

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672
817 SCOM.27:INT. COMM. CONSTITUTIONAL CONVENTION 1979-80

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

Section 11.06. Oath of Office.

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

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

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

ARTICLE XII

Impeachments

Section 12.01. Impeachment of State Officers.

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

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

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

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

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

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

Section 12.02. District Attorneys and Sheriffs.

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

Section 12.03. County and City Officers.

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

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

Section 12.04. Penalties Upon Conviction.

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

ARTICLE XIII

Miscellaneous Provisions

Section 13.01. Eminent Domain.

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

Section 13.02. Protection of Environment.

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

Section 13.03. Exemption of Homesteads.

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

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ARTICLE XIV

Amending the Constitution

Section 14.01. Procedure.

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

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

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

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

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

Section 14.02 Form of the Ballot.

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

Section 14.03. Constitutional Convention.

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

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

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

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

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Section 14.04. Method of Voting.

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

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Commentaries on the PROPOSED CONSTITUTION

PREAMBLE

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

Comment: Present preamble unchanged.

ARTICLE I

Declaration of Rights

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

SECTION 1.01 THE EQUALITY AND RIGHTS OF MAN.

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

Comment: Present section 1. No basic change.

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

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

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

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

SECTION 1.03 DUE PROCESS AND EQUAL PROTECTION.

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

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

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

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

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

SECTION 1.04 SEARCHES AND SEIZURES.

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

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

Comment: Present section 5, unchanged.

SECTION 1.05 RIGHTS OF THE ACCUSED.

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

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

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

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

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

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

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

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

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

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

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

Comment: Present section 15. No change.

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

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Comment: Present section 9. No change.

SECTION 1.06 RIGHT OF TRIAL BY JURY.

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

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

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

SECTION 1.07 HABEAS CORPUS.

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

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

SECTION 1.08 IMPRISONMENT FOR DEBT.

No person shall be imprisoned for debt.

Comment: Present section 20. No change.

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SECTION 1.09 TREASON.

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

Comment: Present section 18. No change.

SECTION 1.10 CIVIL ACTIONS.

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

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

Comment: Present sections 10 and 13 combined.

SECTION 1.11 RIGHT TO SUE THE STATE.

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

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

SECTION 1.12 RIGHT TO BEAR ARMS.

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

Comment: Present section 26. No change.

SECTION 1.13 FORBIDDEN LEGISLATION.

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

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

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

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

SECTION 1.14 EMINENT DOMAIN.

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

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

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

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

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

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

SECTION 1.15 SUSPENSION OF LAWS.

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

Comment: Present section 21. No change.

SECTION 1.16 SUBORDINATION OF MILITARY POWER.

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

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

ARTICLE II

Distribution of Powers of Government

SECTION 2.01. POWERS OF GOVERNMENT.

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

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

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present Constitution. No change in substance is involved.

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

ARTICLE III

The Legislative Department

SECTION 3.01. LEGISLATIVE POWER.

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

Comment: Present section 44. No change.

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment: Amendment 97. No change of substance.

SECTION 3.04. QUALIFICATIONS OF SENATORS AND REPRESENTATIVES.

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

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

SECTION 3.05. APPOINTMENT TO OFFICE OF PROFIT.

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

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

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

SECTION 3.06. ORGANIZATIONAL SESSION.

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

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

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

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

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

SECTION 3.08. PROCEDURE FOR ELECTION BY LEGISLATURE.

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

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

SECTION 3.09. TIME AND LENGTH OF LEGISLATURE SESSIONS.

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

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

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

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

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

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

The reasons are clear:

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

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

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

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

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

SECTION 3.10. LEGISLATION IN SPECIAL SESSION.

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

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

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

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

(b) A state compensation commission is hereby created

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

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

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

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

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

Comment: This section would replace the compensation provisions of present sections 48 and 49. The proposed change in the amount and method of fixing the compensation of the legislature would correct what is generally recognized as a very bad situation and help to assure a more professional and more competent legislature. Legislators must now have a constitutionally fixed salary, and adjust their own compensation by per diem expense and travel allowances. The amendment would provide for an independent commission, appointed for staggered terms, to recommend the compensation for succeeding legislatures. Changes in pay or allowances could not be applied during the term of legislators approving them.

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SECTION 3.12. COMPENSATION OF OFFICERS AND EMPLOYEES.

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

Comment: Present section 67 without change.

SECTION 3.13. QUORUM AND ADJOURNMENT.

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

Comment: Sections 52 and 58 combined. No change.

SECTION 3.14. POWERS OF EACH HOUSE TO MAKE RULES.

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

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

SECTION 3.15. PRIVILEGES OF MEMBERS OF THE LEGISLATURE.

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

Comment: Present section 56. No change.

SECTION 3.16. FORM OF BILLS.

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

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

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

SECTION 3.17. JOURNAL OF PROCEEDINGS.

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

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

SECTION 3.18. ENACTMENT OF LAWS.

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

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

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

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

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

SECTION 3.19. AMENDMENTS AND CONFERENCE REPORTS.

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

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

SECTION 3.20. DUTY TO DELIVER BILLS.

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

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

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

SECTION 3.21. REVENUE BILLS.

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

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

SECTION 3.22. APPROPRIATION BILLS.

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

Comment: This paragraph is substantially the same as

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

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

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

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

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

SECTION 3.23. PAYMENT OF APPROPRIATIONS.

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

Comment: Present section 72. No change.

SECTION 3.24. APPROPRIATIONS TO CHARITABLE INSTITUTIONS.

No appropriations shall be made to any charitable or educa-

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

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

SECTION 3.25. PRIVATE PENSION LAWS.

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

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

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

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

Comment: Present section 100. No change.

SECTION 3.27. CORPORATIONS.

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

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

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

SECTION 3.28. GENERAL LAWS DEFINED.

A general law within the meaning of this constitution is a law which in its terms and effect applies either to the whole state, without excepting any county, political subdivision or geographical district, or to all such subdivisions of the state in a class. In the enactment of general laws, the legislature may classify geographical areas or districts involving two or more counties or municipalities on the basis of criteria reasonably related to the subject of the law. The legislature shall establish classes of counties and municipalities based on population, but not more than eight classes of each shall be in effect at any one time. No county or municipality shall be exempt from any general law applicable to counties or municipalities in its class.

Comment: This section is proposed as a substitute for section 110 of the present constitution.

The principal change is the limitation of classifications based solely on population to eight classes. This is a provision not found in other state constitutions, although some do provide for a limited number of classes for laws dealing with the government and powers of counties. It is designed to prevent the much abused use of so-called "general laws of local application" based solely on population to avoid the requirements for local legislation.

The legislature is, however, free to make general laws based on any classification of two or more counties or municipalities which is logically related to the purpose of the law.

Following is an example of a possible county population classification of eight classes, based on the 1970 census:

Classification of Counties

- I Class — 500,000 and above.
- II Class — 250,000 - 500,000.

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III	Class —	150,000 - 250,000.
IV	Class —	100,000 - 150,000.
V	Class —	75,000 - 100,000.
VI	Class —	50,000 - 75,000.
VII	Class —	25,000 - 50,000.
VIII	Class —	- 25,000.

Counties in Each Class

- I Jefferson
- II Mobile
- III Madison and Montgomery
- IV Calhoun and Tuscaloosa
- V Etowah and Morgan
- VI Baldwin, Cullman, Dale, Dallas, Houston, Lauderdale, Lee, Marshall, Talladega, Walker.
- VII Blount, Chambers, Chilton, Clarke, Coffee, Colbert, Covington, DeKalb, Elmore, Escambia, Jackson, Lawrence, Limestone, Pike, Russel, St. Clair, Shelby, Tallapoosa.
- VIII All others — 31 counties.

SECTION 3.29. LIMITATION ON ENACTMENT OF LOCAL LAWS.

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

Comment: Present section 105 has been revised to prevent the enactment of local laws when the subject matter is covered by a general law. The 1901 Constitution undertook to restrict

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local legislation by three provisions: Section 104, which prohibits a local law dealing with a list of 31 subjects, section 105, which forbids the enactment of a local law "in any case which is provided for by a general law," and section 106 which requires a special procedure for passing a local law. Neither section 104 nor 105, as interpreted by the Alabama Supreme Court, effectively prohibits general laws of local application. *Dearborn v. Johnson*, 234 Ala. 84, 173 So. 864 (1937). The court has held that section 105 does not prohibit enactment of a local law if it differs from a general law, even if the subject matter is the same. *State ex rel. Jones v. Steele*, 263 Ala. 16, 81 So. 2d 542 (1955). *Mathis v. State*, 280 Ala. 16, 189 So. 2d 564 (1966). See *Standard Oil Co. v. Limestone County*, 220 Ala. 231, 124 So. 423 (1929). The draft would reverse this rule.

SECTION 3.30. PROCEDURE FOR ENACTING LOCAL LAWS.

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

Comment: This section revises present section 106 to make the procedure for enacting local laws less burdensome, and thereby reduce the use of general laws of local application. The notice requirements are reduced from four publications to two.

SECTION 3.31. CONFLICT OF INTEREST.

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

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Comment: This section is a substitute for the limited provision of present section 82 with respect to conflicts of interest. This problem would be covered as to judges by the canons of ethics required by the judicial article, Sec. 6.08.

SECTION 3.32. CONTINUITY OF GOVERNMENT IN EMERGENCIES.

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

Comment: This section has been taken from the Michigan Constitution, Art. 4, sec. 39 and is proposed as a substitute for amendment 159. The proposed section is broader than amendment 159 which provides for the continuity of the legislature only in the event of an enemy attack.

ARTICLE IV

Representation

SECTION 4.01. COMPOSITION OF SENATE AND HOUSE OF REPRESENTATIVES.

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

Comment: This section would replace present sections 50,

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197 and 198 and would set a ceiling on the membership of each house at its present level. The Section 50 mandate requiring at least one representative for each newly created county is deleted because of its unconstitutionality under recent decisions of the Supreme Court of the United States.

SECTION 4.02. LEGISLATIVE DISTRICTS.

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

Comment: This section would replace portions of present sections 199, 200 and 201. The new requirement that the ratio of the number of legislators in each district to its population be as nearly equal as practicable is the standard used by the United States Supreme Court. *Wesberry v. Sanders*, 376 U. S. 1 (1964). The new section would also allow the use of multi-member districts where permitted by Federal law.

SECTION 4.03. LEGISLATIVE REAPPORTIONMENT PROCEDURE.

(a) Reapportionment of senatorial and house of representative districts shall be accomplished as soon as practical after official publication of each decennial census of the United States. A commission on legislative reapportionment consisting of five members, shall be established no later than the first day of February in each year following the year in which the decennial census of the United States is officially reported. The lieutenant governor, attorney general, and chief justice of the Alabama Supreme Court shall, by a majority vote, appoint all members of the commission and shall certify their names to the officer designated by law.

(b) No commission member shall hold an elected office in the state. Not more than one member of the commission shall

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be appointed from any congressional district. The members of the commission shall select one of their number as chairman. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

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

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

(e) The supreme court shall have original jurisdiction, upon the petition of any qualified voter of the state, to review the new reapportionment law. If the supreme court holds invalid a reapportionment plan enacted by the legislature, then the commission plan shall become law if it complies with the requirements of this constitution. If the supreme court finds the commission plan invalid, the court shall issue an order remanding the plan to the commission and directing the commission to reapportion the state in a manner not inconsistent with such order. When the court finally approves a reapportionment plan, such plan shall remain in effect until the adoption under this

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section of a reapportionment plan after the next United States decennial census.

