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INFORMATIONAL BOOKLET

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ON THE

PROPOSED 1976 REVISION OF THE

TEXAS CONSTITUTION

64th LEGISLATURE

Approved by: The Senate Committee on the Texas Constitution
The House Committee on Constitutional Revision

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I.

A HISTORY OF CONSTITUTIONAL REVISION IN TEXAS

Texans have lived under six different constitutions since 1836 when the first document was adopted to form the independent Republic of Texas. Each constitution has been a product of its era in the state's history. A second constitution was written in 1845 when Texas was admitted as the 28th state in the United States. When Texas seceded from the Union in 1861, another constitution was written to allow its accession to the Confederate States. That document was rewritten twice in the four years following the Civil War, first in 1866 and then again in 1869 to comply with the demands of Congressional Reconstruction.

The present Texas Constitution was drafted by a constitutional convention that met in 1875, and since its adoption by the voters in 1876, the document has been amended 220 times and now contains approximately 63,000 words.

In 1876 the governor, in a message to the legislature, spoke of the need for constitutional amendments to the new document, particularly in the Judiciary Article. Between 1879 and 1890, numerous unsuccessful attempts were made to create a joint committee to prepare a resolution encompassing suggested changes in the constitution. A single amendment substantially revising the entire Judiciary Article was adopted by the voters in 1891, culminating the movement for revision of that article.

The first recorded attempt to call a constitutional convention occurred eleven years after the ratification of the 1876 Constitution with the introduction of a joint resolution in 1887, the first of many resolutions proposing a convention. However, not until 1917 did both houses of the legislature succeed in passing a resolution that called for a constitutional convention. This senate concurrent resolution called the convention without voter approval but instructed the governor to issue a proclamation for the election of delegates and required submission of any proposed document to the voters for ratification. The governor stopped this revision effort by refusing to issue the proclamation.

Two years later the legislature tried a different approach. The 36th Legislature passed a senate concurrent resolution providing for the submission of the question of a constitutional convention to a public referendum. In November of 1919 the voters overwhelmingly defeated the convention proposition (23,549 for

to 71,376 against) with approximately ten percent of the voters going to the polls.

Between 1919 and 1949 the Texas Legislature regularly considered proposals for a constitutional convention. Four house concurrent resolutions, three senate concurrent resolutions, eight house joint resolutions, and four senate joint resolutions were introduced. Beginning in 1941 proposals for the creation of a revision commission were consistently introduced. However, no resolution calling a constitutional convention or creating a revision commission received legislative approval during this period.

In 1949 the governor called together a group of citizens to form the Citizens Committee on the Constitution, which recommended to the legislature that a commission be created to study the need for constitutional revision. A resolution embodying this recommendation and appropriating money to fund the commission died in a house committee.

A concurrent resolution was passed in 1957 requiring the Legislative Council to begin a study of the 1876 Constitution and to submit its recommendations on revision of the document. Although the legislature did not provide supplemental appropriations for the Legislative Council until 1959, an unpaid 18-member Citizens Advisory Committee was authorized, with the governor, lieutenant governor, and the speaker of the house each appointing six members. In 1959 the Citizens Advisory Committee issued an interim report, which indicated that some type of revision was necessary, subject to further research. The Legislative Council submitted a report to the 57th Legislature in 1961 indicating that no constitutional convention or revision commission was necessary.

Gubernatorial support for calling a constitutional convention was announced in 1966. In 1967 the legislature passed a resolution to create a Constitutional Revision Commission. The commission consisted of 25 members, ten appointed by the governor and five each by the chief justice, lieutenant governor, and speaker of the house. When the lieutenant governor refused to make his appointments, those commission members who had been appointed named the final five members. The commission presented a draft of a revised and simplified constitution to the 61st Legislature in 1969. The legislature did not submit that draft constitution to the voters but did submit an amendment repealing more than 50 obsolete sections of the Texas Constitution, which was approved by the voters in August of 1969.

In 1971 the legislature proposed a constitutional amendment, adopted by the voters on November 7, 1972, calling for the Texas Legislature to sit as a constitutional convention in 1974. This amendment also required the legislature to establish and fund a constitutional study commission before convening as a convention. After nine months of study and public hearings held throughout the state by 37 citizen-members, the Texas Constitutional Revision Commission submitted its recommended new state constitution to the legislature on November 1, 1973.

On January 8, 1974, a constitutional convention, composed of the state's 31 senators and 150 representatives, sitting as a unicameral body, began work on a revised state constitution. Using the 1973 revision commission's recommended document as a starting point, the convention developed several versions of a revised constitution. However, none of the convention proposals garnered the two-thirds vote necessary for submission. Thus, in accordance with the constitutionally mandated deadline, the convention dissolved on July 30, 1974, without submitting a new state charter to the voters.

The 64th Legislative Session convened in January, 1975, with constitutional revision a major issue in both the senate and the house. Over 30 bills and resolutions were introduced that proposed constitutional conventions or constitutional amendments revising one or more articles of the constitution. Early in the session, companion resolutions (House Joint Resolution No. 56 and Senate Joint Resolution No. 11), proposing a series of amendments to revise the entire Texas Constitution except the Bill of Rights, were introduced and referred to the House Committee on Constitutional Revision and the Senate Committee on the Texas Constitution. The house version was amended by the house committee and reported favorably on March 24. Two days later the senate committee incorporated the house committee's amendments into a committee substitute for SJR 11 and favorably reported the substituted resolution. The committee substitute for SJR 11 was amended and passed the Senate on April 1. In the house SJR 11 took the place on the calendar of HJR 56 and passed, with house amendments, on April 8 and 9. SJR 11 was finally passed when the senate concurred in the house amendments on April 16, 1975.

The voters of Texas have the opportunity to vote on a revised constitution for the first time in 100 years on November 4, 1975. The proposed revision of the constitution is submitted in the form

of eight separate amendments, each of which revises a particular portion of the constitution and may be individually adopted or rejected by the voters. The Bill of Rights is retained in full, unaltered except for the technical amendments required because of changes in other parts of the constitution.

II.

PROPOSED 1976 REVISION

OF THE

TEXAS CONSTITUTION

This copy of the proposed 1976 Revision of the Texas Constitution is based on the assumption that all eight amendments on the November 4, 1975 ballot are adopted by the voters. Equally possible is the adoption of several of the amendments and rejection of others. If this occurs, the Texas Constitution will combine those amendments which are adopted with the parts of the current constitution which were not affected by the amendments adopted.

PREAMBLE

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.

ARTICLE I

BILL OF RIGHTS

Retained in full. The only changes are minor technical ones to conform certain provisions to the new court system provided in the revised Article V, The Judiciary.

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

Section 1. FREEDOM AND SOVEREIGNTY OF STATE. Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Section 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Section 3. EQUAL RIGHTS. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Section 3a. EQUALITY UNDER THE LAW. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

Section 4. RELIGIOUS TESTS. No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on

account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Section 5. WITNESSES NOT DISQUALIFIED BY RELIGIOUS BELIEFS; OATHS AND AFFIRMATIONS. No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Section 6. FREEDOM OF WORSHIP. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 7. APPROPRIATIONS FOR SECTARIAN PURPOSES. No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Section 8. FREEDOM OF SPEECH AND PRESS; LIBEL. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Section 9. SEARCHES AND SEIZURES. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause,

supported by oath or affirmation.

Section 10. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

Section 11. BAIL. All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Section 11a. MULTIPLE CONVICTIONS; DENIAL OF BAIL. Any person accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor may, after a hearing, and upon evidence substantially showing the guilt of the accused, be denied bail pending trial, by any judge of a court of record or magistrate in this State; provided, however, that if the accused is not accorded a trial upon the accusation within sixty (60) days from the time of his incarceration upon such charge, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to a court of appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder.

Section 12. HABEAS CORPUS. The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall

enact laws to render the remedy speedy and effectual.

Section 13. EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL PUNISHMENT; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Section 14. DOUBLE JEOPARDY. No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

Section 15. RIGHT OF TRIAL BY JURY. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the appropriate court without the necessity of a trial by jury.

Section 15-a. COMMITMENT OF PERSONS OF UNSOUND MIND. No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of the court where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury.

Section 16. BILLS OF ATTAINDER; EX POST FACTO OR RETROACTIVE LAWS; IMPAIRING OBLIGATION OF CONTRACTS. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Section 17. TAKING, DAMAGING OR DESTROYING PROPERTY FOR PUBLIC USE; SPECIAL PRIVILEGES AND IMMUNITIES; CONTROL OF PRIVILEGES AND FRANCHISES. No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Section 18. IMPRISONMENT FOR DEBT. No person shall ever be imprisoned for debt.

Section 19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Section 20. OUTLAWRY OR TRANSPORTATION FOR OFFENSE. No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

Section 21. CORRUPTION OF BLOOD; FORFEITURE; SUICIDES. No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Section 22. 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 on confession in open court.

Section 23. RIGHT TO KEEP AND BEAR ARMS. Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Section 24. MILITARY SUBORDINATE TO CIVIL AUTHORITY. The military shall at all times be subordinate to the civil authority.

Section 25. QUARTERING SOLDIERS IN HOUSES. No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Section 26. PERPETUITIES AND MONOPOLIES; PRIMOGENITURE OR ENTAILMENTS. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Section 27. RIGHT OF ASSEMBLY; PETITION FOR REDRESS OF GRIEVANCES. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Section 28. SUSPENSION OF LAWS. No power of suspending laws in this State shall be exercised except by the Legislature.

Section 29. PROVISIONS OF BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOLATE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II

SEPARATION OF POWERS

Section 1. SEPARATION OF POWERS. The powers of government of the State of Texas are divided among three distinct branches: legislative, executive, and judicial. Except as otherwise authorized by this constitution, members of one branch may not exercise any power properly attached to either of the others.

ARTICLE III

THE LEGISLATURE

Section 1. THE LEGISLATIVE POWER. The legislative power of the State of Texas is vested in a senate and a house of representatives, together styled "The Legislature of Texas."

Section 2. COMPOSITION. The senate consists of 31 members. The house of representatives consists of 150 members.

Section 3. QUALIFICATION OF MEMBERS. (a) To be eligible to serve in the senate, a person must be a qualified voter at least 25 years old and immediately preceding election have been a resident of this state for five years and of the senatorial district for one year.

(b) To be eligible to serve in the house, a person must be a qualified voter at least 21 years old and immediately preceding election have been a resident of this state for two years and of the representative district for one year.

(c) In the general election following a redistricting, a person is eligible to the legislature from any new district that contains a part of the district in which that person was eligible for election immediately preceding the redistricting, but only if within 60 days after election that person becomes a resident of the new district.

(d) The office of a member of the legislature becomes vacant if the member changes residence from the district from which the member was elected unless the change is to comply with Subsection (c) of this section.

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

(f) A person holding a lucrative office under this state, the United States, or a foreign government, is not eligible to serve in the legislature during the term of that lucrative office.

Section 4. ELECTION AND TERMS OF MEMBERS. (a)

Senators and representatives are elected by the qualified voters of their respective districts at a statewide general election.

(b) Each senator serves a term of four years beginning on the date prescribed by law for convening the legislature in regular session following election. The qualified voters elect a new senate after each statewide senatorial redistricting. The senators shall decide by lot which serve four-year terms and which serve two-year terms, so that one-half will be elected every two years thereafter.

(c) Each representative serves a term of two years beginning on the date prescribed by law for convening the legislature in regular session following election.

(d) Vacancies in the senate and house of representatives are filled by special election in the manner prescribed by law.

Section 5. REDISTRICTING. (a) Before December 15 following publication of each federal decennial census, the legislature by law shall divide the state into single-member senatorial, single-member representative, and single-member congressional districts.

(b) Senatorial, representative, and congressional districts must be composed of compact and contiguous territory and contain, respectively, as nearly as practicable an equal number of inhabitants except that a county is not to be divided unless necessary to prevent a significant population variance among districts.

(c) County lines are to be respected in drawing district lines. If the population of a county is sufficient to provide for one or more districts, only population in excess of that required for complete districts may be added to population of other counties to form districts. If the excess population in a county equals 50 percent or more of that required for a district, the excess must be kept in a single district.

(d) If the Supreme Court of Texas or a federal court enters a final decree concluding legal action that invalidates a redistricting plan or prior to entry of the decree orders a redistricting plan into effect, the legislature shall consider enacting a new redistricting plan. If the legislature is in regular session on the day that the final decree is entered or the order takes effect, a new redistricting bill may be passed only within 30 days thereafter. If the final decree is

entered or the order takes effect within 45 days prior to the convening of a regular session, a new redistricting bill may be passed only within the first 30 days after the convening of the session. If the decree is entered or the order takes effect at any other time, the legislature convenes in a redistricting special session within 14 days thereafter, either on a date set by the secretary of state or on the 14th day.

(e) If the legislature fails to pass a new redistricting bill to replace an invalidated plan or if a new redistricting bill does not become law, a legislative redistricting board consisting of the lieutenant governor, speaker of the house of representatives, attorney general, comptroller of public accounts, and commissioner of the general land office shall convene. The board shall convene within 10 days after the legislature fails to act or a new redistricting bill fails to become law and within 30 days thereafter shall redistrict the state. The legislature shall provide funds for the board's clerical, technical, and other expenses.

Section 6. COMPENSATION. (a) Compensation and allowances for members of the legislature may not exceed the amounts recommended by the salary commission established by this section. No change in compensation may take effect prior to the first regular session following a statewide general election.

(b) The salary commission consists of nine members. The governor, lieutenant governor, speaker of the house of representatives, attorney general, and Chief Justice of Texas, acting together, appoint the members of the commission and designate the chairman. Members must be selected on a nonpartisan basis with due regard to representation of both sexes and of the ethnic groups and geographical regions of the state. No person may be appointed who is related by blood or marriage to, or who has or has had a business association with, an appointing officer. No person may be appointed who has served a full term on the commission.

(c) Members serve six-year terms. One-third of the members are appointed every two years. The appointing officers fill vacancies for the unexpired term.

(d) No member while serving on the commission may hold any other public office, be an employee of the state, or hold an office in a political party.

(e) The commission shall review legislative compensation and

allowances annually and at that time may recommend changes.

Section 7. SESSIONS. (a) The legislature shall convene in regular session each year on a date prescribed by law. Sessions may not exceed 140 consecutive days in odd-numbered years and 90 consecutive days in even-numbered years.

(b) Special sessions may not exceed 30 consecutive days. Veto sessions may not exceed 15 consecutive days.

(c) Sessions of the legislature must be open to the public.

(d) Neither house may adjourn or recess for more than 10 days without the consent of the other.

(e) The legislature shall meet at the seat of government unless otherwise provided by law.

(f) The legislature by petition of three-fifths of the membership of each house may convene in veto session on the first Monday following the 50th day after adjournment solely to reconsider bills or resolutions for passage over a veto. Bills or resolutions that may be reconsidered are (1) bills, resolutions, or appropriation items that the governor vetoed within 10 days of adjournment and that the legislature did not reconsider before adjournment and (2) bills, resolutions, or appropriation items that, by virtue of action of the governor after adjournment, did not become law.

Section 8. ORGANIZATION AND PROCEDURE. (a) Each house is the judge of the qualifications and election of its own members, but contested elections are determined as provided by law.

(b) The legislature may provide by law for assembling and organizing either or both houses prior to the convening of a regular session. If the assembly precedes the regular session following a statewide general election, the assembly is composed of the members of either or both houses of the next legislature.

(c) At an organizational assembly prior to or at the beginning of the regular session in an odd-numbered year, each house by majority vote may adopt or amend its rules of procedure. The legislature by majority vote of the membership of each house shall adopt joint rules. Rules of procedure and joint rules, once adopted, remain in effect until changed by the same or succeeding

legislatures.

(d) At an organizational assembly or on convening in regular session, at the beginning of other sessions, and at the end of each session, the senate shall elect from its members a president pro tempore who performs the duties of lieutenant governor when the lieutenant governor is absent or disabled, or when the office is temporarily vacant.

(e) At an organizational assembly prior to or at the beginning of the regular session in an odd-numbered year, the house of representatives shall elect a speaker from its members. The legislature may limit by law the number of terms a person may serve as speaker.

