and presumably more efficient. Money spent on duplicate staffs and services could be saved in part, and used to improve the facilities and services essential to the proper and effective performance of legislative responsibility. As a consequence of the "one man one vote" rule, this economy and efficiency can now be attained without loss of the distribution of political interests and the integrity of political units which heretofore justified the two-house systems.

To the argument that two houses are needed to act as checks on each other, proponents of one house reply that the presence of two houses often serves as an excuse for avoiding responsibility, or for "passing the buck." Much wasted motion and maneuvering would be eliminated if the legislature were reduced to one house.

Although recognizing the validity of these arguments, a majority of the Commission elected to stay with the traditional bicameral organization.

SECTION 3.02. ELECTION AND TERMS OF OFFICE OF SENATORS AND REPRESENTATIVES.

Senators and representatives shall be elected for a four-year term on the Tuesday succeeding the first Monday in November. The legislature may change the time of holding elections. The terms of office of the senators and representatives shall commence on the day after their election.

Comment: Present section 46. No change in substance. Obsolete provisions have been omitted.

SECTION 3.03 ELECTION TO FILL VACANCY IN SENATE OR HOUSE OF REPRESENTATIVES.

Whenever a vacancy occurs in either house of the legislature the governor shall issue a writ of election to fill such vacancy for the remainder of the term. All expenses of the election shall

be paid by the state. If a legally qualified candidate for election to the vacancy is unopposed when the last date for filing for places on the ballot has passed, the the election shall not be held, and a certificate of election shall be issued in the manner provided by law.

Comment: Amendment 97. No change of substance.

SECTION 3.04. QUALIFICATIONS OF SENATORS AND REPRESENTATIVES.

Senators shall be at least twenty-five years of age, and representatives twenty-one years of age at the time of their election. They shall have been citizens of this state and residents of their respective districts for one year next before their election. They shall reside in their respective districts during their terms of office.

Comment: This section is substantially the same as present section 47 except that it reduces the three year state residence requirement to one year. The validity of residence qualifications for state legislative candidates is currently being questioned, and the lower Federal courts are divided. *Wallace v. Yucht*, 352 F. Supp. 85 (D.C. Del. 1972); *Green v. McKeon* 468 F. 2d 883 (CA 6, 1972).

SECTION 3.05. APPOINTMENT TO OFFICE OF PROFIT.

No senator or representative shall, during the term for which he shall have been elected, be appointed to any office of profit under this state, which shall have been created or the emoluments of which shall have been increased by the legislature during such term. A cost of living adjustment of the salary attached to an office, permitted by the provisions of this constitution, shall not be considered an increase in the emoluments of such office.

Comment: This is a substitute for section 59 of the present constitution. The present exception of offices which "may be

filled by election by the people" has been omitted. The last sentence has been added. Section 3 of the proposed article on Public Officers permits the legislature by general law to provide for adjustments in the compensation of officers based on appropriate cost-of-living criteria.

SECTION 3.06. ORGANIZATIONAL SESSION.

The legislature shall convene on the second Tuesday in January next succeeding their election and shall remain in session for not longer than ten consecutive days, unless a longer period is required for the determination of contested elections. No business shall be transacted at such sessions except the organization of the legislature, the election of officers, the appointment of committees, the introduction of bills, the ascertainment and declaration of the results of the election of state officers, the determination of contested elections for such offices, and the judging of the election and qualifications of the members of the legislature.

Comment: Present section 48, as amended by Amendments 39 and 57. The language has been simplified, and one important change is made, in providing for the introduction of bills at the organizational session. This would enable the committees to begin work immediately on bills.

SECTION 3.07. ELECTION OF PRESIDING OFFICERS AND DETERMINATION OF QUALIFICATION OF MEMBERS.

The senate, at the beginning of each organizational session, and at such other times as may be necessary, shall elect one of its members president pro tempore thereof, to preside over its deliberations in the absence of the lieutenant-governor; and the house of representatives, at the beginning of each organizational session, and at such other times as may be necessary, shall elect one of its members as speaker; and the president pro tempore of the senate and the speaker of the house of representativs shall hold their offices respectively until their successors are elected and qualified. Each house shall choose its own officers and shall judge of the election and qualification of its members.

Comment: Section 51. No change in substance except to substitute "organizational session" for "regular session."

SECTION 3.08. PROCEDURE FOR ELECTION BY LEGISLATURE.

In all elections by the legislature the members shall vote publicly, and the votes shall be entered on the journal.

Comment: This is section 83 of the Constitution without change in substance. The word "publicly" has been substituted for the words "viva voce."

SECTION 3.09. TIME AND LENGTH OF LEGISLATURE SESSIONS.

Regular sessions of the legislature shall be held annually and shall be limited to thirty legislative days within a period of ninety calendar days. The legislature shall convene in regular sessions on the first Tuesday in February, unless the day of meeting is changed by law. Special sessions of the legislature convened in the manner provided by this Constitution shall be limited to twenty legislative days within a period of not more than forty-five calendar days.

Comment: This section would replace the portions of present sections 48 and 76 concerning legislative sessions. It provides for annual sessions of the legislature. The length of regular sessions has been changed from thirty-six legislative days to thirty legislative days within a period of ninety calendar days, and the length of special sessions has been changed from thirty legislative days to twenty legislative days within a period of not more than forty-five calendar days.

This section also changes the time for the beginning of regular sessions from the first Tuesday in May to the first Tuesday in February. This change would probably necessitate changing the time of primary elections.

This proposal for annual sessions was recommended by the Commission in its 1971 interim report, and enacted by the

legislature with minor changes, in Act No. 1264. The proposal was rejected by the voters at the general election in November, 1972. After full and careful consideration of the arguments advanced against annual sessions, the Commission decided to renew its recommendation.

Public recognition of the desirability, even the necessity of annual sessions of state legislatures is rapidly approaching unanimity. In 1942 only three states had regular annual sessions. Now 36 states have them and others are in process. Georgia adopted annual sessions in 1954, Florida and Mississippi in 1968, and Virginia, Missouri, Indiana and Nebraska in 1970.

The reasons are clear:

First—The volume of business with which the legislature is now confronted simply cannot be handled on an intermittent, every-other-year basis. At the regular session in 1971, 4180 bills were introduced, and 2305 were enacted — but even this did not meet the State's needs. In the same year there were three special sessions in which over 1700 bills were introduced, and 1200 passed. The year 1971 was a peak, but only the result of a continuous accumulation of unavoidable and ever-increasing problems. The inescapable necessity for a more or less continuous review and solution of state problems by the legislature is manifested by the fact that there have been 26 sessions of the Legislature in the last 13 years.

Second—Aside from the demands of the mere physical volume of work, the nature of the basic function and responsibility of the legislative branch requires its continuous attention. The legislature is the state's policy making body — its board of directors. The business of the state is not only growing at a tremendous rate, with a budget in excess of a billion dollars, but it is faced with social and economic problems of great complexity which require prompt legislative solutions.

Any board of directors of a business of that size, with over 22,000 employees and 80 departments and divisions, which met only every other year and attempted to plan on a two year budget, would be universally recognized as guilty of a gross neglect of duty.

Third—While it may be true that the enormous volume of proposed and enacted legislation can and should be reduced by legislative self-discipline, regular annual sessions would promote efficiency through a more orderly and restrained introduction of bills, and a corresponding improvement in the care and thoroughness of the legislative process. The present system encourages a flood of bills at regular sessions because it is not known whether or when a special session will be held, and because of the obstacles to legislation not included in the call of special sessions. The efficiency of individual members would likewise be improved by the more effective service of freshman legislators, who need one session to learn problems and procedures.

Fourth—The cost of regular annual sessions would appear to be less than the present system. One regular session would certainly be less than the cost of two or more special sessions. The need for special sessions would be substantially reduced, and the increased efficiencies inherent in the annual sessions would further reduce costs.

SECTION 3.10. LEGISLATION IN SPECIAL SESSION.

When the legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by a vote of two-thirds of each house.

Comment: Section 76. No change except to eliminate the last sentence which limits the length of special sessions, now covered in Section 9.

SECTION 3.11. COMPENSATION COMMISSION FOR THE MEMBERS OF THE LEGISLATURE.

(a) Members of the legislature shall receive an annual salary to be determined in accordance with the provisions of this section. No change in the compensation or expense allowance of members of the legislature shall be made except in accordance with the provisions of this section.

(b) A state compensation commission is hereby created

which shall recommend the salary, expense allowances, and other compensation of the members of the legislature. The commission shall consist of five members. The governor, president of the senate, speaker of the house, attorney general, and chief justice of the supreme court shall each appoint one member.

(c) The terms of the commissioners shall be five years. Of the initial appointees, the governor and attorney general shall each appoint one for two years; the president of the senate and speaker of the house shall each appoint one for four years; and the chief justice shall appoint one for five years. No member of the commission shall hold any ther public office.

(d) The members of the commission shall elect one of their number as chairman at their first meeting and every four years thereafter. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(e) The commission shall submit a report to the legislature on the first day of the regular session which convenes in the odd-numbered years preceding the quadrennial election of members of the legislature. The recommendations of the commission shall become law unless rejected or altered by act of the legislature within fifteen legislative days after submission.

(f) No change in salary, expense allowance or other compensation shall apply to any legislator during the term for which he was elected.

Comment: This section would replace the compensation provisions of present sections 18 and 19. The proposed change in the amount and method of fixing the compensation of the legislature would correct what is generally reognized as a very bad situation and help to assure a more professional and more competent legislature. Legislators must now have a constitutionally fixed salary, and adjust their own compensation by per diem expense and travel allowances. The amendment would provide for an independent commission, appointed for staggered terms, to recommend the compensation for succeeding legislatures. Changes in pay or allowances could not be applied during the term of legislators approving them.

SECTION 3.12. COMPENSATION OF OFFICERS AND EMPLOYEES.

The legislature shall prescribe by law the number, duties, and compensation of the officers and employees of each house, and no payment shall be made from the state treasury or be in any way authorized to any person except to an acting officer or employee elected or appointed in pursuance of law.

Comment: Present section 67 without change.

SECTION 3.13. QUORUM AND ADJOURNMENT.

A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as each house may provide. Neither house shall, without the consent of the other, adjourn for more than three days.

Comment: Sections 52 and 58 combined. No change.

SECTION 3.14. POWERS OF EACH HOUSE TO MAKE RULES.

Each house shall have power to determine the rules of its proceedings and to punish its members and other persons for contempt or disorderly behavior in its presence; to enforce obedience to its rules and processes; to protect its members against violence or offers of bribes or corrupt solicitation; and with the concurrence of two-thirds of the house, to expel a member, but not a second time for the same offense. A member expelled for corruption shall not thereafter be eligible to either house, and punishment for contempt or disorderly behavior shall not bar prosecution for the same offense.

Comment: Sections 53 and 54 combined. The last clause of section 53 has been omitted as unnecessary.

SECTION 3.15. PRIVILEGES OF MEMBERS OF THE LEGISLATURE.

COMMENTARY

Members of the legislature shall, in all cases except treason, felony, violation of their oath of office, or breach of peace be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house shall not be questioned in any other place.

Comment: Present section 56. No change.

SECTION 3.16. FORM OF BILLS.

(a) Every bill, except general appropriation bills, general revenue bills, and bills adopting a code or revision of statutes, shall be confined to one subject and matter properly connected therewith, and the subject shall be briefly and clearly expressed in the title.

(b) No law shall be revived or amended by reference to its title only, but the act revived or the section amended shall be re-enacted and published at length.

Comment: This is a substitution for present section 45. It makes no change in substance. The first sentence of section 45 has been omitted as unnecessary.

SECTION 3.17. JOURNAL OF PROCEEDINGS.

Each house shall keep a journal of its proceedings and cause the same to be published as soon as practicable. A record vote with the yeas and nays entered on the journal, shall be taken on any question on the demand of one-tenth of the members present. Any member of either house shall have the right to protest against any act or resolution and have the reason for his protest entered on the journal.

Comment: Present section 55. The language has been simplified with no substantive change.

SECTION 3.18. ENACTMENT OF LAWS.

No law shall be enacted except by bill, and no bill shall become a law unless, prior to its passage:

(a) It has been referred to a standing committee of each house, acted upon by such committee in session, and reported, which facts shall affirmatively appear upon the journal of each house. A majority of either house may discharge a committee from the consideration of a bill and consider the same as if reported.

(b) It has been read by its title on three different days in each house and on its final passage it has been read at length in each house.

(c) A vote has been taken on it in each house, the name of each member voting for and against recorded in the journal, and except as otherwise provided in this Constitution, a majority of each house be recorded as voting in its favor.

Comment: Sections 62 and 63 have been combined in substance. The last sentence in paragraph (a) providing for compulsory reporting of bills, has been added. Paragraph (b) reduces the present requirement for reading bills at length on three different days to once only on final passage. The exception in (c) refers to larger votes required to override vetoes (Art. V, Sec. 5.06(c-2)), to change court rules (Art. VI, Sec. 6.11), for approval of state debt (Art. VIII, Sec. 8.11), for impeachment (Art. XII, Section 12.01), and for submission of constitutional amendments or calling a convention (Art. XIV, Secs. 14.01 and 14.03.

SECTION 3.19. AMENDMENTS AND CONFERENCE REPORTS.

No bill shall be so altered or amended on its passage through either house as to change its original purpose. No amendment to a bill or report of a committee of conference, shall be adopted by either house, except in the manner required in subparagraph (c) of section 3.18.

Comment: Present sections 61 and 64 have been combined and the language simplified without substantial change.

SECTION 3.20. DUTY TO DELIVER BILLS.

When a bill has been passed by the house in which it origin-

ated, it shall be the duty of the secretary or clerk of that house to deliver such bill immediately, and in no case later than twenty-four hours, to the other house where it shall receive first reading not later than the next legislative day after delivery. When a bill has been passed by both houses, it shall be returned immediately by the secretary or the clerk to the originating house. The secretary or clerk of the house in which the bill originated shall attest its passage and forthwith, and in no case later than six days, deliver the bill to the governor and enter the fact upon the journal.

Comment: This section is a substitute for present section 66. It eliminates the constitutional requirement that the presiding officer of each house sign all bills, after they have been read at length.

SECTION 3.21. REVENUE BILLS.

All bills for raising revenue shall originate in the house of representatives, but may be altered, amended, or rejected by the senate.

Comment: Section 70 has been revised to eliminate the requirement that the governor prepare a general revenue bill and to eliminate the prohibition against passing a revenue bill during the last five days of the session.

SECTION 3.22. APPROPRIATION BILLS.

(a) The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for the public debt, and for the public schools and educational institutions. The salary of no officer or employee shall be increased in any such bill, nor shall any appropriations be made therein for any officer or employee unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

Comment: This paragraph is substantially the same as

present section 71 except that it refers to one or more "general appropriation bills" rather than "the general appropriation bill" and it broadens "public schools" to include all educational institutions. The words "public schools" do not include colleges and universities. *In re Opinions of the Justices,* **229 Ala. 98, 155 So. 699 (1934).**

(b) If general appropriation bills for each of the expenses stated in paragraph (a) of this section have not been passed before the last three legislative days of a regular session, no other legislation shall be finally passed until such appropriation bills have been passed.

Comment: This is a new provision with the purpose of inducing the legislature to pass the general appropriation bills before the final day of the session.

(c) If the legislature at any regular session fails to pass general appropriation bills as defined in paragraph (a), the appropriations for the next succeeding fiscal year for such expenses shall be the same as the appropriations in effect at the end of the legislative session, unless thereafter changed by act of the legislature.

Comment: This is a new provision to prevent a cut-off of funds resulting from a failure to pass the general appropriation bills.

SECTION 3.23. PAYMENT OF APPROPRIATIONS.

No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in the manner provided by law.

Comment: Present section 72. No change.

SECTION 3.24. APPROPRIATIONS TO CHARITABLE INSTITUTIONS.

No appropriations shall be made to any charitable or educa-

tional institution not under the absolute control of the state, except by a vote of two-thirds of all members elected to each house.

Comment: Present section 73 has been changed to eliminate the exception in favor of "normal schools."

SECTION 3.25. PRIVATE PENSION LAWS.

The legislature shall not enact any special or private law granting any pension.

Comment: This section is a substitute for sections 97 and 98, which prohibit the legislature from retiring an officer on pay, or paying the salary of an officer after his death.

SECTION 3.26. RELEASING OBLIGATION OWED TO STATE, COUNTY OR MUNICIPALITY.

No obligation or liability of any person, association, or corporation held or owned by this state or by any county or other municipality thereof, shall ever be remitted, released, or postponed or in any way diminished, by the legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; provided that this section shall not prevent the legislature from providing by general law for the compromise of doubtful claims.

Comment: Present section 100. No change.

SECTION 3.27. CORPORATIONS.

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws, provided, however, that public corporations wholly owned and controlled by the state may be created and dissolved, or their charter amended, by special act.

Comment: This section is proposed as a substitute for sections 229 and 238 of the present constitution. The proposed

section is the same as the Illinois Constitution, Art. XIII, sec. 6, except that the proviso concerning public corporations has been added.

SECTION 3.28. GENERAL LAWS DEFINED.

A general law within the meaning of this constitution is a law which in its terms and effect applies either to the whole state, without excepting any county, political subdivision or geographical district, or to all such subdivisions of the state in a class. In the enactment of general laws, the legislature may classify geographical areas or districts invoiving two or more counties or municipalities on the basis of criteria reasonably related to the subject of the law. The legislature shall establish classes of counties and municipalities based on population, but not more than eight classes of each shall be in effect at any one time. No county or municipality shall be exempt from any general law applicable to counties or municipalities in its class.

Comment: This section is proposed as a substitute for section 110 of the present constitution.

The principal change is the limitation of classifications based solely on population to eight classes. This is a provision not found in other state constitutions, although some do provide for a limited number of classes for laws dealing with the government and powers of counties. It is designed to prevent the much abused use of so-called "general laws of local application" based solely on population to avoid the requirements for local legislation.

The legislature is, however, free to make general laws based on any classification of two or more counties or municipalities which is logically related to the purpose of the law.

Following is an example of a possible county population classification of eight classes, based on the 1970 census:

Classification of Counties

I Class — 500,000 and above.
II Class — 250,000 - 500,000.

III	Class —	150,000 - 250,000.
IV	Class —	100,000 - 150,000.
V	Class —	75,000 - 100,000.
VI	Class —	50,000 - 75,000.
VII	Class —	25,000 - 50,000.
VIII	Class —	- 25,000.

Counties in Each Class

I	Jefferson
II	Mobile
III	Madison and Montgomery
IV	Calhoun and Tuscaloosa
V	Etowah and Morgan
VI	Baldwin, Cullman, Dale, Dallas, Houston, Lauderdale, Lee, Marshall, Talladega, Walker.
VII	Blount, Chambers, Chilton, Clarke, Coffee, Colbert, Covington, DeKalb, Elmore, Escambia, Jackson, Lawrence, Limestone Pike, Russel, St. Clair, Shelby, Tallapoosa.
VIII	All others — 31 counties.

SECTION 3.29. LIMITATION ON ENACTMENT OF LOCAL LAWS.

No special, prviate, or local law shall be created concerning any matter when a general act deals with the same subject matter and is applicable, even though such special, private, or local law may differ from the applicable general law. No special, private or local law shall be enacted in any case when the relief sought can be given by any court of this state. The courts, and not the legislature, shall judge whether the matter of such law is dealt with by an applicable general act, or whether the relief sought can be given by any court. The legislature shall not indirectly enact any such special, private, or local law by the partial repeal of a general law.

Comment: Present section 105 has been revised to prevent the enactment of local laws when the subject matter is covered by a general law. The 1901 Constitution undertook to restrict

local legislation by three provisions: Section 104, which prohibits a local law dealing with a list of 31 subjects, section 105, which forbids the enactment of a local law "in any case which is provided for by a general law," and section 106 which requires a special procedure for passing a local law. Neither section 104 nor 105, as interpreted by the Alabama Supreme Court, effectively prohibits general laws of local application. *Dearborn v. Johnson*, 234 Ala. 84, 173 So. 864 (1937). The court has held that section 105 does not prohibit enactment of a local law if it differs from a general law, even if the subject matter is the same. *State ex rel. Jones v. Steele*, 263 Ala. 16, 81 So. 2d 542 (1955). *Mathis v. State*, 280 Ala. 16, 189 So. 2d 564 (1966). See *Standard Oil Co. v. Limestone County*, 220 Ala. 231, 124 So. 423 (1929). The draft would reverse this rule.

SECTION 3.30. PROCEDURE FOR ENACTING LOCAL LAWS.

No special, private, or local law shall be enacted unless a notice setting forth the intention to introduce it and the substance of the contemplated law shall have been published once a week for two weeks in the county or counties where the law is to be applicable in the manner provided by law prior to the introduction of the bill. Proof by affidavit of publication of such notice with a copy of the text thereof shall be filed with the legislature upon the introduction of the bill and, after passage of the bill, set forth in the journal.

Comment: This section revises present section 106 to make the procedure for enacting local laws less burdensome, and thereby reduce the use of general laws of local application. The notice requirements are reduced from four publications to two.

SECTION 3.31. CONFLICT OF INTEREST.

A code of ethics, which shall include penalties for violation, prohibiting conflict between public duty and private interest, shall be prescribed by law for all members of the legislature, state employees and non-judicial officers.

COMMENTARY

Comment: This section is a substitute for the limited provision of present section 82 with respect to conflicts of interest. This problem would be covered as to judges by the canons of ethics required by the judicial article, Sec. 6.08.

SECTION 3.32. CONTINUITY OF GOVERNMENT IN EMERGENCIES.

In order to insure continuity of state and local government operations in periods of emergency only, resulting from disasters occurring in this state, the legislature may provide by law for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and enact other laws necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section, elections shall always be called as soon as possible to fill any vacancies in elective offices temporarily occupied under any legislation enacted pursuant to the provisions of this section.

Comment: This section has been taken from the Michigan Constitution, Art. 4, sec. 39 and is proposed as a substitute for amendment 159. The proposed section is broader than amendment 159 which provides for the continuity of the legislature only in the event of an enemy attack.

ARTICLE IV

Representation

SECTION 4.01. COMPOSITION OF SENATE AND HOUSE OF REPRESENTATIVES.

The number of senators shall be not more than thirty-five and the number of representatives shall be not more than one hundred six.

Comment: This section would replace present sections 50,

197 and 198 and would set a ceiling on the membership of each house at its present level. The Section 50 mandate requiring at least one representative for each newly created county is deleted because of its unconstitutionality under recent decisions of the Supreme Court of the United States.

SECTION 4.02. LEGISLATIVE DISTRICTS.

The state shall be divided by law into districts for the election of members of the Senate and into districts for the election of members of the House of Representatives. Each district shall consist of compact and adjoining territory, and the ratio of the number of legislators in each district to the population of such district shall be as nearly equal among districts as practicable.

Comment: This section would replace portions of present sections 199, 200 and 201. The new requirement that the ratio of the number of legislators in each district to its population be as nearly equal as practicable is the standard used by the United States Supreme Court. *Wesberry v. Sanders*, 376 U. S. 1 (1964). The new section would also allow the use of multi-member districts where permitted by Federal law.

SECTION 4.03. LEGISLATIVE REAPPORTIONMENT PROCEDURE.

(a) Reapportionment of senatorial and house of representative districts shall be accomplished as soon as practical after official publication of each decennial census of the United States. A commission on legislative reapportionment consisting of five members, shall be established no later than the first day of February in each year following the year in which the decennial census of the United States is officially reported. The lieutenant governor, attorney general, and chief justice of the Alabama Supreme Court shall, by a majority vote, appoint all members of the commission and shall certify their names to the officer designated by law.

(b) No commission member shall hold an elected office in the state. Not more than one member of the commission shall

be appointed from any congressional district. The members of the commission shall select one of their number as chairman. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(c) It shall be the duty of the legislature to appropriate sufficient funds for the compensation and expenses of the commission and staff appointed by the Commission.

(d) No later than ninety days after the commission has been certified, or the population data for the state as determined by the census has become available, whichever is later, the commission, by a majority vote of its membership, shall adopt a reapportionment plan for the senate and house and shall submit it to the governor, the lieutenant governor and speaker of the house. If the commission plan is reported to such officials before the expiration of the first ten legislative days of the first regular session of the legislature held after the appointment of the commission, such plan shall become law if the legislature does not adopt a reapportionment plan at such session. If the commission plan is not reported until after the expiration of the first ten legislative days of such legislative session, and if the legislature does not adopt a reapportionment plan at such session, the governor shall, as soon as practicable after the commission plan has been reported, call a special session of the legislature to adopt a reapportionment plan. If the legislature does not adopt a reapportionment plan at such special session, the commission plan shall become law.

(e) The supreme court shall have original jurisdiction, upon the petition of any qualified voter of the state, to review the new reapportionment law. If the supreme court holds invalid a reapportionment plan enacted by the legislature, then the commission plan shall become law if it complies with the requirements of this constitution. If the supreme court finds the commission plan invalid, the court shall issue an order remanding the plan to the commission and directing the commission to reapportion the state in a manner not inconsistent with such order. When the court finally approves a reapportionment plan, such plan shall remain in effect until the adoption under this

section of a reapportionment plan after the next United States decennial census.

Comment: This section would replace the procedural aspects of present sections 199-201. The principal change is the provision for automatic reapportionment by a commission if the legislature fails to reapportion itself.

Section 201 which provides for a state census if the federal census is unsatisfactory has been deleted.

SECTION 4.04. CONGRESSIONAL REDISTRICTING.

The state shall be divided by law into congressional districts for the election of the members of the United States House of Representatives under the same procedure, under the same commission, and according to the mandate of the preceding section prescribing the manner of reapportioning senate and house representatives districts.

Comment: This section has no counterpart in the 1901 Constitution. It applies the method of legislative reapportionment provided by the previous section to congressional redistricting.

ARTICLE V

Executive Department

SECTION 5.01. EXECUTIVE POWER AND THE EXECUTIVE DEPARTMENT.

The principal executive power of this state shall be vested in a governor. The executive department shall include the governor, a lieutenant governor and an attorney general.

Comment: Present sections 112 and 113.

The only change in present section 113 is a simplication of language.

COMMENTARY

The non-policy making officers named in section 112 would no longer be vested with constitutional status. They are the State Auditor. Secretary of State, State Treasurer, Superintendent of Education, Commissioner of Agriculture and Industries and the Sheriffs. All of the state officers other than the sheriffs properly fall within and should be subject to the control of the executive department under the governor. The omission of these officers from the constitution would not leave any gaps of authority or function as their duties are fully provided for in the code: State Auditor, Title II, Sections 205, et seq., Secretary of State, Title 55, Sections 182, et seq., State Treasurer, Title 55, Sections 211, et seq., Superintendent of Education, Title 52, Sections 41, et seq., Commissioner of Agriculture and Industries, Title 2, Sections 14, et seq., Sheriffs, Title 54.

Present Code provision for the election of these officers, Title 17, Secs. 65, 68, would not be affected by the change, but would no longer be constitutionally required.

SECTION 5.02. ELECTION AND TERM OF OFFICE OF EXECUTIVE OFFICERS.

The governor, lieutenant governor and attorney general shall be elected by the electors of the state at the same time and places appointed for the election of members of the legislature. The governor, lieutenant governor, and attorney general shall hold their respective offices for a term of four years, commencing on the first Monday after the second Tuesday in January next succeeding their election and until their successors shall be elected and qualified. Each of said officers shall be eligible to succeed himself in office, but no person shall be eligible to suceed himself for more than one additional term.

Comment: Present sections 114 and 116 (as changed in 1968 amendment 282). Section 114 is changed only by the deletion of the nonpolicy making elected officers and removal of an obsolete provision for 1902. Section 116, as revised in 1968, is changed only by the deletion of the lesser offices.

SECTION 5.03. ELECTION RETURNS.

The returns of every election for governor, lieutenant gover-

nor and attorney general shall be sealed and transmitted by the returning officers to the seat of government and directed to the speaker of the house of representatives, who shall open and publish the votes in the manner prescribed by law. The person having the higest number of votes for any one of said offices shall be declared elected; but if two or more shall have the highest and an equal number of votes, the legislature by joint vote shall choose one of said persons without delay. Contested elections shall be determined by both houses in the manner prescribed by law.

Comment: Present Section 115. The nonpolicy making officers are deleted. The procedure for opening and counting the results is left to the legislature rather than being detailed in the Constitution.

SECTION 5.04. QUALIFICATIONS OF GOVERNOR AND LIEUTENANT GOVERNOR.

The governor and lieutenant governor shall be at least twenty-five years of age when elected and shall have been qualified voters in this state for three years prior to their election.

Comment: Present section 117. The residency requirements have been changed from "resident citizens of this state for at least seven years" to three years as qualified voters prior to the election. The minimum age has been lowered from thirty to twenty-five. The requirement of ten years of United States citizenship has been eliminated. Under Section 7.01 of the Suffrage Article, only citizens can be qualified voters.

SECTION 5.05. COMPENSATION AND PLACE OF RESIDENCE OF GOVERNOR.

The governor shall receive a salary to be prescribed by law and shall reside in the state capital.

Comment: Present Section 118. The non-policy making officers have been deleted. The requirement that the governor's salary be neither increased nor decreased during his term has

been deleted as this is prohibited by section 11.03 in the Public Officers Article. The unnecessary exception to the place of residence requirement which allowed a move during epidemics has been omitted.

SECTION 5.06. LEGISLATIVE RESPONSIBILITIES OF GOVERNOR.

(a) SPECIAL SESSIONS. The governor may by proclamation on extraordinary occasions convene the legislature at the seat of government or at a different place if the seat of government shall become dangerous. He shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

Comment: This makes no change in present section 122 except to omit the list of reasons why the seat of government might become too dangerous in which to meet.

(b) MESSAGES TO THE LEGISLATURE. The governor shall from time to time give to the legislature information of the state of the government. Within five days after the convening of each regular session of the legislature, he shall transmit to it a budget setting forth his financial program for each of the fiscal years which will have begun before the next regular session. The governor shall also account to the legislature, as may be prescribed by law, for all money received and paid out by him or by his order; and at the commencement of each regular session he shall present to the legislature estimates of the amount of money required to be raised by taxation for all purposes.

Comment: This omits the clauses in section 123 concerning the governor's recommendations of programs to the legislature and the requirement of written messages on the condition of the state at the beginning of each session and at the close of his term. The budget provision is adopted from Title 55, section 93 of the Code.

(c) VETO. Every bill passed by the legislature shall, before it becomes a law, be presented to the governor unless otherwise

provided by this Constitution. If the legislature is in session the bill shall become law if the governor signs or fails to veto it within seven calendar days of presentation. If the legislature adjourns sine die before presentation or during such seven day period, the bill shall become law if the governor signs or fails to veto it within twenty calendar days of presentation. When the governor vetoes a bill, he shall, within seven calendar days of presentation, return it to the secretary or clerk of the house in which the bill originated, unless the legislature shall, by final adjournment, prevent such return. The bill shall be reconsidered and if a majority of the members elected to each house vote for the passage of the bill it shall become law.

(d) EXECUTIVE AMENDMENTS. The governor may, within seven calendar days after a bill has been presented to him return such bill to the house in which it originated, with recommendations for its amendment. If both houses approve such amendment, the bill as amended shall become law. If either house refuses to approve such amendment, or fails to act thereon before the end of the session, then the bill shall again be sent to the governor and acted on by him as if it were before him for for the first time, but no further amendment to such bill can be recommended by the governor. In all cases above set forth, the names of the members voting for and against the bill, or amendments thereto, shall be entered on the journal.

Comment: Paragraphs (c) and (d) undertake to simplify and clarify the unnecessarily detailed procedure prescribed by present section 125 following the presentation of a bill to the governor. The following changes have been made in that section:

(1) The present section gives the governor six days to act on a bill, if the legislature is in session, unless the time is extended because the house in which the bill originated is in recess, and fifteen days in which to consider a bill it it is presented within five days of adjournment. The proposed substitute would give the governor seven calendar days to consider a bill while the legislature is in session, and twenty days from presentation if the legislature adjourns within seven days after the bill is presented to him.

COMMENTARY

(2) Under the present section, a bill presented to the governor after adjournment becomes law only if approved by the governor. The draft provides that a bill presented after adjournment becomes a law unless vetoed by the governor — eliminating the pocket veto.

(3) Under present section 125, if both houses approve the governor's amendment, the bill "shall again be sent to the governor and acted on by him as other bills." The proposed substitute provides that if both houses approve the amendment, the bill as amended becomes law.

(4) Under the present section, if the governor proposes an amendment the bill becomes law only if a majority elected to each house vote in favor of the bill with the amendment. The effect of proposing an amendment is to veto the bill unless the amendment is approved. The draft would permit the governor to consider signing the bill even though the amendment is rejected. The governor would be prohibited from recommending amendments to the bill when it is returned to him.

(e) APPROPRIATION BILLS. The governor shall have power to approve or disapprove any item or items of any appropriation bill embracing distinct items, and the part or parts of the bill 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 bills over the executive veto; and he shall in writing state specifically the item or items he disapproves, setting the same out in full in his message, but in such case the enrolled bill shall not be returned with the governor's objection.

Comment: This is present section 126 without change.

SECTION 5.07. EXECUTIVE AND ADMINISTRATIVE POWERS OF THE GOVERNOR.

(a) EXECUTION OF LAWS. The governor shall be responsible for the faithful execution of the laws. He may by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate or restrain violation of any constitutional or legislative

power, duty or right by an officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceeding against the legislature.

Comment: This expands present section 120 and the power to bring an action in the name of the state to enforce compliance with any constitutional or legislative mandate. Other state Constitutions contain similar provisions, e.g., Alaska, New Jersey, Florida, Michigan. See also: Model State Constitution.

(b) INFORMATION. The governor may require information in writing, under oath, from the officers of the executive department, and all officers and managers of state institutions, on any subject relating to the duties of their respective offices or the condition, management and expenses of their respective departments or institutions. Any such officer or manager who makes a wilfully false report or fails without sufficient excuse to make a required report on demand, is guilty of an offense for which he may be removed.

Comment: This is present section 121, without change of substance.

(c) EXECUTIVE REORGANIZATION. Except for organizational arrangements specified in this Constitution, the governor may make such changes in the organization of the executive department or in the assignment of functions among its units as he considers necessary for efficient administration. If such changes affect existing satutory law, they shall be set forth in executive orders, which must be submitted to the legislature within the first ten calendar days of a regular or special session, and shall become effective, and shall have the force of law at the end of such regular or special session unless specifically modified or disapproved by a majority elected to each house. The governor shall not, however, make changes which would become effective later than ninety days before the end of his administration. For the purpose of his subsection the term "executive department" shall include only those departments, bureaus, and agencies whose director or head is appointed by, and serves at the pleasure of, the governor.

COMMENTARY

Comment: This is a new provision giving the governor the power to reorganize agencies of the executive department by executive order. Other recent state Constitutions have simila. provisions, e.g., North Carolina, Illinois and Virginia.

The last sentence limits the governor's reorganization power to departments headed by his cabinet officers. Under this definition the following existing departments and agencies would be included: Department of Finance, Department of Revenue, Bureau of Publicity and Information, Department of Insurance, Department of Conservation, Department of Labor, Department of Industrial Relations, State Highway Department, State Military Department, Department of Public Safety, Department of Civil Defense, and Alabama State Docks Department. The following departments and agencies would be among those not included: Personnel Department, Department of Agriculture and Industries, Department of Aeronautics, Banking Department, Department of Education, Department of Archives and History, Department of Public Health, Department of Mental Health, Department of Pensions and Security, Radiation Control Agency, State Agency for Social Security, Department of Veterans' Affairs, Department of Toxicology and Criminal Investigation and all commissions, boards, associations, schools colleges, etc.

(d) COMMANDER-IN-CHIEF. The governor shall be commander-in-chief of the armed forces of this state, except when they are called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion.

Comment: This is adopted from present section 131 and deletes the provision that the governor need not command in person as being unnecessary.

(e) POWER TO FILL VACANCIES. The governor shall have power to fill vacancies in all offices of the state for the filling of which the Constitution or laws make no other provision.

Comment: This is proposed as a substitute for present section 136 and was adopted from the new Virginia Constitution. It grants a general power to fill vacancies the filling of

which is not covered by law or the Constitution. The present section allows the governor to fill vacancies in the elective state offices covered by Section 112, unless otherwise provided by law.

This section attempts to group all of the executive and administrative powers of the governor into one place.

SECTION 5.08. EXECUTIVE CLEMENCY.

The governor shall have power to grant reprieves and commutations to persons under sentence of death. The legislature may provide for and regulate the administration of pardons, paroles, remission of fines and forfeitures, and may authorize the courts having criminal jurisdiction to suspend sentence and to order probation. A pardon shall relieve from civil and political disabilities unless specifically provided otherwise therein.

Comment: Section 124 and Amendment 38. The last sentence reverses the present provision, which does not relieve disabilities unless expressed in the pardon.

SECTION 5.09. SUCCESSION TO THE OFFICE OF GOVERNOR.

(a) REMOVAL, DEATH, OR RESIGNATION OF GOVERNOR. In case of the governor's removal from office, death, or resignation, the lieutenant governor shall become governor.

Comment: Present section 127 has been divided into four subsections because of its length and each subsection will be discussed separately. Paragraph (a) adopts the first sentence of the present section with no change.

(b) REMOVAL, DEATH, OR RESIGNATION OF GOVERNOR AND LIEUTENANT GOVERNOR. If both the governor and lieutenant governor be removed from office, die, or resign, the unexpired term of the governor and lieutenant governor shall be filled by a special election, except when such unexpired term is less than one year in which case a new governor and lieutenant governor shall not be elected until the next regular gubernatorial election. In the event of such vacancy the office of governor

shall be held and administered by the speaker of the house of representatives, the president pro tempore of the senate or the attorney general, in that order, until the new governor is elected and qualified.

Comment: This makes three changes in present section 127. First, it substitutes the provision in the Model State Constitution calling for a special election if the unexpired term is one year or longer for the present provision for the election of a new governor if the vacancy occurs more than 60 days from the next general election. Second, the line of succession is changed to put the speaker first, before the president pro tem. Third, the non-policy making elected state officers are removed from the line of succession.

(c) VACANCY DUE TO DISABILITY OR ABSENCE. When the governor is unable to discharge the duties of his office by reason of physical or mental disability, or when the duties are not being discharged by reason of his absence from the state, the power and authority of the office shall, until the governor returns to the state or is restored to his mind, or relieved from other disability, devolve in the order herein named upon the lieutenant governor, the speaker of the house of representatives, the president pro tempore of the senate or the attorney general. If any of the officers in the line of succession be under any of the disabilities herein specified, the office of the governor shall be administered in the order named by such of these officers as may be free from such disability. If the governor's disability or absence does not terminate within six months the office of governor shall be vacant as if the governor had died.

Comment: This makes three changes in the present section 127. First, the governor may be removed only if he fails to perform his duties due to his absence, rather than the present automatic removal for an absence for twenty days. Second, a new provision is added which renders the office of governor vacant if his disability continues for six months. Third, the line of succession is switched to put the speaker first, as in paragraph (b).

(d) FAILURE OF GOVERNOR TO QUALIFY. If the governor-elect fails to qualify, the lieutenant governor-elect shall qualify and exercise the duties of governor until the governor-elect qualifies. In the event that both the governor-elect and the lieutenant governor-elect fail to qualify, the speaker of the house, the president pro tempore of the senate or the attorney general shall, in the order named, administer the office until the governor-elect or the lieutenant governor-elect qualifies, or until the office of governor has been filled by an election and the newly elected governor has qualified. If both the governor-elect and the lieutenant governor-elect fail to qualify within six months of the beginning of their terms of office, the unexpired terms of the governor-elect and the lieutenant governor-elect shall be filled by a special election.

Comment This makes three changes in Section 127. The non-policy making elected state officers are removed from the line of succession. Provision is made for filling the offices of governor and lieutenant governor by a special election, if both governor-elect and lieutenant governor-elect fail to qualify within six months. The same change has been made in the line of succession as in (b) and (c).

SECTION 5.10. PROCEDURE FOR DETERMINATION OF INCAPACITY OF GOVERNOR.

(a) If the governor or acting governor shall appear to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the supreme court upon the request in writing by the attorney general, the president pro tempore of the senate, and the speaker of the house, or any one of them, not next in succession to the office of governor, to ascertain the truth of the charges. If he is adjudged to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the officer next in succession to perform the duties of the office until the disability is removed or until the governor returns to state. If the incumbent denies that the disability of the governor, or other person entitled to administer the office, has been removed, the supreme court shall ascertain the truth

concerning the same. If the disability has not continued for more than six months, and has been removed, the court shall so decree, and the office shall be restored to him. The supreme court shall prescribe the method of taking testimony and the rules of practice in such proceedings.

Comment: This is based on present section 128. It differs from that section in that it is not limited to mental disability. Physical disability and absence are also included.

(b) The physical disability of the governor to perform his duties may also be established by his written declaration to that effect transmitted to the officer next in line of succession and to the attorney general. If the physical disability of the governor is removed within six months, he may resume his office by notifying the acting governor and the attorney general. Any question concerning the governor's ability to resume his office shall be decided by the supreme court.

Comment: This is a new section which provides a method by which a governor may voluntarily declare his physical disability. This is provided for by several recent state Constitutions, e.g., Illinois, North Carolina, Virginia and Florida.

SECTION 5.11. COMPENSATION OF ACTING GOVERNOR.

The lieutenant governor, speaker of the house, president pro tempore of the senate or attorney general, while administering the office of governor, shall receive the same compensation as that prescribed by law for the governor and no other.

Comment: Present section 129. The proposed section changes the line of succession and deletes the offices eliminated from the constitution.

SECTION 5.12. LIEUTENANT GOVERNOR.

(a) DUTIES. Lieutenant Governor shall be ex officio president of the senate, but shall have no right to vote except in case of a tie.

(b) SALARY. The salary of the lieutenant governor shall be as prescribed by law.