Comment: This section would replace the procedural aspects of present sections 199-201. The principal change is the provision for automatic reapportionment by a commission if the legislature fails to reapportion itself.

Section 201 which provides for a state census if the federal census is unsatisfactory has been deleted.

SECTION 4.04. CONGRESSIONAL REDISTRICTING.

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

Comment: This section has no counterpart in the 1901 Constitution. It applies the method of legislative reapportionment provided by the previous section to congressional redistricting.

ARTICLE V

Executive Department

SECTION 5.01. EXECUTIVE POWER AND THE EXECUTIVE DEPARTMENT.

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

Comment: Present sections 112 and 113.

The only change in present section 113 is a simplification of language.

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The non-policy making officers named in section 112 would no longer be vested with constitutional status. They are the State Auditor, Secretary of State, State Treasurer, Superintendent of Education, Commissioner of Agriculture and Industries and the Sheriffs. All of the state officers other than the sheriffs properly fall within and should be subject to the control of the executive department under the governor. The omission of these officers from the constitution would not leave any gaps of authority or function as their duties are fully provided for in the code: State Auditor, Title II, Sections 205, et seq., Secretary of State, Title 55, Sections 182, et seq., State Treasurer, Title 55, Sections 211, et seq., Superintendent of Education, Title 52, Sections 41, et seq., Commissioner of Agriculture and Industries, Title 2, Sections 14, et seq., Sheriffs, Title 54.

Present Code provision for the election of these officers, Title 17, Secs. 65, 68, would not be affected by the change, but would no longer be constitutionally required.

SECTION 5.02. ELECTION AND TERM OF OFFICE OF EXECUTIVE OFFICERS.

The governor, lieutenant governor and attorney general shall be elected by the electors of the state at the same time and places appointed for the election of members of the legislature. The governor, lieutenant governor, and attorney general shall hold their respective offices for a term of four years, commencing on the first Monday after the second Tuesday in January next succeeding their election and until their successors shall be elected and qualified. Each of said officers shall be eligible to succeed himself in office, but no person shall be eligible to succeed himself for more than one additional term.

Comment: Present sections 114 and 116 (as changed in 1968 amendment 282). Section 114 is changed only by the deletion of the nonpolicy making elected officers and removal of an obsolete provision for 1902. Section 116, as revised in 1968, is changed only by the deletion of the lesser offices.

SECTION 5.03. ELECTION RETURNS.

The returns of every election for governor, lieutenant gover-

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nor and attorney general shall be sealed and transmitted by the returning officers to the seat of government and directed to the speaker of the house of representatives, who shall open and publish the votes in the manner prescribed by law. The person having the highest number of votes for any one of said offices shall be declared elected; but if two or more shall have the highest and an equal number of votes, the legislature by joint vote shall choose one of said persons without delay. Contested elections shall be determined by both houses in the manner prescribed by law.

Comment: Present Section 115. The nonpolicy making officers are deleted. The procedure for opening and counting the results is left to the legislature rather than being detailed in the Constitution.

SECTION 5.04. QUALIFICATIONS OF GOVERNOR AND LIEUTENANT GOVERNOR.

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

Comment: Present section 117. The residency requirements have been changed from "resident citizens of this state for at least seven years" to three years as qualified voters prior to the election. The minimum age has been lowered from thirty to twenty-five. The requirement of ten years of United States citizenship has been eliminated. Under Section 7.01 of the Suffrage Article, only citizens can be qualified voters.

SECTION 5.05. COMPENSATION AND PLACE OF RESIDENCE OF GOVERNOR.

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

Comment: Present Section 118. The non-policy making officers have been deleted. The requirement that the governor's salary be neither increased nor decreased during his term has

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been deleted as this is prohibited by section 11.03 in the Public Officers Article. The unnecessary exception to the place of residence requirement which allowed a move during epidemics has been omitted.

SECTION 5.06. LEGISLATIVE RESPONSIBILITIES OF GOVERNOR.

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

Comment: This makes no change in present section 122 except to omit the list of reasons why the seat of government might become too dangerous in which to meet.

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

Comment: This omits the clauses in section 123 concerning the governor's recommendations of programs to the legislature and the requirement of written messages on the condition of the state at the beginning of each session and at the close of his term. The budget provision is adopted from Title 55, section 93 of the Code.

(c) VETO. Every bill passed by the legislature shall, before it becomes a law, be presented to the governor unless otherwise

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

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

Comment: Paragraphs (c) and (d) undertake to simplify and clarify the unnecessarily detailed procedure prescribed by present section 125 following the presentation of a bill to the governor. The following changes have been made in that section:

(1) The present section gives the governor six days to act on a bill, if the legislature is in session, unless the time is extended because the house in which the bill originated is in recess, and fifteen days in which to consider a bill if it is presented within five days of adjournment. The proposed substitute would give the governor seven calendar days to consider a bill while the legislature is in session, and twenty days from presentation if the legislature adjourns within seven days after the bill is presented to him.

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(2) Under the present section, a bill presented to the governor after adjournment becomes law only if approved by the governor. The draft provides that a bill presented after adjournment becomes a law unless vetoed by the governor — eliminating the pocket veto.

(3) Under present section 125, if both houses approve the governor's amendment, the bill "shall again be sent to the governor and acted on by him as other bills." The proposed substitute provides that if both houses approve the amendment, the bill as amended becomes law.

(4) Under the present section, if the governor proposes an amendment the bill becomes law only if a majority elected to each house vote in favor of the bill with the amendment. The effect of proposing an amendment is to veto the bill unless the amendment is approved. The draft would permit the governor to consider signing the bill even though the amendment is rejected. The governor would be prohibited from recommending amendments to the bill when it is returned to him.

(e) **APPROPRIATION BILLS.** The governor shall have power to approve or disapprove any item or items of any appropriation bill embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of bills over the executive veto; and he shall in writing state specifically the item or items he disapproves, setting the same out in full in his message, but in such case the enrolled bill shall not be returned with the governor's objection.

Comment: This is present section 126 without change.

SECTION 5.07. EXECUTIVE AND ADMINISTRATIVE POWERS OF THE GOVERNOR.

(a) **EXECUTION OF LAWS.** The governor shall be responsible for the faithful execution of the laws. He may by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate or restrain violation of any constitutional or legislative

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power, duty or right by an officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceeding against the legislature.

Comment: This expands present section 120 and the power to bring an action in the name of the state to enforce compliance with any constitutional or legislative mandate. Other state Constitutions contain similar provisions, e.g., Alaska, New Jersey, Florida, Michigan. See also: Model State Constitution.

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

Comment: This is present section 121, without change of substance.

(c) EXECUTIVE REORGANIZATION. Except for organizational arrangements specified in this Constitution, the governor may make such changes in the organization of the executive department or in the assignment of functions among its units as he considers necessary for efficient administration. If such changes affect existing statutory law, they shall be set forth in executive orders, which must be submitted to the legislature within the first ten calendar days of a regular or special session, and shall become effective, and shall have the force of law at the end of such regular or special session unless specifically modified or disapproved by a majority elected to each house. The governor shall not, however, make changes which would become effective later than ninety days before the end of his administration. For the purpose of this subsection the term "executive department" shall include only those departments, bureaus, and agencies whose director or head is appointed by, and serves at the pleasure of, the governor.

COMMENTARY

Comment: This is a new provision giving the governor the power to reorganize agencies of the executive department by executive order. Other recent state Constitutions have similar provisions, e.g., North Carolina, Illinois and Virginia.

The last sentence limits the governor's reorganization power to departments headed by his cabinet officers. Under this definition the following existing departments and agencies would be included: Department of Finance, Department of Revenue, Bureau of Publicity and Information, Department of Insurance, Department of Conservation, Department of Labor, Department of Industrial Relations, State Highway Department, State Military Department, Department of Public Safety, Department of Civil Defense, and Alabama State Docks Department. The following departments and agencies would be among those not included: Personnel Department, Department of Agriculture and Industries, Department of Aeronautics, Banking Department, Department of Education, Department of Archives and History, Department of Public Health, Department of Mental Health, Department of Pensions and Security, Radiation Control Agency, State Agency for Social Security, Department of Veterans' Affairs, Department of Toxicology and Criminal Investigation and all commissions, boards, associations, schools colleges, etc.

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

Comment: This is adopted from present section 131 and deletes the provision that the governor need not command in person as being unnecessary.

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

Comment: This is proposed as a substitute for present section 136 and was adopted from the new Virginia Constitution. It grants a general power to fill vacancies the filling of

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which is not covered by law or the Constitution. The present section allows the governor to fill vacancies in the elective state offices covered by Section 112, unless otherwise provided by law.

This section attempts to group all of the executive and administrative powers of the governor into one place.

SECTION 5.08. EXECUTIVE CLEMENCY.

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

Comment: Section 124 and Amendment 38. The last sentence reverses the present provision, which does not relieve disabilities unless expressed in the pardon.

SECTION 5.09. SUCCESSION TO THE OFFICE OF GOVERNOR.

(a) **REMOVAL, DEATH, OR RESIGNATION OF GOVERNOR.** In case of the governor's removal from office, death, or resignation, the lieutenant governor shall become governor.

Comment: Present section 127 has been divided into four subsections because of its length and each subsection will be discussed separately. Paragraph (a) adopts the first sentence of the present section with no change.

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

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

Comment: This makes three changes in present section 127. First, it substitutes the provision in the Model State Constitution calling for a special election if the unexpired term is one year or longer for the present provision for the election of a new governor if the vacancy occurs more than 60 days from the next general election. Second, the line of succession is changed to put the speaker first, before the president pro tem. Third, the non-policy making elected state officers are removed from the line of succession.

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

Comment: This makes three changes in the present section 127. First, the governor may be removed only if he fails to perform his duties due to his absence, rather than the present automatic removal for an absence for twenty days. Second, a new provision is added which renders the office of governor vacant if his disability continues for six months. Third, the line of succession is switched to put the speaker first, as in paragraph (b).

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

Comment This makes three changes in Section 127. The non-policy making elected state officers are removed from the line of succession. Provision is made for filling the offices of governor and lieutenant governor by a special election, if both governor-elect and lieutenant governor-elect fail to qualify within six months. The same change has been made in the line of succession as in (b) and (c).

SECTION 5.10. PROCEDURE FOR DETERMINATION OF INCAPACITY OF GOVERNOR.

(a) If the governor or acting governor shall appear to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the supreme court upon the request in writing by the attorney general, the president pro tempore of the senate, and the speaker of the house, or any one of them, not next in succession to the office of governor, to ascertain the truth of the charges. If he is adjudged to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the officer next in succession to perform the duties of the office until the disability is removed or until the governor returns to state. If the incumbent denies that the disability of the governor, or other person entitled to administer the office, has been removed, the supreme court shall ascertain the truth

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concerning the same. If the disability has not continued for more than six months, and has been removed, the court shall so decree, and the office shall be restored to him. The supreme court shall prescribe the method of taking testimony and the rules of practice in such proceedings.

Comment: This is based on present section 128. It differs from that section in that it is not limited to mental disability. Physical disability and absence are also included.

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

Comment: This is a new section which provides a method by which a governor may voluntarily declare his physical disability. This is provided for by several recent state Constitutions, e.g., Illinois, North Carolina, Virginia and Florida.

SECTION 5.11. COMPENSATION OF ACTING GOVERNOR.