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

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

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

Section 9. LEGISLATIVE IMMUNITY. (a) A member may not be questioned in any other place for speech or debate during a legislative proceeding.

(b) Except for treason, felony, or breach of the peace, a member is privileged from arrest while attending a session of the legislature and while traveling to and from its meeting place for that purpose.

Section 10. CONFLICT OF INTEREST. (a) No member may be appointed to an office that is filled by the legislature.

(b) During the term for which elected, a member is ineligible for appointment to (1) any civil office of profit under this state that is created or the emoluments of which are substantially increased during that term, or (2) any office or position the

appointment to which is made by either house of the legislature. The ineligibility terminates on the last day in December of the last full calendar year of the member's term.

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

(d) No member may enter into a contract with the state during the term for which the member is elected unless the contract is a renewal ukder an existing state program.

Section 11. BILLS AND RESOLUTIONS. (a) A law may be enacted only by bill.

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

(c) A bill must be limited to a single subject. The subject must be expressed in the title of the bill. If a bill that becomes law embraces a subject that is not expressed in the title, only the portion of the law concerning the subject not expressed in the title is void. A general appropriations bill must be limited to the subject of appropriations. A statutory revision bill must be limited to that subject.

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

(e) Before a house considers a bill, it must have been referred to a committee of that house and reported at least five days before adjournment of the session, but either house by a record affirmative four-fifths vote of the members present and voting may suspend this five-day requirement.

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

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

(h) The presiding officer of each house shall certify the final

passage of each bill and the final passage of each resolution that requires the concurrence of both houses. The fact of certification must be recorded in the journal.

(i) No law except general appropriations acts and redistricting acts may take effect until 90 days after adjournment of the session at which it was enacted. The legislature by a record affirmative two-thirds vote of the membership of each house may authorize an earlier effective date.

Section 12. ACTION ON BILLS AND RESOLUTIONS. (a) Each bill that passes both houses of the legislature must be presented to the governor. The governor may approve the bill by signing it, in which event it becomes a law. The governor may veto the bill by returning it with objections to the house in which it originated. That house shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill passes that house by a record affirmative three-fifths vote of the membership, it must be sent with the governor's objections to the other house, which shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill likewise passes that house by a record affirmative three-fifths vote of the membership, the bill becomes a law. If the governor fails to veto a bill within 10 days (Sundays excepted) after it is presented, the bill becomes a law. If the legislature by its adjournment prevents a veto, a bill becomes a law unless within 20 days after adjournment the governor files the bill and objections with the secretary of state and gives public notice thereof by proclamation. If the legislature meets in veto session, the secretary of state shall return the bill with the governor's objections to the house in which the bill originated for reconsideration in the manner provided above. Bills that become law are filed with the secretary of state.

(b) The governor may veto any item of appropriation in a bill. Portions of a bill not vetoed become law. An item vetoed, together with the governor's objections, must be returned to the house in which the bill originated and may become law in the same manner,as a vetoed bill.

(c) Resolutions requiring the concurrence of both houses of the legislature must be presented to the governor. The governor may approve a resolution by signing it or permit it to become effective by filing it with the secretary of state. The governor may disapprove a resolution by returning it to the house in which it originated. In that case the resolution does not become effective unless repassed by both houses in the same manner as a vetoed

bill. Presentation to the governor is not required if a resolution pertains to (1) an amendment to the state or federal constitution, (2) a referendum, (3) adjournment, (4) legislative rules, (5) an investigation or study, (6) internal administration of the legislative branch, or (7) removal by address.

Section 13. LOCAL AND SPECIAL LAWS. (a) Except as expressly authorized by this constitution, the legislature may not enact a local or special law if a general law is or can be made applicable. Whether a general law is or can be made applicable is a question subject to judicial determination.

(b) No local bill may be passed unless notice of the intention to introduce the bill has been given in the affected locality in the manner prescribed by law. Evidence that the notice was given must be exhibited in the legislature before the bill is passed. Compliance with these notice requirements is subject to judicial review.

(c) A local law must identify the area to which it applies by the name or other official designation of the area.

(d) No bill may be considered and no law enacted that limits or defines the area to which it applies by the use of population figures or other statistical data except general laws that have statewide application and classify all of one or more types of political subdivisions on the basis of population.

Section 14. IMPEACHMENT. (a) The house of representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by a record majority vote of its membership, to impeach officers of the executive department, the Chief Justice of Texas, or justices of the supreme court. The house of representatives by petition of a majority of its members may convene and conduct impeachment proceedings.

(b) An officer against whom articles of impeachment have been preferred is suspended from the exercise of the duties of the office during the pendency of the impeachment. If the governor is suspended, the lieutenant governor acts as governor. If the lieutenant governor is suspended, the president pro tempore of the senate acts as lieutenant governor. In other cases the governor may make a temporary appointment to fill the vacancy during suspension.

(c) Impeachments are tried by the senate. The senate shall convene for this purpose upon presentation of articles of impeachment by the house of representatives. Senators shall affirm or take an oath to try impartially the party impeached. If the governor or lieutenant governor is tried, the Chief Justice of Texas shall preside. A person may be convicted of impeachment charges only by a record affirmative two-thirds vote of the membership of the senate.

(d) On conviction by the senate, the office becomes vacant. A judgment of conviction may not extend beyond removal from office and disqualification to hold any office of honor, trust, or profit of this state. An impeached person, whether convicted or acquitted, is amenable to prosecution, trial, judgment, and punishment according to law.

Section 15. ADVICE AND CONSENT OF THE SENATE. An affirmative two-thirds vote of the members present constitutes consent to any appointment which this constitution requires to be with the advice and consent of the senate. A person appointed to an office requiring the advice and consent of the senate does not take office until confirmed by the senate unless the appointment is made when the senate is not in session, in which case the person ceases to serve on rejection by the senate or, if the appointment fails to be voted on at the session to which the appointment is submitted, on adjournment sine die. A person not confirmed by the senate may not be appointed again to fill the same vacancy. An appointment made when the senate is not in session must be submitted to the senate within 10 days after it convenes.

ARTICLE IV

THE EXECUTIVE

Section 1. OFFICERS. The governor is the chief executive officer of the state. Officers of the executive department of the executive branch are the governor, lieutenant governor, attorney general, comptroller of public accounts, treasurer, commissioner of the general land office, commissioner of agriculture, secretary of state, and other officers as provided by law.

Section 2. SELECTION AND TERMS OF OFFICERS. (a) The governor, lieutenant governor, attorney general, comptroller of public accounts, treasurer, commissioner of the general land office, commissioner of agriculture, and other elected officers of the executive department provided for by law are elected by the qualified voters of the state for four-year terms. Separate votes are cast for candidates for governor and lieutenant governor. Quadrennial elections for officers of the executive department start with the statewide general election in 1978.

(b) The secretary of state and other appointed officers of the executive department are appointed by the governor with the advice and consent of the senate and serve at the pleasure of the governor.

(c) The governor appoints officers to state agencies unless otherwise provided by law. Officers appointed by the governor to state agencies are appointed with the advice and consent of the senate.

(d) In addition to other procedures provided by law for the removal of appointed officers, officers appointed by a governor with the advice and consent of the senate and not serving at the pleasure of the governor may be removed by the governor only for stated reasons. Prior to removal and not less than 45 days prior to the required adjournment of a regular session or not more than two days after the convening of a special session, the governor shall advise the senate in writing of the reasons for the proposed removal. If within 45 days after receipt of the governor's statement of reasons the senate by majority vote of the membership rejects the governor's proposed removal, the governor may not remove the officer for those stated reasons.

(e) The term of an officer appointed by the governor to a statutory state agency expires on a date prescribed by law, but the

date must fall between February 1 and May 1 of an odd-numbered year. The terms of officers of multimember state agencies must be staggered.

(f) Only an appointed officer of a multimember statutory state agency having appointed members may serve as its chairman, unless a law designates a member of the executive department as chairman. The governor designates the chairman in odd-numbered years to serve for a term of two years and in the event of a vacancy designates a new chairman to serve for the remainder of the term. If the governor designates a new appointee as chairman and the officer is not confirmed by the senate, the governor designates a new chairman. If the governor fails to designate the chairman prior to May 1, the appointed members designate the chairman.

Section 3. RETURNS OF ELECTION. Election returns for executive officers must be canvassed and certified in a public forum in the manner prescribed by law.

Section 4. GOVERNOR'S ELIGIBILITY AND INSTALLATION. (a) To be eligible to serve as governor, a person must be a citizen of the United States at least 30 years old and have been a resident of the state for at least five years immediately preceding election. A person serving as governor in the second of two consecutive four-year terms is not eligible for a third consecutive term.

(b) The legislature shall provide an appropriation for assistance to a governor-elect prior to inauguration. A governor-elect is entitled to receive any information and reports that the incumbent governor is entitled to require from officers and state agencies.

(c) The governor is inaugurated on the second Thursday in January or as soon thereafter as practicable.

Section 5. GUBERNATORIAL SUCCESSION. (a) If the governor-elect is disqualified, dies, or refuses the office prior to inauguration, the lieutenant governor-elect becomes governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect acts as governor. If the governor-elect does not assume office by the end of the first year of the term, the lieutenant governor becomes governor and serves for the remainder of the term.

(b) If after inauguration the office of governor becomes vacant, the lieutenant governor becomes governor. An elected lieutenant governor who becomes governor serves for the remainder of the term. An appointed lieutenant governor who becomes governor serves until the next statewide general election.

(c) If the offices of both governor and lieutenant governor become vacant, the speaker of the house of representatives, if eligible, becomes governor and serves for the remainder of the term.

(d) The office of governor or lieutenant governor becomes vacant if the person holding the office dies, resigns, becomes permanently disabled, is removed from office, or comes to the end of a period of appointment.

(e) If the governor is absent from the state or temporarily disabled, the lieutenant governor acts as governor until the governor returns or is no longer disabled. If the lieutenant governor is also absent from the state or temporarily disabled, the president pro tempore of the senate acts as governor until either the governor or lieutenant governor returns or is no longer disabled.

(f) While serving or acting as governor a person receives only the compensation payable to a governor.

(g) The legislature shall provide by law for further succession to the office of governor.

Section 6. DISABILITY OF ELECTED OFFICERS OF EXECUTIVE DEPARTMENT. (a) The governor may notify the Chief Justice of Texas in writing of the governor's temporary disability. If, because of the disability, the governor fails to send notification to the chief justice, a majority of the following officers may jointly send the notification: the lieutenant governor attorney general, comptroller of public accounts, treasurer, commissioner of the general land office, commissioner of agriculture, speaker of the house of representatives, and president pro tempore of the senate. A temporary disability ends on the delivery to the chief justice of the governor's sworn statement to that effect. The governor's sworn statement may not be denied by another notification to the chief justice The same procedure applies in the case of the temporary disability of the lieutenant governor except that the governor and not the lieutenant governor is one of the eight officers voting on a notification. At the end of

one year a temporary disability becomes a permanent disability without a determination by the Supreme Court of Texas.

(b) Whether an elected officer of the executive department is permanently disabled and unable to discharge the duties of office is to be determined only by the Supreme Court of Texas in a proceeding conducted under rules of procedure prescribed by that court. The proceeding may be initiated only by a majority vote of the governor, lieutenant governor, attorney general, comptroller of public accounts, treasurer, commissioner of the general land office, commissioner of agriculture, speaker of the house of representatives, and president pro tempore of the senate. If the supreme court determines that the officer is permanently disabled and unable to discharge the duties of office, it shall declare the office vacant.

Section 7. COMPENSATION OF OFFICERS OF EXECUTIVE DEPARTMENT. The compensation of the officers of the executive department may not be diminished during their term of office. The governor has the use of the Governor's Mansion.

Section 8. DUAL OFFICE HOLDING AND EMPLOYMENT. An officer of the executive department may not hold any other civil or corporate office and, for compensation or the promise of compensation, may not practice any other profession or hold any other employment.

Section 9. COMMANDER-IN-CHIEF; CALLING FORTH MILITIA. The governor is commander-in-chief of the military forces of the state except when they are called into actual service of the United States. The governor may call forth the militia to execute the laws of the state, suppress insurrections, repel invasions, and protect life and property in cases of disasters.

Section 10. EXECUTION OF LAWS; CONDUCT OF BUSINESS WITH OTHER STATES, THE UNITED STATES, AND FOREIGN NATIONS. The governor shall cause the laws to be faithfully executed and shall conduct, in person or in the manner prescribed by law, all intercourse and business of the state with other states, the United States, and foreign nations.

Section 11. CONVENING THE LEGISLATURE IN SPECIAL SESSION. The governor, on extraordinary occasions may convene the legislature in special session, stating specifically the purpose of the session. The legislature may consider only those

matters that the governor specifies in the call or subsequently presents to the legislature.

Section 12. GOVERNOR'S MESSAGE. At the beginning of each legislative session the governor shall, and at other times may, give the legislature information on the condition of the state and may recommend legislative action.

Section 13. CHIEF PLANNING OFFICER. The governor is the chief planning officer of the state and may require written information or written reports from all state agencies and executive branch officers on any subject relating to their duties, conditions, management, and expenditures.

Section 14. BUDGET PREPARATION. At the beginning of each session at which appropriations are to be made for the general operation of the government, the governor shall submit to the legislature a budget for all proposed state expenditures for the applicable fiscal period.

Section 15. BUDGET EXECUTION. (a) The legislature by law may authorize or direct the governor to exercise fiscal control over the expenditure of appropriated money.

(b) The governor shall ensure that items of appropriation for the executive branch, except items for the other elective offices of the executive department, are expended only as directed by the legislature. The legislature by law may remove the exception.

Section 16. ADMINISTRATIVE REORGANIZATION. (a) At the regular session held in odd-numbered years, the governor shall submit to the legislature a report on the organization and efficiency of the executive branch.

(b) In recommending plans for reorganization of the executive branch, the governor may submit to the legislature one or more reorganization bills limited to consolidating, abolishing, or transferring functions among statutory state agencies in the executive branch. The legislature must consider those bills but may amend them. A submitted reorganization bill, whether amended or not, must be brought to a vote of each house during the session at which the bill is submitted.

Section 17. REPRIEVES, COMMUTATIONS, AND PARDONS; REMISSION OF FINES AND FORFEITURES. (a) The legislature shall prescribe by law the number of members and

the terms of office of the Board of Pardons and Paroles. The governor, the Chief Justice of Texas, and the attorney general each appoint an equal number of members of the board. Appointments are made with the advice and consent of the senate. A vacancy is filled by the officer who made the original appointment.

(b) The governor may grant one reprieve in a capital case for a period not to exceed 30 days. The governor, on the written signed recommendation and advice of a majority of the Board of Pardons and Paroles, may grant pardons, reprieves, and commutations of punishment; remit fines and forfeitures; and revoke paroles and conditional pardons.

Section 18. LIEUTENANT GOVERNOR. The lieutenant governor must be eligible to serve as governor. The lieutenant governor, by virtue of the office, is president of the senate but may vote only to cast a deciding vote when the senate is equally divided.

Section 19. ATTORNEY GENERAL. The attorney general represents the state in those civil actions before the Supreme Court of Texas in which the state may be a party and, except as otherwise provided by law, represents the state in all other civil actions in which the state may be a party. The attorney general shall especially inquire into the charter rights of private corporations and shall take such action in the courts as may be proper and necessary to prevent a private corporation from exercising a power not authorized by law. When sufficient cause exists and unless otherwise expressly directed by law, the attorney general shall seek a judicial forfeiture of a corporate charter. The attorney general shall give legal advice in writing to the governor and other executive officers when requested by them and perform such other duties as may be required by law. The attorney general has the powers of the office as at common law except as expressly provided by law to the contrary. The attorney general must be qualified to practice before the Supreme Court of Texas.

Section 20. COMMISSIONER OF THE GENERAL LAND OFFICE. The commissioner of the general land office shall administer at the seat of government a general land office in which all land titles that emanate from the state must be registered and shall perform other duties as provided by law.

Section 21. OTHER OFFICERS OF THE EXECUTIVE DEPARTMENT. The comptroller of public accounts, the treasurer, the commissioner of agriculture, and the secretary of

state shall perform the duties required by this constitution and other duties as provided by law.