(c) REMOVAL FOR INSANITY. In case the lieutenant governor shall become of unsound mind, such unsoundness shall be ascertained by the supreme court upon the suggestion of the governor, and if found to be insane, his office shall be vacant.

Comment: Subsection (a) is transferred from section 117. **Subsection (b)** eliminates the present requirement of section 118 that the lieutenant governor's salary be equal to that of the speaker of the house. **Subsection (c)** is adopted from a similar provision on the attorney general found in present section 136.

SECTION 5.13. ATTORNEY GENERAL.

(a) QUALIFICATIONS. The attorney general shall be at least twenty-five years of age. He shall have been a qualified voter, and licensed to practice law, in this state for three years prior to his election.

COMMENT: This makes the following changes in the qualifications required by present section 132. First, the seven year citizenship requirement has been eliminated as unnecessary. Second, the five year residency requirement has been lowered to a requirement that the attorney general has been a qualified voter (and hence necessarily a citizen) for three years. Finally, a requirement that the attorney general has been a member of the state bar for three years has been added.

(b) REMOVAL FOR INSANITY. In case the attorney general shall become of unsound mind, such unsoundness shall be ascertained by the supreme court upon the suggestion of the governor, and if found to be insane, his office shall be vacant.

Comment: This adopts the provision in the last sentence of section 136.

SECTION 5.14. STATE SEAL.

There shall be a seal of the state, which shall be used officially by the governor, and the seal now in use shall continue

to be used until another shall have been adopted by the legislature. The seal shall be called, "The Great Seal of the State of Alabama."

Comment: Present section 133. No change.

ARTICLE VI

The Judicial Department

SECTION 6.01. JUDICIAL POWER.

(a) Except as otherwise provided by this constitution, the judicial power of the state shall be vested exclusively in a unified judicial system which shall consist of a supreme court, a court of appeals, a trial court of general jurisdiction known as the circuit court, a trial court of limited jurisdiction known as the district court, and a probate court.

(b) The legislature may create judicial officers with authority to issue warrants and may vest in administrative agencies established by law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies are created.

Comment: This is a substitute for section 139 of the present constitution as amended by Amendment 111. For the purpose of preventing the multiplication of courts of diversified jurisdiction, paragraph (a) provides that the judicial power of the state shall be vested exclusively in a unified judicial system consisting of the courts named. This section differs from the present constitution in the following respects:

(1) Under the present constitution the legislature may create "such courts of law and equity" as it may deem desirable. This section in effect prohibits the creation of courts other than those named.

(2) This section omits reference to the senate sitting as a court of impeachment. This was omitted as unnecessary

since legislative impeachment is provided for by proposed Article XII.

(3) The prohibition found in present section 139 against establishing a court of general jurisdiction in a county of less than twenty thousand has been omitted.

(4) Amendment 111 providing that the legislature shall have authority to constitute school officials as judicial officers has been omitted as it serves no useful purpose.

(5) Paragraph (b) adds a new provision to avoid any question concerning the power of the legislature to create officers with authority to issue warrants and to vest "judicial powers" in administrative agencies.

SECTION 6.02. THE SUPREME COURT.

(a) The supreme court shall be the highest court of the state and shall consist of one chief justice and such number of associate justices as may be prescribed by law.

(b) The supreme court shall have original jurisdiction (1) of cases and controversies as provided by this Constitution, (2) to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction, and (3) to answer questions of state law certified by a court of the United States.

(c) The supreme court shall have such appellate jurisdiction as may be provided by law.

Comment: Paragraph (a) of this section is in substance the same as section 151 of the present constitution.

Paragraph (b) provides for the power of the supreme court to supervise other courts in language similar to section 140 of the present constitution. In a new provision, it gives the court jurisdiction to answer questions of state law certified by a federal court. This type of procedure has been recommended by the American Law Institute and the Commissioners on Uniform State Laws, and is recognized in a number of states. It would expedite the decision of cases and

avoid unnecessary litigation when the federal courts have to deal with state law questions of first impression.

Paragraph (c) adopts present section 140 without change of substance.

SECTION 6.03. COURT OF APPEALS.

The court of appeals shall consist of such number of judges and division as may be provided by law. It shall exercise appellate jurisdiction under such terms and conditions as shall be provided by law and by rules of the supreme court. The court of appeals shall have no original jurisdiction except that it shall have power to issue all writs necessary or appropriate in aid of its appellate jurisdiction.

Comment: This is a new section providing for a court of appeals. The present constitution does not expressly mention a court of appeals but Section 139 grants power to the legislature to create "such courts of law and equity inferior to the supreme court," consisting of not more than five members, as the legislature may decide to establish.

The proposed section would authorize the legislature, and the Supreme Court, to provide for broad powers of review in the Court of Appeals, including power to issue revisory writs.

SECTION 6.04. CIRCUIT COURT.

(a) The state shall be divided into judicial circuits. For each circuit, there shall be one circuit court having such divisions and consisting of such number of judges as shall be provided by law.

(b) The circuit court shall exercise original general jurisdiction in all cases except as may otherwise be provided by law. The circuit court may be authorized by law to review decisions of state administrative agencies and decisions of inferior courts. It shall have authority to issue such writs as may be necessary or appropriate to effectuate its powers, and shall have such other powers as may be provided by law.

Comment: This is a substitute for present sections 142-148 dealing with the jurisdiction of circuit and chancery courts. The requirement of sections 142 and 145 that circuit judges have resided in the circuit for one year preceding election has been dropped. This is left to the legislature under section 6.07.

SECTION 6.05. DISTRICT COURTS.

The district court shall be a court of limited jurisdiction and shall exercise uniform original jurisdiction in such cases, and within such geographical boundaries, as shall be prescribed by law.

Comment: This is a new section providing for a new court of limited jurisdiction which would take the place of all courts, except the probate court, inferior to the circuit courts.

The present wide differences in the jurisdiction of inferior courts, as to amounts which may be sued for, criminal penalties, rules of procedure, etc., make it very difficult for the bar to deal with such matters as misdemeanor trials, collections, and other matters in more than one county or city. This section would require that the jurisdiction of all of these courts be uniform throughout the state.

SECTION 6.06. PROBATE COURT.

There shall be a probate court in each county which shall have such jurisdiction as may be provided by law.

Comment: This is a substitute for section 149 of the present constitution dealing with probate courts. The jurisdiction of probate courts is now covered by Title 13, Chap. 5 of the Code, supplemented by special acts a to some counties.

SECTION 6.07. QUALIFICATIONS OF JUDGES.

Judges of the supreme court, court of appeals, circuit court and district court shall be licensed to practice law in this state and have such other qualifications as the legislature may prescribe. Judges of the probate court shall have such qualifications as may be provided by law.

COMMENTARY

Comment; This is a substitute for present section 154. The age and residence requirements of sections 142, 145 and 154 have been omitted.

Section 154 requires that judges of all courts of record, except probate judges, "shall be learned in the law." The proposed section requires that judges of the supreme court, court of appeals, circuit and district courts "shall be licensed to practice law in this state", and leaves other qualifications, and all qualifications of probate judges, to the legislature.

SECTION 6.08. PROHIBITED ACTIVITIES.

(a) No judge of any court of this state shall, during his continuance in office, engage in the practice of law or recieve any remuneration for his judicial service except the salary and allowances authorized by law.

(b) No judge, except a judge of a probate court, shall seek or accept any non-judicial elective office, or hold any other office of public trust, or make any contribution to or hold any office in a political party or organization, or campaign for any candidate, except himself, for political office.

(c) The supreme court shall adopt rules of conduct and canons of ethics, not inconsistent with the provisions of this constitution, for the judges of all courts of this state.

Comment: Paragraph (a) is a substitute for section 162 of the present constitution, prohibiting judges from practicing law "in any courts."

The prohibition in paragraph (b) against holding any other office of public trust appears in present section 150. The remainder of (b) prohibiting political activity is based on recently adopted provisions of other state constitutions and the American Bar Association canons of judicial ethics. See, Virginia (1969) Art. VI, sec. 11; Colorado (1966) Art. VI, sec. 18; Illinois (1970) Art. VI, sec. 13; Canons of Judicial Ethics, 28 and 30.

Paragraph (c) is new. It is similar to the 1970 Illinois Constitution, Art. VI, sec. 13(a).

SECTION 6.09. JUDICIAL COMPENSATION.

(a) A state judicial compensation commission is hereby created which shall recommend the salary and expense allowances for all the judges of this state except for judges of the probate court. The commission shall consist of five members; one shall be appointed by the governor, one by the president of the senate, one by the speaker of the house, and two by the governing body of the Alabama state bar.

(b) Members of the judicial compensation commission shall serve for terms of four years. Any vacancy on the commission shall be filled in the same manner in which such position was originally filled. The legislature shall appropriate sufficient funds for the expenses of the Commission.

(c) No member of the commission shall hold any other publice office, or office in any political party, and no member of the commission shall be eligible for appointment to a state judicial office so long as he is a member of the commission and for two years thereafter.

(d) The commission may submit a report to the legislature at any time within the first five calendar days of a regular session. The recommendations of the commission shall become law unless rejected by a joint resolution or altered by act of the legislature at the session to which the report is submitted. No change in salary or expense allowance shall apply to any judge during the term for which he was elected or appointed except as permitted by this constitution.

Comment: This is a new section providing for a commission to recommend judicial salaries. There is precedent for this provision in both federal and state law. In 1967 Congress established the Commission on Executive, Legislative and Judicial Salaries and authorized it to recommend salaries which would become effective unless changed or disapproved by Congress. 2 U.S.C.A. sec. 351-361. In 1968 Michigan adopted an amendment to its constitution providing for a compensation commission to recommend salaries for members of the legislature, the governor, lieutenant governor and justices of the supreme court. Art. 4, sec. 12.

COMMENTARY

The last sentence in subsection (d) would permit change in the compensation of a judge during his term of office only as permitted by Article XI. Section 11.03 of that Article would permit changes in the compensation of members of a court serving on staggered terms, at the end of the first term to expire. This would apply to district, circuit and appellate judges.

SECTION 6.10. ADMINISTRATION.

The chief justice of the supreme court shall be the administrative head of the judicial system. He shall submit budget recommendations to the governor and the legislature for state appropriations for the entire unified judicial system, exclusive of the probate courts. He may appoint an administrative director to serve at his pleasure and to supervise the administrative operation of the judicial system. The chief justice may assign appellate and trial judges for temporary service in any court.

Comment: This is a new section but its provisions are consistent with recent statutes creating the department of court management (Tit. 13, sec. 9(10)-9(13), and granting to the chief justice administrative supervision of the judicial system (Tit. 13, sec. 38). Since the chief justice is the administrative head of the judicial system, the proposed section gives him the duty to submit a budget for all courts except the probate courts.

The provision for a judicial budget is new. It stops short of giving the judicial branch final authority over its budget, although there is much to be said for such a provision, and there is substantial modern authority for the view that courts have inherent power to see that financial support necessary to maintain the system of justice is provided. See *Inherent Powers of the Courts*, National College of the State Judiciary, Reno, Nevada (1973). A judicial budget proposed under the proposed mandate should have a strong presumption of correctness, and strengthen the independence of the judiciary.

SECTION 6.11. POWER TO MAKE RULES.

The supreme court shall make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts. These rules may be changed by an act of the legislature adopted by a two-thirds vote of each house.

Comment: Although a recent statute grants rule-making power to the supreme court in civil cases (Tit. 13, sec. 17(1)-17(2)), it seems desirable to provide for this power as to both civil and criminal procedure by an explicit provision of the constitution. However, the second sentence of the proposed section authorizes the legislature to change a rule of procedure by a two-thirds vote of each house. Florida has a similar provision in its judicial article adopted in 1971 (Art. V, sec. 2). Some recent state constitutions have given an exclusive rule-making power to the supreme court which is immune from legislative interference. See: Arizona, Art. VI, sec. 5(5); Delaware, Art. IV, sec. 13(1); Michigan, Art. 6, sec. 5; Pennsylvania, Art. V, sec. 10(c).

SECTION 6.12. NUMBER OF CIRCUIT AND DISTRICT JUDGES.

(a) The supreme court shall establish criteria for determining the number and boundaries of judicial circuits and districts, and the number of judges needed in each circuit and district. If the supreme court finds that a need exists for increasing or decreasing the number of circuit or district judges, or for changing the boundaries of judicial circuits or districts, it shall, at the beginning of any session of the legislature, certify its findings and recommendations to the legislature.

(b) If a bill is introduced at any session of the legislature to increase or decrease the number of circuit or district judges, or to change the boundaries of any judicial circuit or district, the supreme court shall, within three weeks, report to the legislature its recommendations on the proposed change. No change shall be made in the number of circuit or district judges, or the boundaries of any judicial circuit or district unless authorized by an act adopted after the recommendation of the supreme

court on such proposal has been filed with the legislature.

(c) An act decreasing the number of circuit or district judges shall not affect the right of any judge to hold his office for his full term.

Comment: This is a new section proposed to defer legislative action to increase or decrease the number of circuit or district judges until consideration has been given to the recommendations of the supreme court on the need for such changes.

SECTION 6.13. SELECTION OF JUDGES.

(a) All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts.

ALTERNATIVE SUBSECTION (a):

All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts. The legislature shall provide for the election of all judges except probate judges on a non-partisan basis, without designation of any political affiliation. Nominations for judicial office shall be in the manner prescribed by law. Any incumbent judge may become a candidate for re-election by filing a declaration of candidacy at the time and in the manner prescribed by law.

Comment: Present section 152 provides for the election of judges of the supreme court, circuit courts and probate courts. Judges of other courts established by law may be elected or appointed as provided by the legislature (Section 153). The Commission has carefully considered the now widespread movement for modification or abandonment of the selection of judges by popular election. That system, which did not exist at the time of Independence but was introduced during the Jacksonian era, has been much criticized by prestigious organizations which have devoted many years to its study, including the American Bar Association and the American Judicature Society. In Alabama, the Citizens Conference on the Courts in 1969 recommended the adoption of the so-called Merit System of selection of judges. See SB 423 and HB 748, 1969. This plan provides

for initial appointment of judges by the governor from panels selected by commissions composed in part of laymen. The appointee, at the end of his first term, runs for re-election without opposition.

A number of states have retained the elective system, but sought to eliminate the obvious abuses of unrestrained political partisanship by providing that judges be elected on non-partisan ballots.

A majority of the Commission was unwilling to recommend abandonment of the elective system altogether, but felt that there is much merit in the attempt to eliminate political partisanship. It was therefore decided to submit in the report the above alternative provision for non-partisan elections. This would include a provision allowing incumbent judges, whether appointed or elected, to be put on the ballot for election without nomination.

(b) The office of a judge shall be vacant if he dies, resigns, retires, or is removed. Vacancies in any judicial office except probate judge shall be filled by appointment by the governor from a list of three nominees submitted by the appropriate judicial nominating commission. If the governor fails to appoint any of the nominees within thirty days after the list of nominees is submitted, the commission which selected the nominees shall appoint one of the nominees to fill the vacancy. Vacancies occurring in the office of judge of the probate court shall be filled by appointment or election as provided by law.

Comment: Vacancies in any office of a judge holding office by election are now filled by appointment by the governor (Section 158). In Jefferson County, under the provisions of Amendments 83 and 110, when a vacancy occurs in the office of judge of the Circuit Court, the governor must fill the vacancy by appointing one of three persons nominated by a commission. Paragraph (b) provides for filling vacancies in the office of judge of the supreme court, court of appeals, circuit or district court by a method similar to that used in Jefferson County at the present time.

COMMENTARY

SECTION 6.14. JUDICIAL NOMINATING COMMISSIONS.

(a) An appellate court nominating commission is hereby established to nominate and submit to the governor names of persons for appointment to vacancies in the supreme court and court of appeals. The commission shall consist of seven members, one of whom shall be the chief justice or acting chief justice of the supreme court, who shall serve as chairman, three shall be members of the state bar appointed by the governing body of the Alabama State Bar, two shall be citizens who are not lawyers appointed by the governor, and one a citizen who is not a lawyer appointed by the attorney general.

(b) There shall be one nominating commission for each judicial circuit. In circuits consisting of one county, the commission shall consist of five members, two of whom shall be appointed by the members of the bar residing in the county, two by the governing body of the county, and one, who shall be the chairman, by the chief justice or acting chief justice of the supreme court. In circuits consisting of more than one county, the commission shall consist of five or more members, the chairman of which shall be appointed by the chief justice or acting chief justice of the supreme court, and one member of which shall be appointed by the governing body of each county and one member by the bar of each county in the circuit.

(c) The terms of the members of the judicial nominating commissions shall be concurrent with the term of the chief justice of the supreme court. Any vacancy on a commission shall be filled in the same manner in which the position was originally filled Members of all judicial nominating commissions shall be appointed within ninety days after the adoption of this section of the constitution.

(d) No member of any nominating commission shall receive any compensation for his services, but shall be allowed necessary travel expenses incurred in the performance of duty. No member of any commission except the chief justice shall hold any other public office, or office in any political party, and no member of any commission shall be a nominee of a commission so long as he is a member and for two years thereafter.

Comment: Judicial nominating commissions to select nominees for appointment to judicial vacancies are provided for in the constitutions of a number of states at the present time, e.g., Alaska, Colorado, Florida, Missouri, Nebraska and Oklahoma.

SECTION 6.15. TENURE OF OFFICE.

(a) The term of office of each judge of a court of the judicial system of this state shall be six years.

(b) A judge appointed to fill a vacancy under the provisions of Section 6.13(b) shall serve an initial term lasting until the first Monday after the second Tuesday in January following the next general election held after he has completed one year in office. At such election such judicial office shall be filled for a full term of office beginning at the end of the appointed term.

(c) A law reducing the number of judges of the supreme court or court of appeals shall be without prejudice to the right of the judges affected to seek retention in office. The reduction shall become effective when a vacancy in the affected court occurs.

Comment: Paragraph (a) is a substitute for present section 155 which provides for a six year term of office for judges of the supreme court, the circuit court and the probate court.

Paragraph (b) is a new provision. At the election following the occurence of a vacancy, the judicial office would be filled for a full term and not merely for the unexpired term.

Paragraph (c) is new. It was suggested by the 1970 Illinois Constitution.

SECTION 6.16. RETIREMENT.

The legislature shall provide by law for the retirement of judges, including supernumerary judges, with such conditions, retirement benefits, and pensions for them and their dependents as it may prescribe. No person shall be elected or appointed to a judicial office after reaching the age of seventy years, provided that a judge over the age of seventy may be appointed to the

office of supernumerary judge if he is not eligible to receive state judicial retirement benefits.

Comment: Sections 97 and 98 of the present constitution apparently prohibit establishing a retirement system for state officers. These sections should be repealed.

The first sentence in this section is similar to provisions in other state constitutions, e.g., Virginia, Pennsylvania and Colorado. The last sentence, without the proviso, is similar to a provision in the Michigan constitution.

The proviso is designed to protect judges presently in supernumerary status or who may be qualified for that status, in the period between adoption of the article and the effective date of a pension system carrying them and their dependents.

SECTION 6.17. JUDICIAL INQUIRY COMMISSION.

(a) A judicial inquiry commission is created consisting of seven members. The supreme court shall appoint one supreme court or court of appels judge and two judges of the circuit court as members of the commission. The governor shall appoint two persons who are not lawyers and the governing body of the Alabama state bar shall appoint two members of the state bar to serve as members of the commission. The commission shall select its own chairman. The terms of the members of the commission shall be four years. A vacancy on the commission shall be filled for a full term in the manner the original appointment was made.

(b) The commission shall be convened permanently with authority to conduct investigations, receive or initiate complaints concerning any judge of a court of the judicial system of this state. The commission shall file a complaint with the court of the judiciary in the event that a majority of the members of the commission decide that a reasonable basis exists, (1) to charge a judge with violation of any canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to charge that the judge is

physically or mentally unable to perform his duties. All proceedings of the commission shall be confidential except the filing of a complaint with the court of the judiciary. The commission shall prosecute the complaints.

(c) The supreme court shall adopt rules governing the procedures of the commission.

(d) The commission shall have subpoena power and authority to appoint and direct its staff. Members of the commission who are not judges shall receive per diem compensation and necessary expenses only. The legislature shall appropriate funds for the operation of the commission.

SECTION 6.18. COURT OF THE JUDICIARY.

(a) The court of the judiciary is created consisting of one judge of the supreme court or court of appeals, who shall be selected by the supreme court, and shall serve as chief judge of the court of the judiciary, two judges of the circuit court, who shall be selected by the supreme court, and two members of the state bar, who shall be selected by the governing body of the Alabama state bar. The court shall be convened to hear complaints filed by the judicial inquiry commission. The court shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his duties.

(b) A judge aggrieved by a decision of the court of the judiciary may appeal to the supreme court. The supreme court shall review the record of the proceedings on the law and the facts.

(c) The supreme court shall adopt rules governing the procedures of the court of the judiciary.

(d) The court of the judiciary shall have power to issue sub-

poenas. The legislature shall provide by law for the expenses of the court.

Comment: Sections 17 and 18 are proposed as a substitute for Amendment 317 (January, 1972). The principal substantive difference between the amendment and these sections is that the latter establish a Judicial Inquiry Commission to investigate complaints and a separate body, the Court of the Judiciary, to hear and try the charges. On principle, and probably as a matter of constitutional right, investigatory and prosecuting functions should be separated from adjudicatory responsibilities.

SECTION 6.19. DISQUALIFICATION.

A judge shall be disqualifed from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary.

Comment: This section is similar to a provision of Amendment 317.

SECTION 6.20. CONTINUATION OF COURTS.

All courts in existence at the time this article of the constitution becomes effective shall retain their powers for three years, unless sooner terminated by act of the legislature.

Comment: Three years should be sufficient time for enactment of the legislation which would be required to implement the new article. This would be principally the creation of the new District Courts. If annual sessions are rejected, this provision should probably be extended to four years.

ARTICLE VII

Suffrage and Elections

SECTION 7.01. QUALIFICATIONS FOR VOTING.

Every citizen of the United States who has attained the age

of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his residence. The legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting.

Comment. This fixes voting age at eighteen, and leaves the residency requirements and other conditions for registration up to the legislature. It would replace present sections 177 and 178 (as amended by 207 and 223). These sections contain specific age (21), residence (state for one year and county six months), literacy, and poll tax requirements.

SECTION 7.02. DISQUALIFICATIONS.

No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

Comment: This would replace present section 182 which disqualifies idiots and insane persons and those persons convicted of any of the thirty-three crimes listed in the section. Restoration of civil and political rights is provided for by Code, Tit. 42, sec. 16.

SECTION 7.03. REGULATION OF ELECTIONS.

The legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.

Comment: This leaves the regulation of elections to the legislature and would replace the long, involved, and largely obsolete provisions of present sections 179 through 193 and amendments 41 and 223.

ARTICLE VIII

Taxation and Debt Limitation

SECTION 8.01. LIMIT ON POWERS TO TAX AND LEND CREDIT.

The State of Alabama and its political subdivisions shall use

their power to tax and lend thir credit only for public purposes, except as otherwise permitted by amendments to the Constitution of 1901 at the time this section is adopted or as herein otherwise permitted.

Comment: This section expands the authority of the State and its political subdivisions to permit them to use their taxing power and lend their credit for any public purpose, but it also limits the use of these powers to public purposes. Present section 93 prohibits the State from engaging in "works of internal improvement" or lending its credit in aid thereof. This restriction has resulted in numerous constitutional amendments to permit the state to build roads and bridges, state docks, hospitals, airports and like improvements. This section would eliminate the necessity of submitting amendments of this type for ratification from time to time.

Present section 94 denies to the legislature the power to authorize counties, cities or towns to lend their credit or grant public money to any private person or agency or to become a stockholder in any corporation or association. The language of Section 1 imposes the same restrictions on local government agencies. An exception for industrial and commercial development is provided in Section 14 of this Article.

SECTION 8.02. DELEGATION OF TAXING POWER.

The power to levy taxes shall not be delegated to individuals or private corporations or associations.

Comment: This is present section 212 without change. Section 212 has been construed to prohibit the levy or repeal of a tax subject to a popular referendum. *Al Means, Inc. v. City of Montgomery*, 268 Ala. 31, 104 So. 2d 816 (1958); *Opinions of the Justices*, 232 Ala. 56, 166 So. 706 (1936); 270 Ala. 38, 115 So. 2d 464 (1959); 287 Ala. 321, 251 So. 2d 739 (1971); 252 Ala. 561, 42 So. 2d 81 (1941); 287 Ala. 326, 251 So. 2d 744 (1971).

However, many amendments to the 1901 Constitution have made property tax referenda commonplace in this state, and

local elections on property taxes are provided for in Section 8.10 of this article. Although there may be no valid distinction between referenda on property and other taxes, the difference is deeply engrained in public thinking and tradition, and the Commission has concluded that it would recommend no change in the present approach of the 1901 Constitution and amendments, which recognize the distinction.

SECTION 8.03. STATE TAXES ON INCOME.

(a) A state tax on income shall be levied only on net income and shall not exceed the rate of five per cent.

(b) A resident individual or a corporation organized under the law of this state shall be allowed to deduct from gross income the amount of federal income tax paid or accrued within the taxable year. A nonresident individual or foreign corporation shall be allowed to deduct only that amount of federal income tax paid or accrued in the taxable year on income received from sources within the state to be determined in accordance with such laws as the legislature may enact.

Comment: This section takes the place of several amendments to the 1901 constitution, including Nos. 25, 61, 212 and 225. It retains the present 5 per cent maximum on the income tax and the present prohibition against the removal of the deduction of the Federal income tax from gross income. The requirement of amendment 61 that the proceeds be used for property tax reduction and education has been deleted and the personal exemption specified in amendment 25 has been omitted, as a matter of simplification. The trend is toward an increase, not a reduction, in the original $300 personal exemption.

SECTION 8.04. IMPOSITION OF INCOME TAX WITH REFERENCE TO FEDERAL LAW.

Except as prohibited by this Constitution, the legislature in enacting laws taxing income, may define income by reference to provisions of the laws of the United States as they then exist or may prospectively be enacted, with such modification as may be prescribed by the law of this state.

COMMENTARY

Comment: This provision is a new one. It permits a simplified levy, as e.g. a levy based on a percentage of the income as shown on the Federal income tax return. The purpose is to permit the legislature to simplify the task of the taxpayer in having to fill out two separate tax returns and make two separate complicated calculations to determine his federal and state income tax liability. It merely permits the legislature to grant as a convenience to the taxpayer a so-called "piggy-back" levy. The amendment is necessary because otherwise there could be an invalid delegation of the State's taxing power to the congress. A similar provision is contained in a number of recent constitutions, including Missouri, Kansas, New York, Utah and Oregon.

SECTION 8.05. STATE INHERITANCE AND ESTATE TAXES.

The legislature may provide for the assessment, levy and collection of a tax upon inheritances and for the levying of estate taxes not to exceed in the aggregate the amounts which may by law of the United States be allowed to be credited against or deducted from any similar tax upon inheritances or taxes on estates assessed or levied by the United States on the same subject.

Comment: This is taken from and intended as a simplification of present amendment 23. It permits an estate or inheritance tax not to exceed the credit allowed for such levy against the Federal estate tax. The last sentence of amendment 23 has been omitted because it is redundant and unnecesary.

SECTION 8.06. DEDICATED FUNDS.

No proceeds of any state tax hereafter levied by the legislature, or derived from an increase in the rate of taxes now imposed, shall be dedicated to any special purpose, except when required by the federal government for state participation in federal programs. Any dedication of taxes for special purposes existing at the time of the ratification of this section shall continue until terminated by act of the legislature.

Comment: This is a new section designed to give the legislature greater freedom in budgeting and effectively using available State funds to meet the financial obligations of the State. The greater part of the State's revenues is now earmarked for special purposes. Amendment 61 restricts a portion of the income tax to homestead exemptions and to the special educational trust fund. Amendment 93 earmarks vehicle and motor fuel taxes for highway expenditures. Amendment 272 earmarks the revenue derived from hunting and fishing licenses for conservation. This section retains these and other presently existing earmarkings, but it permits the legislature to terminate them.

SECTION 8.07. LIMITATION ON STATE AD VALOREM TAXATION.

State ad valorem taxes shall not be levied in excess of six and one-half mills on the assessed value of property in any one taxable year, except for taxes required to pay bonds issued after the ratification of section 8.11 of this article.

Comment: This section imposes the same limit as present section 214. It is recommended as a substitute for section (h) of amendment 325 (ratified May 30, 1972) which limits all property taxes to one and one-half per cent of the fair market value of the property taxed. After thorough consideration and consultation with experts in the field, the Commission has concluded that the one overall limitation on three separate levels of government, state, county and city and in some cases even taxing districts as well, is impracticable and administratively unworkable. If the combined levy of taxes by state, county and city should exceed the limit, the determination of what portion of which levy is unlawful would be practically impossible. Separate limitations on local property taxes are provided in Section 8.10 of this article, but with a procedure for exceeding the limits with local governing body, legislative and voter approval, just as is now provided in amendment 325.

The exception for unlimited taxes to pay bonds will provide a higher credit rating for Alabama bonds and reduce the

interest rate the State will have to pay for its borrowing. Whether this exception is included or not, the State can never afford to default on its bonds, and it is generally recognized that it would not do so. It should get the rate of interest that this unstated policy deserves but the policy must be written into the constitution for the market place to reflect it in the interest which the State must pay.

SECTION 8.08. ASSESSMENT AND CLASSIFICATION OF PROPERTY FOR AD VALOREM TAXATION.

(a) All taxable property within this state, not exempt by law, shall be divided into the following classes for the purposes of ad valorem taxation:

Class I. All property of utilities used in the business of such utilities.

Class II. All property not otherwise classified.

Class III. All agricultural, forest and residential property.

(b) With respect to ad valorem taxes levied by the state, all taxable property shall be forever taxed at the same rate, and such property shall be assessed for ad valorem tax purposes according to the classes thereof as herein defined at the following ratios of assessed value to the fair and reasonable market value of such property:

Class I. 30 percentum.

Class II. 25 percentum.

Class III. 15 percentum.

(c) With respect to ad valorem taxes levied by counties, incorporated cities or towns, or other taxing authority, all taxable property shall be forever taxed at the same rate, and such property shall be assessed for ad valorem tax purposes according to the classes of property defined in paragraph (a) herein and at the same ratios of assessed value to the fair and reasonable market value thereof as fixed in paragraph (b) herein, provided, however, that the legislature may vary the ratio of assessed value to the fair and reasonable market value as to any class of

property as defined in paragraph (b) herein, and provided, further, that the lgislature may fix a uniform ratio of assessment of all property within a county defined in paragraph (a) herein as Class II and III and may fix a different ratio of assessment for property defined in paragraph (a) as Class I. Such ratios as herein authorized may vary among counties so long as each such ratio is uniform within a county.

No class of property shall have a ratio of assessed value to fair and reasonable market value of less than 15 percentum nor more than 35 percentum.

(d) Wherever any constitutional provision or statute provides for, limits or measures the power or authority of any county, incorporated city or town, or other taxing authority to levy taxes, borrow money, or incur indebtedness in relation to the assessment of property therein for state taxes or for state and county taxes such provision shall mean as assessed for county or incorporated city or town taxes as the case may be.

Comment: Subsections (a), (b) and (c) are the same as the first three subsections of amendment 325 ratified on May 30, 1972. Subsection (d) is the same as subsection (g) of amendment 325.

SECTION 8.09. EXEMPTIONS FROM AD VALOREM TAXATION.

(a) The following property shall be exempt from all ad valorem taxation: the real and personal property of the state, counties, incorporated cities or towns, and property devoted exclusively to religous, educational or charitable purposes.

(b) The legislature may provide for other exemptions from ad valorem taxation.

Comment: This is a substitute for present section 91. It is taken from paragraphs (i) and (f) of amendment 325.

SECTION 8.10. TAXATION.

Except for taxes levied by the States, taxes presently per-

mitted by the constitution of 1901 as amended, and taxes required for the payment of bonds issued after the ratification of section 8.12 of this article, no ad valorem taxes on real or personal property shall be levied unless the tax shall have been (1) approved by the authority having power to levy the tax after a public hearing on the proposal, (2) thereafter approved by an act of the legislature, and (3) subsequently approved by a majority of the electors of the area in which the tax is to be levied who vote on the proposal.

Comment: This section is a substitute for section 215 (as amended by amendment 208) and 216 (as supplemented by amendment 56) of the 1901 constitution and numerous amendments providing for local property taxation. It is in substance the same as subsection (e) of amendment 325 and it permits local tax increases above the present limits without a constitutional amendment, but subject to a procedure which requires the approval of the local governing body, the legislature and the local voters. Consideration was given to providing a fixed limit for cities and towns and another for counties but no general limitation could allow for the local variances which now exist as permitted by numerous amendments to the 1901 constitution. This section simply recognizes the status quo as to present authorizations.

Paragraph (d) of amendment 325 is a one time adjustment and for this reason it is not carried forward into this section. If by that provision of amendment 325 the existing constitutional limit is increased for any county, city or town in order to maintain last year's tax yield, then that is the limit which will be in effect under this section.

This section is the product of intensive study, consultation and debate in the commission. Several members of the commission and some of its consultants feel strongly that all constitutional limitations on local property taxes should be eliminated. Only a few state constitutions contain such limitations. There is much to be said for the view that a constitution should not deal with taxes at all, leaving to the legislature and the people the determination of the amount and kinds of

taxes to be levied, subject only to the general requirements of due process and equal protection.

SECTION 8.11. STATE DEBT LIMITATION.

No debt or other obligation payable in whole or in part from taxes shall be contracted by or in behalf of the state except as provided herein and the full faith and credit of the state shall be pledged to all debt incurred under this section.

(a) TEMPORARY BORROWING. The legislature may authorize debts to be contracted to meet deficits in the revenue in anticapation of the collection during the then current fiscal year of state taxes and within appropriations for such fiscal year in an amount not exceeding one-tenth of the average annual tax receipts of the state for the five fiscal years immediately preceding. Such debt shall mature and be paid from such tax collection within the current fiscal year.

(b) DEBTS TO FINANCE CAPITAL PROJECTS OR TO REFUND PREVIOUS OBLIGATIONS. The legislature may authorize debts to be contracted: (1) to finance a capital project which is to be specified in the authorizing act, or (2) to refund a previous obligation of the state. The total principal amount of debts so authorized together with all debts or obligations of the state, payable in whole or in part from taxes, shall not exceed one and three-fourths times the average annual revenue receipts of the state for the immediately preceding five fiscal years. An act authorizing such debt shall require for its passage a vote of three-fifths of the members elected to each house.

(c) ADDITIONAL DEBT. The legislature may authorize debt in excess of the limit provided in paragraph (b) by an act passed by a vote of three-fifths of the members elected to each house and approved by a majority of the electors of the state voting on the question.

(d) BONDS TO FINANCE REVENUE PRODUCING CAPITAL PROJECTS. The legislature may authorize the issuance of general obligation bonds of the state to finance or refinance specified revenue producing projects (including the enlargement or improvement thereof), which are owned and controlled by the

state or by one of its institutions or agencies, to an amount not exceeding the average annual tax revenues of the state for the immediately preceding five fiscal years; and such bonds shall not be included in determining the limitation on debt contained in paragraph (b), provided that:

(1) the bonds shall be secured by a pledge of the net revenues derived from rates, fees or other charges of the projects;

(2) before any such bonds shall be authorized, the governor shall file with the clerk of the house and secretary of the senate his opinion, based on responsible engineering and economic estimates attached thereto, that the anticipated net revenues to be pledged to the payment of the principal and interest on such bonds will be sufficient to meet such payments and to provide such reserves as the act authorizing such bonds may require; and

(3) the act authorizing such bonds shall be adopted by a vote of two-thirds of the members elected to each house.

(e) RETIRING DEBT. All bonds authorized under paragraphs (b), (c), or (d) above shall mature serially in annual or more frequent installments, beginning not later than three years from the date of issue and ending within the estimated useful life of the project as stated in the authorizing act or thirty years from date of issue, whichever is shorter. The principal and interest on all such bonds shall be a first charge on the general revenues of the state and, unless sufficient funds are appropriated in each fiscal year for the payment of such principal and interest, there shall be set aside from the first tax revenues received during each fiscal year and each succeeding fiscal year a sum sufficient to pay such principal and interest.

Comment: This section would replace present section 213, as amended. Section 213 forbids the creation of State debts except for temporary loans not to exceed $300,000. This unrealistic limitation has led to many amendments to the constitution, so much so that the accepted method of authorizing state bonds has come to be by constitutional amendment.

The proposed section will alleviate the need for financing desirable improvements by recurring constitutional amendments. Under it, the legislature could (1) authorize temporary debts in anticipation of tax collections not exceeding one-tenth of five year average tax receipts; (2) create debts for capital projects or to refinance previous debt, in a total amount not exceeding one and three-fourths times the average annual revenues, but only by a vote of three-fifths of the members of each house; (3) create additional debt without limit but only if, in addition to being first approved by a vote of three-fifths of the members of each house, it shall be submitted to and approved by the voters of the State; (4) issue general obligation bonds by a vote of two-thirds of the elected members of each house to finance a specified project determined and certified to be productive of revenues sufficient to amortize the bonds.

These are reasonable authorizations with conservative restrictions. They make unnecessary the subterfuges used in the past to avoid the unrealistic limit on State debts and, by permitting the full faith and credit of the State to be pledged, assure a better rating and correspondingly lower rate of interest for State bonds.

Mandatory requirements for scheduling the repayment of debt and for priorities on state revenues are included in paragraph (e) and these requirements, as well as the provision for an unlimited tax for the payment of State bonds in proposed section 8.07 will also improve the State's credit standing and lower the interest rate on bonds issued under this section.

SECTION 8.12. PROCEDURE FOR INCURRING COUNTY AND MUNICIPAL DEBT.

(a) Except as hereinabove permitted, no county or incorporated city or town shall contract or incur any debt or obligation pledging its full faith and credit, or payable in whole or part from taxes unless (1) such debt or obligation shall be incurred or contracted for the purpose of making one or more capital improvements, (2) shall mature within the estimated useful life of such capital improvements or thirty years whichever is the

shorter and (3) shall have been approved by a majority vote of the electors of such county or incorporated city or town voting at an election held in the manner prescribed by law.

(b) The limitation on incurring a debt or obligation provided by subdivision (a) hereof shall not apply to the following:

(1) Obligations incurred for current operating expenses in any fiscal year which do not exceed the anticipated income of that year available for such purposes.

(2) Temporary loans to be paid within one year made in anticipation of the collection of taxes, not exceeding one-fourth of the average annual general revenues (excluding state and federal grants) or such county, incorporated city or town, for the preceding five fiscal years.

(3) The renewal, refunding or reissue of obligations lawfully issued.

(4) Obligations to procure funds to pay for public improvements, the cost of which is to be assessed, in whole or in part, against the property abutting on or served by such improvements.

(5) Obligations of a public corporation created by any county or incorporated city or town, even though property, whether or not capable of producing income, may have been transferred to such public corporation by a county or an incorporated city or town with or without consideration.

Comment: The present debt limits of section 224 for counties and 225 (as amended by amendment 268) for cities and towns are removed, but safeguards are provided to limit the purposes for which debt may be incurred, to impose strict requirements for amortization and repayment, and to require voter approval. Financing by general obligation warrants without an election will no longer be permitted under this section. Present section 224 limits county indebtedness to three and one-half per cent of assessed value and section 225, as amended, limits municipalities to twenty per cent of assessed value with certain exceptions. In its interim report of May 4,

1971, the commission recommended the retention of debt limits, but proposed an enlargement of the county's limit to ten per cent. After further consideration, the commission has concluded that debt limits should be abandoned in favor of the restrictions in this section.

By paragraph (b), the restrictions on incurring debts and the election requirements for issuing bonds and other obligations are made inapplicable to special types of financing presently exempted from the debt limit and election requirements of the 1901 constitution, and amendments. Sections 222, 224, 225, Amendment 107, 108, 126, 194, 228 and 268.

SECTION 8.13. EXCEPTION TO ELECTION REQUIREMENTS FOR OBLIGATIONS TO FINANCE SMALL CAPITAL PROJECTS.

(a) Notwithstanding the provisions of the constitution requiring an election for incurring debts or obligations, a county or an incorporated city or town may incur a debt or obligation without an election in an amount not exceeding one-fifth of its average annual tax revenue paid into its general fund, and, in the case of a county, also its public building, road and bridge fund, for the last five preceding fiscal years, to finance a capital project, if approved by three-fifths of the members of its governing body after a public hearing, of which at least ten days notice has been given by publication. Notice of approval by the governing body shall be published within seven days after approval.

(b) In the event that five percent of the number of electors who were qualified to vote in such county in the last general election, or in such incorporated city or town in the last municipal election, within thirty days following publication of the notice of approval, file a written petition with the governing body for an election, the debt or obligation shall not be incurred unless approved by a majority of the electors voting on the question at an election.

(c) The total principal amount of all debts or obligations incurred without an election and outstanding under this section

shall never exceed one percent of the assessed value of taxable property in the county or incorporated city or town.

Comment: This is a new exception to local debt restrictions not presently found in the 1901 constitution or any amendments thereto. It exempts a county or a city or town from the election requirement of section 8.12 when it incurs debts in limited amounts for small capital projects. No election is required unless five per cent of the electors, after notice that bonds have been authorized, file a petition for an election.

SECTION 8.14. GENERAL OBLIGATION INDEBTEDNESS OF COUNTIES AND MUNICIPALITIES FOR INDUSTRIAL DEVELOPMENT.

(a) No county or incorporated city or town authorized by any amendment to the constitution of 1901 to incur obligations, payable in whole or in part from taxes, for industrial or commercial development shall incur obligations under such authority later than five years after the adoption of this amendment.

(b) The legislature may authorize any county, incorporated city or town, or other subdivision to incur obligations, payable in whole or in part from taxes, for industrial or commercial development, provided that: (1) the obligations shall be approved by a vote of a majority of the electors of the county, incorporated city or town, or other subdivision voting in an election thereon; and (2) the electors simultaneously authorize the levying of a special tax reasonably estimated to be sufficient to pay the obligations if revenues pledged are insufficient. The type of tax, its possible duration and maximum rate shall be set out on the ballot to be used at such election.

