

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

814 S COMM 27: INT. COMM. CONSTITUTIONAL CONVENTION 1979-80

Article X

Section 19. Gambling Enterprises

Neither the State nor any political subdivision thereof shall sponsor or operate lotteries or any other gambling enterprises.

Section 20. Liens of Mechanics, Artisans, and Materialmen

Mechanics, artisans, and materialmen of every class shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Section 21. Pension and Retirement Systems

Any pension or retirement system of this State, or of any political subdivision thereof, or of any governmental agency of either, now in effect shall be continued. No funds held pursuant to any such system shall be used for any purposes inconsistent therewith.

Article XI

Mode of Amending the Constitution of the State

Section 1. Amendments to the Constitution

(a) Amendments to this Constitution may be proposed to the qualified voters of the State by a record vote of two-thirds of the membership of each house. Before either house votes, a proposed amendment shall be submitted to the Attorney General who shall within twenty days of receipt of a request render an opinion on its effect on other provisions of this Constitution and on whether the proposal can be enacted without a constitutional amendment.

(b) A proposed amendment shall be submitted at the next general election following the expiration of ninety days after it is proposed by the Legislature. Procedures shall be provided by law for publicizing proposed amendments.

(c) A proposed amendment shall become a part of this Constitution on approval by a majority of the qualified voters voting on the question.

Section 2. Constitutional Convention

(a) The Legislature by a record vote of a majority of the membership of each house may submit to the qualified voters of the State the question of whether to call a constitutional convention. The question shall be submitted at the first general election occurring at least six months after the Legislature proposes the question. A constitutional convention shall be called if approved by a majority of the qualified voters voting on the question.

(b) The question of whether to call a constitutional convention shall be submitted to the qualified voters at least once every twenty years.

(c) The Legislature shall, at the next legislative session following approval of a constitutional convention by the qualified voters, provide by law for the time, place, and duration of the convention; fix and provide for the pay, allowances, and expenses of delegates and officers; and provide for the expenses of the convention. The first meeting of the convention shall be within three months after the election of delegates.

(d) One delegate shall be elected from each representative district and shall have the same qualifications for office as a member of the House of Representatives. Delegates shall be elected and vacancies filled as provided by law, except that no justice or judge, no member of the Legislature, and no elective official of the executive branch may serve as a delegate.

(e) The constitutional convention may, by a majority vote of its membership, propose any revision or amendments to the Constitution. The convention shall determine the manner of submission, the date of the election, which shall be not less than two nor more than six months after the convention adjourns, and the manner of publicizing the proposals to be voted on.

(f) Any proposed revision or amendments shall become effective, as the convention provides, if approved by a majority of qualified voters voting on the question.

Transition Schedule

The following schedule provisions shall remain part of this Constitution until they have been executed. Once each year the Attorney General shall review this Schedule and certify to the Secretary of State which remaining provisions have been executed. Any provisions so certified shall be removed and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date

- (a) Sections 14 and 15 of Article IV shall become effective on January 1, 1975.
- (b) Section 10 of this Transition Schedule shall become effective on January 1, 1975.

Section 2. Existing Laws, Rights, and Proceedings

All laws not inconsistent with this Constitution shall continue in force until they expire by their own limitation or until amended or repealed, and all existing writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles, and rights shall continue unaffected except as modified in accordance with the provisions of this Constitution.

Section 3. Validity of Issued and Unissued Bonds

(a) All bonds or other evidences of indebtedness validly issued by or on behalf of the State or any agency or political subdivision thereof under authority previously granted by the Constitution of 1876, as amended, remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions notwithstanding the repeal of such authority by virtue of the adoption of this Constitution. The State and any such agency or political subdivision, as the case may be, shall continue to provide for source or sources of payment in accordance with the terms of such bonds or other evidences of indebtedness, whether from taxes or otherwise, until such bonds or other evidences of indebtedness are paid in full.

(b) Any bonds or other evidences of indebtedness previously authorized to be issued by or on behalf of the State or any agency or political subdivision thereof but unissued on the effective date of this Constitution may be validly issued subject to all applicable terms and conditions under the authority previously granted by the Constitution of 1876, as amended, notwithstanding the repeal of such authority by virtue of the adoption of this Constitution. Any such unissued bonds or other evidences of indebtedness may be issued bearing any rate of interest within the limits permitted by the Constitution of 1876, as amended, until the Legislature, by law, hereafter removes such limits or authorizes new limits.

Section 4. Continuation of Grants of Power to Counties

The powers directly granted by the following designated provisions of the Constitution of 1876, as amended, are continued in force and effect until the effective date of a general law that continues the power or by its terms diminishes or discontinues the power.

- (a) Subsection (c) of Section 52 of Article III;
- (b) Section 52d of Article III;
- (c) That Section 52e of Article III that was added in 1967;

Transition Schedule

- (d) That Section 52e of Article III that was added in 1968; and
- (e) Section 6b of Article VII.

Section 5. Ten Cent State Ad Valorem Tax

The State ad valorem tax of ten cents on the one hundred dollars valuation levied by Section 17 of Article VII of the Constitution of 1876, as amended, is hereby levied until the Legislature levies an ad valorem tax pursuant to Section 10 of Article VII. The proceeds of such levies shall be used for the purposes specified in that Section.

Section 6. County Ad Valorem Tax

Counties may continue to levy an ad valorem tax of not more than eighty cents on the one hundred dollars valuation as provided by Article VIII, Section 9 of the Constitution of 1876 until the Legislature by general law grants to counties power to levy an ad valorem tax of a different amount.

Section 7. Assessment of Agricultural Lands

Until otherwise provided by law, Section 1d of Article VIII of the Constitution of 1876, as amended, shall continue in force and effect.

Section 8. Continuation of Power Granted to Independent School Districts and Community College Districts

The powers directly granted to independent school districts and community college districts by Section 3b of Article VII of the Constitution of 1876, as amended, are continued in force and effect until the effective date of a general law that continues the powers or by its terms diminishes or discontinues the powers in whole or in part.

Section 9. Compensation of Legislature and Lieutenant Governor

Members of the Legislature and the Lieutenant Governor shall receive the compensation provided for in the Constitution of 1876, as amended, until otherwise provided by law.

Section 10. Anticipatory Legislation

Laws may be enacted in 1975 in anticipation of the effective date of this Constitution but such laws shall not become effective prior to September 1, 1975.

Section 11. Retirement Systems

The provisions of the following sections of the Constitution of 1876 pertaining to retirement systems shall continue in force and effect unless and until changed by law:

- (a) Article III, Section 48a; Fund for Retirement, Disability and Death Benefits for Employees of Public Schools, Colleges and Universities;
- (b) Article III, Section 48b; Teacher Retirement System of Texas;
- (c) Article III, Section 51e; Municipal Retirement Systems and Disability Pensions;
- (d) Article III, Section 51f; State-wide Retirement and Disability System for Municipal Officers and Employees;

(e) Article V, Section 1-a; Retirement, Censure, and Removal of Justices and Judges; State Judicial Qualifications Commission;

(f) Article XVI, Section 62; State and County Retirement, Disability and Death Compensation Funds;

(g) Article XVI, Section 63; Teachers and Employees Retirement Systems, Service Credit; and

(h) Article XVI, Section 66; Texas Rangers; Retirement and Disability Pension System for Rangers Ineligible for Membership in Employees Retirement System.

Section 12. Special Elections for Members of the Legislature

Until otherwise provided by law, the Governor shall issue writs of election to fill vacancies in either house of the Legislature.

Section 13. Terms of Office

(a) The terms of all offices affected by Section 25 of Article IV are hereby extended to February 1, 1977, 1979 and 1981, if they expire prior to those dates but after January 31, 1976, 1978 and 1980, respectively, and are shortened to March 31, 1977, 1979 and 1981, if they expire subsequent to those dates but prior to February 1, 1978, 1980 and 1982, respectively. The foregoing adjustments are applicable only to offices that are not abolished.

(b) The Commissioner of the General Land Office and the Treasurer elected at the general election held in 1974 shall serve for the terms for which they are elected.

(c) Except as otherwise provided in this Transition Schedule, all elected officers in this State shall continue in office until the end of their terms unless their offices are sooner abolished in accordance with this Constitution or laws enacted pursuant thereto.

(d) Until otherwise provided by law, general law cities and towns, by majority vote of the qualified voters voting at an election called for the purpose, may provide for terms of office of its elected officers not exceeding four years.

(e) Until otherwise provided by law, the terms of office and system of staggered terms created by Sections 64 and 65 of Article XVI of the Constitution of 1876 shall remain in effect.

(f) Until otherwise provided by law, the requirement of Article XVI, Section 65 of the Constitution of 1876 that the candidacy of district, county, and precinct officers for any office other than the office held shall constitute an automatic resignation, if the unexpired term of the office then held shall exceed one year, shall remain in effect.

Section 14. Commissioner of the General Land Office and State Treasurer

The Commissioner of the General Land Office and the State Treasurer shall continue to be elected officials until the Legislature otherwise provides by law.

Section 15. Board of Pardons and Paroles

Until otherwise provided by law, the Board of Pardons and Paroles shall continue to be chosen and shall continue to operate as provided in Section 14 of Article IV of the Constitution of 1876, as amended.

Transition Schedule

Section 16. Constitutional Powers Omitted from Implementing Statutes

Any power directly granted to any of the following designated boards by the applicable designated section of the Constitution of 1876, as amended, not also granted by statute shall remain in force and effect until the effective date of a statute either granting such power or otherwise specifically superseding the power hereby continued. No statute may supersede any power the continuation of which is made necessary by the provisions of Section 3 of this Schedule.

(a) State Board of Trustees of the Teacher Retirement System of Texas—Section 48b of Article III.

(b) Veterans' Land Board—Section 49b of Article III.

(c) Texas Water Development Board—Sections 49c, 49d and 49d-1 of Article III.

(d) Texas Water Quality Board or any successor agency—Section 49d-1 of Article III.

(e) State Board of Trustees of the Employees Retirement System of Texas—Section 62 of Article XVI.

Section 17. Dual Officeholding

Until otherwise provided by law, the prohibitions and exceptions thereto contained in Sections 12, 33 and 40 of Article XVI of the Constitution of 1876, as amended, shall continue in force and effect as to all persons except members of the Legislature.

Section 18. Conflict of Interest

No member of the Legislature on the effective date of this Constitution shall be in violation of Section 10(a) of Article III if on that date the member has a pecuniary interest in a contract with the State and that interest would not have violated Section 18 of Article III of the Constitution of 1876, as amended. This preservation of a pecuniary interest shall not extend beyond the term for which the member was elected.

Section 19. The Judiciary

(a) All courts, except those authorized by Article V and the Court of Criminal Appeals, are hereby abolished and all matters pending therein transferred to the courts created by or pursuant to this Article. The Court of Criminal Appeals shall be merged with the Supreme Court as provided by Section 19(d) of this Transition Schedule. The courts into which the matters are transferred shall assume full jurisdiction of the matters and shall have full power and authority to dispose of them and to execute or otherwise give effect to all orders, judgments, and decrees issued by the predecessor courts. The courts created pursuant to Article V shall succeed to all records and property of the courts abolished hereby.

(b) Except to the extent inconsistent with the provisions of Article V, all laws and rules of court in force on the effective date of this Constitution shall continue in effect until superseded as authorized by law.

(c) All appeals docketed but not heard by the Court of Criminal Appeals on the effective date of this Constitution are hereby transferred to that Court of Appeals, formerly the Court of Civil Appeals, in which the appeal would have been docketed if it had been imposed in a civil case. Until such time as the Supreme Court promulgates specific rules

for appeals of criminal cases from the courts of appeal, the rules presently in force for appeals from courts of civil appeals shall be used in criminal cases.

(d) Two alternative methods for selection of appellate judges are proposed in Article V, Section 8.

(1) If the merit plan for selection of appellate judges is adopted, the following provision will govern.

On the effective date of this Constitution, the Chief Justice of the Supreme Court shall become the Chief Justice of Texas. After the effective date of this Constitution, the offices of the first five justices of the Supreme Court and judges of the Court of Criminal Appeals, other than the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals, who cease to be members of the Supreme Court or Court of Criminal Appeals shall cease to exist. The Supreme Court and Court of Criminal Appeals, after the effective date of this Constitution, shall continue to function separately until a majority of each court determines that the number has been reduced sufficiently for the total membership of the two courts to function properly as one court, but no later than when the total membership has been reduced to nine. Thereupon, the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals shall immediately file with the Secretary of State a statement certifying that such determinations have been made and that the courts have been merged. Whereupon, the Presiding Judge and other judges of the Court of Criminal Appeals shall become justices of the Supreme Court of Texas. At the same time each commissioner of the Court of Criminal Appeals shall become a commissioner of the Supreme Court of Texas, but when he ceases to hold that position, the position shall cease to exist. Upon the filing with the Secretary of State of the statement certifying that the courts have been merged, the Supreme Court of Texas shall assume all authority and jurisdiction of the Court of Criminal Appeals.

(2) If the nonpartisan election method for selection of appellate judges is adopted, the following provision will govern.

On the effective date of this Constitution, the Chief Justice of the Supreme Court shall become the Chief Justice of Texas. After the effective date of this Constitution, the offices of the first five justices of the Supreme Court and judges of the Court of Criminal Appeals, other than the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals, who die, resign, retire, or who are removed or fail to file for reelection shall cease to exist. The Supreme Court and Court of Criminal Appeals, after the effective date of this Constitution, shall continue to function separately until a majority of each court determines that the number has been reduced sufficiently for the total membership of the two courts to function properly as one court, but no later than when the total membership has been reduced to nine. Thereupon, the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals shall immediately file with the Secretary of State a statement certifying that such determinations have been made and that the courts have been merged. Whereupon, the Presiding Judge and other judges of the Court of Criminal Appeals shall become justices of the Supreme Court of Texas. At the same time each commissioner of the Court of Criminal Appeals shall become a commissioner of the Supreme Court of Texas, but when he ceases to hold that position, the position shall cease to exist. Upon the filing with the Secretary of State of the statement certifying that the courts have been merged, the Supreme Court of Texas shall assume all authority and jurisdiction of the Court of Criminal Appeals.

(e) Chief Justices of the courts of civil appeals shall become chief judges of the courts of appeals; justices of the courts of civil appeals shall become judges of the courts of appeals.

Transition Schedule

(f) Each district judge or judge of a criminal district court, domestic relations court, special juvenile court, or special designated probate court shall become a judge of a district court.

(g) Each judge of a county court at law, county civil court at law, county court for criminal cases, county criminal court, or county court of criminal appeals shall become a judge of a county court.

(h) Judges of the county court elected pursuant to Article V, Section 15 of the Constitution of 1876 shall remain as presiding officers of the County Commission as provided by Article IX, Section 3(a) of this Constitution. Any judge of the county court who is licensed to practice law may elect to preside over the County Commission or may, by written notice to the Governor filed with the Secretary of State within thirty days after the effective date of this Constitution, elect to become a judge of the county court provided by Article V, Section 5 of this Constitution. In the latter event, the office of county judge shall be vacant and shall be filled by the County Commission until the next general election.

(i) No judicial office shall be abolished by the adoption of this Constitution until the expiration of the term of the person who held the office on the effective date of this Constitution or until that person ceases to hold the office, whichever occurs first.

(j) The members of the Judicial Nominating Commission first selected under the provisions of Section 7 of Article V shall serve for the following terms of years: four for two years, four for four years, and three for six years. The holders of the foregoing respective terms shall be determined by lot.

(k) If the merit plan is adopted for selection of appellate judges, the Chief Justice, each justice of the Supreme Court, and each judge of the courts of appeals now in office shall be subject, in the manner provided by law, to approval or rejection at the general election preceding the expiration of the term for which each was elected. Until the merger of the Supreme Court and the Court of Criminal Appeals is accomplished pursuant to Section 19(d) of this Transition Schedule, the Presiding Judge and each judge of the Court of Criminal Appeals now in office shall be subject, in the manner provided by law, to approval or rejection at the general election preceding the expiration of the term for which each was elected.

(l) The terms of all district judges in office on the effective date of this Constitution are hereby extended two years.

(m) Members of the Judicial Qualifications Commission on the effective date of this Constitution shall continue in office and serve as a commission under Section 11(c) of Article V until a commission is established by law pursuant to that Section.

(n) In the event a transfer or transition has not been provided for by this Section or by law, the Supreme Court shall provide by rule for the required orderly transfer or transition.

Section 20. Publicizing Proposed Amendments

Until otherwise provided by law, the Secretary of State and the Attorney General shall follow the procedure prescribed in Section 1 of Article XVII of the Constitution of 1876, as amended, for publicizing proposed amendments to this Constitution.

Adoption Schedule

These Schedule provisions are part of this Constitution only for the limited purposes of determining whether this Constitution has been adopted and establishing the general effective

tive date of this Constitution. No provision of this Schedule shall be published as a part of this Constitution.

Section 1. Effective Date

Except as otherwise provided in Section 1 of the Transition Schedule, this Constitution, if approved by the qualified voters as provided by the Constitution of 1876, as amended, shall take effect on September 1, 1975. The Constitution of 1876, as amended, shall thereafter be of no effect.

Note: Subsequent sections of the Adoption Schedule should spell out the details for adoption of alternative provisions (if submitted), the form of the ballot, and the like.

Chapter Two

Introduction

Chapter Two

Introduction

Constitution writing is a democratic process deeply ingrained in Texas history. The earliest constitution governing the state dates back to the early 1800's when Texas was a part of Mexico. In 1836 the Republic of Texas was established and a new fundamental law was written for that fledgling nation. Succeeding constitutions were adopted in 1845 when Texas became part of the United States, in 1861 at the time of secession, and again in 1866 and 1869 during the Reconstruction period. The present constitution of the state, adopted in 1876, was written in the aftermath of that troubled era.

Delegates to the constitutional convention of 1875, concerned about governmental corruption and irresponsibility during Reconstruction, drafted the state's present constitution with many of the specific problems of that time in mind. Numerous safeguards were included to prevent the misuse of public funds as well as prevent the concentration of political power in any officer or branch of government. Opinions as to the adequacy of that document have varied over the years. But perhaps the best test of a constitution, which is intended to be the state's fundamental law, is its adaptability to changing needs and circumstances. Since 1876 the constitution has been amended 218 times in attempts to keep it current with the needs of a rapidly changing society.

Efforts to bring about constitutional reform in Texas have gained momentum in recent years as citizens of the state have become increasingly aware of the need to modernize the institutions of government. Recent study efforts which have contributed to the increased awareness and knowledge of the constitution include a study published by the Legislative Council in 1960. That study led eventually to the deletion of much obsolete material by a "clean-up" amendment in 1969. In addition, a study commission created by the Legislature made its recommendations for revision in 1968.

The current effort for constitutional revision began with the adoption of a resolution by the 62nd Texas Legislature in May, 1971. The resolution called for an amendment to be submitted to the voters in November, 1972. If approved, the amendment would set in motion a process leading to a thorough study and recommended revision of the state's fundamental law. (The amendment is reproduced as Appendix A.) With the support of numerous legislators, civic leaders, and private citizens the amendment was approved by the people by a substantial margin. The amendment spe-

cifically called for the creation of a citizens' commission whose recommendations for constitutional change would be acted upon by the Legislature sitting as a constitutional convention. Proposals for constitutional change agreed upon by the Legislature would then be submitted to the voters of Texas for their approval.

The Constitutional Revision Commission

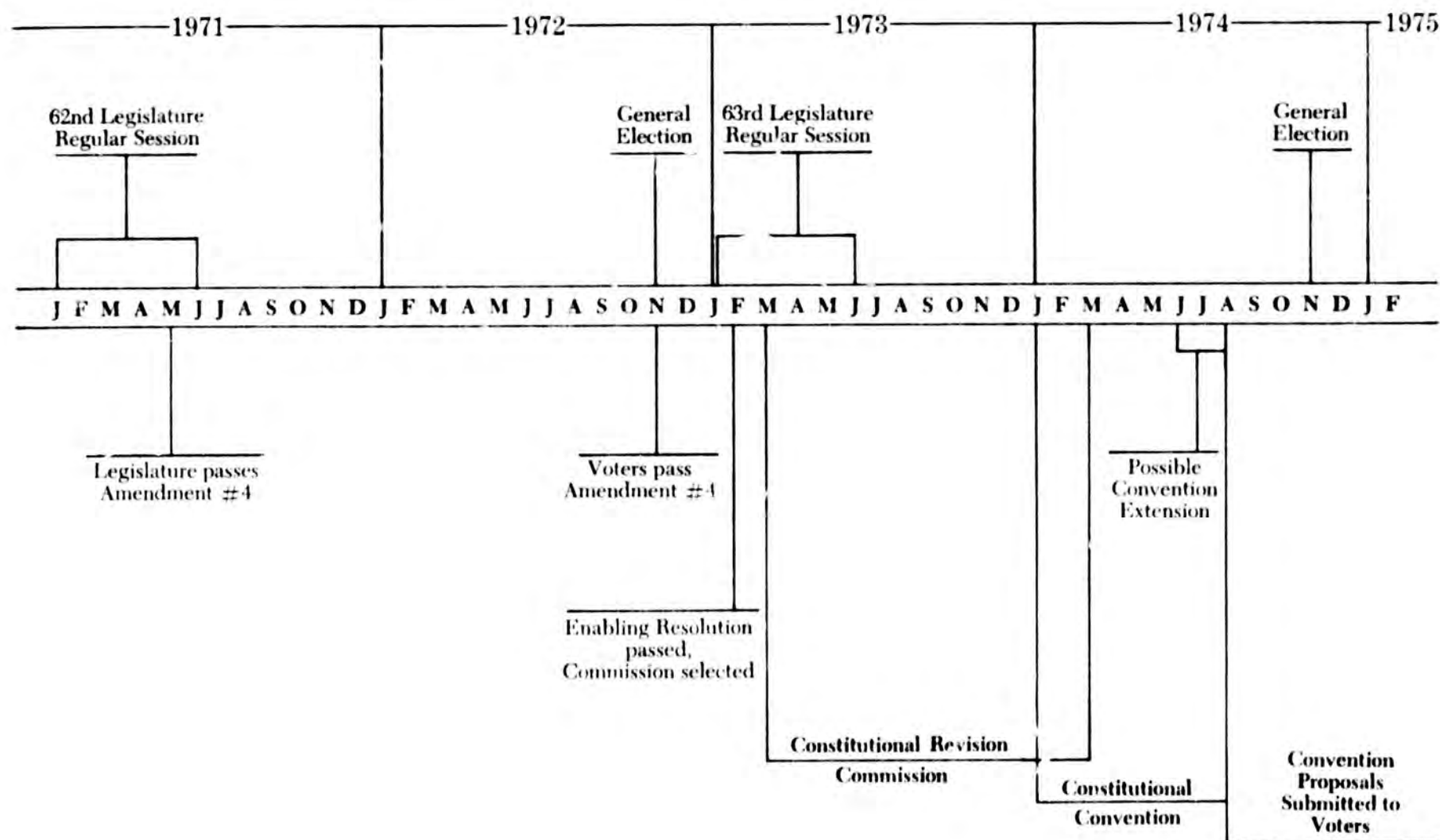
Within a few months after approval of the proposal for constitutional reform by the voters, the Legislature passed a resolution establishing the Texas Constitutional Revision Commission. On February 12, 1973, Senate Concurrent Resolution Number 1 (S.C.R. 1), was signed into law, creating the Commission for the purpose of studying the need for constitutional change and reporting its recommendations to the Legislature not later than November 1, 1973. The resolution provided that the recommendations would be considered by the Legislature sitting as a constitutional convention beginning in January, 1974. (S.C.R. 1 is reproduced as Appendix B.)

Shortly after the passage of S.C.R. 1, a selection committee composed of Governor Dolph Briscoe, Lt. Governor William P. Hobby, Jr., Speaker of the House Price Daniel, Jr., Attorney General John Hill, Chief Justice Joe Greenhill of the Supreme Court, and Presiding Judge John Onion of the Court of Criminal Appeals met and began the process of selecting 37 persons to serve on the Constitutional Revision Commission. By February 24, 1973, the 37 had been chosen from a list of approximately 1,000 names submitted for consideration.