Section 22. RAILROAD COMMISSION. The railroad commission consists of three commissioners elected at a statewide general election for six-year terms. One commissioner is elected every two years. The legislature by law may prescribe qualifications for the office of commissioner. The commission has the authority and performs the duties prescribed by law. The legislature by law may abolish the commission.

Section 23. VACANCIES IN STATEWIDE ELECTIVE OFFICES. Unless otherwise provided by this constitution, vacancies in elective statewide offices are filled by appointment of the governor with the advice and consent of the senate. If the office of lieutenant governor becomes vacant, the governor shall call the senate into session within 20 days to confirm the appointment of a lieutenant governor. If the senate rejects the appointee, the governor shall continue to submit appointments until a lieutenant governor is confirmed. The senate shall then adjourn sine die. The term of an officer appointed to a vacancy in an elective statewide office ends at the next statewide general election.

Section 24. STATE AGENCIES. (a) State agencies include all boards, commissions, departments, institutions, and other executive or administrative agencies of state government. State agencies are a part of the executive branch unless otherwise provided by law.

(b) Statutory state agencies with statewide jurisdiction having appointed officers, except institutions related to higher education, have a life of not more than 10 years unless renewed by law for not more than 10 years at a time. Unless otherwise provided by law, appointed officers serving on the effective date of a renewal continue to hold office for the terms for which they were appointed. A bill to renew an agency or agencies, the life of any one of which expires in less than two years from the beginning of the session in which the bill was introduced, must be reported from committee in the house and senate and brought to a vote in each house not less than 20 days before adjournment.

(c) Subsection (b) of this section does not end the life of a state agency with outstanding bonds unless the legislature by law first provides for the administration of property under the control of the agency and makes adequate provision for servicing the

outstanding debt to ensure that the bond obligations are not impaired.

Section 25. SEAL OF STATE. The seal of the state is a star of five points encircled by olive and live oak branches and the words "The State of Texas." The seal of the state is kept by the secretary of state and used by that officer officially under the direction of the governor.

ARTICLE V

THE JUDICIARY

Section 1. JUDICIAL POWER. (a) The judicial power of the state is vested in the judicial branch. The state unified judicial system is composed of a supreme court, courts of appeals, district courts, and circuit courts. All courts have jurisdiction as provided by law, but jurisdiction of courts of the same level within the unified judicial system must be uniform throughout the state. No courts may be created except those authorized by this article.

(b) The legislature by law may grant the supreme court the power to answer questions of state law certified from a federal court.

(c) Courts that have original jurisdiction of criminal cases may (1) subject to regulation by law, suspend imposition or execution of sentence and place a defendant on probation, or (2) if authorized by law, modify, set aside, or reimpose sentence.

Section 2. SUPREME COURT. The supreme court is the highest court of the state and consists of the Chief Justice of Texas and at least eight other justices. The court may sit en banc or in sections of not fewer than five justices. The concurrence of a majority of the justices sitting is necessary to decide a case.

Section 3. COURTS OF APPEALS. The legislature by law shall establish one or more districts and in each provide for a court of appeals consisting of a chief judge and at least two other judges. The court may sit in sections if authorized by law. The concurrence of a majority of the judges sitting is necessary to decide a case.

Section 4. DISTRICT COURTS. The state is divided into judicial districts, each with one district court having one or more judges. The legislature from time to time may determine by law the number and location of districts and the number of judges in each district.

Section 5. CIRCUIT COURTS. The legislature by general or local law may provide for circuit courts, each with one or more judges, and from time to time shall determine the number and location of circuit courts. A circuit court may serve one or more counties, but no county may be served by more than one circuit court.

Section 6. OTHER COURTS. (a) The county courts in existence on August 31, 1976, are continued unless otherwise provided by general or local law. The county courts have jurisdiction as provided by general law. The county judge is the presiding officer of the county court and has judicial functions as provided by general law.

(b) The governing body of each county shall (1) divide the county from time to time into not fewer than four nor more than eight justice precincts and (2) establish and maintain one or more justice courts, each serving one or more precincts in the manner prescribed by general law.

(c) Municipal courts may be established by general law or by charter as authorized by general law.

Section 7. COURT ADMINISTRATION AND RULEMAKING AUTHORITY. (a) The supreme court shall provide for the efficient administration of the judicial branch. The supreme court may delegate administrative authority to the chief justice and the administrative judges.

(b) The supreme court may direct the transfer of cases between courts of the same level. The supreme court may temporarily assign justices or judges within or between levels.

(c) Each court of appeals district constitutes an administrative district for the management of trial courts. The Chief Justice of Texas with the advice and consent of the senate shall designate a judge to serve as the administrative judge of each district.

(d) The legislature by law may provide for an agency of the judicial branch to propose rules for administration of the unified judicial system and to perform other duties as provided by law. Members of this agency are not subject to the provisions of Article II of this constitution.

(e) A rule of administration may not be inconsistent with general law or rules of procedure and does not take effect until approved by the supreme court.

(f) The supreme court may promulgate rules of civil procedure for all courts but may not promulgate other procedural rules except as provided by law. A rule of civil procedure promulgated by the court may not be inconsistent with general

law and has no effect if expressly disapproved by the legislature.

Section 8. QUALIFICATIONS OF JUDGES. To be eligible to serve as a justice, judge, or justice of the peace, a person must be a citizen of the United States, a resident of this state, and otherwise qualified as prescribed by law. No person may serve as a justice or judge in the unified judicial system unless licensed to practice law in this state.

Section 9. SELECTION AND TERMS OF JUDGES. (a) The justices of the supreme court are elected for six-year terms by the qualified voters of the state. The judges of each court of appeals are elected for six-year terms by the qualified voters of the court-of-appeals district. A district judge is elected for a four-year term by the qualified voters of the judicial district. A circuit judge is elected for a four-year term by the qualified voters within the geographical area served by the circuit court. The legislature may prescribe by law a mandatory retirement age for justices and judges of these courts.

(b) A justice of the peace is elected for a four-year term by the qualified voters of the precinct or precincts. A municipal court judge is selected in the manner prescribed by law or by charter as authorized by law.

(c) A vacancy in the office of justice of the supreme court or judge of a court of appeals, district court, or circuit court is filled by appointment of the governor with the advice and consent of the senate. A vacancy in the office of justice of the peace is filled by appointment of the governing body of the county. A justice, judge, or justice of the peace appointed to a vacancy serves until the next statewide general election.

(d) Justices, judges, and justices of the peace are elected in the manner prescribed by law.

Section 10. REMOVAL AND DISCIPLINE OF JUDGES. (a) The governor shall remove a justice of the supreme court on the address of two-thirds of the members of each house of the legislature for willful neglect of duty, incompetency, oppression in office, or other reasonable cause not a sufficient ground for impeachment.

(b) The legislature by law (1) shall provide for a judicial qualifications commission and (2) may provide for the removal, suspension, or censure of justices of the supreme court, judges,

and justices of the peace.

Section 11. DISTRICT ATTORNEYS. (a) In each district as defined by law, the qualified voters elect a district attorney for a four-year term.

(b) Each county must be served by a district attorney. The district attorney shall represent the state in all criminal cases in courts below the level of court of appeals, except municipal courts or justice courts, but in counties in which there is a county attorney, the duties and functions of the district and county attorneys are as provided by law. The district attorney performs other duties and functions provided by law.

(c) A district attorney must be licensed to practice law in this state. Other qualifications of district attorneys, the grounds and procedure for disqualification, suspension, and removal, and the filling of vacancies in office are as provided by law.

Section 12. DISTRICT CLERKS. (a) The qualified voters of each county elect a district clerk for a four-year term. The legislature may provide by law for the election of a single clerk to perform the duties of both a county clerk and a district clerk.

(b) The district clerk is the clerk of the district and circuit courts of the county and performs such duties as provided by law.

(c) A clerk holding office under this section may be removed on a jury finding of incompetence, official misconduct, or other cause defined by law. A vacancy in the office is filled by appointment by the judges of the district and circuit courts of the county in the manner prescribed by law. A clerk appointed to a vacancy serves until the next statewide general election.

Section 13. JURIES. (a) The grand jury is impaneled only in the district cour and consists of 12 persons. Nine members of a grand jury constitute a quorum. At least nine members must concur in a bill of indictment.

(b) A party has a right to a trial by jury on demand made in the manner prescribed by law. The legislature by law shall provide for trial juries.

(c) A jury verdict must be unanimous except that in civil cases the legislature by law, or the supreme court by procedural rule promulgated under this article, may authorize a jury verdict

to be rendered by not less than three-fourths of the jurors sitting in the case. Alternate jurors are not permitted unless authorized by law.

Section 14. APPEAL BY STATE. Subject to the guarantees of the Bill of Rights of this constitution, the state may appeal in a criminal case only (1) from a trial court ruling that a law is unconstitutional or (2) from a court of appeals decision to the supreme court, which appeal is at the discretion of the supreme court unless otherwise provided by law.

Section 15. APPEAL BY ACCUSED. (a) A person convicted of a criminal offense in a trial court has a right to an appeal to the court having jurisdiction.

(b) An appeal to the supreme court in a criminal case is at the discretion of the supreme court unless otherwise provided by law.

Section 16. APPEALS FROM ADMINISTRATIVE ACTION. Notwithstanding any other provision of this constitution, the legislature may provide by law for the method of appeal to the courts from rulings, decisions, or other actions of state agencies or political subdivisions of the state.

Section 17. FINANCING. The state shall pay the basic compensation of justices and judges of the unified judicial system and district attorneys and shall pay such other expenses of the system as provided by law.

ARTICLE VI

VOTER QUALIFICATIONS AND ELECTIONS

Section 1. QUALIFICATIONS FOR VOTING. (a) A citizen of the United States who is at least 18 years old and who meets the registration and residence requirements provided by law is a qualified voter unless the person has been convicted of a felony and for that felony is incarcerated, on parole, or on probation or unless the person is mentally incompetent as determined by a court.

(b) The legislature may provide by law for additional limitations on voting by persons convicted of a felony.

(c) The legislature by law may require property ownership as an additional qualification for voting (1) in an election held by a political subdivision for the purpose of authorizing property taxes or issuing bonds that are payable from property taxes or (2) in an election held by a special district or authority that principally engages in special or limited activities that have a disproportionate effect on property owners.

Section 2. ELECTIONS. (a) Voting by the people in all elections must be by secret ballot.

(b) The legislature shall provide by law for residence, registration, and absentee voting requirements, for the administration of elections, and for the protection of the integrity of the electoral process.

(c) The general election for state and county officers is to be held in even-numbered years on a date prescribed by law.

ARTICLE VII

EDUCATION

Section 1. EQUITABLE SUPPORT OF FREE PUBLIC SCHOOLS. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, the legislature has the duty to establish and provide by law for the equitable support and maintenance of an efficient system of free public schools below the college level. The system must furnish each individual an equal educational opportunity, but a school district may provide local enrichment of educational programs exceeding the level provided by the state consistent with general law.

Section 2. PERMANENT AND AVAILABLE SCHOOL FUNDS. (a) The Permanent School Fund consists of the property set apart, before or after this article takes effect, for the support of free public schools; the proceeds from sale and mineral development of the property; and the property purchased with the proceeds.

(b) The Permanent School Fund is held in perpetual trust for the free public schools. The principal of the fund may not be spent. The land of the permanent fund may be sold, leased, or exchanged as provided by law. The State Board of Education shall direct the investment of all Permanent School Fund money in the manner prescribed by law.

(c) The Available School Fund consists of the income from the Permanent School Fund and the state taxes dedicated to the Available School Fund.

(d) The State Board of Education shall set aside from the Available School Fund an amount sufficient to provide the free textbooks, and other instructional materials authorized by law, that are required in educational programs in the free public schools. The remainder of the Available School Fund must be distributed among the counties according to their respective scholastic populations and must be spent for the support of free public schools in the manner prescribed by law.

Section 3. COUNTY PUBLIC SCHOOL FUND. (a) The County Public School Fund of each county consists of the property transferred to the county for the support of free public schools in that county, the proceeds from sale and mineral

development of the property, and the property purchased with the proceeds.

(b) Title to the property is in the county and may not be divested by limitation. A county may sell, lease, or exchange the property and invest the proceeds in the manner prescribed by law. A county may annually spend the income from the fund for the support of its free public schools in the manner prescribed by law.

(c) The governing body of a county may transfer in the manner prescribed by law all or part of the property in its County Public School Fund to the school districts of the county for use by them to reduce their bonded indebtedness or to make permanent improvements. State financial aid to a school district may not be reduced because of a transfer under this subsection.

Section 4. STATE BOARD OF EDUCATION. The legislature shall provide by law for a State Board of Education composed of elected members.

Section 5. SCHOOL AND COMMUNITY JUNIOR COLLEGE DISTRICTS. The legislature shall provide by general law for school districts and community junior college districts.

Section 6. FIRST CLASS COLLEGES AND UNIVERSITIES. The legislature shall provide by law for a system of higher education of the first class.

Section 7. PERMANENT AND AVAILABLE UNIVERSITY FUNDS. (a) The Permanent University Fund consists of the land set apart for The University of Texas by Article VII, Section 15, of the Constitution of 1876, as amended and as it existed on November 4, 1975, and the Legislative Act of April 10, 1883; the proceeds from sale and mineral development of the land; and the property purchased with the proceeds.

(b) The Permanent University Fund is held in perpetual trust for the people of Texas and for the use and benefit of The Texas A&M University System and The University of Texas System. The principal of the fund may not be spent. The Board of Regents of The University of Texas System may sell, lease, exchange, or otherwise manage the assets of the fund in the manner prescribed by law and shall invest all proceeds.

(c) The Board of Regents of The University of Texas System shall make full disclosure of all investments as provided by law.

The board of regents shall invest the Permanent University Fund in accordance with generally accepted fiduciary standards but may invest only in stocks or bonds, debentures, or other obligations and may not:

(1) invest in the stock of a corporation that is not incorporated in the United States;

(2) invest in the stock of a corporation unless:

(A) the corporation or its predecessors have paid dividends on common stock for at least five years preceding investment; and

(B) the stock is either:

(i) listed on an exchange registered with the Securities and Exchange Commission or its successor; or

(ii) issued by a bank or insurance company with capital and surplus of not less than $5 million and admitted assets of not less than $50 million;

(3) invest more than one percent of the fund in the securities of any one corporation;

(4) permit the fund to own more than five percent of the voting stock of any one corporation; or

(5) invest in the obligations of any state or its political subdivisions other than the State of Texas or its political subdivisions.

(d) The Available University Fund consists of the income from the Permanent University Fund less administrative expense and less the net income from grazing leases of permanent-fund land. Out of one-third of the Available University Fund the legislature shall appropriate an annual sum sufficient to service Permanent University Fund bonds or notes issued by the governing board of The Texas A&M University System under authority of this article. The legislature shall appropriate the remainder of that one-third for the support and maintenance of Texas A&M University in the County of Brazos. Out of two-thirds of the Available University Fund the legislature shall appropriate an annual sum sufficient to service Permanent University Fund bonds or notes issued by the Board of Regents of The University

of Texas System under authority of this article. The legislature shall appropriate the remainder of that two-thirds and the net income from grazing leases of permanent-fund land for the support and maintenance of The University of Texas at Austin.

Section 8. PERMANENT UNIVERSITY FUND BONDS AND NOTES. (a) The governing boards of The Texas A&M University System and The University of Texas System each may issue negotiable bonds or notes for the benefit of the institutions included in their respective systems on the date this article is adopted. The aggregate principal amount of bonds and notes issued for The Texas A&M University System may not exceed 10 percent, and for The University of Texas System may not exceed 20 percent, of the value of the Permanent University Fund exclusive of real estate at the time of any issuance. The bonds or notes may be issued to acquire real property, construct permanent improvements, repair or rehabilitate existing permanent improvements, acquire library books or library materials, acquire capital equipment, or refund bonds.

(b) Bonds and notes issued under this section are payable only out of the Available University Fund and must mature not more than 30 years from the date of issuance.