Comment: This section is intended to take the place of the numerous amendments to the 1901 constitution which permit indebtedness payable from county or municipal taxes for industrial or commercial development. Under paragraph (a) outstanding authorizations under these amendments would continue for five years, thus allowing ample opportunity for any county or municipality which has an industrial or commercial project in the works to complete this financing. From the

date of ratification and, in the case of counties and municipalities under special amendments, after the five year cut-off, the local government units would be permitted to incur obligations, payable in whole or in part from taxes, for industrial or commercial development but only subject to the stringent limitations imposed in paragraph (b). These include voter approval of the obligation and simultaneous voter authorization of the levy of a special tax reasonably estimated to be sufficient to pay the proposed bonds in the event that the rent or revenues from which these bonds are made payable should turn out to be insufficient. These provisions are intended to make sure that the voters face up to the possibility that they will have to dig into their own pockets to pay more taxes if these bonds are not paid from rent or revenues as contemplated. Some members of the commission feel strongly that tax obligations should not be used for the subsidization of local industrial and commercial development but the majority felt that these special safeguards were adequate. There was strong sentiment in the commission for making the same industrial and commercial financing opportunities equally available to all counties and municipalities, and this view prevailed, subject to the five year continuance of authority in present local amendments.

ARTICLE IX

Local Government

SECTION 9.01. COUNTIES.

(a) The state shall be divided into political subdivisions called counties; and the present boundaries of the several counties shall continue until changed in accordance with the provisions of this article.

Comment: This is a substitute for present section 38. No change in substance is involved.

(b) The legislature shall by general law prescribe procedures for the creation, abolition, consolidation, merger, and change of boundaries of counties, and shall provide for payment

or apportionment of the public debt of each county affected by a change, provided that no such change shall be made without consent of a majority of the electors voting on the proposal within each county affected.

Comment: This is a substitute for present sections 39, 40 and Amendment 132. The present sections allow the legislature to alter boundaries of counties by a two-thirds vote, prohibit changes which would create boundaries within seven miles of a courthouse, and permit the legislature to alter the boundaries of Macon County by a majority vote. This proposal requires the legislature to provide uniform procedures for all counties whereby boundaries may be changed with the consent of the people involved.

(c) The legislature may, by local law adopted by a vote of two-thirds of each house, change the boundary between adjoining counties, provided that the change shall have been approved by the governing bodies of each county prior to the enactment of such law.

Comment: This provides another method of changing boundaries between adjoining counties. Under this alternate procedure boundaries could be changed by a local law, which would have to be published in each county affected, if adopted by a two-thirds vote of each house of the legislature and approved by the governing bodies of each county.

(d) No new county shall be formed with an area of less than six hundred square miles, and no county shall be reduced below that area by a change of boundaries.

Comment: This retains the prohibition against reducing any county to less than six hundred square miles which is now provided for by section 39.

(e) No courthouse or county site shall be removed, nor shall any branch courthouse be established or abolished, unless such proposal is first submitted to a vote of the electors of the county or counties to be affected and is approved by a majority of those voting upon such proposal. An election under this section on the issue of moving, establishing or abolishing a courthouse or

or apportionment of the public debt of each county affected by a change, provided that no such change shall be made without consent of a majority of the electors voting on the proposal within each county affected.

Comment: This is a substitute for present sections 39, 40 and Amendment 132. The present sections allow the legislature to alter boundaries of counties by a two-thirds vote, prohibit changes which would create boundaries within seven miles of a courthouse, and permit the legislature to alter the boundaries of Macon County by a majority vote. This proposal requires the legislature to provide uniform procedures for all counties whereby boundaries may be changed with the consent of the people involved.

(c) The legislature may, by local law adopted by a vote of two-thirds of each house, change the boundary between adjoining counties, provided that the change shall have been approved by the governing bodies of each county prior to the enactment of such la...

Comment: This provides another method of changing boundaries between adjoining counties. Under this alternate procedure boundaries could be changed by a local law, which would have to be published in each county affected, if adopted by a two-thirds vote of each house of the legislature and approved by the governing bodies of each county.

(d) No new county shall be formed with an area of less than six hundred square miles, and no county shall be reduced below that area by a change of boundaries.

Comment: This retains the prohibition against reducing any county to less than six hundred square miles which is now provided for by section 39.

(e) No courthouse or county site shall be removed, nor shall any branch courthouse be established or abolished, unless such proposal is first submitted to a vote of the electors of the county or counties to be affected and is approved by a majority of those voting upon such proposal. An election under this section on the issue of moving, establishing or abolishing a courthouse or

branch courthouse shall not be held at more frequent intervals than every four years.

Comment: This is a substitute for present section 41 and amendment 81. No change in substance is involved.

SECTION 9.02. MUNICIPALITIES.

The legislature shall provide by general law for the incorporation, government, merger and change of boundaries of cities and towns, and for the annexation of unincorporated territory to incorporated cities and towns, which are referred to as municipalities in this article. When any municipality is abolished, provision shall be made for the protection of its creditors.

Comment: There is nothing in the present constitution similar to this proposed section. However, the proposed section does not grant any power to the legislature which it does not already have. The section simply makes explicit the duty of the legislature to provide by general law for the government and change of boundaries of municipalities.

SECTION 9.03. OPTIONAL PLANS OF GOVERNMENT FOR COUNTIES AND MUNICIPALITIES.

The legislature shall provide by general law optional plans of local government for counties and municipalities. A county or municipality may adopt or repeal a prescribed plan of local government by referendum in accordance with such conditions and procedures as the legislature shall provide by general law.

Comment: This section grants no new power to the legislature. It merely makes explicit the duty of the legislature to provide optional plans of local government for both counties and municipalities.

SECTION 9.04. COUNTY AND MUNICIPAL HOME RULE CHARTERS.

Upon the expiration of two years following the adoption of this article, a county or municipality shall have the right and power to frame, adopt, amend or repeal a home rule charter by the following procedure:

COMMENTARY

1. Upon resolution approved by the governing body of a county or municipality, or upon petition of ten per cent of the number of electors who were qualified to vote in such county in the last general election, or in such municipality in the last municipal election, filed with the governing body and a copy filed with the probate judge, the question of the creation of a commission to frame a home rule charter, or charter amendments, shall be submitted to the electorate not less than forty-five days nor more than ninety days after the filing of the petition at a general election, if one is to be held during such period but if not, at a special election. An affirmative vote of a majority of the electors voting on the question shall authorize the creation of the commission.

2. The resolution or petition to have a charter commission may include the names of seven commissioners, to be listed at the end of the ballot, so that an affirmative vote on the question is a vote to elect the persons named. Otherwise, the resolution or petition shall designate the method by which the members of the charter commission shall be chosen.

3. Any proposed charter, or charter amendment, shall be published by the commission and submitted to the electorate not less than forty-five days nor more than ninety days after publication at a general election, if one is to be held during such period, but if not, at a special election. The procedure for publication shall be prescribed by resolution of the charter commission. The governing body of the county or municipality shall appropriate money to provide for the reasonable expenses of the commission and for the publication of its proposals.

4. Any election pursuant to the provisions of this section shall be conducted in the manner provided by law for holding other county and municipal elections. The cost of any such election shall be paid out of the general funds of the county or municipality.

5. A home rule charter or charter amendment shall become effective if approved by a majority of the electors voting thereon. The charter may provide for direct submission of charter revisions or amendments initiated by petition or by resolution of the governing body of a county or municipality.

6. An election on the issue of the creation of a charter commission shall not be held at more frequent intervals than every two years.

Comment: There is nothing in the present constitution similar to this proposed section. This section provides the procedure whereby a county or municipality may frame and adopt a home rule charter. The procedure does not become effective until two years after the adoption of the local government article in order to give the legislature time within which it may provide optional plans of local government under Section 9.03. It is contemplated that most counties and municipalities would want to operate under a plan of local government provided for by the legislature.

SECTION 9.05. COUNTY AND MUNICIPAL POWERS OF GOVERNMENT.

Any county or municipality which adopts a home rule charter, or plan of local government prescribed by the legislature, after the ratification of this article of the constitution, may exercise all legislative power of government not inconsistent with its charter, this constitution, or the general law of the state.

Comment: This provision would permit the exercise of very broad "home rule" powers by local governments whose organization meets certain standards. At the present time both counties and cities may exercise only such powers as are specifically delegated to them. Court decisions have consistently held that counties and cities are strictly limited to those powers which have been expressly or impliedly granted by constitutional provisions or legislative enactments. The proposed grant of residual powers of local government to counties and cities would eliminate the need for local acts of the legislature granting specific powers, and would enable local governments to serve the needs of their people more promptly and efficiently. These broad local powers would not be given to counties having the present governmental organization, but only to those which are carefully structured under guidance from the legislature.

and the legislature would retain the authority to restrict or limit the powers of local governments by general laws.

SECTION 9.06. CONFLICTING COUNTY AND MUNICIPAL ORDINANCES.

In the event of conflict between a municipal ordinance and a county ordinance, the municipal ordinance shall prevail within the municipality, unless otherwise provided by a county charter or general law.

Comment: There is no similar provision in the present constitution. If both counties and municipalities exercise legislative powers, it is necessary to define the limits of such powers in the event of a conflict.

SECTION 9.07. MUNICIPAL FRANCHISES.

No franchise or license shall be granted by any municipality for a period longer than thirty years.

Comment: This is a substitute for section 228 of the present constitution which forbids the granting of utility franchises for the use of public streets, except to railroads, for longer than thirty years. The draft broadens the prohibition to all franchises and licenses of any kind, for more than thirty years. While section 228 applies only to cities or towns having a population of more than six thousand, the proposed section would apply to all municipalities.

SECTION 9.08. RESPONSIBILITY FOR COUNTY ROADS.

The county's responsibility for the construction and maintenance of county roads shall not hereafter be delegated to a state agency unless the delegation is approved by a vote of the electors of the county.

Comment: This is a substitute for amendment 142. The language has been changed but the substance of amendment 142 has been retained.

SECTION 9.09. MUNICIPAL STREETS.

No person, firm, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys, or public places of any municipality for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of the municipality.

Comment: This is section 220 of the present constitution with the omission of the word "village." Municipal corporations are classified as cities or towns. Code, Tit. 37, sec. 2. There is a statute in the language of section 220: Code, Tit. 10, sec. 72.

ARTICLE X

Education

SECTION 10.01. MAINTENANCE AND SUPPORT OF PUBLIC SCHOOLS AND EDUCATIONAL INSTITUTIONS.

The legislature shall provide for the maintenance and support of public schools open to all children in the state and shall establish, organize and support such other public educational institutions, including public institutions of higher learning, as may be desirable.

Comment: This general mandate to the legislature to provide for public education is substituted for the longer detailed one in present Section 256. It is taken from the Model State Constitution.

SECTION 10.02. STATE BOARD AND SUPERINTENDENT OF EDUCATION.

(a) General supervision of the public schools in Alabama shall be vested in a state board of education, which shall be elected in such manner as the legislature may provide.

(b) The chief state school officer shall be the state superintendent of education, who shall be appointed by the state board of education and serve at its pleasure. The authority and duties of the superintendent of education shall be determined by the

state board of education according to such regulations as the legislature may prescribe.

Comment: Only one change of substance is made in the present amendment 284. The requirement that the legislature fix the superintendent's salary is changed to permit the legislature to allow the board of education to set the salary.

SECTION 10.03. BOARD OF TRUSTEES FOR THE UNIVERSITY OF ALABAMA.

(a) The state university shall be under the management and control of a board of trustees which shall consist of two members from the congressional district in which the university is located, one from each of the other congressional districts in the state, the superintendent of education, and the governor, who shall be ex officio president of the board. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be elected and confirmed as hereinafter required. Each elected member shall hold office for a term of twelve years .

(b) When the term of any member of such board shall expire, the remaining members of the board shall, by secret ballot, elect his successor; provided, that any trustee so elected shall hold office from the date of his election until his confirmation or rejection by the senate, and, if confirmed, until the expiration of the term for which he was elected, and until his successor is elected.

(c) At every meeting of the legislature the superintendent of education shall certify to the senate the names of all who have been so elected since the last session of the legislature, and the senate shall confirm or reject them, as it shall determine is for the best interest of the university. If it rejects the names of any members it shall thereupon elect trustees in the stead of those rejected.

(d) In case of a vacancy on said board by death or resignation of a member, or from any cause other than the expiration of his term of office, the board shall elect his successor, who shall hold office until the next session of the legislature.

(e) No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

Comment: The only change made in present section 264 is to delete the obsolete material concerning the board's membership in the period immediately following the adoption of the 1901 Constitution.

SECTION 10.04. BOARD OF TRUSTEES FOR AUBURN UNIVERSITY.

(a) Auburn University shall be under the management and control of a board of trustees. The board shall consist of two members from the congressional district in which the institution is located, one from each of the other congressional districts in the state as the same were constituted on the first day of January, 1961, the state superintendent of education, and the governor, who shall be ex officio president of the board.

(b) The trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for a term of twelve years, and until their successors be appointed and qualified. The board shall be divided into three classes, as nearly equal as may be, so that one-third may be chosen quadrennially.

(c) Vacancies occurring in the office of trustees from death or resignation shall be filled by the governor, and such appointee shall hold office until the next meeting of the legislature. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be appointed as herein required.

(d) No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such. No employee of Auburn University shall be eligible to serve on its board of trustees.

Comment: Amendment 161. No change.

COMMENTARY

SECTION 10.05. MEMBERS OF LEGISLATURE INELIGIBLE TO SERVE ON BOARD OF TRUSTEES.

No member of the legislature shall be eligible to serve as a member of the board of trustees of any state college or university.

Comment: This is a new section designed to promote objectivity in the consideration of programs and fund requests of state colleges and universities.

SECTION 10.06. COMMISSION ON HIGHER EDUCATION.

There shall be a Commission on Higher Education, which shall have the responsibility of advising the governor and the legislature on education beyond the secondary level. The membership, duties, and procedures of the Commission shall be provided for by law.

Comment: This is a new section giving constitutional status to the Commission of Higher Education, but leaving to the legislature the definition of its functions and authority. The Commission was established by statute in 1969. Code, Tit. 52, sec. 513(84) - (93).

SECTION 10.07. EXEMPTION OF MOBILE COUNTY.

The provisions of this article and of any act of the legislature passed in pursuance thereof for educational purposes, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw portions of the funds to which said county shall be entitled for school purposes and to make reports to the superintendent of education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the legislature.

Comment: This is section 270 of the constitution as amended by amendment 111, unchanged.

CONSTITUTION OF ALABAMA

ARTICLE XI

Public Officers

SECTION 11.01. DUAL OFFICEHOLDING.

No person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this state; nor shall any person, except a notary public, hold two offices of profit at one and the same time under this state. Service of a delegate to a constitutional convention or as a member of a statutory body having only advisory powers shall not be considered an office of profit as the term is used in this constitution. The legislature may by general law exempt persons in the state military forces or in the military service of the United States from the provisions of this section.

Comment: This section would replace present section 280. It omits the exemptions contained in section 280 concerning postmasters, justices of the peace, constables, and commissioners of deeds. It adds a new provision exempting delegates to a constitutional convention and members of statutory bodies having only advisory powers. The last sentence was added in order to remove any question concerning the validity of statutes exempting persons in military service from the prohibition against dual officeholding. See: Code, Tit. 35, Sec. 37; Tit. 41, Secs. 224, 230(1).

SECTION 11.02. DISQUALIFICATION BY CONVICTION OF CRIME.

No person convicted of a felony involving moral turpitude whose civil and political rights have not been restored shall be eligible to hold any office of trust or profit in this state.

Comment: This section is a substitute for present section 60. The only change in substance is to replace the list of crimes in the current section with the words, "felony involving moral turpitude whose civil and political rights have not been restored."

COMMENTARY

SECTION 11.03. COMPENSATION OF PUBLIC OFFICERS.

(a) The rate of compensation of any officer holding any civil office of profit under this state, or any county or municipality thereof, who is elected or appointed for a fixed term, whether such officer may be removed at the pleasure of the authority electing or appointing him or only upon impeachment, shall not be increased or diminished, during the term for which he shall have been elected or appointed, either by the imposition of new, different, and additional duties, or otherwise.

(b) Nor shall the expense allowance of any such officer be increased or decreased during his term except by general law applying to all similar public officers.

(c) Any increase or decrease in the compensation of officers who are members of any court, board, commission, or similar body, whose terms do not run concurrently, shall become effective as to all such members thereof immediately after the expiration of the term or terms of office of the member or members whose term or terms first expire.

(d) Notwithstanding the provisions of this section, the legislature may by general law provide for adjustments, up or down, in the compensation of such officers based on the United States Bureau of Labor Statistics Consumer Price Index or other appropriate cost-of-living criteria.

Comment: Subsection (a), (b) and (c) combine the substance of section 281 and amendment 92. Subsection (b) also prohibits any increase in the expense allowances of such officers except by general law applying to all similar officers.

Subsection (d) is new. To ease the burden of inflation on officers and to provide for help to the government in times of depression, this subsection would allow the legislature to provide for adjustments in compensation based on cost-of-living criteria. The United States Bureau of Labor Statistics Consumer Price Index is commonly used in labor contracts to provide for cost of living adjustments. Under this provision the legislature could provide for automatic adjustments at reason-

able intervals, or set up a commission to determine the amount and timing of adjustments.

SECTION 11.04. METHOD OF CHANGING THE BASIS OF COMPENSATING COUNTY OFFICIALS.

The legislature may, by general or local law, change the method or basis of compensating any officer of a county, including the judge of probate, sheriff, tax assessor, tax collector, clerk of the circuit court, and register, and may place such officers on a salary. In the event that a county officer is placed on a salary, all fees, allowances, and commissions collected by him shall be paid into the county treasury. No law shall be effective to change the method of compensating any county officer during the term for which he shall have been elected or appointed, nor shall any such law become effective in a county until it has been approved by a majority of the electors of the county who vote thereon at a referendum election held for such purpose.

Comment: This is a new section which would replace sections 96 and 104(24) and would render 33 constitutional amendments unnecessary. It was submitted to the legislature in May, 1971. Since submission to the legislature, the language has been changed slightly to make it clear that an officer placed on salary must pay into the treasury all fees collected by him.

SECTION 11.05. CIVIL SERVICE.

(a) The legislature shall provide by law for appointments and promotions in the civil service of the state according to merit, fitness, and efficiency, to be determined, so far as practicable, by competitive examination. The legislature shall provide adequate financial support for a program of personnel management in the state service.

Comment: Section 11.05 is amendment 88 without change of substance.

SECTION 11.06. OATH OF OFFICE.

All members of the legislature, and all officers, executive

and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation:

"I, . . . , solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

The oath may be administered by the presiding officer of either house of the legislature, or by any officer authorized by law to administer an oath.

Comment: This is present section 279 of the constitution without change.

ARTICLE XII

Impeachments

SECTION 12.01. IMPEACHMENT OF STATE OFFICERS.

(a) The governor, or acting governor, and all state officers, except judges, who are elected on a statewide basis, shall be subject to impeachment by the house of representatives for willful neglect of duty, corruption in office, or the commission of any offense, while in office, involving moral turpitude.

(b) Unless otherwise provided by law, impeachment by the house of representatives shall be tried by the senate. No person shall be convicted by the senate sitting as a court of impeachment without the concurrence of at least two-thirds of the members present. The legislature may provide for the trial of impeachments by a special tribunal of seven judges appointed by the supreme court from the judges of the state.

(c) When the governor or acting governor is impeached, the chief justice, or one of the associate justices of the supreme court, to be selected by it, shall preside over the senate when sitting as a court of impeachment.

(d) If at any time when the legislature is not in session, a majority of all the members elected to the house of representatives shall certify in writing to the speaker of the house their desire to meet to consider the impeachment of the governor or acting governor, it shall be the duty of the speaker of the house to summon the members of the house to assemble at the capitol to consider the impeachment of the governor or acting governor. If the house of representatives prefers articles of impeachment, the lieutenant governor or president pro tempore of the senate shall summon the members of the senate to assemble at the capitol for the purpose of organizing as a court of impeachment, unless the legislature has provided for the trial of such official by a special tribunal.

(e) An officer impeached by the house of representatives shall be disqualified from performing any official duties until he has been tried and acquitted. He shall be removed from office upon conviction.

Comment: This section is a substitute for section 173 of the present constitution. It differs from section 173 in the following respects:

(1) Judges are exempt from legislative impeachment because the judicial article provides a method of removing judges from office.

(2) It omits "incompetency or intemperence in the use of intoxicating liquors or narcotics" as specific grounds for impeachment.

(3) It requires a two-thirds vote of the senate to convict, when the senate is sitting as a court of impeachment.

(4) It permits the legislature to provide for the trial of impeachments by a special tribunal of seven judges.

(5) It provides that an officer impeached by the house shall be disqualified from performing his official duties until acquitted.

SECTION 12.02. DISTRICT ATTORNEYS AND SHERIFFS.

District attorneys and sheriffs may be removed from office

for any of the causes specified in section 12.01(a), by the supreme court, under such regulations as may be prescribed by law.

Comment: This section is a substitute for section 174 of the present constitution. Section 174 has been implemented by statute. Code, Tit. 41, sec. 178-202. The proposed section has been made applicable only to sheriffs and district attorneys, since the judicial article provides a method for the removal of judges.

SECTION 12.03. COUNTY AND CITY OFFICERS.

All county officers and officers of incorporated cities and towns may be removed from office for any of the causes specified in section 12.01(a) of this article by a court having jurisdiction to try felony cases in the county or district in which such officers hold their office. The legislature shall provide by law the method of proceeding under this section, provided that the right of trial by jury and appeal in such cases shall be secured. This section shall not apply to the judge of any court who may be removed by procedures provided by the judicial article.

Comment: This section is a substitute for section 175 of the present constitution. The only change of substance made by the proposed section is the omission of judges of inferior courts. Section 175 has been implemented by statute. Code Tit. 41, sec. 178-202.

SECTION 12.04. PENALTIES UPON CONVICTION.

Judgments in cases arising under the three preceding sections shall not extend beyond removal from office and disqualification to hold any office of honor, trust or profit under the state. But the person convicted, or acquitted, shall be subject to criminal punishment according to law.

Comment: This section is a substitute for section 176 of the present constitution. Under section 176 judgment of conviction in impeachment proceedings does not extend beyond removal from office and disqualification to hold office "for the term for which the officer was elected or appointed." The proposed section would disqualify any person convicted in im-

peachment proceedings from holding "any office of honor, trust or profit, under the state." This is the language of the 1819 constitution Art. V, sec. 8.

ARTICLE XIII

Miscellaneous Provisions

SECTION 13.01. EMINENT DOMAIN.

In proceedings for the taking of property for public use, the right of appeal from any preliminary assessment of damages may not be denied but such appeal shall not deprive the condemnor of a right of entry, provided the amount of damages assessed shall have have been paid into court in money, and an adequate bond shall have been given, in not less than double the amount of the damages assessed, to pay such damages as the property owner may sustain; and the amount of damages in all cases of appeals shall on demand of either party be determined by a jury according to law.

Comment: This section is based on present section 235, which specifically applies to "municipal and other corporations and individuals invested with the privilege of taking property for public use. It does not apply to the condemnors, including the state.

The first sentence of section 235, which prohibits the taking of property without paying compensation, has been omitted because it is a repetition of the eminent domain section in the Bill of Rights (Sec. 1.14).

Section 35 provides for a right of entry pending an appeal provided that the condemnor pay the amount of damages assessed into court and give bond "with good and sufficient sureties." This has been changed to require the condemnor to give "an adequate bond."

SECTION 13.02. PROTECTION OF ENVIRONMENT.

It shall be the policy of the state to conserve and protect its

natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and and water pollution and of excessive and unnecessary noise.

Comment: There is no comparable section in the present constitution. The proposed section is the same as article II, sec. 7 of the 1968 Florida constitution.

SECTION 13.03. EXEMPTION OF HOMESTEADS.

The legislature shall provide by law for the exemption of homesteads, of a value of not less than two thousand dollars, from forced sale for the payment of debts.

Comment: This section is proposed as a substitute for sections 205-208 of the present constitution. The proposed section requires the legislature to provide for homestead exemptions, but the definition of homestead and the extent of the exemption is left to the legislature.

ARTICLE XIV

Amending the Constitution

SECTION 14.01. PROCEDURE.

(a) The legislature may propose an amendment to this constitution in the manner required for the enactment of legislation if, on its final passage, the amendment is read at length in each house and three-fifths of all the members elected to each house approve it.

(b) Proposed amendments shall be submitted to the electors of the state at the next general election following the notice required by this section, provided, that the legislature may, by separate bill enacted in the manner required for proposing an amendment, call a special election for submission of an amendment. The act must declare that an emergency exists necessitating the submission prior to the next general election, and shall not be effective unless approved by the governor within seven days after it has been submitted to him. If a special

election on a proposed amendment is called, other amendments may be submitted at the same election.

(c) Notice of the election on all proposed amendments shall be given by a single proclamation of the governor. The notice, with the full text of all proposed amendments shall be published once in every county, in a newspaper of general circulation, not more than thirty nor less than ten days before the day of the election. The ballot statement of each amendment shall also be published once not less than three nor more than ten days before the election in each newspaper in the state which is authorized by law to publish such notices at public expense. In addition to the required publication in newspapers, the legislature may provide for the publication of the proposed amendments or the ballot statements thereof by other means, including radio and television.

(d) Elections upon proposed amendments shall be held as provided by law. A proposed amendment shall become part of the constitution if approved by a majority of electors voting on the proposal.

(e) The revision of an entire article or articles or the addition of one or more new articles may be proposed as a single amendment.

Comment: Section 1 sets out the procedure to be used when amending the constitution and would replace section 284 (as amended by No. 24) of the present constitution. Several substantive changes have been made. The major ones are:

(1) The present requirement that an amendment must be read at length on three separate days in each house before a vote thereon is shortened to require only one reading at length before final passage.

(2) An effort has been made in the new section to curtail expensive special elections by requiring that a bill declaring that an emergency exists be passed before a special election on an amendment may be held.

(3) The notice requirement has been changed from publication for four successive weeks to one publication of the full

text in every county and one publication of the ballot statement in each newspaper of the state. The new section also permits the legislature to provide for publication by other means, including radio and television.

(4) The new section would allow the revision of an article, or articles, or the addition of one or more new ones, including the submission of an entire new constitution, as a single amendment.

SECTION 14.02. FORM OF THE BALLOT.

The ballot submitting an amendment to the constitution shall contain a summary or short statement clearly indicating its effect. It shall be the duty of the attorney general to prepare such statement in such language as shall create no prejudice for or against the proposed amendment.

Comment: This section provides for the preparation of the ballot. It replaces section 285. The attorney general is required to prepare a short statement of the effect of the amendment, rather than a statement of the substance or subject matter now required.

SECTION 14.03. CONSTITUTIONAL CONVENTION.

(a) The legislature may by a vote of a majority of the members elected to each house adopt an act calling for a convention to propose a general revision of, or specific amendments to this constitution. If a convention is called for the consideration of a specific amendment, or amendments, the convention shall have no power to propose amendments on other subjects. No convention shall be held unless the question of holding the same as limited by the legislature shall be first submitted to a vote of the electors of the state and approved by a majority of the electors voting on the proposal.

(b) The act calling the convention shall provide for the election of delegates and may limit the period of time during which the convention can meet, provided that the duration of the convention may be extended, by act of the legislature, adopted in the manner required for legislation, after the convention convenes.

(c) No act of the legislature calling a convention for the purpose of revising or amending the constitution shall be repealed after the electors of the state have approved the holding of a convention.

(d) The legislature shall provide for the submission of the proposals of the convention to a vote of the electors of the state. If a majority of electors voting on any such proposal vote in favor of it, the proposal thus approved shall become effective on the date designated therein.

Comment: Section 14.03 describes the method of calling and holding constitutional conventions. It replaces present section 286 and makes several substantive changes. The most important are:

(1) The legislature can limit the convention to specific sections or amendments under the new section.

(2) The legislature may, under this section, limit the duration of the convention. After the convention meets, its duration may be extended by legislative act.

(3) An act calling a convention may not be repealed after the approval of the convention by the voters. The old section allowed repeal only by the same session of the legislature which passed the act.

(4) The new section requires approval of a convention's proposals by the voters.

SECTION 14.04. METHOD OF VOTING.

All votes of the legislature upon proposed revisions of, or amendments to this constitution and upon bills calling a convention for the purpose of altering or amending the constitution of this state, shall be taken by yeas and nays and entered on the journals. No act of the legislature passed in accordance with the provisions of this article, proposing revisions of, or amendments to this constitution, or calling a convention for the purpose of altering or amending the constitution, shall be submitted for the approval of the governor, but shall be valid without his approval.

COMMENTARY

Comment: This section makes only one minor change in present section 287. The words "proposed revisions" and "proposing revisions" are added in order to incorporate the changes made by proposed section 14.01.

CONSTITUTION OF ALABAMA

CORRESPONDING SECTIONS

OF

1901 CONSTITUTION

AND

PROPOSED REVISION

Section 1901	Proposed Section	1901 Section	Proposed Section
1	1.01	38	9.01
2	deleted	39	9.01
3	1.02	40	9.01
4	1.02	41	9.01
5	1.04	42	2.01
6	1.03, 1.05	43	2.01
7	deleted	44	3.01
8	1.05	45	3.16
9	1.05	46	3.02
10	1.10	47	3.04
11	1.06	48	3.06, 3.07,
12	deleted		3.09, 3.11.
13	10	49	deleted
14	11	50	4.01
15	1.05	51	3.07
16	1.05	52	3.13
17	1.07	53	3.14
18	1.09	54	3.14
19	deleted	55	3.17
20	1.08	56	3.15
21	1.15	57	deleted
22	1.13	58	3.13
23	1.14	59	3.05
24	deleted	60	11.02
25	1.02	61	3.18, 3.19
26	1.12	62	3.18
27	1.16	63	3.18
28 - 36	deleted	64	3.19
37	deleted	65	deleted

CORRESPONDING SECTIONS OF 1901 CONSTITUTION

1901 Section	Proposed Section	1901 Section	Proposed Section
66	3.20	115	5.03
67	3.12	116	5.02
68	deleted	117	5.04
69	deleted	118	5.05
70	3.21	119	deleted
71	3.22	120 - 121	5.07
72	3.23	112, 123	5.06
73	3.24	124	5.08
74	deleted	125, 126	5.06
75	deleted	127	5.09
76	3.10	128	5.10
77 - 81	deleted	129	5.11
82	3.31	130	11.01
83	3.08	131	5.07
84 - 88	deleted	132	5.13
89	9.05	133	5.14
90	deleted	134, 135	deleted
91	8.09	136	5.07
92	deleted	137, 138	deleted
93	8.01	139	8.01
94	8.01	140	8.02
95	deleted	141	deleted
96	11.04	142, 144	8.04
97	3.25	145, 148	deleted
98	3.25	149	8.06
99	deleted	150	8.08
100	3.26	151	8.02
101 - 103	deleted	152	8.13
104	3.29	153	deleted
105	3.29	154	8.07
106	3.30	155	8.15
107	3.30	156, 157	deleted
108 - 109	deleted	158	8.13, 8.14, 8.15
110	3.28		
111	3.30	159 - 161	deleted
112, 113	5.01	162	8.08
114	5.02	163 - 172	deleted

Section 1901	Proposed Section	Section 1901	Proposed Section
173	12.01	223	deleted
174	12.02	224	8.12
175	12.03	225	8.12
176	12.04	226 - 227	deleted
177 - 196	7.01, 7.02, 7.03	228	9.07
		229 - 234	deleted
197	4.01	235	13.01
198	4.01 & 4.03	236 - 255	deleted
199 - 203	4.02 & 4.03	256	10.01
204	deleted	257 - 263	deleted
205 - 208	13.03	264	10.03
209 - 210	deleted	265 - 268	deleted
211	deleted	269	8.10
212	8.02	270 - 278	deleted
213	8.11	279	11.06
214	8.07	280	11.01
215 - 216	8.10	281	11.03
217	8.08	282 - 283	deleted
218 - 219	deleted	284	14.01
220	9.09	285	1402
221	deleted	286	14.03
222	8.12	287	14.04

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENTS TO 1901 CONSTITUTION AND CORRESPONDING SECTIONS OF PROPOSED REVISION

AMENDMENT		PROPOSED SECTION
Amendments on local ad valorem taxes:		8.10
8	41 cities	
13	9 cities	
17	12 cities	
18	Mobile	
19	Walker	
31	Attalla	
34	Limestone	
45	Colbert	
52	Decatur-Cullman-Morgan County	
54	Haleyville	
56	All counties	
59	All counties except Mobile and Montgomery	
63	Montgomery	
65	DeKalb	
66	Marshall	
69	Marion	
70	Escambia	
72	All counties except Mobile, Montgomery and Jefferson	
76	All counties except Mobile and Jefferson	
125	All counties	
143	Barbour	
195	Mobile	
198	Tallapoosa	
199	Washington	
208	Amendments Section 215	
209	Mountain Brook	
230	Baldwin	
240	Birmingham	
242	Auburn	
248	Mobile	
254	Winston	

AMENDMENT	PROPOSED SECTION
262	Franklin
269	All counties — library
275	Mobile
276	Walker
300	Mobile
307	Chambers
311	Lawrence, Limestone, Morgan
318	Morgan
319	Baldwin
324	Lee

Amendments on County, City and District School Taxes:

3	State wide
6	Selma
16	Mobile
20	Lawrence
32	Lawrence
52	Decatur, Cullman
67	Etowah
68	Calhoun
71	Tuscaloosa
77	St. Clair
78	Cherokee
79	Courtland
80	Huntsville
82	Jefferson
86	Monroe
98	Talladega
99	Lawrence
101	Marshall
102	Chambers
106	Morgan
111	State wide
123	Cleburne
124	Russell
129	Tallapoosa
130	Colbert

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT		PROPOSED SECTION
131	Butler	
145	Coosa	
146	DeKalb	
147	Lee and Opelika	
148	Auburn	
149	Madison	
153	Winston	
156	Randolph	
162	Baldwin	
163	Bullock	
164	Tuscaloosa	
165	Calhoun	
166	Chilton	
167	Choctaw	
168	Clarke	
169	Clay	
170	Tuscumbia	
171	Sheffield	
172	Muscle Shoals	
173	Franklin	
174	Jackson	
175	Jefferson	
176	Lamar	
177	Lauderdale	
178	Florence	
179	Mobile	
180	Randolph	
181	Talladega	
182	Washington	
202	State wide	
203	Jackson	
204	Walker	
205	Marion	
206	Coffee	
210	DeKalb	
211	Franklin	
216	Coffee	
218	Huntsville	

AMENDMENT		PROPOSED SECTION
232	Anniston	
234	Fort Payne	
252	Talladega	
253	Jasper	
260	Jefferson	
279	Fort Payne	
281	Anniston	
291	Calhoun	
292	Covington	
293	Colbert	
294	Lawrence	
295	Dale	
296	Etowah	
298	Jefferson	
299	Oneonta	
301	Mobile	
304	Madison	
305	Huntsville	
309	Lee	
310	Talladega	
316	Mountain Brook	
Amendments on Local Economic Development:		8.14
84	Marion	
94	Fayette	
95	Blount	
104	Haleyville and Double Springs	
128	Bullock	
155	Union Town	
183	Autauga	
186	Franklin	
188	Greene	
189	Lamar	
190	Lawrence	
191	Madison	
197	St. Clair	
217	Clarke	

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT		PROPOSED SECTION
220	Bayou La Batre	
221	York	
244	Lester	
245	Madison	
246	Marion	
250	Sumter	
251	Livingston	
256	Addison and Lynn	
259	Evergreen	
261	Bayou La Batre	
263	Geneva	
277	Carbon Hill	
302	Pickens	
303	Morgan	
308	Marengo	
312	Bibb	
313	Hale	
Amendments on County Debt Limit:		8.12
18	Mobile	
29	Mobile	
30	Lawrence	
36	Morgan	
60	Mobile	
73	Jefferson	
75	Marion	
100	Mobile	
115	Tuscaloosa	
122	Mobile	
151	Mobile	
152	Mobile	
187	Geneva	
193	Mobile	
194	Mobile	
200	State wide	
237	Henry	
238	Jefferson	

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT		PROPOSED SECTION
220	Bayou La Batre	
221	York	
244	Lester	
245	Madison	
246	Marion	
250	Sumter	
251	Livingston	
256	Addison and Lynn	
259	Evergreen	
261	Bayou La Batre	
263	Geneva	
277	Carbon Hill	
302	Pickens	
303	Morgan	
308	Marengo	
312	Bibb	
313	Hale	
Amendments on County Debt Limit:		8.12
18	Mobile	
29	Mobile	
30	Lawrence	
36	Morgan	
60	Mobile	
73	Jefferson	
75	Marion	
100	Mobile	
115	Tuscaloosa	
122	Mobile	
151	Mobile	
152	Mobile	
187	Geneva	
193	Mobile	
194	Mobile	
200	State wide	
237	Henry	
238	Jefferson	

AMENDMENT		PROPOSED SECTION
284	Marengo	
280	Jefferson	
300	Mobile	
301	Mobile	
320	Madison	
Amendments on Municipal Debt Limit:		8.12
107	All municipalities	
108	Public corporations	
126	Towns less than 6,000	
194	Mobile	
228	All cities	
268	Towns less than 6,000	
Local Salary and Court Cost Amendments:		11.04
2	Jefferson	
4	Montgomery	
28	Mobile	
43	Etowah and Cherokee	
44	Morgan	
46	Dallas	
47	Mobile	
48	Houston	
50	Walker	
62	Etowah	
64	Limestone	
85	Talladega	
103	Chambers	
127	Walker	
134	DeKalb	
135	Madison	
136	Colbert	
137	Cullman	
138	Dallas	
139	Montgomery	
185	Elmore	

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT		PROPOSED SECTION
196	**St. Clair**	
215	**Marshall**	
229	**Baldwin**	
231	**Bullock**	
236	**Greene**	
241	Lauderdale	
249	**Shelby**	
265	**Marengo**	
290	**Barbour**	
297	Tallapoosa	
306	Bibb	
321	Lawrence	
326	**Dale**	
Amendments Authorizing State Bonds: 11, 21, 26, 42, 74, 87 113, 114, 116, 117, 118, 119, 120, 121, 141, 157, 158, 213, 222, 224, 266, 267, 270, 273, 286, 287, 288.		8.11
Miscellaneous Amendments as to State and Local Government:		8.01
1	Amend Sec. 93 for roads	
5	Repealed Sec. 250	
7, 9, 10, 14, 49, 90, 109	Poll taxes	
12	Port Authority	
22	Drainage districts	
23	Inheritance tax	8.05
24	Amendment procedure	14.01
25	Income tax	8.03
26-A	Salaries	11.03
27	Corporations	
35	Sheriffs	
37	Waiver of indictment by plea of guilty	1.05
38	Pardon and parole	5.08

AMENDMENT		PROPOSED SECTION
Miscellaneous Amendments as to State and Local Government: cont'd.		
39	Biennial sessions	3.09
40	Trust funds	
41	Voting machines	7.03
51	Banks	
53	State hospitals	8.01
55	Voter qualification (see 91, 96)	7.01
57	Legislative sessions and pay	3.09, 3.11
58	Harbors and airports	8.01
61	Income tax disposition	8.06
81	Branch court houses	
83, 110	Vacancies in Jefferson Circuit Court	6.13
88	Civil Service	11.05
89	Militia	
91	Voter qualification	7.01
92	Salaries (Boutwell)	11.03
93	Gasoline tax earmarked	8.06
96	Voter residence	7.01
97	Legislature vacancies	3.03
105	Legislature may fix court costs Madison County	
132	Abolish Macon County	9.01
133	Municipal taxes on wages Walker County prohibited	
139	Court costs Montgomery	
140	No change form of government Lauderdale without local vote	9.02, 9.03
142	Highway Dept. assumption of responsibility for county roads	9.08
144	Local vote for changes in government or salaries Colbert	9.02, 9.03, 11.03
150, 192	Pensions Mobile County	
154	Mortgage loans by foreign corporations	
159	Legislature in emergency	3.32
161	Auburn trustees	10.04
184	No change government Dekalb without vote	9.03

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT		PROPOSED SECTION
201	Promotion of cattle industry	
212	Income tax on corporations	8.03
214	Promotion of poultry	
219	No tax on wages in Mobile county without local vote	
223	Literacy test for voters	7.01
225	Income tax — deduction of federal tax	8.03
226	Circuit Solicitor changed to district attorney	
227	Irrigation districts	
233	Legislature may fix court costs Dallas County	
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THE MAKING OF ALABAMA'S SIX CONSTITUTIONS (1819-1901)

by

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INTRODUCTION

Alabama moved from a rural frontier of about a hundred thousand people in 1819 to a semi-industrial state with thriving cities and almost two million people in 1901. In these eighty-two years the state held six conventions, or an average of one every fourteen years. The Civil War and its aftermath precipitated a series of crises which brought four conventions in fifteen years. Alabama's six constitutions may be briefly described as the Frontier Constitution of 1819; Secession Constitution of 1861; Reorganization Constitution of 1865 (following the War); Reconstruction or Radical Constitution of 1868; Bourbon or Conservative Constitution of 1875; and the Disfranchising Constitution of 1901. All of these constitutions were written by constitutional conventions but only the last three were submitted to the people for their ratification.

PERIODS OF CONSTITUTION MAKING

Alabama, coming into the Union in 1819, missed the first period of constitution making in America. The early constitutions, usually framed by the legislature, gave expression to the political ideas and problems of the Revolutionary era. They manifested a dread of executive and military power (stemming from experiences with England and the royal governors), and showed a disposition to entrust the government to the hands of the legislative authority, which more directly represented the people. Most of the early constitutions contained little but an elaborate bill of rights, and a rather crudely drawn outline of a frame of government with provision for few executive or judicial officers.