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

Comment: Present section 129. The proposed section changes the line of succession and deletes the offices eliminated from the constitution.

SECTION 5.12. LIEUTENANT GOVERNOR.

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

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

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

Comment: Subsection (a) is transferred from section 117. Subsection (b) eliminates the present requirement of section 118 that the lieutenant governor's salary be equal to that of the speaker of the house. Subsection (c) is adopted from a similar provision on the attorney general found in present section 136.

SECTION 5.13. ATTORNEY GENERAL.

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

COMMENT: This makes the following changes in the qualifications required by present section 132. First, the seven year citizenship requirement has been eliminated as unnecessary. Second, the five year residency requirement has been lowered to a requirement that the attorney general has been a qualified voter (and hence necessarily a citizen) for three years. Finally, a requirement that the attorney general has been a member of the state bar for three years has been added.

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

Comment: This adopts the provision in the last sentence of section 136.

SECTION 5.14. STATE SEAL.

There shall be a seal of the state, which shall be used officially by the governor, and the seal now in use shall continue

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to be used until another shall have been adopted by the legislature. The seal shall be called, "The Great Seal of the State of Alabama."

Comment: Present section 133. No change.

ARTICLE VI

The Judicial Department

SECTION 6.01. JUDICIAL POWER.

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

(b) The legislature may create judicial officers with authority to issue warrants and may vest in administrative agencies established by law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies are created.

Comment: This is a substitute for section 139 of the present constitution as amended by Amendment 111. For the purpose of preventing the multiplication of courts of diversified jurisdiction, paragraph (a) provides that the judicial power of the state shall be vested exclusively in a unified judicial system consisting of the courts named. This section differs from the present constitution in the following respects:

(1) Under the present constitution the legislature may create "such courts of law and equity" as it may deem desirable. This section in effect prohibits the creation of courts other than those named.

(2) This section omits reference to the senate sitting as a court of impeachment. This was omitted as unnecessary

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since legislative impeachment is provided for by proposed Article XII.

(3) The prohibition found in present section 139 against establishing a court of general jurisdiction in a county of less than twenty thousand has been omitted.

(4) Amendment 111 providing that the legislature shall have authority to constitute school officials as judicial officers has been omitted as it serves no useful purpose.

(5) Paragraph (b) adds a new provision to avoid any question concerning the power of the legislature to create officers with authority to issue warrants and to vest "judicial powers" in administrative agencies.

SECTION 6.02. THE SUPREME COURT.

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

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

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

Comment: Paragraph (a) of this section is in substance the same as section 151 of the present constitution.

Paragraph (b) provides for the power of the supreme court to supervise other courts in language similar to section 140 of the present constitution. In a new provision, it gives the court jurisdiction to answer questions of state law certified by a federal court. This type of procedure has been recommended by the American Law Institute and the Commissioners on Uniform State Laws, and is recognized in a number of states. It would expedite the decision of cases and

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avoid unnecessary litigation when the federal courts have to deal with state law questions of first impression.

Paragraph (c) adopts present section 140 without change of substance.

SECTION 6.03. COURT OF APPEALS.

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

Comment: This is a new section providing for a court of appeals. The present constitution does not expressly mention a court of appeals but Section 139 grants power to the legislature to create "such courts of law and equity inferior to the supreme court," consisting of not more than five members, as the legislature may decide to establish.

The proposed section would authorize the legislature, and the Supreme Court, to provide for broad powers of review in the Court of Appeals, including power to issue revisory writs.

SECTION 6.04. CIRCUIT COURT.

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

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

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Comment: This is a substitute for present sections 142-148 dealing with the jurisdiction of circuit and chancery courts. The requirement of sections 142 and 145 that circuit judges have resided in the circuit for one year preceding election has been dropped. This is left to the legislature under section 6.07.

SECTION 6.05. DISTRICT COURTS.

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

Comment: This is a new section providing for a new court of limited jurisdiction which would take the place of all courts, except the probate court, inferior to the circuit courts.

The present wide differences in the jurisdiction of inferior courts, as to amounts which may be sued for, criminal penalties, rules of procedure, etc., make it very difficult for the bar to deal with such matters as misdemeanor trials, collections, and other matters in more than one county or city. This section would require that the jurisdiction of all of these courts be uniform throughout the state.

SECTION 6.06. PROBATE COURT.

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

Comment: This is a substitute for section 149 of the present constitution dealing with probate courts. The jurisdiction of probate courts is now covered by Title 13, Chap. 5 of the Code, supplemented by special acts as to some counties.

SECTION 6.07. QUALIFICATIONS OF JUDGES.

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

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Comment: This is a substitute for present section 154. The age and residence requirements of sections 142, 145 and 154 have been omitted.

Section 154 requires that judges of all courts of record, except probate judges, "shall be learned in the law." The proposed section requires that judges of the supreme court, court of appeals, circuit and district courts "shall be licensed to practice law in this state", and leaves other qualifications, and all qualifications of probate judges, to the legislature.

SECTION 6.08. PROHIBITED ACTIVITIES.

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

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

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

Comment: Paragraph (a) is a substitute for section 162 of the present constitution, prohibiting judges from practicing law "in any courts."

The prohibition in paragraph (b) against holding any other office of public trust appears in present section 150. The remainder of (b) prohibiting political activity is based on recently adopted provisions of other state constitutions and the American Bar Association canons of judicial ethics. See, Virginia (1969) Art. VI, sec. 11; Colorado (1966) Art. VI, sec. 18; Illinois (1970) Art. VI, sec. 13; Canons of Judicial Ethics, 28 and 30.

Paragraph (c) is new. It is similar to the 1970 Illinois Constitution, Art. VI, sec. 13(a).

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SECTION 6.09. JUDICIAL COMPENSATION.

(a) A state judicial compensation commission is hereby created which shall recommend the salary and expense allowances for all the judges of this state except for judges of the probate court. The commission shall consist of five members; one shall be appointed by the governor, one by the president of the senate, one by the speaker of the house, and two by the governing body of the Alabama state bar.

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

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

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

Comment: This is a new section providing for a commission to recommend judicial salaries. There is precedent for this provision in both federal and state law. In 1967 Congress established the Commission on Executive, Legislative and Judicial Salaries and authorized it to recommend salaries which would become effective unless changed or disapproved by Congress. 2 U.S.C.A. sec. 351-361. In 1968 Michigan adopted an amendment to its constitution providing for a compensation commission to recommend salaries for members of the legislature, the governor, lieutenant governor and justices of the supreme court. Art. 4, sec. 12.

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The last sentence in subsection (d) would permit change in the compensation of a judge during his term of office only as permitted by Article XI. Section 11.03 of that Article would permit changes in the compensation of members of a court serving on staggered terms, at the end of the first term to expire. This would apply to district, circuit and appellate judges.

SECTION 6.10. ADMINISTRATION.

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

Comment: This is a new section but its provisions are consistent with recent statutes creating the department of court management (Tit. 13, sec. 9(10)-9(13)), and granting to the chief justice administrative supervision of the judicial system (Tit. 13, sec. 38). Since the chief justice is the administrative head of the judicial system, the proposed section gives him the duty to submit a budget for all courts except the probate courts.

The provision for a judicial budget is new. It stops short of giving the judicial branch final authority over its budget, although there is much to be said for such a provision, and there is substantial modern authority for the view that courts have inherent power to see that financial support necessary to maintain the system of justice is provided. See *Inherent Powers of the Courts*, National College of the State Judiciary, Reno, Nevada (1973). A judicial budget proposed under the proposed mandate should have a strong presumption of correctness, and strengthen the independence of the judiciary.

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SECTION 6.11. POWER TO MAKE RULES.

The supreme court shall make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts. These rules may be changed by an act of the legislature adopted by a two-thirds vote of each house.

Comment: Although a recent statute grants rule-making power to the supreme court in civil cases (Tit. 13, sec. 17(1)-17(2)), it seems desirable to provide for this power as to both civil and criminal procedure by an explicit provision of the constitution. However, the second sentence of the proposed section authorizes the legislature to change a rule of procedure by a two-thirds vote of each house. Florida has a similar provision in its judicial article adopted in 1971 (Art. V, sec. 2). Some recent state constitutions have given an exclusive rule-making power to the supreme court which is immune from legislative interference. See: Arizona, Art. VI, sec. 5(5); Delaware, Art. IV, sec. 13(1); Michigan, Art. 6, sec. 5; Pennsylvania, Art. V, sec. 10(c).

SECTION 6.12. NUMBER OF CIRCUIT AND DISTRICT JUDGES.

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

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

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court on such proposal has been filed with the legislature.

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

Comment: This is a new section proposed to defer legislative action to increase or decrease the number of circuit or district judges until consideration has been given to the recommendations of the supreme court on the need for such changes.

SECTION 6.13. SELECTION OF JUDGES.

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

ALTERNATIVE SUBSECTION (a):

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

Comment: Present section 152 provides for the election of judges of the supreme court, circuit courts and probate courts. Judges of other courts established by law may be elected or appointed as provided by the legislature (Section 153). The Commission has carefully considered the now widespread movement for modification or abandonment of the selection of judges by popular election. That system, which did not exist at the time of Independence but was introduced during the Jacksonian era, has been much criticized by prestigious organizations which have devoted many years to its study, including the American Bar Association and the American Judicature Society. In Alabama, the Citizens Conference on the Courts in 1969 recommended the adoption of the so-called Merit System of selection of judges. See SB 423 and HB 748, 1969. This plan provides

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for initial appointment of judges by the governor from panels selected by commissions composed in part of laymen. The appointee, at the end of his first term, runs for re-election without opposition.

A number of states have retained the elective system, but sought to eliminate the obvious abuses of unrestrained political partisanship by providing that judges be elected on non-partisan ballots.

A majority of the Commission was unwilling to recommend abandonment of the elective system altogether, but felt that there is much merit in the attempt to eliminate political partisanship. It was therefore decided to submit in the report the above alternative provision for non-partisan elections. This would include a provision allowing incumbent judges, whether appointed or elected, to be put on the ballot for election without nomination.

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

Comment: Vacancies in any office of a judge holding office by election are now filled by appointment by the governor (Section 158). In Jefferson County, under the provisions of Amendments 83 and 110, when a vacancy occurs in the office of judge of the Circuit Court, the governor must fill the vacancy by appointing one of three persons nominated by a commission. Paragraph (b) provides for filling vacancies in the office of judge of the supreme court, court of appeals, circuit or district court by a method similar to that used in Jefferson County at the present time.

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SECTION 6.14. JUDICIAL NOMINATING COMMISSION. S.

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

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

(c) The terms of the members of the judicial nominating commissions shall be concurrent with the term of the chief justice of the supreme court. Any vacancy on a commission shall be filled in the same manner in which the position was originally filled. Members of all judicial nominating commissions shall be appointed within ninety days after the adoption of this section of the constitution.

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

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Comment: Judicial nominating commissions to select nominees for appointment to judicial vacancies are provided for in the constitutions of a number of states at the present time, e.g., Alaska, Colorado, Florida, Missouri, Nebraska and Oklahoma.

SECTION 6.15. TENURE OF OFFICE.

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

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

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

Comment: Paragraph (a) is a substitute for present section 155 which provides for a six year term of office for judges of the supreme court, the circuit court and the probate court.

Paragraph (b) is a new provision. At the election following the occurrence of a vacancy, the judicial office would be filled for a full term and not merely for the unexpired term.

Paragraph (c) is new. It was suggested by the 1970 Illinois Constitution.