(c) The governing boards of The Texas A&M University System and The University of Texas System each may pledge in whole or in part their respective interests in the Available University Fund to secure payment of bonds or notes issued under this section. No bonds or notes may be issued under this section without the prior approval of the attorney general. After approval the bonds and notes are incontestable.

Section 9. HIGHER EDUCATION FUND FOR TEXAS AND BONDS AND NOTES. (a) There is hereby established the Higher Education Fund for Texas.

(b) A state ad valorem tax is hereby levied on real property and tangible personal property of 10 cents on the $100 assessed valuation for the Higher Education Fund for Texas. The rate of the tax may be changed by law, but not to exceed 10 cents on the $100 assessed valuation. For purposes of this tax, the legislature shall establish by law an assessment ratio that must be applied uniformly throughout the state.

(c) The legislature shall provide by law for an annual assessment of needs, according to which the fund is to be allocated

among the state systems of higher education (except institutions in The University of Texas System and The Texas A&M University System) and the state senior institutions not included in a system. The fund must be allocated under equitable formulas based on statewide higher education needs. If in any year the total allocations are less than the revenue generated by the tax levied in this section, the surplus revenue accumulates in the fund and is to be invested as provided by law. Income from the fund is allocated as provided in this subsection.

(d) The fund, income from the fund, or proceeds from bonds or notes issued under this section may be used to acquire real property, construct permanent improvements, repair or rehabilitate existing permanent improvements, acquire library books or library materials, acquire capital equipment, or service debt incurred under this section.

(e) The governing boards of the state systems of higher education (except institutions in The University of Texas System and The Texas A&M University System) and the governing boards of the state senior institutions not included in a system may issue negotiable bonds or notes for the benefit of their systems or institutions based on allocations to their systems or institutions under Subsection (c) of this section. Bonds or notes issued under this subsection are secured by and payable only from the fund. Bonds or notes may be issued to refund bonds issued under this section. No bonds or notes may be issued under this section without the prior approval of the attorney general. After approval the bonds and notes are incontestable.

(f) The legislature may provide by law for allocation of a portion of the fund to state-owned vocational and technical institutes that do not grant academic degrees.

ARTICLE VIII

FINANCE

Section 1. STATE TAXATION. (a) State taxes may be levied and collected only by general law.

(b) No state ad valorem tax on real property or tangible personal property may be levied for state purposes except (1) the tax of 10 cents on the $100 assessed valuation levied under Article VII of this constitution and (2) a tax of two cents on the $100 assessed valuation that is hereby levied to provide funds for the State Building Fund. This two-cent tax may be reduced by law.

Section 2. AD VALOREM TAXATION. (a) Except as otherwise permitted in this article, all real property and tangible personal property must be taxed equally and uniformly in proportion to market value.

(b) The legislature by general law shall provide for the establishment and enforcement of standards and procedures for appraisal of property for ad valorem tax purposes. These standards and procedures must be applied uniformly throughout the state. Except as limited by general law, a taxing authority levying a tax on property within a county may seek countywide enforcement of these standards and procedures.

(c) Each county shall provide for appraisal of all taxable property within its boundaries in the manner prescribed by law. Each taxing authority imposing a tax on property within the county shall tax in proportion to, but not in excess of, this appraisal. The costs and expenses of appraisals are to be allocated among the taxing authorities in the manner prescribed by general law.

(d) Ad valorem taxes delinquent less than 10 years may not be released.

Section 3. AD VALOREM TAX EXCEPTIONS. (a) The legislature by general law shall establish separate formulas for appraising land to promote the preservation of open-space land devoted to farm or ranch purposes and by general law may establish separate formulas for appraising land to promote the preservation of forest land devoted to timber production. The legislature by general law may provide limitations and impose sanctions in furtherance of the appraisal policy of this subsection.

(b) The legislature by general law may permit the rolling stock of railroads to be assessed for ad valorem tax purposes by the county in which the principal office of the railroad is located and require the comptroller of public accounts to apportion on the basis of track mileage the assessed value of the rolling stock among the counties through which the railroad runs.

Section 4. AD VALOREM TAX EXEMPTIONS. (a) The following property is exempt from ad valorem taxation:

(1) property of the state except as otherwise provided by law;

(2) property of political subdivisions of the state used for public purposes;

(3) household goods not used for the production of income;

(4) personal effects not used for the production of income; and

(5) farm products in the hands of the producer and family supplies for home and farm use.

(b) Each residential homestead is exempt from state ad valorem taxation in the amount of $3,000 of appraised value. The legislature by law may increase this amount.

(c) The residential homestead of persons at least 65 years old is exempt from ad valorem taxation in the amount of $3,000 of assessed value in each taxing political subdivision except that a person may elect in writing to be excluded from the exemption. A political subdivision may increase this amount within its jurisdiction. In a political subdivision that has pledged its ad valorem tax for the payment of debt, a residential homestead exemption does not become effective if the exemption would impair the obligation of the contract under which the tax was pledged.

(d) Subject to such limitations, classifications, or exclusions as it may prescribe, the legislature by law may exempt from ad valorem taxation:

(1) property used exclusively for educational or charitable purposes;

(2) nonresidential property owned and used exclusively by organizations chartered by both the State of Texas and the United States and whose membership is composed solely of former members of the armed services of the United States;

(3) places of burial not held for profit;

(4) property owned by a disabled veteran of the armed services of the United States, by the surviving spouse or minor children of a disabled veteran of the armed services of the United States, or by the surviving spouse or minor children of a member of the armed services of the United States whose life was lost while on active duty;

(5) actual places of religious worship;

(6) property owned by a church or a strictly religious society for exclusive use as a dwelling place for the ministry of the church or religious society if the property yields no revenue to the church or religious society, but the exemption may not extend to more property than is reasonably necessary for a dwelling place and in no event to more than one acre of land; or

(7) property that is owned by a nonprofit water supply corporation whose board of directors is elected by the members it serves, that is not held for profit, and that is reasonably necessary for and is used in the acquisition, storage, transportation, or distribution of water or in providing sewage or waste water treatment service.

Section 5. AD VALOREM TAX RELIEF. (a) The legislature by law may grant relief from residential ad valorem taxes payable by persons determined to be in need of relief because of economic circumstance and either age or disability. A law granting relief must provide either (1) that political subdivisions are reimbursed for revenue losses caused by the relief or (2) that relief applies to the ad valorem taxes of a political subdivision only if the political subdivision approves.

(b) The legislature by law may provide for the preservation of cultural, historical, or natural history resources by:

(1) granting relief from state ad valorem taxes on appropriate property so designated in the manner prescribed by law; or

(2) authorizing political subdivisions to grant relief from ad valorem taxes on appropriate property so designated by the political subdivision in the manner prescribed by general law.

Section 6. AD VALOREM TAX ACTIONS. (a) Notwithstanding other remedies provided by law, an owner of property may pay under protest ad valorem taxes due on that property and sue for a refund in a district court.

(b) In a suit for a refund of taxes, a court has the duty of entering those orders necessary to ensure equal treatment under the law for the complaining property owner, including refund of taxes and equalization of property appraisal and assessment.

(c) Subject to limitations provided by law, the court has the additional duty of entering all other orders necessary to ensure equal treatment under the law for all property owners within the taxing authority, including refunds of taxes and equalization of property appraisals and assessments.

Section 7. ALLOCATIONS AND USES OF CERTAIN REVENUES. (a) Each county receives from the net revenue derived annually from motor vehicle registration fees attributable to the county an amount prescribed by general law but that amount must be at least equal to all fees collected up to $50,000 and 50 percent of the next $250,000 of fees collected.

(b) All net revenue from motor vehicle registration fees not retained by the counties and three-fourths of all net revenue derived from taxes on motor fuels and lubricants used to propel motor vehicles over public roadways, except gross production, petroleum products manufacturing, and ad valorem taxes, may be appropriated only for the following purposes:

(1) acquiring rights-of-way for public roadways;

(2) constructing or maintaining public roadways;

(3) administering laws pertaining to the supervision of traffic or safety on public roadways; or

(4) policing public roadways.

(c) One-fourth of all net revenue from the motor fuel tax and from state occupation taxes is dedicated to the Available School Fund.

(d) No revenue from taxes on motor fuels and lubricants or from motor vehicle registration fees not retained by counties may be appropriated for payment of principal or interest on bonds or warrants issued by political subdivisions.

Section 8. STATE DEBT. (a) State debt may not be incurred except as authorized by this constitution.

(b) "State debt" means bonds or other evidences of indebtedness that are secured by the general credit of the state or are to be repaid from taxes, fees, tuition, or other charges of the state, a state senior college or university, or a state agency or institution having statewide jurisdiction. "State debt" does not include bonds or other evidences of indebtedness issued to finance a project if the debt is authorized by law and is payable solely from revenues generated by the project to be financed.

(c) State debt may be authorized by law if approved by a record affirmative two-thirds vote of the membership of each house of the legislature and submitted to and approved by a majority of the qualified voters of the state voting on the question.

(d) State debt may be authorized by law to refund outstanding state debt.

Section 9. APPROPRIATIONS. (a) No money may be drawn from the State Treasury except in accordance with specific appropriation made by law. No law may appropriate money from the State Treasury for a purpose not previously authorized by law.

(b) No appropriation of money from the State Treasury may be made for a period longer than two years.

(c) On the convening of the legislature in regular session, the comptroller of public accounts shall submit to the governor and the legislature a report that shows (1) the condition of the treasury at the end of the preceding fiscal period, (2) an estimate of the probable receipts and disbursements for the current fiscal year, (3) an itemized estimate of anticipated revenues for the next applicable fiscal period, and (4) other information required by law. On the convening of a special session of the legislature, the comptroller of public accounts shall submit a report showing changes from the regular report previously submitted. In the event of changes at other times, the comptroller of public accounts shall report the changes to the governor and to the members of the

legislature.

(d) No bill containing an appropriation may be considered as passed or be presented to the governor unless the comptroller of public accounts has certified that the amount appropriated is within the estimated revenue for the applicable fiscal year or unless the appropriation is made in response to imperative public necessity and approved by a record affirmative four-fifths vote of the membership of each house of the legislature.

Section 10. PUBLIC FUNDS. Public funds and public credit may be used only for public purposes. No public funds or public credit may be used to influence the election of a public officer.

Section 11. REPORT OF DEDICATED FUNDS. The legislature shall provide by law for an annual report of the receipts and expenditures of constitutionally dedicated funds.

Section 12. EXEMPTION FROM RETAIL SALES TAX. No retail sales tax may be imposed on (1) agricultural machinery or parts, fertilizer, feed or seeds, (2) prescription drugs or medicine, or (3) food for human consumption except food sold by restaurants or comparable establishments for immediate consumption.

Section 13. REFUNDABLE MARINE FOOD OR AGRICULTURAL ASSESSMENTS. An assessment voted by marine food or agricultural producers on their product sales is not a tax if provision is made for the individual producer to receive a refund of the assessment when the producer does not desire to be assessed.

ARTICLE IX

LOCAL GOVERNMENT

Section 1. COUNTIES. (a) The counties of the state are those that exist on the date of adoption of this article.

(b) Under procedures prescribed by general law, (1) county boundaries may be changed if approved by a majority of the qualified voters in each affected county who vote on the question, and (2) counties may be merged or county seats relocated if approved by two-thirds of the qualified voters in each affected county who vote on the question.

Section 2. POWERS OF COUNTY GOVERNMENT. Counties have only the powers of government granted by the constitution and general laws of this state.

Section 3. COUNTY OFFICERS. (a) The governing body of each county is the county commission, consisting of a county judge elected by the qualified voters of the county, and four county commissioners, each elected by the qualified voters of separate and compact precincts containing as nearly as practicable an equal number of inhabitants. The county judge is the presiding officer of the county commission.

(b) The qualified voters of each county elect a sheriff, treasurer, tax assessor-collector, and county clerk. The qualified voters elect a county attorney in those counties designated by general or local law.

(c) The county commission shall provide for the election of one or more constables.

(d) The qualifications, duties, and functions of county officers and the grounds and procedure for disqualification, suspension, and removal are as provided by general law except that (1) among other qualifications the county attorney must be licensed to practice law in this state and (2) among the duties and functions of the county clerk are those of county recorder and clerk of the county commission.

(e) Under methods and procedures established by general law, the qualified voters of a county by a majority vote of those voting on the question may create additional offices, eliminate

offices, or combine the duties and functions of offices. In the case of a county commission this power is limited to reducing or increasing the number of county commissioners. If the duties and functions of an office named in Subsections (b) and (c) of this section are combined with another office, the holder of the combined offices must be elected. The county commission shall designate the officer to perform the duties required by law to be performed by an officer whose office is eliminated.

(f) Vacancies in county offices are filled as provided by general law.

Section 4. **COUNTY ORDINANCES.** (a) Under procedures prescribed by general law, the qualified voters of a county, by a majority of those voting on the question, may grant to or withdraw from the county commission a general or limited power to enact ordinances. If this power is granted, the county commission may enact ordinances that are not inconsistent with the constitution or laws of this state. The legislature by general law may provide procedures by which the qualified voters of a county may repeal ordinances.

(b) If a county ordinance conflicts with an ordinance of an incorporated city or town, the municipal ordinance prevails within its jurisdiction as defined by law.

Section 5. **GENERAL LAW CITIES.** Cities and towns having a population of 1,500 or less may be chartered only under general law.

Section 6. **CITY CHARTERS.** Cities and towns having more than 1,500 inhabitants, by a majority vote of the qualified voters voting on the question, may adopt, amend, or repeal their charters in the manner prescribed by law. No charter or ordinance may be inconsistent with the constitution or laws of this state. No tax may be levied unless authorized by law or charter. No city loses the power to amend or repeal its charter because its population drops below 1,500.

Section 7. **SPECIAL DISTRICTS AND AUTHORITIES.** (a) The legislature may provide by general or local law for special districts or authorities.

(b) Counties, cities, and towns may provide for special districts or authorities within their boundaries but only if authorized by general law. No local law may create a special

district or authority wholly within a county, city, or town if a general law authorizes the county, city, or town to create a special district or authority for the same purpose.

(c) Special districts or authorities may be created only for public purposes.

(d) The provisions of this section are not applicable to school districts or community junior college districts.

Section 8. TERMS OF OFFICE. Constitutional county officers are elected for four-year terms. Other elected county officers and elected officers of other political subdivisions are elected for terms as provided by law or charter.

Section 9. COMPENSATION OF OFFICERS. Elected officers of political subdivisions are not to be compensated on a fee basis.

Section 10. TAX RATES AND DEBT LIMITATIONS. (a) The maximum annual tax rate established by law or charter for ad valorem taxes levied by a city or town for purposes other than debt service may not exceed $2 on the $100 of assessed valuation. The maximum annual tax rate established by law for ad valorem taxes levied by a county for purposes other than debt service may not exceed $1.25 on the $100 of assessed valuation.

(b) No school district, community junior college district, or special district or authority may levy an annual ad valorem tax for purposes other than debt service unless a maximum annual tax rate, not exceeding the maximum rate permitted by law, has been approved by a majority of the qualified voters of the district or authority voting on the question at an election held for that purpose.

(c) A political subdivision may levy an additional annual ad valorem tax at a rate not greater than necessary to provide an annual amount sufficient to service debt payable from ad valorem taxes.

(d) The legislature shall establish by general law the maximum amount of interest-bearing obligations payable from ad valorem taxes that may be issued by cities, towns, counties, school districts, and community junior college districts.

(e) No interest-bearing obligations payable from ad valorem

taxes, other than refunding obligations, may be issued by school districts, community junior college districts, or special districts or authorities unless authorized by a majority of the qualified voters of the district or authority voting on the question at an election held for that purpose.

(f) No interest-bearing obligations for mass transportation purposes and payable from ad valorem taxes may be issued by a political subdivision unless authorized by a majority of the qualified voters of the political subdivision who vote on the question.

(g) The power of a political subdivision to levy taxes or issue interest-bearing obligations previously voted is not lost by any change in its boundaries. If boundaries are changed by annexation or by merger or consolidation of two or more political subdivisions of the same type, the surviving political subdivision may levy taxes at the highest rate previously voted by any of the affected political subdivisions and may issue interest-bearing obligations to the extent previously approved by each of the affected political subdivisions. The legislature shall provide by general or local law for the assumption of outstanding obligations of political subdivisions whose boundaries are changed.