The second period of constitution making began in the early part of the nineteenth century. The powers of the legislative branch began to be questioned, checks and balances of power among the three branches further developed, and the governor became a popularly elected official with veto powers. An increasing demand for popular election of all executive and judicial officials and the extension of the suffrage by the elimination of property and educational qualifications were both notable trends of the period. The Alabama Constitution of 1819 reflected most of these trends. Made in the early part of the period, however, it still favored the legislative branch with large appointive powers and contrary to the trend was not submitted for ratification by the people.

The third period began about the time of the Civil War and was marked by a tendency to further strengthen the judicial and especially the executive department in the crisis of the war period. As governmental problems increased because of industrialization and urbanization, the governor's powers were further increased. The most marked change during this period, however, was a narrowing of the power and competency of the legislature, and the fettering of its action in some fields by absolute prohibition. The trend was accentuated in Alabama and other Southern states where the legislative branch was more discredited than elsewhere as a result of the public's belief that it was incompetent and of general low caliber during the Reconstruction period. Added distrust of the electorate after the enfranchisement of the Negro in 1867 also had its effect. Severe restrictions on taxation, state aid to internal improvements, local legislation and other like limitations were the result.

The conservative-dominated constitutional convention of 1875 abandoned many of the objectives of the Radical period and launched a policy of retrenchment and economy in an effort to extricate the state from a $29,000,000 debt amassed since 1867. However, the Carpetbaggers left a lasting imprint on the Alabama constitution. There was no attempt to retreat from reforms such as popular election of all judicial and executive officials, guarantees of homestead exemptions and women's

rights. The article on education in the Constitution of 1875 was more like that of 1868 than any previous article, and the convention of 1875 dared not take action against Negro suffrage for fear of federal intervention. In fact, the bill of rights of the Constitution of 1875 forbade any educational or property qualifications for voting or the denial of the right to vote to anyone because of race. However, no factor influenced the 1875 convention more than unfaded memories of the Reconstruction regime. To guard against every possible evil of that regime, numerous restrictions were written into the Constitution of 1875 until it became primarily an "instrument of prohibition."

SUFFRAGE AND DISFRANCHISEMENT

The Constitution of 1819 contained no property, educational, taxpaying, or similar qualifications for voting and provided for universal white manhood suffrage. In its suffrage and other general divisions it was noted along with the constitution of Kentucky for its democracy. The Constitution of 1901 contained limitations on suffrage based on property, literacy, good character, "understanding", vagrancy, petty crimes, and poll taxes which made it the most complicated suffrage article in any of the state constitutions. It represented a drastic break with the past as no previous constitution of Alabama had contained any of these provisions. Universal white manhood suffrage had existed since 1819 and universal manhood suffrage since 1868. The Constitution of 1901 effected a revolution in state politics in the opposite direction from the Constitution of 1868. The latter enlarged the electorate by more than forty per cent by enfranchising the Negro. The former reduced the electorate by an even greater percentage by disfranchising the Negro and many whites as well.

[1] The federal Civil Rights Acts of the 1960's and federal court decisions struck down most of the suffrage provisions of the 1901 constitution.

The first constitutional provision for a poll tax was written into the Constitution of 1868, when the Radicals provided for a compulsory poll tax of $1.50 to be used for educational purposes. The Constitution of 1875 contained the same poll tax provisions as that of 1868. The convention of 1901 continued

the poll tax for schools, but also made it non-compulsory as a tax, cumulative, and a prerequisite for voting. In 1941-42, some 600,000 whites and 520,000 Negroes over 21 years of age were not voters. By contrast there were 440,291 registered voters in the state. Designed to disfranchise the Negro, the poll tax and other deterrents had disfranchised more whites than blacks.

Residence requirements for voting were lengthened at the end of the century. All constitutions prior to 1868 required one year in the state and three months in the county or district. The Carpetbaggers provided for six months in the state and three months in the county or district in order not to disqualify themselves. The Constitution of 1875 restored the residence provisions existing prior to 1868. But the convention of 1901 lengthened residence requirements for voting to two years in the state, one year in the county and three months in the ward or precinct. Supposedly directed at migratory Negroes, these severe residence qualifications also disfranchised some whites from the beginning. Moreover, as Americans became more mobile, they took an increasing toll of both whites and Negroes in all economic groups. In the 1960's, a residence requirement of only one year in the state was provided for by amendment of the Constitution of 1901 and recent federal court decisions have further reduced state, county, and precinct residence requirements.

No religious, property, educational, or tax paying requirements for office holding have ever been written into any of Alabama's constitutions. The bill of rights of every Alabama constitution has forbidden any religious qualification.

ELECTION OF OFFICIALS

Unlike the constitutions of most of the older Southern states, the Alabama Constitution of 1819 provided for the election of the governor and sheriffs by the people. The election of other executive officials was entrusted to the legislature. The legislature elected the secretary of state, the state treasurer, and the comptroller of public accounts until 1868, when the Radicals provided for their election by the people. The election

of all judicial officials, except the justices of the peace whom the people elected, was granted the legislature by the Constitution of 1819. In 1850, the election of circuit and county judges was given to the people, but chancellors and judges of the Supreme Court were still elected by the legislature. There was much agitation in the eighteen-fifties for the election of all executive and judicial officials by the people. Before this change could be accomplished, however, the Civil War checked constitutional reform.

The Constitution of 1868 made all executive and judicial officials elective by the people. The Negroes, Carpetbaggers, and most of the Scalawags demanded this privilege in the name of democracy, although the old electorate had not enjoyed it. The convention of 1875 left the election of these officials, with minor exceptions, to the people.

ELECTIONS AND SESSIONS OF THE LEGISLATURE

The Constitution of 1819 provided for annual elections; the Constitution of 1901 for quadrennial elections. Alabama had annual elections to 1846 and biennial elections from 1846 to 1901.

Annual sessions of the legislature were held from 1819 to 1846; biennial sessions from 1846 to 1861; annual sessions from 1861 to 1875; biennial sessions from 1875 to 1901; quadrennial sessions from 1901 to 1939; biennial sessions since 1939.

RESTRICTIONS ON THE LEGISLATURE

A growing distrust of the legislature was one of the most apparent constitutional trends in Alabama in the nineteenth century. After 1819, not a single convention met without placing additional limitations on the legislature. The people limited the legislature by the adoption of two amendments before the Civil War. In 1846, an amendment took the election of district and county judges from the legislature and gave it to the people. The convention of 1861 restored annual sessions of the legislature but limited each session to thirty days. For the first time restrictions were placed on local legislation and

on the power of the legislature to create debt; also the legislature was forbidden to grant divorces. The convention of 1865 forbade the legislature, which had a large share of the appointive power until 1868, to appoint a legislator to any state civil office of profit. The convention of 1867 provided that state aid to corporations could be given only with a two-thirds vote of the legislature (a check which proved insufficient) and forbade the legislature to grant any municipality the right to levy a greater tax than two percentum of the assessed value of property. Strangely enough, the Radicals were the first to place a restriction on state aid to corporations and a tax limit in the constitution of Alabama. However, by granting to the people the power to elect many executive and judicial officials formerly elected by the legislature, the Radical convention made the greatest reduction in the power of the legislature. By creating a rival legislative body, the Board of Education, which had power to make all laws on the subject of education, the convention of 1867 further reduced the power of the legislature.

In 1875, with the Reconstruction period in mind, the convention restricted the legislature by placing an absolute prohibition against state aid to corporations and a limitation of three-fourths of one percentum on state taxation. It provided for biennial sessions of the legislature limited to fifty days and because of frequent special sessions in the Radical period, special sessions were now limited (except by a two-thirds vote of the legislature) to a consideration of only those subjects listed in the governor's call. Additional sections were written into the constitution seeking to limit the legislature's power to pass local and special legislation. Moreover, numerous sections protecting the people from corrupt legislatures were incorporated into the organic law. Most of these concerned matters of legislative procedure or sought to regulate the legislature in making contracts. A proviso that the governor might veto items in an appropriation bill substantially reduced the legislature's power in financial matters. The convention of 1875, with Civil War and Reconstruction history in mind, forbade the legislature or the governor to suspend the writ of *habeas corpus* under any circumstances. The convention of 1901 provided for quadren-

nial sessions of the legislature, limited to fifty days. This proviso sought to reduce the time the legislature was in session by one-half, as biennial sessions under the Constitution of 1875 had also been limited to fifty days. Quadrennial sessions of the legislature were a new venture to state government. Many states have quadrennial elections but only Alabama has ever provided for quadrennial sessions. However, so many special sessions were called under the Constitution of 1901 that Alabama returned to biennial sessions by constitutional amendment in 1939.

In 1901 thirty-one subjects on which there could be no local legislation were written into the constitution. The convention further limited the legislature's power by providing that the governor might propose amendments to the legislature embodying his objections to a bill presented for his signature. The bill with executive amendments must be accepted or rejected in toto by the legislature without alteration. Moreover, the same convention further restricted the legislature's taxing power by limiting the legislature to a maximum state ad valorem tax of sixty-five-hundredths of one percentum instead of seventy-five-hundredths. Criticism of the legislature had reached a new high by the end of the century.

GROWTH OF EXECUTIVE POWER

The governor was given more power in 1819 than in most of the old states of the Union, despite the fact that popular resentment against several territorial governors had been great. He was made elective by the people rather than by the legislature; hence he was not dependent on the legislature as in many of the early state constitutions. Unlike most of the early state governors, the Alabama governor had the veto power. However, the governor in Alabama never secured the power to appoint with the consent of the Senate major judicial and executive officials which governors enjoyed in some states. Beginning in 1819, the legislature elected the secretary of state, state treasurer, the comptroller of public accounts, and all judicial officials except the justices of the peace, who were elected by the people. When the election of some of them was denied

the legislature by amendment in 1850 and the election of all of them by the Radical convention of 1867, they were all made elective by the people instead of appointive by the governor. And as new officials were created (state superintendent of education, commissioner of industrial resources, commissioner of agriculture and industry) they were also made elective by the people.

As the century advanced the governor secured longer tenure and more participation in the making of legislation. He was elected biennially from 1819 to 1901 and quadrennially after 1901. However, the convention of 1901 provided that the governor could not succeed himself, a provision since changed by amendment. In 1875, the governor was given much more participation in the making of financial legislature by the provision that he could veto part of an appropriation bill. (Such a veto is still denied the President of the United States.)

APPORTIONMENT OF THE LEGISLATURE

Disagreement over apportionment in the legislature was an important reason for sectionalism in Alabama in the nineteenth century. In 1819 and thereafter, North Alabama wanted representation based on the white population; South Alabama, the federal ratio, which added three fifths of the Negroes to the white count. Apportionment in the state legislature was based on the white population until 1868. All attempts of the "black" counties, beginning in the convention of 1819, to have the federal ratio adopted were defeated. Although the slaves had been freed, the convention of 1865 retained white population as the basis for representation. The Radical convention of 1867 not only enfranchised the Negro but provided that the whole population should be the basis of representation in the state legislature. The convention of 1875 retained that basis but violated the principle by apportioning representation for the next six years unfavorably to the Black Belt where most blacks lived and where the Radicals were still in control. Long before 1900, however, apportionment in the legislature and the Democratic State Convention was shifted in favor of the Black Belt and other South Alabama counties. Since apportionment in the con-

stitutional convention of 1901 was based in large part on legislative apportionment, South Alabama controlled that body. Leaders of that section proceeded to apportion representation in favor of South Alabama and provided in addition that the whole population as the basis of representation could not be changed by the amending process.

The new constitution required the legislature to reapportion representation after each federal census; a provision which the legislature controlled by South Alabama has refused to honor after the federal census of 1910 and every decennial census thereafter until 1965, when the federal courts forced reapportionment.[2]

A strict mathematical, or "one man one vote" basis of apportionment was never applied throughout the nineteenth century. As in the Federal structure, the interests of political units as such were recognized not only in the Senate, but by providing that each county have at least one representative regardless of population.

AMENDING ALABAMA'S CONSTITUTION

The amending process in Alabama became easier during the century. The Constitution of 1819 provided for amendment by a two-thirds vote of the legislature, a majority vote of all the electors voting in a regular election, and a two-thirds majority vote of the following legislature. This process was followed until 1875, when the latter provision was stricken out. This requirement for amending the Alabama constitution, however, proved too difficult in the period from 1875 to 1901. The provision that an amendment secure a majority of those

[2] Birmingham, a city of well over 350,000 in 1965, had no more representation in the legislature than it did as a city of about 30,000 in 1901. When the federal court reapportioned the lower house, it gave Jefferson County 20 representatives to seven which they had had since 1901. The Alabama legislature then apportioned the Senate, changing Jefferson County from one senator to seven. The court declared that not only the House of Representatives but also the state Senate should be apportioned on a "one-man, one-vote basis." Hence geography or political units could no longer be used as a basis for representation even in the Senate.

voting in a regular election was prohibitive since many electors voted for candidates but failed to mark the ballot on constitutional amendments. The convention of 1901 reduced the two-thirds provision to three-fifths; it also provided that an amendment might be submitted in a special or general election. In either case it was required to receive only a majority of those voting on the amendment.

SUBMISSION OF CONSTITUTIONS TO THE PEOPLE

The Constitution of 1868 was the first one submitted to a vote of the people in Alabama. Its submission was required by the Reconstruction Acts. Since that time all Alabama constitutions have been submitted rather than proclaimed. Popular fear of the powers of a convention became evident early in the century and increased as the century advanced. In 1861, popular indignation became intense in North Alabama when the secession convention carried Alabama out of the Union without a referendum vote, although North Alabama demanded one and there was great opposition to secession in that section. North Alabama was able to write a proviso into the Constitution of 1865 which declared that no convention should ever be called in Alabama without submitting the question to the people and securing a favorable vote. In order to secure the conventions of 1875 and 1901, the Democratic party found it necessary to pledge that the proposed conventions would not consider certain questions and would not change certain sections of the constitution; and the legislature wrote certain limitations on the proposed conventions in the enabling acts.

SUMMARY OF CONSTITUTIONAL TRENDS IN NINETEENTH CENTURY

Legislative supremacy, evident in the Constitution of 1819, had been greatly eroded by 1901. The executive had gained power at the expense of the legislature and the people at the expense of all three branches of the government. The judiciary, elected by the legislature for life dependent on good behavior in 1819, was made elective as the century advanced. Popular election of officials became an established principle in

all three branches of the government. The amending process was made more pliable and the principle of submission of a new constitution to popular vote established. However, democracy in Alabama was marred at the end of the century by the denial of the suffrage, its most essential feature, to the Negro and many whites. From the liberal suffrage article of 1819 Alabama moved by 1901 to the most complicated and undemocratic suffrage article in the United States.

THE CONSTITUTION OF 1901 A "STRAITJACKET"

Each major revision of the constitution has lengthened the document. The Constitution of 1819 was a document of only eighteen pages, that of 1901 fifty-two pages. Many of the new sections were legislative rather than constitutional in nature. The Alabama constitution has become a code of laws as well as a constitution. The freezing of essentially current legislative matter has made constant changes by amendment unavoidable.

More amendments to Alabama's Constitution of 1901 deal with changing tax and debt limits for counties and municipalities, than with any other subject. And each time the electorate of the whole state is called upon to vote on the matter. The amendments to the Constitution of 1901 form a document much longer than the constitution itself. The constitution has been amended 327 times and more than 150 other proposed amendments have been submitted and rejected by the people.

The state was forbidden to engage in "internal improvements" by the Constitution of 1901. This forced the state to get an amendment to the Constitution of 1901 allowing it to build highways, when the federal government under the Good Roads Act of 1918 offered to match any money the state would spend on roads. Fundamentally, except in regard to the suffrage, the Constitution of 1901 was a re-adoption of that of 1875, which came direcly out of the pangs of Reconstruction. "The constitutional convention of 1901 was called for the paramount purpose of reforming the suffrage and removing from our electorate the menace of an ignorant and purchasable vote."

declared Governor Emmet O'Neal in asking for a new constitution as early as 1914. "Little consideration was given to matters of reform, and hence the Constitution of 1875 which was framed to meet conditions which can never again exist, was practically readopted," he said.

A constitution should be a principled framework of government, limited by firm protection of individual rights and liberties, but not so unpliant that it cannot be interpreted to meet the changing needs of succeeding generations. It must not be a code of statutory laws. Legislative matters belong to the legislature itself. Unfortunately, the Alabama Constitution of 1901 has become the longest, most statutory, rigid, and prohibitive in the state's history, and next to Louisiana's, the longest and most restrictive in the nation. It is time that it be recast to open for the states unlimited potential "the room to grow in" which the Birmingham *Age Herald* (April 25, 1901) admonished the convention of 1901 to provide.

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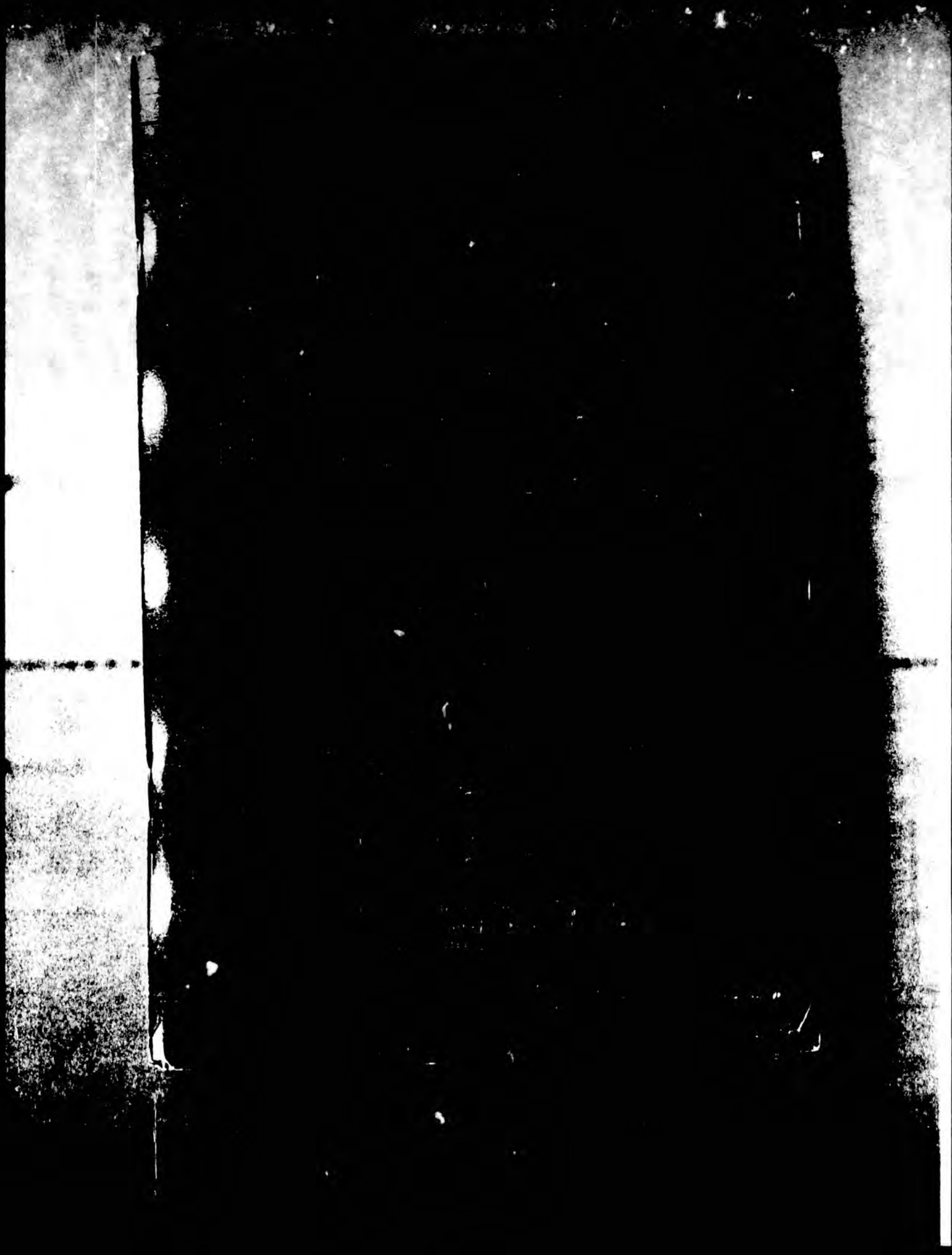

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CHECKLIST ON LEGISLATIVE IMPLEMENTATION OF THE 1970 ILLINOIS CONSTITUTION

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STATE OF ILLINOIS

CITIZENS TASK FORCE
ON CONSTITUTIONAL IMPLEMENTATION

September 14, 1971

LETTER OF TRANSMITTAL

Honorable Richard B. Ogilvie,
Governor, State of Illinois;
Honorable Cecil A. Partee,
President Pro Tempore of the Senate;
Honorable W. Robert Blair,
Speaker of the House;
Honorable Robert C. Underwood,
Chief Justice of the Supreme Court

Submitted herewith is the third report of the Citizens Task Force on Constitutional Implementation. The report encompasses action taken to implement the 1970 Illinois Constitution during the first session of the 77th General Assembly. It also takes note of proposed actions which await the session scheduled for October, 1971.

The Task Force is gratified by the effort made to implement the new Constitution. Full implementation has not been achieved but there is evidence of a good faith effort to deal with the more than eighty sections identified in our initial report. Proposals for adoption of procedural rules are pending before the rules committees of the General Assembly. Action has been taken by the Supreme Court to conform its rules to the new Constitution. The will of the people, expressed by their ratification of the new Constitution on December 15, 1970, is well on its way to being effected.

The work of the Task Force has been significantly aided by the continuing high level of cooperation forthcoming from officers and agents of the state, from groups and associations, and from individual citizens. Our job would have been infinitely more demanding without their advice and counsel.

Sincerely,

Samuel K. Gove
Chairman

Room 2000 – 160 North LaSalle Street – Chicago, Illinois 60601

INTRODUCTION

Implementation of a new state constitution is a task which is not often confronted. Illinois history spans a full century since the citizens and public officials of this state last made the transition from one basic charter to another. It was, therefore, with no experience and some trepidation that concerned Illinoisans approached the task of implementing the 1970 Illinois Constitution. This report describes the several stages in the process of implementation and offers an evaluation of the progress made in the nine months since the new constitution was ratified by the people.

Implementation of the new constitution, while not complete, has progressed well up to this time. The Citizens Task Force on Constitutional Implementation issued its initial report on April 12, 1971. The report identified 91 sections or subsections out of a total of 226 as requiring implementation prior to July 1, 1971.

Substantial implementation has been achieved for 21 of the 91 sections originally identified. Another 24 sections have been reconsidered by the Task Force as while early implementation is necessary, such action can be deferred until the 1972 session of the General Assembly. An additional 34 sections have been addressed by bills which were introduced prior to the end of the 1971 regular session. These bills have been carried over to the session planned for October, 1971, and will be considered at that time. Finally, 12 sections await introduction of bills or other implementing action. These last two categories must be given special attention in the weeks ahead.

Among the 34 sections to which bills have been addressed and are now pending are some of the most important and controversial provisions in the 1970 Constitution. They include creation of a bipartisan State Board of Elections (Article III, Section 5); provision for the new office of County Chief Executive (Article VII, Sections 4(a) and 6(a)); creation of a State Board of Education (Article X, Section 2(a)); and provision of a new ethical standard for public officials (Article XIII, Section 2). These and other sections in this category have far-reaching ramifications and merit thoughtful and detailed consideration.

The 12 sections to which no bills have been addressed should be dealt with during the session planned for October, 1971. Five of these have been considered by the Citizen's Advisory Committee on Implementation of the Comptroller's Office.

The Committee is expected to make detailed recommendations in its final report, to be issued in late September, 1971. The House Special Committee on Constitutional Implementation is expected to introduce bills in connection with five more sections during the October session. Two sections remain with no implementing action pending or in process at this time.

Full implementation of the 1970 Illinois Constitution has not been attained at this time. There has been a good faith effort on the part of the General Assembly but several months passed before the members of that body realized the magnitude of their task. When recognition did occur, particularly on the part of the House Special Committee on Constitutional Implementation, action was forthcoming. This does not lessen the burden and the responsibility of the General Assembly to quickly and effectively achieve full implementation of the new Constitution. It does establish that the legislature has confronted the issue and is, we trust, ready to deal with it in the best interests of the citizens of Illinois.

I. IMPLEMENTING A NEW CONSTITUTION: THE ILLINOIS EXPERIENCE

The Citizens Task Force - Creation and Purpose

The die was irrevocably cast on December 15, 1970. The people of Illinois, by a margin of some 11 percent of more than two million votes cast, had ratified a new state Constitution. Their action was the ratification of the product of nearly nine months of work by 116 elected representatives--the members of the Sixth Illinois Constitutional Convention.* The central question on December 16, 1970, was a simple one. How does a state with a full century of experience with one charter go about the serious business of implementing a new one--the 1970 Illinois Constitution.

The question of implementation of the 1970 Illinois Constitution did not go long unresolved. Before the new year Governor Ogilvie, a strong supporter of the new Constitution, had directed his staff to begin considering steps to be taken in the immediate future. The goal of a new, more flexible constitution had been achieved. The central purpose now was to bring it into effect.

The question of implementing the new constitution had not been (indeed, could not have been) resolved by the Convention which created it. That body had not been empowered or funded to perform such a task. Furthermore, it had adjourned sine die on September 3, 1970, more than three months prior to ratification of the new document. Implementation of the new charter was now in the hands of the elected representatives of the people; the members of the executive, legislative and judicial branches of the state government.

At his direction, members of the Governor's staff met and exchanged memoranda during late December, 1970, and early January, 1971. Several members of the convention expressed their concern over implementation, as did a number of other public and private persons. The Governor, aware that no formal provisions had been made for implementation and sympathetic to the concerns being expressed, promulgated Executive Order No. 1, 1971. (See Appendix B) Executive Order No. 1 created a special study group, the Citizens Task Force on Constitutional Implementation, and gave it four charges: identify those sections of the new constitution requiring implementation prior to July 1, 1971; specify the nature of required implementation; assist the General Assembly in such ways as that body might request or direct; and advise the Governor on the constitutional appropriateness of implementing legislation awaiting his approval.

*The Sixth Illinois Constitutional Convention performed the final act in a scenario which had spanned at least two decades. Space is too limited to list the many citizens and groups whose works contributed to its success. Credit must be given to the Constitutional Study Commission for its efforts in bringing together the ideas and information which helped pave the way to the ultimate success of the convention.

Organization of the Task Force

Executive Order No. 1 was promulgated on January 21, 1971. Eight days later the newly constituted Citizens Task Force on Constitutional Implementation met for the first time. Comprised by 14 former members of the Constitutional Convention and 11 members at-large, the Task Force represented all major areas and persuasions in Illinois. An early order of business at the initial meeting was the grant of authority to the Chairman to establish a steering committee to deal with procedural matters and to nominate members to standing committees.

The Steering Committee met on February 9, 1971 for the purpose of defining areas of committee responsibility and nominating members to the several committees. This action was ratified by the Task Force on February 10. The committees were to consist of one each in the general areas of local government, revenue and financial administration, rights and legal procedures, and structure of state government. Each committee was assigned a group of articles and sections in the new constitution as its primary field for review and recommendation of implementing action (see Appendix C).

The Committee Structure

It is necessary to understand how the Task Force organized itself to meet its initial charge before further discussing its role in working toward implementation of the new constitution. As previously noted, the Task Force had been organized into a steering committee and four other committees which were to study selected portions of the new Constitution.

With the exception of the Chairman, each member of the Steering Committee was also a member of one of the four committees which dealt with selected articles of the new constitution. Their dual role called for them to deal with questions of policy as well as those of constitutional substance. The policy questions related to matters such as how the Task Force would be staffed and budgeted, the allocation of committee assignments, determination of committee jurisdiction, and initial review of the various reports which ultimately issued from the Task Force.

The four substantive committees were given the responsibility of reviewing their assigned articles of the new constitution to determine which sections required implementation prior to July 1, 1971, the effective date of the new charter. Although the charge to the Task Force had been to determine those areas where legislation was required, it soon became apparent that action would also be necessary with regard to procedural rules of the General Assembly and rules of court. The Task Force was aware that full implementation would require adaptation in all of these areas, not to mention the years ahead when the courts will define the ultimate validity of statute law and constitutional law.

The Task Force dealt with the question of whether the several committees should hold public hearings at its meeting on February 10, 1971. It was noted that the people of Illinois had expressed their mandate by ratifying the new charter. Furthermore, the Task Force had been given a clear charge in Executive Order No. 1. The central questions to be answered were these: Which sections were, by their language, self-executing? Which sections could await implementation at some future time? Which sections required immediate implementation? The Task Force believed that the answers to these questions could best be found in the words of the Constitution and that public hearings were not necessary.

Staff Structure

Staffing an agency such as the Task Force is always a complex process. First, such an agency operates within a limited span of time. In the case of the Task Force it was originally envisioned that this time would extend approximately 90 days beyond the end of the first session of the 77th General Assembly on June 30, 1971. This coincides with the constitutionally prescribed period within which the Governor must complete his action on bills passed during the session. This meant that the maximum life of the Task Force would be some eight months.

An agency with an anticipated life span of eight months could ordinarily expect some difficulty in finding competent staff personnel. The Task Force was fortunate in several respects. There was available a small pool of personnel who had been associated with the Sixth Illinois Constitutional Convention and with the campaign for ratification of the new document. There was also an abiding interest in and concern for the constitution-framing process on the part of these and many others. Furthermore, budgetary and other constraints militated in favor of a small staff. Finally, the Task Force was comprised by persons of wide-ranging expertise and did not require a large staff to service its needs.

The staff of the Task Force never exceeded four persons and was at that level for only two months* Of the four, three

*Miss Virginia Ubik served as research aid to the Committee on Structure of State Government until late March, when she was named staff director of the Governor's Advisory Commission on Financing the Arts in Illinois. A former staff member of the Constitutional Convention and of the staff of the Citizens Committee for the New Constitution, Miss Ubik brought knowledge, experience and a high level of competence to her assignment. Miss Kathleen Meehan served as secretary to the Task Force. She had also served as staff to the convention and the Citizens Committee. Her quiet competence, efficiency and initiative were of immeasurable value to the success of the staff effort. Mr. Harvey Schwartz, Attorney-at-Law, provided expert legal knowledge to the Committee on Rights and Legal Procedures. Dr. John Wenum, college professor and former member of the Constitutional Convention served as staff director for the Task Force.

were full-time persons engaged on a contractual basis. These three consisted of a staff director, secretary, and a research aid to the Committee on Structure of State Government. The fourth person was a lawyer who was engaged as research aid to the Committee on Rights and Legal Procedures on a fee basis. After the Initial Report was approved for publication the staff was reduced to two persons, the staff director and secretary. Staff remained at this level until mid-September, at which time the major responsibilities of the Task Force had been discharged. *

*Due to the small number and non-controversial nature of implementing bills passed, the Task Force was not called upon to assist in reviewing bills awaiting action by the Governor as envisioned in charge number 4 of Executive Order No. 1.

II. THE WORK OF THE TASK FORCE

Preparing the Initial Report

The Task Force adopted the committee structure as proposed by the Steering Committee at a meeting on February 10. Subsequently the chairman and staff director formalized the assignment of committee responsibilities which had been suggested during the meeting and on February 12 a memorandum was circulated in which specific articles and sections were assigned to the committees. The committees immediately began scheduling meetings to review their respective articles and sections to determine which of them required implementation prior to July 1, 1971.

The committees of the Task Force were working against an imminent deadline. The 77th General Assembly had already been in session for over a month and few pieces of implementing legislation had been introduced. Only four and one-half months remained in a session during which the legislature had to reapportion itself, review the proposed state budget and pass related appropriation bills, consider the more than 4,000 bills which would be introduced, and implement the new constitution. The problems of the General Assembly were compounded by its nearly even partisan division, a condition which harbored the potential for stalemate The Senate was evenly divided along party lines and in the House the Republicans had one vote more than the constitutional majority required to pass a bill.

The Task Force recognized the nature of the work facing the General Assembly. It was decided that a report should be prepared and submitted to the Governor and the legislature at the earliest possible date. The report would serve as a guide to the legislature in establishing priorities for action. It would also be a statement of necessary action from a bipartisan public agency.

Each committee of the Task Force met several times between February 10 and April 1. The Task Force met as a body on March 3, March 18 and April 1. At each meeting the recommendations of the committees were reviewed by the Task Force. Subsequent to each meeting the staff made corrections in the evolving report and submitted the revised drafts back to the Task Force members. The Task Force met on April 1 to review the final draft of the Initial Report. Necessary editorial corrections were made and the report was submitted for publication. On April 12 the report was published and three days later it was formally presented to the Governor at a press conference in his office. The report was simultaneously released to the legislature, the state departments and agencies, the Supreme Court and to the public.

The Initial Report identified 99 sections out of 226 in the new constitution as requiring implementation prior to July 1, 1971. It specified sections of the statutes which needed to be reviewed for conformity with the new constitution, where new laws were required, and where implementation could be achieved

by changes in procedural rules of the legislature and rules of court. The report also noted options available to the General Assembly in certain cases and provided notes to explain its recommendations in many instances. Publication of the Initial Report fulfilled the first and second charges in Executive Order No. 1.

It would be inappropriate to leave the discussion of the Initial Report without commenting briefly on the assistance received from individuals and associations. Letters commenting on various sections of the new constitution were received from members of the convention, staff counsel to committees of the convention and agencies of the state. The Illinois League of Women Voters, the Chicago Bar Association and the Illinois Legislative Council had all prepared lists of sections which, in their judgement, required legislative implementation. The Illinois Municipal League made available a commentary on Article VII, Local Government, which had been prepared by their legal counsel. These and many other letters and reports were made available to the Task Force. The Task Force sometimes arrived at different conclusions with respect to specific sections. All of these source materials were carefully considered, however, and helped the Task Force in making its determinations.

The Liaison Function

During the period when the Task Force was preparing its Initial Report, the leadership in the General Assembly had been considering how to best perform its function in the implementing process. At one point it was proposed that a joint committee on implementation be created. This proposal was nullified by creation of the House Special Committee on Constitutional Implementation on February 19. Although some members of the Senate pursued the idea of a joint committee for a time, formation of a counterpart Senate committee was announced on March 19.

Throughout the remaining months of the session the Task Force was represented at most meetings of the special committees. The Task Force representative was more an observer than a spokesman, however. This was rooted in two positions taken by the Task Force early in its existence. The first of these was that any appearance of intrusion into legislative prerogative should be scrupously avoided. This was based in the third charge of Executive Order No. 1, which stated that the Task Force was to "work in cooperation with the General Assembly and its agencies as that body may direct and request..." This charge, it was felt, did not empower the Task Force to act as a lobbying agency in the usual sense of the term.

A second position taken was that no one person could speak for the Task Force unless that body had adopted a point of view on the particular bill or subject. The Task Force did not endorse or sanction specific bills. It sought instead to assess the implementing effect of bills and to avoid questions of ideology or partisanship. Its concern was that

the constitution be implemented in a manner consistent with the words of the document and the intent of the framers.

Adoption of the foregoing positions limited any spokesman for the Task Force to the role of advisor and neutral commentator. Advocacy, while the prerogative of members as individuals, was denied them as spokesman for the body. In retrospect this appears to have been a wise course of action. The credibility of the Task Force was enhanced in the eyes of the General Assembly and it could never be accused of polarizing partisan or regional groups on a particular bill or issue. Taking a neutral position also led to better relations with the chairmen of the special committees, particularly in the House. This in turn led to a better exchange of ideas and information than might have been expected.

Communications between representatives of the Task Force and the special committees of the General Assembly varied considerably from one house to the other. This derived in large part from the role each committee chose for itself. The choice of role was a product, at least in part, of the size of the two committees and the date of their creation.

The Legislative Implementation Committees

The Senate committee chose to act as a bill-review agency. It reacted to legislation which was assigned to it but did not prepare and introduce any committee bills. Choice of this course of action appears to have been related both to the size of the committee and its date of creation. Comprised by 12 members, the Senate committee was not large enough to be organized into sub-committees which could adequately deal with assigned portions of the new Constitution in the time remaining. Its creation on March 19, 1971, with barely more than one-half of the session remaining, appears to have forced the Senate committee to adopt its limited role.

The House committee was comprised by 24 members. It was created on February 19, a full month before its Senate counterpart. With its larger membership and longer work period, the House committee was able to adopt a different approach to its task. Shortly after its creation the committee was organized into five study groups. Each study group was assigned responsibility for reviewing one or more articles of the Constitution to determine what implementing action was required.

It would appear at first glance that the Task Force was performing much the same role as the House committee. This is clearly not the case, however, when the roles and perspectives of the two groups are examined. Only three of the 24 members of the House committee had been members of the Constitutional Convention. This meant that the case for intent behind the words of the new constitution could not be as clearly made as in the Task Force, where 14 of the 25 members had been at

the convention. In addition, the Task Force had been charged with identifying those sections which required implementation prior to July 1, 1971, the effective date of the new Constitution. The House and Senate committees were no less concerned with achieving full implementation but did not always share the Task Force's concern over the July 1 effective date.

The more active role chosen by the House committee caused representatives of the Task Force to relate more to that body than to its Senate counterpart. Beginning in February, a working relationship developed between the chairman and staff director of the Task Force and the chairman, vice-chairman and staff of the House committee. (Relations with the Senate committee were always cordial but not as substantive.) There were frequent discussions of the progress of implementation, both with staff and with the committee leadership.

Despite the good working relationship established with the House committee, it became apparent in late April that a large number of constitutional provisions had not been addressed with implementing legislation. The subject was briefly discussed at a Task Force meeting on April 30 but no formal action was taken.

The Task Force met again on May 14. The staff had prepared a report on the status of implementing legislation which showed that more than half of the sections identified in the Initial Report as requiring implementation prior to July 1 had not been addressed by the General Assembly. The members of the Task Force were uncertain as to how best to proceed in seeking more expeditious implementation. After lengthy discussion, a motion was taken which directed the Steering Committee to prepare letters to the Governor and the presiding officers of the House and Senate.

Letters were sent to Governor Richard B. Ogilvie, Speaker of the House W. Robert Blair, and Senate President Pro Tempore Cecil A. Partee on May 21. The letter to the Governor asked if there were ways beyond those noted in Executive Order No. 1 in which the Task Force could be of assistance. The letters to Speaker Blair and President Pro Tempore Partee offered "...to assist the General Assembly in such ways as you might desire, particularly in the following areas:"

1. Identification of sections of the new Constitution which require implementation prior to July 1 and to which no legislation has been addressed.

2. Review pending bills and advise you when they seem to be inadequate to implement or in conflict with the provisions of the new Constitution.

3. Assist in drafting legislation in those areas where none has been introduced to date.

Governor Ogilvie responded in a letter dated May 26. In his reply the Governor stated:

> **In specific response to your letter, I am of the opinion that the Task Force can best discharge its continuing responsibilities by servicing the specific requests you might receive from the leadership of the General Assembly and from the membership of the two committees on Constitutional Implementation. Although it is premature for me at this time to indicate specifically which bills I will need your guidance (on), I intend to submit specific legislation for your review following the adjournment of the present session.**

The Governor had reinforced the charge given in Executive Order No. 1 but left any elaboration thereon to the leadership of the General Assembly and the two committees.

President Pro Tempore Partee responded on June 3. He expressed his appreciation of the Task Force's initial report and noted his understanding that the Task Force was maintaining a running record of implementing legislation. After stating his hope that such a record would be available to the Senate and its committee on Constitutional Implementation, Senator Partee assured the Task Force that its service would be requested "...if other matters arise in connection with implementation of the Constitution where we think you may be helpful." Speaker Blair did not respond to the letter from the Task Force.

The Task Force met on June 4 and reviewed its position. It was now clear that more than 40 of the sections identified in the initial report had not been addressed. The Governor's letter of May 26 made it clear that for the remainder of the session the Task Force should service requests from the General Assembly. In the absence of specific requests for such assistance from the General Assembly, the Task Force directed its staff to prepare a second report for the purpose of identifying those areas where no implementing action had been taken to date.

The Second Report

The staff, as part of its service to the Task Force, had been maintaining a detailed record of the status of implementation. As soon as a bill was introduced the published synopsis was evaluated to identify any implementing effect. When the printed bill became available it was analyzed to determine its constitutional import. Committee chairmen received copies of all bills which appeared to pertain to the sections of the Constitution assigned to their respective committees. The Task Force members received copies of bill synopses and a brief bill analysis on a regular basis.

The Task Force met on June 4 to review the status of implementation. Copies of the response of the Governor and the President Pro Tempore to the letters of May 21 were distributed to the membership. After an extended discussion of several courses of action available to it, the Task Force took a motion that a second report be prepared and distributed. The second report was to be brief, containing only a letter of transmittal and a listing of sections which had not yet been addressed with implementing action. The report was prepared and publication occurred on June 16, 1971.

Two weeks of the legislative session remained when the second report was published. The two weeks were more productive of bills designed to implement the new Constitution than the preceding five months. (In fairness it must be noted that many of the bills introduced during the last two weeks had been in the process of preparation long before publication of the second report.) The report listed 42 sections of the 91 originally identified as being inadequately addressed by pending legislation or not addressed at all. By the end of the session that number had been reduced to Implementation would not be fully accomplished before the end of the legislative session but a new awareness had been created on the part of the General Assembly.

The Last Two Weeks: Results of the Second Report

Publication of the Second Report of the Citizens Task Force on Constitutional Implementation generated a new awareness on the part of the General Assembly. Only two weeks remained in the session, yet barely more than one-half of the 91 sections identified in the initial report had been addressed with implementing bills. The second report listed 42 of these as having no bills or other action pending.