The final membership of the Commission was broadly representative of the ethnic groups and geographic areas of the state. Occupations of members included banking, education, law, farming and ranching, journalism, medicine, organized labor, and public service. (The members are listed in Appendix C.) From among the members, the selection committee appointed Judge Robert W. Calvert, retired Chief Justice of the Texas Supreme Court, as chairman. Mrs. Malcolm Milburn, prominent in civic work and Republican Party politics, was named vice-chairman.

The Commission began its task with a mandate from the people and a list of duties and responsibilities laid down in constitutional amendment and public law. On

Figure 2.1
Significant Dates in the Implementation of Constitutional Revision



March 10, 1973, the members convened in Austin for an organizational meeting during which the basic structure of the Commission was decided upon. An important organizational decision, in that it provided the framework for much of the future work of the Commission, was the establishment of seven committees which would study specific areas of the existing constitution and make recommendations back to the full Commission.

On March 28, 1973, seven study committees were appointed and were assigned responsibility, respectively, for the executive branch, the legislative branch, the judicial branch, local government, finance, general provisions, and education. In addition, the Commission decided to form a style and drafting committee to oversee the organization of the new document and to ensure that its language would be clear and consistent.

Using preference lists submitted by each Commission member, the chairman and vice-chairman appointed committee members and designated officers for each. (The composition of the study committees is included as Appendix D.) At the same time, each committee was assigned articles of the 1876 Constitution for study.

Public Participation in the Revision Process

Public Hearings. After establishing the basic framework to be used in the revision process, the Commission began its charge to study the need for constitutional change. Heeding the concurrent resolution's command to "provide for maximum participation at the grass roots level," the Commission scheduled a series of nineteen public hearings across Texas, thereby more than trebling the requirement in S.C.R. 1 that public meetings be held in a minimum of six geographical areas of the state.

Beginning on April 25, 1973, in Amarillo, and ending on June 30, 1973, in Austin, the Revision Commission toured the state and listened to citizens in every geographic area express their thoughts and concerns on what should or should not be included in a new constitution for Texas. An average of approximately 200 attended each public hearing. Local residents were vocal in their support of and opposition to such issues as legislative pay, voting rights, the composition of the executive branch, the method of selecting judges, the environment, local government, home rule, public school financing, and the length and frequency of legislative sessions.

Many of those testifying at the hearings presented detailed recommendations. In several cases, a complete new constitution was presented for consideration. At the other extreme were those who made very broad

recommendations with regard to the length or general content of a new constitution. Still another viewpoint was that no changes should be made in the Constitution of 1876.

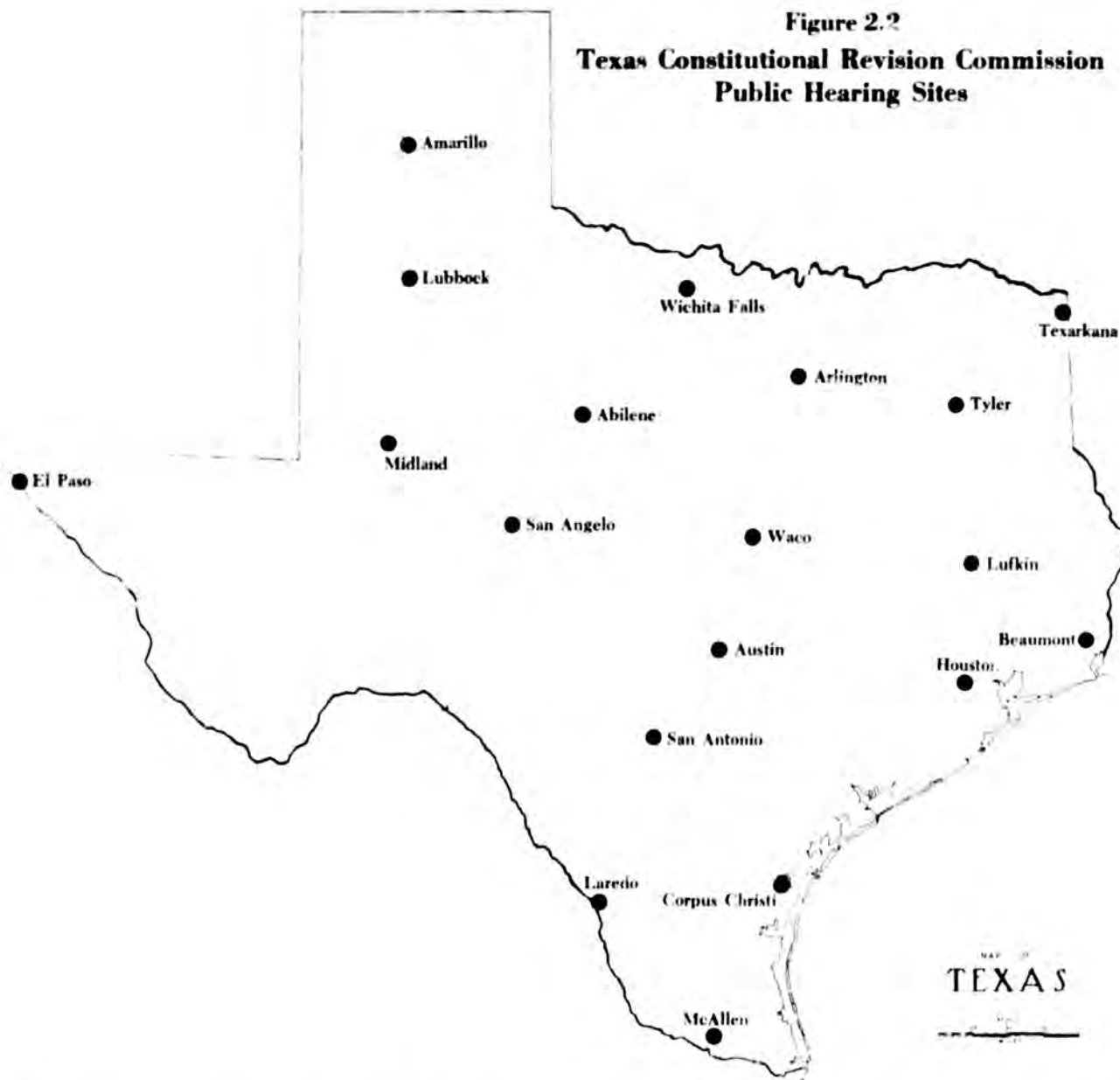
Just as there was marked diversity in the subject matter of the testimony presented at the public hearings, the backgrounds of those testifying were as varied as the terrain of Texas. The people who came to testify were rural residents and city dwellers, rich and poor, farmers and salesmen, great-grandmothers and teenagers, college presidents and college students. By the end of the last public hearing on June 30, 1973, the Revision Commission had been directly involved with over 4,000 citizens who represented almost every segment of the Texas population. (For a tabular summary of public hearings, see Appendix F.)

Citizen Advisory Committees. At the same time that the Commission was discharging its obligation under S.C.R. 1 to hold public hearings, it was fulfilling another provision of S.C.R. 1 which empowered the Commission to select citizen committees to assist in its work. Realizing the importance of involving as many Texans as possible in constitutional revision, the Commission began in mid-April of 1973 to appoint local citizen advisory committees in those areas scheduled to have public hearings.

Ultimately, over 40 local advisory committees were formed, with a total membership of almost 3,000 persons. Ranging in size from 44 to 401, the committees were generally very broad-based and represented a



Figure 2.2
Texas Constitutional Revision Commission
Public Hearing Sites



cross section of the local area's population. Specific functions of local advisory committees included helping organize public hearings in each area, assisting the Commission in identifying local citizens desiring to give testimony at the hearings, helping the Commission become informed on local perceptions concerning the strengths and weaknesses of the Texas Constitution, and aiding in the dissemination of the findings and recommendations of the Commission.

In almost every city the Commission's expectations were realized by involving sizeable numbers of local residents through the advisory committees. Citizens in practically every area of the state turned out enthusiastically for advisory committee meetings. To encourage maximum local flexibility, the Commission did not issue any standardized rules or procedures, but allowed the committees to organize and set about

their tasks in different ways. In many localities, citizen advisory committees held additional hearings to supplement Commission hearings in their areas. Others conducted public opinion polls with questionnaires mailed out to individuals and printed in local newspapers. Still others appointed subcommittees to study the various sections of the constitution and recommend changes to their full advisory committees and subsequently to the Revision Commission.

All of the advisory committees took their responsibilities seriously and worked diligently to produce information and recommendations useful to the Commission. The Commission, impressed by both the quantity and quality of the advisory committees' work, made every effort to involve them in the revision process as much as possible and tried to draw upon the expertise possessed by local committee members on a continuing

basis. Advisory committees were regularly sent draft recommendations as they were formulated by the Commission and asked to respond to them. In addition, at a special meeting for advisory committee chairmen held in Austin on August 22, 1973, representatives of the committees were given detailed explanations of Commission proposals prior to adoption and were asked to comment on them from local perspectives.

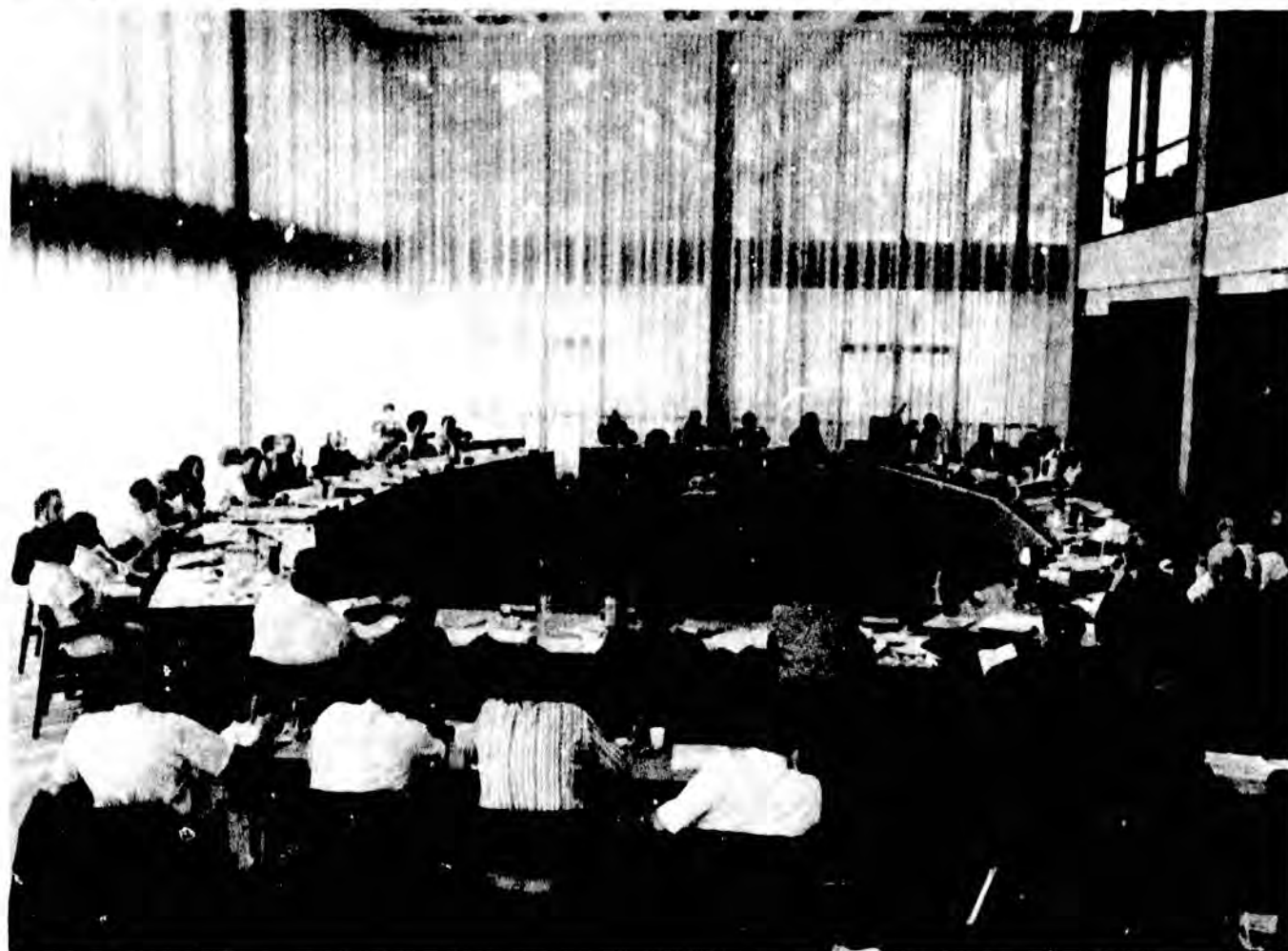
Drafting a New Constitution

The Commission established a policy early in April not to make any substantive decisions until after the citizens of Texas had made known their views in the public hearings, and therefore did not begin its deliberations in earnest until early July, 1973. Utilizing the results of staff research, information and suggestions obtained from the citizen advisory committees, and testimony at the nineteen public hearings, the Commission began at that time to discuss issues and make tentative recommendations for a new constitution. In order to supplement the information gathered earlier, however, the Commission's seven study committees held a number of committee hearings at several locations around the state. Authorities on such subjects as municipal bonds, state executive department structure

and operations, the judiciary, and state boards and commissions were invited to attend and discuss with the committees their areas of expertise and ramifications of alternative courses of action.

Findings of the committee hearings were integrated with information previously gathered and became part of the subject matter of numerous and lengthy committee and Commission meetings held during July, August, and September, 1973. During these meetings, recommendations were gradually refined from preliminary conceptual statements to final constitutional provisions. By the time of the last Commission meeting prior to presenting the final document to the Legislature, practically every sentence in every article and section had come under repeated scrutiny and discussion. Opposing viewpoints were aired, defended, and in most cases reconciled. In those instances where agreement could not be reached, separate statements were prepared for later distribution.

The revision process culminated on September 29, 1973, with the approval of a new constitution reflective of many hours of study and deliberation on the part of the Commission as well as the unprecedented involvement of Texas citizens. The results are contained in the pages that follow.



Chapter Three

Overview of the Commission's Report

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Overview of the Commission's Report

To those familiar with the Constitution of 1876, it can be seen readily in even a brief glance through the new constitution appearing in the front of this report that there are marked changes in both style and content. Although the Commission began its deliberations with the Constitution of 1876 and retained a number of its provisions, these have been rewritten appropriately to fulfill the present and future needs of the state. The new constitution is intended as a complete replacement document and not a reorganized or otherwise superficially changed version of the Constitution of 1876. The new document is much shorter, having only eleven articles instead of seventeen as in the 1876 Constitution, and is written so as to be understandable to persons without legal training.

Much of the reduction in length was achieved by de-

leting obsolete or duplicative sections of the 1876 Constitution and by removing statutory detail not felt to be appropriate in a constitution. Most of such provisions are already included in the laws of the state. In those instances in which provisions were not carried forward in the new document and it was necessary to ensure that no existing laws or rights were threatened as a result, the provisions were retained in a Transition Schedule so that they would continue in force until they lapse of their own accord or are amended or repealed.

The Transition Schedule contains all provisions necessary for an orderly change from the old constitution to the new one. It is part of the text of the new constitution found at the front of this report.

Major Proposals Contained in the New Constitution

The following summary contains the highlights of the recommendations of the Texas Constitutional Revision Commission contained in this document. A more complete discussion of these recommendations is presented in Chapter IV of this report. In that chapter, each new article and section is listed along with a discussion of each section and the effects of the proposals.

Article I, Bill of Rights

The Commission recommends no changes in this article since the constitutional amendment which set the revision process in motion required that the Bill of Rights be retained in full.

Article II, Separation of Powers

This article continues the basic separation of legislative, executive, and judicial power that is contained in the 1876 Constitution. The revised article provides additional flexibility in the sharing of powers by the various branches.

Article III, The Legislature

Composition. The Commission recommends flexibility in the number of members of the Senate and the House of Representatives. The Senate would consist of not fewer than 31 nor more than 50 members, and

the House of not fewer than 93 nor more than 155 members. A fixed ratio of House and Senate seats would be required. For example: either 2-1, 3-1, 4-1, or 5-1.

Compensation. The Commission recommends that salaries of legislators and other state officials be set according to law. Under the Commission proposals, a salary commission would be created to recommend levels of compensation for state officers. The Legislature could accept or reject these proposals but could not enact higher rates of compensation.

Sessions. The Commission recommends that the Legislature meet at least once every two years at such times and for such duration as provided by law.

Districting. The Commission recommends that all representative districts be single member and that representative districts be contained within senatorial districts in the same ratio throughout the state. The concept of a redistricting board is retained in the event the Legislature fails to redistrict the state following a decennial census.

Election of Officers. The Commission recommends the open election of all officers, including the Speaker of the House of Representatives.

Conflict of Interest. Provisions in the new Legislative Article would prevent a member of the Legislature from appearing before state executive or administrative units on behalf of clients or others for compensation.

Article IV, The Executive

Executive Department Officers. Elected officers named in the new constitution include the Governor, Lieutenant Governor, Attorney General, and Comptroller of Public Accounts. The Secretary of State remains an appointed officer, but serves at the pleasure of the Governor, and the Commissioner of the General Land Office may be either elected or appointed, as provided by law. The Legislature may provide for other executive department officers, if necessary.

The Governorship. The Commission recommends additional authority to the Governor to supervise the operations of state government. Recommendations include:

- (a) A retention of the current line-item veto, and the additional authority of a new reduction veto for certain appropriation items;
- (b) Budget execution authority, as provided by the Legislature;
- (c) Authority to submit administrative reorganization plans to the Legislature that would take effect unless disapproved; and
- (d) The constitutional duty of submitting a budget bill to be considered by the Legislature.

Agencies, Boards, and Commissions. The terms of office of appointed members of most state boards and commissions expire in such a manner that the Governor may appoint one-third of the members within the first few months after assuming office. The Governor may also designate the chairmen of the boards and commissions, but this is not a mandatory duty.

Article V, The Judiciary

Appellate Courts. The Court of Criminal Appeals is merged with the Supreme Court. The present courts of civil appeals become courts of appeals with jurisdiction that includes criminal as well as civil cases.

State Unified Judicial System. The Judiciary Article vests power in the Legislature to create a unified judicial system including the courts of appeals described above and trial courts at the district and county levels. Municipal courts and justice courts continue to operate subject to the provisions of general law, but are not part of the unified judicial system.

Merit Selection and Nonpartisan Elections. Justices and judges of the Supreme Court and courts of appeals re-

main in office subject to voter approval of their judicial records. Vacancies in the appellate courts are filled by appointment of the Governor from a list of nominees provided by the Judicial Nominating Commission. District and county judges in the unified judicial system are elected on nonpartisan ballots.

Qualifications. Except for judges who preside over county commissions, justices of the peace, and municipal court judges, all judges are required to be qualified attorneys.

Nonpartisan Election of Judges. The Commission recommends the selection of appellate judges according to the merit plan, but believes that the voters should have the opportunity to express their preference for the merit plan or for the election of all judges on a nonpartisan ballot. An alternative proposal for nonpartisan election is therefore included in the Judiciary Article.

Article VI, Suffrage

Qualified voters are defined in conformance with recent United States Supreme Court cases and in conformance with the recent Twenty-Sixth Amendment to the United States Constitution. The Legislature may establish additional requirements by law.

Article VII, Education

Equal Educational Opportunities. The Commission recommendations include a policy statement that each person is guaranteed an equal educational opportunity, and that the quality of education should not depend on the resources of the local school district.

Aid to Private Schools. The Commission recommendations prohibit public aid to private schools below the college level, but do not affect tuition equalization grants for students attending private institutions of higher learning.

Permanent School Fund. The Permanent School Fund for the support of free public schools is retained as a constitutional fund which will be invested at the direction of the State Board of Education as provided by law.

Permanent University Fund. The provisions of the 1876 Constitution concerning the Permanent University Fund for the support of Texas A&M University and The University of Texas are retained. The recommended provision includes requirements that land set apart to the permanent fund be sold only according to legislative directions and that investments of the fund be limited by specific requirements contained in the constitution. Proceeds from bond sales secured by income from the Permanent University Fund may be used to pay for construction or repair of permanent improvements and

for the purchase of capital equipment and library books at all institutions now included in the Texas A&M and University of Texas Systems.

Dedicated Tax for Colleges and Universities. The present constitutional provision for a state property tax to support institutions of higher learning outside The University of Texas and Texas A&M Systems is retained. The Legislature may increase the amount of the tax to provide additional funds in the future.

Article VIII, Finance

Taxation. The Commission recommends that taxes be levied and collected by general law. Property tax exemptions are continued for residence homesteads, household goods and personal effects not used for the production of income, and farm products in the hands of the producer. The Legislature is given authority to make or to continue property tax exemptions for educational, religious, and charitable organizations, for disabled veterans and the survivors of veterans disabled or killed on active duty, and for those determined to be in need of relief because of age, disability, or economic circumstances. The dedicated gasoline tax for constructing, maintaining, and policing highways is maintained.

Pay as You Go. The Commission proposals retain the constitutional requirement that appropriations not exceed the revenue estimated to be available for the fiscal period.

State Debt. The existing safeguards against the incurrence of state debt are retained. Under the new constitution, state debt could only be incurred after approval by a two-thirds vote of both houses of the Legislature and by a statewide referendum. This is currently the process by which the incurrence of debt is authorized by constitutional amendment. Under the new procedure, the same strict voting requirements are retained, but details concerning bond issues, rates of interest, and methods of repayment would be left in statutes rather than placed in the constitution.

Spending Public Funds. The Commission proposals retain the concept that public funds should be used only for public purposes.

Article IX, Local Government

Counties. The present elected county and district officers are retained in the new constitution with some minor changes. The county surveyor becomes a statutory officer, and the number of constables is left up to each county governing body. The county judge who presides over the county commission exercises administrative responsibilities only. The Judiciary Article contains provisions for a system of county courts and a separate office of county judge for those courts.

Additional Flexibility for Counties.

- (a) Upon a favorable vote of the county voters, counties may combine existing offices or create new offices.
- (b) Counties may enact ordinances if that power is granted by vote of the people.
- (c) Upon a favorable vote of the county voters, counties over 25,000 population may adopt charters and exercise powers similar to that of cities.

Home Rule and General Law Cities. The new constitution retains the provision for city home rule and the provision that authorizes the creation of general law cities. The population limit for home rule status is reduced from 5,000 to 1,500.

Special Districts. Provisions affecting special purpose governments, such as hospital, airport, and conservation and reclamation districts, are removed from the new constitution and are retained in statutory form. These lengthy sections are replaced by a single provision which allows the Legislature to establish and to regulate special districts by general law.

Article X, General Provisions

Homestead. The homestead provisions of the 1876 Constitution are carried forward with some changes. These include allowing the Legislature to extend the homestead exemption to unmarried persons, allowing the Legislature to increase the dollar amount of exempt property, and authorizing a voluntary mortgage of the business homestead.

Garnishment of Wages. The prohibition against laws which would allow garnishment of wages contained in the 1876 Constitution is carried forward in the Commission recommendations.

Alcoholic Beverages. The current provisions which allow local option liquor elections and require that an election be held before alcoholic beverages are sold are retained in the Commission's proposal.

Environment. A new provision on the environment states it is the duty of individuals as well as the state government to maintain an improved, clean, and healthful environment in Texas. The environmental provision requires that the Legislature provide for the administration and enforcement of this duty.

Pension and Retirement Systems. The Commission proposals require continuation of any pension or retirement systems of the State or any of its political subdivisions.

Community Property. The provision defining the community property of husband and wife is retained with minor changes to reflect the 1972 equal rights amendment to the Constitution of 1876.

Banking. The prohibition against branch banking in the Constitution of 1876 was not carried forward in the new constitution in order to allow the Legislature flexibility to deal with changing conditions in the banking industry. The provision which prevents foreign banks from operating in the state was retained without change.

Gambling Enterprises. The Commission recommends that the state government and its political subdivisions be prohibited from sponsoring lotteries or other gambling enterprises.

Usury. Since the provisions of the 1876 Constitution

concerning usury and rates of interest have not proved effective, the Commission recommends that the Legislature regulate such matters by law.