SECTION 6.16. RETIREMENT.

The legislature shall provide by law for the retirement of judges, including supernumerary judges, with such conditions, retirement benefits, and pensions for them and their dependents as it may prescribe. No person shall be elected or appointed to a judicial office after reaching the age of seventy years, provided that a judge over the age of seventy may be appointed to the

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office of supernumerary judge if he is not eligible to receive state judicial retirement benefits.

Comment: Sections 97 and 98 of the present constitution apparently prohibit establishing a retirement system for state officers. These sections should be repealed.

The first sentence in this section is similar to provisions in other state constitutions, e.g., Virginia, Pennsylvania and Colorado. The last sentence, without the proviso, is similar to a provision in the Michigan constitution.

The proviso is designed to protect judges presently in supernumerary status or who may be qualified for that status, in the period between adoption of the article and the effective date of a pension system carrying them and their dependents.

SECTION 6.17. JUDICIAL INQUIRY COMMISSION.

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

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

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physically or mentally unable to perform his duties. All proceedings of the commission shall be confidential except the filing of a complaint with the court of the judiciary. The commission shall prosecute the complaints.

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

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

SECTION 6.18. COURT OF THE JUDICIARY.

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

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

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

(d) The court of the judiciary shall have power to issue sub-

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poenas. The legislature shall provide by law for the expenses of the court.

Comment: Sections 17 and 18 are proposed as a substitute for Amendment 317 (January, 1972). The principal substantive difference between the amendment and these sections is that the latter establish a Judicial Inquiry Commission to investigate complaints and a separate body, the Court of the Judiciary, to hear and try the charges. On principle, and probably as a matter of constitutional right, investigatory and prosecuting functions should be separated from adjudicatory responsibilities.

SECTION 6.19. DISQUALIFICATION.

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

Comment: This section is similar to a provision of Amendment 317.

SECTION 6.20. CONTINUATION OF COURTS.

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

Comment: Three years should be sufficient time for enactment of the legislation which would be required to implement the new article. This would be principally the creation of the new District Courts. If annual sessions are rejected, this provision should probably be extended to four years.

ARTICLE VII

Suffrage and Elections

SECTION 7.01. QUALIFICATIONS FOR VOTING.

Every citizen of the United States who has attained the age

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

Comment. This fixes voting age at eighteen, and leaves the residency requirements and other conditions for registration up to the legislature. It would replace present sections 177 and 178 (as amended by 207 and 223). These sections contain specific age (21), residence (state for one year and county six months), literacy, and poll tax requirements.

SECTION 7.02. DISQUALIFICATIONS.

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

Comment: This would replace present section 182 which disqualifies idiots and insane persons and those persons convicted of any of the thirty-three crimes listed in the section. Restoration of civil and political rights is provided for by Code, Tit. 42, sec. 16.

SECTION 7.03. REGULATION OF ELECTIONS.

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

Comment: This leaves the regulation of elections to the legislature and would replace the long, involved, and largely obsolete provisions of present sections 179 through 193 and amendments 41 and 223.

ARTICLE VIII

Taxation and Debt Limitation

SECTION 8.01. LIMIT ON POWERS TO TAX AND LEND CREDIT.

The State of Alabama and its political subdivisions shall use

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their power to tax and lend thir credit only for public purposes, except as otherwise permitted by amendments to the Constitution of 1901 at the time this section is adopted or as herein otherwise permitted.

Comment: This section expands the authority of the State and its political subdivisions to permit them to use their taxing power and lend their credit for any public purpose, but it also limits the use of these powers to public purposes. Present section 93 prohibits the State from engaging in "works of internal improvement" or lending its credit in aid thereof. This restriction has resulted in numerous constitutional amendments to permit the state to build roads and bridges, state docks, hospitals, airports and like improvements. This section would eliminate the necessity of submitting amendments of this type for ratification from time to time.

Present section 94 denies to the legislature the power to authorize counties, cities or towns to lend their credit or grant public money to any private person or agency or to become a stockholder in any corporation or association. The language of Section 1 imposes the same restrictions on local government agencies. An exception for industrial and commercial development is provided in Section 14 of this Article.

SECTION 8.02. DELEGATION OF TAXING POWER.

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

Comment: This is present section 212 without change. Section 212 has been construed to prohibit the levy or repeal of a tax subject to a popular referendum. *Al Means, Inc. v. City of Montgomery*, 268 Ala. 31, 104 So. 2d 816 (1958); *Opinions of the Justices*, 232 Ala. 56, 166 So. 706 (1936); 270 Ala. 38, 115 So. 2d 464 (1959); 287 Ala. 321, 251 So. 2d 739 (1971); 252 Ala. 561, 42 So. 2d 81 (1941); 287 Ala. 326, 251 So. 2d 744 (1971).

However, many amendments to the 1901 Constitution have made property tax referenda commonplace in this state, and

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local elections on property taxes are provided for in Section 8.10 of this article. Although there may be no valid distinction between referenda on property and other taxes, the difference is deeply engrained in public thinking and tradition, and the Commission has concluded that it would recommend no change in the present approach of the 1901 Constitution and amendments, which recognize the distinction.

SECTION 8.03. STATE TAXES ON INCOME.

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

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

Comment: This section takes the place of several amendments to the 1901 constitution, including Nos. 25, 61, 212 and 225. It retains the present 5 per cent maximum on the income tax and the present prohibition against the removal of the deduction of the Federal income tax from gross income. The requirement of amendment 61 that the proceeds be used for property tax reduction and education has been deleted and the personal exemption specified in amendment 25 has been omitted, as a matter of simplification. The trend is toward an increase, not a reduction, in the original \$300 personal exemption.

SECTION 8.04. IMPOSITION OF INCOME TAX WITH REFERENCE TO FEDERAL LAW.

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

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Comment: This provision is a new one. It permits a simplified levy, as e.g. a levy based on a percentage of the income as shown on the Federal income tax return. The purpose is to permit the legislature to simplify the task of the taxpayer in having to fill out two separate tax returns and make two separate complicated calculations to determine his federal and state income tax liability. It merely permits the legislature to grant as a convenience to the taxpayer a so-called "piggy-back" levy. The amendment is necessary because otherwise there could be an invalid delegation of the State's taxing power to the congress. A similar provision is contained in a number of recent constitutions, including Missouri, Kansas, New York, Utah and Oregon.

SECTION 8.05. STATE INHERITANCE AND ESTATE TAXES.

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

Comment: This is taken from and intended as a simplification of present amendment 23. It permits an estate or inheritance tax not to exceed the credit allowed for such levy against the Federal estate tax. The last sentence of amendment 23 has been omitted because it is redundant and unnecessary.

SECTION 8.06. DEDICATED FUNDS.

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

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Comment: This is a new section designed to give the legislature greater freedom in budgeting and effectively using available State funds to meet the financial obligations of the State. The greater part of the State's revenues is now earmarked for special purposes. Amendment 61 restricts a portion of the income tax to homestead exemptions and to the special educational trust fund. Amendment 93 earmarks vehicle and motor fuel taxes for highway expenditures. Amendment 272 earmarks the revenue derived from hunting and fishing licenses for conservation. This section retains these and other presently existing earmarkings, but it permits the legislature to terminate them.

SECTION 8.07. LIMITATION ON STATE AD VALOREM TAXATION.

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

Comment: This section imposes the same limit as present section 214. It is recommended as a substitute for section (h) of amendment 325 (ratified May 30, 1972) which limits all property taxes to one and one-half per cent of the fair market value of the property taxed. After thorough consideration and consultation with experts in the field, the Commission has concluded that the one overall limitation on three separate levels of government, state, county and city and in some cases even taxing districts as well, is impracticable and administratively unworkable. If the combined levy of taxes by state, county and city should exceed the limit, the determination of what portion of which levy is unlawful would be practically impossible. Separate limitations on local property taxes are provided in Section 8.10 of this article, but with a procedure for exceeding the limits with local governing body, legislative and voter approval, just as is now provided in amendment 325.

The exception for unlimited taxes to pay bonds will provide a higher credit rating for Alabama bonds and reduce the

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interest rate the State will have to pay for its borrowing. Whether this exception is included or not, the State can never afford to default on its bonds, and it is generally recognized that it would not do so. It should get the rate of interest that this unstated policy deserves but the policy must be written into the constitution for the market place to reflect it in the interest which the State must pay.

SECTION 8.08. ASSESSMENT AND CLASSIFICATION OF PROPERTY FOR AD VALOREM TAXATION.

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

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

Class II. All property not otherwise classified.

Class III. All agricultural, forest and residential property.

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

Class I. 30 percentum.

Class II. 25 percentum.

Class III. 15 percentum.

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

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

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

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

Comment: Subsections (a), (b) and (c) are the same as the first three subsections of amendment 325 ratified on May 30, 1972. Subsection (d) is the same as subsection (g) of amendment 325.

SECTION 8.09. EXEMPTIONS FROM AD VALOREM TAXATION.

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

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

Comment: This is a substitute for present section 91. It is taken from paragraphs (i) and (f) of amendment 325.

SECTION 8.10. TAXATION.

Except for taxes levied by the States, taxes presently per-

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

Comment: This section is a substitute for section 215 (as amended by amendment 208) and 216 (as supplemented by amendment 56) of the 1901 constitution and numerous amendments providing for local property taxation. It is in substance the same as subsection (e) of amendment 325 and it permits local tax increases above the present limits without a constitutional amendment, but subject to a procedure which requires the approval of the local governing body, the legislature and the local voters. Consideration was given to providing a fixed limit for cities and towns and another for counties but no general limitation could allow for the local variances which now exist as permitted by numerous amendments to the 1901 constitution. This section simply recognizes the status quo as to present authorizations.

Paragraph (d) of amendment 325 is a one time adjustment and for this reason it is not carried forward into this section. If by that provision of amendment 325 the existing constitutional limit is increased for any county, city or town in order to maintain last year's tax yield, then that is the limit which will be in effect under this section.

This section is the product of intensive study, consultation and debate in the commission. Several members of the commission and some of its consultants feel strongly that all constitutional limitations on local property taxes should be eliminated. Only a few state constitutions contain such limitations. There is much to be said for the view that a constitution should not deal with taxes at all, leaving to the legislature and the people the determination of the amount and kinds of

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taxes to be levied, subject only to the general requirements of due process and equal protection.

SECTION 8.11. STATE DEBT LIMITATION.

No debt or other obligation payable in whole or in part from taxes shall be contracted by or in behalf of the state except as provided herein and the full faith and credit of the state shall be pledged to all debt incurred under this section.

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

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

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

(d) **BONDS TO FINANCE REVENUE PRODUCING CAPITAL PROJECTS.** The legislature may authorize the issuance of general obligation bonds of the state to finance or refinance specified revenue producing projects (including the enlargement or improvement thereof), which are owned and controlled by the

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state or by one of its institutions or agencies, to an amount not exceeding the average annual tax revenues of the state for the immediately preceding five fiscal years; and such bonds shall not be included in determining the limitation on debt contained in paragraph (b), provided that:

- (1) the bonds shall be secured by a pledge of the net revenues derived from rates, fees or other charges of the projects;
- (2) before any such bonds shall be authorized, the governor shall file with the clerk of the house and secretary of the senate his opinion, based on responsible engineering and economic estimates attached thereto, that the anticipated net revenues to be pledged to the payment of the principal and interest on such bonds will be sufficient to meet such payments and to provide such reserves as the act authorizing such bonds may require; and
- (3) the act authorizing such bonds shall be adopted by a vote of two-thirds of the members elected to each house.