(h) No interest-bearing debt may be created by a political subdivision unless at the same time provision is made for paying the interest and principal when due.

(i) Ad valorem taxes levied by school districts, community junior college districts, or special districts or authorities are not to be counted as part of the ad valorem tax limits imposed on counties, cities, and towns.

Section 11. INTERGOVERNMENTAL COOPERATION. The legislature shall prescribe by law the manner in which a political subdivision, by act of its governing body, may cooperate or contract with other political subdivisions, the state, or the United States for the performance of functions required or authorized by the constitution or laws of this state.

Section 12. CONSOLIDATION OF OFFICES AND TRANSFER OF FUNCTIONS. Political subdivisions may be authorized only by general law to consolidate offices, transfer functions of government, or cancel a consolidation or transfer. A law may not authorize a consolidation or transfer among political subdivisions of more than one geographical county. No

consolidation or transfer may take effect unless it is approved by a majority of the qualified voters in each affected political subdivision who vote on the question except that the legislature by general law may provide for the consolidation of the function of collection of taxes in a county.

ARTICLE X

GENERAL PROVISIONS

Section 1. OFFICIAL OATH. State and local officers shall take the following oath before entering on the duties of public office:

"I, , do solemnly swear (or affirm) that I will faithfully execute the duties of the office of and will to the best of my ability preserve, protect, and defend the constitution and laws of the United States and of this state; and I furthermore solemnly swear (or affirm) that I have not directly or indirectly paid, offered, or promised to pay, contributed or promised to contribute any money or valuable thing, or promised any public office or employment, as a reward for the securing of this office, so help me God."

Section 2. RESIDENCE OF CIVIL OFFICERS. Public officers shall reside within the state. Officers of a political subdivision or district shall reside and shall keep their offices at the locations prescribed by law. An office becomes vacant if the officer does not comply with this section.

Section 3. FORFEITURE OF RESIDENCE BY ABSENCE ON PUBLIC BUSINESS. A person's absence from the state, a political subdivision, or a district on business of the United States, this state, or the political subdivision or district does not forfeit a residence for purposes of suffrage or of election or appointment to public office.

Section 4. CONTINUATION IN OFFICE. An officer of this state continues to perform the duties of office until a successor has assumed office, but an officer appointed by the governor to a statutory state agency may not perform those duties beyond December 31 of the year in which the term expires.

Section 5. VACANCIES FILLED FOR UNEXPIRED TERM. A person elected to fill a vacancy in office serves for the remainder of the term.

Section 6. DISQUALIFICATION, SUSPENSION, AND REMOVAL FROM CONSTITUTIONAL OFFICE. The legislature by law may provide grounds and procedures for the disqualification, suspension, or removal of those constitutional officers whose removal is not provided for elsewhere in this

constitution and for the temporary filling of vacancies.

Section 7. PROTECTION OF THE ENVIRONMENT. The quality of the environment of the State of Texas is to be protected. The legislature by law shall implement and enforce this policy.

Section 8. CONSERVATION AND DEVELOPMENT OF NATURAL RESOURCES. (a) It is the policy of this state to promote the conservation and development of the natural resources in the state. The legislature by law shall implement and enforce this policy. In furtherance of this policy the legislature shall provide by law for (1) the control, storage, preservation, and distribution for useful purposes of storm, flood, river, and stream waters; (2) the reclamation, irrigation, and drainage of land; (3) the abatement of subsidence; (4) the conservation of the atmosphere; (5) the collection and disposal or recycling of wastes; (6) the conservation and development of the energy resources and forests; and (7) the navigability of the waters.

(b) No state fund established for purposes of water development, transmission, transfer, or filtration may be used to finance a project that contemplates or results in removing surface water from the river basin of origin if the surface water is necessary to supply the reasonably foreseeable water requirements of the basin for the ensuing 50 years. This subsection does not apply to a removal of water (1) that is sufficiently replaced to the point of removal from outside the state or (2) that is on a temporary, interim basis.

Section 9. COASTAL NATURAL RESOURCES. (a) In order to preserve the coastal natural resources of the state, the state holds in perpetual trust for the use and benefit of the people of this state the beaches and those coastal submerged lands belonging to the state and may not by sale transfer a fee simple absolute title in these lands.

(b) Subject to such reasonable limitations as prescribed by law, the public, individually and collectively, has the free and unrestricted right of use and benefit of the beaches. The state and its political subdivisions shall provide reasonable access avenues to the beaches and coastal public waters. An illegal entry on private property to gain access to a beach is not permitted by virtue of this section.

(c) In this section "beach" means the land on the seaward

shore of the open Gulf of Mexico, whether island or mainland, that extends inland from the line of mean low tide to the natural line of vegetation or the larger contiguous area to which the public has (1) acquired a right of use by dedication, prescription, or estoppel or (2) retained a continuous right of use recognized by law or custom since time immemorial.

Section 10. PROTECTION OF WILDLIFE RESOURCES. The legislature may enact local laws to regulate the taking of wildlife resources.

Section 11. SEPARATE AND COMMUNITY PROPERTY OF SPOUSES. (a) The property owned or claimed by a spouse before marriage and that acquired by a spouse during marriage by gift, devise, or descent is the separate property of the spouse. The legislature by law may prescribe more precise rules within the principles of this definition and may more clearly define the rights of each spouse in relation to separate and community property.

(b) The definition in Subsection (a) of this section does not limit the power of spouses to enter into written contracts or other written transactions between themselves that affect their property rights. Spouses may enter into written contracts or other written transactions (1) that change their community property into separate property if the change does not prejudice the rights of preexisting creditors or (2) that create between themselves a right of survivorship in community property. The form, manner of execution, and recordation requirements of the written contracts or other written transactions are as prescribed by law.

Section 12. HOMESTEAD. (a) The homestead is the home of a family or single adult. The place used for conducting the occupation of the claimant of an urban homestead may also be a homestead.

(b) The rural homestead consists of not more than 200 acres of land in one or more parcels, with improvements, located outside a city, town, or village. Not more than 50 acres on which the home is located is a residential homestead; the rest is a nonresidential homestead. A rural homestead may not be changed to an urban homestead without the claimant's consent so long as the land is used for agricultural purposes.

(c) The urban homestead consists of land, with improvements, located in a city, town, or village; but the value of

the land, without improvements, at the time of establishment as homestead may not exceed $10,000, or a larger sum if prescribed by law. The urban homestead is a residential homestead if used as a home and a nonresidential homestead if used as a place for conducting the occupation of the claimant.

(d) The homestead is not subject to forced sale for the payment of debt except for (1) purchase money for the homestead, (2) taxes due on the homestead, and (3) the value of improvements made on the homestead under a written contract (A) to which the claimant consents or (B) in the case of a homestead of spouses, to which both spouses consent in the manner prescribed by law for the conveyance of a homestead. A pretended sale of a homestead involving a defeasance or a condition nullifying the sale is void.

(e) A mortgage, trust deed, or other lien on a residential homestead is void except for (1) the purchase money for the homestead or (2) the value of improvements as provided in Subsection (d) of this section. A lien on a nonresidential homestead may be created but only in the manner prescribed by law for the conveyance of a homestead.

(f) Except as otherwise provided by law, a homestead of spouses may not be sold or abandoned without the consent of both spouses. A temporary renting of a homestead does not change its character if no other homestead is acquired.

(g) A homestead of spouses descends and vests like other real property but may not be partitioned so long as the homestead is used or occupied as a home by either a surviving spouse or minor child if that use has been granted the child by a proper court.

Section 13. PROTECTION OF PERSONAL PROPERTY FROM FORCED SALE. The legislature shall provide by law for the protection from forced sale of certain personal property belonging to each adult and each head of family.

Section 14. PROTECTION OF WAGES FROM GARNISHMENT. Current wages for personal service are not subject to garnishment.

Section 15. PRIVATE CORPORATIONS. A private corporation may not be chartered except under general law.

Section 16. BANKING. (a) No bank may engage in business

at more than one place in this state. A bank shall designate in its charter the place at which it will engage in business.

(b) The legislature by law shall provide for the regulation of bank holding companies.

(c) No foreign corporation except a bank chartered by the United States and domiciled in Texas may exercise banking or discounting privileges in this state.

Section 17. ALCOHOLIC BEVERAGES. (a) The legislature by law shall provide for the regulation of the manufacture, packaging, sale, possession, and transportation of alcoholic beverages and mixed alcoholic beverages.

(b) This regulation must preserve the right of local option by counties, justice precincts, or incorporated cities or towns but may not provide for local option by other political subdivisions. Local option is a determination of whether to legalize or prohibit the sale of these beverages and a determination of the various types and various alcoholic contents of these beverages that may be sold.

(c) A local-option determination by a county, justice precinct, or incorporated city or town may be made only by a majority of the qualified voters who vote on the question at an election in that political subdivision.

(d) The local-option status of a county, justice precinct, or incorporated city or town on the effective date of this article, may be changed only by a majority of the qualified voters who vote on the question at an election in that political subdivision.

Section 18. PRACTITIONERS OF MEDICINE. The legislature shall pass laws to prescribe the qualifications of practitioners of medicine and to punish persons for malpractice. No preference may be given by law to any schools of medicine.

Section 19. LOTTERIES AND GIFT ENTERPRISES. The legislature by law shall prohibit lotteries and gift enterprises except that the legislature by law may authorize bingo or raffles conducted for the benefit of a nonprofit charitable organization if (1) all proceeds are spent in this state for the purposes of the organization and (2) the games are limited to one location as defined by law.

Section 20. LIENS OF MECHANICS, ARTISANS, AND MATERIALMEN. Mechanics, artisans, and materialmen have a

lien on the buildings or articles made or repaired by them. The lien is for the value of labor or material furnished. The legislature by law shall provide for the efficient enforcement of the lien.

Section 21. RETIREMENT BENEFITS FOR PUBLIC EMPLOYEES. (a) General Provisions. (1) The legislature may enact general laws establishing systems and programs of retirement and related disability and death benefits for public employees and officers. Financing of benefits must be based on sound actuarial principles. The assets of a system are held in trust for the benefit of members and may not be diverted.

(2) A person may not receive benefits from more than one system for the same service, but the legislature may provide by law that a person with service covered by more than one system or program is entitled to a fractional benefit from each system or program based on service rendered under each system or program calculated as to amount upon the benefit formula used in that system or program. Transfer of service credit between the Employees Retirement System of Texas and the Teacher Retirement System of Texas may also be authorized by law.

(3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments. In making investments, a board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The legislature by law may further restrict the investment discretion of a board.

(4) General laws establishing retirement systems and optional retirement programs for public employees and officers in effect on the date of adoption of this article, remain in effect, subject to the general powers of the legislature established in this subsection.

(b) State Retirement Systems. (1) The legislature shall establish by law a Teacher Retirement System of Texas to provide benefits for persons employed in the public schools, colleges, and universities supported wholly or partly by the state. Other employees may be included under the system by law.

(2) The legislature shall establish by law an Employees Retirement System of Texas to provide benefits for officers and employees of the state and such state-compensated officers and employees of the unified judicial system as may be included under the system by law.

(3) The legislature shall establish by law the amount to be contributed by persons participating in the Employees Retirement System of Texas and the Teacher Retirement System of Texas. The amount contributed by the state must be at least six percent of the aggregate compensation paid to individuals participating in the system. The legislature may appropriate such additional sums as are actuarially determined to be required to fund benefits authorized by law.

(c) Local Retirement Systems. (1) The legislature shall provide by law for:

(A) the creation by any city or county of a system of benefits for its officers and employees;

(B) a statewide system of benefits for the officers and employees of counties of other political subdivisions of the state in which counties or other political subdivisions may voluntarily participate; and

(C) a statewide system of benefits for officers and employees of cities in which cities may voluntarily participate.

(2) Benefits under these systems must be reasonably related to participant tenure and contributions.

(d) Judicial Retirement System. (1) Notwithstanding any other provision of this section, the system of retirement, disability, and survivors' benefits heretofore established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts is continued in effect. The legislature shall provide for inclusion in the system of judges of all courts in the unified judicial system. Contributions required and benefits payable are to be as provided by law.

(2) General administration of the Judicial Retirement System of Texas is by the Board of Trustees of the Employees Retirement System of Texas under such regulations as may be provided by law.

Section 22. REGULATION OF INTEREST AND LENDING. (a) Except as otherwise provided by law, a contract providing for a rate of interest in excess of 10 percent a year is usurious. If a contract does not specify a rate of interest, the rate under the contract may not exceed six percent a year.

(b) The legislature may not delegate the power to classify loans or lenders, define interest, or fix maximum interest rates.

Section 23. EQUAL TREATMENT OF THE HANDICAPPED. A person may not be denied a right, benefit, or opportunity because of a physical or mental handicap as defined by law except (1) as otherwise provided in this constitution, (2) as prescribed by law in the regulation of commerce, or (3) to the extent a handicap prevents work performance in employment. This guarantee is self-operative.

Section 24. ACCESS TO HEALTH CARE. A goal of this state is to provide every resident access to adequate, comprehensive health care as may be provided by law.

ARTICLE XI

MODE OF AMENDING

THE CONSTITUTION OF THE STATE

Section 1. AMENDMENTS TO THE CONSTITUTION. (a) The legislature may propose amendments to this constitution by a record affirmative two-thirds vote of the membership of each house. The legislature shall limit a proposed amendment to the revision of all or part of one article except that the amendment may revise parts of other articles that are germane to the revision of the principle article.

(b) A proposed amendment must be submitted to the people at the next statewide general election or at a special election held on a date specified by the legislature. In no event is an election on a proposed amendment to take place less than 90 days after the legislature proposes the amendment.

(c) Proposed amendments must be publicized in the English language and any other language prescribed by law. The legislature shall prescribe by law the procedure for publicizing proposed amendments.

(d) A proposed amendment is adopted if approved by a majority of the qualified voters voting on the question and becomes a part of this constitution on the date that the statewide returns of the election are canvassed.

Section 2. CONSTITUTIONAL CONVENTION. (a) The legislature by a record affirmative two-thirds vote of the membership of each house may submit to the people the question of whether to call a constitutional convention and may stipulate in the question the articles of the constitution that the convention may consider. The question must be submitted at the first statewide general election occurring at least six months after the legislature approves the submission. A constitutional convention must be called if approved by a majority of the qualified voters voting on the question.

(b) The question of whether to call a constitutional convention must be submitted to the people at least once every 30 years.

(c) At the next legislative session following approval of a call,

the legislature shall provide by law for the election of delegates and the filling of vacancies; for the convening of the convention on a date no later than three months after the election of delegates; for the meeting place and duration of the convention; for the pay, allowances, and expenses of delegates and officers; and for the other expenses of the convention.

(d) No public officer is prohibited from serving as a delegate by virtue of any provision in this constitution.

(e) The constitutional convention by a record affirmative two-thirds vote of its membership, in the case of an unlimited call, may propose any revision of or amendments to the constitution or, in the case of a limited call, may propose any revision of or amendments to the articles stipulated in the call. The convention shall determine the manner of submitting and publicizing its proposals and fix the date of the election. Convention proposals must be publicized in the English language and in any other language specified by the convention.

(f) A revision or amendment proposed by the constitutional convention becomes effective, as the convention provides, if approved by a majority of the qualified voters voting on the question.

TRANSITION SCHEDULE

The following schedule provisions remain part of this constitution until executed. Once each year the attorney general shall review the schedule and certify to the secretary of state which remaining provisions have been executed. A provision so certified is to be removed from and no longer published as part of the constitution.

Section 1. EXISTING LAWS, RIGHTS, AND PROCEEDINGS. All laws not inconsistent with the 1976 revision of this constitution continue in effect until they expire by their own limitation or until amended or repealed. All existing writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles, and rights continue unaffected except as modified in accordance with the revised provisions of this constitution.