Article XI, Amending the Constitution

The Commission recommendations contain proposals for an amendment process similar to that of the present constitution. However, the recommendations also contain provisions for calling a constitutional convention. The article requires that the question of whether to call a constitutional convention is to be submitted to the voters at least once every 20 years.

Chapter Four

Text of the New Constitution with Commentary

Chapter Four

Text of the New Constitution with Commentary

In this part of the Commission's report each article and section of the new constitution, with the exception of the Bill of Rights, is listed along with a commentary which explains each section and the effects of the proposed change.

The following format is used throughout.

1. Article . . . , Section
(Text of recommended section)
2. **Origin**

(In this space, the relevant sections of the Constitution of 1876 are listed. Consistent terminology is used to indicate the relationship of the new section to the old section or sections. The term *revises* is used to indicate substantive changes, whether by addition or deletion. The term *rewords* is used to indicate grammatical changes, reordering of sentences, or other nonsubstantive changes. The term *new provision* is self-explanatory and is included to indicate that no similar provision is contained in

the 1876 Constitution. In a few cases sections of the 1876 Constitution have been retained without change and this fact is reflected by *retained unchanged*.)

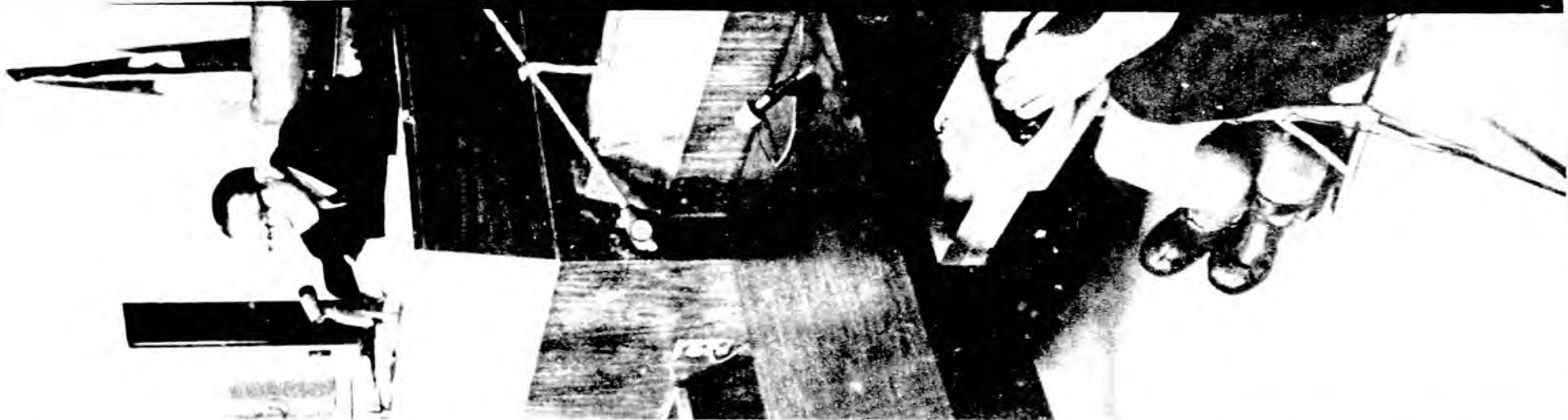
3. **Commentary**

(Under this heading each section is discussed to explain what the proposed language means, the intended legal effect of the section, the reasoning behind its adoption, and in some cases other alternatives which were considered.)

The Commission did not undertake any changes in the Bill of Rights (Article I of the Constitution of 1876) since the constitutional amendment which initiated the revision procedure requires that the Bill of Rights be retained in full. Therefore, no commentary for the Bill of Rights is provided in this report. The Bill of Rights of the Constitution of 1876 is reproduced in full as Article I of the new constitution printed at the front of this report.

Article II

Separation of Powers



Article II

Separation of Powers

Section 1. Separation of Powers

The government of the State of Texas shall be divided into three branches: legislative, executive, and judicial. Except as otherwise authorized by this Constitution, each branch shall exercise the powers appropriate thereto.

Origin

Revises Article II, Section 1.

Commentary

Section 1 preserves the principle of separation of powers which is fundamental to the organization of state government in the United States. About 40 states have a separation of powers clause in their constitutions. The revised section provides for a less rigid separation of powers than is contained in the 1876 Constitution.

The Commission believes that a separation of powers provision is desirable but recognizes that it is impractical and unwise to require an overly rigid separation principle. The proposed Section 1 recognizes that with separation of powers there should be checks and balances to prevent the abuse of power by one branch and that there are instances in which powers of one branch are exercised by another. Some examples of overlapping powers are as follow:

- (1) The Governor exercises legislative power by vetoing acts of the Legislature;
- (2) The Lieutenant Governor, although a member of the Executive Department, presides over the Senate;

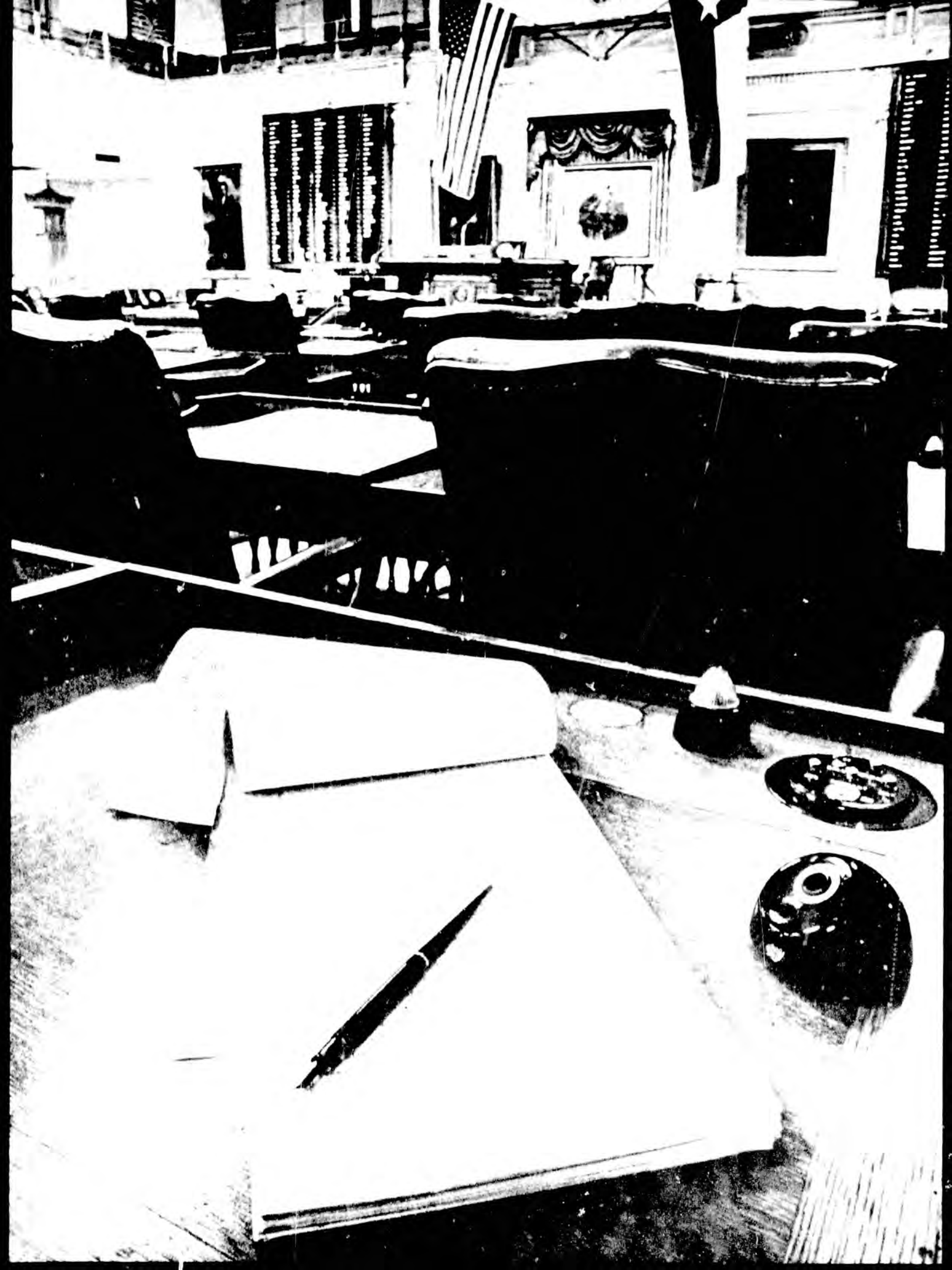
(3) The Supreme Court is permitted to exercise legislative power in making certain rules; and

(4) The Legislature is authorized to impeach and remove executive officers and Supreme Court justices.

The Commission has recommended the language of Section 1 in a careful attempt to solve a difficult problem. In the past, the courts have construed the separation of powers rather strictly. A slight encroachment on the apparent powers of one branch by another branch has been held to violate the constitutional principle, and attempts to relinquish some power in cases where it would benefit the overall operation of government have been suspect. With this history of judicial interpretation in mind, the Commission has attempted to revise Section 1 to allow a less rigid interpretation of the separation of powers concept, but to retain it as a fundamental principle defining the major branches of state government and indicating their primary responsibilities.

Article III

The Legislature



Article III

The Legislature

Section 1. Legislative Power

The legislative power of the State of Texas shall be vested in two houses, a Senate and a House of Representatives, which together shall be styled "The Legislature of the State of Texas."

Origin

Rewords Article III, Section 1.

Commentary

No substantive change is made by this section which is a rewording of Article III, Section 1 of the Constitution of 1876. The power to enact laws has been left in the Legislature alone. This is a continuation of the sound policy that has been in effect since the state's first constitution.

In considering the legislative process, the Commission discussed the possible adoption of limited procedures for direct legislation by initiative and referendum. However, it is the feeling of the Commission that such procedures are mostly of historical significance and

would be of little real value in the legislative process. Initiative and referendum procedures would logically belong in the first part of the Legislative Article if adopted.

Although the possibility of a unicameral legislature was considered, the retention of the bicameral system is recommended since it is deeply ingrained in the history of the state. In a bicameral legislature, a Senate and House of Representatives acting independently of each other will ensure careful enactment of legislation.

Section 2. Composition

As shall be provided by law, the Senate shall consist of not fewer than thirty-one nor more than fifty members, and the House of Representatives shall consist of not fewer than ninety-three nor more than one hundred fifty-five members. The number of members of the House of Representatives shall be a whole multiple of the number of members of the Senate.

Origin

Revises Article III, Section 2.

Commentary

The number of members of both houses could be changed under the revised section. The Constitution of 1876 has fixed the number of Senators at 31 and the number of Representatives has reached its maximum of 150. Under the revised section, the number of members can be adjusted somewhat to provide different ratios of Senators and Representatives.

With the rapid growth of the state, it is felt that a recommendation allowing the Legislature to take into account the geographic and demographic variances of Texas in setting the number of members for each house is necessary. This section requires that the number of members of the House of Representatives be a whole multiple of the number of members of the Senate. Each senatorial district can contain two, three,

four, or five representative districts. Some possible membership ratios for the Senate and House are: 50-100 (1-2); 50-150 (1-3); 38-152 (1-4); 31-155 (1-5).

Today, there are situations in which a House district is divided among four senatorial districts. The proposed ratio plan should, along with the recommendations in Section 5 of this article, prevent gerrymandering because the Senator and Representatives within that senatorial district will have to work together in drafting an equitable and reasonable districting plan.

This approach, which does not set a definite membership for the Legislature in the constitution, is not novel. Article V, Section 2 of the recently adopted Montana Constitution allows the size of its two houses to be determined by the Legislature.

Section 3. Qualification of Members

(a) A person shall be eligible for election to the Senate if a citizen of the United States, a qualified voter, twenty-five years of age or older, and a resident of this State for five years and of the senatorial district for one year immediately preceding the election.

(b) A person shall be eligible for election to the House of Representatives if a citizen of the United States, a qualified voter, twenty-one years of age or older, and a resident of this State for two years and of the representative district for one year immediately preceding the election.

(c) In the general election following a redistricting, a person shall be eligible to be elected to the Legislature from any new district that contains a part of the district in which that person was eligible for election on the effective date of the redistricting, but only if within thirty days after the date of filing as a candidate in the primary election that person becomes a resident of the new district.

(d) A member of the Legislature may not hold any other office or position of profit or trust under this State, the United States, or any foreign government, except as a member of the National Guard, National Guard Reserve, or any of the armed forces reserves of the United States, as a retired member of the armed forces of the United States, or as a notary public.

Origin

- (a) Revises Article III, Section 6.
- (b) Rewords Article III, Section 7.
- (c) New provision.
- (d) Revises: Article III, Section 19;
Article XVI, Section 40.

Commentary

Several changes in the Constitution of 1876 have been made in this section. Subsection (a) lowers the age for the Senate from 26 to 25. Subsection (c) is new. Subsection (d) allows public officeholders to run for the Legislature and, if elected, to serve in the Legislature upon resignation from their previous office. Subsection (d) also narrows the existing dual office holding exceptions.

In dealing with the qualifications for the Senate, the Commission deems it advisable to lower the age from 26 to 25. This will provide an opportunity for a House member who has served two terms to seek a position in the Senate. The Constitution of 1876 is ambiguous as to whether a person must be 26 at the date of the election or whether a person must be 26 to assume office. Subsection (a) clarifies this matter by requiring that a person be 25 on the day of the election. A similar interpretation is intended in subsection (b).

Consideration was given to lowering the age for eligibility to the House of Representatives from 21 to 18. The age limit was retained at 21, however. The Commission feels that the age for representing others carries with it different responsibilities from those of voting.

Although Texas law now recognizes 18 year olds as adults, the maturity and training required to serve in the Legislature may not be present.

Subsection (c) is a new provision. After redistricting, many legislators find themselves residing within new districts and separated from an area that they had previously represented. Knowledge of and allegiance to an area and its people may dictate that the legislator run in the newly created district. The recommended provision will allow a legislator or any other qualified person to run in the new district without meeting the constitutional requirement of residence for a certain period in the district. However, the Commission believes that a person running for the Senate or House in the new district should be required to move into that district within a reasonable time. For this reason it is required that such person move into the new district "within thirty days after the date of filing as a candidate in the primary election." Although this time limit may create some hardship, it would ensure that the person running for office would actually move into the district and, if not already acquainted, become acquainted with the local people and their interests.

Subsection (d) has made a substantial change in Article III, Section 19 of the Constitution of 1876. The 1876 document does not allow an officeholder to resign and to run for the Legislature during the term for which that officeholder was elected or appointed. This prevents many elected officials of state and local government from running for the Legislature. The revised section allows an officeholder to serve in the Legislature if elected and contains no requirement that the officeholder resign before running for the Legislature.

However, in order to serve, the newly elected legislator would have to resign the other public office. The Commission feels that this change will be beneficial since it will allow many experienced state, county, and district officials to run for the Legislature if they desire. Subsection (d) also applies to legislators after they assume office and prevents dual office holding by a legislator except in certain instances in which it is expressly allowed by the revised constitution.

Section 4. Election and Terms of Members

(a) Senators and Representatives shall be elected at a general election.

(b) Each Senator shall serve a term of four years beginning on the date provided in this Constitution or by law for convening the Legislature in regular session. The qualified voters shall elect a new Senate after each statewide senatorial redistricting, and the Senators shall decide by lot which shall serve four-year terms and which shall serve two-year terms, so that one-half shall be chosen every two years thereafter.

(c) Each Representative shall serve a term of two years beginning on the date provided in this Constitution or by law for convening the Legislature in regular session.

(d) Vacancies in the Senate and House of Representatives shall be filled by special election as provided by law.

Origin

- (a) Rewords Article III, Section 27.
- (b) Revises Article III, Section 3.
- (c) Revises Article III, Section 4.
- (d) Revises Article III, Section 13.

Commentary

Section 4 makes only a slight change in existing law and that change is made in subsection (d). Subsections (b) and (c) provide for the same lengths of terms for Senators and Representatives as those in the Constitution of 1876. The possibility of four-year terms for House members was considered but rejected. Two-year terms for House members tend to make them more responsive to their constituents. If House members must run every two years, the electorate is given a frequent opportunity to make its views known on the issues of the day. Approximately 44 states have two-year terms for their legislative bodies comparable to the Texas House of Representatives.

The term of office for Senators is kept at four years in order to provide for continuity and experience in the Legislature. Moreover, four-year terms for Senators is in accord with the traditional theory of a bicameral legislature that the upper house, by virtue of longer terms, will be a more independent body less subject to the immediate demands of popular opinion. About

two-thirds of the states have four-year terms for their senators.

The requirement in subsection (b) that a new Senate be elected after every senatorial redistricting is a continuation of the existing procedure. Article III, Section 3 of the Constitution of 1876 requires that the Senate be divided into two "classes" to determine who shall serve initial two-year terms or four-year terms. If the Senate is composed of 31 members, it cannot be divided into two equal parts. However, the present practice of dividing that body into groups of sixteen Senators and fifteen Senators would continue. If the Senate is composed of an even number of Senators, there will, of course, be two numerically equal groups after each redistricting.

Subsection (d) allows the Legislature to provide by law the method for calling special elections to fill vacancies in House and Senate seats. Under Article III, Section 13 of the Constitution of 1876, the Governor issues a writ for a special election.

Section 5. Redistricting

(a) Before August 15 following publication of each federal decennial census, the Legislature shall by law divide the State into single-member senatorial districts and each senatorial district into single-member representative districts.

(b) All senatorial districts shall contain as nearly as practicable an equal number of inhabitants. All representative districts within a senatorial district shall contain as nearly as practicable an equal number of inhabitants. All districts shall be composed of compact and contiguous territory.

(c) A county entitled to more than one Senator or Representative shall be divided into the required number of districts. Population in excess of that required for complete districts within the county, or the population of a county insufficient to comprise a district, shall be joined with population of another county or counties to form one district.

(d) Senatorial and representative districts shall not divide counties unless necessary to prevent a significant population variance between districts.

(e) A Legislative Redistricting Board shall be constituted within twenty days after August 15. The board shall consist of the Governor, Lieutenant Governor, Speaker of the House of Representatives, Attorney General, and five members appointed by the Governor. The appointed members shall be from different geographical regions of the State, and due regard shall be given to the division between urban and rural areas. No appointed member shall be a public officeholder, and not more than three shall be from the same political party. The Legislature shall provide funds for the board's clerical, technical, and other expenses.

(f) If the Legislature fails to redistrict by August 15 or if its redistricting plan is declared invalid, the State shall be redistricted by the board. In the event of failure to redistrict, the board shall convene as soon as practicable after it is constituted. In the event the legislative redistricting plan is declared invalid, the board shall convene as soon thereafter as is practicable. The board shall make and file its redistricting plan with the Secretary of State within twenty-five days after its first meeting.

(g) If the board fails to complete its redistricting in accordance with the requirements of this Section, the Supreme Court of Texas shall have original jurisdiction to compel the board to perform its duties and may provide such remedies and penalties as may be appropriate.

(h) The board shall be dissolved immediately following the first general election held in accordance with a valid redistricting plan.

Origin

- (a) Revises Article III, Section 28.
- (b) Revises Article III, Sections 25 and 26.
- (c) Revises Article III, Sections 25 and 26.
- (d) Revises Article III, Sections 25 and 26.
- (e) Revises Article III, Section 28.
- (f) Revises Article III, Section 28.
- (g) Revises Article III, Section 28.
- (h) New Provision.

Commentary

Section 5 retains some of the redistricting procedures of the Constitution of 1876, but there are also some

significant changes. Changes are made in the composition and operation of the Legislative Redistricting

Board. Also, the requirements for redistricting contained in Section 5 should deter the gerrymandering of districts and require district lines to be consistent with local political subdivision boundaries whenever possible.

The Legislature retains the power to redistrict itself; however, it must act before the next August 15 following publication of the decennial census. The cutoff date in August was chosen in order to allow sufficient time for the Legislature to act. The complete census figures for counties and precincts are usually not available until February or March of the year following a census. For example, the 1980 census figures are expected to be made available to the Legislature about February or March of 1981. The Legislature has approximately six months in which to complete its redistricting task under Section 5. Section 7 of this article allows the Legislature to meet for such duration as provided by law, so the constitution would not prevent the Legislature from remaining in session until August 15.

Subsection (b) recognizes the one-man, one-vote principle as enunciated in the United States Supreme Court case of *Baker v. Carr*, 369 U.S. 186 (1962). The language "as nearly as practicable an equal number of inhabitants" is similar to that which appears in the redistricting case of *Reynolds v. Sims*, 377 U.S. 533 (1964). Two recent United States Supreme Court cases have approved the language in *Reynolds*. The cases are as follows: *Mahan v. Howell*, 93 S. Ct. 979 (1973); *White v. Regester*, 93 S. Ct. 2332 (1973). It is not intended for subsection (b) to require mathematical equality in the population of each legislative district. The word "practicable" expresses the Commission's desire to maintain the integrity of a political subdivision such as a county as long as the maintenance of subdivision lines does not result in significant population variances among districts.

There are two additional requirements in subsection (b). The requirement that districts be composed of compact territory is intended to prevent gerrymandering. Two recently adopted state constitutions use the word "compact" in their redistricting requirements. See Montana Constitution, Article V, Section 14, and Illinois Constitution, Article IV, Section 3. The requirement that representative districts be wholly within senatorial districts is intended to complement Section 2 of this article and lead to a uniform ratio of House to Senate districts.

Section 6. Compensation

Each member of the Legislature shall receive compensation and allowances as provided by law, not to exceed the amount recommended by the salary commission. Any increase in com-

Subsection (c) recognizes that United States Supreme Court decisions will not allow significant population variances, and, as a result, some counties may have to be divided to obtain districts which contain "as nearly as practicable an equal number of inhabitants." Subsection (d), however, emphasizes that the integrity of county lines should be preserved whenever possible.

Subsection (e) provides for the creation and the composition of a Legislative Redistricting Board. The Lieutenant Governor, Speaker of the House of Representatives, and Attorney General are retained as board members from the Constitution of 1876. The Commission retained the Lieutenant Governor and Speaker for the experience and knowledge in redistricting they might contribute to the board. If the board were activated, these two individuals would have already spent time—possibly five or six months—working on a redistricting plan. The Governor would serve in place of the Comptroller and the Commissioner of the General Land Office.

The board would also have five citizen members appointed by the Governor. This, of course, places the citizen members in a numerical majority on the board. The citizens would be chosen under guidelines that ensure representation of diverse interests and groups.

Subsection (f) provides for the operation of the board in the event of the Legislature's failure to redistrict or the judicial determination of invalidity of a redistricting plan. The subsection also imposes a time within which the board must file its plan.

Subsection (g) retains the present grant of authority to the Supreme Court to require that the board fulfill its duties, but it also is intended to grant new power. Article III, Section 28 of the Constitution of 1876 provides that the Supreme Court of Texas may compel the board to act by "writ of mandamus or other extraordinary writs." The Texas Supreme Court has held that these "other extraordinary writs" are as follows: procedendo, certiorari, prohibition, quo warranto, and other such common law writs. See *Mauzy v. Legislative Redistricting Board*, 471 S. W. 2d 570, 575 (Tex. 1971). Subsection (g) authorizes the Court to "provide such remedies and penalties as may be appropriate." This new language is intended to allow the Supreme Court to issue a declaratory judgment declaring a redistricting plan invalid. It would also allow the Court to issue an injunction. See *Mauzy*, supra, at page 575.

pensation shall become effective only at the first regular session following the next general election.

Origin

Revises Article III, Section 24.

Commentary

Section 6 reflects a basic change from the Constitution of 1876. Legislators' salaries would no longer be set in the constitution. Since 1968, the number of states with constitutional restrictions on salary has fallen from 22 to 11.

Under Section 6, Texas would join the ranks of those states that have recently done away with constitutional restrictions on salary. Removal of these restrictions does not mean, however, that there will be uncontrolled salary increases. Although this recommendation allows such compensation as may be provided by law, legislators might be reluctant to vote themselves an adequate level of compensation because of possible voter antipathy. Section 8 of this article should be considered in conjunction with Section 9 of the General Provisions Article (Article X), which provides for the creation of a salary commission to serve in an advisory capacity to the Legislature. The recommendations of the commission would not be final, as legislators would still have to enact a statute setting their own salaries. Any increase in salary could not exceed the recommendations made by the Salary Commission.