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

Comment: This section would replace present section 213, as amended. Section 213 forbids the creation of State debts except for temporary loans not to exceed \$300,000. This unrealistic limitation has led to many amendments to the constitution, so much so that the accepted method of authorizing state bonds has come to be by constitutional amendment.

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The proposed section will alleviate the need for financing desirable improvements by recurring constitutional amendments. Under it, the legislature could (1) authorize temporary debts in anticipation of tax collections not exceeding one-tenth of five year average tax receipts; (2) create debts for capital projects or to refinance previous debt, in a total amount not exceeding one and three-fourths times the average annual revenues, but only by a vote of three-fifths of the members of each house; (3) create additional debt without limit but only if, in addition to being first approved by a vote of three-fifths of the members of each house, it shall be submitted to and approved by the voters of the State; (4) issue general obligation bonds by a vote of two-thirds of the elected members of each house to finance a specified project determined and certified to be productive of revenues sufficient to amortize the bonds.

These are reasonable authorizations with conservative restrictions. They make unnecessary the subterfuges used in the past to avoid the unrealistic limit on State debts and, by permitting the full faith and credit of the State to be pledged, assure a better rating and correspondingly lower rate of interest for State bonds.

Mandatory requirements for scheduling the repayment of debt and for priorities on state revenues are included in paragraph (e) and these requirements, as well as the provision for an unlimited tax for the payment of State bonds in proposed section 8.07 will also improve the State's credit standing and lower the interest rate on bonds issued under this section.

SECTION 8.12. PROCEDURE FOR INCURRING COUNTY AND MUNICIPAL DEBT.

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

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shorter and (3) shall have been approved by a majority vote of the electors of such county or incorporated city or town voting at an election held in the manner prescribed by law.

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

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

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

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

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

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

Comment: The present debt limits of section 224 for counties and 225 (as amended by amendment 268) for cities and towns are removed, but safeguards are provided to limit the purposes for which debt may be incurred, to impose strict requirements for amortization and repayment, and to require voter approval. Financing by general obligation warrants without an election will no longer be permitted under this section. Present section 224 limits county indebtedness to three and one-half per cent of assessed value and section 225, as amended, limits municipalities to twenty per cent of assessed value with certain exceptions. In its interim report of May 4,

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1971, the commission recommended the retention of debt limits, but proposed an enlargement of the county's limit to ten per cent. After further consideration, the commission has concluded that debt limits should be abandoned in favor of the restrictions in this section.

By paragraph (b), the restrictions on incurring debts and the election requirements for issuing bonds and other obligations are made inapplicable to special types of financing presently exempted from the debt limit and election requirements of the 1901 constitution, and amendments. Sections 222, 224, 225, Amendment 107, 108, 126, 194, 228 and 268.

SECTION 8.13. EXCEPTION TO ELECTION REQUIREMENTS FOR OBLIGATIONS TO FINANCE SMALL CAPITAL PROJECTS.

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

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

(c) The total principal amount of all debts or obligations incurred without an election and outstanding under this section

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shall never exceed one percent of the assessed value of taxable property in the county or incorporated city or town.

Comment: This is a new exception to local debt restrictions not presently found in the 1901 constitution or any amendments thereto. It exempts a county or a city or town from the election requirement of section 8.12 when it incurs debts in limited amounts for small capital projects. No election is required unless five per cent of the electors, after notice that bonds have been authorized, file a petition for an election.

SECTION 8.14. GENERAL OBLIGATION INDEBTEDNESS OF COUNTIES AND MUNICIPALITIES FOR INDUSTRIAL DEVELOPMENT.

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

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

Comment: This section is intended to take the place of the numerous amendments to the 1901 constitution which permit indebtedness payable from county or municipal taxes for industrial or commercial development. Under paragraph (a) outstanding authorizations under these amendments would continue for five years, thus allowing ample opportunity for any county or municipality which has an industrial or commercial project in the works to complete this financing. From the

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date of ratification and, in the case of counties and municipalities under special amendments, after the five year cut-off, the local government units would be permitted to incur obligations, payable in whole or in part from taxes, for industrial or commercial development but only subject to the stringent limitations imposed in paragraph (b). These include voter approval of the obligation and simultaneous voter authorization of the levy of a special tax reasonably estimated to be sufficient to pay the proposed bonds in the event that the rent or revenues from which these bonds are made payable should turn out to be insufficient. These provisions are intended to make sure that the voters face up to the possibility that they will have to dig into their own pockets to pay more taxes if these bonds are not paid from rent or revenues as contemplated. Some members of the commission feel strongly that tax obligations should not be used for the subsidization of local industrial and commercial development but the majority felt that these special safeguards were adequate. There was strong sentiment in the commission for making the same industrial and commercial financing opportunities equally available to all counties and municipalities, and this view prevailed, subject to the five year continuance of authority in present local amendments.

ARTICLE IX

Local Government

SECTION 9.01. COUNTIES.

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

Comment: This is a substitute for present section 38. No change in substance is involved.

(b) The legislature shall by general law prescribe procedures for the creation, abolition, consolidation, merger, and change of boundaries of counties, and shall provide for payment

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or apportionment of the public debt of each county affected by a change, provided that no such change shall be made without consent of a majority of the electors voting on the proposal within each county affected.

Comment: This is a substitute for present sections 39, 40 and Amendment 132. The present sections allow the legislature to alter boundaries of counties by a two-thirds vote, prohibit changes which would create boundaries within seven miles of a courthouse, and permit the legislature to alter the boundaries of Macon County by a majority vote. This proposal requires the legislature to provide uniform procedures for all counties whereby boundaries may be changed with the consent of the people involved.

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

Comment: This provides another method of changing boundaries between adjoining counties. Under this alternate procedure boundaries could be changed by a local law, which would have to be published in each county affected, if adopted by a two-thirds vote of each house of the legislature and approved by the governing bodies of each county.

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

Comment: This retains the prohibition against reducing any county to less than six hundred square miles which is now provided for by section 39.

(e) No courthouse or county site shall be removed, nor shall any branch courthouse be established or abolished, unless such proposal is first submitted to a vote of the electors of the county or counties to be affected and is approved by a majority of those voting upon such proposal. An election under this section on the issue of moving, establishing or abolishing a courthouse or

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or apportionment of the public debt of each county affected by a change, provided that no such change shall be made without consent of a majority of the electors voting on the proposal within each county affected.

Comment: This is a substitute for present sections 39, 40 and Amendment 132. The present sections allow the legislature to alter boundaries of counties by a two-thirds vote, prohibit changes which would create boundaries within seven miles of a courthouse, and permit the legislature to alter the boundaries of Macon County by a majority vote. This proposal requires the legislature to provide uniform procedures for all counties whereby boundaries may be changed with the consent of the people involved.

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

Comment: This provides another method of changing boundaries between adjoining counties. Under this alternate procedure boundaries could be changed by a local law, which would have to be published in each county affected, if adopted by a two-thirds vote of each house of the legislature and approved by the governing bodies of each county.

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

Comment: This retains the prohibition against reducing any county to less than six hundred square miles which is now provided for by section 39.

(e) No courthouse or county site shall be removed, nor shall any branch courthouse be established or abolished, unless such proposal is first submitted to a vote of the electors of the county or counties to be affected and is approved by a majority of those voting upon such proposal. An election under this section on the issue of moving, establishing or abolishing a courthouse or

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branch courthouse shall not be held at more frequent intervals than every four years.

Comment: This is a substitute for present section 41 and amendment 81. No change in substance is involved.

SECTION 9.02. MUNICIPALITIES.

The legislature shall provide by general law for the incorporation, government, merger and change of boundaries of cities and towns, and for the annexation of unincorporated territory to incorporated cities and towns, which are referred to as municipalities in this article. When any municipality is abolished, provision shall be made for the protection of its creditors.

Comment: There is nothing in the present constitution similar to this proposed section. However, the proposed section does not grant any power to the legislature which it does not already have. The section simply makes explicit the duty of the legislature to provide by general law for the government and change of boundaries of municipalities.

SECTION 9.03. OPTIONAL PLANS OF GOVERNMENT FOR COUNTIES AND MUNICIPALITIES.

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

Comment: This section grants no new power to the legislature. It merely makes explicit the duty of the legislature to provide optional plans of local government for both counties and municipalities.

SECTION 9.04. COUNTY AND MUNICIPAL HOME RULE CHARTERS.

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

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

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

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

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

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

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

Comment: There is nothing in the present constitution similar to this proposed section. This section provides the procedure whereby a county or municipality may frame and adopt a home rule charter. The procedure does not become effective until two years after the adoption of the local government article in order to give the legislature time within which it may provide optional plans of local government under Section 9.03. It is contemplated that most counties and municipalities would want to operate under a plan of local government provided for by the legislature.

SECTION 9.05. COUNTY AND MUNICIPAL POWERS OF GOVERNMENT.

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

Comment: This provision would permit the exercise of very broad "home rule" powers by local governments whose organization meets certain standards. At the present time both counties and cities may exercise only such powers as are specifically delegated to them. Court decisions have consistently held that counties and cities are strictly limited to those powers which have been expressly or impliedly granted by constitutional provisions or legislative enactments. The proposed grant of residual powers of local government to counties and cities would eliminate the need for local acts of the legislature granting specific powers, and would enable local governments to serve the needs of their people more promptly and efficiently. These broad local powers would not be given to counties having the present governmental organization, but only to those which are carefully structured under guidance from the legislature.

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and the legislature would retain the authority to restrict or limit the powers of local governments by general laws.

SECTION 9.06. CONFLICTING COUNTY AND MUNICIPAL ORDINANCES.

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

Comment: There is no similar provision in the present constitution. If both counties and municipalities exercise legislative powers, it is necessary to define the limits of such powers in the event of a conflict.

SECTION 9.07. MUNICIPAL FRANCHISES.

No franchise or license shall be granted by any municipality for a period longer than thirty years.

Comment: This is a substitute for section 228 of the present constitution which forbids the granting of utility franchises for the use of public streets, except to railroads, for longer than thirty years. The draft broadens the prohibition to all franchises and licenses of any kind, for more than thirty years. While section 228 applies only to cities or towns having a population of more than six thousand, the proposed section would apply to all municipalities.

SECTION 9.08. RESPONSIBILITY FOR COUNTY ROADS.

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

Comment: This is a substitute for amendment 142. The language has been changed but the substance of amendment 142 has been retained.

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SECTION 9.09. MUNICIPAL STREETS.

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

Comment: This is section 220 of the present constitution with the omission of the word "village." Municipal corporations are classified as cities or towns. Code, Tit. 37, sec. 2. There is a statute in the language of section 220: Code, Tit. 10, sec. 72.

ARTICLE X

Education

SECTION 10.01. MAINTENANCE AND SUPPORT OF PUBLIC SCHOOLS AND EDUCATIONAL INSTITUTIONS.

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

Comment: This general mandate to the legislature to provide for public education is substituted for the longer detailed one in present Section 256. It is taken from the Model State Constitution.

SECTION 10.02. STATE BOARD AND SUPERINTENDENT OF EDUCATION.

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

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

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

Comment: Only one change of substance is made in the present amendment 284. The requirement that the legislature fix the superintendent's salary is changed to permit the legislature to allow the board of education to set the salary.

SECTION 10.03. BOARD OF TRUSTEES FOR THE UNIVERSITY OF ALABAMA.