Section 2. VALIDITY OF ISSUED BONDS. Bonds or other evidences of indebtedness validly issued by or on behalf of the state or any agency or political subdivision thereof under authority previously granted by the Constitution of 1876, as amended and as it existed prior to November 4, 1975, remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions notwithstanding the repeal of such authority by virtue of the 1976 revision of this constitution. The state, agency, or political subdivision, as the case may be, shall continue to provide for a source or sources of payment in accordance with the terms of the bonds or other evidences of indebtedness, whether from taxes or otherwise, until the bonds or other evidences of indebtedness are paid in full.

Section 3. DELAYED EFFECTIVE DATE. Notwithstanding the general effective date of each article revised in 1976, as provided in each amendment, the following provisions become effective on the date indicated, or earlier if provided by law:

(1) Section 5 of Article III on January 1, 1981;

(2) Section 9 of Article VII on January 1, 1979;

(3) Subsections (b) and (c) of Section 2 of Article VIII on January 1, 1978; and

(4) Subsection (c) of Section 6 of Article VIII on January 1, 1979.

Section 4. PROVISIONS OF THE CONSTITUTION OF 1876. Until January 1, 1980, unless earlier enacted, repealed, or superseded by law, the following provisions of the Constitution of 1876, as amended and as it existed on November 4, 1975, continue in effect as if statutes, but only to the extent that they are not in conflict with the 1976 revision of this constitution:

(1) Article III, Section 13;

(2) Article III, Section 29;

(3) Article III, Section 36–insofar as it refers to revival of bills;

(4) Article III, Section 52e (as added in 1967);

(5) Article IV, Section 3–insofar as it relates to tie votes and prescribes a procedure for the canvassing of the votes for the governor and lieutenant governor;

(6) Article IV, Section 11–insofar as it provides for the number of members and the terms of the Board of Pardons and Paroles;

(7) Article IV, Section 20;

(8) Article IV, Section 24–insofar as it relates to information under oath and perjury penalties;

(9) Article V, Section 18–insofar as it requires the county commission to divide the county into commissioners precincts;

(10) Article VII, Section 6b–insofar as it requires county permanent school funds to be distributed on a per scholastic basis;

(11) Article VIII, Section 1-d;

(12) Article VIII, Section 1-e, Subsections (4) and (5);

(13) Article VIII, Section 9–insofar as it authorizes each county to put all tax money collected by the county into one general fund without regard to the purpose or source of each tax;

(14) Article XI, Section 11;

(15) Article XVI, Section 11–insofar as it authorizes trial de novo for those whose permits have been denied or cancelled by a regulatory agency;

(16) Article XVI, Sections 12, 33, and 40;

(17) Article XVI, Section 14;

(18) Article XVI, Section 26;

(19) Article XVI, Section 30–insofar as it provides that the duration of all offices not fixed by law or the Constitution of Texas is not to exceed two years;

(20) Article XVI, Section 41;

(21) Article XVI, Section 59, Subsections (d) and (e);

(22) Article XVI, Section 61;

(23) Article XVI, Section 64;

(24) Article XVI, Section 65; and

(25) Article XVII, Section 1–insofar as it provides a procedure for publicizing amendments to the constitution.

Section 5. TERMS OF OFFICE. Elected officers in this state continue in office until the end of their terms unless their offices are sooner abolished in accordance with this constitution or laws enacted pursuant thereto.

Section 6. ANTICIPATORY LEGISLATION. Laws may be enacted in anticipation of the effective date of revised articles, but those laws may not become effective prior to September 1, 1976.

Section 7. POWERS OF THE SECRETARY OF STATE UNDER AMENDMENTS ADOPTED NOVEMBER 4, 1975. Regarding nonsubstantive matters, the secretary of state, after the review and approval of the attorney general, shall: (1) number, locate, amend, or delete articles, sections, or subsections, and change cross-references in the Constitution of Texas in accordance with constitutional amendments adopted by the voters of the state on November 4, 1975; (2) number, locate, amend, or delete portions of the transition schedule of the constitution in accordance with constitutional amendments adopted by the voters

of the state on November 4, 1975; and (3) make other nonsubstantive changes in the constitution or amendments to the constitution as required to assure an orderly revision of the Texas Constitution from amendments adopted by the voters of the state on November 4, 1975.

Section 8. REDISTRICTING. Until January 1, 1981, unless earlier enacted, repealed, or superseded by law, Sections 25, 26, and 28 of Article III of the Constitution of 1876, as amended and as it existed on November 4, 1975, continue in effect as if statutes, but only to the extent that they are not in conflict with court rulings.

Section 9. LEGISLATIVE SALARY COMMISSION. When making the initial appointments to the legislative salary commission, the appointing body shall determine which three members serve until October 15, 1977, which three members serve until October 15, 1979, and which three members serve until October 15, 1981.

Section 10. CONVENING THE LEGISLATURE. The legislature convenes in regular session at 12 noon on the first Monday in January, 1976. The 1976 regular session of the legislature is limited to considering those matters that are submitted by the governor or such matters as the legislature considers necessary to effect implementation occurring as a result of the adoption of one or more amendments revising one or more articles of the constitution.

Section 11. RESIDENCE OF EXECUTIVE DEPARTMENT OFFICERS. Until enacted, repealed, or superseded by law, the requirements of the Constitution of 1876, as amended and as it existed on November 4, 1975, that certain officers of the executive department reside at the seat of government, or maintain an office or their records at the seat of government, continue in effect as if by statute.

Section 12. ALIGNMENT OF TERMS OF OFFICE. Subject to a law or laws establishing terms within the guidelines of Article IV, Section 2, Subsection (e), the terms of all officers appointed by the governor to statutory state agencies are extended to February 1, 1979, 1981, and 1983, if they expire prior to those dates but after January 31, 1978, 1980, and 1982, respectively; are shortened to April 30, 1977, 1979, and 1981, if they expire subsequent to those dates but prior to February 1, 1978, 1980, and 1982, respectively; and are extended to February 1, 1977, if

they expire after December 31, 1976, and prior to February 1, 1977. The foregoing adjustments are applicable only to offices that are not abolished.

Section 13. STATE AGENCY RENEWAL. (a) Within two years of January 1, 1976, the Texas Legislative Council, or its successor, shall submit to each house of the legislature a suggested agency disposition list for Subsection (b) of Section 24 of Article IV. This disposition list is to contain as nearly as possible a complete listing of all state agencies affected by Subsection (b) of Section 24.

(b) An affected agency not included on the disposition list shall register with the Legislative Council prior to May 31, 1978, listing its membership, statutory authorization, and who appoints its members. The Legislative Council shall transmit this information to the speaker of the house of representatives and the lieutenant governor, who shall add the agency to the disposition list.

(c) Beginning in the 1979 regular session, the legislature shall consider individually each agency on the disposition list.

Section 14. REORGANIZATION. Within two years after January 1, 1976, the governor shall submit to the legislature at least one bill of reorganization in conformity with Section 16 of Article IV.

Section 15. LEGISLATIVE COMPENSATION. Until the legislative salary commission makes its recommendations and new rates of compensation and allowances are set in conformity with Article III, Section 6 of this constitution, members of the legislature receive the compensation and allowances in effect on December 31, 1975.

Section 16. JUDICIARY TRANSITION ON EFFECTIVE DATE. On September 1, 1976:

a) SUPREME COURT; COURT OF CRIMINAL APPEALS. The chief justice of the supreme court becomes the Chief Justice of Texas. The presiding judge and the other judges of the court of criminal appeals and the associate justices of the supreme court become justices of the supreme court. Each commissioner of the court of criminal appeals becomes a commissioner of the supreme court.

(b) COURTS OF APPEALS DISTRICTS AND JUDGES. The supreme judicial districts of the state become court of appeals districts and the courts of civil appeals become courts of appeals, except that supreme judicial districts which occupy the identical territory become a single court of appeals district and the courts of civil appeals which exercised jurisdiction within that territory become a single court of appeals. Chief justices and associate justices of courts of civil appeals become, respectively, chief judges and judges of courts of appeals, except that where a court of appeals would have two or more chief judges the Chief Justice of Texas shall designate from among them one to be the chief judge of that court.

(c) DISTRICT AND CIRCUIT JUDGES. (1) Until otherwise provided by law, each district judge or judge of a criminal district court, domestic relations court, special juvenile court, or specially designated probate court becomes a district court judge.

(2) The offices of county court at law judge, county civil court at law judge, county criminal court judge, county criminal court at law judge, county criminal court of appeals judge, and judge of any other county court created by statute are continued until the legislature implements Section 5 of the 1976 revision of Article V; upon implementation, judges holding those offices in a county that is to be served by a circuit court become judges of the circuit court.

(d) CRIMINAL DISTRICT ATTORNEYS. Each criminal district attorney becomes a district attorney. Until otherwise provided by law, a criminal district attorney who becomes a district attorney under this section continues to perform the duties and functions prescribed by law applicable to the office of that criminal district attorney in effect on August 31, 1975. Unless otherwise provided by law, Article 329 of the Revised Civil Statutes of Texas, 1925, does not apply to a county in which a criminal district attorney becomes a district attorney under this section.

(e) TRANSFER OF PROCEEDINGS AND RECORDS. All courts, except those authorized by the 1976 revision of Article V, are abolished, and all matters pending before them are transferred to the appropriate successor courts authorized by the 1976 revision of Article V. The courts into which the matters are transferred assume full jurisdiction of them and full authority to dispose of them and to execute or otherwise give effect to all orders, judgments, and decrees issued by their predecessor courts.

Courts authorized by the 1976 revision of Article V succeed to all records and property of courts abolished by this subsection.

(f) TRANSFERS FROM COURT OF CRIMINAL APPEALS. All matters filed in or docketed by the court of criminal appeals but not heard by the court are transferred to the court of appeals in which the matters would have been docketed were they civil in nature and the court of appeals still a court of civil appeals.

Section 17. STABILIZATION OF SUPREME COURT SIZE. Unless otherwise provided by law, the offices of the first five justices, except the chief justice, who cease to be members of the supreme court by reason of death, removal, resignation, or retirement after September 1, 1976, cease to exist. The death, removal, resignation, or retirement of an incumbent justice after having been defeated at a primary or general election does not terminate the office. The position of commissioner of the supreme court exists only as long as it is held by the individual in the office on September 1, 1976.

Section 18. COUNTY COURT; COUNTY JUDGE. Unless otherwise provided by general or local law, county courts created in Article V, Section 15, of the Constitution of 1876, as amended and as it existed on November 4, 1975, continue in effect as the courts authorized in Section 6(a) of the 1976 revision of Article V, and the judges of those courts remain as county court judges and as presiding officers of the county commissioners courts. However, a judge of the county court who is licensed to practice law, by written notice to the governor filed with the secretary of state within 30 days after September 1, 1976, may elect instead to become a judge of the circuit court established pursuant to Section 5 of the 1976 revision of Article V if there is no circuit court judge provided for that district under the provisions of this transition schedule. If a judge of the county court becomes a circuit judge, the office of county judge becomes vacant and is filled by the county commissioners court until the next statewide general election. Should more than one judge of a county court within the same circuit court district file such written notice, the governor shall select the one to become judge of the circuit court. Section 6(a) of the 1976 revision of Article V does not mandate or require a change in the jurisdiction or judicial functions of a county judge.

Section 19. MUNICIPAL COURT JUDGES AND JUSTICES OF THE PEACE. Unless otherwise provided by law, order, charter, or ordinance, municipal court judges and justices of the

peace remain as they exist on August 31, 1976.

Section 20. CLERKS. All laws pertaining to the office of district clerk or county clerk which are in effect on August 31, 1976, and which are consistent with the provisions of the 1976 revision of Article V, remain in effect until changed by law.

Section 21. PROSECUTORS. All laws pertaining to the office of district attorney or county attorney which are in effect on August 31, 1976, remain in effect until changed by law. Section 11 of the 1976 revision of Article V does not mandate or require a redistricting of existing district attorney districts.

Section 22. QUALIFICATIONS COMMISSION. Members of the judicial qualifications commission continue in office and perform the duties of the commission established by Article V, Sections 1(a) (2-13) of the 1876 Constitution, as amended and as it existed on November 4, 1975, until a commission is established pursuant to Section 10(b) of the 1976 revision of Article V.

Section 23. JUDICIAL DISTRICTS. Until otherwise provided by law, the judicial districts in existence on August 31, 1976, remain in effect, including any judicial districts then authorized by law but which take effect after August 31, 1976. Section 4 of the 1976 revision of Article V does not mandate or require judicial redistricting.

Section 24. LAWS AND RULES CONTINUED. Except to the extent inconsistent with the provisions of the 1976 revision of Article V, all laws and rules of court in force on August 31, 1976, continue in effect until superseded as authorized by law.

Section 25. MANNER OF APPEAL IN CRIMINAL CASES. Until the legislature or supreme court makes provisions for the appeal of criminal cases from the courts of appeals, the rules and laws presently in force for appeals from courts of civil appeals also apply to the appeal of criminal cases.

Section 26. JUDICIAL OFFICE TRANSITION. No judicial office is abolished until the expiration of the term of the person who holds the office on August 31, 1976, or until that person ceases to hold the office, whichever occurs first.

Section 27. INITIAL JUDICIAL TERMS. The initial justices, judges, and justices of the peace in the judicial branch established by the 1976 revision of Article V serve for the remainder of the

terms for which elected and thereafter terms of office are as provided in the 1976 revision of Article V.

Section 28. INITIAL TERMS FOR CERTAIN PROSECUTORS. Individuals who become district attorneys pursuant to Section 16 of this transition schedule hold that office two years beyond the terms for which they were elected. Successor office holders are elected for the same terms and in the same manner as are other district attorneys.

Section 29. MEMBER OF BOARD OF PARDONS AND PAROLES. The member of the Board of Pardons and Paroles who was appointed by the Presiding Judge of the Court of Criminal Appeals serves the full term to which appointed. A vacancy in that position is filled by the Attorney General of Texas with the advice and consent of two-thirds of the senate present.

Section 30. OTHER JUDICIARY TRANSITION. In the event a transfer or transition required by the revision of Article V has not been provided for by this transition schedule or by law, the supreme court shall provide by rule for the orderly transfer or transition.

Section 31. DISQUALIFICATION FROM VOTING. Unless provided otherwise by a law enacted after July 31, 1975, no person may be disqualified from voting because of conviction for a felony unless for the felony the person is incarcerated, on parole, or on probation.

Section 32. STATE AD VALOREM TAX. (a) Until December 31, 1978, Article VII, Section 17 (except for the first paragraph) of the Constitution of 1876, as amended and as it existed on November 4, 1975, continues in effect as if part of the constitution.

(b) The state ad valorem tax on property of two cents on the $100 assessed valuation levied by the first paragraph of Article VII, Section 17 of the Constitution of 1876, as amended and as it existed on November 4, 1975, is hereby levied until December 31, 1978, unless an amendment revising the finance provisions of the constitution is adopted and a state ad valorem tax of two cents is levied in the constitution.

Section 33. CONTINUATION OF BOND AUTHORITY. (a) Bonds or other evidences of indebtedness specifically authorized to be issued or executed by or on behalf of the state or an agency

thereof under the following designated sections of the Constitution of 1876, as amended and as it existed on November 4, 1975, may be validly issued or executed subject to all applicable terms and conditions:

(1) Article III, Section 49-b, Veterans' Land Program;

(2) Article III, Section 49-c, Texas Water Development Board; Bond Issue; Texas Water Development Fund;

(3) Article III, Section 49-d, Acquisition and Development of Water Storage Facilities; Filtration, Treatment and Transportation of Water; Enlargement of Reservoirs;

(4) Article III, Section 49-d-1, Additional Texas Water Development Bonds;

(5) Article III, Section 49-e, Texas Park Development Fund;

(6) Article III, Section 50b, Student Loans; and

(7) Article III, Section 50b-1, Additional Student Loans.

(b) The bonds or other evidences of indebtedness may be issued or executed bearing any rate of interest within the limits permitted by the Constitution of 1876, as amended and as it existed on November 4, 1975. However, the legislature by law may authorize new limits if approved by a record affirmative two-thirds vote of the membership of each house of the legislature and submitted to and approved by a majority of the qualified voters voting on the question.