Section 6 also includes the stipulation that "any increase in compensation shall become effective only at the first regular session following the next general election." This recommendation, along with that of an advisory salary commission, is intended to mitigate the negative effects of public opinion which often accompany legislators' attempts to raise their own salaries.

There are many reasons for removing the level of legislators' compensation from the constitution. With the number and complexity of demands placed upon legislators today, an increasing portion of their time and attention is required. A more flexible approach is needed to set adequate salaries in order to encourage qualified citizens to give their time in service to the state. All eligible citizens should be able to hold office if elected, and low salaries would seem to exclude all those who cannot afford to leave a full-time occupation. A legislator who is paid an adequate salary will be able to devote full-time to his or her constituents and will be less susceptible to special interest influence.

Section 7. Sessions

- (a) The Legislature shall meet at least once every two years and at such times and for such duration as provided by law.
- (b) All legislative proceedings shall be open to the public.
- (c) Neither house may adjourn or recess for more than three days without the consent of the other.
- (d) The Legislature shall meet at the seat of government unless otherwise provided by law.

Origin

- (a) Revises Article III, Section 5.
- (b) Revises Article III, Section 16.
- (c) Rewords Article III, Section 17.
- (d) Rewords Article III, Section 58.

Commentary

Several significant changes from the 1876 Constitution are reflected in this provision. Section 7 contains no time limitation on regular sessions of the Legislature and requires only that the Legislature meet in regular

session every biennium. Another change is to make all legislative proceedings open to the public.

The Constitution of 1876 provides for a regular session every biennium with a limit of 140 days on that ses-

sion. Subsection (a) will allow the Legislature to meet "at such times and for such duration as provided by law," and would therefore give the Legislature the authority to determine the time needed to complete its work.

Consideration was given to simply lengthening the time of legislative sessions contained in the 1876 Constitution. Sessions of 180 days in odd-numbered years and 60 days in even-numbered years were considered. One possible advantage of a time limit would be to prevent excessively long sessions without any assurance of increased quality of legislation. However, just as a 140 day session is insufficient time for the Legislature to transact its business at present, any other constitutionally-imposed time limit could become an insufficient time for carrying on the business of the state. The Commission believes that the Legislature will meet only for the time it needs to transact its business. Legislators need to maintain personal contact with their constituents and likely would oppose, unless needed, any year-round sessions.

Section 7 provides maximum flexibility because the Legislature could provide by law for a biennial session, annual sessions, or a biennial regular session with an interim budget session. None of these alternatives is dictated by the constitutional language, but all are possible. This flexible provision is not novel. About 33

states have annual legislative sessions, and, approximately one-half of these have no time limits on the length of the session.

Subsection (b) provides that "all legislative proceedings shall be open to the public." The Commission feels that the public has the right to know what its elected representatives are doing. The Constitution of 1876 allows the Senate to hold executive sessions, which are mostly used for the discussion of gubernatorial appointments. Prohibiting executive sessions of the Senate would necessitate nomination of those whose qualifications can successfully undergo public scrutiny.

Subsection (c) helps eliminate a conflict that might arise between the two houses as to the time of adjournment. If either house could adjourn at pleasure, it could completely block public business and practically destroy a session of the Legislature. This provision requires both houses to sit and work simultaneously.

Subsection (d) is not intended to change the seat of government although the capital is not specifically mentioned by name. The words "unless otherwise provided by law" would allow relocation of the seat of government if emergencies necessitated its removal from Austin. Emergencies causing removal might include floods, disease, or nuclear attack.

Section 8. Organization and Procedure

(a) Each house shall be the judge of the qualifications and election of its own members, but contested elections shall be determined as provided by law.

(b) Each house shall adopt its rules of procedure. The Legislature by majority vote of the membership of each house shall adopt joint rules. Rules, once adopted, shall remain in effect until amended, repealed, or otherwise changed by the same or succeeding Legislatures.

(c) At the beginning and end of each session the Senate shall elect from its members a president pro tempore who shall perform the duties of president when the Lieutenant Governor is absent or disabled, or when the office is vacant.

(d) When first assembled the House of Representatives shall organize and elect a speaker from its members.

(e) All elections held by either house of the Legislature shall be by individual voice votes to be recorded in the journal.

(f) Two-thirds of the membership of each house shall constitute a quorum for transacting business, but fewer members may recess or adjourn from day to day and compel the attendance of absent members.

(g) Each house shall prepare and publish a journal of its proceedings. At the request of any three members present, the votes on any question shall be recorded in the journal.

(h) Each house may punish a member for disorderly conduct or for cause deemed sufficient by that house and may expel a member by two-thirds vote of its membership, but not a second time for the same offense.

Origin

- (a) Rewords Article III, Section 8.
- (b) Revises Article III, Section 11.
- (c) Rewords Article III, Section 9.
- (d) Rewords Article III, Section 9.
- (e) Revises Article III, Section 41.
- (f) Rewords Article III, Section 10.
- (g) Rewords Article III, Section 12.
- (h) Revises Article III, Section 11.

Commentary

Section 8 reflects three basic changes from the Constitution of 1876: (1) the provision for adoption of joint rules in (b) is new; (2) as provided by (e) there would be no secret election of any legislative officers; (3) in (h), the requirement to expel a member of the Legislature was raised from two-thirds of a quorum to two-thirds of the membership of the house doing the expelling.

Subsection (b) requires that each house adopt its own rules. The adoption of rules results in more efficient transaction of legislative business and helps prevent confusion and interruption of legislative sessions. The provision requiring adoption of joint rules is new. In the past the Senate and House have at times been unable to agree on joint rules. This subsection provides that at the beginning of a legislative session there will be a carryover of the previous joint rules until they are amended, repealed, or otherwise changed. Continuing the joint rules results in the smooth and orderly flow of legislative business.

The Commission believes that joint rules should be used to limit effectively the authority of conference committees to modify appropriation bills and other legislation beyond the intent of either of the conflicting bills. The joint rules adopted by the 63rd Legislature attempt to deal with this problem.

Subsections (c) and (d) contain no change from Article III, Section 9 of the Constitution of 1876. Consideration was given to limiting election of a President pro tempore of the Senate to the beginning and end of each regular session, but this limitation was not adopted. Under this provision the Senate can continue to elect a President pro tempore at the beginning and end of both regular and special sessions of the Legislature.

Subsection (e) would require the election of all legislative officers to be open. The major effect of this recommendation is to require the open election of the Speaker of the House. Each member's vote would be recorded in the journal. The words "individual voice votes" are intended to preclude all members from voting by machine at the same time. It is the Commis-

sion's belief that public voting will make it more difficult for behind the scenes maneuvering in the election of a Speaker. A Speaker elected by open vote might, in making committee assignments, be less likely to express ill will toward the opposition since the votes for opposing candidates are public. The public would be aware if those members were discriminated against because of their vote for Speaker.

Subsection (f) retains the requirement that two-thirds of each house constitute a quorum. Although some thought was given to lowering the quorum requirement to a majority, it was retained at two-thirds. The quorum requirement of two-thirds is a precaution against a small group of legislators passing laws without sufficient deliberation by the whole legislative body.

Subsection (g) contains the requirement that a journal be kept in each house. The requirement of a journal is considered important to inform the public of the proceedings. Since the journal of each house is the official record of the actions taken by that body, reference may be made to the legislative journal to ascertain the history of the passage of an act, to clarify it, or to disclose the intention of the Legislature.

The provision which allows three members to request a record vote is retained from the Constitution of 1876 in order to permit the public to know the action taken by their Representatives and Senators with respect to certain measures. The requirement that three persons be necessary to request a record vote is to prevent record votes being requested too frequently by one individual. A record vote consumes time and thus can delay the transaction of other legislative work.

Subsection (h) revises Article III, Section 11 of the Constitution of 1876. The 1876 provision does not expressly state that two-thirds of a quorum is needed to expel a member. This has been held to be the case, however. See TEXAS ATT'Y GEN. OP. (To Honorable R. L. Bobbitt, February 8, 1927), 1926-1928 Tex. Att'y Gen. Bien. Rep. 387. Section 8 increases the requirement for expulsion to two-thirds of the membership of each house. Although not expressly stated, a

vacancy is created upon expulsion of a member and a special election is called to fill the vacant seat. In the *Journal of the House of Representatives of the Regular Session of the Fortieth Legislature* (1927) on pages 442 and 443, resolutions can be found which provide

for the expulsion of certain members and declare their seats vacant. An expelled member can be elected to fill the vacant seat and cannot be expelled a second time for the same offense.

Section 9. Legislative Immunity

No member shall be questioned in any other place for speech or debate during a legislative proceeding.

Origin

Rewords Article III, Section 21.

Commentary

In Section 9 the words "legislative proceeding" are substituted for "either house" which appear in Article III, Section 21 of the Constitution of 1876. The change in wording was made in order to coincide with the judicially interpreted scope of that language. See *Tenny v. Brandhove*, 341 U.S. 367 (1951); cf. *Canfield v. Gresham*, 17 S.W. 390 (Tex. 1891). Freedom of

legislative speech and debate is a great and vital privilege to assure the proper functioning of the legislative process. This provision gives absolute immunity to a speech made by a member on the floor of either house, before committees, or in any other proceedings directly connected with the Legislature.

Section 10. Conflict of Interest

(a) No member may vote for the appointment of another member to any office filled by the Legislature.

(b) During the term for which elected a member shall be ineligible for (1) any civil office of profit under this State which shall have been created, or the emoluments of which may have been increased, during such term, or (2) any office or position the appointment to which may be made, in whole or in part, by either house of the Legislature. The ineligibility shall terminate on the last day in December of the last full calendar year of the term for which the member was elected.

(c) A member privately interested in a bill, resolution, or other matter before the Legislature shall disclose the interest and shall not vote on the bill, resolution, or other matter.

(d) No member may have a pecuniary interest in any contract with the State.

(e) No member shall for compensation other than the emoluments of office appear before or have dealings with an executive or administrative unit of State government; and no member shall directly or indirectly share in any fee paid to any other person for such appearance or dealings.

(f) A continuance shall not be granted in any judicial proceeding solely because a party or attorney is a member of the Legislature.

Origin

(a) Rewords Article III, Section 18.

(b) Rewords Article III, Section 18.

(c) Rewords Article III, Section 22.

(d) Revises Article III, Section 18.

(e) New provision.

(f) New provision.

Commentary

Section 10 contains provisions thought essential to prevent conflict of interest situations that work to the detriment of the public interest. Subsections (a), (b), and (c) are intended to make no changes in their counterparts found in the Constitution of 1876. Subsections (e) and (f) contain new provisions.

Subsection (a) provides for a continuation of existing law. As defined in Section 1 of this article, the "Legislature" is composed of both the House and the Senate. In any election by the Legislature (joint action of the two houses) a member cannot vote for another member to fill an office. This provision, of course, is not intended to preclude a Representative from voting for a Speaker or a Senator from voting for a President pro tempore. Both of these offices are filled by a single house and not by the joint houses.

Subsection (b) is designed to prevent legislators from resigning to take state offices which they may have created or offices for which they may have increased the emoluments. This provision is intended to prevent any improper bias on the part of a legislator when that legislator votes to create a new office or increase the salary of an existing office.

Subsection (c) retains the requirement that a member of the Legislature abstain from voting on matters in which he or she may have a personal, private interest. This provision is difficult to enforce, and therefore becomes basically a matter for each legislator's individual conscience. The type of private interest envisioned in a bill is an interest which is personal to a legislator. It is not intended that lawyer-legislators, for example, not vote on bills concerning the judiciary in general. An interest which is general to a class and remote to a legislator is not intended to disqualify the legislator from casting his or her vote.

Subsection (d) changes the provisions of the 1876 Constitution which prohibit a legislator from having an interest in a contract with the state, or any county thereof, when the contract has been authorized by any law during a term when the legislator has served. Subsection (d) prohibits a legislator from having a pecuniary interest in any contract with the state, regardless of when the contract was authorized. Realizing that such a proposal might disrupt some existing and legal contracts, a provision has been placed in the Transition Schedule to allow such contracts to continue until expiration. As with other provisions of this section, subsection (d) is intended to prevent a legislator from receiving any special favors or treatment by virtue of the office held.

Subsection (e) pertains to another possible conflict of interest situation. Since the Legislature acts on the

budgets of state agencies, boards, and commissions, it is possible that a legislator might receive special treatment from these groups—favorable treatment that the legislator would not have received except for the office held. In order to prevent a legislator from possibly exerting undue influence on state agencies or from receiving special treatment unwittingly given by an agency's personnel, subsection (e) would limit the appearance of legislators before these agencies and also prevent the legislator from sharing in any fee paid to another for such an appearance.

This proposal is not intended to prohibit a legislator from appearing before a budget board, for example, to ask that a college in that legislator's district be given adequate funding. This is part of a legislator's duty. However, any appearance before or dealings with an agency in which the legislator would be representing clients for a fee would be prohibited. The word "dealings" is also used because a legislator could attempt to influence the actions of a state agency, board, or commission through correspondence as well as by personal appearance. The fact to bear in mind is that the office alone can exert influence. Consequently, any use of the legislator's position is discouraged.

This proposal extends to all legislators and is not just limited to one occupation or profession. As a result, legislators, whether engineers, lawyers, doctors, pharmacists, farmers, or members of other professions, would be unable for a fee to appear before or have dealings with an executive or administrative unit of state government.

Section 10(e) also states, "No member shall directly or indirectly share in any fee paid to any other person for such appearance or dealings." Cognizant that many legislators are members of firms and partnerships, a legislator could not share, directly or indirectly, in any fee paid to a partner or other such person. This would prohibit any fee sharing arrangement which might be used to circumvent the proposal.

In 1973, the 63rd Legislature amended the statute, TEX. REV. CIV. STAT. ANN. art. 2168a (1964), which grants members of the Legislature a mandatory continuance if the legislator is a party or attorney in a suit. This amended statute appears in Vernon's Texas Session Law Service: Tex. Laws 1973, ch. 428 at 1130. The amendment was an attempt to prevent some of the abuses of continuance. Subsection (f) is intended to provide a stronger method to prevent any further abuses of the continuance procedure. The bill that amended the mandatory continuance statute had language recognizing the abuses. It reads,

The fact that mandatory continuance of suits for Members of the Legislature has been the subject of

some abuse, and the fact that on occasions it has appeared that such mandatory continuances have been used solely for the purpose of delay. . . . See Tex. Laws 1973, ch. 428 at 1130, 1131. Under subsection (f), it would still be possible for a legislator to

obtain a continuance if a party or attorney in a case. However, there must be a good reason, other than legislative membership, for such a continuance. The decision to grant a continuance would be discretionary with the judge and not mandatory.

Section 11. Bills

(a) The Legislature shall enact no law except by bill.

(b) A bill may originate in either house. After a bill passes either house, the other may amend or reject it, but neither house may so amend a bill as to change its original purpose.

(c) Every bill shall be limited to a single subject, which shall be expressed in its title. A general appropriation bill shall be limited to the subject of appropriations. A statutory revision bill shall be limited to that subject.

(d) A bill, amendatory in form, shall set out the complete section, as amended, of the statute it amends.

(e) Before a house considers a bill it must have been referred to a committee of that house and reported at least five days before adjournment of the session.

(f) Before a bill becomes law it must be read on three separate days in each house. Either house by four-fifths record vote of the members present and voting may suspend this requirement.

(g) If a bill or resolution is defeated by a vote of either house, no bill or resolution containing the same substance shall be passed during the same session.

(h) The presiding officer of each house shall, in the presence of that house, certify the final passage of each bill or resolution requiring the concurrence of both houses. The fact of certification shall be recorded in the journal.

(i) No law except the general appropriation act and redistricting acts shall take effect until ninety days after it becomes a law or ninety days after adjournment of the session at which it was enacted, whichever is earlier. The Legislature, by three-fourths record vote of the membership of each house, may authorize an earlier effective date.

Origin

(a) Rewords Article III, Section 30.

(b) Rewords: Article III, Section 30;
Article III, Section 31.

Revises Article III, Section 33.

(c) Revises Article III, Section 35.

(d) Rewords Article III, Section 36.

(e) Revises Article III, Section 37.

(f) Rewords Article III, Section 32.

(g) Rewords Article III, Section 34.

(h) Rewords Article III, Section 38.

(i) Revises Article III, Section 39.

Commentary

Section 11 provides for a continuation of the basic provisions of the Constitution of 1876 concerning the enactment of bills. However, Section 11 contains some

changes in existing law. Subsection (b) would allow revenue bills to originate in the Senate; (e) establishes the requirement that a bill be reported from

committee at least five days before adjournment instead of three days; (i) changes the effective date for bills.

Subsection (a) retains the mandatory requirement that the Legislature enact no law except by bill. This subsection is not applicable to joint resolutions of the Legislature. Resolutions, although they express the will of the Legislature, cannot be given the effect of law because subsection (a) provides that no law shall be enacted except by bill.

Subsection (b) allows any bill, including a revenue bill, to originate in either house. The Senate of the Texas Legislature and the upper houses of many other representative bodies have traditionally been prevented by constitutional provisions from initiating revenue bills. The tradition stems from the fact that the House of Lords in England has been composed of an hereditary class. United States Senators were originally selected by state legislatures, rather than being popularly elected. Therefore, the general public had an aversion to allowing individuals selected only by a few to introduce revenue bills. Although State Senators in Texas have always been selected by popular election, a prohibition on the framing of new taxes by the upper body was retained in the 1876 Constitution. Today State Senators are elected by the people according to the one-man, one-vote principle, and there is no longer a sound reason why Senators, as elected representatives of the people, should not be allowed to initiate revenue bills. More than one-half the states now allow revenue bills to originate in the upper house.

Subsection (b) also allows a bill passed by one house to be amended or rejected by the other house; however, neither house may change the bill's original purpose. The provision that a bill not be amended on its passage through either house so as to change the bill's original purpose prevents confusion in the statutes. Furthermore, it helps keep legislators from unintentionally passing a bill that might otherwise be entirely different from one which was first introduced.

Some consideration was given to making the title-subject rule in subsection (c) a matter for legislative compliance only and not subject to judicial review. This approach was rejected although the title-subject provision can be used as a tactic to void legislation years after its passage. The title-subject rule has some basic advantages, and retaining judicial review would ensure that the rule would continue to be strictly followed. The title gives the legislators an indication of the content of a bill and can therefore prevent the careless or unintentional adoption of legislation. The title-subject rule also gives persons outside the Legislature a better opportunity to be fairly apprised of the subjects of legislation under consideration.

The purpose of subsection (d) is to prohibit "blind" amendments or amendments by reference. This subsection is intended to carry forward the intent of Article III, Section 36 concerning bills that are amendatory in form. In *Thompson v. United Gas Corporation*, 190 S.W. 2d 504 (Tex. Civ. App.—Austin 1945, writ ref'd), a statute expressly repealing part of another law by merely citing it was held to be excluded from the ban of Article III, Section 36 of the Constitution of 1876. This case is illustrative of a bill that amends but is not amendatory in form.

Subsection (e) provides that a bill be referred to a committee and that a bill cannot be passed unless reported at least five days before adjournment. This is an extension of the three day requirement contained in Article III, Section 37 of the Constitution of 1876. This added time should help prevent hasty legislation. Referring a bill to committee allows for in-depth deliberation of the proposed measure by a few who then can pass their deliberations on to the whole legislative body.

Subsection (f) rewords Article III, Section 32 of the Constitution of 1876. The purpose of this provision is to prevent hasty and improvident legislation by allowing sufficient time for adequate information and orderly discussion.

Subsection (g) rewords Article III, Section 34 of the Constitution of 1876. This provision is intended to avoid contradictory actions by the Legislature during the same session by prohibiting reconsideration or re-introduction of any bill defeated during the same session. This prohibition is solely a matter for legislative compliance. The enrolled bill rule prevents the courts from ruling on a violation of this subsection by the Legislature. See *Jackson v. Walker*, 49 S.W. 2d 693 (Tex. 1932); *King v. Terrell*, 218 S.W. 42 (Tex. Civ. App.—Austin 1920, writ ref'd).

The requirement for certification of an approved bill by the presiding officer is retained in subsection (h). Certification is a proper step in the passage of a bill and is used to supply evidence that a bill has duly passed and is ready for approval or rejection by the Governor. Added precaution is taken in requiring the fact of signing to be entered in the journals, for this creates a record and proof of the authenticity of a bill. This procedure has allowed the adoption of the "enrolled bill rule," under which the courts accept the certification of the presiding officer that procedural rules have been properly followed in the passage of a bill.

In subsection (i) the effective date for bills can be earlier than the 90 days after adjournment of the Legislature provided by Article III, Section 39 of the Con-

stitution of 1876. Because Section 7 of this article allows flexibility in setting the duration of sessions, the continuation of the existing provision could delay acts from taking effect much longer than is needed. A delay of 90 days after a bill is signed by the Governor or filed with the Secretary of State should provide adequate time for the publication and implementation of

a new law. Since the Commission feels that 90 days is needed to adequately inform the public of a new law, only an extraordinary majority should be allowed to permit an earlier effective date. Consequently, the vote to authorize an earlier effective date is raised from two-thirds to three-fourths of the membership of each house.

Section 12. Local or Special Legislation

The Legislature may not enact a local or special law if 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.

Origin

Revises Article III, Section 56.

Commentary

Section 12 revises Article III, Section 56 of the Constitution of 1876, which contains a long list of items upon which the Legislature is prohibited from enacting local or special laws. The long list of prohibitions is eliminated by Section 12, but its removal does not mean that local or special laws can now be passed on these subjects. The basic prohibition is carried forward by the proposed shorter section.

The prohibition against local or special laws was originally intended to prevent special interests from obtaining a benefit through state law and to prevent discrimination among localities of the state. The Commission feels that the Legislature's attention should be focused on bills of statewide interest and it should not try to deal with individual localities any more than is necessary. A constitutional prohibition of the enactment of local or special laws should contribute greatly to the uniformity of legislation affecting local governments throughout the state. Many laws have been enacted which affect only counties and cities in a narrow population "bracket." Such laws are inconsistent with the intent of this section.

It should be pointed out, however, that occasionally some special or local law may need to be enacted. If so, such laws may be enacted if a general law cannot be made applicable. This approach, for example, would allow the passage of local laws for the preservation of the game and fish of this state in certain localities or for the enactment of fence laws affecting certain counties.

Consideration was given to placing a time limit of one year after enactment for judicial review of a law on the ground that it is a local or special law in violation of this section. Statutes have been declared unconstitutional years after enactment because they violated the prohibition against local or special laws. However, the facts and other attendant circumstances which might give rise to an attack on a statute on this basis may not occur until years after enactment. In view of this, no constitutional time limit on judicial review was adopted. The judiciary's function under this section is not just to review the Legislature's action but is to determine whether the statute under attack is indeed a local or special law.

Section 13. Impeachment

(a) The House of Representatives shall have the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the record vote of two-thirds of its membership, to impeach executive officers and justices of the Supreme Court.

(b) Any officer against whom articles of impeachment have been preferred shall be suspended from the exercise of the duties of the office during the pendency of the impeachment. The Governor may make a temporary appointment to fill the vacancy occasioned by the suspension of the officer until the decision on the impeachment.

(c) Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall affirm or take an oath to try impartially the party impeached. If the Governor or Lieutenant Governor is tried, the Chief Justice of the Supreme Court shall preside. A per-

son may be convicted of impeachment charges only by record vote of two-thirds of the membership of the Senate.

(d) A judgment of conviction by the Senate shall not extend beyond removal from office and disqualification to hold any office of honor, trust, or profit of this State. An impeached person, whether convicted or acquitted, shall be amenable to prosecution, trial, judgment, and punishment according to law.

Origin

(a) Revises Article XV, Section 1;

Article XV, Section 2.

(b) Rewords Article XV, Section 5.

(c) Revises Article XV, Section 3.

(d) Rewords Article XV, Section 4.