Chairman Thomas C. Rose of the House Committee on Constitutional Implementation was already sensitive to the complexities of bringing the new document into effect by July 1. Subsequent to publication of the second report he redoubled the efforts of his committee and staff. Bills, many of which had been in the drafting process, were completed and introduced. Chairman Rose initiated correspondence with the House Rules Committee in which he recommended changes in procedural rules to bring them into conformance with the new Constitution. He also indicated that his committee will prepare bills relating to five of the remaining sections for introduction during an unusual fall session of the legislature. It is expected that the final report of the Citizens' Advisory Committee on Implementation of the Comptroller's Office will recommend action on five other sections.

The 77th Illinois General Assembly can look to its fall session with only two sections remaining to which no implementing action has been addressed or promised. The

record has improved markedly since June 16 but one fact remains. Despite the many bills and other actions pending, the new Constitution is far from being fully implemented. As was noted earlier, several of the most controversial sections still must receive final action. The task of implementing a new Constitution has been found complex and laborious. Readjusting a process of government set in a century of constitutional history subjected the legislative process to a difficult test. The results are not yet in.

III. THE PROCESS OF IMPLEMENTATION: A RECAPITUALTION

It is less productive but far easier to look backward rather than into the future. This truism applies equally well to the Citizens Task Force on Constitutional Implementation and the 77th General Assembly. In February neither body had any experience with constitutional implementation. By the end of the legislative session both bodies were somewhat chastened and far more appreciative of the myriad problems involved. The Task Force, because it was created for the express purpose of expediting implementation, came to appreciate those problems at an earlier date. To its credit, the General Assembly came to share those appreciations well before the end of the session in the early morning hours of July 1.

Perhaps the major problem confronting the members of the General Assembly was conceptual in nature. The members of the Task Force came to their assignment with their attention focused only on the new constitution. The members of the General Assembly, however, returned to the same climate of law and court cases, the same array of organized interest groups and the typical legislative burden of new bills on old subjects. There were more things to take their attention away from the new constitution than to course them to focus upon it. The result was that the members of the General Assembly did not grasp as readily some of the innovative provisions of the 1970 Illinois Constitution.

Part of the conceptual problem for members of the General Assembly can be attributed to their relative isolation from the process of writing the new Constitution. With the exception of the members of the special committees of the House and Senate, this isolation was not lessened until well into the first session of the 77th General Assembly. Part of it may also have derived from the short period of time between ratification of the new Constitution on December 15, 1970, and the convening of the 77th General Assembly on January 6. 1971. In those three weeks there was all too little opportunity for members of the General Assembly to ponder and develop strategies on implementation.

It is necessary to note that many in the General Assembly did not share the concern of the Task Force for early implementation. Both by the charge of Executive Order No. 1 and the nature of its membership, the Task Force viewed the July 1 effective date in absolute terms. Failure to achieve full implementation of the new Constitution would deprive the people of Illinois of the full force and effect of the document they had ratified. The General Assembly on the other hand, appears not to have felt as strongly on the subject. Furthermore, it did not share the sense of urgency of the Task Force with respect to some sections. For example, while the Task Force was concerned that a state board of education be immediately created as provided by Article X, Section 2(a), the General Assembly was not disposed to rush into the subject. Several

bills were introduced and are on the fall, 1971 calendar. The legislature, however, was not as concerned over the question of what would take place in the event of a vacancy in the office of Superintendent of Public Instruction as with the manner of naming the members of the new board.

It is necessary to note, out of fairness to the members of the General Assembly, that the Task Force may have been overly zealous in its identification of sections requiring immediate implementation. Approximately 24 of the 91 sections originially identified did not, on further study, seem to require implementation by July 1. They are still viewed as demanding early action but may be deferred until a later session without unduly jeopardizing the intent of the Constitution and the welfare of the people of Illinois.

The Role of the Court

It would be all too easy to overlook the part already played by the Illinois Supreme Court in bringing the 1970 Illinois Constitution into effect. At this date no cases have been tried nor laws tested against the standard of the new charter. The courts do not deal only in the substance of the laws, however. They also deal with procedures, with the framework of actions and processes within which justice is sought.

The Illinois Supreme Court and its staff have been working for several months at revising the rules which govern the conduct of judicial business. The results of their efforts can be found in two sets of revisions to the Illinois Supreme Court Rules. The first of these, effective July 1, 1971, modifies a number of rules which deal with original and appellate jurisdiction and procedural matters. Several sections of the new Constitution are implemented in whole or in part by these revisions.

The second set of revised rules relates to discovery in criminal cases and will be effective on October 1, 1971. Although substantive in content, these rules set procedural guidelines in relation to sections of the Constitution which the members of the Task Force believe to be self-executing.

The Supreme Court has moved quickly in fulfilling its first responsibility in connection with implementation of the new Constitution. Its further responsibility will be discharged in the further evolution of case law and additional refinements to the rules of court.

The Effect of Anticipatory Legislation

A question which arose early in the deliberations of the Task Force had to do with so-called anticipatory legislation. What is the legal status of a bill passed prior to the effective date of a new Constitution when the intent of the bill is to deal with provisions contained in the new document. The question becomes more complex when the bill relates to a provision in the new Constitution which does not appear in the old one.

On February 20, 1971, the Honorable Wayne W. Whalen, member of the Task Force and former member of the Constitutional Convention, distributed a memorandum on the subject. The answer to the question regarding anticipatory legislation was a qualified yes (see Appendix D). His position was supported by a second memorandum prepared by Miss Ann Lousin, lawyer and staff aid to the House Committee on Constitutional Implementation. Miss Lousin's memorandum, dated March 22, 1971 also concluded that anticipatory legislation could be passed by the General Assembly. There were a number of differences in both reasoning and conclusions reached but both memoranda sustained the concept of anticipatory legislation.

A more cautious view was expressed in a memorandum prepared by Mr. Frank M. Pfeifer, General Counsel to the Illinois Municipal League. In his memorandum of January 4, 1971, Mr. Pfeifer had addressed himself to the question of local ordinances passed in anticipation of the effective date of the new Constitution. Directing himself to the grant of home rule contained in the new document, Mr. Pfeifer said, "The power to operate under home rule ordinances...does not come into being until July 1, 1971 and I do not believe that any such ordinances should be enacted before that date." He went on to note that such ordinances could probably be legally passed prior to July 1 if they were not effective until after that date, but suggested waiting on such action.

The General Assembly operated under the assumption that anticipatory legislation could be passed prior to July 1.

The Timing of Gubernatorial Approval of Bills

A question which related in some part to that regarding anticipatory legislation was being considered in the Governor's office. How did the provisions of the new Constitution, which differed from those in the old one, effect the timing of the Governor's approval of bills passed prior to July 1? The old Constitution provided a maximum period of 10 days (Sundays excepted) between the time the Governor received a bill and the time when he had to either approve or veto it. Lacking any action on his part, the bill became law at the end of the 10 day period.

The new Constitution provided a maximum period of 90 days between time of passage and approval or rejection by the veto. The Attorney General was asked for an opinion as to the effect of the varying provisions in the old and new Constitutions. The Attorney General responded in an opinion dated June 15, 1971 (see Appendix E). The essence of his answer was that any bill passed within less then 10 days (Sundays excepted) of July 1 was to be considered under the new provisions. For any bill passed earlier, the Governor had 10 days from the time it reached his desk to indicate approval or rejection. Owing to the spate of bills passed during the waning hours of the session, the Governor had a much longer time to consider his actions thereon.

Deferred Implementation: The Fall Session

During the spring of 1971 the leadership of the General Assembly came to the realization that their work would not be completed by June 30, the end of the regular session under the provisions of the 1870 Constitution. In an effort to better understand the ramifications of the new Constitution, the Attorney General was requested to prepare an opinion on the General Assembly as a continuing body. The question had two important parts to it. Could the 77th General Assembly, constituted under the previous Constitution, continue to transact business after July 1, when the new Constitution came into effect? Could bills still pending as of June 30 be placed on the calendar of a later session with the same status? The Attorney General answered both parts of the question in the affirmative. (See Appendix F). The procedural feasibility of a fall session had been assured.

The General Assembly now faces a fall session in which hundreds of bills must be considered. Among these are several score which relate to the new Constitution. At least 45 of these are substantive bills and in several cases these is more than one bill pending on a section of the Constitution. Because of their late introduction, a number of implementing bills are still on first reading in the Committees on Constitutional Implementation of the House and Senate.

The procedural hurdles have been cleared away by the opinions of the Attorney General. The General Assembly must still face the difficult question of how to enact bills which best serve the words and intent of the 1970 Illinois Constitution. The basic political climate is unchanged, although various interest groups will have had more time to establish their positions for and against particular pieces of legislation.

The Task Force believes the best interest of the people of Illinois have been served by implementation effected to date. We trust that concern for that common good will pervade the fall session of the 77th General Assembly. Its responsibility is of heroic proportions and far-reaching historical significance. We wish good fortune and Godspeed to all concerned with full implementation of the 1970 Illinois Constitution.

APPENDIX A
SEPTEMBER, 1971: THE STATUS OF IMPLEMENTATION

The history of the United States clearly demonstrates the dynamic and evolutionary nature of our constitutional tradition. It would therefore be inconsistent to expect that Illinois ever can or even should arrive at a moment when the 1970 Constitution is fully implemented. Full implementation would connote stasis, a condition incompatible with the history of the state and the nation. There is necessary, however, some measure of the extent to which the words and intent of a constitution operate at any given time. Such a measure is to be found in the pages following, where the present and prospective status of implementation of the new constitution is reported.

Several comments are necessary here so as to give more meaning to the analysis of the status of implementation which follows. It must first be made clear that this analysis is presented from the point of view of the Citizens Task Force on Constitutional Implementation. That point of view is expressed in the initial report of the Task Force. The initial report identified those sections of the new constitution which required implementation prior to July 1, 1971. Although not repeated herein, the statement contained in the initial report is the base from which this analysis begins.

The reader of this report must also be aware that the status of implementation of many sections of the new constitution is difficult to define at this time. A number of implementing bills are awaiting gubernatorial action. Until the governor either approves or vetoes these bills the status of the related sections remains in doubt. (This deadline for gubernatorial action may be as late as September 29 for a bill passed on June 30.) Furthermore, bills relating to 34 sections have been introduced but await final legislative action during the fall session.

The pages which follow contain the complete text of the 1971 Illinois Constitution. A statement as to the status of implementation appears opposite each section of the new constitution. These statements fall into the following categories.

1. The Task Force believes the section is self-executing or adequately treated by existing statutes and rules.

2. The section is implemented.

3. The section is not implemented.

4. The section will be implemented if pending bills are passed substantially as introduced.

5. Specific and immediate implementation is not required.

CONSTITUTION OF THE STATE OF ILLINOIS

Adopted in Convention at Springfield, September 3, 1970.
Ratified by the People, December 15, 1970.
In force July 1, 1971.

PREAMBLE

We, the People of the State of Illinois—grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors—in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity—do ordain and establish this Constitution for the State of Illinois.

ARTICLE I

BILL OF RIGHTS

SECTION 1. INHERENT AND INALIENABLE RIGHTS

All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

SECTION 2. DUE PROCESS AND EQUAL PROTECTION

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

SECTION 3. RELIGIOUS FREEDOM

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and

(cont'd)

STATUS OF IMPLEMENTATION

The Preamble is a statement of the goals and purposes envisioned in this Constitution. Traditionally a Preamble is not viewed as having the force of law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes or rules.

no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference by* given by law to any religious denomination or mode of worship.

SECTION 4. FREEDOM OF SPEECH

All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 5. RIGHT TO ASSEMBLE AND PETITION

The people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 6. SEARCHES, SEIZURES, PRIVACY AND INTERCEPTIONS

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 7. INDICTMENT AND PRELIMINARY HEARING

No person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine or by imprisonment other than in the penitentiary, in cases of impeachment, and in cases arising in the militia when in actual service in time of war or public danger. The General Assembly by law may abolish the grand jury or further limit its use.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

*Probably should read "be".

No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause.

SECTION 8. RIGHTS AFTER INDICTMENT

In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to meet the witnesses face to face and to have process to compel the attendance of witnesses in his behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 9. BAIL AND HABEAS CORPUS

All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 10. SELF-INCRIMINATION AND DOUBLE JEOPARDY

No person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 11. LIMITATION OF PENALTIES AFTER CONVICTION

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. No conviction shall work corruption of blood or forfeiture of estate. No person shall be transported out of the State for an offense committed within the State.

Section will be implemented if HB 3044 is passed substantially as introduced. HB 3044 declares the purpose of the Criminal Code to be the restoration of offenders to useful citizenship. The bill is on the fall calendar.

Passage of SB 759-64, 767-68, 770-72, 774-94 and 1058 and their approval by the Governor partially implements the section. Bills in the 700 series allow consideration of felony convictions in determining an applicant's eligibility for licensing in certain occupations (cont'd)

or professions but prevents such convictions from acting as a bar to registration. SB 1058 established procedures for restoring voting rights upon completion of sentence.

SECTION 12. RIGHT TO REMEDY AND JUSTICE

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 13. TRIAL BY JURY

The right of trial by jury as heretofore enjoyed shall remain inviolate.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 14. IMPRISONMENT FOR DEBT

No person shall be imprisoned for debt unless he refuses to deliver up his estate for the benefit of his creditors as provided by law or unless there is a strong presumption of fraud. No person shall be imprisoned for failure to pay a fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfully failed to make payment.

Section will be implemented if HB 3077 is passed substantially as introduced. HB 3077 establishes procedures for installment payment of fines. The bill is on the fall calendar. In the absence of legislation the section can be implemented by rule of court.

SECTION 15. RIGHT OF EMINENT DOMAIN

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

Specific and immediate implementation is not required. Ch. 47, Sec. 1, Ill. Rev. Stat. (1969) provides for jury determination of just compensation in certain cases and permits it upon request in certain others. It is desirable that the permissive language be amended to conform with this section at a future date.

SECTION 16. EX POST FACTO LAWS AND IMPAIRING CONTRACTS

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 17. NO DISCRIMINATION IN EMPLOYMENT AND THE SALE OR RENTAL OF PROPERTY

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.

These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 18. NO DISCRIMINATION ON THE BASIS OF SEX

The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 19. NO DISCRIMINATION AGAINST THE HANDICAPPED

All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 20. INDIVIDUAL DIGNITY

To promote individual dignity, communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 21. QUARTERING OF SOLDIERS

No soldier in time of peace shall be quartered in a house without the consent of the owner, nor in time of war except as provided by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 22. RIGHT TO ARMS

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 23. FUNDAMENTAL PRINCIPLES

A frequent recurrence to the fundamental principles of civil government is necessary to preserve the blessings of liberty. These blessings cannot endure unless the people recognize their corresponding individual obligations and responsibilities.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 24. RIGHTS RETAINED

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the individual citizens of the State.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE II

THE POWERS OF THE STATE

SECTION 1. SEPARATION OF POWERS

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. POWERS OF GOVERNMENT

The enumeration in this Constitution of specified powers and functions shall not be construed as a limitation of powers of state government.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE III

SUFFRAGE AND ELECTIONS

SECTION 1. VOTING QUALIFICATIONS

Every United States citizen who has attained the age of 21 or any other voting age required by the United States for voting in State elections and who has been a permanent resident of this State for at least six months next preceding any election shall have the right to vote at such election. The General Assembly by law may establish registration requirements and require permanent residence in an election district not to exceed thirty days prior to an election. The General Assembly by law may establish shorter residence requirements for voting for President and Vice-President of the United States.

Section is implemented by passage of SB 719 and HB 1964 if these bills are approved by the Governor. SB 719 and HB 1964 bring Chs. 46 and 122, Ill.Rev. Stat. (1969) into conformance with this section. This section is subject to continous implementation by state and federal statutes and judicial determination. HB 1963 which changed residence requirements for voting in school elections has been returned to the General Assembly.

SECTION 2. VOTING DISQUALIFICATIONS

A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence.

Section has been implemented by passage and approval of SB 1058. SB 1058 establishes procedures for restoring voting rights upon completion of sentence.

SECTION 3. ELECTIONS

All elections shall be free and equal.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. ELECTION LAWS

The General Assembly by law shall define permanent residence for voting purposes, insure secrecy of voting and the integrity of the election process, and facilitate registration and voting by all qualified persons. Laws governing voter registration and conduct of elections shall be general and uniform.

Section is implemented by passage of SB 719 if this bill is approved by the Governor. SB 719 bring Chs. 46 and 122, Ill. Rev. Stat. (1969) into conformance with this section. A more precise definition of "permanent abode" as used in Ch. 46, Sec. 3-2, is desirable. This section is subject to continuing implementation by state and federal statutes and judicial determination. HB 1963 which changed residence requirements for voting in school elections has been returned to the General Assembly.

SECTION 5. BOARD OF ELECTIONS

A State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. No political party shall have a majority of members of the Board.

Section will be implemented if HB 2615, 2916, SB 654 or 868 is passed substantially as introduced. These bills are on the fall calendar.

SECTION 6. GENERAL ELECTION

As used in all articles of this Constitution except Article VII, "general election" means the biennial election at which members of the General Assembly are elected. Such election shall be held on the Tuesday following the first Monday of November in even-numbered years or on such other day as provided by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE IV

THE LEGISLATURE

SECTION 1. LEGISLATURE—POWER AND STRUCTURE

The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives elected by the electors from 59 Legislative Districts.

SECTION 2. LEGISLATIVE COMPOSITION

(a) One Senator shall be elected from each Legislative District. Immediately following each decennial redistricting, the General Assembly by law shall divide the Legislative Districts as equally as possible into three groups. Senators from one group shall be elected for terms of four years, four years and two years; Senators from the second group, for terms of four years, two years and four years; and Senators from the third group, for terms of two years, four years and four years. The Legislative Districts in each group shall be distributed substantially equally over the State.

(b) Three Representatives shall be elected from each Legislative District for a term of two years. No political party shall limit its nominations to less than two candidates for Representative in any Legislative District. In elections for Representatives, including those for nomination, each elector may cast three votes for one candidate or distribute them equally among no more than three candidates. The candidates highest in votes shall be declared elected.

(c) To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the district which he is to represent. In the general election following a redistricting, a candidate for the General Assembly may be elected from any district which contains a part of the district in which he resided at the time of the redistricting and reelected if a resident of the new district he represents for 18 months prior to reelection.

(cont'd)

Section has been implemented. The Legislative Redistricting Commission has filed its redistricting plan with the Secretary of State. The plan provides for a 59th Senate seat.

Section will be implemented if HB 2908 is passed substantially as introduced. HB 2908 provides for dividing legislative districts into three groups and for staggered terms of Senators.

Section will be implemented if either HB 1148 or 2134 is passed substantially as introduced. HB 1148 and 2134 both limit any party from nominating only one candidate for Representative in a legislative district. Both bills are on the fall calendar.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(d) Within thirty days after a vacancy occurs, it shall be filled by appointment as provided by law. If the vacancy is in a Senatorial office with more than twenty-eight months remaining in the term, the appointed Senator shall serve until the next general election, at which time a Senator shall be elected to serve for the remainder of the term. If the vacancy is in a Representative office or in any other Senatorial office, the appointment shall be for the remainder of the term. An appointee to fill a vacancy shall be a member of the same political party as the person he succeeds.

(e) No member of the General Assembly shall receive compensation as a public officer or employee from any other governmental entity for time during which he is in attendance as a member of the General Assembly.

No member of the General Assembly during the term for which he was elected or appointed shall be appointed to a public office which shall have been created or the compensation for which shall have been increased by the General Assembly during that term.

Section is implemented by passage of HB 3042 and SB 67 if either of these bills is approved by the Governor. Either bill will establish procedures for filling legislative vacancies.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. LEGISLATIVE REDISTRICTING

(a) Legislative Districts shall be compact, contiguous and substantially equal in population.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts.

If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.

The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.

(cont'd)

Section has been implemented. The Legislative Redistricting Commission has filed its redistricting plan with the Secretary of State. Redistricting will have to be accomplished after each decennial census as provided in this section.

The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.

Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.

Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General. [This Section 3 of Article IV shall become effective on January 15, 1971. See Transition Schedule Section 10.]

Revised Illinois Supreme Court Rule 382, July 1, 1971, implements the last sentence of this section by establishing procedures for actions challenging legislative redistricting.

SECTION 4. ELECTION

Members of the General Assembly shall be elected at the general election in even-numbered years.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 5. SESSIONS

(a) The General Assembly shall convene each year on the second Wednesday of January. The General Assembly shall be a continuous body during the term for which members of the House of Representatives are elected.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(cont'd)

ARTICLE IV–THE LEGISLATURE (cont'd)

(b) The Governor may convene the General Assembly or the Senate alone in special session by a proclamation stating the purpose of the session; and only business encompassed by such purpose, together with any impeachments or confirmation of appointments shall be transacted. Special sessions of the General Assembly may also be convened by joint proclamation of the presiding officers of both houses, issued as provided by law.

(c) Sessions of each house of the General Assembly and meetings of committees, joint committees and legislative commissions shall be open to the public. Sessions and committee meetings of a house may be closed to the public if two-thirds of the members elected to that house determine that the public interest so requires; and meetings of joint committees and legislative commissions may be so closed if two-thirds of the members elected to each house so determine.

Section will be implemented if HB 2899 is passed substantially as introduced. HB 2899 establishes procedures whereby the presiding officers of both houses of the General Assembly may call a special session. The bill is on the fall calendar.

Section will be implemented if HB 3038 is passed substantially as introduced and if rules changes recommended in the House of Representatives are adopted by both houses of the General Assembly. HB 3038 is on the fall calendar.

SECTION 6. ORGANIZATION

(a) A majority of the members elected to each house constitutes a quorum.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) On the first day of the January session of the General Assembly in odd-numbered years, the Secretary of State shall convene the House of Representatives to elect from its membership a Speaker of the House of Representatives as presiding officer, and the Governor shall convene the Senate to elect from its membership a President of the Senate as presiding officer.

Specific and immediate implementation is not required. Section is substantially implemented by existing procedures of the General Assembly. Wherever they appear in rules of the Senate or in statutes, references to the Lieutenant Governor as President of the Senate should be changed prior to the convening of the 78th General Assembly.

(c) For purposes of powers of appointment conferred by this Constitution, the Minority Leader of either house is a member of the numerically strongest political party other than the party to which the Speaker or the President belongs, as the case may be.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(d) Each house shall determine the rules of its proceedings, judge the elections, returns and qualifications of its members and choose its officers. No member shall be expelled by either house, except by a vote of two-thirds of the members elected to that house. A member may be expelled only once for the same offense. Each house may punish by imprisonment any person, not a member, guilty of disrespect to the house by disorderly or contemptuous behavior in its presence. Imprisonment shall not extend beyond twenty-four hours at one time unless the person persists in disorderly or contemptuous behavior.

Specific and immediate implementation is not required. Section is substantially implemented by existing procedures of the General Assembly.

SECTION 7. TRANSACTION OF BUSINESS

(a) Committees of each house, joint committees of the two houses and legislative commissions shall give reasonable public notice of meetings, including a statement of subjects to be considered.

Section will be implemented if HB 3038 is passed substantially as introduced. HB 3038 provides for notice of meetings of legislative committees and commissions. The bill is on the fall calendar

(b) Each house shall keep a journal of its proceedings and a transcript of its debates. The journal shall be published and the transcript shall be available to the public.

Section has been implemented by passage and approval of HB 2894. HB 2894 provides a line item appropriation for defraying the costs of preparing a transcript of legislative debates. Modification of procedural rules of the General Assembly may also be desirable.

(c) Either house or any committee thereof as provided by law may compel by subpoena the attendance and testimony of witnesses and the production of books, records and papers.

Specific and immediate implementation is not required.

SECTION 8. PASSAGE OF BILLS

(a) The enacting clause of the laws of this State shall be: "Be it enacted by the People of the State of Illinois, represented in the General Assembly."

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) The General Assembly shall enact laws only by bill. Bills may originate in either house, but may be amended or rejected by the other.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) No bill shall become a law without the concurrence of a majority of the members elected to each house. Final passage of a bill shall be by record vote. In the Senate at the request of two members, and in the House at the request of five members, a record vote may be taken on any other occasion. A record vote is a vote by yeas and nays entered on the journal.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(d) A bill shall be read by title on three different days in each house. A bill and each amendment thereto shall be reproduced and placed on the desk of each member before final passage.

Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriations.

A bill expressly amending a law shall set forth completely the sections amended.

The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met.

Section will be implemented if HB 3041 is passed substantially as introduced. HB 3041 provides for certification by the Speaker of the House and President of the Senate that procedural requirements for passage have been met. The bill is on the fall calendar.

SECTION 9. VETO PROCEDURE

(a) Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage. The foregoing requirement shall be judicially enforceable. If the Governor approves the bill, he shall sign it and it shall become law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(cont'd)

(c) The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-fifths of the members elected passes the bill, it shall be delivered immediately to the second house. If within 15 calendar days after such delivery the second house by a record vote of three-fifths of the members elected passes the bill, it shall become law.

(d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

(e) The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bill shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated.

SECTION 10. EFFECTIVE DATE OF LAWS

The General Assembly shall provide by law for a uniform effective date for laws passed prior to July 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to July 1. A bill passed after June 30 shall not become effective prior to July 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

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Section has been implemented by passage and approval of HB 3029. HB 3029 establishes a uniform effective date of October 1 and provides for exceptions.

SECTION 11. COMPENSATION AND ALLOWANCES

A member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected.

Specific and immediate implementation is not required. HB 1938 and 1939 deal with expense allowances for members of the General Assembly. Both bills are on the fall calendar.

SECTION 12. LEGISLATIVE IMMUNITY

Except in cases of treason, felony or breach of peace, a member shall be privileged from arrest going to, during, and returning from sessions of the General Assembly. A member shall not be held to answer before any other tribunal for any speech or debate, written or oral, in either house. These immunities shall apply to committee and legislative commission proceedings.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 13. SPECIAL LEGISLATION

The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 14. IMPEACHMENT

The House of Representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the vote of a majority of the members elected, to impeach Executive and Judicial officers. Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall be upon oath, or affirmation, to do justice according to law. If the Governor is tried, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators elected. Judgment shall not extend beyond removal from office and disqualification to hold any public office of this State. An impeached officer, whether convicted or acquitted, shall be liable to prosecution, trial, judgment and punishment according to law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 15. ADJOURNMENT

(a) When the General Assembly is in session, neither house without the consent of the other shall adjourn for more than three days or to a place other than where the two houses are sitting.

(b) If either house certifies that a disagreement exists between the houses as to the time for adjourning a session, the Governor may adjourn the General Assembly to a time not later than the first day of the next annual session.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE V

THE EXECUTIVE

SECTION 1. OFFICERS

The Executive Branch shall include a Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller and Treasurer elected by the electors of the State. They shall keep the public records and maintain a residence at the seat of government during their terms of office.

Section has been implemented in areas of immediate need by passage and approval of SB 1146. SB 1146 amends Ch. 127, Sec. 151a, Ill. Rev. Stat.(1969) to reflect that the Lieutenant Governor shall maintain residence at the state capitol during his term. SB 652 which would have deleted reference to the Superintendent of Public Instruction in Ch. 46, Sec. 25-5 has been vetoed. Deletion of reference to the Superintendent of Public Instruction in the Election Code will be desirable prior to the election of 1974. Further implementation awaits the final report and recommendations of the Citizens Advisory Committee on Implementation of Comptroller's Office.

SECTION 2. TERMS

These elected officers of the Executive Branch shall hold office for four years beginning on the second Monday of January after their election and, except in the case of the Lieutenant Governor, until their successors are qualified. They shall be elected at the general election in 1978 and every four years thereafter.

Section has been implemented by passage and approval of SB 653. SB 653 establishes procedures for electing state officers in 1978 and every four years thereafter.

SECTION 3. ELIGIBILITY

To be eligible to hold the office of Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller or Treasurer, a person must be a United States citizen, at least 25 years old, and a resident of this State for the three years preceding his election.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. JOINT ELECTION

In the general election for Governor and Lieutenant Governor, one vote shall be cast jointly for the candidates nominated by the same political party or petition. The General Assembly may provide by law for the joint nomination of candidates for Governor and Lieutenant Governor.

Section will be implemented if SB 1224, HB 2158, 2900 or 2912 is passed substantially as introduced. SB 1224 provides for joint nomination and election, as does HB 2158. HB 2900 provides for joint election and for nomination of the Lieutenant Governor by party convention. HB 2912 provides for joint election. These bills are on the fall calendar.

SECTION 5. CANVASS–CONTESTS

The election returns for executive offices shall be sealed and transmitted to the Secretary of State, or other person or body provided by law, who shall examine and consolidate the returns. The person having the highest number of votes for an office shall be declared elected. If two or more persons have an equal and the highest number of votes for an office, they shall draw lots to determine which of them shall be declared elected. Election contests shall be decided by the courts in a manner provided by law.

Section is implemented in areas of immediate need by existing statutes. Transfer of responsibility for canvassing from Secretary of State to State Board of Elections may be necessary. SB 654, 868, HB 2615 or 2916 will accomplish this. These bills are on the fall calendar.

SECTION 6. GUBERNATORIAL SUCCESSION

(a) In the event of a vacancy, the order of succession to the office of Governor or to the position of Acting Governor shall be the Lieutenant Governor, the elected Attorney General, the elected Secretary of State, and then as provided by law.

Section will be implemented if SB 148 is passed substantially as introduced. SB 148 establishes order of succession beyond that provided in this section. Bill is on the fall calendar.

(b) If the Governor is unable to serve because of death, conviction on impeachment, failure to qualify, resignation or other disability, the office of Governor shall be filled by the officer next in line of succession for the remainder of the term or until the disability is removed.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) Whenever the Governor determines that he may be seriously impeded in the exercise of his powers, he shall so notify the Secretary of State and the officer next in line of succession. The latter shall thereafter become Acting Governor with the duties and powers of Governor. When the Governor is prepared to resume office, he shall do so by notifying the Secretary of State and the Acting Governor.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(cont'd)

(d) The General Assembly by law shall specify by whom and by what procedures the ability of the Governor to serve or to resume office may be questioned and determined. The Supreme Court shall have original and exclusive jurisdiction to review such a law and any such determination and, in the absence of such a law, shall make the determination under such rules as it may adopt.

Section will be implemented if HB 2898 or 3018 is passed substantially as introduced. HB 2898 provides for resumption of duties by Governor subject to challenge by code department heads. HB 3018 provides that ability of Governor to serve will be determined by a commission comprised by other elective officers of executive branch. Both bills are on the fall calendar. Revised Illinois Supreme Court Rule 382, July 1, 1971, implements the last sentence of the section.

SECTION 7. VACANCIES IN OTHER ELECTIVE OFFICES

If the Attorney General, Secretary of State, Comptroller or Treasurer fails to qualify or if his office becomes vacant, the Governor shall fill the office by appointment. The appointee shall hold office until the elected officer qualifies or until a successor is elected and qualified as may be provided by law and shall not be subject to removal by the Governor. If the Lieutenant Governor fails to qualify or if his office becomes vacant, it shall remain vacant until the end of the term.

Specific and immediate implementation is not required. SB 652 which would have deleted reference to the Superintendent of Public Instruction has been vetoed. Transition Schedule, Section 7 provides in the event of a vacancy in this office. Deletion of reference to Office of Superintendent of Public Instruction in the Ill. Rev. Stat. will be desirable after 19/4.

SECTION 8. GOVERNOR–SUPREME EXECUTIVE POWER

The Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 9. GOVERNOR–APPOINTING POWER

(a) The Governor shall nominate and, by and with the advice and consent of the Senate, a majority of the members elected concurring by record vote, shall appoint all officers whose election or appointment is not otherwise provided for. Any nomination not acted upon by the Senate within 60 session days after the receipt thereof shall be deemed to have received the advice and consent of the Senate. The General Assembly shall have no power to elect or appoint officers of the Executive Branch.

Specific and immediate implementation is not required.

(b) If, during a recess of the Senate, there is a vacancy in an office filled by appointment by the Governor by and with the advice and consent of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall make a nomination to fill such office.

Specific and immediate implementation is not required.

(cont'd)

(c) No person rejected by the Senate for an office shall, except at the Senate's request, be nominated again for that office at the same session or be appointed to that office during a recess of that Senate.

SECTION 10. GOVERNOR—REMOVALS

The Governor may remove for incompetence, neglect of duty, or malfeasance in office any officer who may be appointed by the Governor.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 11. GOVERNOR—AGENCY REORGANIZATION

The Governor, by Executive Order, may reassign functions among or reorganize executive agencies which are directly responsible to him. If such a reassignment or reorganization would contravene a statute, the Executive Order shall be delivered to the General Assembly. If the General Assembly is in annual session and if the Executive Order is delivered on or before April 1, the General Assembly shall consider the Executive Order at that annual session. If the General Assembly is not in annual session or if the Executive Order is delivered after April 1, the General Assembly shall consider the Executive Order at its next annual session, in which case the Executive Order shall be deemed to have been delivered on the first day of that annual session. Such an Executive Order shall not become effective if, within 60 calendar days after its delivery to the General Assembly, either house disapproves the Executive Order by the record vote of a majority of the members elected. An Executive Order not so disapproved shall become effective by its terms but not less than 60 calendar days after its delivery to the General Assembly.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

Specific and immediate implementation is not required. It may be desirable to modify the rules of both houses of the General Assembly to deal with reorganization orders.

SECTION 12. GOVERNOR—PARDONS

The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper. The manner of applying therefore may be regulated by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 13. GOVERNOR—LEGISLATIVE MESSAGES

The Governor, at the beginning of each annual session of the General Assembly and at the close of his term of office, shall report to the General Assembly on the condition of the State and recommend such measures as he deems desirable.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 14. LIEUTENANT GOVERNOR—DUTIES

The Lieutenant Governor shall perform the duties and exercise the powers in the Executive Branch that may be delegated to him by the Governor and that may be prescribed by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 15. ATTORNEY GENERAL—DUTIES

The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 16. SECRETARY OF STATE—DUTIES

The Secretary of State shall maintain the official records of the acts of the General Assembly and such official records of the Executive Branch as provided by law. Such official records shall be available for inspection by the public. He shall keep the Great Seal of the State of Illinois and perform other duties that may be prescribed by law.

Section will be implemented if HB 1339 or 2199 is passed substantially as introduced. HB 1339 and 2199 require that public records be subject to disclosure. Both bills are on the fall calendar.

SECTION 17. COMPTROLLER—DUTIES

The Comptroller, in accordance with law, shall maintain the State's central fiscal accounts, and order payments into and out of the funds held by the Treasurer.

Section is not implemented. It is expected that the final report of the Citizens' Advisory Committee on Implementation of Comptroller's Office will contain specific recommendations. Report will be published prior to the fall session.

SECTION 18. TREASURER—DUTIES

The Treasurer, in accordance with law, shall be responsible for the safekeeping and investment of monies and securities deposited with him, and for their disbursement upon order of the Comptroller.

Section is not implemented. It is expected that the final report of the Citizens' Advisory Committee on Implementation of Comptroller's Office will contain specific recommendations. Report will be published prior to the fall session.

SECTION 19. RECORDS—REPORTS

All officers of the Executive Branch shall keep accounts and shall make such reports as may be required by law. They shall provide the Governor with information relating to their respective offices, either in writing under oath, or otherwise, as the Governor may require.

Section is not implemented. It is expected that the final report of the Citizens' Advisory Committee on Implementation of Comptroller's Office will contain specific recommendations. Report will be published prior to the fall session.

SECTION 20. BOND

Civil officers of the Executive Branch may be required by law to give reasonable bond or other security for the faithful performance of their duties. If any officer is in default of such a requirement, his office shall be deemed vacant.

Section is not implemented It is expected that the final report of the Citizens' Advisory Committee on Implementation of Comptroller's Office will contain specific recommendations. Report will be published prior to the fall session.

SECTION 21. COMPENSATION

Officers of the Executive Branch shall be paid salaries established by law and shall receive no other compensation for their services. Changes in the salaries of these officers elected or appointed for stated terms shall not take effect during the stated terms.

Specific and immediate implementation is not required.

ARTICLE VI

THE JUDICIARY

SECTION 1. COURTS

The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. JUDICIAL DISTRICTS

The State is divided into five Judicial Districts for the selection of Supreme and Appellate Court Judges. The First Judicial District consists of Cook County. The remainder of the State shall be divided by law into four Judicial Districts of substantially equal population, each of which shall be compact and composed of contiguous counties.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. SUPREME COURT—ORGANIZATION

The Supreme Court shall consist of seven Judges. Three shall be selected from the First Judicial District and one from each of the other Judicial Districts. Four judges constitute a quorum and the concurrence of four is necessary for a decision. Supreme Court Judges shall select a Chief Justice from their number to serve for a term of three years.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. SUPREME COURT—JURISDICTION

(a) The Supreme Court may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus and as may be necessary to the complete determination of any case on review.

(b) Appeals from judgments of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right. The Supreme Court shall provide by rule for direct appeal in other cases.

(c) Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court, or if a division of the Appellate Court certifies that a case decided by it involves a question of such importance that the case should be decided by the Supreme Court. The Supreme Court may provide by rule for appeals from the Appellate Court in other cases.

The Task Force believes this section is self-executing or adequatley treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 5. APPELLATE COURT—ORGANIZATION

The number of Appellate Judges to be selected from each Judicial District shall be provided by law. The Supreme Court shall prescribe by rule the number of Appellate divisions in each Judicial District. Each Appellate division shall have at least three Judges. Assignments to divisions shall be made by the Supreme Court. A majority of a division constitutes a quorum and the concurrence of a majority of the division is necessary for a decision. There shall be at least one division in each Judicial District and each division shall sit at times and places prescribed by rules of the Supreme Court.

Section has been implemented by revised Ill. Supreme Court Rule 22, July 1, 1971. The House Special Committee on Constitutional Implementation is preparing bills for introduction during the fall session. The General Assembly will need to periodically review the number of Appellate Judges from each Judicial District.

SECTION 6. APPELLATE COURT—JURISDICTION

Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located except in cases appealable directly to the Supreme Court and except that after a trail on the merits in a criminal case, there shall be no appeal from a judgment of acquittal. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts. The Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review. The Appellate Court shall have such powers of direct review of administrative action as provided by law.

Section is not implemented. The House Special Committee on Constitutional Implementation is preparing bills for introduction during the fall session. Revised Illinois Supreme Court Rule 306 and 307, July 1, 1971, implements the permissive second sentence.

SECTION 7. JUDICIAL CIRCUITS

(a) The State shall be divided into Judicial Circuits consisting of one or more counties. The First Judicial District shall constitute a Judicial Circuit. The Judicial Circuits within the other Judicial Districts shall be as provided by law. Circuits composed of more than one county shall be compact and of contiguous counties. The General Assembly by law may provide for the division of a circuit for the purpose of selection of Circuit Judges and for the selection of Circuit Judges from the circuit at large.

Section will be implemented if HB 2756 is passed substantially as introduced. HB 2756 provides for division of the state into judicial circuits. This action will need to occur periodically to reflect changes in population and case load.

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(b) Each Judicial Circuit shall have one Circuit Court with such number of Circuit Judges as provided by law. Unless otherwise provided by law, there shall be at least one Circuit Judge from each county. In the First Judicial District, unless otherwise provided by law, Cook County, Chicago, and the area outside Chicago shall be separate units for the selection of Circuit Judges, with at least twelve chosen at large from the area outside Chicago and at least thirty-six chosen at large from Chicago.

(c) Circuit Judges in each circuit shall select by secret ballot a Chief Judge from their number to serve at their pleasure. Subject to the authority of the Supreme Court, the Chief Judge shall have general administrative authority over his court, including authority to provide for divisions, general or specialized, and for appropriate times and places of holding court.

SECTION 8. ASSOCIATE JUDGES

Each Circuit Court shall have such number of Associate Judges as provided by law. Associate Judges shall be appointed by the Circuit Judges in each circuit as the Supreme Court shall provide by rule. In the First Judicial District, unless otherwise provided by law, at least one-fourth of the Associate Judges shall be appointed from, and reside, outside Chicago. The Supreme Court shall provide by rule for matters to be assigned to Associate Judges.

SECTION 9. CIRCUIT COURTS—JURISDICTION

Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

SECTION 10. TERMS OF OFFICE

The terms of office of Supreme and Appellate Court Judges shall be ten years; of Circuit Judges, six years; and of Associate Judges, four years.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

Section has been implemented by passage and approval of HB 2951-98 and 3001-13 and by revised Illinois Supreme Court Rules 39 and 295, July 1, 1971. These bills provide for change of reference regarding magistrates and associate judges. Periodic review of statutes will be necessary to determine the appropriate number of associate judges. Rule 39 provides for the appointment of associate judges. Rule 295 provides for matters assigned to them.

Section is not implemented. The House Special Committee on Constitutional Implementation is preparing bills for introduction during the fall session.

Specific and immediate implementation is not required.

SECTION 11. ELIGIBILITY FOR OFFICE

No person shall be eligible to be a Judge or Associate Judge unless he is a United States citizen, a licensed attorney-at-law of this State, and a resident of the unit which selects him. No change in the boundaries of a unit shall affect the tenure in office of a Judge or Associate Judge incumbent at the time of such change.

Specific and immediate implementation is not required.

SECTION 12. ELECTION AND RETENTION

(a) Supreme, Appellate and Circuit Judges shall be nominated at primary elections or by petition. Judges shall be elected at general or judicial elections as the General Assembly shall provide by law. A person eligible for the office of Judge may cause his name to appear on the ballot as a candidate for Judge at the primary and at the general or judicial elections by submitting petitions. The General Assembly shall prescribe by law the requirements for petitions.

Section is not implemented. The House Special Committee on Constitutional Implementation is preparing bills for introduction during the fall session.

(b) The office of a Judge shall be vacant upon his death, resignation, retirement, removal, or upon the conclusion of his term without retention in office. Whenever an additional Appellate or Circuit Judge is authorized by law, the office shall be filled in the manner provided for filling a vacancy in that office.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) A vacancy occurring in the office of Supreme, Appellate or Circuit Judge shall be filled as the General Assembly may provide by law. In the absence of a law, vacancies may be filled by appointment by the Supreme Court. A person appointed to fill a vacancy 60 or more days prior to the next primary election to nominate Judges shall serve until the vacancy is filled for a term at the next general or judicial election. A person appointed to fill a vacancy less than 60 days prior to the next primary election to nominate Judges shall serve until the vacancy is filled at the second general or judicial election following such appointment.