(c) Until January 1, 1981, or an earlier date provided by law, bonds or other evidences of indebtedness payable solely from the general building use fees of senior colleges or universities and issued under the authority of Chapter 55 of the Education Code as it existed on July 31, 1974, are not included within the definition of "state debt" contained in Section 8(b) of Article VIII.

Section 34. CONSTITUTIONAL POWERS OMITTED FROM IMPLEMENTING STATUTES. (a) Any power directly granted to any of the following state agencies by the applicable designated section of the Constitution of 1876, as amended and as it existed on November 4, 1975, not also granted by statute continues in effect until the effective date of a statute either granting that

power or otherwise expressly superseding the power hereby continued:

(1) Veterans' Land Board--Section 49-b of Article III;

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

(3) Texas Water Quality Board or any successor agency–Section 49-d-1 of Article III;

(4) The Parks and Wildlife Department or its successor--Section 49-e of Article III; and

(5) Coordinating Board, Texas College and University System, or its successor or successors--Sections 50b and 50b-1 of Article III.

(b) No statute may supersede a power the continuation of which is made necessary by Section 2 of this schedule.

Section 35. COUNTY AND ROAD DISTRICT HIGHWAY FUND. Notwithstanding Section 7(d) of the 1976 revision of Article VIII, payments may be made to the County and Road District Highway Fund for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, as provided under Section 7-a of Article VIII of the Constitution of 1876, as amended and as it existed on November 4, 1975.

Section 36. AD VALOREM TAX EXEMPTIONS. (a) Ad valorem tax exemptions granted by the 1976 revision of Article VIII, apply for the 1977 tax year. Ad valorem tax exemptions granted by the Constitution of 1876, as amended and as it existed on November 4, 1975, apply for the 1976 tax year.

(b) If an exemption in excess of $3,000 of the assessed value of the residential homestead of persons 65 years of age or older has been granted by a political subdivision under Article VIII, Section 1-b, Subsection (b) of the Constitution of 1876, as amended and as it existed on November 4, 1975, the amount of the exemption in excess of $3,000 continues in effect for persons eligible under Section 4, Subsection (c) of the 1976 revision of Article VIII unless lowered in the manner permitted by the Constitution of 1876, as amended and as it existed on November 4, 1975.

Section 37. CONFEDERATE AND TEXAS RANGER PENSIONS. Revenue from the two-cent tax levied by Section 1(b) (2) of the 1976 revision of Article VIII may be used for the additional purposes of paying Confederate and Texas Ranger pensions to those persons entitled to benefits under Article III, Section 51 and Article XVI, Section 66 of the Constitution of 1876, as amended and as it existed on November 4, 1975, until no persons are entitled to benefits under those provisions or until a trust fund is established by law to provide benefits for those persons.

Section 38. SHERIFF, ASSESSOR-COLLECTOR OF TAXES. In those counties in which the offices of sheriff and assessor-collector of taxes are combined on August 31, 1976, the offices remain combined as if they had been combined in conformity with Article IX, Section 3(e), of the 1976 revision of Article IX.

Section 39. COUNTY ATTORNEYS. Those counties in which the office of county attorney exists, under Section 21 of Article V of the Constitution of 1876, as amended and as it existed on November 4, 1975, retain those offices under Subsection (b) of Section 3 of Article IX until otherwise provided by general or local law. The county attorneys have those duties as provided in Section 21 of Article V of the Constitution of 1876, as amended and as it existed on November 4, 1975, unless otherwise provided by general law.

Section 40. LOCAL GOVERNMENT DEBT LIMITS. Until the legislature by general law establishes a maximum amount of interest-bearing obligations payable from ad valorem taxes that may be issued by a class of political subdivisions under Section 10, Subsection (d) of the 1976 revision of Article IX, a political subdivision of that class may issue interest-bearing obligations payable from ad valorem taxes only to the extent that the total amount of outstanding interest-bearing obligations payable from ad valorem taxes does not exceed the following applicable percentage of the then current assessed valuation of taxable property within the political subdivision:

(1) a city or town--12 percent;

(2) a county--8 percent for purposes other than those described in Article III, Section 52, Subsection (c) of the Constitution of 1876, as amended and as it existed on November 4, 1975, for which the limit is 25 percent of the assessed value of

real property for obligations approved by a majority of the qualified electors voting on the issue;

(3) a school district–10 percent; or

(4) a community junior college district--10 percent.

III.

ARTICLE-BY-ARTICLE REVIEW

OF THE PROPOSED

1976 REVISION OF

THE TEXAS CONSTITUTION

ARTICLE I, BILL OF RIGHTS

The guarantees provided under the present Bill of Rights are retained in full. These important provisions include freedom of speech, assembly, and religion; separation of church and state; the right of trial by jury; the right to keep and bear arms; and the equal legal rights amendment adopted in 1972.

ARTICLE II, SEPARATION OF POWERS

Retained provisions:

Continues the division of powers among the three branches of government: legislative, executive, and judicial. Section 1.

New provisions:

None.

ARTICLE III, THE LEGISLATURE

Retained provisions:

Continues the present structure of the legislature consisting of a senate with 31 members and a house of representatives with 150 members. Section 2.

Continues provisions concerning the organization and procedure of the legislature except that the provision allowing closed executive sessions of the senate is omitted. Section 8.

Continues provisions on conflict of interest of members of the legislature. Section 10.

Continues the governor's power to veto bills or line items in appropriation bills. Section 12.

New provisions:

Requires single-member senatorial, representative, and congressional districts. Section 5.

Provides a compensation commission which would recommend the compensation and allowances received by members of the legislature. The legislative compensation, set by law, may not exceed this recommendation and does not take effect until after an intervening general election. Section 6.

Provides for annual sessions of 140 days in odd-numbered years and 90 days in even-numbered years, and a veto session of 15 days upon request of three-fifths of the membership of each house. Section 7.

Allows the legislature to meet in organizational sessions prior to the convening of the legislature in regular sessions. Section 8.

ARTICLE IV, THE EXECUTIVE

Retained provisions:

Continues the status of the governor, lieutenant governor, attorney general, comptroller of public accounts, treasurer, commissioner of the genera. land office, and secretary of state as executive department officers. Section 1.

Provides four-year terms for elected executive department officers. Section 2.

Provides for a Board of Pardons and Paroles. Section 17.

Specifies terms and number of members of the Railroad Commission. Section 22.

New provisions:

Includes the commissioner of agriculture as an executive department officer. Section 1.

Authorizes the governor to designate chairmen of state boards and to remove those gubernatorial appointments to state agencies for cause unless the removal is vetoed by the senate. Section 2.

Mandates the legislature to provide a new governor-elect an appropriation in order to allow the governor to organize an office prior to inauguration. Section 4.

Permits the legislature to grant powers of fiscal control to the governor. Section 15.

Mandates a periodic review of state agencies by the governor and provides that all governmental agencies, with several exceptions, have a life of not more than 10 years unless extended by the legislature. Sections 16 and 24.

Limits the governor to two consecutive terms. Section 4.

ARTICLE V, THE JUDICIARY

Retained provisions:

Continues the present system of county courts and county judges until otherwise provided by law. Section 6.

Continues the system of choosing judges by election of the people. Section 9.

Provides for district attorneys and district clerks to be elected by the people. Sections 11 and 12.

Continues individual rights for a trial by jury and appeal by the accused. Sections 13 and 15.

New provisions:

Establishes a unified judicial system consisting of the supreme court, courts of appeals, district courts, and circuit courts. Section 1.

Merges the court of criminal appeals and the supreme court into a single court of last resort. Section 1.

Authorizes the supreme court to provide for efficient administration of the judicial system and to balance case loads. Section 7.

Allows the state to appeal in criminal cases in limited circumstances. Section 14.

Allows the legislature to establish methods of appeal to the courts from decisions of state agencies. Section 16.

ARTICLE VI, VOTER QUALIFICATIONS AND ELECTIONS

Retained provisions:

Provides for registration and qualifications for voting. Section 1.

Provides for voter residency requirements to be established by the legislature. Section 2.

New provisions:

Allows a person to vote unless that person has been convicted of a felony and for that felony is incarcerated, on parole, or on probation, subject to further legislative restrictions. Section 1.

Allows the legislature to make property ownership an additional qualification for voting in property tax or tax bond elections. Section 1.

Provides 18-year-olds the right to vote conforming the article to the 26th Amendment to the U.S. Constitution. Section 1.

ARTICLE VII, EDUCATION

Retained provisions:

Continues the Permanent and Available School Funds for the support of the free public schools. Section 2.

Continues the County Public School Funds for the support of the free public schools. Section 3.

Retains the State Board of Education. Section 4.

Continues the Permanent and Available University Funds for the benefit of The University of Texas and Texas A&M Systems. Sections 7 and 8.

Continues the state ad valorem tax of 10 cents on the $100 valuation for the benefit of colleges and universities outside The University of Texas and Texas A&M Systems and allocates the receipts to a new Higher Education Fund. Section 9.

New provisions:

Provides that the public education system must furnish each

individual an equal educational opportunity, but a school district may provide local enrichment of educational programs exceeding the level provided by the state consistent with general law. Section 1.

Permits the legislature to change the 10 cent higher education tax by law within the 10 cent maximum, and permits the legislature to allocate by law a portion of the Higher Education Fund to certain state vocational and technical institutes. Section 9.

Increases the amount of Permanent University Bonds which may be issued from 20% of the Fund to 30% of the Fund. Section 8.

Enlarges what the money from the bonds can be used for to include capital improvements and library materials. Sections 8 and 9.

ARTICLE VIII, FINANCE

Retained provisions:

Requires that state taxes be levied and collected by general law. Section 1.

Prohibits state ad valorem taxes except for (1) the continuation of the two cent tax for State Building Fund and (2) the 10 cent tax provided for in Article VII (both taxes may be reduced by law). Section 1.

Requires ad valorem taxes on real and tangible personal property to be equal and uniform. Section 2.

Continues existing exemptions from ad valorem taxation. Section 4.

Retains the dedication of motor fuel taxes for highway purposes and the Available School Fund. Section 7.

Retains the "pay-as-you-go" principle for the operation of state government. Section 9.

New provisions:

Continues the two cent tax for the State Building Fund

Under present Article VIII, tax is phased out in 1976. Section 1.

Requires uniform standards and procedures for appraisal of property for ad valorem tax purposes. Section 2.

Requires each county to provide for a single appraisal of all property within its boundaries as provided by law. Section 2.

Requires the legislature to establish separate formulas for appraisal of farm and ranch land and authorizes separate formulas for land devoted to timber production. Section 3.

Mandates a $3,000 exemption from ad valorem taxation by political subdivisions for persons 65 years of age or older. A political subdivision may increase the amount of the exemption. Section 4.

Authorizes legislature to exempt from ad valorem tax certain property owned by veterans' organizations, non-profit water corporations, and persons in need because of age, disability and economic circumstance. The legislature also may exempt property to preserve historical, cultural or natural history resources. Sections 4 and 5.

Provides taxpayers a new method to correct inequitable tax assessments through court action. Section 6.

Exempts petroleum products manufacturing tax from constitutional dedication to highway fund and available school fund. Section 7.

Requires state debt to be approved by two-thirds of the legislature and a majority vote of the voters. Section 8.

Requires that public funds be used only for public purposes. Amounts of public expenditures may be established by law. Section 10.

Prohibits a retail sales tax on (1) agricultural machinery or parts, fertilizer, feeds or seeds, (2) prescription drugs or medicine, or (3) food, except food sold by restaurants. Section 12.

Provides that refundable assessments voted by marine food or agricultural producers are not taxes. Section 13.

ARTICLE IX, LOCAL GOVERNMENT

Retained provisions:

Defines the counties of the state as those that exist on the date of adoption of the local government article. Section 1.

Retains the elected constitutional county offices and provides for four-year terms of office. Sections 3 and 8.

Retains home-rule provisions for cities. Section 6.

Continues the policy of intergovernmental cooperation. Section 11.

Continues provisions allowing the consolidation of offices and the transfer of governmental functions. Section 12.

New provisions:

Allows county voters to create additional offices, combine the duties and functions of offices, or eliminate offices. Section 3.

Enables county voters to grant ordinance-making power to the governing body of the county. Section 4.

Lowers the required population for home-rule cities from 5,000 to 1,500. Section 6.

Establishes tax limitations for operating purposes for cities and counties and requires the legislature to fix debt limits for cities, towns, counties, and school and community junior college districts. Section 10.

ARTICLE X, GENERAL PROVISIONS

Retained provisions:

Continues basic provisions relating to public officeholders such as the official oath of office and residency requirements. Sections 1 through 6.

Retains the provision defining the separate and community property of spouses. Section 11.

Continues the protection of the homestead from forced sale. Section 12.

Requires the legislature to protect certain personal property from forced sale. Section 13.

Prohibits garnishment of wages. Section 14.

Prohibits branch banking and foreign banking corporations. Section 16.

Continues the present system of local-option elections for the prohibition or sale of alcoholic beverages. Section 17.

Requires the legislature to prohibit lotteries and gift enterprises. Section 19.

Continues provisions for retirement benefits of teachers and other public employees. Section 21.

New provisions:

Requires the quality of the environment to be protected. Section 7.

Retains prohibition against use of state money for removing surface water from basin of origin if water is necessary to supply needs of the basin for ensuing 50 years. A new exception to this prohibition is made for the removal of water which is replaced from outside the state. Section 8.

Establishes the seaward beaches of the Gulf of Mexico and coastal submerged lands as a perpetual trust for the benefit of the people. Section 9.

Distinguishes between branch banks and bank holding companies. Mandates regulation of bank holding companies. Section 16.

Prohibits discrimination against handicapped persons. Section 23.

Establishes a goal of access to comprehensive health care for every resident as state policy. Section 24.

ARTICLE XI, MODE OF AMENDING THE CONSTITUTION OF THE STATE

Retained provisions:

Establishes a procedure for constitutional amendments requiring a two-thirds vote of each house of the legislature and majority approval by the voters. Section 1.

New provisions:

Provides for the calling of a limited or unlimited constitutional convention with voter approval. Section 2.

Requires that the question of whether to call a constitutional convention is to be submitted to the people every 30 years. Section 2.

IV.

A SUMMARY COMPARISON OF THE PROPOSED 1976 REVISION OF THE TEXAS CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE CONSTITUTION AS IT PRESENTLY EXISTS

This summary comparison sets forth some of the more significant provisions of the proposed 1976 revision of the Texas Constitution and provides a brief summary of the changes that are made from the constitution as it presently exists. Emphasis is placed on the explanation of the new provisions and only the major changes are noted. Two of the significant changes are the length and the form of the documents; other changes are highlighted below. Some changes of substance have been made by deletion of material that is either no longer necessary or provided by statutes.

If all eight amendments are adopted on November 4, 1975, the revised constitution will consist of 11 articles with approximately 18,000 words, or about one-third the length of the present version, which contains approximately 63,000 words and is composed of 17 articles.