Commentary

This section carries forward the impeachment provisions of the Constitution of 1876 with some changes. Article XV, Section 1 of the 1876 document does not specifically state that only a majority vote is needed for the House to impeach, but this has been the case in practice. Since a majority might be too easy to obtain, and since articles of impeachment against a person may seriously damage that person's reputation, an extraordinary majority of two-thirds of the House to impeach is recommended in subsection (a).

Those subject to impeachment are executive officers and justices of the Supreme Court. This new approach in subsection (a) eliminates the present listing by title of all those officers subject to impeachment. The Judiciary Article contains several methods of removing judges and thus it was thought that the impeachment process should be reserved only for the statewide officers at the highest level of the judiciary.

Subsection (b) is a slight rewording from Article XV, Section 5 of the Constitution of 1876. A temporary suspension during the impeachment process can be justified. An accusation of misconduct in office is of such a serious nature that the public should be protected against a chance of continuing misconduct which might take place if the accusation proved to be true. Furthermore, such a provision works for the

benefit of the accused. It gives the accused an opportunity to prepare a defense without being encumbered with the responsibilities and daily burdens which go hand-in-hand with the holding of public office.

The provision in subsection (c) that the Chief Justice of the Supreme Court preside in case of the trial of the Governor or Lieutenant Governor is new. The Commission believes that the Chief Justice should preside as one who is an impartial observer and who is experienced in the law. Also, a conviction by the Senate would require two-thirds of its membership instead of two-thirds of those present as is now the case. Again, it is felt that such serious consequences flow from an impeachment conviction that an extraordinary majority should be required.

The entire impeachment process is a method of removing an official from office. The impeachment process is not used for the purpose of inflicting the punishment applicable to any crime that may have been committed. In other words, a court of impeachment does not pronounce a full and complete sentence. Therefore, subsection (d) allows the courts through their processes to deal with the accused and any alleged crimes. The intent of this section is to allow an indictment by grand jury if warranted either before, during, or after the impeachment proceedings.

Section 14. Advice and Consent of the Senate

Two-thirds of the members present and voting shall constitute consent to any appointment which this Constitution requires to be with the advice and consent of the Senate. The Legislature may provide by law for interim appointments made when the Senate is not in session.

Origin

New provision.

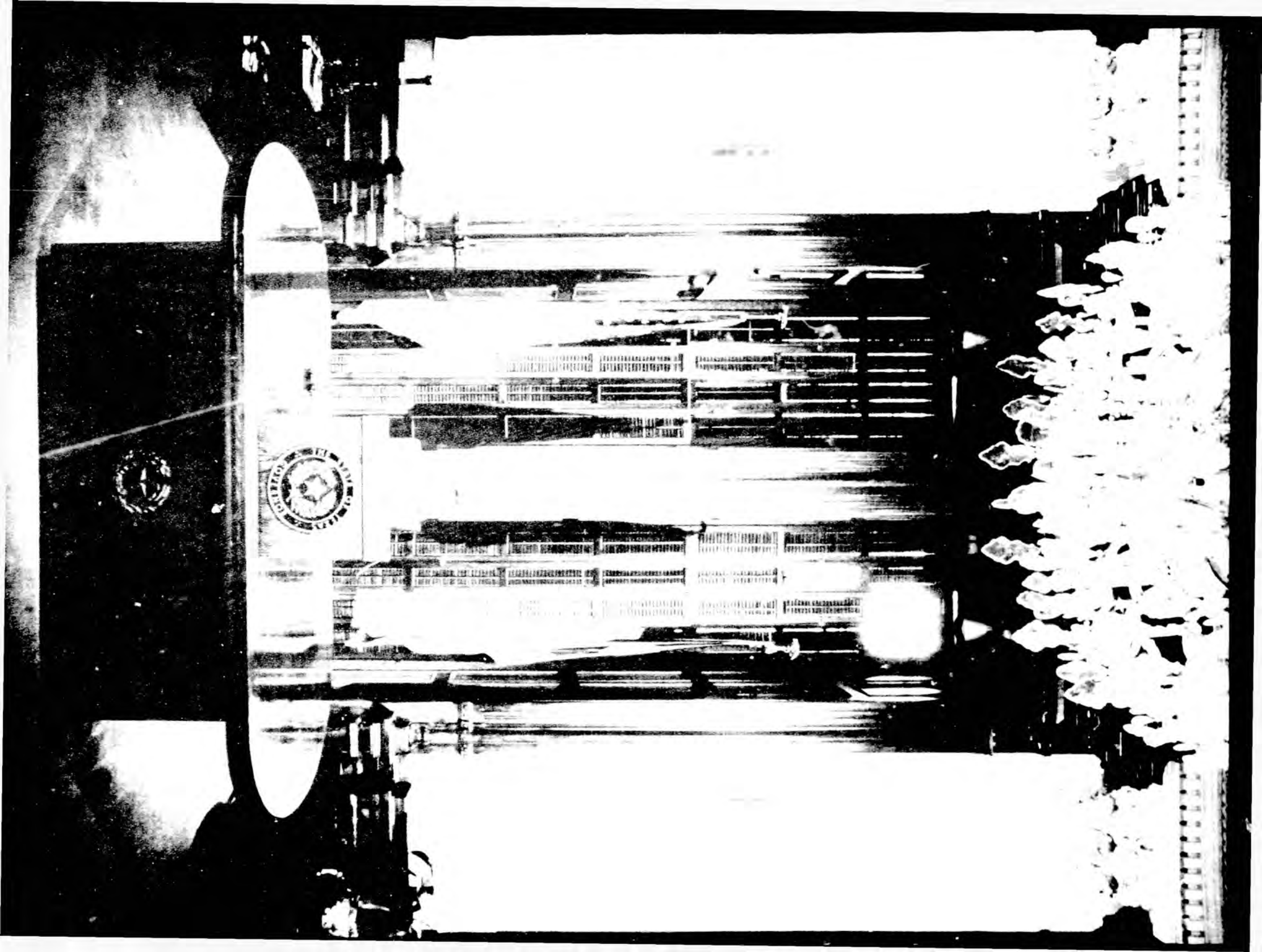
Commentary

The words "with the advice and consent of the Senate" appear throughout the new constitution. They are

explained to avoid misunderstanding as to the voting requirements for Senate confirmation.

Article IV

The Executive



Article IV

The Executive

Section 1. Officers Constituting the Executive Department

The Governor shall be the Chief Executive Officer of the State. The Executive Department shall consist of a Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, Commissioner of the General Land Office, and such other officers as may be provided by law.

Origin

Revises: Article IV, Section 1;
Article IV, Section 23.

Commentary

The importance of the Governor as Chief Executive of the State is reflected in the first sentence. The Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, and Commissioner of the General Land Office are traditional Executive Department officers, and each of them performs constitutionally mandated duties. Flexibility in the structure of the Executive Department is achieved by adding the phrase, "and such other officers as may be provided by law." This wording would allow the Legislature to provide by law for the

inclusion of the Treasurer, Commissioner of Agriculture, and any other officers which the Legislature might stipulate, within the Executive Department.

Many recent state constitutions have provided for consolidating administrative agencies into a specific number of departments. Although this was not considered a viable approach by the Commission, the language of Section 1 would permit the heads of the departments to be incorporated into the Executive Department, if such a reorganization is undertaken in the future.

Section 2. Selection, Terms, and Residence of Officers of Executive Department

The Governor, Lieutenant Governor, Attorney General, and Comptroller of Public Accounts shall be elected by the qualified voters of the State at general elections beginning with 1978. The Secretary of State shall be appointed by the Governor. The Commissioner of the General Land Office shall be elected or appointed as provided by law. Appointive officers of the Executive Department shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor. Elective officers of the Executive Department shall serve four-year terms. All officers of the Executive Department shall reside at the seat of government.

Origin

Revises: Article IV, Section 2;
Article IV, Section 13;
Article IV, Section 16;
Article IV, Section 21;
Article IV, Section 22;
Article IV, Section 23.

Commentary

The election process constitutes the traditional method of selecting the Governor and Lieutenant Governor and this section preserves that democratic principle. The election process is also the most commonly accept-

ed method of ensuring the independence of officers of government. The necessity of an independent check on the governmental actions of both executive and legislative officers was the rationale for the continued

constitutional mandate for the election of the Attorney General and Comptroller of Public Accounts. The Commissioner of the General Land Office has a different type of responsibility and therefore might logically be selected by appointment. However, broad powers of management of the state's public lands entrusted in the Land Office, including mineral rights and related responsibilities, raise the issue of whether the officer entrusted with the public lands should remain elected by the public. Since there are strong reasons for both election and appointment of the Commissioner of the General Land Office, and since there is difficulty in determining what evolution the office might undergo, the option of flexibility was exercised by permitting the Legislature to provide by law the method of selection of that officer. The Secretary of

State was retained as an appointive officer of the Executive Department.

The four-year term for elected Executive Department officers, with no limitation on the number of terms to which an officer might be reelected, was retained. The appointive officers of the Executive Department, presently only the Secretary of State, are to be appointed by the Governor with the advice and consent of the Senate and will serve at the pleasure of the Governor. The concept of the term of office for appointed members of the Executive Department being the pleasure of the Governor was implemented to permit the Governor to be held accountable for the actions of an appointed member of the Executive Department.

Section 3. Returns of Election; Declaration of Election; Tie Votes; Contests

Election returns for executive officers shall, until otherwise provided by law, be sealed and transmitted to the Secretary of State, who shall open the returns and promptly certify the winner but shall do so no later than the first Monday in January. The person receiving the highest number of votes for an office shall be declared elected. If two or more persons shall have the highest and an equal number of votes for an office, one of them shall be chosen immediately by joint vote of both houses of the Legislature. Contested elections for executive offices specifically named in Section 1 of this Article shall be determined by both houses of the Legislature in joint session.

Origin

Revises Article IV, Section 3.

Commentary

This section provides that the Secretary of State, not the Legislature, shall certify the election returns of the executive officers. This will allow the winner of the Governor's race to be certified as Governor-elect prior to the convening of the Legislature. The certification of election prior to the convening of the Legislature is necessary to allow an incoming Governor the lead time which Section 4(b) of this article provides.

The Secretary of State was chosen because this office has traditionally been responsible for conducting elec-

tions and processing returns for all statewide and district elections except that of Governor and Lieutenant Governor. In order to establish uniformity, this provision includes the other elected officers of the Executive Department.

Under this language the Legislature could continue the role of the present State Canvassing Board, create a new canvassing or certifying board or boards of different membership, or allow the Secretary of State or another officer to certify the winners.

Section 4. Governor's Eligibility and Installation

(a) The Governor shall be at least thirty years of age, shall be a citizen of the United States, and shall have been a resident of this State at least five years immediately preceding election.

(b) The Legislature shall provide appropriations for a staff and office space for a new Governor-elect prior to inauguration. A new Governor-elect shall be entitled to receive from governmental agencies those reports to which an incumbent Governor is entitled.

(c) The Governor shall be inaugurated on the second Tuesday in January or as soon thereafter as practicable. In those years when a new Governor is inaugurated, the Legislature shall convene in regular session one day prior to inauguration and shall organize but shall not act as a deliberative body for the consideration and passage of bills and resolutions until forty-five days thereafter, except on matters called for by the Governor.

Origin

Revises Article IV, Section 4.

Commentary

Subsection (a) retains the same qualifications for Governor as in the Constitution of 1876. Subsections (b) and (c) attempt to deal with the problems encountered when a new Governor takes office. In order to provide a newly elected Governor with the opportunity to organize a staff and become familiar with the responsibilities of the office, a provision allowing the Governor lead time before the convening of the Legislature is included in subsection (b). Under the new provision a newly elected Governor, once certified, is able to hire a staff and rent office space from money appropriated by the preceding Legislature. If an incumbent wins reelection, the funds would revert to the Treasury. Also, the new Governor is entitled to receive all reports to which the incumbent Governor is entitled. This will allow a new Governor to begin work on the budget bill, to consider the appointments which need to be made shortly after inauguration, and to be-

gin work prior to inauguration on the programs the new Governor was elected to carry out. The Governor's budget preparation authority is discussed in the *Commentary* for Article IV, Section 15.

This section sets a definite date for the inauguration of a Governor. If the elected Governor is not an incumbent, the Legislature will convene one day prior to the inauguration but is precluded from acting as a deliberative body for 45 days, except on matters which the Governor calls. However, during this time legislative committees may meet and consider pending legislation. The provision prohibiting deliberative action during the first 45 days of the legislative session revises the Constitution of 1876, which prohibits the Legislature from acting as a deliberative body for 60 days except on four-fifths vote of the membership.

Section 5. Gubernatorial Succession

(a) If before inauguration the person elected Governor fails to qualify, is disabled, or dies, the person elected Lieutenant Governor shall be inaugurated and shall serve as Governor until the person elected Governor at the next general election assumes office for the remainder of the term.

(b) If after inauguration the Governor dies, resigns, becomes disabled, or is removed from office, the Lieutenant Governor shall become Governor and shall serve for the remainder of the term unless the vacancy occurs within sixteen months after inauguration in which event the Lieutenant Governor shall serve only until the person elected Governor at the next general election assumes office for the remainder of the term.

(c) If after a vacancy occurs in the office of Governor and the Lieutenant Governor becomes Governor and thereafter dies, resigns, becomes disabled, or is removed from office, the Speaker of the House of Representatives, if qualified, shall become Governor under the same conditions and for the same term as provided for the Lieutenant Governor.

(d) If the Governor is absent from the State, the Lieutenant Governor shall act as Governor until the Governor returns. If both the Governor and Lieutenant Governor are absent from the State, the Speaker of the House of Representatives shall act as Governor during such absences.

(e) While serving or acting as Governor, the Lieutenant Governor or Speaker of the House of Representatives shall receive only the compensation payable to a Governor.

(f) The Legislature may provide by law for further succession to the office of Governor. No person shall serve as Governor unless qualified for that office.

Origin

Revises: Article IV, Section 3a;
Article IV, Section 16;
Article IV, Section 17.

Commentary

The major changes made in this section relate to succession to the governorship and filling vacancies in that office. Subsection (c) provides that the Speaker of the House, instead of the President pro tempore of the Senate, succeeds to the governorship if the Lieutenant Governor cannot serve. The Speaker, as presiding officer of the House of Representatives, holds a position analogous to the Lieutenant Governor, in that both are permanent presiding officers. In addition, the Speaker is the elected leader of the house of the Legislature which is more subject to popular control. The President pro tempore of the Senate serves only temporarily when the Lieutenant Governor is not present to preside over the Senate.

The second change, reflected in subsections (a) and (b), provides that if a vacancy occurs in the office of Governor before the inauguration of the Governor-

elect or within sixteen months after the inauguration of the Governor, the person succeeding to the office of Governor shall serve only until a candidate elected at the next general election assumes office for the remainder of the unexpired term. The Lieutenant Governor, elected as a separate officer with a defined role, is not regarded by the electorate as the Governor's permanent replacement. Therefore, the Commission believes that the voters should have a voice in the selection of a Governor to serve the remainder of the unexpired term. Since a general election occurs every two years, it would require little additional expense or effort to allow the citizens of the state the opportunity to select the permanent replacement for a Governor if the vacancy occurs within sixteen months after inauguration. The sixteen-month limitation was stipulated to permit adequate time to conduct a campaign.

Section 6. Disability of Elective Officers of Executive Department

The disability of any elected officer of the Executive Department to perform the duties of the office during the term for which elected shall be determined in a proceeding in the Supreme Court of the State under such rules of procedure as may be prescribed by that court. A majority vote of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Commissioner of the General Land Office, Speaker of the House of Representatives, and President pro tempore of the Senate shall initiate such proceedings.

Origin

New provision.

Commentary

Section 5, preceding, deals with the disability of the Governor and Lieutenant Governor, and it is conceivable that the problem might also arise with regard to the other elected Executive Department officers. This section is designed to provide a method for resolving the issue of disability. The question of who can initiate disability proceedings presents a problem, and the various state constitutions have suggested a number of possibilities. Recognizing the danger which indiscrim-

inate or punitive action in raising the question of disability might have on the officer, this section requires that a majority of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Commissioner of the General Land Office, Speaker of the House, and President pro tempore of the Senate vote to initiate the question before the Supreme Court of the state.

Section 7. Compensation of Officers of Executive Department

The compensation of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, and Commissioner of the General Land Office shall

be as provided by law, not to exceed the amount recommended by the salary commission. The compensation of officers of the Executive Department shall not be diminished during their term of office. The Governor shall have the use of the Governor's Mansion.

Origin

Revises: Article III, Section 61 (1954);
Article IV, Section 5;
Article IV, Section 16;
Article IV, Section 17;
Article IV, Section 21;
Article IV, Section 22;
Article IV, Section 23.

Commentary

This section retains the compensation provisions of the 1876 Constitution but allows a salary commission to be implemented. Article X, Section 9 of the new constitution provides for the establishment of a salary commission. The Lieutenant Governor would receive compensation as a member of the Executive Department and not as a member of the Senate. The Salary

Commission recommends rates of compensation which may be approved by the Legislature. In setting the salaries the Legislature may not exceed the recommendations of the commission. The change in the salary provisions concerning the Lieutenant Governor was necessary due to the increased responsibility and time involved in performing the duties of the office.

Section 8. Dual Office Holding; Other Compensation

No officer of the Executive Department shall hold any other civil or corporate office or practice any profession; nor shall any such officer receive any salary, reward, or compensation from non-governmental sources.

Origin

Revises Article IV, Section 6.

Commentary

Section 8 was revised to include all officers of the Executive Department. A prohibition in the 1876 Constitution against holding military office was removed in

consideration of the number of citizens who are members of the reserve corps of the armed services.

Section 9. Commander-in-Chief; Calling Forth Militia

The Governor shall be Commander-in-Chief of the military forces of the State, except when they are called into actual service of the United States, and shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.

Origin

Revises Article IV, Section 7.

Commentary

The only change in this section from the 1876 Constitution was the deletion of the phrase "and protect the

frontier from hostile incursions by Indians or other predatory bands."

Section 10. Execution of Laws; Conduct of Business With Other States, The United States, and Foreign Nations

The Governor shall cause the laws to be faithfully executed and shall conduct, in person or in such manner as shall be provided by law, all intercourse and business of the State with other states, the United States, and foreign nations.

Origin

Revises Article IV, Section 10.

Commentary

This section includes the authority of the Governor to conduct the state's relations and business with foreign nations. The revised Section 10 gives constitutional status to actions which Governors have taken in recent

years to encourage social and economic ties with other countries. There is no other change from the predecessor section.

Section 11. Convening the Legislature in Special Session

The Governor may, on extraordinary occasions, convene the Legislature in special session, stating specifically the purpose and duration of the session.

Origin

Revises: Article III, Section 40;
Article IV, Section 8.

Commentary

Section 11 retains the Governor's authority to call the Legislature into special session when necessary and

provides that the Governor shall determine the subjects to be considered and the length of the session.

Section 12. Governor's Message

At the beginning of each legislative session the Governor shall, and at other times may, give the Legislature information on the condition of the State, and may recommend legislative action.

Origin

Rewords Article IV, Section 9, first sentence.

Commentary

Section 12 was reworded for clarity. The fiscal provisions of Article IV, Section 9 of the Constitution of

1876 have been relocated in Section 15 of this article.

Section 13. Action on Bills and Resolutions

(a) Every bill that passes both houses of the Legislature shall be presented to the Governor. The Governor may approve the bill by signing it in which event it shall become law and shall be filed with the Secretary of State. The Governor may veto the bill by returning it with objections to the house in which it originated. That house shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill passes that house by a two-thirds record vote of the membership, it shall be sent with the Governor's objections to the other house which shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill likewise passes that house by a two-thirds record vote of the membership, the bill shall become a law and shall be filed with the Secretary of State. If the Governor fails to veto a bill within ten days (Sundays excepted) after it is presented, the bill shall become a law and shall be filed with the Secretary of State. If the Legislature by its adjournment prevents a veto, the bill shall become a law and shall be filed with the

Secretary of State unless within twenty days after adjournment the Governor files the bill and objections with the Secretary of State and gives public notice thereof by proclamation. If the same Legislature meets again, the Secretary of State shall return the bill with the Governor's objections to the house in which the bill originated for reconsideration in the manner provided above.

(b) The Governor may veto or reduce any item of appropriation in a bill, except that no item consisting of an appropriation for the salary for a single office or position may be reduced. Portions of a bill not vetoed and the reduced amount of items shall become law. Items vetoed and the amount by which items are reduced together with the Governor's objections shall be returned to the house in which the bill originated for reconsideration in the manner provided in Subsection (a).

(c) All orders and resolutions requiring the concurrence of both houses of the Legislature, except those concerning adjournment and legislative rules and those proposing amendments to the Constitution or a referendum on incurring State debt, shall be presented to the Governor. If the Governor disapproves an order or resolution, it shall not become effective unless repassed in the manner provided for in Subsection (a).

Origin

Revises: Article IV, Section 14;
Article IV, Section 15.

Commentary

Section 13 retains the veto provision of the 1876 Constitution, including the line-item veto on appropriations. The requirement for the Legislature to override a veto has been standardized in both houses to a two-thirds record vote of the membership. This change was in response to the provision in Article IV, Section 14 of the Constitution of 1876 which required a record vote of two-thirds of members present and voting in the originating house while requiring a record vote of two-thirds of the membership in the second house.

This section also authorizes a reduction line-item veto except for a specific line-item appropriation for an individual salary. Recent appropriation practices, through the use of lump-sum appropriations, have rendered the existing line-item veto ineffective. The Governor must now decide either to veto a total aggregate appropriation because some portion is unacceptable or to retain the whole.

An example of the problem which has confronted the Governor in recent years is evident from a comparison between the Department of Agriculture appropriations for 1947 and 1971. In 1947 the amount appropriated to the Department of Agriculture for the fiscal year 1947-1948 was \$784,658. This appropriation contained 88 line items, any or all of which the Governor could veto. In 1971, the Legislature passed an appropriation for the Department of Agriculture for fiscal year 1971-1972 of \$7,926,528. There were only fourteen

line items. Item number 11 of the appropriation encompassed all the Department's major programs and was for the amount of \$2,837,925. The Governor's options were either to retain all the programs or to veto all of them.

Section 13 would allow post-adjournment veto of a bill or line-item veto or reduction of an appropriation bill to be reconsidered by the same Legislature in regular or special session without having to be reintroduced as a new bill. By eliminating the necessity of the procedural formalities of a new bill, this provision would provide a speedier method of dealing with post-adjournment vetoes. Under the Constitution of 1876, there have been 740 post-adjournment vetoes. With the increased chances of the Legislature to reconsider a vetoed bill, or a line-item or reduction veto, it is envisioned that the Legislature will be able to assert its will to a greater extent. However, this is not likely to occur often since the last veto to be overridden was in 1941.

Although the Governor's veto authority could possibly be used as a punitive measure, the Legislature will have received previous notice of the Governor's estimates through the budget bill. The Legislature also can pass appropriations with line items divided in sufficient detail to lessen the threat of a reduction veto to a lump sum appropriation.

Section 14. Chief Planning Officer

The Governor shall be the chief planning officer of the State and may require information in writing and reports from all State agencies and officers upon any subject relating to their duties, conditions, management, and expenditures.

Origin

Revises Article IV, Section 24.

Commentary

Section 14 recognizes the role of the Governor in planning for the coordinated operation of state government. The Governor now chairs several interagency planning councils in such diverse fields as health, transportation, and natural resources. He is also increasingly responsible for planning the state imple-

mentation of new federal programs, such as revenue sharing, which affect both state and local agencies. As a related matter, this section retains the provisions of Article IV, Section 24 of the Constitution of 1876 with regard to the Governor's authority to request and receive reports from governmental agencies.

Section 15. Budget Preparation

At the beginning of each session at which appropriations are to be made for the general operation of the government the Governor shall submit to the Legislature a budget for all proposed State expenditures for the applicable fiscal period, accompanied by an appropriation bill covering the proposed expenditures. This bill, to be known as the Budget Bill, shall be introduced immediately in each house by the respective chairmen of the committees on appropriations for consideration and passage as in the case of any other bill. Until the Budget Bill has been enacted, neither house shall finally pass any other appropriation bill, except emergency bills recommended by the Governor and appropriations for the operation of the Legislature.