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

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

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

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

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

Comment: The only change made in present section 264 is to delete the obsolete material concerning the board's membership in the period immediately following the adoption of the 1901 Constitution.

SECTION 10.04. BOARD OF TRUSTEES FOR AUBURN UNIVERSITY.

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

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

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

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

Comment: Amendment 161. No change.

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SECTION 10.05. MEMBERS OF LEGISLATURE IN-ELIGIBLE TO SERVE ON BOARD OF TRUSTEES.

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

Comment: This is a new section designed to promote objectivity in the consideration of programs and fund requests of state colleges and universities.

SECTION 10.06. COMMISSION ON HIGHER EDUCATION.

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

Comment: This is a new section giving constitutional status to the Commission of Higher Education, but leaving to the legislature the definition of its functions and authority. The Commission was established by statute in 1969. Code, Tit. 52, sec. 513(84) - (93).

SECTION 10.07. EXEMPTION OF MOBILE COUNTY.

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

Comment: This is section 270 of the constitution as amended by amendment 111, unchanged.

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ARTICLE XI

Public Officers

SECTION 11.01. DUAL OFFICEHOLDING.

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

Comment: This section would replace present section 280. It omits the exemptions contained in section 280 concerning postmasters, justices of the peace, constables, and commissioners of deeds. It adds a new provision exempting delegates to a constitutional convention and members of statutory bodies having only advisory powers. The last sentence was added in order to remove any question concerning the validity of statutes exempting persons in military service from the prohibition against dual officeholding. See: Code, Tit. 35, Sec. 37; Tit. 41, Secs. 224, 230(1).

SECTION 11.02. DISQUALIFICATION BY CONVICTION OF CRIME.

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

Comment: This section is a substitute for present section 60. The only change in substance is to replace the list of crimes in the current section with the words, "felony involving moral turpitude whose civil and political rights have not been restored."

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SECTION 11.03. COMPENSATION OF PUBLIC OFFICERS.

(a) The rate of compensation of any officer holding any civil office of profit under this state, or any county or municipality thereof, who is elected or appointed for a fixed term, whether such officer may be removed at the pleasure of the authority electing or appointing him or only upon impeachment, shall not be increased or diminished, during the term for which he shall have been elected or appointed, either by the imposition of new, different, and additional duties, or otherwise.

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

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

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

Comment: Subsection (a), (b) and (c) combine the substance of section 281 and amendment 92. Subsection (b) also prohibits any increase in the expense allowances of such officers except by general law applying to all similar officers.

Subsection (d) is new. To ease the burden of inflation on officers and to provide for help to the government in times of depression, this subsection would allow the legislature to provide for adjustments in compensation based on cost-of-living criteria. The United States Bureau of Labor Statistics Consumer Price Index is commonly used in labor contracts to provide for cost of living adjustments. Under this provision the legislature could provide for automatic adjustments at reason-

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able intervals, or set up a commission to determine the amount and timing of adjustments.

SECTION 11.04. METHOD OF CHANGING THE BASIS OF COMPENSATING COUNTY OFFICIALS.

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

Comment: This is a new section which would replace sections 96 and 104(24) and would render 33 constitutional amendments unnecessary. It was submitted to the legislature in May, 1971. Since submission to the legislature, the language has been changed slightly to make it clear that an officer placed on salary must pay into the treasury all fees collected by him.

SECTION 11.05. CIVIL SERVICE.

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

Comment: Section 11.05 is amendment 88 without change of substance.

SECTION 11.06. OATH OF OFFICE.

All members of the legislature, and all officers, executive

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and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation:

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

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

Comment: This is present section 279 of the constitution without change.

ARTICLE XII

Impeachments

SECTION 12.01. IMPEACHMENT OF STATE OFFICERS.

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

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

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

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

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

Comment: This section is a substitute for section 173 of the present constitution. It differs from section 173 in the following respects:

(1) Judges are exempt from legislative impeachment because the judicial article provides a method of removing judges from office.

(2) It omits "incompetency or intemperance in the use of intoxicating liquors or narcotics" as specific grounds for impeachment.

(3) It requires a two-thirds vote of the senate to convict, when the senate is sitting as a court of impeachment.

(4) It permits the legislature to provide for the trial of impeachments by a special tribunal of seven judges.

(5) It provides that an officer impeached by the house shall be disqualified from performing his official duties until acquitted.

SECTION 12.02. DISTRICT ATTORNEYS AND SHERIFFS.

District attorneys and sheriffs may be removed from office

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for any of the causes specified in section 12.01(a), by the supreme court, under such regulations as may be prescribed by law.

Comment: This section is a substitute for section 174 of the present constitution. Section 174 has been implemented by statute. Code, Tit. 41, sec. 178-202. The proposed section has been made applicable only to sheriffs and district attorneys, since the judicial article provides a method for the removal of judges.

SECTION 12.03. COUNTY AND CITY OFFICERS.

All county officers and officers of incorporated cities and towns may be removed from office for any of the causes specified in section 12.01(a) of this article by a court having jurisdiction to try felony cases in the county or district in which such officers hold their office. The legislature shall provide by law the method of proceeding under this section, provided that the right of trial by jury and appeal in such cases shall be secured. This section shall not apply to the judge of any court who may be removed by procedures provided by the judicial article.

Comment: This section is a substitute for section 175 of the present constitution. The only change of substance made by the proposed section is the omission of judges of inferior courts. Section 175 has been implemented by statute. Code Tit. 41, sec. 178-202.

SECTION 12.04. PENALTIES UPON CONVICTION.

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

Comment: This section is a substitute for section 176 of the present constitution. Under section 176 judgment of conviction in impeachment proceedings does not extend beyond removal from office and disqualification to hold office "for the term for which the officer was elected or appointed." The proposed section would disqualify any person convicted in im-

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peachment proceedings from holding "any office of honor, trust or profit, under the state." This is the language of the 1819 constitution Art. V, sec. 3.

ARTICLE XIII

Miscellaneous Provisions

SECTION 13.01. EMINENT DOMAIN.

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

Comment: This section is based on present section 235, which specifically applies to "municipal and other corporations and individuals invested with the privilege of taking property for public use. It does not apply to the condemnors, including the state.

The first sentence of section 235, which prohibits the taking of property without paying compensation, has been omitted because it is a repetition of the eminent domain section in the Bill of Rights (Sec. 1.14).

Section 35 provides for a right of entry pending an appeal provided that the condemnor pay the amount of damages assessed into court and give bond "with good and sufficient sureties." This has been changed to require the condemnor to give "an adequate bond."

SECTION 13.02. PROTECTION OF ENVIRONMENT.

It shall be the policy of the state to conserve and protect its

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natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise.

Comment: There is no comparable section in the present constitution. The proposed section is the same as article II, sec. 7 of the 1968 Florida constitution.

SECTION 13.03. EXEMPTION OF HOMESTEADS.

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

Comment: This section is proposed as a substitute for sections 205-208 of the present constitution. The proposed section requires the legislature to provide for homestead exemptions, but the definition of homestead and the extent of the exemption is left to the legislature.

ARTICLE XIV

Amending the Constitution

SECTION 14.01. PROCEDURE.

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

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

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election on a proposed amendment is called, other amendments may be submitted at the same election.

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

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

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

Comment: Section 1 sets out the procedure to be used when amending the constitution and would replace section 284 (as amended by No. 24) of the present constitution. Several substantive changes have been made. The major ones are:

(1) The present requirement that an amendment must be read at length on three separate days in each house before a vote thereon is shortened to require only one reading at length before final passage.

(2) An effort has been made in the new section to curtail expensive special elections by requiring that a bill declaring that an emergency exists be passed before a special election on an amendment may be held.

(3) The notice requirement has been changed from publication for four successive weeks to one publication of the full

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text in every county and one publication of the ballot statement in each newspaper of the state. The new section also permits the legislature to provide for publication by other means, including radio and television.

(4) The new section would allow the revision of an article, or articles, or the addition of one or more new ones, including the submission of an entire new constitution, as a single amendment.

SECTION 14.02. FORM OF THE BALLOT.

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

Comment: This section provides for the preparation of the ballot. It replaces section 285. The attorney general is required to prepare a short statement of the effect of the amendment, rather than a statement of the substance or subject matter now required.

SECTION 14.03. CONSTITUTIONAL CONVENTION.

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

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

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

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

Comment: Section 14.03 describes the method of calling and holding constitutional conventions. It replaces present section 286 and makes several substantive changes. The most important are:

(1) The legislature can limit the convention to specific sections or amendments under the new section.

(2) The legislature may, under this section, limit the duration of the convention. After the convention meets, its duration may be extended by legislative act.

(3) An act calling a convention may not be repealed after the approval of the convention by the voters. The old section allowed repeal only by the same session of the legislature which passed the act.

(4) The new section requires approval of a convention's proposals by the voters.

SECTION 14.04. METHOD OF VOTING.

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

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Comment: This section makes only one minor change in present section 287. The words "proposed revisions" and "proposing revisions" are added in order to incorporate the changes made by proposed section 14.01.

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CORRESPONDING SECTIONS

OF

1901 CONSTITUTION

AND

PROPOSED REVISION

Section 1901	Proposed Section	1901 Section	Proposed Section
1	1.01	38	9.01
2	deleted	39	9.01
3	1.02	40	9.01
4	1.02	41	9.01
5	1.04	42	2.01
6	1.03, 1.05	43	2.01
7	deleted	44	3.01
8	1.05	45	3.16
9	1.05	46	3.02
10	1.10	47	3.04
11	1.06	48	3.06, 3.07,
12	deleted		3.09, 3.11.
13	10	49	deleted
14	11	50	4.01
15	1.05	51	3.07
16	1.05	52	3.13
17	1.07	53	3.14
18	1.09	54	3.14
19	deleted	55	3.17
20	1.08	56	3.15
21	1.15	57	deleted
22	1.13	58	3.13
23	1.14	59	3.05
24	deleted	60	11.02
25	1.02	61	3.18, 3.19
26	1.12	62	3.18
27	1.16	63	3.18
28 - 36	deleted	64	3.19
37	deleted	65	deleted

CORRESPONDING SECTIONS OF 1901 CONSTITUTION

1901 Section	Proposed Section	1901 Section	Proposed Section
66	3.20	115	5.03
67	3.12	116	5.02
68	deleted	117	5.04
69	deleted	118	5.05
70	3.21	119	deleted
71	3.22	120 - 121	5.07
72	3.23	112, 123	5.06
73	3.24	124	5.08
74	deleted	125, 126	5.06
75	deleted	127	5.09
76	3.10	128	5.10
77 - 81	deleted	129	5.11
82	3.31	130	11.01
83	3.08	131	5.07
84 - 88	deleted	132	5.13
89	9.05	133	5.14
90	deleted	134, 135	deleted
91	8.09	136	5.07
92	deleted	137, 138	deleted
93	8.01	139	8.01
94	8.01	140	8.02
95	deleted	141	deleted
96	11.04	142, 144	8.04
97	3.25	145, 148	deleted
98	3.25	149	8.06
99	deleted	150	8.08
100	3.26	151	8.02
101 - 103	deleted	152	8.13
104	3.29	153	deleted
105	3.29	154	8.07
106	3.30	155	8.15
107	3.30	156, 157	deleted
108 - 109	deleted	158	8.13, 8.14, 8.15
110	3.28		
111	3.30	159 - 161	deleted
112, 113	5.01	162	8.08
114	5.02	163 - 172	deleted