Section will be implemented if SB 1065 or HB 2901 passes substantially as introduced. SB 1065 and HB 2901 provide different methods of filling judicial vacancies. Both bills are on the fall calendar.

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(d) Not less than six months before the general election preceding the expiration of his term of office, a Supreme, Appellate or Circuit Judge who has been elected to that office may file in the office of the Secretary of State a declaration of candidacy to succeed himself. The Secretary of State, not less than 63 days before the election, shall certify the Judge's candidacy to the proper election officials. The names of Judges seeking retention shall be submitted to the electors, separately and without party designation, on the sole question whether each Judge shall be retained in office for another term. The retention elections shall be conducted at general elections in the appropriate Judicial District, for Supreme and Appellate Judges, and in the circuit for Circuit Judges. The affirmative vote of three-fifths of the electors voting on the question shall elect the Judge to the office for a term commencing on the first Monday in December following his election.

(e) A law reducing the number of Appellate or Circuit Judges shall be without prejudice to the right of the Judges affected to seek retention in office. A reduction shall become effective when a vacancy occurs in the affected unit.

SECTION 13. PROHIBITED ACTIVITIES

(a) The Supreme Court shall adopt rules of conduct for Judges and Associate Judges.

(b) Judges and Associate Judges shall devote full time to judicial duties. They shall not practice law, hold a position of profit, hold office under the United States or this State or unit of local government or school district or in a political party. Service in the State militia or armed forces of the United States for periods of time permitted by rule of the Supreme Court shall not disqualify a person from serving as a Judge or Associate Judge.

SECTION 14. JUDICIAL SALARIES AND EXPENSES—FEE OFFICERS ELIMINATED

Judges shall receive salaries provided by law which shall not be diminished to take effect during their terms of office. All salaries and such expenses as may be provided by law shall be paid by the State, except that Appellate, Circuit and Associate Judges shall receive such additional compensation from counties within their district or circuit as may be provided by law. There shall be no fee officers in the judicial system.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

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Specific and immediate implementation is not required. Further review of existing statutes to eliminate provisions for former fee officers is desirable.

SECTION 15. RETIREMENT–DISCIPLINE

(a) The General Assembly may provide by law for the retirement of Judges and Associate Judges at a prescribed age. Any retired Judge or Associate Judge, with his consent, may be assigned by the Supreme Court to judicial service for which he shall receive the applicable compensation in lieu of retirement benefits. A retired Associate Judge may be assigned only as an Associate Judge.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) A Judicial Inquiry Board is created. The Supreme Court shall select two Circuit Judges as members and the Governor shall appoint four persons who are not lawyers and three lawyers as members of the Board. No more than two of the lawyers and two of the non-lawyers appointed by the Governor shall be members of the same political party. The terms of Board members shall be four years. A vacancy on the Board shall be filled for a full term in the manner the original appointment was made. No member may serve on the Board more than eight years.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules. HB 3047 creates the Board and appears to be unnecessary. It is on the fall calendar.

(c) The Board shall be convened permanently, with authority to conduct investigations, receive or initiate complaints concerning a Judge or Associate Judge, and file complaints with the Courts Commission. The Board shall not file a complaint unless five members believe that a reasonable basis exists (1) to charge the Judge or Associate Judge with willful misconduct in office, persistent failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to charge that the Judge or Associate Judge is physically or mentally unable to perform his duties. All proceedings of the Board shall be confidential except the filing of a complaint with the Courts Commission. The Board shall prosecute the complaint.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(d) The Board shall adopt rules governing its procedures. It shall have subpoena power and authority to appoint and direct its staff. Members of the Board who are not Judges shall receive per diem compensation and necessary expenses; members who are Judges shall receive necessary expenses only. The General Assembly by law shall appropriate funds for the operation of the Board.

Section will be implemented if HB 3030 is passed substantially as introduced. HB 3030 provides an appropriation for expenses of the Judicial Inquiry Board. The bill is on the fall calendar.

(e) A Courts Commission is created consisting of one Supreme Court Judge selected by that Court, who shall be its chairman, two Appellate Court Judges selected by that Court, and two Circuit Judges selected by the Supreme Court. The Commission shall be convened permanently to hear complaints filed by the Judicial Inquiry Board. The Commission shall have authority after notice and public hearing, (1) to remove from office, suspend without pay, censure or reprimand a Judge or Associate Judge for willful misconduct in office, persistent failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend, with or without pay, or retire a Judge or Associate Judge who is physically or mentally unable to perform his duties.

(f) The concurrence of three members of the Commission shall be necessary for a decision. The decision of the Commission shall be final.

(g) The Commission shall adopt rules governing its procedures and shall have power to issue subpoenas. The General Assembly shall provide by law for the expenses of the Commission.

SECTION 16. ADMINISTRATION

General administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. The Supreme Court shall appoint an administrative director and staff, who shall serve at its pleasure, to assist the Chief Justice in his duties. The Supreme Court may assign a Judge temporarily to any court and an Associate Judge to serve temporarily as an Associate Judge on any Circuit Court. The Supreme Court shall provide by rule for expeditious and inexpensive appeals.

SECTION 17. JUDICIAL CONFERENCE

The Supreme Court shall provide by rule for an annual judicial conference to consider the work of the courts and to suggest improvements in the administration of justice and shall report thereon annually in writing to the General Assembly not later than January 31.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

Section has been implemented by passage and approval of SB 1215. SB 1215 provides a line item appropriation for expenses of the Courts Commission.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 18. CLERKS OF COURTS

(a) The Supreme Court and the Appellate Court Judges of each Judicial District, respectively, shall appoint a clerk and other non-judicial officers for their Court or District.

Section will be implemented if SB 1257 or 1265 is passed substantially as introduced. SB 1256 and 1265 provide for appointment of clerks of the Supreme and Appellate Courts. Both bills are on the fall calendar. Provision should be made for filling a vacancy occuring during the term of the incumbents.

(b) The General Assembly shall provide by law for the election, or for the appointment by Circuit Judges, of clerks and other non-judicial officers of the Circuit Courts and for their terms of office and removal for cause.

Section will be implemented by passage of SB 1258 and 1259. SB 1258 deals with vacancies in the office of Circuit Court clerk. SB 1259 provides for appointment of Circuit Court clerks by the Circuit Judges. Both bills are on the fall calendar.

(c) The salaries of clerks and other non-judicial officers shall be as provided by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 19. STATE'S ATTORNEYS—SELECTION, SALARY

A State's Attorney shall be elected in each county in 1972 and every fourth year thereafter for a four year term. One State's Attorney may be elected to serve two or more counties if the governing boards of such counties so provide and a majority of the electors of each county voting on the issue approve. A person shall not be eligible for the office of State's Attorney unless he is a United States citizen and a licensed attorney-at-law of this State. His salary shall be provided by law.

Section is not implemented. The House Special Committee on Constitutional Implementation is preparing bills for introduction during the fall session.

ARTICLE VII

LOCAL GOVERNMENT

SECTION 1. MUNICIPALITIES AND UNITS OF LOCAL GOVERNMENT

"Municipalities" means cities, villages and incorporated towns. "Units of local government" means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts.

Section is not implemented. The varying statutory definitions of "municipal", "municipality", "municipalities", and "local government" make full implementation of this section a complex and long-term process. For example, Ch. 108½, Sec. 7-105, Ill. Rev. Stat.(1969) defines "municipality" as any of 17 different types of local government. This section limits "municipalities" to cities, villages and incorporated towns. Secs. 8 and 10 of this Article are also affected, especially by statutory definitions of "units of local government". Failure of implementation may lead to unnecessary litigation, especially for non-home rule units. For example, is a junior college district a school district, and therefore not included in the constitutional definition of "unit of local government?

SECTION 2. COUNTY TERRITORY, BOUNDARIES AND SEATS

(a) The General Assembly shall provide by law for the formation, consolidation, merger, division, and dissolution of counties, and for the transfer of territory between counties.

Specific and immediate implementation is not required. Review of the statutes to insure conformity with this section is desirable, particularly so as to delete obsolete provisions such as found in Ch. 34, Secs. 108-110, Ill. Rev. Stat. (1969).

(b) County boundaries shall not be changed unless approved by referendum in each county affected.

Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government. Further review of statutes to insure conformance with this section is desirable.

(c) County seats shall not be changed unless approved by three-fifths of those voting on the question in a county-wide referendum.

Specific and immediate implementation is not required. Further review of statutes to insure conformance with this section is desirable.

SECTION 3. COUNTY BOARDS

(a) A county board shall be elected in each county. The number of members of the county board shall be fixed by ordinance in each county within limitations provided by law.

Specific and immediate implementation is not required.

(b) The General Assembly by law shall provide methods available to all counties for the election of county board members. No county, other than Cook County, may change its method of electing board members except as approved by county-wide referendum.

Specific and immediate implementation is not required. Further review of statutes to insure conformance with this section is desirable, particulary as regards counties which elect a board of county commissioners.

(c) Members of the Cook County Board shall be elected from two districts, Chicago and that part of Cook County outside Chicago, unless (1) a different method of election is approved by a majority of votes cast in each of the two districts in a county-wide referendum or (2) the Cook County Board by ordinance divides the county into single member districts from which members of the County Board resident in each district are elected. If a different method of election is adopted pursuant to option (1) the method of election may thereafter be altered only pursuant to option (2) or by county-wide referendum. A different method of election may be adopted pursuant to option (2) only once and the method of election may thereafter be altered only by county-wide referendum.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. COUNTY OFFICERS

(a) Any county may elect a chief executive officer as provided by law. He shall have those duties and powers provided by law and those provided by county ordinance.

Section will be implemented if HB 1800 or SB 810 is passed substantially as introduced. HB 1800 and SB 810 were identical bills at the time of introduction. HB 1800 has been amended. Both bills are on the fall calendar.

(b) The President of the Cook County Board shall be elected from the County at large and shall be the chief executive officer of the County. If authorized by county ordinance, a person seeking election as President of the Cook County Board may also seek election as a member of the Board.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government.

(d) County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.

Section will be implemented if HB 2840 and 2841 are passed substantially as introduced. HB 2840 requires county sheriffs to submit periodic financial reports to their county boards. HB 2841 allows county boards to alter the powers, duties and functions of county officers by 2/3 vote. Both bills are on the fall calendar.

Section is partially implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government.

(e) The county treasurer or the person designated to perform his functions may act as treasurer of any unit of local government and any school district in his county when requested by any such unit or school district and shall so act when required to do so by law.

Section will be implemented if HB 3045 is passed substantially as introduced. HB 3045 provides that county treasurers may act as treasurers for other units of local government and school districts within the county upon written request. The bill is on the fall calendar.

SECTION 5. TOWNSHIPS

The General Assembly shall provide by law for the formation of townships in any county when approved by county-wide referendum. Townships may be consolidated or merged, and one or more townships may be dissolved or divided, when approved by referendum in each township affected. All townships in a county may be dissolved when approved by a referendum in the total area in which township officers are elected.

Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government. Dissolution or consolidation of townships under this section will require implementation of Sec. 12 of this article.

SECTION 6. POWERS OF HOME RULE UNITS

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt

Section will be implemented if SB 810 or HB 1800 is passed substantially as implemented. SB 810 or HB 1800 will provide procedures whereby counties may become home rule units. Both bills are on the fall calendar.

Section is partially implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government.

(b) A home rule unit by referendum may elect not to be a home rule unit.	Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government. HB 2926 which has been approved provides that a municipality which is a home rule unit by reason of having a population of over 25,000 subsequently falls below 25,000, it shall continue to have home rule powers until it elects by referendum not to be a home rule unit.
(c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.	The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.
(d) A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.	The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.
(e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.	The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.
(f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.	Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government.

(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (1) of this section.

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (1) of this Section.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(j) The General Assembly may limit by law the amount of debt which home rule counties may incur and may limit by law approved by three-fifths of the members elected to each house the amount of debt, other than debt payable from ad valorem property tax receipts, which home rule municipalities may incur.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(k) The General Assembly may limit by law the amount and require referendum approval of debt to be incurred by home rule municipalities, payable from ad valorem property tax receipts, only in excess of the following percentages of the assessed value of its taxable property: (1) if its population is 500,000 or more, an aggregate of three percent; (2) if its population is more than 25,000 and less than 500,000, an aggregate of one percent; and (3) if its population is 25,000 or less, an aggregate of one-half percent. Indebtedness which is outstanding on the effective date of this Constitution or which is thereafter approved by referendum or assumed from another unit of local government shall not be included in the foregoing percentage amounts.

Specific and immediate implementation is not required. Legislation to clarify procedures for incurring debt and to change the maximum period for service of bonded debt from 20 to not more than 40 years is desirable (see Sec. 6d above).

(l) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

Specific and immediate implementation is not required. Legislation to clarify procedures for incurring debt and to change the maximum period for service of bonded debt from 20 to not more than 40 years is desirable (see Sec. 6d above).

Section will be implemented if SB 479 or HB 1799 is passed substantially as introduced. SB 479 and HB 1799 are identical bills which provide special assessment and area taxation powers for counties. HB 1440 also provides for county special assessments. All of these bills are on the fall calendar. It will also be necessary to provide for area taxation by municipalities.

(m) Powers and functions of home rule units shall be construed liberally.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 7. COUNTIES AND MUNICIPALITIES OTHER THAN HOME RULE UNITS

Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government; (2) by referendum, to adopt, alter or repeal their forms of government provided by law; (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; (4) in the case of counties, to provide for their officers, manner of selection and terms of office as provided in Section 4 of this Article; (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and (6) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

Section will be implemented if SB 479 or HB 1799 passes substantially as introduced. These are identical bills which provide for special assessment and area taxation by counties. HB 1440 also provides for county special assessment. All of these bills are on the fall calendar. It will also be necessary to provide for area taxation by municipalities.

Section has been partially implemented by passage and approval of HB 1715, 1716, 2076, 2427, SB 920 and 921 which provide grants of authority as permitted under this section. HB 3017 provides initiative and referendum procedures for use in all units of local government is awaiting approval by the Governor.

SECTION 8. POWERS AND OFFICERS OF SCHOOL DISTRICTS AND UNITS OF LOCAL GOVERNMENT OTHER THAN COUNTIES AND MUNICIPALITIES

Townships, school districts special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law. No law shall grant the power (1) to any of the foregoing units to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred, or (2) to make improvements by special assessments to any of the foregoing classes of units which

Section has been implemented by passage and approval of HB 2084-2105. HB 2084-2105 provide for appointment of officers of special districts by non-judicial authorities. Legislation to clarify procedures for incurring debt and to change the maximum period for service of debt from 20 to not more than 40 years is desirable.

HB 2625 passed. It continues judicial appointment of trustees of River Conservancy Districts and is in conflict with the letter and intent of this section.

do not have that power on the effective date of this Constitution. The General Assembly shall provide by law for the selection of officers of the foregoing units, but the officers shall not be appointed by any person in the Judicial Branch.

SECTION 9. SALARIES AND FEES

(a) Compensation of officers and employees and the office expenses of units of local government shall not be paid from fees collected. Fees may be collected as provided by law and by ordinance and shall be deposited upon receipt with the treasurer of the unit. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes. [This Section 9(a) of Article VII shall become effective on December 1, 1971. See Transition Schedule Section 1(b).]

(b) An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected.

Section will be implemented if HB 2618 is passed substantially as introduced. HB 2618 provides for timely deposit with the county treasurer of fees collected by any elected or appointed county officer and provides penalties for violation. Further review of the statutes to provide salaries for former fee officers and to develop appropriate fee schedules is desirable.

SECTION 10. INTERGOVERNMENTAL COOPERATION

(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

(b) Officers and employees of units of local government and school districts may participate in intergovernmental activities authorized by their units of government without relinquishing their offices or positions.

(c) The State shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities.

Specific and immediate implementation is not required. SB 734, 735, 738, HB 2040 and 2041 passed and have been approved by the Governor. These bills are among a number introduced which grant authority to units of local government to enter into specific types of intergovernmental activity. These bills appear to be unnecessary where they grant authority for intergovernmental activitiy but are required insofar as they grant related tax powers to non-home rule units.

SECTION 11. INITIATIVE AND REFERENDUM

(a) Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law.

Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government. The bill is flawed by the omission of a word. Corrective action has been instituted and an amendatory bill will be introduced during the fall session.

(b) Referenda required by this Article shall be held at general elections, except as otherwise provided by law. Questions submitted to referendum shall be adopted if approved by a majority of those voting on the question unless a different requirement is specified in this Article.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 12. IMPLEMENTATION OF GOVERNMENTAL CHANGES

The General Assembly shall provide by law for the transfer of assets, powers and functions, and for the payment of outstanding debt in connection with the formation, consolidation, merger, division, dissolution and change in the boundaries of units of local government.

Section is not implemented. The House Special Committee on Constitutional Implementation is expected to prepare bills for introduction during the fall session.

SB 903 and 904 passed and have been approved by the Governor. They provide for transfer of pension funds where a fire district is absorbed by a municipality. SB 226 and HB 1798 provide for transfer of functions and assets in certain other cases of local governmental consolidation or merger. Both bills are on the fall calendar.

ARTICLE VIII

FINANCE

SECTION 1. GENERAL PROVISIONS

(a) Public funds, property or credit shall be used only for public purposes.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(cont'd)

(b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) Reports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. STATE FINANCE

(a) The Governor shall prepare and submit to the General Assembly, at a time prescribed by law, a State budget for the ensuing fiscal year. The budget shall set forth the estimated balance of funds available for appropriation at the beginning of the fiscal year, the estimated receipts, and a plan for expenditures and obligations during the fiscal year of every department, authority, public corporation and quasi-public corporation of the State, every State college and university, and every other public agency created by the State, but not of units of local government or school districts. The budget shall also set forth the indebtedness and contingent liabilities of the State and such other information as may be required by law. Proposed expenditures shall not exceed funds estimated to be available for the fiscal year as shown in the budget.

Specific and immediate implementation is not required. The legislature may wish to designate an agency to provide an estimate of funds available for the fiscal year as shown in the budget.

(b) The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year. [This Section 2 of Article VIII shall become effective on January 1, 1972. See Transition Schedule Section 1(c).]

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules. The legislature may wish to designate an agency to provide an estimate of funds available for the fiscal year shown in the budget.

SECTION 3. STATE AUDIT AND AUDITOR GENERAL

(a) The General Assembly shall provide by law for the audit of the obligation, receipt and use of public funds of the State. The General Assembly, by a vote of three-fifths of the members elected to each house, shall appoint an Auditor General and may remove him for cause by a similar vote. The Auditor General shall serve for a term of ten years. His compensation shall be established by law and shall not be diminished, but may be increased, to take effect during his term.

(b) The Auditor General shall conduct the audit of public funds of the State. He shall make additional reports and investigations as directed by the General Assembly. He shall report his findings and recommendations to the General Assembly and to the Governor.

SECTION 4. SYSTEMS OF ACCOUNTING, AUDITING AND REPORTING

The General Assembly by law shall provide systems of accounting, auditing and reporting of the obligation, receipt and use of public funds. These systems shall be used by all units of local government and school districts.

Section will be implemented if HB 3031 is passed substantially as introduced. HB 3031 provides for the office of Auditor General and prescribes his powers and duties. The bill is on the fall calendar.

Section will be implemented if HB 3031 is passed substantially as introduced. HB 3031 provides for the offices of Auditor General and prescribes his powers and duties. The bill is on the fall calendar.

Section is not implemented. It is expected that the final report of the Citizens' Advisory Committee on Implementation of Comptroller's Office will contain specific recommendations. Report will be published prior to the fall session.

Several parties are concerned with early implementation of this section. They include the Citizens' Advisory Committee(see above), the Auditor of Public Accounts, the Office of Community Services of the Department of Local Government Affairs, several county auditors and representatives of other units of local governments. Coordination of the efforts of these several concerned parties is desirable.

ARTICLE IX

REVENUE

SECTION 1. STATE REVENUE POWER

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. NON-PROPERTY TAXES—CLASSIFICATION, EXEMPTIONS, DEDUCTIONS, ALLOWANCES AND CREDITS

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. LIMITATIONS ON INCOME TAXATION

(a) A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon corporations the rate shall not exceed the rate imposed on individuals by more than a ratio of 8 to 5.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. REAL PROPERTY TAXATION

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

Section will be implemented if HB 2197 is passed substantially as introduced. HB 2197 provides for classification of real estate for purposes of taxation in counties with a population of more than 200,000 but not more than 1,000,000. HB 556 defines "fair cash value" as 50% of actual value except for counties over 200,000 which classify. HB 2772 also provides for classification of real property. These bills are on the fall calendar.

(c) Any depreciation in the value of real estate occasioned by a public easement may be deducted in assessing such property.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 5. PERSONAL PROPERTY TAXATION

(a) The General Assembly by law may classify personal property for purposes of taxation by valuation, abolish such taxes on any or all classes and authorize the levy of taxes in lieu of the taxation of personal property by valuation.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) Any ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated.

Specific and immediate implementation is not required. The Illinois Supreme Court, in Lake Auto Parts Co. et al v. Bernard J. Korzen el al and related cases, nullified the results of the November 3, 1970 referendum. In that referendum the electorate approved of abolition of the personal property tax on individuals.

HB 2839 creates a Revenue Replacement Commission to study and report on the effects of the abolition of the ad valorem personal property tax.

The effect of this section is deferred until not later than January 1, 1979 (see Sec. 5(c) below).

(c) On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971. If any taxes imposed for such replacement purposes are taxes on or measured by income, such replacement taxes shall not be considered for purposes of the limitations of one tax and the ratio of 8 to 5 set forth in Section 3(a) of this Article.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 6. EXEMPTIONS FROM PROPERTY TAXATION

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 7. OVERLAPPING TAXING DISTRICTS

The General Assembly may provide by law for fair apportionment of the burden of taxation of property situated in taxing districts that lie in more than one county.

Section will be implemented if SB 130 is passed substantially as introduced. SB 130 provides that in overlapping taxing districts property which lies in 2 or more counties will be valued by applying the lowest level of assessment prevailing in any of the counties. HB 2619 creates a commission to study the problem of taxing districts that lie in more than one county. Both bills are on the fall calendar.

SECTION 8. TAX SALES

(a) Real property shall not be sold for the non-payment of taxes or special assessments without judicial proceedings.

Specific and immediate implementation is not required. The constitutional language, when coupled with existing statutes, appears to be adequate.

(b) The right of redemption from all sales of real estate for the non-payment of taxes or special assessments shall exist in favor of owners and persons interested in such real estate for not less than two years following such sales. Owners, occupants and parties interested shall be given reasonable notice of the sale and the date of expiration of the period of redemption as the General Assembly provides by law.

Section is not implemented. SB 779 passed. It provides for an extended period of redemption by the owner or owners of real property consisting of at least one but not more than four dwelling units where one of the dwelling units is occupied by the owner or owners. SB 779 does not coincide with the wording of this section and is in conflict with the apparent intent. No other bill is pending at this time.

SECTION 9. STATE DEBT

(a) No State debt shall be incurred except as provided in this Section. For the purpose of this Section, "State debt" means bonds or other evidences of indebtedness which are secured by the full faith and credit of the State or are required to be repaid, directly or indirectly, from tax revenue and which are incurred by the State, any department, authority, public corporation or quasi-public corporation of the State, any State college or university, or any other public agency created by the State, but not by units of local government, or school districts.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) State debt for specific purposes may be incurred or the payment of State or other debt guaranteed in such amounts as may be provided either in a law passed by the vote of three-fifths of the members elected to each house of the General Assembly or in a law approved by a majority of the electors voting on the question at the next general election following passage. Any law providing for the incurring or guaranteeing of debt shall set forth the specific purposes and the manner of repayment.

Specific and immediate implementation is not required. This section, when coupled with Article IV and existing statutes, appears to be adequate.

(c) State debt in anticipation of revenues to be collected in a fiscal year may be incurred by law in an amount not exceeding 5% of the State's appropriations for that fiscal year. Such debt shall be retired from the revenues realized in that fiscal year.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(d) State debt may be incurred by law in an amount not exceeding 15% of the State's appropriations for that fiscal year to meet deficits caused by emergencies or failures of revenue. Such law shall provide that the debt be repaid within one year of the date it is incurred.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(e) State debt may be incurred by law to refund outstanding State debt if the refunding debt matures within the term of the outstanding State debt.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(f) The State, departments, authorities, public corporations and quasi-public corporations of the State, the State colleges and universities and other public agencies created by the State, may issue bonds or other evidences of indebtedness which are not secured by the full faith and credit or tax revenue of the State nor required to be repaid, directly or indirectly, from tax revenue, for such purposes and in such amounts as may be authorized by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 10. REVENUE ARTICLE NOT LIMITED

This Article is not qualified or limited by the provisions of Article VII of this Constitution concerning the size of the majorities in the General Assembly necessary to deny or limit the power to tax granted to units of local government.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE X

EDUCATION

SECTION 1. GOAL—FREE SCHOOLS

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.

Section will be implemented if HB 1918 is passed substantially as introduced. HB 1918 provides for classes for youth and adults whose education has been interrupted. The bill is on the fall calendar.

Recent court decisions in California suggest that the General Assembly should carefully review the responsibility of the state for financing public education as provided in the last sentence of the section.

SECTION 2. STATE BOARD OF EDUCATION—CHIEF STATE EDUCATIONAL OFFICER

(a) There is created a State Board of Education to be elected or selected on a regional basis. The number of members, their qualifications, terms of office and manner of election or selection shall be provided by law. The Board, except as limited by law, may establish goals, determine policies, provide for planning and evaluating education programs and recommend financing. The Board shall have such other duties and powers as provided by law.

Section will be implemented if HB 1903, 2106 or 2118 passes substantially as introduced. HB 1903 provides for an interim state board of education. The other bills provide for a permanent board. These bills are on the fall calendar.

(cont'd)

HB 2905 provides for an interim board with the sole power of filling a vacancy in the office of Superintendent of Public Instruction should one occur prior to January, 1973. The bill is on the fall calendar.

(b) The State Board of Education shall appoint a chief state educational officer.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. PUBLIC FUNDS FOR SECTARIAN PURPOSES FORBIDDEN

Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE XI

ENVIRONMENT

SECTION 1. PUBLIC POLICY—LEGISLATIVE RESPONSIBILITY

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. RIGHTS OF INDIVIDUALS

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law. [The second sentence of Section 2 of Article XI shall become effective on January 1, 1972. See Transition Schedule Section 1(d).]

The Task Force believes this section is self-executing. Legislation is desirable to provide for appropriate legal proceedings to pursue the right established in the section.

ARTICLE XII

MILITIA

SECTION 1. MEMBERSHIP

The State militia consists of all able-bodied persons residing in the State except those exempted by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. SUBORDINATION OF MILITARY POWER

The military shall be in strict subordination to the civil power.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. ORGANIZATION, EQUIPMENT AND DISCIPLINE

The General Assembly shall provide by law for the organization, equipment and discipline of the militia in conformity with the laws governing the armed forces of the United States.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. COMMANDER-IN-CHIEF AND OFFICERS

(a) The Governor is commander-in-chief of the organized militia, except when they are in the service of the United States. He may call them out to enforce the laws, suppress insurrection or repel invasion.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) The Governor shall commission militia officers who shall hold their commissions for such time as may be provided by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 5. PRIVILEGE FROM ARREST

Except in cases of treason, felony or breach of peace, persons going to, returning from or on militia duty are privileged from arrest.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE XIII

GENERAL PROVISIONS

SECTION 1. DISQUALIFICATION FOR PUBLIC OFFICE

A person convicted of a felony, bribery, perjury or other infamous crime shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. STATEMENT OF ECONOMIC INTERESTS

All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This Section shall not be construed as limiting the authority of any branch of government to establish and enforce ethical standards for that branch. [This Section 2 of Article XIII shall become effective on January 1, 1972. See Transition Schedule Section 1(e).]

Section will be implemented if SB 81 and 82 are passed substantially as introduced. SB 81 expands coverage of the Illinois Governmental Ethics Act by requiring more detailed reporting of economic interest. It also provides for public inspection of filed statements. The coverage of the Act is extended to elected local officials. SB 82 creates the Political Spending Act. Both bills are on the fall calendar.

SECTION 3. OATH OR AFFIRMATION OF OFFICE

Each prospective holder of a State office or other State position created by this Constitution, before taking office, shall take and subscribe to the following oath or affirmation:

"I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of . . . . . to the best of my ability."

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. SOVEREIGN IMMUNITY ABOLISHED

Except as the General Assembly may provide by law, sovereign immunity in this State is abolished. [This Section 4 of Article XIII shall become effective on January 1, 1972. See Transition Schedule Section 1(e).]

Section will be implemented if HB 3039 and 3040 are passed substantially as introduced. HB 3039 extends the Local Governmental and Governmental Employee Tort Immunity Act to include claims or actions against the state. HB 3040 repeals the Act creating the Court of Claims and provides for dealing with pending actions. Both bills are on the fall calendar.
(cont'd)

Section 4. (cont'd)

HB 2047 provides that actions against the state shall be filed only in the Court of Claims. HB 2048 and 2049 deal with cases involving claims for firemen and policemen killed in the line of duty. Such cases are assigned to the Court of Claims. These bills are on the fall calendar.

The intent of HB 3039 and 3040 appears to be in conflict with that expressed in HB 2047. This conflict should be resolved during the fall session

SECTION 5. PENSION AND RETIREMENT RIGHTS

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 6. CORPORATIONS

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 7. PUBLIC TRANSPORTATION

Public transportation is an essential public purpose for which public funds may be expended. The General Assembly by law may provide for, aid, and assist public transportation, including the granting of public funds or credit to any corporation or public authority authorized to provide public transportation within the State.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 8. BRANCH BANKING

Branch banking shall be authorized only by law approved by three-fifths of the members voting on the question or a majority of the members elected, whichever is greater, in each house of the General Assembly.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE XIV

CONSTITUTIONAL REVISION

SECTION 1. CONSTITUTIONAL CONVENTION

(a) Whenever three-fifths of the members elected to each house of the General Assembly so direct, the question of whether a Constitutional Convention should be called shall be submitted to the electors at the general election next occurring at least six months after such legislative direction.

(b) If the question of whether a Convention should be called is not submitted during any twenty-year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission.

(c) The vote on whether to call a Convention shall be on a separate ballot. A Convention shall be called if approved by three-fifths of those voting on the question or a majority of those voting in the election.

(d) The General Assembly, at the session following approval by the electors, by law shall provide for the Convention and for the election of two delegates from each Legislative District; designate the time and place of the Convention's first meeting which shall be within three months after the election of delegates; fix and provide for the pay of delegates and officers; and provide for expenses necessarily incurred by the Convention.

(e) To be eligible to be a delegate a person must meet the same eligibility requirements as a member of the General Assembly. Vacancies shall be filled as provided by law.

(f) The Convention shall prepare such revision of or amendments to the Constitution as it deems necessary. Any proposed revision or amendments approved by a majority of the delegates elected shall be submitted to the electors in such manner as the Convention determines, at an election designated or called by the Convention occurring not less than two nor more than six months after the Convention's adjournment. Any revision or amendments proposed by the Convention shall be published with explanations, as the Convention provides, at least one month preceding the election.

(g) The vote on the proposed revision or amendments shall be on a separate ballot. Any proposed revision or amendments shall become effective, as the Convention provides, if approved by a majority of those voting on the question.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

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SECTION 2. AMENDMENTS BY GENERAL ASSEMBLY

(a) Amendments to this Constitution may be initiated in either house of the General Assembly. Amendments shall be read in full on three different days in each house and reproduced before the vote is taken on final passage. Amendments approved by the vote of three-fifths of the members elected to each house shall be submitted to the electors at the general election next occurring at least six months after such legislative approval, unless withdrawn by a vote of a majority of the members elected to each house.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) Amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors. The vote on the proposed amendment or amendments shall be on a separate ballot. A proposed amendment shall become effective as the amendment provides if approved by either three-fifths of those voting on the question or a majority of those voting in the election.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) The General Assembly shall not submit proposed amendments to more than three Articles of the Constitution at any one election. No amendment shall be proposed or submitted under this Section from the time a Convention is called until after the electors have voted on the revision or amendments, if any, proposed by such Convention.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. CONSTITUTIONAL INITIATIVE FOR LEGISLATIVE ARTICLE

Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the Secretary of State at least six months before that general election. The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.

Section will be implemented if HB 3043 is passed substantially as introduced. HB 3043 provides for initiative to amend the Legislative Article. The bill is on the fall calendar.

SECTION 4. AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

The affirmative vote of three-fifths of the members elected to each house of the General Assembly shall be required to request Congress to call a Federal Constitutional Convention, to ratify a proposed amendment to the Constitution of the United States, or to call a State Convention to ratify a proposed amendment to the Constitution of the United States. The General Assembly shall not take action on any proposed amendment to the Constitution of the United States submitted for ratification by legislatures unless a majority of the members of the General Assembly shall have been elected after the proposed amendment has been submitted for ratification. The requirements of this Section shall govern to the extent that they are not inconsistent with requirements established by the United States.

TRANSITION SCHEDULE

The following Schedule Provisions shall remain part of this Constitution until their terms have been executed. Once each year the Attorney General shall review the following provisions and certify to the Secretary of State which, if any, have been executed. Any provisions so certified shall thereafter be removed from the Schedule and no longer published as part of this Constitution.

Section 1. Delayed Effective Dates.
Section 2. Prospective Operation of Bill of Rights.
Section 3. Election of Executive Officers.
Section 4. Judicial Offices.
Section 5. Local Government.
Section 6. Authorized Bonds.
Section 7. Superintendent of Public Instruction.
Section 8. Cumulative Voting for Directors.
Section 9. General Transition.
Section 10. Accelerated Effective Date.

SECTION 1. DELAYED EFFECTIVE DATES

(a) The provisions of Section 1, 2(a), 2(b), and 2(c) of Article IV shall not apply to the General Assembly elected at the general election in 1970. Notwithstanding Section 6(b) of Article IV, the incumbent Lieutenant Governor for the remainder of his term shall be the President of the Senate with a right to vote when the Senate is equally divided.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) Section 9(a) of Article VII shall become effective on December 1, 1971.

(c) Section 2 of Article VIII shall become effective on January 1, 1972.

(d) The second sentence of Section 2 of Article XI shall become effective on January 1, 1972.

(e) Sections 2 and 4 of Article XIII shall become effective on January 1, 1972.

SECTION 2. PROSPECTIVE OPERATION OF BILL OF RIGHTS

Any rights, procedural or substantive, created for the first time by Article I shall be prospective and not retroactive.

SECTION 3. ELECTION OF EXECUTIVE OFFICERS

The Governor, Lieutenant Governor, Attorney General, Secretary of State and Comptroller elected in 1972 shall serve for four years and those elected in 1976 for two years. The Treasurer elected in 1974 shall serve for four years.

SECTION 4. JUDICIAL OFFICES

(a) On the effective date of this Constitution, Associate Judges and magistrates shall become Circuit Judges and Associate Judges, respectively, of their Circuit Courts. All laws and rules of court theretofore applicable to Associate Judges and magistrates shall remain in force and be applicable to the persons in their new offices until changed by the General Assembly or the Supreme Court, as the case may be.

(b) Notwithstanding the provisions of Section 11 of Article VI, magistrates in office on the effective date thereof are eligible to serve as Associate Judges.

(c) Notwithstanding the provisions of Section 18 of Article VI, the Clerk of the Supreme Court and the Clerks of the Appellate Court Districts in office on the effective date of this Constitution shall continue in office until the expiration of their elective terms.

(d) Until otherwise provided by law and except to the extent that the authority is inconsistent with Section 8 of Article VII, the Circuit Courts shall continue to exercise the non-judicial functions vested by law as of December 31, 1963, in county courts or the judges thereof.

SECTION 5. LOCAL GOVERNMENT

(a) The number of members of a county board in a county which, as of the effective date of this Constitution, elects three members at large may be changed only as approved by county-wide referendum. If the number of members of such a county board is changed by county-wide referendum, the provisions of Section 3(a) of Article VII relating to the number of members of a county board shall govern thereafter.

(b) In Cook County, until (1) a method of election of county board members different from the method in existence on the effective date of this Constitution is approved by a majority of votes cast both in Chicago and in the area outside Chicago in a county-wide referendum or (2) the Cook County Board by ordinance divides the county into single member districts from which members of the County Board resident in each district are elected, the number of members of the Cook County Board shall be fifteen except that the county board may increase the number if necessary to comply with apportionment requirements. If either of the foregoing changes is made, the provisions of Section 3(a) of Article VII shall apply thereafter to Cook County.

(c) Townships in existence on the effective date of this Constitution are continued until consolidated, merged, divided or dissolved in accordance with Section 5 of Article VII.

SECTION 6. AUTHORIZED BONDS

Nothing in Section 9 of Article IX shall be construed to limit or impair the power to issue bonds or other evidences of indebtedness authorized but unissued on the effective date of this Constitution.

SECTION 7. SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 2(b) of Article X shall take effect upon the existence of a vacancy in the Office of Superintendent of Public Instruction but no later than the end of the term of the Superintendent of Public Instruction elected in 1970.

SECTION 8. CUMULATIVE VOTING FOR DIRECTORS

Shareholders of all corporations heretofore organized under any law of this State which requires cumulative voting of shares for corporate directors shall retain their right to vote cumulatively for such directors.

SECTION 9. GENERAL TRANSITION

The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place. All officers filling any office by election or appointment shall continue to exercise the duties thereof, until their offices shall have been abolished or their succesors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

SECTION 10. ACCELERATED EFFECTIVE DATE

The effective date of Section 3 of Article IV shall be January 15, 1971.

For purposes of appointing members of a Legislative Redistricting Commission in 1971, the President Pro Tempore of the Senate shall have the appointing power vested by Section 3(b) of Article IV in the President of the Senate.

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

SPRINGFIELD, ILLINOIS

Number 1 (1971)

EXECUTIVE ORDER

WHEREAS, on December 15, 1970, the electors of Illinois approved by public referendum the proposed Constitution of 1970; and

WHEREAS, the Adoption Schedule of the Constitution of 1970 provides that with certain exceptions the new state charter shall take effect on July 1, 1971; and

WHEREAS, the Sixth Constitutional Convention of the State of Illinois adjourned sine die on September 3, 1970; and

WHEREAS, the 77th General Assembly of the State of Illinois is presently convened in regular session; and

WHEREAS, under the provisions of the Constitution of 1970 the General Assembly is required to implement certain of its provisions prior to July 1, 1971, and is further required to direct considerable legislative attention to such major areas of public concern as revenue and local government; and

WHEREAS, there is not presently existing any governmental entity established for the purpose of bringing to the General Assembly the expertise of the Convention, the academic community, the concerned citizens of our State necessary to provide continuity to the work product of the Convention and to serve as an information resource for the General Assembly; and

WHEREAS, it is in the public interest that every effective step be taken to avert a constitutional crisis in the task of legislatively implementing the Constitution of 1970;

NOW, THEREFORE, I, RICHARD B. OGILVIE, GOVERNOR OF THE STATE OF ILLINOIS, by and under the powers vested in me by the Constitution of 1870 and the statutes of the State of Illinois, do hereby establish a Citizens Task Force on Constitutional Implementation, with the chairman and membership to be appointed and serve at the pleasure of the Governor, for the purpose of discharging the following responsibilities:

1. To immediately review the Illinois Constitution of 1870, the Illinois Constitution of 1970, and the Laws of Illinois for the purpose of identifying those areas of legislation which will require consideration by the General Assembly prior to June 30, 1971, and those which may be deferred for consideration beyond that date;

2. To make recommendations for the enactment, repeal or amendment of specific statutes where it is appropriate to the purposes of the task force and not inconsistent with the prerogatives of the legislative branch of state government;

3. To work in cooperation with the General Assembly and its agencies as that body may direct and request for the purpose of research and technical assistance incidental to the preparation of legislation necessary to implement the Constitution of 1970; and

4. To advise me as I may from time to time request with regard to the review of enacted legislation awaiting my final action.

Dated at Springfield, Illinois, this 21st day of January, A.D. 1971.

Richard B. Ogilvie
Governor

APPENDIX C
COMMITTEE ASSIGNMENTS

Steering Committee

Samuel K. Gove
William S. Hanley
Stanley Johnson
Betty Ann Keegan
Clifford P. Kelley

Committee on Revenue and Financial Administration

Chairman -- Simeon Leland
Members Lester Brann
Paul Giblin
Stanley Johnson
Maurice Scott

Committee on Structure of State Government

Chairman -- Alice Ihrig
Members William S. Hanley
Jeffrey Ladd
Odas Nicholson

Committee on Rights and Legal Procedures

Chairman -- David Davis
Members Al Raby
Charles W. Shuman
Wayne Whalen

Committee on Local Government

Chairman -- John C. Parkhurst
Members Robert Butler
Philip J. Carey
Clifford P. Kelley
Betty Ann Keegan
Troy Kost
L. D. LaFleur
Leonard Gardner
Jack Siegel
Virgil C. Wikoff
John Woods

APPENDIX C (continued)
COMMITTEE RESPONSIBILITIES
1970 Illinois Constitution

Steering Committee: Budget, personnel, policy.

Committee on Rights and Legal Procedures: Articles I, III, XI, XII and XIII.

Committee on Structure of State Government: Articles IV, V, VI, X and XIV (Section 3).

Committee on Revenue and Financial Administration: Articles VIII and IX.

Committee on Local Government: Article VII.

Article II does not appear to require implementing legislation and is not assigned to any committee.

APPENDIX D

MEMORANDUM

February 20, 1971

RE: Constitution of 1970 -- Powers of 77th General Assembly

FROM: Mr. Wayne W. Whalen

Question: Does the 77th General Assembly have authority to enact, at its regular 1971 session, bills (in anticipation of the effective date of the Constitution of 1970), inconsistent with the Constitution of 1870 but consistent with the Constitution of 1970?