Origin

New provision.

Commentary

Section 15 provides that budget preparation and submission of a budget bill are the duty of the Governor and that the Governor's recommended budget shall be introduced in each house of the Legislature for consideration. Texas is one of only four states where budget preparation is not conferred exclusively upon the Governor or an appointee of the Governor. In recent years, the budget preparation process has been divided between the Legislature and the Governor. Two different budgets are now submitted and considered. Since the Governor has the final decision on appropriations as passed by the Legislature, submission of a single budget by the Governor seems appropriate. Also, this procedure will supply a common initial budget bill to both houses of the Legislature as a single fiscal document from which each house can begin

review, hearings, committee amendment, and floor action.

This section does not eliminate the Legislative Budget Board and does not prevent either house from changing any portion of the budget bill. It will, however, ensure that the Legislature receives an indication of the Governor's budgetary wishes and require that the Governor's proposals be introduced and specifically considered.

This section also includes provisions against the passage of any special appropriations until the budget bill has been acted upon. The only exceptions are emergency appropriations requested by the Governor and appropriations for the operating expenses of the Legislature.

Section 16. Budget Execution

The Governor shall be responsible as provided by law for the proper execution and administration of the total State budget and shall require of all State governmental agencies such

expenditure plans, fiscal reports, and accounts as deemed necessary to supervise the expenditure of previously appropriated funds.

Origin

New provision.

Commentary

Section 16 is intended to settle any question of whether the Legislature can grant budget execution power to the Governor under the separation of powers doctrine. This is not a grant of authority to the Governor, but it allows the Legislature to grant such authority to

the Governor. Although a direct grant of authority was discussed as a possibility, the inability to determine what budget execution power might be necessary in the future was decisive in providing a flexible system.

Section 17. Administrative Reorganization

The Governor may from time to time submit to the Legislature written reorganization plans reassigning functions among or consolidating or abolishing any State governmental agencies. Within sixty days after submission or within sixty days after the Legislature can act as a deliberative body, whichever comes later, either house may reject a plan by resolution. Unless rejected the plan shall become effective by its terms.

Origin

New provision.

Commentary

The state's governmental operations are presently being administered by approximately 200 agencies, boards, and commissions. Many of these governmental agencies have overlapping or conflicting responsibilities. As a result of fragmentation, there are also areas where no agency seems to have a definitive jurisdiction. A major impediment to reorganization by the Legislature has been the lack of adequate time to study the problem in detail and the need to consider more pressing business of the state while in session.

The effect of this section would be to place a responsi-

bility with the Governor to review the structure of administrative agencies of government, determine a more effective division of responsibilities, and formulate specific reorganization plans for submission to the Legislature. Either house of the Legislature would retain the right to veto any plan within 60 days after submission or 60 days after the Legislature could act as a deliberative body, whichever came later. This legislative veto would ensure that the traditional checks and balances safeguard still exists.

Section 18. Reprieves, Commutations, and Pardons; Remission of Fines and Forfeitures

The Governor shall have power as provided by law to grant reprieves relating to the execution of death sentences, and to grant commutations, pardons, and the remission of fines and forfeitures.

Origin

Revises Article IV, Section 11

Commentary

Under Section 18 the Governor retains the authority to grant death sentence execution reprieves, and to grant commutation of sentences, pardons, and the remission

of fines and forfeitures, subject to relevant laws enacted by the Legislature. The Board of Pardons and Paroles is included in the Constitution of 1876 but is restricted

both as to membership and functions. In an effort to gain flexibility for an important function, the Board of Pardons and Paroles was not included in the revised section. The modifying clause, "as provided by law," would allow the Legislature to provide for a Board of Pardons and Paroles of the same or changed membership, and with similar or different duties.

There is no modification of the authority provided in the 1876 Constitution with regard to reprieves from

execution of death sentences. This section does, however, leave the issue of administrative reprieves for illness, holiday, or emergency leaves flexible so that the Legislature can provide for these as it deems necessary, rather than requiring in the constitution that a board and the Governor act on these questions.

If this provision is adopted, the Commission recommends to the Legislature that the membership of the Board of Pardons and Paroles be increased in number.

Section 19. Lieutenant Governor

The Lieutenant Governor shall possess the same qualifications as provided for the Governor. The qualified voters shall cast separate votes for the candidates for Governor and Lieutenant Governor. The Lieutenant Governor shall, by virtue of the office, be President of the Senate and when the Senate is equally divided may cast a deciding vote.

Origin

Revises Article IV, Section 16.

Commentary

Section 19 provides for the election of the Lieutenant Governor and stipulates that the Lieutenant Governor is to serve as President of the Senate. The gubernatorial

succession provision for the Lieutenant Governor is contained in Section 5 of this article.

Section 20. Secretary of State

The Secretary of State shall perform the duties required by this Constitution and such other duties as may be provided by law.

Origin

Revises Article IV, Section 21.

Commentary

Section 20 provides for a continuation of the constitutional office of Secretary of State. Provisions concerning the method of selection, compensation, and duty to

receive all bills passed by the Legislature are included, respectively, in Sections 2, 7, and 13 of this article.

Section 21. Attorney General

The Attorney General, except as expressly provided by law to the contrary, shall represent the State in all suits in which the State may be a party in all the courts of the State and of the United States, shall have all the powers of the office as at common law, and shall have such other duties as may be provided by law. The Attorney General must be qualified to practice before the Supreme Court of this State.

Origin

Revises Article IV, Section 22.

Commentary

Much of the language in Article IV, Section 22 of the Constitution of 1876 is statutory, especially the Attor-

ney General's detailed authority over corporations and charters. These provisions were not included in the re-

vised constitution, although they will be retained through existing statutes. The concept of the Attorney General having common law authority, that is, the inherent authority to protect the public interest through the courts, is a basic principle which should be included in the constitution. Common law powers have been recognized in various states to include among others: challenging the constitutionality of legislative or administrative actions; enforcing anti-trust laws; preventing air and water pollution; instituting quo warranto actions against public officers; and abating offenses against morality. The attorneys general in most states have some form of common law authority, and the Texas courts have peripherally indicated that the Tex-

as Attorney General is no exception. The provision that the Legislature can remove or modify common law power would check any abuses which might arise.

The authority of the Attorney General to represent the state in both state and federal courts is derived from the 1876 Constitution, state law, and actual practice. This authority could be modified by the Legislature. The requirement that the Attorney General be an attorney licensed to practice in the state was included to ensure that the person holding the office be qualified to appear in court and have a knowledge of the law.

Section 22. Comptroller of Public Accounts

The Comptroller of Public Accounts shall perform the duties required by this Constitution and such other duties as may be provided by law.

Origin

Revises Article IV, Section 23.

Commentary

The only constitutional duty of the Comptroller of Public Accounts in the new constitution is the certification of appropriation bills as within the revenue available for the fiscal period. This appears in Article VIII, Section 6(c). Several alternatives were discussed in relation to this important function. The alternative considered most seriously was the creation of an office of Auditor which would be filled by a certified public accountant appointed by a committee of the Governor, Speaker of the House, and Chief Justice of the Supreme Court for an eight-year term. This officer would certify the availability of funds and perform additional constitutional duties of post audits and performance audits.

Provision for a constitutional officer who performs post audits and performance audits has found increasing favor as the business of government becomes of major financial proportions. As more money is collected and disbursed, the need to ensure careful and prudent spending of these funds increases. Many believe that the constitution should provide for management of the fiscal affairs of the state, especially in the

areas of post and performance audits. By this reasoning, constitutional status for the Auditor would provide guidance for fiscal responsibility in government.

After consideration, the Auditor concept was rejected. Several reasons were important, among them being the thought that an appointed officer would be less independent than an elected officer. Further, this provision would have replaced one constitutional office with another while retaining the first as a statutory office. Also, the constitutional definition of duties would have denied flexibility to that office.

Because of the problems enumerated, the Commission decided to retain the Comptroller as a constitutional elected officer and allow maximum flexibility by requiring that the only constitutional duty be the certification of appropriation bills. This would allow the Legislature to place the fiscal management of the government in such office or offices as deemed necessary to secure the best fiscal policies for the state and to change these as needs evolve.

Section 23. General Land Office

There shall be one General Land Office in the State at the seat of government, where all land titles emanating from the State shall be registered. The Commissioner of the General Land Office shall perform the duties required by this Constitution and such other duties as may be provided by law.

Origin

Revises: Article IV, Section 23;
Article XIV, Section 1.

Commentary

The provision for a General Land Office in the constitution reflects the importance of that office due to its responsibility for public lands and the potential for

environmental work. The Commissioner of the General Land Office is designated as an officer of the Executive Department by Section 1 of this article.

Section 24. Vacancies in Statewide Offices

Unless otherwise provided by this Constitution, all vacancies in elective statewide offices shall be filled by appointment of the Governor with the advice and consent of the Senate. An appointee shall serve for the remainder of the term unless the vacancy occurs within sixteen months after the elected officer assumed office, in which event the appointee shall serve only until a successor elected at the next general election assumes office for the remainder of the unexpired term.

Origin

Revises Article IV, Section 12.

Commentary

Section 24 provides for the filling of vacancies in statewide elective offices through appointment by the Governor with the advice and consent of the Senate. The vacancy provision for elective district offices has been dealt with in the Local Government and Judiciary Articles of the new constitution. The only district offices not covered by either the Local Government or Judiciary Articles are those of the State Board of Education, which are provided for by statute.

This section brings the filling of vacancies in elective statewide offices into conformity with the succession provisions to the governorship, as found in Section 5 of this article. An appointee to a vacancy within sixteen

months after an elected officer assumes office serves only until another officer, elected at the following general election, assumes office for the remainder of the unexpired term. The rationale for this decision was that the people should retain their right to elect a replacement as soon as possible, consistent with the schedule of the election process and the requirements for a campaign. The provision is sufficiently flexible to provide for filling vacancies in elected offices for terms which are neither four nor six years.

Procedures for filling vacancies in appointive offices, other than those with constitutional status such as the Secretary of State, are now provided by statute.

Section 25. State Agencies

(a) The length of the term of members appointed by the Governor to State governmental agencies created by statute and with a life of not less than six years shall be two years, unless the number of appointed members is three or a whole multiple thereof in which case the length of the term shall be six years. Two-year terms shall expire between February 1 and April 1 of odd-numbered years. In the case of agencies with members who serve six-year terms, the terms of the members appointed by the Governor shall be staggered. The terms of one-third of such members shall expire between February 1 and April 1 of odd-numbered years.

(b) At the time of appointing members of multi-member agencies with six-year terms, the Governor may designate the chairman. If the Governor fails to designate a chairman prior to April 1, the members of an agency shall choose the chairman from among its membership.

Origin

Revises Article XVI, Section 30a.

Commentary

The term "state governmental agencies" as used in this constitution means all agencies, boards, commissions, departments and any other executive or administrative agency of government. The governing boards of state governmental agencies of Texas consist primarily of citizen members appointed by the Governor or some other officer of the state. Most of these agencies have a membership of a multiple of three who serve staggered six-year terms. The six-year staggered terms have created a continuity and stability which many consider very desirable. However, a difficulty has developed with the evolution of this system due to the relative independence of agency members from the Governor and the Legislature. In some cases, a new Governor is unable to appoint any member to a state agency until long after assuming office. As a result, the Governor can experience difficulty in implementing campaign promises to the electorate.

In an attempt to provide a Governor more capability in directing the affairs of state government, this section standardizes the terms of office in such a manner that the terms of one-third of the appointed members of any state governmental agency appointed by the Governor and composed of a multiple of three would expire within three months after a Governor takes office. This section also provides that the Governor can

designate a chairman of the agency within the same period. If the Governor fails to designate the chairman, the agency members could select one.

Further, Section 25 provides that the terms of all members of state governmental agencies appointed by the Governor and not composed of a multiple of three shall be for two years and shall expire within the same two month period. This provision would ensure that a Governor's views are represented on all agencies including those whose membership are not composed of a multiple of three. None of these provisions would apply to any temporary agency which is in existence less than six years.

Several alternatives were considered in relation to constitutional provisions concerning state agencies. A suggestion that the Governor be allowed to appoint all the members of governing boards of state agencies was considered but rejected as it might adversely affect the continuity and stability of the operations. Another alternative considered was to allow the Governor to name the executive directors. This was viewed as an invasion of the prerogatives of the board members of the agency and as a threat to the job security of the staff. Granting the Governor greater removal power over board members was discussed and was rejected as leading to uncertainty throughout the agency.

Section 26. Seal of State and Commissions

There shall be a Seal of the State which shall be kept by the Secretary of State and used by that officer officially under the direction of the Governor. The Seal of the State shall be a star of five points encircled by olive and live oak branches and the words "The State of Texas." All commissions shall be in the name and by the authority of the State of Texas, sealed with the Seal of the State, signed by the Governor, and attested by the Secretary of State.

Origin

Rewords: Article IV, Section 19;
Article IV, Section 20.

Commentary

Section 26 was reworded only for clarity.

Article V

The Judiciary



Article V

The Judiciary

Section 1. Unified Judicial System

The judicial power of the State is vested in the Judicial Branch. The State unified judicial system shall be composed of a Supreme Court, courts of appeals, district courts, and county courts. No other courts shall be created except municipal courts, as provided by law or charter, and justice courts. All courts shall have jurisdiction as provided by law, but jurisdiction of courts of the same level shall be uniform throughout the State.

Origin

Revises Article V, Section 1.

Commentary

Section 1 describes the composition of the state unified judicial system, eliminates the Legislature's prerogative in Section 1 of the Constitution of 1876 to create other courts, and authorizes the Legislature to establish the jurisdiction of all courts.

Several courts are merged into the unified judicial system under this provision. On the appellate level, the Court of Criminal Appeals is merged with the Supreme Court and the courts of civil appeals are merged into the courts of appeals. On the trial level, criminal district courts, domestic relations courts, juvenile courts, county courts at law, county criminal courts at law, county criminal courts of appeal, county civil courts at law, and probate courts are merged into the district and county courts. Under this provision all courts shall have jurisdiction as provided by law.

Merging the Court of Criminal Appeals and the Supreme Court and designating the intermediate appellate court: the courts of appeals is designed to help alleviate the congested docket of criminal cases. Under this provision, appeals of criminal cases can be made to the intermediate level where there are more judges available to expedite appeals of criminal cases. It now takes approximately two years before a conviction is upheld or reversed because there is an absolute right to appeal guilty verdicts to the court of final resort in criminal cases. The Court of Criminal Appeals consists of only five judges and two commissioners.

Texas is one of only two states which has a special court of final resort for civil cases and another for criminal cases. This provision eliminates that specialization

and moves Texas in line with the other forty-eight states.

Vesting criminal jurisdiction in the intermediate courts will increase their caseload beyond its present level, but some of the intermediate courts which have light caseloads will welcome the increased workload. Moreover, subsequent sections of this article provide means of assisting any overburdened court. Proposed Section 2(b) permits the Supreme Court to transfer cases from one court of appeals to another, and proposed Sections 3 and 12(c) permit assignment of additional judges to the intermediate courts on either a permanent or temporary basis.

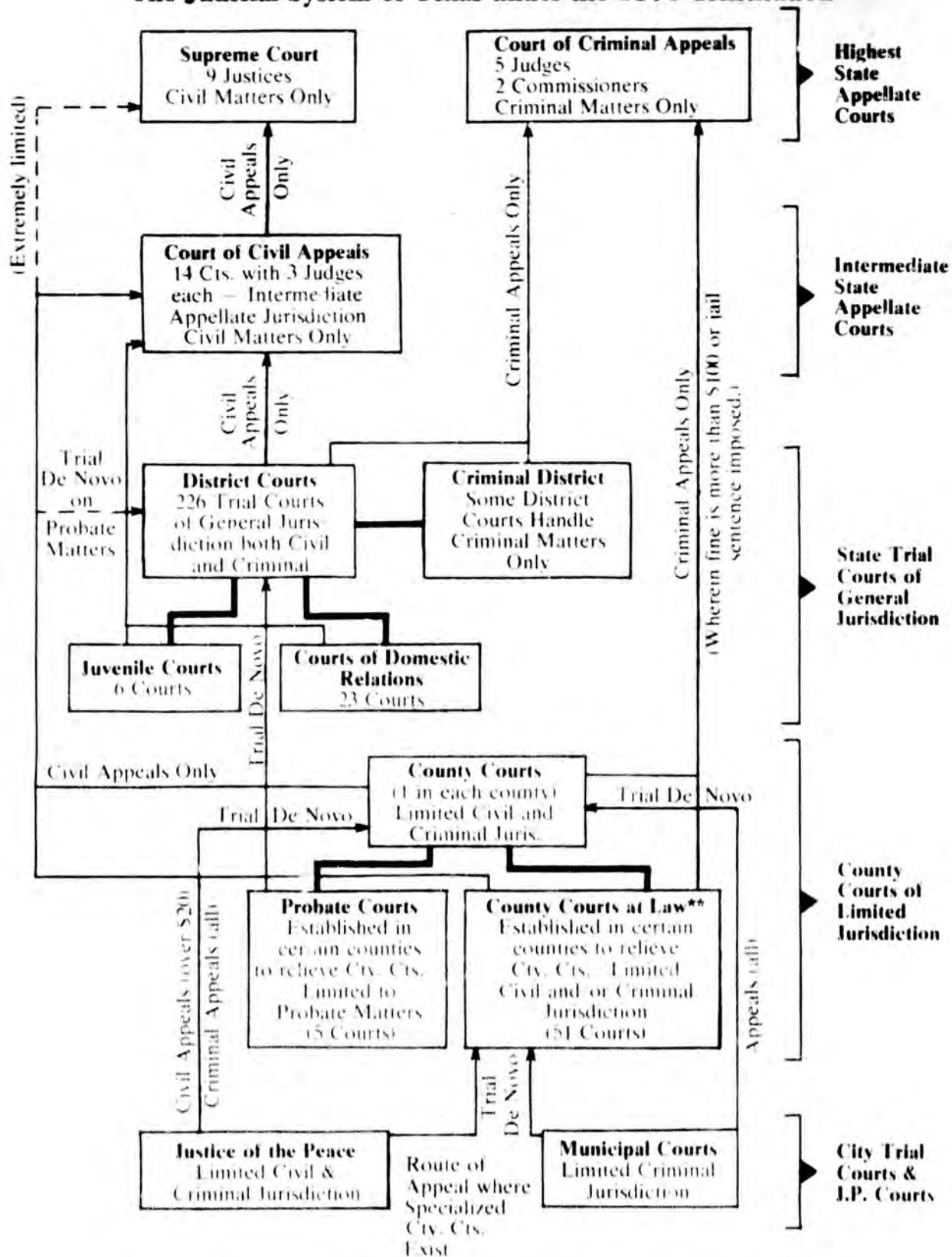
As part of the plan to unify the judicial system, proposed Section 1 removes the Legislature's prerogative to create courts other than those listed in the constitution. Under the power granted to the Legislature in Article V, Section 1 of the Constitution of 1876, the Legislature has created many courts, each having jurisdiction over a specialized area, and each having overlapping jurisdiction with the constitutional courts. As a result, Texas court system has burgeoned into an inefficient and cumbersome arrangement. The objective of this proposed revision is to streamline the court system and make greater efficiency possible.

The justice and municipal courts are not included in the unified judicial system, although this provision does retain their identities. The county commissions will provide for the justice courts, and the governing bodies of towns and cities will provide for municipal courts.

Section 2. Supreme Court

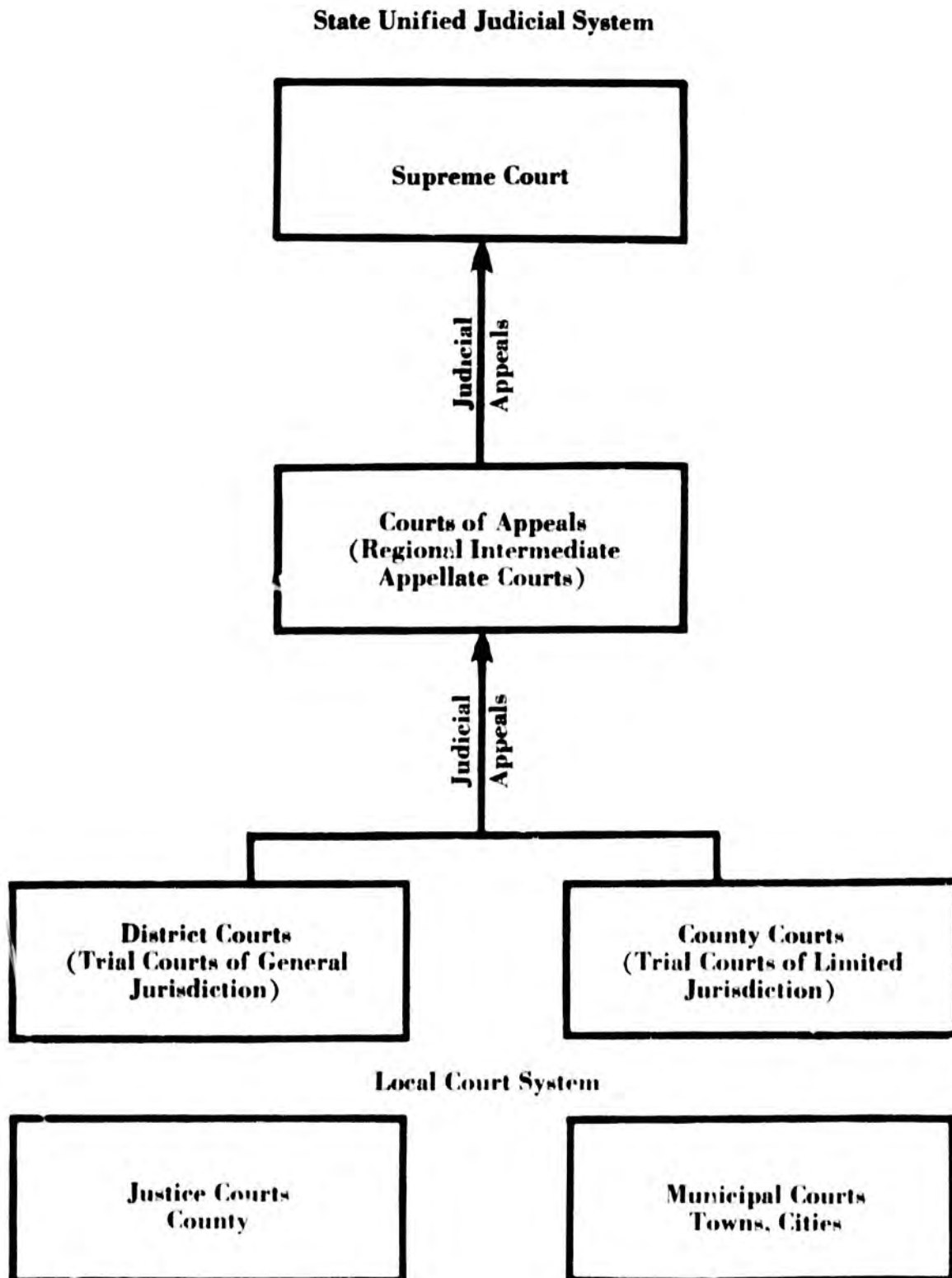
(a) The Supreme Court shall be the highest court of the State and shall consist of the Chief Justice of Texas and at least eight other justices. The court may sit in sections as designated

Figure 4.1
The Judicial System of Texas under the 1876 Constitution



**Some Counties have separate civil & criminal County Courts at Law. (34 County Courts at Law, 10 County Criminal Courts at Law, 3 County Civil Courts at Law, 1 County Criminal Court of Appeal, 2 "County Courts")

Figure 4.2
Proposed Judicial System
of Texas



by the court to hear argument of cases and to consider applications for writs of error or other preliminary matters, but a majority of the court shall be necessary to decide a case.

(b) The Supreme Court shall have the duty and authority to provide for the efficient and just operation of the judicial system. It may transfer cases from a trial court to a court of appeals or to the Supreme Court, and from one court of appeals to another or to the Supreme Court.