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Section 1901	Proposed Section	Section 1901	Proposed Section
173	12.01	223	deleted
174	12.02	224	8.12
175	12.03	225	8.12
176	12.04	226 - 227	deleted
177 - 196	7.01, 7.02, 7.03	228	9.07
197	4.01	229 - 234	deleted
198	4.01 & 4.03	235	13.01
199 - 203	4.02 & 4.03	236 - 255	deleted
204	deleted	256	10.01
205 - 208	13.03	257 - 263	deleted
209 - 210	deleted	264	10.03
211	deleted	265 - 268	deleted
212	8.02	269	8.10
213	8.11	270 - 278	deleted
214	8.07	279	11.06
215 - 216	8.10	280	11.01
217	8.08	281	11.03
218 - 219	deleted	282 - 283	deleted
220	9.09	284	14.01
221	deleted	285	1402
222	8.12	286	14.03
		287	14.04

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENTS TO 1901 CONSTITUTION AND CORRESPONDING SECTIONS OF PROPOSED REVISION

AMENDMENT	PROPOSED SECTION
Amendments on local ad valorem taxes:	8.10
8 41 cities	
13 9 cities	
17 12 cities	
18 Mobile	
19 Walker	
31 Attalla	
34 Limestone	
45 Colbert	
52 Decatur-Cullman-Morgan County	
54 Haleyville	
56 All counties	
59 All counties except Mobile and Montgomery	
63 Montgomery	
65 DeKalb	
66 Marshall	
69 Marion	
70 Escambia	
72 All counties except Mobile, Montgomery and Jefferson	
76 All counties except Mobile and Jefferson	
125 All counties	
143 Barbour	
195 Mobile	
198 Tallapoosa	
199 Washington	
208 Amendments Section 215	
209 Mountain Brook	
230 Baldwin	
240 Birmingham	
242 Auburn	
248 Mobile	
254 Winston	

CONSTITUTION OF ALABAMA

AMENDMENT

PROPOSED SECTION

262	Franklin
269	All counties — library
275	Mobile
276	Walker
300	Mobile
307	Chambers
311	Lawrence, Limestone, Morgan
318	Morgan
319	Baldwin
324	Lee

Amendments on County, City and District School Taxes:

3	State wide
6	Selma
16	Mobile
20	Lawrence
32	Lawrence
52	Decatur, Cullman
67	Etowah
68	Calhoun
71	Tuscaloosa
77	St. Clair
78	Cherokee
79	Courtland
80	Huntsville
82	Jefferson
86	Monroe
98	Talladega
99	Lawrence
101	Marshall
102	Chambers
106	Morgan
111	State wide
123	Cleburne
124	Russell
129	Tallapoosa
130	Colbert

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT	PROPOSED SECTION
131	Butler
145	Coosa
146	DeKalb
147	Lee and Opelika
148	Auburn
149	Madison
153	Winston
156	Randolph
162	Baldwin
163	Bullock
164	Tuscaloosa
165	Calhoun
166	Chilton
167	Choctaw
168	Clarke
169	Clay
170	Tuscumbia
171	Sheffield
172	Muscle Shoals
173	Franklin
174	Jackson
175	Jefferson
176	Lamar
177	Lauderdale
178	Florence
179	Mobile
180	Randolph
181	Talladega
182	Washington
202	State wide
203	Jackson
204	Walker
205	Marion
206	Coffee
210	DeKalb
211	Franklin
216	Coffee
218	Huntsville

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AMENDMENT

PROPOSED SECTION

232	Anniston
234	Fort Payne
252	Talladega
253	Jasper
260	Jefferson
279	Fort Payne
281	Anniston
291	Calhoun
292	Covington
293	Colbert
294	Lawrence
295	Dale
296	Etowah
298	Jefferson
299	Oneonta
301	Mobile
304	Madison
305	Huntsville
309	Lee
310	Talladega
316	Mountain Brook

Amendments on Local

Economic Development:

8.14

84	Marion
94	Fayette
95	Blount
104	Haleyville and Double Springs
128	Bullock
155	Union Town
183	Autauga
186	Franklin
188	Greene
189	Lamar
190	Lawrence
191	Madison
197	St. Clair
217	Clarke

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT	PROPOSED SECTION
220	Bayou La Batre
221	York
244	Lester
245	Madison
246	Marion
250	Sumter
251	Livingston
256	Addison and Lynn
259	Evergreen
261	Bayou La Batre
263	Geneva
277	Carbon Hill
302	Pickens
303	Morgan
308	Marengo
312	Bibb
313	Hale

Amendments on County

Debt Limit: 8.12

18	Mobile
29	Mobile
30	Lawrence
36	Morgan
60	Mobile
73	Jefferson
75	Marion
100	Mobile
115	Tuscaloosa
122	Mobile
151	Mobile
152	Mobile
187	Geneva
193	Mobile
194	Mobile
200	State wide
237	Henry
238	Jefferson

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT	PROPOSED SECTION
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220	Bayou La Batre
221	York
244	Lester
245	Madison
246	Marion
250	Sumter
251	Livingston
256	Addison and Lynn
259	Evergreen
261	Bayou La Batre
263	Geneva
277	Carbon Hill
302	Pickens
303	Morgan
308	Marengo
312	Bibb
313	Hale

Amendments on County

Debt Limit:	8.12
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18	Mobile
29	Mobile
30	Lawrence
36	Morgan
60	Mobile
73	Jefferson
75	Marion
100	Mobile
115	Tuscaloosa
122	Mobile
151	Mobile
152	Mobile
187	Geneva
193	Mobile
194	Mobile
200	State wide
237	Henry
238	Jefferson

CONSTITUTION OF ALABAMA

AMENDMENT	PROPOSED SECTION
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264	Marengo
280	Jefferson
300	Mobile
301	Mobile
320	Madison

Amendments on Municipal

Debt Limit:	8.12
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107	All municipalities
108	Public corporations
126	Towns less than 6,000
194	Mobile
228	All cities
268	Towns less than 6,000

Local Salary and Court Cost

Amendments:	11.04
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2	Jefferson
4	Montgomery
28	Mobile
43	Etowah and Cherokee
44	Morgan
46	Dallas
47	Mobile
48	Houston
50	Walker
62	Etowah
64	Limestone
85	Talladega
103	Chambers
127	Walker
134	DeKalb
135	Madison
136	Colbert
137	Cullman
138	Dallas
139	Montgomery
185	Elmore

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT	PROPOSED SECTION
196 St. Clair	
215 Marshall	
229 Baldwin	
231 Bullock	
236 Greene	
241 Lauderdale	
249 Shelby	
265 Marengo	
290 Barbour	
297 Tallapoosa	
306 Bibb	
321 Lawrence	
326 Dale	
Amendments Authorizing	
State Bonds:	8.11
11, 21, 26, 42, 74, 87	
113, 114, 116, 117, 118,	
119, 120, 121, 141, 157,	
158, 213, 222, 224, 266,	
267, 270, 273, 286, 287,	
288.	
Miscellaneous Amendments as to	
State and Local Government:	8.01
1 Amend Sec. 93 for roads	
5 Repealed Sec. 250	
7, 9, 10, 14, 49, 90, 109 Poll taxes	
12 Port Authority	
22 Drainage districts	
23 Inheritance tax	8.05
24 Amendment procedure	14.01
25 Income tax	8.03
26-A Salaries	11.03
27 Corporations	
35 Sheriffs	
37 Waiver of indictment by plea of guilty	1.05
38 Pardon and parole	5.08

CONSTITUTION OF ALABAMA

AMENDMENT	PROPOSED SECTION
Miscellaneous Amendments as to	
State and Local Government: cont'd.	
39 Biennial sessions	3.09
40 Trust funds	
41 Voting machines	7.03
51 Banks	
53 State hospitals	8.01
55 Voter qualification (see 91, 96)	7.01
57 Legislative sessions and pay	3.09, 3.11
58 Harbors and airports	8.01
61 Income tax disposition	8.06
81 Branch court houses	
83, 110 Vacancies in Jefferson Circuit Court	6.13
88 Civil Service	11.05
89 Militia	
91 Voter qualification	7.01
92 Salaries (Boutwell)	11.03
93 Gasoline tax earmarked	8.06
96 Voter residence	7.01
97 Legislature vacancies	3.03
105 Legislature may fix court costs	
Madison County	
132 Abolish Macon County	9.01
133 Municipal taxes on wages	
Walker County prohibited	
139 Court costs Montgomery	
140 No change form of government	
Lauderdale without local vote	9.02, 9.03
142 Highway Dept. assumption of responsibility for county roads	9.08
144 Local vote for changes in govern- ment or salaries Colbert	9.02, 9.03, 11.03
150, 192 Pensions Mobile County	
154 Mortgage loans by foreign corporations	
159 Legislature in emergency	3.32
161 Auburn trustees	10.04
184 No change government Dekalb without vote	9.03

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT	PROPOSED SECTION
201 Promotion of cattle industry	
212 Income tax on corporations	8.03
214 Promotion of poultry	
219 No tax on wages in Mobile county without local vote	
223 Literacy test for voters	7.01
225 Income tax — deduction of federal tax	8.03
226 Circuit Solicitor changed to district attorney	
227 Irrigation districts	
233 Legislature may fix court costs Dallas County	
235 Law library court cost tax Etowah	
239 Fire and garbage districts Jefferson	
257 Water management districts	
258 Inferior courts Jefferson (1966)	6.05
271 Clerk of Supreme Court (unnecessary)	
272 Game and Fish Fund	8.06
274 Dock facilities on inland waters	
278 Court costs Elmore county	
282 Governor and state officers succeed themselves once	5.02
283 Jefferson inferior courts (1967) Identical to amendment 258	6.05
284 Superintendent of education appointed by board	10.02
285 Voter registration by mail (1969) see Amend. 322	7.03
289 Sixteenth section land Mobile to University of South Alabama	
314 Amends 239, fire and garbage districts Jefferson County	
315 Promotion of soybeans	
317 Judicial Commission	6.17, 6.18
322 Voter registration by mail (1972) see Amend. 285	7.03
323 Justices of the Peace abolished	6.05
325 Ad valorem tax classification	8.08

CONSTITUTION OF ALABAMA

THE MAKING OF ALABAMA'S SIX CONSTITUTIONS (1819-1901)

by

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INTRODUCTION

Alabama moved from a rural frontier of about a hundred thousand people in 1819 to a semi-industrial state with thriving cities and almost two million people in 1901. In these eighty-two years the state held six conventions, or an average of one every fourteen years. The Civil War and its aftermath precipitated a series of crises which brought four conventions in fifteen years. Alabama's six constitutions may be briefly described as the Frontier Constitution of 1819; Secession Constitution of 1861; Reorganization Constitution of 1865 (following the War); Reconstruction or Radical Constitution of 1868; Bourbon or Conservative Constitution of 1875; and the Disfranchising Constitution of 1901. All of these constitutions were written by constitutional conventions but only the last three were submitted to the people for their ratification.

PERIODS OF CONSTITUTION MAKING

Alabama, coming into the Union in 1819, missed the first period of constitution making in America. The early constitutions, usually framed by the legislature, gave expression to the political ideas and problems of the Revolutionary era. They manifested a dread of executive and military power (stemming from experiences with England and the royal governors), and showed a disposition to entrust the government to the hands of the legislative authority, which more directly represented the people. Most of the early constitutions contained little but an elaborate bill of rights, and a rather crudely drawn outline of a frame of government with provision for few executive or judicial officers.