Answer: Although the matter is not free from doubt, and there are no reported Illinois cases dealing directly with the question, the General Assembly does seem to have such authority.

ANALYSIS

1. Sections 9 and 10 of the Transition Schedule of the Constitution of 1970 provide in relevant part:

> "Section 9. GENERAL TRANSITION
>
> The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place . . . ."

"Section 10. ACCELERATED EFFECTIVE DATE

The effective date of Section 3 of Article IV shall be January 15, 1971.

* * * * *

2. The Preamble and Section 1 of the Adoption Schedule of the Constitution of 1970 provide:

"The following Schedule Provisions shall not be deemed to be a part of this Constitution except for the limited purpose of governing the determination of whether or not this Constitution has been adopted, the determination of what changes thereto have been made as a result of the vote on each of the separately submitted issues, and the establishment of the general effective date of this Constitution.

* * * * *

Section 1.

"Except as otherwise provided in Section 1 of the Transition Schedule, this Constitution, if approved by the electors as provided by the Constitution of 1870, as amended, shall take effect on July 1, 1971, and the Constitution of 1870, as amended, shall thereafter be of no force and effect except to the extent that the contingencies provided for in Section 6 of this Adoption Schedule may require."

3. As Section 10 of the Transition Schedule indicates, the Constitution of 1970 became effective for certain purposes prior to July 1, 1971, the date on which

it becomes generally effective, except for the delayed effective dates provided for by Section 1 of the Transition Schedule. A constitutional provision is generally deemed effective, unless otherwise provided, on the date it is ratified. Druggan v Anderson, 269 U.S. 36, 39 (1925); Richards v Donagho, 66 Ill. 73 (1872); Schall v Bowman, 62 Ill. 321, 329 (1872). Therefore, the intent of the Sixth Illinois Constitutional Convention governs the validity of anticipatory legislation.

4. Although the report of the Committee on Style, Drafting and Submission of the 1970 Constitutional Convention is silent on this subject, the transcript of the debates on the floor of the Convention indicates an intention on the part of the Convention that the 77th General Assembly, at its regular 1971 session, be authorized to take steps implementing provisions of the Constitution of 1970. One delegate stated to the floor of the Convention in explanation of the delayed effective date of the proposed Constitution: "(W)e thought they (the Legislature) could anticipate the effect of the new Constitution...." (Transcript of Sixth Illinois Constitutional Convention, Sept. 1, 1970 at p. 453.) There are no statements contradicting this conclusion.

5. Although there are no reported Illinois cases directly on point, the rule in jurisdictions which have passed upon the question

is that bills can be adopted after ratification, but in anticipation of the effective date, of a new constitutional provision. See cases collected at 171 A. L. R. 1070, 1075 (1947); 16 Am. Jur. 2d "Con. Law" § 181 at p. 409. Even if the anticipatory bill is prohibited under the constitution in effect at the time the anticipatory bill is adopted, but allowed under a constitutional provision which has been ratified, the courts have generally upheld such legislation.

Gaylord v. Beckett, 378 Mich. 273, 144 N.W. 2d 460 (1966), appears to be the reported case which bears most closely on the present question. The Michigan legislature passed, and the Governor signed, the Industrial Revenue Bond Act of 1963 in anticipation of an adequate provision of the Michigan Constitution of 1963, which, at the time the Act was passed and signed, had been ratified but was not yet generally effective. In this case to test the constitutionality of the Act, the Supreme Court of Michigan specifically requested counsel to address themselves to the constitutionality of the Act "against the limitations on legislative power contained in the 1908 Constitution, then still in effect." Of the eight justices then sitting on the Supreme Court, four justices concluded that the anticipatory Act was to be tested under the standards of the 1963 Constitution (implying that the lawfulness of the Act under the 1908 Constitution was irrelevant) stating:

> "A legislature has power to enact a statute not authorized by the present Constitution where the statute is passed in anticipation of a constitutional amendment authorizing it or provides that it shall take effect upon the adoption of such a constitutional amendment." 144 N.W. 2d at 482.

Two justices also concluded that the Act was to be tested under the 1963 Constitution but appeared to base their conclusion on the contention that the Act was "in force" on the effective date of the 1963 Constitution (they did not consider the lawfulness of the Act under the 1908 Constitution). One justice concluded that the Act was unlawful under the 1908 Constitution and therefore beyond the power of the legislature when passed. He stated:

> "What these cases mean to me is that the Legislature's acts must be judged in the light of the powers possessed by the Legislature at the time it undertakes to act. With due regard for the fact that the legislative power of a state, unlike the legislative power of Congress, does not depend upon express constitutional grant but, rather, is a broad and comprehensive as necessary to accomplish the legitimate purposes of government except as the people may have imposed restraints upon such power by constitutional limitations... the Constitution in force and effect at the time the Legislature acts must be examined to determine whether the people in fact have forbidden the Legislature so to act. If they have, the legislature act is a nullity, a void, a failure of creation; it is stillborn, dead at birth; it lacks the force of law; it is impotent as a source of rights or of obligations; it signifies an act of futility as devoid of effect as if never attempted; it is no more effective as a law than is a piece of blank paper."
>
> * * *
>
> "* * * When a Legislature purports to enact a statute the subject matter of which is beyond the legislative power of the state as limited by the state's people in their constitution, the principle is applicable and the statute is void ab initio. . . . If it were beyond the powers of the Legislature under the 1908 Constitution, our judicial duty would end with our declaration of the Act's validity. Only if it were not beyond such powers, would Act 62 then have to be tested for its current validity against the limitations contained in the 1963 Constitution." 144 N. W. 2d at 486-87

Finally, one justice concluded that further proceedings were required before the court should attempt to dispose of this issue.

In Druggan v. Anderson, 296 U.S. 36 (1952), the Court, speaking through Justice Holmes, rejected the claim that the National Prohibition Act was unconstitutional because it was passed after Amendment XVIII to the United States Constitution was ratified but prior to the date the Amendment became effective:

> "***We have no doubt of the authority of Congress to pass the law. Barbour v. Georgia, 249 U.S. 454. Diamond Glue Co. v. United States Glue Co., 187 U.S. 611, 615, 616. Indeed it would be going far to say that while the fate of the Amendment was uncertain Congress could not have passed a law in aid of it, conditioned upon the ratification taking place." 269 U.S. at 39.

See also State v. Herker, 109 Ore. 520, 221 Pac. 808 (1923) (state constitution had prohibited death penalty; court upheld statute permitting death penalty passed in anticipation of effective date of constitutional amendment permitting death penalty).

In Alabam's Freight Co. v. Hunt, 29 Ariz. 419, 242 Pac. 658 (1926), the plaintiff challenged a workmen's compensation act on the ground that the statute had been passed prior to the effective date of an enabling constitutional amendment. The court held:

> "We are of the opinion that the Legislature may pass an act to take effect only upon the adoption of a Constitutional amendment authorizing it, and that its constitutionality is to be tested by the Constitution as it is at the time the law takes effect, and not as when it was passed." 242 Pac. at 659.

The Supreme Court of Illinois has accepted the view that the state constitution represents a limitation on the power of the State, and that, except where so limited (by the state or federal constitutions)

the General Assembly has broad residual power to adopt legislation. Cf. Thorpe v. Mahin, 43 Ill. 2d 36, 44-5 (1969). Since neither the Constitution of 1870 nor the Constitution of 1970 restricts the power of the General Assembly to pass legislation in anticipation of the effectiveness of constitutional provisions, this doctrine of residual power supports the authority of the General Assembly to adopt such anticipatory legislation. Also see, e.g., In re Opinions of the Justices, 227 Ala. 291, 149 So. 776 (1933).

In Neisel v. Moran, 80 Fla. 98, 85 So. 346 (1920), the court stated:

> "The state Legislature has plenary lawmaking power, subject only to the limitations imposed by the state and federal Constitutions, and may enact any anticipatory statutes that are not forbidden by such Constitutions. The state Constitution expressley provides for the enactment of statutes to take effect after their passage and approval and after the final adjournment of the session of the Legislature at which they were enacted. Anticipatory statutes are not forbidden; nor are they contrary to the letter or to the spirit of the state Constitution; but the enactment is expressly contemplated by the Constitution." 85 So. at 349.

There are cases, though apparently none reported in Illinois, where the courts have struck down attempts to revive unconstitutional statutes by a later constitutional amendment where the statute in question was not passed in anticipation of the constitutional amendment and the constitutional amendment did not, by its terms, call for the revivial of the statute. See, e.g., Plebset v. Barnwell Drilling Co., 243 La. 874, 148 S. 2d 584, 588 (1963); Little Rock v. Caren, _____ Ark. _____, 381, S.W. 2d 741 (1964); Mathews v. Quinton, 362 P. 2d 932, 938-39 (Alaska, 1961).

6. On the question of whether the Governor should sign an anticipatory bill before or after July 1, the balance seems to tip in favor of signing after July 1. In fairness, it should be noted that none of the anticipatory enactment cases appears to turn on the time the bill is approved by the head of the executive branch of government, and the time of approval issue is not relevant to the rationale of the anticipatory enactment theory.

If the bill were signed before July 1 it would, under Article IV, Section 13 of the Constitution of 1870, become effective July 1, 1971. A delayed effective date provision would require a finding of "emergency" and a 2/3rds majority in order to be operative. Absent such a finding and majority, a July 1 effective date would raise the question of whether the bill or the legislature provisions of the Constitution of 1970 became effective first on July 1, 1971. It would be desirable to avoid that conundrum.

A bill signed by the Governor before July 1, with a post-July 1 effective date, would be a "law" and would therefore seem to gain the benefit of the literal language of the saving clause (which does not apply to bills) of Section 9 of the Transition Schedule of the Constitution of 1970. See Gaylord v. Beckett, supra (concurring opinion). The report of the Committee on Style, Drafting and Submission is silent regarding the intention of the saving clause and the matter was not the subject of recorded debate on the floor of the Convention; it seems fair to assume, however, that the delegates were not necessarily attempting to provide for anticipatory legislation when they adopted the saving clause. Rather, the

clause seems clearly to have been intended generally to preserve all existing non-repugnant laws, etc. In Gaylord, however, the bill was signed before the 1963 Constitution became generally effective and two justices relied, at least in part, on the saving clause to sustain the bill.

A bill signed after July 1, would not be covered by the language of the saving clause. A post-July 1 signature, however, would seem to enhance the validity of the bill by withholding, until the Constitution of 1970 is in general effect, the necessary step by which a bill passed in anticipation of that Constitution becomes law. After July 1, 1971, the provisions of Article IV, Section 9 of the Constitution of 1970 regarding the Governor's approval or veto of bills will apply to all such action by the Governor, including action on bills passed at the 1971 regular session of the General Assembly. This seems to indicate an intention on the part of the Constitutional Convention to provide for a bridging of the July 1, 1971 effective date through the enactment of legislation before July 1 and the consideration by the Governor of such legislation after July 1.

7. The Bills probably should, in their preamble, recite that they are being adopted in anticipation of the effective date of the Constitution of 1970. Such Bills should be signed by the Governor after July 1, 1971, It would probably be desirable to have a message from the Governor in connection with his signature adopting the theory of anticipatory enactment referred to in the preamble to the Bills.

APPENDIX E

June 15, 1971

FILE NO. S-[illegible]09

CONSTITUTION:
ARTICLE IV, Section 8 (d) : Section 9

The Honorable Richard B. Ogilvie
Governor
207 State House
Springfield, Illinois 62706

Dear Governor Ogilvie:

I have your letter of May 19, 1971, as follows:

"I would appreciate receiving the benefit of your opinion as to the effect of Section 9, Article IV of the Constitution of 1970, in terms of its application to legislation enacted by the General Assembly prior to July 1, 1971.

I direct your attention to the following specific questions:

1. Does the requirement of Section 9 (a) concerning presentment to the Governor within 30 calendar days after passage of a bill require that legislation be presented to the Governor 30 days from July 1, 1971 when the provision itself becomes effective or does it require presentment of bills 30 days after the actual date of the bill's passage even if it occurred prior to July 1, 1971?

2. As to bills presented to the Governor prior to July 1, 1971 and still held by him on the effective date of the new Constitution, is the terminal date of the Governor's action to be measured by the Constitution of 1870 or by 60-day rule of

Section 9 (b) of the Constitution of 1970? If, in your opinion, the 60-day rule of the 1970 Constitution does apply, are the 60 days to be counted from the actual day of presentment or from the effective date of the new Constitution?

3. With respect to bills passed prior to July 1, 1971, but considered by the Governor on or after that date, may he exercise the powers of review vested in him under Section 9 of the Constitution of 1970, or are his powers limited to those set forth in Article V, Section 16 of the Constitution of 1870?

4. If, prior to July 1, 1971, the Governor returned a vetoed bill to the General Assembly and the General Assembly was still then in session, but subsequently recessed or adjourned prior to July 1, 1971 without having taken action with respect to that veto, do the provisions of Section 9 (c) apply? If so, is the 15 calendar day period to be measured against the day on which the veto message was first journalized or is it measured from July 1, 1971, the effective date of the new Constitution?

5. Under the provisions of Section 9(e), do the 30-day rule concerning presentment and the 60-day rule concerning the Governor's review apply to a bill which is presented to the Governor for certification that the action of the General Assembly conforms to his recommendations?

6. As a general matter, I would appreciate your opinion as to whether the time periods identified in Section 9 are to be measured beginning the count with the actual date the event occurs or with the first full calendar date after the day of the event.

I would also appreciate your construction of Section 8 (d) which requires the Speaker of the House and President of the Senate to sign each bill that passes both houses certifying that procedural requirements for passage have been met.

Specifically, I request your opinion on the question whether this provision must be satisfied in the form of bills presented to the Governor after June 30, 1971, even though the bill passed both houses prior to July 1, 1971. If so, will the signatures alone satisfy this requirement or will specific wording of certification be necessary?

Thank you for your continuing courtesies."

At the outset the rules for construction of the Constitution, as stated by the Illinois Supreme Court, should be noted. In the People v. Crawley, 274 Ill 139, 142, the Court said:

"* * * * * The general principles governing the construction of constitutions are the same as those that apply to statutes. * * * * * * In construing constitutions, as with statutes, the chief purpose is to give effect to the intent of the makers. * * * In seeking such intention we are to consider the language used by the legislature, the evil to be remedied and the object to be attained. We are not confined to the literal meaning of the words. A thing within the intention is regarded within the statute though not within the letter. A thing within the letter is not within the statute if not within the intention. When the intention can be gathered from the entire document, words may be modified or altered so as to obviate all inconsistency with such intention. When great inconvenience or absurd consequences will result from a particular construction the courts are bound to assume that such consequences are not intended. *"

In Graham v Dye, 308 Ill 283, 286, the Court said:

The Honorable Richard B. Ogilvie

"* * * * *The intent and meaning of the constitution are to be determined from the language used in its provisions. We said in People v. Stevenson, 281 Ill. 17: 'As a constitution is dependent upon adoption by the people, the language used will be understood in the sense most obvious to the common understanding. The language and words of a constitution unless they be technical words and phrases, will be given effect according to their usual and ordinary signification, and courts will not disregard the plain and ordinary meaning of the words used, to search for some other conjectural intention.' In City of Beardstown v. City of Virginia 76 Ill. 34, the court said, in the construction of the meaning of constitutional provisions the intent is determined from the meaning of the words used, and that when words have a definite meaning it is not allowable to go elsewhere in search of conjecture or resort to subtle or forced construction for the purpose of limiting or extending their meaning and effect.

* *

In People v. Barrett, 370 Ill. 478, 480, the Court said:

"* *'

* * * * * * * * * *It is a well-recognized canon of constitutional construction that the chief purpose sought to be attained is the intention of its framers. In seeking such an intention courts are to consider the language used, the object to be attained or the evil to be remedied. Where the constitutional provisions are not applicable, no limitation exists upon the legislative body. In the construction of the constitution courts should not indulge in speculation apart

from the spirit of the document, or apply so strict a construction as to exclude its real object and intent. *

* *"

The Constitution of 1970 provides:

ADOPTION SCHEDULE
Section 1

"Except as otherwise provided in Section 1 of the Transition Schedule, this Constitution, if approved by the electors as provided by the Constitution of 1870, as amended, shall take effect on July 1, 1971, and the Constitution of 1870, as amended, shall thereafter be of no force and effect except to the extent that the contingencies provided for in Section 6 of this Adoption Schedule may require."

ARTICLE IV (The Legislature)
Section 8:

"(d) *

* *

The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met."

Section 9:

"(a) Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage. The foregoing requirement shall be judicially enforceable. If the Governor approves the bill, he shall sign it and it shall become law.

(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.

(c) The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-fifths of the members elected passes the bill, it shall be delivered immediately to the second house. If within 15 calendar days after such delivery the second house by a record vote of three-fifths of the members elected passes the bill, it shall be come law.

(d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

(e) The Governor may return a bill together with specific recommendations for change to the house

> in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bills shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated."

Under Section 1 of the Adoption Schedule, above quoted, any action by the Legislature or the Governor or any time limitations or requirements pertaining to legislation or bills is to be determined by the Constitution of 1870 up to July 1, 1971, and as of that date, to be determined solely by the Constitution of 1970. Based on this conclusion and interpretation, I have the following views on your questions.

The answer to question number 1 of ARTICLE IV, Section 9 (a) requires that a bill passed prior to July 1, 1971, not theretofore presented to the Governor, must be presented to the Governor within 30 calendar days after its passage.

The answer to question number 2 is the provisions of ARTICLE IV, Section 9 (b) of the Constitution of 1970 apply to any bills presented to the Governor less than 10 days (Sundays excepted), prior to July 1, 1971 and still held by him on that

date. This means that the Governor has 60 calendar days within which to return the bill after it is presented to him which also means that such 60 days are to be counted from the actual day of presentment of the bill to the Governor. The reference herein to the ten-day period arises from the requirement of Article V, Section 16 of the 1870 Constitution.

The answer to question number 3 is the provisions of Article IV, Section 9 of the Constitution of 1970 applies.

The answer to question 4 is that the provisions of Article IV, Section 9 (c) apply to all vetoed bills returned by the Governor to the General Assembly on or after July 1, 1971 and, as hereinafter noted, to a limited extent to certain bills returned by the Governor prior to July 1, 1971. The Constitution of 1870 applies with respect to all vetoed bills returned to the General Assembly up to July 1, 1971 insofar as action of the General Assembly is concerned up to that date. As of July 1, 1971, the provisions of Section 9 (c) of the Constitution of 1970 would apply to any General Assembly action on any vetoed bills then pending and undisposed of in the General Assembly. The fifteen calendar days would in any event be computed from and including the day after

the Governor's objections are entered in the journal of the originating house.

The answer to question number 5 is the time limits prescribed in ARTICLE IV, Section 9 (a) and 9 (b) apply as well to a bill presented to the Governor for certification under Section 9(e). It is noted Section 9 (e) provides that when the bill is returned by the Governor to the originating house with specific recommendations for change it shall be considered in the same manner as a vetoed bill except that the specific recommendations may be accepted by a vote of the majority of the elected members to each house. Section 9 (e) further provides that such bills shall be presented again to the Governor for his certification whereupon it shall become law, or if he does not certify, he shall return the bill as a vetoed bill to the originating house. Since Section 9 (e) provides that the bill shall be presented again to the Governor, and since Section 9 (a) and 9 (b) both provide for time limits after a bill is "presented" to the Governor, it is evident that such time limits likewise apply to a bill returned and presented to the Governor pursuant to Section 9 (e) and to the Governor's action thereon with respect to certification.

The Honorable Richard B. Ogilvie

The answer to question number 6 is the time periods specified in ARTICLE IV, Section 9, are to be measured commencing with the calendar day following the day on which the event occurs. It is observed that the language in Section 9 in connection with and immediately following the periods of time specified uses the word "after". In Webster's New International Dictionary, 2nd Edition, Unabridged, "after" is defined as:

> "subsequent to; following the expiration of; in legal consideration where a time is expressed as to be computed, as an act as to be done, after a certain date, the word after is judicially construed as not intended to include the day or period governed by the word after; thus 30 days after April 1 would include the period beginning with April 2d and including May 1st; two months after July would include all of August and September; 10 days after sight of a draft would include ten days subsequent to, and not including, the day of its presentation. But the word may be construed to include the day or period referred to, as where this will plainly give effect to the intention of the user, as in a devise or a statute to subserve public policy, avoid a forfeiture, etc."

In Ballentine's Law Dictionary, Third Edition, "after" is defined as:

> "Behind; later in point of time. Where an act is to be performed within a specified period "after" a day named, the general rule is to exclude the day designated and to include the last day of the specified period. 52 Am 31st Time § 27."

The answer to the final question is the provisions of ARTICLE IV, Section 8 (d) apply and require the Speaker of the House and President of the Senate to sign each bill that passes both houses certifying that the procedural requirements for passage have been met for all bills that are passed on or after July 1, 1971, and all bills that are passed prior to July 1, 1971, which have not been signed by the Speaker and President as of July 1, 1971, in accordance with the requirements of ARTICLE IV, Section 13 of the Constitution of 1870. ARTICLE IV, Section 8 of the Constitution of 1970 expressly provides that each bill that passes both houses be signed by the Speaker of the House of Representatives and the President of the Senate. That portion of Section 8 reading "to certify that the procedural requirements for passage have been met" does not require that an express statement to such effect be signed. Section 8 does not clearly and expressly say this is required. It says that the officers shall "sign each bill". It does not say that they shall sign a certificate or that they shall certify. It provides, as I interpret it, the effect of their signing of a bill.

The Honorable Richard B. Ogilvie

It is my opinion that only signing of each passed bill by the Speaker and President is required and that no specific wording or certification is necessary.

Very truly yours,

ATTORNEY GENERAL

APPENDIX F

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706
June 16, 1971

FILE NO. S-310

CONSTITUTION:
77th General Assembly
Continuous Body

Honorable Cecil A. Partee
President Pro Tempore
Illinois State Senate
State House
Springfield, Illinois

Honorable W. Robert Blair
Speaker, House of Representatives
State House
Springfield, Illinois

Dear Senator Partee:
Dear Mr. Speaker:

Senator Terrel E. Clarke, Assistant Minority Leader, has asked the following question:

> "Is the 77th General Assembly terminated on the day the 1970 Constitution takes effect, July 1, 1971, or does Section 9 of the Transition Schedule of the Constitution of 1970 permit the 77th General Assembly to function as a continuous body until the Second Wednesday of January, 1973?"

Honorable Cecil A. Partee and
Honorable W. Robert Blair

This is a question of importance which involves both the on-going nature of the General Assembly under Article IV and the broad effects of the Schedules.

My judgment is that the 77th Illinois General Assembly is not terminated on July 1, 1971. Section 9 of the Transition Schedule clearly permits the 77th General Assembly to function as a continuous body until the second Wednesday of January, 1973, at which time the 78th General Assembly shall convene.

Consequently, the 77th General Assembly may, for example, recess prior to July 1, 1971, by adjournment to a time certain after June 30, 1971, should it feel appropriate.

Additionally, the 1970 Constitution requires the 77th General Assembly to convene anew on the second Wednesday of January, 1972.

The obvious and traditional purposes of a schedule in a new constitution are to provide for an orderly transition from the old constitution, and to establish temporary regulations for the interim until new machinery and proceedings are

constructed. Such purposes are abundantly evident in the Transition Schedule and Adoption Schedule of the 1970 Illinois Constitution.

Section 1 of the Adoption Schedule provides:

> "Except as otherwise provided by Section 1 of the Transition Schedule, this Constitution, if approved by the electors as provided by the Constitution of 1870, as amended, shall take effect on July 1, 1971, and the Constitution of 1870, as amended, shall thereafter be of no force and effect except to the extent that the contingencies provided for in Section 6 of this Adoption Schedule may require."

This language in no way suggests that the authority, rights and duties of the 77th General Assembly, initially assumed under the 1870 Constitution, terminate on July 1, 1971.

It is, rather, the necessary effect of the Schedules and 1970 Constitution to repeal, alter or modify General Assembly authority, rights and duties, and procedures only to the extent inconsistent with the new constitution. This is clarified by Section 9 of the Transition Schedule, providing for a general transition:

> "The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of

> court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. * * *"

The 77th General Assembly, being a "public body", cf., 1970 Ill. Const., Art. IV, Sec. 5 (a), retains all rights and duties which it has under the 1870 Constitution, unless changed by the 1970 Constitution. Thus, unless so changed, the 77th General Assembly may continue to function, with the right to adjourn to a time certain, after June 30, 1971. Cf., Opinions of Ill. Attorney-General, 1966, pp. 186, 189 (annual sessions; adjournment to a time certain).

No language in the 1970 Constitution requires termination of the 77th General Assembly on July 1, 1971. To the contrary, Article IV, Section 5 (a) expressly permits a continuing session:

> " * * * The General Assembly shall be a continuous body during the term for which members of the House of Representatives are elected."

This provision "constitutionally mandates that the General Assembly shall be a continuous body during each two year term of the House of Representatives." Committee on Legislative Article Majority Report, p. 68, Sixth Illinois Constitutional Convention (1970).

The 77th General Assembly convened in January, 1971. It shall be and remains a continuous body during the constitutional term of House members elected thereto, i.e., until the 78th General Assembly is convened on the second Wednesday of January 1973.

It must be emphasized that, whatever the decision of the 77th General Assembly as to continuing the session after June 30, 1971, the 1970 Constitution, Art. IV, Sec. 5(a) additionally requires that Assembly to convene anew on the second Wednesday of January, 1972:

> "The General Assembly shall convene each year on the second Wednesday of January. * * *"

This provision "commits Illinois to annual sessions through providing that the General Assembly shall convene each year on the second Wednesday of January . . ." Committee on Legislative Article Majority Report, p. 68, Sixth Illinois Constitutional Convention (1970).

It "implicitly states that all legislation introduced in the first year of the two year term shall carry over to the second year." Id., at p. 69.

Honorable Cecil A. Partee and
Honorable W. Robert Blair

Article IV, Sec. 5 (b), further, provides for special sessions called by proclamation by either the Governor or presiding officers of both houses in the event the General Assembly has adjourned. Joint proclamation by the presiding officers must issue as provided by law.

The 1971 organization of the 77th General Assembly shall continue as established in January, 1971, until the 78th General Assembly is convened in January, 1973. 1970 Ill. Const., Art. IV, Sec. 6 (b); Committee on Legislative Article Majority Report, p. 74, Sixth Illinois Constitutional Convention (1970).

The 77th General Assembly may on June 30, 1971 adjourn to a time certain in 1971 or 1972. It must convene on the second Wednesday of January, 1972. This Assembly shall function as a continuous body until the second Wednesday of January, 1973.

Very truly yours,

ATTORNEY GENERAL

cc: The Honorable Richard B. Ogilvie
Governor
Honorable Paul Simon
Lieutenant Governor
Honorable Clyde L. Choate
Minority Leader
Honorable Terrel E. Clarke
Assistant Minority Leader

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1 November 1979

SOME COMMENTS made to the panel reviewing the attached paper:

This paper is primarily a compilation of constitutional amendments reported. Time did not permit intensive analysis of the exact meaning and impact of each within its political jurisdiction. This kind of effort is useful only in identifying broad trends and suggesting topics for further research. My experience has highlighted certain problems in dealing with data of this kind:

1. Amendments vary widely in their significance

This is obvious, of course, but needs continual stressing in works of this sort. For example, an amendment may revamp an entire article--say, the judiciary; it may embrace the Missouri Plan rejecting popular election, adopt unification, establish a commission on judicial qualifications, and abolish jps. Or it may authorize the legislature to exempt from ad valorem taxation commercial shrimping and oyster boats using diesel fuel. In compilations both of these count the same.

2. Adoption Rates have utility---but not a lot

A comparison of amendments proposed with those finally adopted by the people produces an adoption rate. This might be 71.7% in one period and 65.2% in another. Such figures reveal very little and must be used carefully. For examples:

Kansas in 1972--revised its executive article, including joint election of governor and lieutenant governor, eliminated the latter from the legislature, and increased terms to 4 years
--revised its judiciary article, including unification and the Missouri Plan
--removed the prohibition against transportation of convicted persons outside the state

All approved: adoption rate 100%

Wyoming in 1976--repealed a prohibition against any female and any boy under 14 from working in the mines
--eliminated annual census of school children
--authorized the building of a prison for men at Rawlings and for women at any convenient spot

All approved: adoption rate 100%

New Hampshire in 1970--required declaration by civil officers to support the constitutions of the U.S. and New Hampshire
but rejected
--annual sessions
--4-year terms for executive officers
--compensation commission for the legislature

Adoption rate: still 25%

I realize that this is anecdotal and not statistical but it still suggests a problem with this measurement.

3. Watch the local amendments

Several states have this practice although Georgia is by far the worst practitioner. Statewide amendments in Georgia would still include:

—authority to create a public facilities authority for the city of Conyers
—the creation of a downtown Americus authority
—transfer of all existing public library systems, facilities and services located in any county of 600,000 or more to a countywide library system.

A local example:

—to amend the constitution so as to increase the civil jurisdiction of justices of the peace in Lanier County from $200.00 to $500.00

4. You can't always tell what's important

Reading cold print far from the political scene may mislead the reader. For example, I noticed that an initiative petitioned amendment to bar the use of "leghold traps" was on the ballot in Ohio—subsequently voted down. I assumed that this must have been the pet project of a fringe group and was handily voted down. However, talking with an Ohioan later I learned that this was the "most divisive issue in Ohio next to Mayor Kucinich." Evidently it divided rural and urban and stimulated the expenditure of great amounts of money on both sides.

5. Things not passed are important too--but watch initiatives

Any review of constitutional change should include not only what was accepted but what was not. Defeated change may indicate directions not favored by the people or it might be a harbinger—like an occasional Supreme Court dissent--of things to come. But take care, particularly with initiative petitions. Generally it takes only about 10% of the qualified voters to get something on the ballot. I suspect you might normally get 10% of 12-year-olds to vote to abolish Christmas. For example, in this paper on page 32—the section on taxation and finance—I have the sentence: "...In Montana, a draconian measure, initiative inspired, carried not only a flat limitation of $375 million per biennium through fiscal year 1983 but would have ordered a 15% reduction in the amount of federal aid received each year until 1984, after which no further aid could be accepted." After writing this I was troubled and put through a call to Montana's secretary of state. That amendment was overwhelmingly defeated, gathering barely 30% of the vote, obviously a product of a fringe group and suggesting little about current or future thinking in Montana.

Note: I am sure there are numerous errors in the paper. One which has been noted is on page 31, footnote 38a. Texas did not approve the amendment setting the two-thirds rule. Another error is on page 37: Pennsylvania did not vote on, much less approve a provision to submit the question of calling a con con every ten years.

TRENDS IN STATE CONSTITUTION-MAKING
1973-78

John P. Wheeler, Jr.
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Gatlinburg, Tennessee
1 November 1979

INTRODUCTION

Two developments stand out in the history of state constitutional development during the six year period 1973-78. First, the single most dramatic, if not most significant, event occurred in California on 6 June 1978. Voters approved item Number 13 in a list of propositions submitted to referendum, and in so doing sent "shock waves" through American politics, giving impetus to the drive to amend the U.S. Constitution and inspiring and encouraging efforts to bring about similar changes in other state consitutions. California's imposition of stringent restraints upon the state's property taxing power signalled the success and may have indicated a pause in the drive clearly evident since Baker v. Carr[1] and perhaps from the Kestnbaum Commission Report[2] to make the states more effective, more active units of government, and more viable parts of an integrated federal system.[2a]

Reform of the judiciary stands out as the other principal characteristic of the period. Although the leading elements in the reform package--except perhaps for commissions on judicial qualifications--have long been parts of the reformer's bundle, the intensity and breadth of change during the brief period is highly significant. Of course, the executive and, to a lesser extent, the legislative branch continued to receive attention but the pace of constitutional change considerably slowed. Having concentrated upon the governorship in an earlier day and upon the

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[1] 369 U.S. 186 (1962).

[2] Report, Commission on Intergovernmental Relations, June 1955.

[2a] Author's note: Last minute reflection makes me suspect that I am guilty of hyperbole with this statement. The evidence from so short a period and from so few cases is not now as convincing as it first seemed. While some other states went in the same direction as California none seems to have gone so far.

legislature during the late 1960s, the electorate may have been poised to consider the third of the great triumvirate during the 1970s.

The great activity in the areas of suffrage and elections did not reflect creative effort and positive change but a mopping up operation after the federal onslaught by constitutional amendment, statute, and court decision. Some state action preceded federal reduction of age and destruction of residence requirements but most action came later. Changes in state bills of rights reflected some state acceptance of equal rights amendments where the nation had not. Constitutional action in regard to local government--outside financial concerns--was important only in a limited number of states. And miscellaneous amendments and provisions gave recognition of emerging problems and concerns but did not promise exciting new initiatives. Generalization is always dangerous but these impressions seem supportable.

The purpose of this paper is primarily to summarize and report and secondarily to analyze the constitutional activity at the state level during the six-year period 1973-78. This is a modest effort to continue the inquiries made first by W. Brooke Graves[3] covering the quarter of a century through 1965 and carried through 1972 by Albert L. Sturm.[4] Its data are two revisions[5] and 841 amendments offered to voters in referenda by the legislature, by constitutional convention, and through initiative

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[3]"State Constitutional Law: A Twenty-Five Year Summary," William and Mary Law Review VIII (Fall, 1966), pp. 1-42.

[4]Trends in State Constitution-Making:1966-1972, Lexington, Kentucky: The Council on State Governments, 1973.

[5]Louisiana (1974) and Texas (rejected 1975). A number of references will also be made to earlier revisions, particularly Montana (1972), North Dakota (1972), and Illinois (1970).

petition.[6] The presentation will follow the pattern set in the earlier studies and not the order of relative importance, in terms of changes made, of the areas covered.

THE BILL OF RIGHTS

Civil liberties did not attract heavy attention in the period covered. Perhaps this is influenced by a popular but mistaken notion that the Federal courts have preempted the field and little remains for the states. Indeed some of the few changes in this section--as in the section on suffrage and elections--simply duplicated or adapted federal provisions or rulings.

Anti-discrimination Provisions

The most significant activity involved proposals to bar discrimination based on sex, the popularly tagged "equal rights amendments." Sixteen states constitutions now contain such explicit anti-discriminatory provisions, Connecticut and New Hampshire in 1974 and Massachusetts in 1976 being the last to join the group. Colorado turned back an initiative petition amendment challenging its 1972 equal rights amendment. Meanwhile four states rejected proposals--Florida, New York, New Jersey, and Wisconsin. An interesting footnote to this question is suggested by actions in New Mexico and Hawaii, both of which have had equal rights amendments since 1972. Both passed more specific amendments, Hawaii barring sex-based discrimination in public educational institutions and New Mexico banning such action in regard to qualifications for holding office and for enjoying a veteran's property tax exemption.

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[6] The first 8 amendments, all rejected, from Florida's unique Constitutional Commission will also be considered.

Utah (1896) and Wyoming (1890) entered the Union with provisions barring sex discrimination. In the early 1970s, Virginia, Montana, Illinois and in 1974[7] Louisiana adopted provisions as part of thoroughly revised documents, and Alaska, Connecticut, New Mexico, Pennsylvania, Texas and Washington adopted amendments. A similar provision was in North Dakota's defeated revision of 1972.

Four states with equal rights provisions are among the fifteen which have not approved the proposed amendment to the U.S. Constitution. Actually the existence of a state provision has been used in some states as justification for opposing the national change.

Equal rights amendments seem to promise some coverage beyond the anti-discriminatory restrictions of the U.S. Constitution and federal law. Other state moves against discrimination are likely only to duplicate federal protections or to remove provisions now invalidated by federal actions. Florida in 1974, for example, banned discrimination based upon physical handicaps.[8] Others have endorsed due process clauses referring specifically to race, color, creed and ethnic origin. Mississippi. Oklahoma, and Missouri have removed provisions calling for racially segregated schools. Tennessee dropped its ban on public funding for schools which integrate and its archaic and obsolete bar to intermarriage. Massachusetts now constitutionally prohibits the assignment of any student to any school on the basis of race, color, creed or ethnic origin, and

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[7]The document clearly bars racial discrimination. However, in regard to sex discrimination it is far less clear. It reads: "No law shall arbitrarily, capriciously or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition or political ideas or affiliations." And later another provision uses "arbitrary, capricious, or unreasonable" in referring to discrimination on grounds of age, sex, or physical condition concerning access to public areas, accommodations and facilities.

[8]See also note 7 above.

whether a civil liberty or not, Colorado, through an initiative petition, endorsed an anti-bussing amendment in 1974.

Some states took action to remove language bias from their documents. California converted masculine references to neuter ones, and Nevada excised a reference to "female electors." Hawaii took similar action in 1978. Women escaped a bit of type-casting but lost a guaranteed job when Mississippi repealed the requirement that the state librarian be a woman.

The right to privacy received further support in Louisiana's new constitution and, in 1978, in Hawaii, bringing to five the number of constitutions now giving explicit recognition. Montana's revised constitution contained a statement, and previously Alaska and California had recognized the right. Two proposed constitutions which failed of adoption--in Delaware and North Dakota--also contained a provision on privacy.

"Environmental" Rights

Some new ground is being tentatively tested as a result of increasing concern with environmental matters. Hawaii in 1978 approved a number of amendments concerning the environment, including one which states the rights of persons to a healthful environment and providing the right to sue, subject to regulation by law, to enforce that right. Massachusetts earlier (1972) had authorized eminent domain proceedings to protect the people's right to clean air and water.

Bearing Arms

In 1978, Idaho reinforced the right of its citizens to keep and bear arms and banned any effort to confiscate, license, register or to tax specifically firearms or ammunition. New Mexico moved in the same direction but not quite so explicitly. Meanwhile New Hampshire, in 1978,

refused to guarantee to all persons the right to bear arms in defense of self, family, property and state.[9]

Procedural Rights

Some states are tampering with the jury and some with the procedural right of indictment. The traditional common law jury of twelve had taken shape in England at least by the twelfth century and its antecedents can be traced through the Normans to European origins.[10] Yet the traditional twelve now is questioned. In 1972, Arizona authorized the legislature to fix the size of civil juries, Connecticut authorized six-person juries in non-capital cases, and Michigan in cases in which the potential punishment is less than a year. Oregon authorized six as the minimum number in all cases, but New Mexico, in the only negative vote in the series, refused to go along. More recently, New Jersey and Rhode Island have approved the smaller number in civil cases while North Dakota has approved smaller numbers in all civil and non-felony criminal cases.[11]

The Fifth Amendment guarantee of indictment by grand jury is another of the few Federal rights not pressed against the states. Currently

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[9]Perhaps "leghold traps" are not arms but a majority of Ohio voters agreed after a bitter battle that they should not be constitutionally banned.

[10]"Many romantic explanations have been offered of the number twelve--the twelve tribes of Israel, the twelve patriarchs, and the twelve officers of Solomon recorded in the Book of Kings, and the twelve Apostles. Not all of these suggestions are equally happy; the first implies that there may be a thirteenth juror who has got lost somewhere in the corridor and the last that there is a Judas on every jury. It is clear that what was wanted was a number that was large enough to create a formidable body of opinion in favour of the side that won; and doubtless the reason for having twelve instead of ten, eleven or thirteen was much the same as gives twelve pennies to the shilling and which exhibits an early English abhorrence of the decimal system. . ." Sir Patrick Devlin, Trial by Jury, rev. ed. London: Stevens & Sons Limited, 1966, p. 8.

[11]In 1971 Pennsylvania approved non-unanimous decisions in civil cases.

twenty-eight states permit some or all criminal charges to be brought by the filing of an "information" against the suspect. New York, Oregon, Pennsylvania, and Rhode Island have most recently accepted this although each restricts the change to non-capital cases.

Other procedural rights faced restriction. In 1978, Michigan barred bail in cases involving violent crimes and Nebraska where specific sexual crimes are involved. Texas now denies bail to an accused who has been twice convicted of felony and is on bail when he commits another felony, a restriction that might not seem out of line to many. Georgians in 1978 reflected some evident annoyance with criminals with two amendments which authorize the legislature in criminal cases to impose additional penalties to help pay for law enforcement training and to compensate victims of crime.

SUFFRAGE AND ELECTIONS

This decade has produced a significant expansion of the potential electorates in the states. Unhappily perhaps this did not occur from pressure by internal state forces or through the rejection by state electorates of the old principle that those who hold political power are rather reluctant to share it. Rather the motive force for change has come from Congress and the federal courts. The points of attack were voting age and durational residence requirements.

Voting Age

Title III of the Voting Rights Act of 1970 set the minimum age for voting at 18 in all elections--federal, state and local. Title II required states to make special provision--regardless of state requirements--for voters in presidential elections to qualify 30 days before

the election. There were also liberal provisions for absentee voting.

Oregon and Texas hastily brought original jurisdiction suits in the U.S. Supreme Court against the Attorney General. A court badly divided sustained the legislation in regard to federal elections but struck down the provisions as they touched state and local elections.[12] Congress quickly arranged and passed the Twenty-sixth Amendment; the legislatures showing remarkable powers of reaction in view of their earlier inertia, responded with approval in record time--three months and seven days.

Between 1968 and 1978, thirty-four states considered a total of 49 amendments related to lowering the voting age, passing 30, defeating 19. Much of this activity was moot. Before 1970, only four states had voting ages lower than 21--Georgia and Kentucky at 18, Alaska at 19, and Hawaii at 20. Before the effective date of the XXVI Amendment, Kansas, Maine, Minnesota, Nevada, and Oklahoma had dropped the age to 18, Massachusetts and Montana to 19, and Nebraska to 20. Some states rejected bids to go to 18--Connecticut, Hawaii twice, and Michigan--while Colorado and New Jersey turned dow 19. Oddly some states turned down amendments after the adoption of the XXVI Amendment, and Tennessee changed its constitution finally only in 1978.