(c) The Supreme Court shall have authority to prescribe rules of civil and criminal procedure, but any rule of procedure expressly disapproved by the Legislature shall have no effect thereafter. The Supreme Court may prescribe other rules as provided by law.

Origin

- (a) Revises Article V, Section 2.
- (b) New provision.
- (c) Revises Article V, Section 25.

Commentary

Subsection (a) carries forward the basic provisions of Article V, Section 2 of the Constitution of 1876. The Supreme Court should be the highest court of the state, and it should be able to sit in sections when the business of the Court requires it to do so. Under this provision, the number of justices is no longer set at nine. It can be enlarged to any number necessary to conduct its business. With the added criminal jurisdiction, the business of the Court may require more than nine justices. Under proposed Section 8 of this article, Supreme Court justices will serve six-year terms and will be selected under the merit plan.

Subsection (b) requires the Supreme Court to provide for the just and efficient operation of the judicial system. This is a new provision. Its purpose is to enable the Supreme Court to promulgate uniform rules and procedures and establish clear lines of administrative authority.

Subsection (b) also gives the Supreme Court the authority to transfer cases horizontally between courts of appeals and vertically from a trial or appellate court to a superior court. Horizontal transfer of cases between courts of appeals is presently done by the Supreme Court to equalize the dockets of the intermediate appellate courts. Vertical transfer of cases from a trial or appellate court to a superior court is a new provision added to expedite appeal of a case affected

with such public interest that it should be given immediate attention by an appellate court.

Subsection (c) gives the Supreme Court authority to prescribe rules of civil and criminal procedure, but any rule of procedure expressly disapproved by the Legislature shall have no effect thereafter. This provision revises Article V, Section 25 of the 1876 Constitution by placing the principal responsibility for establishing rules of procedure in the Supreme Court. Under the present constitution, the Legislature and the Supreme Court share that responsibility, although the Legislature ceded its rule-making power in *civil* procedure to the Supreme Court in 1939. See TEX. REV. CIV. STAT. ANN. art. 1731a.

The Commission feels that vesting the rule-making authority principally in the Supreme Court promotes the concept of the unified court system; that is, it allows the Supreme Court to provide for the efficient operation of the judicial system. The Legislature has already acquiesced in the area of civil procedure, and, with the merger of the two highest courts, the Supreme Court ought to have the same responsibility for establishing rules of criminal procedure. See TEX. CODE CRIM. PROC. ANN. sections 1, et seq.

Section 2(c) also gives the Supreme Court authority to prescribe other rules such as rules pertaining to the right to practice law in this state.

Section 3. Courts of Appeals

The Legislature shall provide by law for one or more courts of appeals, each consisting of a chief judge and two other judges, and such additional judges as may be provided by law. Not fewer than three judges shall sit in any case.

Origin

Revises Article V, Section 6.

Commentary

This provision deletes the specialization inherent in the name "courts of civil appeals" and makes it possible for the intermediate appellate court to review appeals of both civil and criminal cases. It also permits the Legislature to increase the membership of the in-

termediate courts to handle the increased workload such courts may have. Under Section 8 of this article, judges of the courts of appeals will serve six-year terms and will be selected under the merit plan.

Section 4. District Courts

The State shall be divided by law, or by an agency acting under authority of law, into geographical judicial districts. In each district there shall be one district court with one or more district judges and such other officials as provided in this Article or by law.

Origin

Revises Article V, Section 7.

Commentary

Article V, Section 7 of the Constitution of 1876 does not permit more than one person to sit as a judge of a district court. This revision allows the Legislature to assign as many judges to a district court as the workload warrants so that a district court need not be created every time another judge is needed in a certain area of the state.

Under Section 8 of this article, district judges will

serve six-year terms and will be elected on a non-partisan ballot. Section 4 authorizes the Legislature to staff district courts with "such other officials as provided in this article or by law." This provision allows the Legislature to provide for such court support personnel as associate judges, marriage counselors, or other professional personnel.

Section 5. County Courts

The Legislature shall provide by law for county courts. A county court may serve one or more counties, but no county shall have more than one county court. Each county court shall have one or more judges and such other officials as provided by law.

Origin

Revises Article V, Section 15.

Commentary

There are now 254 county courts and 254 county judges. Under Article V, Section 15 of the Constitution of 1876, each county is entitled to a county court, but only one judge may sit on the court. Section 5 provides some flexibility in the structure and composition of the county courts by allowing one county court to serve more than one county. This is particularly important in view of Section 7 of this article which requires judges of county courts to be licensed to practice law. In some sparsely populated counties lawyers are not available to serve as judges and neither is there sufficient judicial business to warrant having a court in those counties. This provision allows more than one judge to sit on a county court so that a county court

serving a county or several counties will have the judicial personnel needed to transact any judicial business.

Under Section 8 of this article, judges of county courts serve four-year terms and are elected on a nonpartisan ballot. Article IX, Section 3 of the new constitution also provides for a separate county judge who serves as presiding officer of the county commission.

Section 5 provides that each county court shall have "such other officials as provided by law." The Legislature can provide such court personnel as associate judges or magistrates, probation officers, marriage counselors, or other professional personnel.

Section 6. Justice Courts

The governing body of each county shall establish and maintain one or more justice courts and, if more than one, shall divide the county into justice precincts and provide a justice court for each precinct.

Origin

Revises Article V, Section 18.

Commentary

It was mentioned in the commentary to Section 1 of this article that the justice courts are not included in the unified judicial system but that they are retained as part of the court system.

The Commission feels that it is important to retain the justice courts because they are a place where neighborhood problems can be resolved without formal legal procedure or the intervention of a lawyer. This provision maintains the concept of the "people's court" but allows the county commission or the governing body of each county to provide for as many justice courts as are needed in the county.

The justice court dates back to the early history of the

state. Although consideration was given to including such courts in the unified judicial system, it seemed desirable to maintain their separate status because of their unique function. In Article IX of the new constitution, Section 4 entitles counties to enact ordinances under certain conditions. The justice courts may be given criminal jurisdiction over violations of county ordinances and such other jurisdiction as the Legislature may provide.

Justices of the peace will be elected according to general law. Under present law, justices are elected on a partisan ballot for four-year terms.

Section 7. Qualifications of Judges

Each justice or judge shall be a citizen of this State and shall have such other qualifications as provided by law. Each justice and judge in the unified judicial system must be licensed to practice law in this State.

Origin

Revises: Article V, Section 2;
Article V, Section 6;
Article V, Section 7;
Article V, Section 15.

Commentary

The requirements in Section 7 are very general compared to the specific provisions of the 1876 Constitution. This provision permits the Legislature to prescribe qualifications consonant with changes in society. Both the 1876 Constitution and proposed Section 7 are silent on the qualifications of justices of the peace and judges of municipal courts.

Article V, Section 15 of the 1876 Constitution does not require that judges of county courts be licensed to practice law; they need only be "well informed in the

law." Section 7 requires that each justice and judge be a licensed attorney; therefore, non-lawyer county judges now elected pursuant to Article V, Section 15 of the 1876 Constitution are ineligible to perform judicial duties under Section 7. However, there is no intention to eliminate the executive function of the county judge, for this provision does not prevent the non-lawyer county judge from performing administrative tasks as presiding judge of the county commission.

Section 8. Merit Selection and Nonpartisan Election

(a) There is hereby created a Judicial Nominating Commission of eleven members, a majority of whom shall be non-lawyers. The Governor, Lieutenant Governor, and Speaker of

the House of Representatives acting together shall select the members of the Judicial Nominating Commission and designate the chairman. The selection of the members shall be on a nonpartisan basis with due regard to representation of the sexes, ethnic groups, and geographical regions of the State.

(b) Members of the commission shall serve six-year terms, and no person shall serve more than one full term. Vacancies shall be filled by the selection committee for the remainder of the term.

(c) No member of the commission shall hold an elective or salaried public office or office in a political party, or shall be eligible for appointment to a State judicial office during the term for which appointed.

(d) When a vacancy occurs in the office of the Chief Justice of Texas, a supreme court justice, or a court of appeals judge, the vacancy shall be filled by the Governor from a list of three nominees submitted by the commission within forty-five days after the vacancy occurs. In selecting nominees, the commission shall consider only those who are well qualified from experience and knowledge of the law, but, among those so qualified, shall give fair consideration to the sexes, ethnic groups, and geographical regions of the State. If the Governor fails to make the appointment within sixty days after receiving the list of nominees, the Lieutenant Governor shall make the appointment from the list. A justice or judge appointed pursuant to this Subsection shall be subject, in the manner provided by law, to approval or rejection on a nonpartisan ballot at the first general election held more than ten months after the appointment is made, and every sixth year thereafter.

(e) If the Supreme Court determines that the Chief Justice is temporarily disabled, it shall designate another justice of the Supreme Court to serve temporarily as acting Chief Justice until the disability ends.

(f) District and county judges shall be elected on a nonpartisan ballot by the qualified voters as provided by law. Judges of the district courts shall serve six-year terms, and judges of the county courts shall serve four-year terms. Vacancies in the office of judge of the district and county courts shall be filled until the next succeeding general election by the Governor with the advice and consent of the Senate

(g) Justices of the peace shall be elected every four years by the qualified voters of the county or precinct. Vacancies in the office shall be filled by the County Commission for the remainder of the term.

(h) No active justice or judge in the unified judicial system may engage in the practice of law. If any justice or judge files as a candidate for any elective nonjudicial office, the judicial office shall immediately become vacant.

Origin

(a) New provision.

(b) New provision.

(c) New provision.

(d) Revises: Article V, Section 2;
Article V, Section 6;
Article V, Section 28.

(e) New provision.

(f) Revises: Article V, Section 7;
Article V, Section 15;
Article V, Section 28.

(g) Revises: Article V, Section 18;

Article V, Section 28.

(h) New provision.

Commentary

Subsections (a), (b), and (c) are new provisions. They provide for the creation of an eleven member Judicial Nominating Commission the members of which serve six-year terms. A majority of the members must be non-lawyers, and no member may hold any other public office while a member of the commission. The commission is created to submit lists of nominees to the Governor when a vacancy occurs on the Supreme Court or the courts of appeals. The Governor, Lieutenant Governor, and Speaker of the House, acting together, are responsible for appointing the members of the commission and designating the chairman thereof. Selection of the members is to be on a nonpartisan basis with due regard to representation of the sexes, ethnic groups, and geographical regions of the state.

Subsection (d) revises the method of filling vacancies on the appellate courts. When a vacancy occurs on the Supreme Court or on the courts of appeals, the Governor fills the vacancy from a list of three nominees submitted by the Judicial Nominating Commission. In selecting nominees to be submitted to the Governor, the commission considers only those well qualified from experience and knowledge of the law, with due consideration to representation of the sexes, different ethnic groups, and different geographical regions of the state. A justice or judge appointed in this manner is subject to approval or rejection on a nonpartisan ballot at the first general election held more than ten months after the appointment is made and every sixth year thereafter. The question on the ballot is usually phrased: "Shall Justice (Judge) _____ of the Supreme Court (Court of Appeals) be retained in office? Yes/...../No/...../."

The nominative-appointive method for filling vacancies and voter approval or rejection of the appointee's judicial record in succeeding elections, as described in the preceding paragraph, constitute the merit plan for the selection of judges. The Commission regards the merit plan of selecting judges as preferable to the present partisan election method because of the shortcomings inherent in partisan elections, namely: (1) judges must neglect their judicial duties and demean their judicial office by actively soliciting support, both financial and political, for election and re-election; (2) many of the persons best qualified to serve as judges are unwilling to undergo the pressures, expense, and uncertainties of election campaigns and, thus, the public is sometimes deprived of the best judicial personnel available; (3) the danger exists that judges may be elected, not on the

basis of their qualifications, but on the basis of unrelated issues or popular political name; (4) political obligations may dissipate judicial independence and influence decisions in particular cases; and (5) the general public is rarely well informed of a judicial candidate's qualifications and many citizens find it undesirable to vote under such conditions.

The objectives of any method of selection should be to obtain judges possessed of qualities that will lead to the highest performance of their judicial duties. Merit selection comes closer to achieving that objective than any other method.

Subsection (e) is a new provision. It permits the Supreme Court to designate another of its members to serve temporarily as Chief Justice if the Court determines that the Chief Justice is temporarily disabled. In that way the duties of the office of the Chief Justice will continue to be carried out until an appointment is made to fill the vacancy.

Subsection (f) revises Article V, Sections 7, 15, and 28 of the Constitution of 1876. It increases the term of district judges from four to six years to give that office more independence. The term of county judges remains at four years, but the judges of district and county courts are elected on a nonpartisan ballot. This provision does not apply to county judges who preside over the county commission. Subsection (f) also retains the method of filling vacancies which occur on the district and county courts. The Governor fills the vacancy with the advice and consent of the Senate until the next succeeding general election.

Subsection (g) carries forward the same provisions of Article V, Sections 18 and 28 of the 1876 Constitution. It provides a four-year term for justices of the peace and directs the county commission to fill any vacancy on the justice court for the remainder of the unexpired term. The present provisions for election and for the qualifications of justices of the peace are not altered by this section. The terms of municipal court judges and their method of selection are left to general law and the governing bodies of cities and towns.

Subsection (h) is a new provision. It prohibits any active justice or judge in the unified judicial system from engaging in the practice of law. It also declares an automatic vacancy in the office of any justice or judge who files as a candidate for an elective nonjudicial office. The purpose of this new provision is to prevent possible conflict of interest and diminution of judicial performance.

Alternative Submission

Section 8. Nonpartisan Election of Appellate Judges

(a) The Chief Justice and justices of the Supreme Court shall be elected by the qualified voters of this State every six years on a nonpartisan ballot in the manner provided by law. Judges of the courts of appeals shall be elected by the qualified voters of their respective districts every six years on a nonpartisan ballot in the manner provided by law.

(b) Vacancies in the offices of justices and judges of the Supreme Court and the courts of appeals shall be filled until the next succeeding nonpartisan election by the Governor with the advice and consent of the Senate.

Origin

- (a) Revises: Article V, Section 2;
Article V, Section 6.
- (b) Revises: Article V, Section 28.

Commentary

The Commission voted its preference for the merit plan for selecting appellate judges but believes this alternative for nonpartisan election should be submitted to the voters separately. The Commission considered partisan election as a third method for selecting judges. How-

ever, that suggestion was rejected because the Commission feels that the qualifications of the candidate, rather than partisanship, should determine the success or failure of a judicial candidate.

Section 9. Compensation

The State shall pay the basic salaries of all justices and judges of the unified judicial system, subject to any supplementation by counties, and shall pay such other expenses of the system as provided by law. The salaries of such justices and judges shall not exceed the amount recommended by the salary commission. Funds collected by the courts may not be used to support the unified judicial system except to the extent of reimbursement of salaries and other expenses.

Origin

- Revises: Article V, Section 2;
Article V, Section 6;
Article V, Section 7;
Article V, Section 15.

Commentary

Section 9 requires the state to pay the salaries and expenses of the unified judicial system including the salaries and expenses attributable to the county court. The salaries of judges, as well as the salaries of the clerks, reporters, and other supporting personnel assigned to the courts in the unified judicial system, are to be paid by the state. Expenses attributable to the justice and municipal courts are excluded from this provision.

Some of the urban counties supplement the salaries of local judges. This provision permits the continuation of

that practice. There is no intention to discourage supplementation of the basic salary paid by the state.

The last sentence in Section 9 limits the Legislature's right to use fines collected in the district and county courts. The Legislature may use the funds only to reimburse the state for the costs of maintaining the district and county courts. It is intended that any funds remaining after the state has been reimbursed will be appropriated to the county.

Section 10. Mandatory Retirement of Judges

The office of each justice and judge in the unified judicial system shall become vacant on the first day of January of the year following the date on which the incumbent reaches the age of seventy-five years or an earlier age, not less than seventy years, as provided by law.

Origin

Revises Article V, Section 1a.

Commentary

Section 10 carries forward the mandatory retirement provisions for justices and judges contained in Article V, Section 1a of the Constitution of 1876. This section applies only to justices and judges in the unified court system and does not affect county judges who preside

over the county commission, justices of the peace, or municipal court judges. Retired judges may be temporarily assigned to various courts as provided by Section 12(c) of this article.

Section 11. Removal of Judges

(a) Any justice of the Supreme Court shall be removed by the Governor, after a hearing by the Legislature and a vote by two-thirds of the membership of each house, for willful neglect of duty, incompetency, oppression in office, or other reasonable cause not a sufficient ground for impeachment.

(b) Any justice, judge, or other judicial officer may be removed from office, suspended, or censured by the Supreme Court for willful or persistent conduct which is clearly inconsistent with the proper performance of duties of the office, or which casts public discredit upon the judiciary or the administration of justice, and may be involuntarily retired or removed by the Supreme Court for disability seriously interfering with the performance of duties of the office if the disability is, or is likely to become, permanent.

(c) The Legislature shall establish by law a Judicial Qualifications Commission which shall operate under rules promulgated by the Supreme Court. The commission shall have authority to issue an order of public censure and to recommend to the Supreme Court suspension, removal, or retirement of any justice, judge, or other judicial officer.

Origin

(a) Revises Article XV, Section 8.

(b) Revises: Article V, Section 1a;
Article XV, Section 6.

(c) Revises Article V, Section 1a.

Commentary

Subsection (a) carries forward the provision of Article XV, Section 8 of the 1876 Constitution which authorizes the removal of judges for causes that are not sufficient grounds for impeachment. The process has been historically referred to as "address." It takes an affirmative vote of two-thirds of the membership of the Legislature to remove a justice or judge before the Governor is obligated to remove that justice or judge. Subsection (a) requires the Legislature to conduct a hearing on the charges to guarantee the accused due process of law.

Subsection (b) combines the removal provisions of Article V, Section 1a and Article XV, Section 6 of the 1876 Constitution. The Supreme Court may remove from office any justice or judge for willful or persistent conduct which is clearly inconsistent with proper performance of the duties of the office or which casts public discredit upon the judiciary or the administration of justice. The Supreme Court's authority is not dependent on the oath of ten lawyers as provided in Article XV, Section 6 of the 1876 Constitution.

The Supreme Court may also involuntarily retire or remove a justice for disability seriously interfering with the performance of the office. This authority is presently vested in the Supreme Court by Article V, Section 1a of the 1876 Constitution.

Subsection (c) commands the Legislature to establish a Judicial Qualifications Commission with the authority to issue an order of public censure and to recommend to the Supreme Court suspension, removal, or retirement of any justice, judge, or other judicial officer. This provision revises Article V, Section 1a of the 1876 Constitution in the sense that much of the detail concerning the composition and operation of the Judicial Qualifications Commission is omitted.

The Constitution of 1876 provides for two additional methods for removing justices and judges. Article XV,

Section 2 provides that judges of the Supreme Court, courts of appeals, and district courts are subject to removal by impeachment proceedings. This method of removal is incorporated in the new Legislative Article; however, only justices of the Supreme Court are subject to removal by impeachment proceedings in the new article. The other method is provided in Article V, Section 24 of the 1876 Constitution. It provides for removal of county judges by district judges upon a jury verdict based on charges of incompetency, official misconduct, habitual drunkenness, or other causes defined by law. This method was not adopted since judges of county courts are subject to removal by the Governor and the Supreme Court pursuant to Section 11(a) and (b).

Section 12. Judicial Council

(a) There is hereby created a Judicial Council which shall consist of the Chief Justice of Texas as chairman and the following members, each of whom shall serve a two-year term: two judges of the courts of appeals, three trial judges, one district clerk, and one county clerk, each appointed by the Supreme Court of Texas; four members of the State Bar appointed by its board of directors; and two members of each house of the Legislature appointed by each house. Vacancies shall be filled by the appointing authority for the remainder of the term.

(b) The council shall prescribe rules of administration for the unified judicial system and shall perform other duties as provided by law. Rules of administration shall not become effective until approved by the Supreme Court.

(c) Pursuant to rules of administration prescribed by the council, the Chief Justice may delegate administrative powers to active or retired judges, and temporarily assign a judge to any court of the same level and from a court of appeals to the Supreme Court. By such assignments, the membership of any court may be temporarily increased. The council shall also prescribe rules for filling vacancies temporarily for the purposes of trying cases and hearing appeals. If for any reason a judge feels aggrieved by any administrative action of the Chief Justice, the judge may petition the Supreme Court for review of such action.

Origin

New provision.

Commentary

Section 12 is a new provision designed to provide central management in the judicial system. This management authority is different from the rule-making power of the Supreme Court pertaining to procedural and substantive rules which affect the handling of cases.

Responsibilities of the Judicial Council pertain to administrative rules or guidelines such as assignment of judges, description of the duties of court support per-

sonnel, and preparation of a budget for the judicial system. These are the housekeeping items which an independent branch of the government should have the inherent right to provide.

The chief administrator is the Chief Justice of Texas. Pursuant to rules of administration prescribed by the Judicial Council and approved by the Supreme Court, the Chief Justice may delegate administrative powers

to active or retired judges and temporarily assign a judge to any court of the same level and from a court of appeals to the Supreme Court.

This provision does not interfere with the independence of a judge to make judicial decisions. Judicial de-

cisions must be independent and unbiased. On the other hand, judicial independence should not be confused with administrative independence. Any organization of substantial size should have central administration.

Section 13. Clerks

(a) The Supreme Court and each court of appeals shall appoint a clerk who shall serve for a term of four years unless sooner removed by the court for good cause entered on the minutes of the court. These clerks shall give bond as required by law.

(b) District courts may remove their district clerks from office upon a jury finding of incompetence, official misconduct, or other causes defined by law.

Origin

(a) Rewords: Article V, Section 3;
Article V, Section 6.

(b) Rewords Article V, Section 24.

Commentary

Section 13 carries forward the provisions of the 1876 Constitution concerning the appointment and removal of clerks of the appellate courts and removal of clerks

of the district courts without change. Provisions for the district and county clerks are contained in Article IX, Section 3 of the new constitution.

Section 14. Juries

(a) Grand juries in the district courts shall consist of twelve persons, nine of whom shall constitute a quorum.

(b) Trial juries in the district courts shall consist of twelve persons and verdicts shall be unanimous, except that the Legislature or the Supreme Court pursuant to its rule-making power may provide that a verdict may be rendered in civil and misdemeanor cases in the district courts by fewer than twelve but not fewer than nine who shall concur in and sign the verdict.

(c) Trial juries in county courts shall consist of six persons and verdicts shall be unanimous, except that the Legislature or the Supreme Court pursuant to its rule-making power may provide that in civil cases a verdict may be rendered by fewer than six jurors.

(d) The qualifications of grand jurors and trial jurors shall be as provided by law.

(e) Any party shall have a right of trial by jury in civil causes in the district and county courts upon demand as provided by law or rule of the Supreme Court. A jury shall not be empaneled in any cause until a jury fee is paid if required by law or by rule of the Supreme Court.

Origin

(a) Rewords Article V, Section 13.

(b) Revises Article V, Section 13.

(c) Revises Article V, Section 17.

(d) Rewords Article XVI, Section 19.

(e) Revises Article V, Section 10.

Commentary

Subsection (a) carries forward the provisions of the 1876 Constitution concerning the grand jury since Article 1, Section 10 of the 1876 Constitution guarantees a person accused of a felony the right of a grand jury indictment.

Subsection (b) changes the name "petit juries" to "trial juries." It also revises Article V, Section 13 of the 1876 Constitution to make it clear that in civil and misdemeanor cases neither the Legislature nor the Supreme Court pursuant to its rule-making power may provide for jury verdicts of fewer than nine concurring jurors.

Subsection (c) is written to conform to the provisions of subsection (b). Article V, Section 17 of the 1876 Constitution merely states that "A jury in the County Court shall consist of six men. . . ." Subsection (c) allows the Legislature or the Supreme Court pursuant to its rule-making power to provide for less than unanimous verdicts in civil cases.

Subsection (d) rewords Article XVI, Section 19. No change is intended even though the proviso in Article XVI, Section 19 that "neither the right nor the duty to serve on grand or petit juries shall be denied or abridged by reason of sex" is not included in this revision because the same protection is provided in Section 3a of the Bill of Rights.

Subsection (e) revises Article V, Section 10 of the 1876 Constitution. It guarantees any party a right of trial by jury in civil causes in the district and county courts. The right exists in Article V, Section 10 of the 1876 Constitution as to causes in the district courts, but not to causes in the county courts.