HISTORY OF ALABAMA'S CONSTITUTIONS

The second period of constitution making began in the early part of the nineteenth century. The powers of the legislative branch began to be questioned, checks and balances of power among the three branches further developed, and the governor became a popularly elected official with veto powers. An increasing demand for popular election of all executive and judicial officials and the extension of the suffrage by the elimination of property and educational qualifications were both notable trends of the period. The Alabama Constitution of 1819 reflected most of these trends. Made in the early part of the period, however, it still favored the legislative branch with large appointive powers and contrary to the trend was not submitted for ratification by the people.

The third period began about the time of the Civil War and was marked by a tendency to further strengthen the judicial and especially the executive department in the crisis of the war period. As governmental problems increased because of industrialization and urbanization, the governor's powers were further increased. The most marked change during this period, however, was a narrowing of the power and competency of the legislature, and the fettering of its action in some fields by absolute prohibition. The trend was accentuated in Alabama and other Southern states where the legislative branch was more discredited than elsewhere as a result of the public's belief that it was incompetent and of general low caliber during the Reconstruction period. Added distrust of the electorate after the enfranchisement of the Negro in 1867 also had its effect. Severe restrictions on taxation, state aid to internal improvements, local legislation and other like limitations were the result.

The conservative-dominated constitutional convention of 1875 abandoned many of the objectives of the Radical period and launched a policy of retrenchment and economy in an effort to extricate the state from a \$29,000,000 debt amassed since 1867. However, the Carpetbaggers left a lasting imprint on the Alabama constitution. There was no attempt to retreat from reforms such as popular election of all judicial and executive officials, guarantees of homestead exemptions and women's

CONSTITUTION OF ALABAMA

rights. The article on education in the Constitution of 1875 was more like that of 1868 than any previous article, and the convention of 1875 dared not take action against Negro suffrage for fear of federal intervention. In fact, the bill of rights of the Constitution of 1875 forbade any educational or property qualifications for voting or the denial of the right to vote to anyone because of race. However, no factor influenced the 1875 convention more than unfaded memories of the Reconstruction regime. To guard against every possible evil of that regime, numerous restrictions were written into the Constitution of 1875 until it became primarily an "instrument of prohibition."

SUFFRAGE AND DISFRANCHISEMENT

The Constitution of 1819 contained no property, educational, taxpaying, or similar qualifications for voting and provided for universal white manhood suffrage. In its suffrage and other general divisions it was noted along with the constitution of Kentucky for its democracy. The Constitution of 1901 contained limitations on suffrage based on property, literacy, good character, "understanding", vagrancy, petty crimes, and poll taxes which made it the most complicated suffrage article in any of the state constitutions. It represented a drastic break with the past as no previous constitution of Alabama had contained any of these provisions. Universal white manhood suffrage had existed since 1819 and universal manhood suffrage since 1868. The Constitution of 1901 effected a revolution in state politics in the opposite direction from the Constitution of 1868. The latter enlarged the electorate by more than forty per cent by enfranchising the Negro. The former reduced the electorate by an even greater percentage by disfranchising the Negro and many whites as well.

The first constitutional provision for a poll tax was written into the Constitution of 1868, when the Radicals provided for a compulsory poll tax of \$1.50 to be used for educational purposes. The Constitution of 1875 contained the same poll tax provisions as that of 1868. The convention of 1901 continued

HISTORY OF ALABAMA'S CONSTITUTIONS

the poll tax for schools, but also made it non-compulsory as a tax, cumulative, and a prerequisite for voting. In 1941-42, some 600,000 whites and 520,000 Negroes over 21 years of age were not voters. By contrast there were 440,291 registered voters in the state. Designed to disfranchise the Negro, the poll tax and other deterrents had disfranchised more whites than blacks.

Residence requirements for voting were lengthened at the end of the century. All constitutions prior to 1868 required one year in the state and three months in the county or district. The Carpetbaggers provided for six months in the state and three months in the county or district in order not to disqualify themselves. The Constitution of 1875 restored the residence provisions existing prior to 1868. But the convention of 1901 lengthened residence requirements for voting to two years in the state, one year in the county and three months in the ward or precinct. Supposedly directed at migratory Negroes, these severe residence qualifications also disfranchised some whites from the beginning. Moreover, as Americans became more mobile, they took an increasing toll of both whites and Negroes in all economic groups. In the 1960's, a residence requirement of only one year in the state was provided for by amendment of the Constitution of 1901 and recent federal court decisions have further reduced state, county, and precinct residence requirements.

No religious, property, educational, or tax paying requirements for office holding have ever been written into any of Alabama's constitutions. The bill of rights of every Alabama constitution has forbidden any religious qualification.

ELECTION OF OFFICIALS

Unlike the constitutions of most of the older Southern states, the Alabama Constitution of 1819 provided for the election of the governor and sheriffs by the people. The election of other executive officials was entrusted to the legislature. The legislature elected the secretary of state, the state treasurer, and the comptroller of public accounts until 1868, when the Radicals provided for their election by the people. The election

CONSTITUTION OF ALABAMA

of all judicial officials, except the justices of the peace whom the people elected, was granted the legislature by the Constitution of 1819. In 1850, the election of circuit and county judges was given to the people, but chancellors and judges of the Supreme Court were still elected by the legislature. There was much agitation in the eighteen-fifties for the election of all executive and judicial officials by the people. Before this change could be accomplished, however, the Civil War checked constitutional reform.

The Constitution of 1868 made all executive and judicial officials elective by the people. The Negroes, Carpetbaggers, and most of the Scalawags demanded this privilege in the name of democracy, although the old electorate had not enjoyed it. The convention of 1875 left the election of these officials, with minor exceptions, to the people.

ELECTIONS AND SESSIONS OF THE LEGISLATURE

The Constitution of 1819 provided for annual elections; the Constitution of 1901 for quadrennial elections. Alabama had annual elections to 1846 and biennial elections from 1846 to 1901.

Annual sessions of the legislature were held from 1819 to 1846; biennial sessions from 1846 to 1861; annual sessions from 1861 to 1875; biennial sessions from 1875 to 1901; quadrennial sessions from 1901 to 1939; biennial sessions since 1939.

RESTRICTIONS ON THE LEGISLATURE

A growing distrust of the legislature was one of the most apparent constitutional trends in Alabama in the nineteenth century. After 1819, not a single convention met without placing additional limitations on the legislature. The people limited the legislature by the adoption of two amendments before the Civil War. In 1846, an amendment took the election of district and county judges from the legislature and gave it to the people. The convention of 1861 restored annual sessions of the legislature but limited each session to thirty days. For the first time restrictions were placed on local legislation and

HISTORY OF ALABAMA'S CONSTITUTIONS

on the power of the legislature to create debt; also the legislature was forbidden to grant divorces. The convention of 1865 forbade the legislature, which had a large share of the appointive power until 1868, to appoint a legislator to any state civil office of profit. The convention of 1867 provided that state aid to corporations could be given only with a two-thirds vote of the legislature (a check which proved insufficient) and forbade the legislature to grant any municipality the right to levy a greater tax than two per centum of the assessed value of property. Strangely enough, the Radicals were the first to place a restriction on state aid to corporations and a tax limit in the constitution of Alabama. However, by granting to the people the power to elect many executive and judicial officials formerly elected by the legislature, the Radical convention made the greatest reduction in the power of the legislature. By creating a rival legislative body, the Board of Education, which had power to make all laws on the subject of education, the convention of 1867 further reduced the power of the legislature.

In 1875, with the Reconstruction period in mind, the convention restricted the legislature by placing an absolute prohibition against state aid to corporations and a limitation of three-fourths of one per centum on state taxation. It provided for biennial sessions of the legislature limited to fifty days and because of frequent special sessions in the Radical period, special sessions were now limited (except by a two-thirds vote of the legislature) to a consideration of only those subjects listed in the governor's call. Additional sections were written into the constitution seeking to limit the legislature's power to pass local and special legislation. Moreover, numerous sections protecting the people from corrupt legislatures were incorporated into the organic law. Most of these concerned matters of legislative procedure or sought to regulate the legislature in making contracts. A proviso that the governor might veto items in an appropriation bill substantially reduced the legislature's power in financial matters. The convention of 1875, with Civil War and Reconstruction history in mind, forbade the legislature or the governor to suspend the writ of *habeas corpus* under any circumstances. The convention of 1901 provided for quadren-

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nial sessions of the legislature, limited to fifty days. This proviso sought to reduce the time the legislature was in session by one-half, as biennial sessions under the Constitution of 1875 had also been limited to fifty days. Quadrennial sessions of the legislature were a new venture to state government. Many states have quadrennial elections but only Alabama has ever provided for quadrennial sessions. However, so many special sessions were called under the Constitution of 1901 that Alabama returned to biennial sessions by constitutional amendment in 1939.

In 1901 thirty-one subjects on which there could be no local legislation were written into the constitution. The convention further limited the legislature's power by providing that the governor might propose amendments to the legislature embodying his objections to a bill presented for his signature. The bill with executive amendments must be accepted or rejected in toto by the legislature without alteration. Moreover, the same convention further restricted the legislature's taxing power by limiting the legislature to a maximum state ad valorem tax of sixty-five-hundredths of one percentum instead of seventy-five-hundredths. Criticism of the legislature had reached a new high by the end of the century.

GROWTH OF EXECUTIVE POWER

The governor was given more power in 1819 than in most of the old states of the Union, despite the fact that popular resentment against several territorial governors had been great. He was made elective by the people rather than by the legislature; hence he was not dependent on the legislature as in many of the early state constitutions. Unlike most of the early state governors, the Alabama governor had the veto power. However, the governor in Alabama never secured the power to appoint with the consent of the Senate major judicial and executive officials which governors enjoyed in some states. Beginning in 1819, the legislature elected the secretary of state, state treasurer, the comptroller of public accounts, and all judicial officials except the justices of the peace, who were elected by the people. When the election of some of them was denied

HISTORY OF ALABAMA'S CONSTITUTIONS

the legislature by amendment in 1850 and the election of all of them by the Radical convention of 1867, they were all made elective by the people instead of appointive by the governor. And as new officials were created (state superintendent of education, commissioner of industrial resources, commissioner of agriculture and industry) they were also made elective by the people.

As the century advanced the governor secured longer tenure and more participation in the making of legislation. He was elected biennially from 1819 to 1901 and quadrennially after 1901. However, the convention of 1901 provided that the governor could not succeed himself, a provision since changed by amendment. In 1875, the governor was given much more participation in the making of financial legislature by the provision that he could veto part of an appropriation bill. (Such a veto is still denied the President of the United States.)

APPORTIONMENT OF THE LEGISLATURE

Disagreement over apportionment in the legislature was an important reason for sectionalism in Alabama in the nineteenth century. In 1819 and thereafter, North Alabama wanted representation based on the white population; South Alabama, the federal ratio, which added three fifths of the Negroes to the white count. Apportionment in the state legislature was based on the white population until 1868. All attempts of the "black" counties, beginning in the convention of 1819, to have the federal ratio adopted were defeated. Although the slaves had been freed, the convention of 1865 retained white population as the basis for representation. The Radical convention of 1867 not only enfranchised the Negro but provided that the whole population should be the basis of representation in the state legislature. The convention of 1875 retained that basis but violated the principle by apportioning representation for the next six years unfavorably to the Black Belt where most blacks lived and where the Radicals were still in control. Long before 1900, however, apportionment in the legislature and the Democratic State Convention was shifted in favor of the Black Belt and other South Alabama counties. Since apportionment in the con-