Residence Requirements

The attack on durational residence requirements came from two directions. First, the federal provision for voting in presidential elections forced the keeping of two sets of records, a nuisance for the

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[12] Oregon v. Mitchell, 400 U.S. 112 (1970).

states. Then, and more significantly, the U.S. Supreme Court cut them down.[13] Using the equal protection clause and the "compelling state interest" concept based upon it the Court ruled six to one that Tennessee's one year state and three-month county residency rules were unconstitutional. The requirements, in the Court's view, adversely affected two constitutional rights--to vote and to travel—and the state had not demonstrated that a "compelling state interest" justified interference. While the court set no firm guidelines as to what might be acceptable, it suggested that Tennessee's 30-day pre-election period for closing registration books seemed ample for completion of the state's administrative tasks. Subsequently Florida and Alaska through statute tried 75-day durational residency requirements only to see these struck down. The strategy shifted from durational residency requirements to questions of registration closing dates. The court with strong dissents accepted 50-day closing periods in Arizona[14] and Georgia[15] because of "special" conditions. However, only Arizona now requires the full 50 days and only two others shut the books more than 30 days before the election--New Mexico (42 days) and Colorado (32 days).

In 1966, thirty-two states set a one-year state residency requirement; only Mississippi demanded more, 2 years. Fifteen set the period at 6 months, and two--New York and Pennsylvania--3 months and 90 days respectively. At the precinct or district level requirements varied from a year (Mississippi) to 10 days, with 28 states opting for 2 months

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[13] Dunn v. Blumstein, 405 U.S. 330 (1972).

[14] Marston v. Lewis, 410 U.S. 679 (1973).

[15] Burns v. Fortson, 410 U.S. 686 (1973).

or less. By 1972, thirteen states had softened their requirements at the state or precinct level or both. Mississippi cut its limits to a year and six months. Six states cut state requirements from a year to 6 months and two--Vermont and Colorado--from a year to three months. Subsequently 14 states produced 16 amendments, moving to the thirty day requirement. Three of these failed of adoption. Other states adjusted by statute.

Other Developments

With the success of the federal actions states have been more inclined to facilitate registering and voting. Virginia has authorized the legislature to provide for absentee registration of persons temporarily outside the country by reason of employment. Before 1974, few states permitted registration by mail; now 22 do, although most of this has resulted from law, not constitutional change. Three states permit registration at the polls. One of the few retrogressive steps was taken in Ohio when voters by constitutional amendment overturned the state's new law permitting registration at the polls.

Maryland, in 1974, authorized the legislature to make provision for absentee voting. Persons on vacation will now be permitted to vote in Delaware, and those whose religious beliefs conflict with voting on a day designated for an election will have special arrangements made by Massachusetts. Connecticut has turned the whole business of registration and most of that of elections over to the legislature, and in the new constitutions the articles on suffrage and elections are among the shortest, vesting extensive discretionary authority in the legislature.

THE LEGISLATURE

> One of the most frequently recurring themes of the movement for legislative improvement has been the attempt to increase both the amount and the flexibility of time available to legislatures. This has been achieved in many States by such means as instituting annual rather than biennial sessions, relaxing constitutional restrictions on the length of sessions, giving the legislature the authority to call itself back into special session, imposing deadlines for the various stages of the legislative process so as to avoid logjams and, particularly in recent years, making greater use of pre-session periods. . . .[16]

This comment briefly summarizes one major aspect of the move for legislative reform which has been underway since the early 1960s. Most of the specific elements noted were characteristic of the particular period under review. Other elements in the reform collection centered on legislative size, reapportionment machinery, and the working conditions of legislators.

Annual Sessions

In 1967, only 21 states provided constitutionally for annual sessions; in five of these the odd session was restricted to budgetary matters. By 1973, the number had grown to 36, with four placing restrictions on the second year's meeting. By 1978, the number was 37 with four maintaining restrictions to budget matters. So the number of states holding to biennial sessions continues to shrink but resistance is firm among the holdouts. Since 1972, seven states have considered the move to annual sessions, only three have made it--Alabama, Maine, and North Dakota, the latter authorizing the legislature to meet for 80 days anytime during the biennium and not necessarily consecutively. Kentucky

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[16] The Book of the States, 1974-1975, Lexington, Kentucky: The Council of State Governments, 1974, p. 55.

and Texas once and New Hampshire twice rejected amendments to change. Montana established annual sessions in its revised constitution only to revert to biennial sessions two years later when the voters approved an amendment via the initiative petition route.

However, a word of caution is wise here--as is often the case with constitut onal provisions. The lack of authority for annual sessions has not kept all states so restricted from meeting annually. Eight of the 13 states formally without annual sessions managed to meet each year of the biennium 1975-76, either by informal adjustments of the regular sessions or by lengthy special sessions.

Special Sessions

Iowa in 1974, New York in 1975, and Oregon, after previously voting down a proposal, in 1976 approved amendments allowing the legislature to call itself into special session without gubernatorial involvement. This brings to 27 the legislatures with that authority, up from 15 in 1967 and 25 in 1972.[17]

Nine states currently require a two-thirds majority of each house to call a special session, five permit a majority to do so, four permit three-fifths, and four others allow a call by the presiding officers. Maine requires a majority vote of each party in each house. The only change attempted during the past few years failed; New Hampshire had sought to reduce the requirement for a call from two-thirds to a majority.

Session Length

Only North Dakota constitutionally changed the length of legislative sessions during this period. In 1976, it extended from 60 to 80 days the

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[17]Connecticut dropped the provision when it moved from biennial sessions to annual sessions.

time legislators might meet and specified that the days need not be consecutive during the biennium. It also authorized committees to function any time during the two year period. Eighteen states have no restriction on the length of sessions, and of those that do only ten specify limits in "calendar" rather than the more ambiguous and flexible "legislative" days. Presumably these restrictions do not bear as heavily as once thought for serious concern is being voiced about the future of "citizen legislators" in the face of increasing time demands upon them.[18]

New Hampshire called for an organizational meeting of the legislature prior to a regular session, and Maine, to narrow the "lame duck" period, moved the legislature's convening date to December from January.

Rules of Procedure

Procedural rule change by constitutional adjustment during this period was rare, and the few instances are relatively insignificant. Nevada now permits the legislature to utilize the consent calendar. Nebraska modified veto provisions to allow the legislature to line item override the governor's line item vetoes, but refused to eliminate the archaic rule that every bill be read at large before vote on final passage.

Legislative Powers

The ~~signal~~ simple event of this period in regard to expansion of legislative powers has to be the remarkable accomplishment of Louisiana. Long a pariah among pariahs, the example constantly dragged out by reformers to show the end toward which too many others tended (when all knew it was sui generis), the Louisiana constitution had reached, by 1974, the

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[18]See The Book of the States, 1978-79, p. 5.

appalling length of more than a quarter of a million words. Length alone, of course, is no conclusive measure of the quality of a fundamental law[19] but when it reaches far beyond the bounds of reason there is little risk in making the judgment. Louisiana, in 1974, legislated by constitutional amendment. From 1968 through 1972, Louisiana voters faced 145 amendments referred to them--78 of statewide application but all voted on statewide. In 1976, they faced none, and in 1978 only one. The constitutional convention had pared the document to about 35,000 words--still a lot by comparison with other state constitutions--but back within the bounds of reason. Whatever legislative power Louisiana grants is now back in the legislature.

But the grant of power is far from complete. Take taxation, for example. Not only is legislative action restricted to every other year, but a two-thirds majority of the elected members is required to levy a tax, increase an existing tax, or repeal an existing exemption. "This may be offensive to the purist political scientist, but it is better than legislating by constitutional amendment."[20]

Another matter, not involving Louisiana at the moment, may promise expansion of a traditional role of legislatures--oversight of the administration. The growth in bureaucracy and the concommitant growth of rule-making have stimulated public concern and legislative reaction. So far by statute, a number of states have given legislatures the power to intervene in administrative action by suspending or disallowing rules.

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[19]See Frank P. Grad, The State Constitution: Its Function and Form for Our Time, New YOrk: National Municipal League, reprint from Virginia Law Review, June 1968.

[20]Cecil Morgan, "A New Constitution for Louisiana," National Civic Review LXIII (July, 1976), p. 350.

Connecticut has the most stringent law, not only allowing a committee to suspend a rule but creating a bar to its implementation unless the whole legislature overrules the committee. No state yet has given this practice constitutional status, but the question has reached voters in constitutional referenda in Florida and Missouri.

Legislative Terms

Terms for representatives have remained unchanged for nearly three decades. Only four states--Alabama, Louisiana, Maryland and Mississippi--allow house members 4-year terms. The only state to attempt a change recently was Georgia in 1978. Prior to that the latest attempts were in Florida in 1970 and again Georgia in 1968. The Model State Constitution and most reform advocates call for a longer term than two years but two years seems to be the rule. Thirty-eight states grant senators 4-year terms, the exceptions being the six New England states and Arizona, Georgia,[21] Idaho, New York, North Carolina and South Dakota. The last change in senatorial terms took place in New Jersey in 1970. Three states including New Jersey have devised a scheme for securing effective reapportionment of their senates as soon after a decennial census as possible. All senate seats in New Jersey were up for election in 1972 and will be every ten years thereafter, providing two 4-year terms and one 2-year term each decade. Illinois follows a variation of this scheme. Montana senators will draw lots after each census to determine which half will serve a 2-year term.

Size of Legislatures

The upheavals in size of legislatures precipitated by the

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[21]The Georgia amendment which failed in 1978 provided 4-year terms for members of both houses.

reapportionment turmoil have largely subsided. The only significant change in size was promised in Massachusetts by an amendment in 1974, the lower house dropped from 240 to 160 after the 1978 elections. Other than that the drop from 102 to 100 in North Dakota's house is the only change to note.

Recently, New Mexico constitutionally froze its legislature at its present size, 42 senators and 70 representatives. Vermont adopted 150 with single-member districts to be determined by the legislature. New Hampshire's effort to increase its senate from 24 to 36 failed, as did South Dakota's move to reduce its house from 75 to 70.

Despite the numerous changes in legislative size over the past 12 years the totals have remained fairly stable. In 1967, there were 5,632 members of the 49 lower houses, an average of about 115. With Massachusett's decrease there will now be 5,501, an average of 112. The range has changed slightly from 35-400 to 40-400 with the median remaining at 100. During the same period Senates have changed little, from a total of 1983 to 1981; ranges only inched upward from 18-67 to 20-67, and average senate size remained the same, a bit above 39.

Legislative Salaries

Opinion polls generally show that American legislatures occupy a low rung on the public's ladder of social endorsement. Treatment of amendments and other constitutional efforts aimed at improving the financial lot of legislators give further evidence of this attitude, at least in some states.[22] Eight states set legislative salaries in the bedrock of constitutional language. Nebraska twice recently refused

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[22]Legislative compensation in many states has improved considerably in the 1970s.

to accept amendments giving legislators $675 a month, a rise from $400, but finally allowed them to receive some allowances for per diem expenses. Rhode Islanders rejected a salary of $2,000 which was coupled with a provision that future changes could be made by law with voter approval. New Hampshire's long-standing constitutional salary of $200 remains firm despite a bid to establish legislative pay at the level of the lowest paid employee in the state's classified service.[23] In 1976, North Dakota voters reaffirmed their support of the existing constitutional pay of $5 a day. Legislators in Texas tried an interesting approach to get a raise, but it probably was not planned. Undaunted at having failed to get approval through amendment for $8,400 a year, they came back in 1973 with an amendment calling for $15,000. That failed too but perhaps softened the public to give them $600 a month in 1975.

It is interesting to note that total biennial compensation averages $8,888 in the eight states in which salaries are set in the constitution and $23,660 in the others.

Yet even in most of the states which are not constitutionally limited legislators are often reluctant to increase their salaries. Their fear of political retribution from unsympathetic voters is usually well founded. The compensation commission has been developed both to get around this obstacle and to provide a more rational basis for determining the proper level of pay. Twenty-six states--seven through constitutional action--have set up commissions. The great majority are advisory only, but some, principally those constitutionally based, require legislative action. Idaho and Maryland, for examples, require positive action for

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[23]To add insult to injury voters even refused to permit a change in the deadline date for paying mileage!

the legislature to reject; no action means acceptance. It takes a two-thirds vote of each house in Michigan to reject commission recommendations. Only Oklahoma though accepts commission findings as final and binding. Idaho, Washington, and Hawaii are recent adopters of the system through constitutional amendment. North Dakota twice, and Arkansas, California, and New Mexico have turned down the system.[24]

THE EXECUTIVE

Reform of the executive continued in the traditional pattern although the pace of change eased, as might be expected, during 1973-78. Executive branch reorganization including the shorter ballot, longer terms for governors with increased possibilities for reelection, the tying together of governor and lieutenant governor on the ballot characterized the constitutional changes.

Executive Branch Reorganization

The long term process of executive reorganization set off by Michigan's comprehensive restructuring in 1965 continues. By 1978, twenty-one states had undergone major executive branch reorganization. Much of this activity has been legislative and occasionally executive in origin. However, there are constitutional implications. Constitutions and amendments have mandated reorganization by placing limits upon the number of departments which might be created or continue to exist. In 1972, Idaho and Missouri called for restructuring of their state administrations within 20 and 14 departments, respectively. Louisiana's new constitution set 20 as the maximum including departments headed by eight

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[24]Only in California, among these four, did the legislature currently have the unrestricted power to set salaries.

elected officials; legislation in 1975 established 19. Constitutions and amendments can also create and destroy specific offices and departments. The Louisiana constitution allows the legislature by a two-thirds vote to make appointive four of the currently elective positions. Oklahoma eliminated five positions by amendment in 1975; that action provided impetus for the creation of a 15-man Special Commission on the Reorganization of the State Government. Functional integration of the executive departments has been mandated by a 1978 amendment to the Hawaiian constitution.

The proposed Texas constitution which died in 1975 carried two unique features concerning reorganization. First, the governor was required biennially to report to the legislature on the organization and effectiveness of the executive branch, and the legislature in turn was directed to consider any bills on the subject the governor might submit. The other feature would have provided the first constitutional "sunset" provision since the document mandated lives of 10 years for state agencies unless renewed by law.[25]

The Shorter Ballot

At least since the turn of the century reformers have railed against the large number of elected officials at the state and local level. A large number allegedly offends both the voter's capacity to pass judgment on performance and sound management. Some chipping away continues overall, and a major step was taken by Oklahoma as it abdicated its hold on the most bloated ballot in the country in 1975. The steady trickle of change can be seen in the following figures:

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[25]"Sunset" laws have spread rapidly since they first appeared in 1976. Twenty-four states had such a statute by 1978.

	Number of Officers		
	1967	1973	1979
Constitutional, Elective (no boards or commissions)	300	290	281
All constitutional, Elective	342	339	333
All elective--constitutional and statutory	528	587*	566*

*These increases have occurred primarily in the area of education, both secondary and higher, as boards have increased in number and size.

Since 1972, Illinois and South Dakota have dropped Superintendents of Public Instruction, and Indiana changed the status of the position from constitutional to statutory. Louisiana eliminated the constitutional positions of Controller and Commissioner of Lands. But the big news came from Oklahoma which effective January 1979 eliminated five of the 12 constitutional, elective positions. Dropped were the Commissioners of Labor and of Charities and Corrections, the Secretary of State, and the Chief Mine Inspector, and the office of Examiner and Inspector and that of Auditor were combined. Eleven states had longer ballots but none had more offices both elective and constitutionally preserved. Pennsylvania, in 1978, was the only state to add an office, moving its attorney-general from an appointive status to constitutional and elective. Vermont had refused to take that step earlier.

Governor's Powers

A number of actions affected the powers of various governors. Maine abolished its 155-year-old Executive Council in 1976. Massachusetts increased from three to eight weeks the time after a legislative session opens for the presentation of the executive budget. Hawaii limited the item veto by excluding appropriations for the legislative and judicial

branches, but Illinois rejected an effort to limit the governor's amendatory veto to technical errors. Maine, Tennessee, Washington, and New Hampshire increased the time for the governor to consider bills, from five to ten days, but California refused to extend the period from 12 to 20 days after adjournment. Maryland shifted appointment of the treasurer from the governor to the legislature.

States continued to create, modify and destroy various commissions and agencies. Michigan created a state transportation commission and Hawaii an office of Hawaiian Affairs. Kansas and New Mexico refused to create state boards of education and Oklahoma refused a full time pardon and parole board. Georgia changed a name, from Department of Community Development to Department of Industry and Trade, a matter of little import save that that was the name it abandoned only four years before. Constitutionally most activity of this sort involved adjustments of boards dealing with public education, higher and secondary.

Cabinet Systems

State cabinet systems have come to be noted. The Book of the States, first commenting on this in 1978,[26] reports that thirty-six states responded to an inquiry that some kind of a cabinet system functioned. Thirteen of these were based upon statute while the others rested on executive orders or simply tradition. Only Florida, as it has since the nineteenth century, still maintains a constitutional cabinet. Florida voters, in 1978, renewed their support of this unique institution by rejecting an amendment to abolish it, submitted directly by the Florida Constitutional Commission.

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[26]The Book of the States, 1978-79, p. 129.

Terms Of Office

Forty-six states give their governors a four year term. There was no change in this during 1973-78 although of the four holding to two year terms—Rhode Island, Arkansas, Vermont and New Hampshire--the first three tried unsuccessfully to change. (New Hampshire had refused in 1970.) However, reelection prospects were given possibility in three states as Tennessee and Georgia approved two consecutive terms and North Carolina endorsed an absolute two term limit. New Mexico in 1976 rejected such an amendment. The steady progress toward a more reasonable tenure is reflected in the following:

Terms of Office for Governors

	Number of States		
	1967	1973	1979
4-yr term, no immediate succession	11	8	6
4-yr term, 2 consecutive term limitation	9	17	18
4-yr term, absolute 2 term limitation	3	2	3
4-yr term, unlimited succession	16	19	19
2-yr term, 2 consecutive term limitation	4	0	0
2-yr term, unlimited succession	7	4	4

Lieutenant Governors

Four-fifths of the states have constitutional, elected lieutenant governors. Two related changes concerning the election and function of this officer were evident during 1973-78. First, there was a definite

and rapid trend toward tying the election of the lieutenant governor directly to that of the governor. And growing out of that, the second change takes the lieutenant governor out of the legislative process.

Of the 41 lieutenant governors 21 are now elected on a joint ticket with the governor, a jump from six in 1966, and from 19 in 1972, the year Kansas, Minnesota, Montana, and South Dakota joined the list.[27] Subsequently Indiana, North Dakota, and Ohio took the step.

Eleven states have relieved the lieutenant governor of the traditional role of presiding over in senate and participating in certain legislative activities, such as the appointment of committees. Ten of these require joint election, and usually that requirement and the relief from legislative duties have come in the same action.[28] Only Louisiana among those separately electing the lieutenant governor have relieved him of legislative duties.

THE JUDICIARY

W. Brooke Graves noted that the thorough revision of the judicial structure of New Jersey in 1947 "was not only the first in New Jersey for a century but the first major reorganization of the courts in any state for a very long time."[29] That accomplishment evidently stimulated other states for as Graves noted judicial reorganization was accomplished in Colorado, Illinois, Missouri, New York and North Carolina. He cited the serious efforts "to unify the court system, to simplify the judicial structure, to streamline judicial procedure and to make courts more

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[27]Delaware once required joint election but no longer.

[28]South Dakota in the same referendum treated the question in two parts, passing joint election but defeating relief.

[29]Graves, op. cit., p. 26.

responsible to present day needs."[30]

This thrust continued through the 1960s and into the 1970s. Albert L. Sturm viewing the period 1968-72 "cited the substantial progress toward greater professionalization and unification of state judicial systems. . ."[31] At least 14 states adopted new or revised constitutional articles on the judiciary. Principal concern since 1972 has been with court unification and with the selection and disciplining of judges. Indeed all three moves seem intertwined: tighter organization and greater insulation of judges from the political process seem to call for better policing. In the period 1973-78 substantially revised judicial articles have been adopted in Alabama, Arizona (by initiative petition), North Dakota, Vermont, and West Virginia, and rejected in Tennessee and Washington.

Court Unification

Since 1972, ten more states have "unified" their court systems through constitutional action. Alabama, Georgia, Kentucky, New York, North Dakota, West Virginia, and Wisconsin have embraced unification outright or moved significantly in that direction. Louisiana also has accepted unification while rather pointedly avoiding the label.[32] Nevada after rejecting a proposal in 1972 reversed itself four years later. The latest to join the list, New Hampshire, adopted an amendment in 1978 designating its chief justice as administrative head of the court system. Vermont and

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[30] Ibid., p. 27.

[31] Sturm, op. cit., p. 62.

[32] See Cecil Morgan, "A New Constitution for Louisiana," National Civic Review LXIII (June, 1974), pp. 347-8.

others have unified through non-constitutional methods.[33] Efforts to unify in Washington failed with the defeat of that state's omnibus article in 1975.

By 1978, all state court systems had some kind of a central administrative office, even Nevada which had adopted the system, then rejected it, only to recreate an office in 1976. Nine of these were established during 1973-78, only three requiring constitutional action--Montana in its new constitution, New York and South Carolina. The other offices were established either by law or by Supreme Court directive. In all, 17 states rest their administrative offices upon a constitutional foundation.

Judicial Disciplining

Probably the most significant development in judicial matters has been the rapid spread and almost universal adoption or adaption of mechanisms for enforcing judicial ethics and generally monitoring the performance of judges. Today, forty-eight states have a specific commission or direct the Supreme Court to perform this task; only Maine and Mississippi continue to rely wholly on the traditional methods of impeachment or recall. The commission on judicial qualifications, as it is usually called, receives complaints about judges and may investigate them, finally making recommendations for action where appropriate to the Supreme Court.

Judicial commissions have been created directly by the constitution or by the legislature under constitutional mandate. The year 1972 produced a bumper crop of actions with Alabama, Georgia, Iowa, Minnesota, North

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[33]See Larry Berkson and Susan Carbon, Court Unification: History, Politics and Implementation, U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, August 1978.

Carolina and Wyoming creating or laying the foundation for commissions. Subsequently New York, Nevada and North Carolina would complete the forty-eight. Recent constitutional action revamping commissions and their powers took place in several states.

Formal names vary. California, the first to create a commission, in 1960, called it Commission on Judicial Qualifications, but changed it in 1976 to the Commission on Judicial Performance. It is called the Commission on Judicial Conduct in Texas, the Commission on Judicial Disabilities in Maryland, the Judicial Inquiry and Review Commission in Virginia, and simply the Judiciary Commission in the new constitution of Louisiana.

Selection of Judges

The question of the proper way to select judges has been a preoccupation of reformers for many years. Popular election, gubernatorial appointment, a combination of the two, these in combination with some means of checking the qualifications of candidates or nominees are all possibilities. This question continues to be active despite the absence of conclusive evidence that the method of selection conditions behavior and performance on the bench.

Six states since 1972 have changed the method of selecting judges for their highest court. Florida after moving from partisan to non-partisan elections in the 1960s adopted the Missouri Plan in 1976.[34] New York changed from partisan elections and Idaho and Arizona from non-partisan elections to the Missouri Plan, but Louisiana chose to stay with elections. Maine abandoning its executive council moved to require

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[34]Florida rejected an amendment in 1978 extending this to circuit and county judges.

senatorial confirmation of the governor's appointments.

The steadily growing popularity of the Missouri Plan and similar arrangements is reflected in the following table:

METHODS OF SELECTING JUDGES OF HIGHEST COURTS

	Number States		
	1967	1973	1979
Partisan election	15	13	11
Nonpartisan	14	15	11
Missouri plan	9	10	17
Legislature	5	5	4
Governor anpoint	7	7	7

The trend is the same for lower courts but less pronounced.

Terms of Judges

Four states adjusted the terms of office for judges on their highest courts in the period 1973-78, five others during 1967-72. There was a perceptible move--both upwards and downwards--to 10 years as an optimum term. Those changes are reflected in the following:

TERMS OF JUDGES

	Number Years		
	1967	1973	1978
Hawaii	7	10	10
Indiana	6	10	10
Louisiana	14	14	10
Maryland	15	15	10
Massachusetts	Life	to Age 70	to Age 70
New Jersey	7 years, then to Life	7, to Life	7, to Age 70
Pennsylvania	21	21	10
South Dakota	6	8	8
Vermont	2	2	6

Currently, twelve states give 10 year terms. Only seven grant more than that, usually 12 years, although New York gives 14, New Hampshire, Massachusetts, and, in practice, New Jersey give to age 70, and Rhode Island shows no inclination to change its life term.

LOCAL GOVERNMENT

Louisiana's acceptance of the Fordham plan of home rule stands out as the most significant constitutional development in a period largely devoid of creative concern with local government. The Fordham plan, endorsed by the Advisory Commission on Intergovernmental Relations and the American Municipal Association, and embedded as the preferred option in the Model State Constitution, frees local government to act in the absence of specific constitutional or statutory restraints. Louisiana's constitutional statement reads:

> Subject to and not inconsistent with this constitution, the governing authority of a local governmental subdivision which has no charter or plan of government may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of the proposition that the governing authority may exercise such general powers. Article VI, Section 7.

A proposal for modified home rule for counties and municipalities in Arkansas was part of the proposed constitution defeated in 1970. Partially resurrected by amendment four years later, the new system, effective January 1977, engrafts new powers upon old forms, not fully embracing home rule but allowing a county "through its Quorum court to exercise local legislative authority not denied by the Constitution or by law." There is no choice of governmental structure, and taxing powers

are sharply limited. Separation of powers is invoked, with the county judge--in reality an executive—presiding over the Quorum court--in reality a legislature—with no vote but a veto subject to override. Interestingly, the court may submit to the voters a plan for the creation, consolidation, separation, revision or abandonment of any elective county office.[35]

Montana's unique requirement for periodic voter review of local government which first appeared in its constitution of 1972 was amended last year to make the step optional rather than mandatory. The provision originally read:

> Section 9. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.
> (2) The legislature shall require a review procedure once every ten years.

Part (2) was changed to mandate only that the legislature require an election in each local government every ten years, a majority of voters determining whether the step should be taken.[36]

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[35]See Glen W. Sparrow, "Arkansas Local Governments Begin to Take Control," National Civic Review LXVII (November, 1978), pp. 452-56.

[36]"Montana's unique experiment requiring a review of local governments in the state ended in 1976 when several elections were held to ratify or reject recommendations of local government study commissions. Two of three prospective city-county consolidations were approved. Twenty-six municipalities changed their form of government, and 15 of those adopted home rule. Four counties adopted a new form of government and two chose home rule. Two service consolidations were adopted, consolidating the municipal police and sheriff's departments. The total of 32 changes in the form of government completed the process of government review in 126 municipalities and 56 counties in Montana." Advisory Commission on Intergovernmental Relations, State Actions in 1976, February, 1977, M-109, p. 18. See also James J. Lopach and Lauren S. McKinsey, "Montana Local Government Review: Reflections on Product and Process," National Civic Review LXVI (July, 1977), pp. 339-45.

Apart from the developments noted above there was the usual plethora of amendments dealing with minute financial matters--taxes, exemptions, debt, investment of funds, expenditures--and the usual tinkering with local government machinery, most of which could be eliminated by an adequate system of home rule.

TAXATION AND FINANCE

Taxation and finance issues were important throughout the period 1973-78 and marked the last year indelibly. On the ballots of the states in 1978 were 16 constitutional proposals which would have limited in some fashion state or local government taxing or spending powers. Other referenda, not constitutional in form, promised considerable impact upon state finances.

The Power to Tax

Proposition 13 went before the voters of California by way of an initiative petition carrying one million signatures and passed by a margin of two-to-one. Its provisions are simple: property taxes may not exceed 1% of assessed valuation; assessments are frozen at 1976 levels with thaws of only 2% a year allowed unless the property is sold, transferred or supports new construction; new taxes on non-property sources may be levied but only by a two-thirds vote of the legislature. Proposition 13 limits local governments as well as the state. The projected economic and political impact of the amendment has been reported and debated too often to require repetition here.

Was Proposition 13 the stimulus or catalyst for action in other states? It is difficult to tell. However, there can be no doubt that the passage of Proposition 13 in June and the attendant publicity had

influence on the other decisions made in November. Nevada[37] and Idaho passed Proposition 13 type amendments while Oregon rejected one. Michigan rejected an initiative petition amendment which would have drastically cut property taxes and instituted a voucher system for financing schools.[38] Alabama approved an amendment lowering assessments, and Missouri authorized the legislature to order local government to lower property taxes.

South Dakota chose the route of making it more difficult for taxes to go up. It now bars increases in state taxes on income, sales, or property unless approved by popular initiative or a two-thirds vote of the legislature.[38a] All of the above actions involved constitutional change and does not cover state action by legislation or initiative.

The Power to Spend

Some states followed the route of expenditure control. New limits in Hawaii and Texas ride with the growth of the states' economies. Hawaii's provision also mandates the return of any surplus money and a prohibition against deficit spending except in an emergency. An initiative petition placed the issue before Michigan voters. Future appropriations are frozen at the current proportion of all state and local taxes and revenues (except federal aid) to personal income. The provision prohibits new taxes or increases without voter approval, and interestingly places a bar to any reduction in current levels of support for local government. Arizona placed a 7% limit on annual increases, an

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[37]Nevada's action must be approved again in 1980 but since it passed by a margin of three-to-one, the outcome hardly seems in doubt.

[38]The negative action in Oregon and Michigan, however, may have been influenced by other fiscal issues voted upon at the same time.

[38a]Texas, Louisiana and California also have adopted the two-thirds rule for new or increased taxes.

approach turned down narrowly in Colorado.[39] Nebraska rejected a 5% limit on local governments. Other action included an advisory referendum in Illinois on setting a mandatory ceiling on state spending; it passed four-to-one.

All the above also took place in 1978. The rapidity with which the public accepted these new restraints is revealed by actions in the previous biennium.[40] Both Michigan and Montana rejected amendments brought by initiative petition which would have curbed expenditures. The proposal in Michigan would have limited state and local spending to 8.3% of the personal income of the state. In Montana, a draconian measure, initiative inspired, carried not only a flat limitation of $375 million per biennium through fiscal year 1983 but would have ordered a 15% reduction in the amount of federal aid received each year until 1984, after which no further aid could be accepted. And an indirect method of control--limiting the number of state employees--was rejected in Florida.[41] Colorado voters had turned back a proposal (via initiative petition) to subject all to voter approval legislative and executive acts requiring new or increased taxes.

But perhaps the handwriting was on the wall in the appearance of these proposals. And certainly 1974-75 was a hard time for those seeking higher taxes. Oregon voters said no to higher income taxes and Washington

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[39]Actually this change for Colorado would probably have resulted in greater spending authority than the current statutory limit permits.

[40]However, 1974 was not a promising year either, in regard to bond issues. Over 90% of the amount sought was rejected by voters.

[41]The limit was to be 1% of the estimated population. With 8.4 million people, employment could have totalled 84,000. The total was over 100,000 in 1976.

voters to a corporate income tax. A higher sales tax with the exemption of food and drugs was defeated in Arizona. Nevada refused to raise debt limits, and Maryland and Louisiana mandated balanced budgets. So public disillusionment had been building.

Special Note

Now that Californians have settled the question of taxes, they turn this year (1979) to that of appropriations. Tagged by the Wall Street Journal[42] perhaps appropriately as "Son of Proposition 13" another initiative petitioned amendment is on the ballot for November. Paul Gann of Jarvis-Gann renown has been the central mover behind this effort to put a halt to rising expenditures. This proposal seems far more restrictive than existing limitations in other states. Proposition 4 would allow increases in appropriations over the base year--the twelve months ending the preceding June 30--only for rises in the population and in either the consumer price index or per-capita income of the state, whichever is lower. Excess revenues would have to be returned through lower taxes or fees. The ceiling may be exceeded if approved in a referendum of the governmental unit concerned, but any such increase lasts only four years and must be rolled back unless further voter blessing is forthcoming. There is a provision for exceeding the ceiling in an emergency without a referendum but, to cover all tracks, in such cases the excess is charged against future expenditures and must be repaid within three years.

Odds and Ends

Sixty-five amendments related to direct bond issues or authorizations to issue or to liberalize restraints upon state and local bonded indebtedness. Thirty-two of these passed. Of 18 direct bond issues 11

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[42]Friday, October 12, 1979, p. 12.

involving a total of $1.5 billion were approved while seven involving $5.2 billion failed. Of the amount approved $642 million, about 45%, was for veterans' benefits.

Electorates showed mixed reactions to bond issues and authorizations for industrial development and pollution control, and an outright hostility to transportation facilities, both motorway and other. West Virginians did vote a $500 million issue for bridges at the beginning of the period but later transportation issues took a beating. In Ohio, in 1975, a huge, $1.75 billion program of highway development and upgrading failed. A plan to spend $175 million helping railroad development in Michigan was turned down. Ohio voters also rejected granting authorization to state and local transportation authorities to lend credit and aid to AMTRAK and Conrail. Meanwhile Floridians turned down $100 million for housing. The only significant social program which passed was New York's increase of $150 million for its Job Development Authority. Oregon authorized up to one-half of 1% of the value of all assessed property to finance multi-family housing for the elderly, but turned down a similar amount for public water systems. Idaho approved debt for environmental pollution control and for rehabilitating existing electric generating facilities.

Utah removed the requirement of taxpayer status for participation in bond elections,[43] and Missouri dropped its vote requirement on approving airport, utility and industrial development bonds from 4/7 to a majority. Idaho meanwhile refused to lower from 2/3 to a majority the vote required in bond elections concerning airport and air navigation

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[43]Such provisions are of doubtful validity in view of the court's ruling in Phoenix v. Kolodziejski, 399 U.S. 209 (1970).

facilities.

Generally speaking the voters became less generous as the period progressed. A particularly bad year was 1978, the high point being perhaps Alabama's approval of $15 million in bonds for penal institutions.

Forty-one states now tax personal incomes, since New Jersey joined the list by statute in 1976. Tax rates reflect varying degrees of progressiveness from the hardly perceptible scheme in New Jersey--2.0-2.5--to Delaware's scale of 1.6 to 19.8 percent. Three states peg the tax ' a percentage of the federal--Vermont at 25%, Rhode Island at 17%, and Nebraska at 16%. Most changes during this period involved increases in the upper limits. About a fifth of the states made such adjustments. Four states, restricted by uniformity classes, have flat rates--Illinois, Massachusetts, Michigan, and Per ylvania. They have shown no inclination to change them. Massachusetts and Michigan in 1976, as they had previously done in 1968 and 1972, rejected amendments which would have allowed graduated schemes. Alabama legislators have not presented an amendment to raise that state's maximum limit since the 1970 failure to secure voter support for an increase from 5 to 7%. Washington voters in 1973 repeated their 1970 vote and again blocked an effort to permit an income tax. The sweeping authority given Tennessee's last limited convention did not include the tax article, thus preventing consideration of an income tax for another six years.

Missouri boosted its constitutional sales tax from 3% to 3.175% to provide increased funding for bird, fish, game, forestry and wildlife programs. This seems the only instance of an increase in sales taxes by constitutional change during this period. North Dakota voted a reduction from 4% to 3%. More activity was aimed at lifting sales tax

levies from food and prescription drugs, thus easing the regressive impact of the tax. Michigan endorsed an initiative inspired amendment while Arkansas and Missouri balked. Meanwhile legislators in Kansas, Tennessee, Utah, and Washington were actively responding to pressures for exemptions on one or both of the items. Currently there are 45 sales tax states; by 1978, twenty-two exempted food (other than prepared) and thirty-six exempted prescription drugs from the levy.

Voters were mixed in their responses to proposals to utilize the lucrative motor vehicle and fuel revenues for other than highway purposes. California and Massachusetts obtained permission to divert some to mass transit purposes, while Arizona and Florida and Minnesota refused their use for "other transportation" purposes. Michigan voters did beat back an amendment which would have barred using such funds even for highway patrol purposes.

Emerging problems and concerns are often revealed in tax adjustments. Inflationary pressures and rising housing costs plague particularly people on fixed income, more likely the elderly than others. Homestead exemptions are constitutionally based in several states. During 1973-78 twelve amendments came from eight states modifying, usually increasing, benefits for the elderly or the disabled. Rising values of land raised questions about the viability of its use for agricultural, recreational or open space purposes. At least sixteen states made some kind of adjustment in their rules of uniform treatment to permit valuation in terms of actual use rather than pure market value. And the energy crisis has its constitutional implications. Virginia and Nebraska have authorized exemptions also for wind powered facilities. Other states have taken steps in the same direction through statutes. Nevada, for example, is

providing tax incentives for systems using wind energy, geothermal resources, and energy derived from solid waste conversions or water power.

CHANGING STATE CONSTITUTIONS

Procedures for changing state consitutions received a bit of attention, involving about 16 states producing 23 amendments; all but four of which passed. None was of immense importance although a few may facilitate the process of change or make the process fairer. Vermont in 1974 reduced its quite ageless requirement of an interval of 10 years between amendments--one which had never been particularly restrictive in view of the simplicity of that state's document--to four years and then passed up the opportunity in 1978 to use it for the first time. Alaska changed the time of submitting amendments from "the next statewide election" to the "next general election," and Pennsylvania endorsed posing the question of a constitutional convention at least every ten years. Idaho, Massachusetts and Maryland simplified their requirements for publicity on pending amendments. Oklahoma eliminated the "silent voter" by changing to a majority voting in the election, but Minnesota rejected a move to lower the requirement for approval in referenda to 55% of those voting on the issue or 50% voting in the election.

Some states took up the problem of keeping constitutions in better shape without resorting to the cumbersome process of constitutional amendment. Maryland was busiest, in 1978 passing two changes. The first made provision for special placement and subsequent dropping when ineffective of new amendments of limited duration. The second dealt with the existing constitution authorizing the removal or correction of obsolete, unconstitutional or duplicative language that relate to technical matters.

but Georgia, South Dakota, and Vermont would not go along with similar efforts. Georgia proposed a special commission to incorporate new amendments into the constitution upon adoption, South Dakota proposed allowing the legislature every ten years to arrange the constitution in orderly fashion deleting obsolete material, and Vermont considered giving similar authority to the Supreme Court. South Carolina in 1974, 1976, 1978 extended the authority of the legislature to submit changes to an entire article as one question, a device it has used successfully in securing revision of its constitution.

Florida had its first experience with amendments produced by its unique constitution based constitutional commission. Florida's constitution which became operative in January 1969 provided for the establishment of a thirty-seven member constitution revision commission ten years after adoption of that constitution and every twenty years thereafter, with responsibility for studying the constitution and the authority for making proposals for change directly to the people. The commission submitted eight amendments, all of which were defeated. One was an omnibus revision proposal and the others specific changes, including abolition of the Florida's unique cabinet, an equal rights amendment, single-member districts, and a Missouri plan for selecting circuit and county court judges, a package of changes which could hardly be called noncontroversial.

MISCELLANEOUS

The period 1973-78 was not one characterized by revolutionary change. There were no bold new departures in substance or structure, indicating future trends for the states. Rather the period seemed one of consolidation after the previous decade of considerable activity, of

extension of gains made toward more effective and responsible government. Perhaps the changes in the area of taxation and finance suggest even reaction.

Concern with the energy problem presented itself in a number of tax concessions made for those investing in devices not dependent upon fossil fuel or in more mundane matters such as residential insulation. The nuclear energy controversy began to have constitutional implications as Colorado established mandatory procedures--including voter approval—for the detonation of nuclear devices but refused to honor an initiative petition amendment which would have placed stringent procedures for approving the construction of nuclear facilities. Hawaii made provision for legislative approval of nuclear plant construction and the disposition of radioactive material.

States continued to expand aid to students in higher education--both public and private--by removing obstacles to grants to private school students or by directly authorizing grant or loan programs. Perhaps the aging of the population accounted for the rather high number of amendments relating to retirement, both public and private. Current economic developments produced adjustments in maximum interest rates permitted by some constitutions.

Gambling attracted an unusual amount of attention with fifteen states producing 20 amendments. New Jersey voters in 1976, after turning down a wider amendment allowing casinos on a local option basis two years earlier, gave approval for them in Atlantic City. They rejected betting on Jai Alai in 1978. Florida voters last year rejected an initiative petition amendment which would have permitted casinos in Dade and Broward counties, the Miami Beach area. Most constitutional activity

though centered around allowing exceptions to state constitutional prohibitions of lotteries to permit charitable and fraternal as well as church groups to set up bingo enterprises. This group included California, Delaware, Kansas, New York, North Dakota, Ohio, Rhode Island, South Carolina, West Virginia, Wisconsin, Oregon, and Georgia. Missouri approved an interesting one permitting games of chance where nothing of value is exchanged for the opportunity to participate or receive a prize. Ohio was the only state in the period to authorize a state lottery to raise revenue for the general fund.

Much of the activity of the period involved the usual tinkering with legislative detail embedded in constitutional documents or with trying to clean up obsolete debris. Oklahoma expressed its continued interest in drinking questions by turning down two amendments which might have facilitated the process. Michigan meanwhile authorized the legislature to regulate drinking by those under 21. A change in South Carolina holds a certain fascination if it reflects little constitution profundity. That state changed its ban on liquor sales from "sunset to sunrise" to "from 7pm to 9am," thus effectively decreasing the period in summers while expanding it perceptibly in winter.

Perhaps someday constitutions will be rid of all references to duelling, for a few more states including Mississippi and Ohio removed that behavior as a bar to holding public office. Mississippi also relieved railroads of a heavy responsibility by repealing the provision that required a railroad to run through a county seat should it otherwise come within three miles of it.

Hawaii's Thirty-four

Hawaii's action in 1978 in approving 34 amendments should not go

unnoticed. The products of a constitutional convention these amendments seem to mark a significant step away from the relatively simple constitution adopted in 1958 and relatively unmarked through the years, even by the 22 sections changed in 1968. This time there seemed greater concern with detail and with the specification of legislative responsibility. The latter did produce some interesting provisions: that the state and counties conserve, protect and promote development of their natural beauty and resources; the right of persons to a healthful environment and the right to sue to enforce it; for the state management and control of ocean waters and lands within and adjacent to the boundaries of the state and for state-licenses mariculture operations. Hawaii did produce one provision, revolutionary if it actually succeeds, that plain language be required in all government writing.