Ostensibly, the right to trial by jury guaranteed in subsection (e) is the same right of trial by jury guaranteed in Article I, Section 15 of the 1876 Constitution. However, the cases of *White v. White*, 196 S.W. 508 (Tex. 1917) and *Hickman v. Smith*, 238 S.W.2d 838 (Tex. Civ. App.—Austin 1951, writ ref'd) have held that the right of trial by jury guaranteed in the Bill of Rights is limited to the right as it existed at common law or as provided for by statutes when the Constitution was adopted in 1876. On the other hand, the cases of *Tolle v. Tolle*, 104 S.W. 1049 (Tex. 1907) and *Hatten v. Houston*, 373 S.W.2d 525 (Tex. Civ. App.—Houston 1963, writ ref'd n.r.e.) have held that the right of trial by jury guaranteed in Article V, Section 10 of the 1876 Constitution is not dependent on the existence of the right at the time the Constitution was adopted in 1876. The guarantee extends to any "cause" instituted in the district court. A "cause" is defined as a suit or action concerning any question, civil or criminal, contested before a court of justice.

Section 15. Suspension of Sentence and Probation

Courts having original jurisdiction of criminal cases shall have power to suspend sentence, place a defendant on probation, and reimpose sentence, subject to regulation by law.

Origin

Rewords Article IV, Section 11a.

Commentary

Section 15 rewords Article IV, Section 11a of the Constitution of 1876. The Commission believes that the courts of this state should have the power, after conviction, to suspend the imposition or execution of sen-

tence. Otherwise, the courts may revert to earlier judicial decisions which held legislation giving the courts that power an unconstitutional infringement of the executive pardon.

Section 16. Appeal by State

The State shall have no right of appeal in criminal cases.

Origin

Retained unchanged from Article V, Section 26.

Commentary

Section 16 retains intact Article V, Section 26 of the 1876 Constitution. The prohibition of a state appeal in criminal cases recognizes that such an appeal may

cause economic hardship upon the defendant and that state appeal may be used as an instrument of oppression.

Section 17. Appeal by Accused

The right of appeal granted to an accused by Article I, Section 11a of this Constitution shall be direct to the Supreme Court of Texas.

Or in

New provision.

Commentary

This provision was added to protect the right of an accused whose bail has been denied pursuant to Article I, Section 11a of the 1876 Constitution to appeal directly to the Supreme Court. Article I, Section 11a authorizes a judge of any court of record or a magistrate to deny bail to any person accused of a felony less than capital

but who has been convicted twice before of a felony. It also expressly accords the accused the right to appeal an order denying bail direct to the "Court of Criminal Appeals." The direct appeal shall be made to the Supreme Court as a result of the merger provided by Section 1 of this article.

Article VI

Suffrage



Article VI

Suffrage

Section 1. Qualified Voter

Any citizen of the United States eighteen years of age or older who meets the registration and residence requirements provided by law, who is not serving a sentence for a felony, whether incarcerated, on parole, or on probation, and who is not of unsound mind as determined by a court, shall be a qualified voter.

Origin

Revises: Article VI, Section 1;
Article VI, Section 2;
Article VI, Section 2a;
Article VI, Section 3;
Article VI, Section 4.

Commentary

The provisions on suffrage and elections were substantially revised and simplified. Changes in voter qualifications were made in order to conform with recent United States Supreme Court decisions, especially those concerning residence requirements. There was also a change in the age for voting from 21 to 18 to conform with the Twenty-Sixth Amendment to the United States Constitution.

The residence requirements for voting in state and local elections have been in a state of flux because of recent United States Supreme Court decisions. Therefore, a flexible approach was adopted which would allow the Legislature to set the residence requirements in conformity with any federal laws or decisions. For further discussion of recent federal decisions, see the *Commentary* for Article VI, Section 2.

Section 2. Elections

All elections by the qualified voters shall be by secret ballot. The Legislature by law shall provide the requirements for residence, registration, absentee voting, and administration of elections, and shall ensure the purity of elections and guard against abuses of the electoral process.

Origin

Revises: Article VI, Section 2;
Article VI, Section 2a;
Article VI, Section 3;
Article VI, Section 4.

Commentary

The proposed Section 2 would allow the Legislature to set voter registration and residence requirements, rather than list such details in the constitution.

Section 1 does not continue the disenfranchisement of convicted felons contained in the 1876 Constitution. In the new provision, persons who have served their terms for felonies would regain the right to vote. This is consistent with the idea of returning individuals who have served sentences to a useful role in society. However, if a felon is serving a sentence which would include actual incarceration, or parole or probation supervision, that person would be unable to vote.

There have been a few recent cases throughout the country which have dealt with a felon's right to vote. The attack on the prohibition on voting has been based on the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. There is no definitive ruling in this area at present.

Recent United States Supreme Court decisions have cast considerable doubt on the residence requirements of one year in the state and six months in the county

now contained in the 1876 Constitution. In *Dunn v. Blumstein*, 92 S. Ct. 995 (1972), the Supreme Court struck down Tennessee's residence requirements of one year in the state and three months in the county. The Court held that residence requirements of such duration impinge on the right to vote and the right to travel. In a more recent United States Supreme Court case, *Har-*

ston v. Lewis, 93 S. Ct. 1211 (1973), the Court held that a cutoff date for registration 50 days prior to the elections approached the outer constitutional limits. In the light of these cases, it appears appropriate to allow for flexibility by leaving residence and registration requirements as a statutory matter.

Section 3. General Elections

General elections shall be held in even-numbered years on a date provided by law.

Origin

New provision.

Commentary

Section 3 provides a single definition for the term "general election" as it appears throughout this constitution. The section continues the current practice of holding general elections every two years. See TEX. ELECTION CODE ANN. art. 2.01 (1967). The Commission feels that the dates for a general election should be

provided by law to insure that there is always a definite time for a general election; and, as a result, a definite time for the operation of certain constitutional provisions. Article III, Section 6 of the recently adopted Illinois Constitution has a provision similar to the one proposed here.

Article VII

Education



Article VII Education

Section 1. Equitable Support of Free Public Schools

(a) A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature to establish and make suitable provision for the equitable support and maintenance of an efficient system of free public schools and to provide equal educational opportunity for each person in this State.

(b) In distributing State resources in support of the free public schools, the Legislature shall ensure that the quality of education made available shall not be based on wealth other than the wealth of the State as a whole and that State supported educational programs shall recognize variations in the backgrounds, needs, and abilities of all students. In distributing State resources, the Legislature may take into account the variations in local tax burden to support other local government services.

Origin

Subsection (a) of Section 1 incorporates all of Article VII, Section 1 of the 1876 Constitution, with addition of the words "equitable" and "and to provide equal educational opportunity for each person in this State."

Subsection (b) is a new provision.

Commentary

Proposed Section 1 requires the Legislature to support the free public schools equitably, guarantee each person an equal educational opportunity, and ensure that the quality of education available to each person, insofar as the quality of education is a function of financial resources, shall depend only on the wealth of the state as a whole. It imposes a requirement that variations in the backgrounds, needs, and abilities of students be taken into account by the Legislature in providing resources for the free public schools. Also, it recognizes that taxpayers in urban areas are burdened with taxes to support a wide range of municipal services and it allows the Legislature to take that fact into account in distributing state resources. The Commission decided not to prescribe or suggest a specific formula to accomplish the requirements of Section 1. Such a provision would be statutory in nature and would unnecessarily limit the options available to the Legislature. The Commission intends Section 1 to be a strong statement of the educational policy of this state and a mandate to the Legislature to support the free public schools equitably.

The Commission focused its attention on the inequities in public school financing and decided to emphasize the Legislature's responsibility for equitable support of the free public schools. Currently there are two elements which contribute greatly to the inequities in public school financing: disparities in local spending

per pupil caused by the differences in taxable wealth of school districts and the failure of the Minimum School Foundation Program to compensate for the differences in the taxable wealth of school districts. For example, the Texas Education Agency reports that in the fiscal year 1970-71, Deer Park Independent School District (Harris County) expended \$1,552 per student from state and local resources while North Forest Independent School District (Harris County) expended only \$491 per student from state and local resources. *Annual Audit Report of School Districts* (Texas Education Agency, 1972). *Superintendents Annual Report for Average Daily Attendance, Part 1* (Texas Education Agency, 1972).

Texas plaintiffs complained about these inequities in *San Antonio Independent School District v. Rodriguez*, 93 S. Ct. 1278 (1973). Although the Court reversed the lower court opinion which had held public school finance in Texas a violation of the Fourteenth Amendment Equal Protection Clause, the United States Supreme Court made specific reference to the inequities of the system and cited the state's responsibility for correcting these inequities.

Indeed, as a result of widespread litigation over the issue of public school finance, many states, notably Minnesota, Michigan, Utah, New Jersey, California and Florida, have reformed their public school financing systems. No doubt Texas will soon follow suit. The

Commission feels that Section 1 is responsive to the needs of the public school system and has incorporated general constitutional principles as guides to the Legislature in correcting the inequities in Texas public

school finance. The Commission believes that adherence to these principles will effect substantial improvement in the quality of education provided to all Texans in our free public schools.

Section 2. Permanent and Available School Fund

(a) The Permanent School Fund consists of all property set apart for support of the free public schools. The Permanent Fund shall not be expended but shall be preserved and invested at the direction of the State Board of Education in the manner prescribed by law.

(b) The Available School Fund consists of income from the Permanent Fund together with all State taxes dedicated to support the free public schools.

(c) The Available Fund shall be appropriated by the Legislature to support the free public schools, including the provision of free textbooks and such other instructional materials as may be required in academic programs.

Origin

- (a) Rewords: Article VII, Section 2;
Article VII, Section 4;
Article VII, Section 5.
- (b) Rewords Article VII, Section 5.
- (c) Revises: Article VII, Section 3;
Article VII, Section 5.

Commentary

The requirements in the 1876 Constitution that the Available School Fund be distributed according to each county's scholastic population and that the State Board of Education be responsible for providing free textbooks have been revised. The requirement of support for free "instructional materials as may be required in academic programs" is a new provision.

The value of the Permanent School Fund now exceeds \$1 billion. Good management over the years has preserved this fund for the benefit of school children for generations to come. Distribution of the money available in this fund might be a short-term solution to the financial crisis confronting the school system, but if the Legislature is permitted to appropriate the fund to finance current operations, the fund will quickly dissipate and the school children of this generation and

future generations will suffer as a result of that action.

Section 2 simplifies the provisions of the 1876 Constitution. However, subsection (c) contains a significant change. Rather than follow the existing inflexible requirement that the Available School Fund be distributed according to each county's scholastic population, this provision allows the Legislature to appropriate the Available School Fund in a manner consistent with the requirements of proposed Section 1. Solution of the financial crises confronting the state's school system dictates flexibility. Also, Section 2(c) retains the provision for free textbooks and adds a new provision for free instructional materials. This addition was deemed necessary to emphasize the Legislature's responsibility to provide a free public school system.

Section 3. Prohibition of Aid to Non-Public Schools

Public funds shall not be used for support of religious, church-affiliated, or proprietary schools that provide education below the college level; nor shall public funds be provided to any students for payment of expenses incurred by attending such schools.

Origin

Revises Article VII, Section 5.

Commentary

Section 3 prohibits public aid to any non-public school or aid to any student to defray the cost of attending such school. It combines the prohibitions contained in Article I, Section 7 and Article VII, Section 5 of the 1876 Constitution against expending public money for the support of religious or church-affiliated schools, with the requirement in Article VII, Section 5, that the Permanent and Available School Funds be used only for support of the free public schools. This provision is also consistent with recent United States Supreme

Court decisions invalidating legislative enactments which provided public aid to sectarian schools. The Supreme Court has ruled that any legislative act which advances or inhibits religion or invites administrative entanglement by the state in the affairs of the church violates the Establishment Clause of the First Amendment to the United States Constitution. *Committee for Public Education v. Nyquist*, 93 S. Ct. 2903 (1973); *Hunt v. McNair*, 93 S. Ct. 2868 (1973).

Section 4. Dedicated School Tax

One-fourth of the revenue from State occupation taxes and one-fourth of the net revenue from the State motor fuel tax are dedicated to the Available School Fund.

Origin

Rewords: Article VII, Section 3;
Article VIII, Section 7a.

Commentary

Rather than require the Legislature to levy and collect a new tax to replace the taxes levied in the 1876 Constitution, the provisions of Article VII, Section 3 and Article VIII, Section 7a, which dedicate one-fourth of the revenue from occupation and motor fuel taxes to

the Available School Fund, were left unchanged. This reworded provision does not carry forward the one dollar poll tax dedicated to the Available School Fund in Article VII, Section 3 because it has been inoperative for several years.

Section 5. State Board of Education

There shall be a State Board of Education which shall have the duties provided in this Article and by law. The Legislature may provide either for appointed or elected members whose terms shall not exceed six years. If the board is elective, the Governor shall appoint four additional members to the board. In making appointments the Governor shall give consideration to fair and equitable representation of the sexes, ethnic groups, social groups, and economic groups.

Origin

Revises Article VII, Section 8.

Commentary

Provision for the State Board of Education was retained in the new constitution because of the amount of interest focused on education as a result of the *Rodriguez* case. However, under the present elective system members of the State Board of Education may not adequately represent the population of the state. For that reason,

this provision leaves the Legislature with the option of providing for either an appointive or elective board, but if the Legislature provides for an elective board, this provision requires the Governor to appoint four members to the board in such a manner as to improve the representative character of the board.

Section 6. School and Community College Districts

The Legislature shall define by general law the duties and functions of school and community college districts and shall provide for establishing, financing, altering, consolidating, and abolishing such districts.

Origin

Rewords Article VII, Section 3.

Commentary

The Legislature has delegated much of the fiscal and administrative responsibility for the everyday operation of the public schools below the college level to the various independent school districts. As a reminder to the Legislature of its ultimate responsibility to equitably support a free public school system, this provision makes it mandatory for the Legislature to define the duties of the school districts and to provide for their formation and alteration.

Community college districts are not mentioned in Article VII, Section 3 of the 1876 Constitution, but the Texas Supreme Court has interpreted that section to include such districts. See *Shepherd v. San Jacinto Junior College District*, 362 S. W. 2d 742 (Tex. 1962). Therefore, specific mention of community college districts in this reworded provision conforms with existing law.

Section 7. First Class Colleges and Universities

The Legislature shall provide for a system of higher education of the first class which shall include The University of Texas System, the Texas A&M University System, universities, colleges, community colleges, and other first class institutions or systems as may be provided by law.

Origin

Revises: Article VII, Section 10;
Article VII, Section 13.

Commentary

Article VII, Section 10 of the 1876 Constitution directs the Legislature to provide for the maintenance of a university of the first class to be located by a vote of the people of this state. The people voted to locate the university at Austin. Section 10 also states that the Legislature shall provide for the maintenance of an Agricultural and Mechanical Department of the first class. Section 13 of Article VII located that Department in Brazos County, which is now known as Texas A&M University at College Station, and made it a branch of The University of Texas.

Subsequent to the formation of The University of Texas at Austin and Texas A&M University at College Station, the Legislature created community colleges and institutions of higher education throughout the state. Rather than leave the impression that the Legislature

may maintain these institutions at a level less than first class, this provision requires the Legislature to maintain all colleges and universities on a first class basis.

The University of Texas System and the Texas A&M University System are specifically mentioned in proposed Section 7 for the historical reason mentioned in the first paragraph and also because of the succeeding sections which provide for the investment and use of the Permanent University Fund. Although the framers of the Constitution of 1876 did not envision The University of Texas at Austin and Texas A&M University at College Station expanding into systems, the constitution has since been amended to allow certain named institutions in The University of Texas and Texas A&M Systems to share in the Permanent University Fund. Proposed Section 7 reflects that change.

Section 8. Permanent University Fund, Its Administration, Its Investments; Available University Fund and Its Expenditure

(a) The Permanent University Fund consists of the two million acres of land set apart and appropriated for the establishment and maintenance of The University of Texas by the Constitution of 1876 and the Legislative Act of April 10, 1883, together with the proceeds of the sale of such land, including the sale of oil, gas, and other minerals from such land, and the securities and other assets purchased with the proceeds. All proceeds shall be invested, and only the income from the Permanent University Fund may be appropriated and expended.

(b) The Permanent University Fund shall be held in trust for the people of Texas and for the use and benefit of the Texas A&M University System and The University of Texas System. The land set apart to the Permanent University Fund, if sold, shall be sold under such regulations, at such times, and on such terms as may be provided by law.

(c) The Board of Regents of The University of Texas System may invest the Permanent University Fund in securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States Government, or any of its agencies, in bonds issued by the State of Texas or any political subdivision thereof, and in such bonds, debentures, obligations, preferred stocks, or common stocks issued by corporations, associations, or other institutions as the Board of Regents of The University of Texas System may deem to be proper investments for the Permanent University Fund. However, not more than one percent of the Fund shall be invested in the securities of any one corporation nor shall more than five percent of the voting stock of any one corporation be owned by the Fund. In making each and all investments, the Board of Regents shall exercise the judgment and care under the circumstances then prevailing that men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The Board of Regents shall make full disclosure of all investments as provided by law.

(d) The net income (that is, dividends, interest, and other income less administrative expense) of the Permanent University Fund, exclusive of net income attributable to grazing leases of Permanent University Fund land, shall constitute the Available University Fund. Out of one-third of the Available University Fund, the Legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Directors of the Texas A&M University System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such one-third of the Available University Fund shall be appropriated by the Legislature for the support and maintenance of Texas A&M University at College Station. Out of the other two-thirds of the Available University Fund, the Legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Regents of The University of Texas System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such two-thirds of the Available University Fund, plus the net income (that is, income less administrative expense) from grazing leases of Permanent University Fund land, shall be appropriated by the Legislature for the support and maintenance of The University of Texas at Austin.

Origin

- (a) Rewords: Article VII, Section 11;
Article VII, Section 15.
- (b) Rewords Article VII, Section 12.
- (c) Revises: Article VII, Section 11;
Article VII, Section 11a.
- (d) Revises Article VII, Section 11a.

Commentary

Section 8 considerably shortens and simplifies the corresponding sections of the Constitution of 1876. The

Permanent University Fund, which currently exceeds \$600 million, cannot be expended, but the income from

the fund, known as the Available University Fund, can be appropriated to service bonds sold to finance construction of permanent improvements at specified institutions within The University of Texas and Texas A&M Systems and to achieve academic excellence at The University of Texas at Austin and Texas A&M University at College Station. The Permanent and Available University Funds have made it possible for this state to have two outstanding universities which rank prominently among the institutions of higher education in the United States.

The proposed Section 8 defines the Permanent and Available University Funds, provides for the investment of the Permanent University Fund, and provides for the distribution of the Available University Fund. It also requires the Board of Regents to make full disclosure of its investments, as is now the case, so that interested citizens may be kept well informed of the disposition of the property which is held in trust for the benefit of the people of this state. The applicable sections of the 1876 Constitution restrict the investment authority of the Board of Regents of The University of

Texas in the type and amount of investments that can be made. This provision includes the same restrictions except the limitation in Article VII, Section 11a of the 1876 Constitution which prohibits the Board of Regents from purchasing stock in a corporation which has not paid dividends for the past five consecutive years and which is not listed upon an exchange registered with the Securities and Exchange Commission.

Subsection (d) revises Article VII, Section 11a of the 1876 Constitution. This revision reflects the statutory division of the Available University Fund after payment of the principal and interest due on Permanent University Fund bonds or notes. One-third of the remainder is appropriated to Texas A&M University at College Station, and two-thirds of the remainder is appropriated to The University of Texas at Austin.

Except for the specific changes listed above, it was the Commission's intent not to increase or decrease the constitutional authority of The University of Texas System Board of Regents to invest the Permanent University Fund.

Section 9. Texas A&M University System; The University of Texas System; Permanent University Fund Bonds or Notes

(a) The Board of Directors of the Texas A&M University System and the Board of Regents of The University of Texas System for the benefit of all the institutions now included in their respective systems are each hereby authorized to issue in amounts not to exceed for the Texas A&M System ten percent, and for The University of Texas System twenty percent, of the value of the Permanent University Fund exclusive of real estate at the time of any issuance, negotiable bonds and notes for the following purposes: (1) acquiring land either with or without permanent improvements; (2) constructing new buildings or other permanent improvements; (3) repairing and rehabilitating existing buildings or other permanent improvements; (4) acquiring library books and materials; (5) acquiring capital equipment; and (6) refunding any bonds heretofore or hereafter issued.

(b) Any bonds or notes issued pursuant to this Section shall be payable solely out of the Available University Fund. Bonds or notes so issued shall mature serially or otherwise not more than thirty years from their respective dates.

(c) Institutions now included in the Texas A&M University System and The University of Texas System, and entitled to participate in the Permanent University Fund, shall not receive any general revenue funds for acquiring land either with or without permanent improvements, or for constructing and equipping new buildings or other permanent improvements except in case of fire, flood, storm, or earthquake occurring at any such institution. In such an event an appropriation in an amount sufficient to replace the uninsured loss may be made by the Legislature from general revenue funds.

(d) For the purpose of securing the payment of the principal and interest of these bonds or notes, the Boards are severally authorized to pledge the whole or any part of the respective interests of the Texas A&M University System and The University of Texas System in the

Available University Fund. The Permanent University Fund may be invested in these bonds or notes. All bonds or notes issued pursuant to this Section shall be approved by the Attorney General of Texas and when so approved shall be incontestable.

Origin

Revises: Article VII, Section 14;
Article VII, Section 18.

Commentary

Section 9 provides that: (1) the Permanent University Fund bond proceeds may be used for acquiring land with or without permanent improvements, constructing and equipping new buildings or other permanent improvements, repairing and rehabilitating existing buildings and other improvements, and acquiring capital equipment; and (2) the constitutional limit on bond sales is raised from 20 percent to 30 percent of the value of the Permanent University Fund.

Article VII, Section 14 of the 1876 Constitution specifically prohibits the Legislature from appropriating any money from general revenue for the purpose of erecting buildings at The University of Texas. Until 1947, the Board of Regents of The University of Texas and the Board of Directors of Texas A&M University relied solely on income from the Permanent University Fund to finance capital improvements at their respective institutions. In 1947, Article VII, Section 18 was added to the constitution to permit the Board of Regents and the Board of Directors to issue negotiable bonds and notes to finance a much needed building program at their respective institutions.

Article VII, Section 18 was amended again in 1966 to liberalize the amount of the Permanent University Fund which could be pledged to secure the bonds and notes issued for capital improvements. Also, the number of institutions entitled to share in the Permanent University Fund building program was increased to include those institutions which were made a part of the Texas A&M University System and The University of Texas System.

Section 9 continues the basic provisions of the 1876 Constitution but authorizes additional uses of the bond proceeds. For example, proceeds can now be used for the repair and rehabilitation of existing buildings, for the acquisition of capital equipment, and for the acquisition of library materials. There is no longer the emergency for additional buildings which existed in 1947, and the emphasis has now shifted to enrichment of the academic programs. Only those institutions now included in the two systems are entitled to share in bond proceeds under this proposal.

Section 10. State Higher Education Tax Fund for the Benefit of Certain Institutions of Higher Education

(a) The Legislature shall levy a State ad valorem tax on property at a rate not less than ten cents on the one hundred dollars valuation sufficient to provide a level of support necessary to promote the attainment of first class status for all State institutions of higher education except those institutions included in the Texas A&M University System and The University of Texas System, all public community colleges, and all State technical institutes.

(b) The proceeds of this tax shall comprise the Higher Education Tax Fund.

(c) The Higher Education Tax Fund may be pledged to secure or refund bonds issued heretofore or hereafter for acquiring land, either with or without permanent improvements thereon, constructing, equipping, repairing, rehabilitating buildings or other permanent improvements, and for acquiring capital equipment and library books and materials at the institutions for which the Fund is created. After appropriating an annual sum sufficient to pay the principal and interest due on such bonds, the Legislature shall appropriate the remainder of the Fund for the support and maintenance of State institutions of higher education other than The University of Texas at Austin, Texas A&M University at College Station, the public community colleges, and the State technical institutes.