ARTICLE I
COMPARISON OF BILL OF RIGHTS

Proposed 1976 Revision	**Present Constitution**
The guarantees provided under the Bill of Rights contained in the 1876 Constitution are retained in full. These important provisions include freedom of speech, assembly, and religion; separation of church and state; the right of trial by jury; the right to keep and bear arms; and the equal legal rights amendment adopted in 1972. The only changes from the present constitution are minor technical ones to conform certain provisions to the new court system provided in the revised Judiciary Article (Article V).	*Same as 1976 revision.*

ARTICLE II
COMPARISON OF PROVISIONS ON SEPARATION OF POWERS

Proposed 1976 Revision	Present Constitution
Provides for three branches of state government–legislative, executive, and judicial. This section preserves the separation of powers principle by prohibiting one branch from exercising powers properly attached to the others except as authorized by the constitution.	*Similar provision.*

ARTICLE III
COMPARISON OF PROVISIONS ON THE LEGISLATURE

Proposed 1976 Revision	Present Constitution
1. Continues. the present structure of the legislature composed of a senate and a house of representatives. The senate consists of 31 members and the house of representatives 150 members.	*Same as 1976 revision.*
2. Requires single-member senatorial, representative, and congressional districts.	*Representative districts may contain more than one representative in those counties entitled by sufficient population.*
3. Requires the legislature to redistrict the state after each federal decennial census. If a redistricting plan is found invalid by a court, the legislature is directed to enact a redistricting plan within a designated time. If the legislature then fails to enact a	*Requires the legislature to divide the state into senatorial and representative districts after each census. A redistricting board performs this duty if the legislature fails to do so.*

redistricting plan, a redistricting board performs this duty.	
4. **Provides for regular annual sessions of the legislature not to exceed 140 days in odd-numbered years and 90 days in even-numbered years. Provides for veto session of not more than 15 days upon petition of three-fifths of the membership of each house.**	*Regular sessions are limited to 140 days duration every two years.*
5. Contains provisions concerning organization and procedure of the legislature. Organizational sessions would be permitted prior to the convening of the legislature in regular sessions.	*Similar provisions except preliminary organizational sessions are not allowed.*
6. Contains specific prohibitions against legislative dual-office holding and provisions on conflict of interest of members of the legislature.	*Similar provisions.*
7. Prohibits the legislature from enacting local or special laws except when a general law cannot be made applicable and provides that the question of whether a general law can be made applicable is reviewable by courts.	*Similar provisions except the subjects on which local and special laws may not be enacted are specifically listed.*

8. Includes a method for impeachment and removal from office of executive department officers and justices of the supreme court.	*Similar provision is contained in a separate article on impeachment.*
9. Includes a veto provision by which the governor may disapprove bills or line items of appropriation bills.	*Similar provisions contained in the executive article.*
10. Provides for a salary commission to recommend maximum compensation and allowance for members of the legislature.	*Salary is fixed at $7,200 per year. Members of the legislature are also entitled to $30 per diem and travel expenses.*

ARTICLE IV
COMPARISON OF PROVISIONS ON THE EXECUTIVE

Proposed 1976 Revision	Present Constitution
1. Provides for an executive department consisting of the governor, lieutenant governor, attorney general, secretary of state, comptroller of public accounts, treasurer, commissioner of the general land office, commissioner of agriculture, and others as provided by law. All of these officers are to be elected except the secretary of state.	*Same as 1976 revision, except does not name commissioner of agriculture and also does not allow additional members to be included by law.*
2. Provides for four-year terms for executive department officers and limits the governor to two consecutive four-year terms.	*Similar provisions, except there is no limit on the number of terms a governor may serve.*

3. **Provides that the terms of officers appointed by the governor to state governmental agencies will expire between February 1 and May 1 of odd-numbered years.**	***No similar provision.***
4. Allows the governor to designate the chairmen of state governmental agencies.	*No similar provision.*
5. Authorizes the governor to remove appointed officers of state governmental agencies for stated reasons but the senate can refuse a removal by a majority vote.	*No similar provision.*
6. Mandates the legislature to appropriate funds to be used by a governor-elect prior to inauguration.	*No similar provision.*
7. Authorizes the governor to call a special 30-day session of the legislature.	*Same as 1976 revision.*
8. Designates the governor as chief planning officer of the state.	*No similar provision.*
9. Requires that the governor prepare and submit a budget to the legislature at the beginning of each session of the legislature at which a general appropriation bill is to be passed.	*Similar provision.*

10. Allow' : legislature to grant powers of fiscal control to the governor.	***No similar provision.***
11. Requires the governor to report to the legislature every two years on the organization and efficiency of the executive branch. The governor may submit reorganization plans to the legislature. The plans, as they may be amended, must be brought to a vote of each house.	*No similar provision.*
12. Provides for a Board of Pardons and Paroles and authorizes the governor, on the written recommendation and advice of the board, to grant various types of clemency.	*Similar provision, except number and terms of Board are fixed in present constitution.*
13. Provides that state agencies with statewide jurisdiction having appointed members, except institutions related to higher education, have a life of not more than 10 years unless renewed by the legislature.	*No similar provision.*
14. Provides for the membership and terms of office for a railroad commission.	*Similar provision.*

ARTICLE V
COMPARISON OF PROVISIONS ON THE JUDICIARY

	Proposed 1976 Revision	Present Constitution
1.	Provides for a unified judicial system consisting of a supreme court, courts of appeals, district courts, and circuit courts, each with jurisdiction as provided by law. Prohibits statutory courts.	*Provides for a supreme court, courts of civil appeals, a court of criminal appeals, district courts, county courts, and justice courts. Provides specific jurisdictional assignments for all courts. Permits statutory courts.*
2.	Provides for the merger of the supreme court and court of criminal appeals. Provides that intermediate courts of appeal have criminal, as well as civil, jurisdiction.	*Provides for separate civil and criminal courts of appeal.*
3.	Continues the present system of constitutional county courts unless changed by law. At least one justice court per county is required. Municipal courts are as authorized by law or city charter.	*Provides for a constitutional county court. Requires at least four justice courts per county.*
4.	Requires justices, judges, and justices of the peace to be U. S. citizens and residents of this state. Additional qualifications may be prescribed by the legislature. Justices and judges in the unified judicial system, including circuit courts on the county level, must be licensed to practice law in this state.	*Similar provisions for district and appellate judges.*

5. **Justices of the supreme court and judges of the courts of appeals are elected for six-year terms. Judges of district and circuit courts and justices of the peace are elected for four-year terms. District attorneys and district clerks are elected for four-year terms.**	***Similar provisions.***
6. Allows the legislature to determine the number of judges for each trial court, except the county court.	*Number of judges per court fixed by constitution.*
7. Provides for a judicial qualifications commission with authority and functions as provided by law.	*Similar provision with most authority and functions stated in the constitution.*
8. Authorizes the legislature to provide by law for methods of removal for all justices, judges, and justices of the peace. Justices of the supreme court may also be removed by impeachment or address.	*Contains several procedures for removal of justices and judges of the various courts.*
9. Permits the legislature to grant the supreme court the authority to receive and answer questions of state law certified from federal courts.	*No similar provision.*
10. Grants a limited right of appeal by the state in criminal cases.	*Prohibits appeal by the state in criminal cases.*

11. **Assigns administrative responsibility for the judicial branch to the supreme court.**	***No similar provision.***
12. Grants individuals the right to trial by jury and appeal by the accused, but appeal to the highest court is at the discretion of that court.	*Similar provisions, except that an express right of appeal is granted to the Court of Criminal Appeals.*
13. Permits legislature to establish methods of appeals to the courts from decisions of state agencies.	*No similar provision.*
14. Requires that the state pay the basic expenses of the unified judicial system.	*No similar provision. Counties pay the expense of county courts and many statutory courts.*

ARTICLE VI
COMPARISON OF PROVISIONS ON VOTER QUALIFICATIONS AND ELECTIONS

Proposed 1976 Revision	Present Constitution
1. Defines a qualified voter as any citizen 18 years of age or older who meets the residence and registration requirements provided by law. A person may vote unless that person has been convicted of a felony and for that felony is incarcerated, on parole, or on probation, subject to further legislative restrictions. Also, persons found mentally incompetent by a court	*Persons under 21 years old, idiots and lunatics, paupers, and felons are disqualified. Specific residence requirements are fixed in the constitution for state and local elections. (The present age requirement is 18 years of age or older due to the 26th Amendment to the U. S. Constitution.)*

would not be able to vote.

2. Authorizes the legislature to make property ownership an additional qualification for voting in property tax or bond elections. A similar authorization is stated for elections by special districts and authorities whose activities have a disproportionate effect on property owners.

Only property owners may vote in elections held by political subdivisions for the purpose of issuing bonds or spending money.

3. Provides for elections by secret ballot and directs the legislature to ensure the integrity of the election process.

Similar provisions.

4. Defines general elections as those held every two years for election of state and county officials.

No similar provision.

ARTICLE VII
COMPARISON OF PROVISIONS ON EDUCATION

Proposed 1976 Revision

1. Provides that the legislature has the duty to establish and provide by law for the equitable support and maintenance of an efficient system of free public schools below the college level. The system must furnish each individual an equal educational opportunity, but a school district may provide local enrichment of educational programs

Present Constitution

Similar provision except no stated guarantee of equal educational opportunity or of the right of local enrichment.

exceeding the level provided by the state consistent with general law.	
2. Establishes two trust funds, the permanent and county public school funds, for the support of the free public schools.	*Similar provisions.*
Requires that the permanent funds may not be spent, but must be invested in the manner provided by law. The Available School Fund (income from the investments of the Permanent School Fund and state taxes dedicated to the Available School Fund) is spent to provide free text books and other instructional materials. The provision to provide free instructional materials is new. The remainder of the fund is distributed to each county according to its scholastic population. The income from the County Public School Fund is spent for the support of public schools in the manner provided by law.	*Similar provisions except for differences in details concerning the expenditure of available and county funds.*
3. Directs legislature to provide for a State Board of Education composed of elected members.	*Similar provisions, except the board may be appointed or elected as provided by law.*
4. Establishes the Permanent University	*Similar provision.*

	Fund for the benefit of The University of Texas System and The Texas A&M University System.	***Similar provision, except the distribution of the remainder of the Available University Fund is provided by statute.***
	Requires that the Permanent University Fund may not be spent but must be invested in the manner described in the constitution. The Available University Fund (net income from the investments of the Permanent University Fund) is spent first to pay the principal and interest due on Permanent University Fund bonds and notes. The remainder is allocated, one-third to Texas A&M University in Brazos county and two-thirds to The University of Texas at Austin.	
5.	Allows Permanent University Fund bonds and notes to be issued to a value of 30% of the Permanent University Fund.	*Similar provision except limited to 20% of Permanent University Fund.*
6.	Permits the use of proceeds from Permanent University Fund bonds for rehabilitation of permanent improvements, purchase of capital equipment, and acquisition of library books and materials.	*Bond proceeds may be used only for construction of permanent improvements.*

7. **Establishes the Higher Education Fund to finance permanent improvements for public senior colleges and universities that are not included in The University of Texas System or The Texas A&M University System. The source of revenue for the fund is the 10 cents on the $100 valuation state ad valorem tax continued from the present constitution, but provision is made for reducing the tax by law. The legislature is authorized to allocate a portion of the fund to certain state vocational and technical institutes. Fund is allocated among participating institutions on the basis of statewide higher education needs, which must be assessed annually.**

Levies state ad valorem tax of 10 cents on the $100 valuation which is dedicated to 17 specified colleges and universities for the purpose of financing the construction of permanent improvements. Fund is allocated among participating institutions according to a fixed formula. No provision for distribution of a portion of fund to state vocational and technical institutes.

8. Permits the use of proceeds from Higher Education Fund bonds for rehabilitation of permanent improvements, purchase of capital equipment, and acquisition of library books and materials.

Bond proceeds may be used only for construction of permanent improvements.

ARTICLE VIII
COMPARISON OF PROVISIONS ON FINANCE

Proposed 1976 Revision	Present Constitution
1. Taxation	
(a) Requires that all real and tangible personal property be taxed on the basis of market value.	*Requires that all property (real and tangible and intangible personal property) be taxed on the basis of value.*
(b) Prohibits state ad valorem taxes except for (1) a tax of 2 cents on the $100 valuation (reducible by law) for the State Building Fund and (2) a tax of 10 cents on the $100 valuation (can be changed by law within the 10 cent maximum) for higher education purposes.	*Beginning in 1978, would prohibit state ad valorem taxes for state purposes except for the tax of 10 cents on the $100 valuation levied for institutions of higher education.*
(c) Requires uniform standards and procedures for appraisal of property for ad valorem tax purposes. Appraisals are to be provided for by the county in the manner and according to standards and procedures established by the legislature.	*No similar provision.*
(d) Requires the legislature to provide separate formulas for the appraisal of farm and ranch land and allows the legislature to provide for similar formulas for timberland.	*Provides directly for a right of appraisal on the basis of productivity for land owned by natural persons and designated for agricultural use but only if agriculture is the "primary occupation and source of income of the owner."*

(e) Provides for residential homestead exemptions and other exemptions from the ad valorem tax.

Similar provisions.

(f) Mandates a $3,000 residential homestead exemption from taxation by political subdivisions for persons 65 years or older. A political subdivision may increase this amount.

Allows political subdivision to grant residential homestead exemption of not less than $3,000 for persons 65 years or older.

(g) Authorizes the legislature to exempt from ad valorem taxation certain property owned by veterans' organizations, non-profit water corporations, and persons in need because of age, disability and economic circumstances. The legislature may exempt property to preserve historical, cultural, or natural history resources.

No similar provisions.

(h) Allows a taxpayer to pay ad valorem taxes under protest and sue for a refund in a district court. Courts have the duty of equalizing property appraisal and assessment.

No similar provision.

(i) Dedicates three-fourths of the net revenue from motor fuel taxes for highway construction and maintenance and related

Similar provision.

purposes. One-fourth of the revenue from the motor fuel tax and state occupation taxes is dedicated to the Available School Fund.

(j) Exempts petroleum products manufacturing tax from constitutional dedication to highway fund and available school fund.

No similar provision.

2. State Debt

(a) Requires that before state debt may be incurred it must be approved by a two-thirds vote of the membership of each house of the legislature and approved by the voters at a statewide election.

Prohibits state debt, but various bond issues have been authorized by amendment to the constitution, which is basically the same approval process as the one in the 1976 revision.

(b) Defines state debt to include bonds that obligate the general credit of the state or which are payable from tax revenue, tuition, fees, or other charges of state colleges and universities, or certain state agencies. Bonds that are payable solely from the revenues of the project to be financed are not included in this definition.

Does not specifically define state debt, but the courts have limited the term to bonds that obligate the general credit of the state.

3. Appropriations

(a) Requires that appropriations remain within the revenue

Similar provision.

	estimated to be available for the fiscal year.	
	(b) Permits appropriations in excess of estimated revenue only in response to imperative public necessity and a four-fifths vote of the membership of each house of the legislature.	*Similar provision.*
4.	Requires that public money and public credit be used only for public purposes. The legislature may impose limitations on the amount of public money or credit that may be used for various purposes (e.g., ceiling on assistance grants to needy individuals) by statute.	*Prohibits grants or loans to individuals, associations, or corporations except for purposes stated in several provisions. Among specific purposes mentioned in the present constitution are: workmen's compensation coverage, assistance grants to needy individuals (state funds for direct assistance grants are limited to $80 million), aid to persons improperly imprisoned, assistance for survivors of law enforcement officers, and funds for the conservation and development of natural resources.*
5.	Prohibits a retail sales tax on (1) agricultural machinery or parts, fertilizer, feed or seeds, (2) prescription drugs or medicine, or (3) food, except food sold in restaurants.	*No similar provision.*
6.	Provides that refundable assessments voted by marine food or agricultural producers are not taxes.	*No similar provision.*

ARTICLE IX
COMPARISON OF PROVISIONS ON LOCAL GOVERNMENT

Proposed 1976 Revision	Present Constitution
1. Allows changes in county boundaries by a majority vote of the voters in each county affected. Mergers of two or more counties and the relocation of county seats would require a two-thirds vote for approval.	*Similar provisions for changes in county boundaries and the relocation of county seats.*
2. Defines the powers of counties as those granted by the constitution and general law.	*No similar provision.*
3. Retains county officers as elected officers and provides four-year terms of office.	*Similar provisions.*
4. Allows county voters by a majority vote to create additional offices, eliminate offices, or combine the duties and functions of offices.	*No similar provision, except that the offices of district and county clerks may be combined in counties with a population under 8,000 and the sheriff also may be the tax collector in certain counties.*
5. Ordinance-making powers may be granted to or taken from the county governing body by county voters.	*No similar provision.*
6. Cities under 1,500 population may be chartered only by general law and cities over 1,500 population may adopt home-rule charters.	*Similar provisions, except the minimum population for home rule is 5,000.*

7. Contains a general statement of authority for the legislature to provide for special districts and authorities by general or local law. Cities and counties may also establish special districts within their boundaries if authorized by general law.	*There are several sections authorizing different types of special districts and authorities.*
8. Establishes maximum ad valorem tax rates for operation of cities and counties. Political subdivisions with taxing power are authorized to levy an additional tax in an amount necessary to service debt payable from ad valorem taxes.	*Maximum tax rates for cities and counties apply to taxes levied for all purposes including debt services.*
9. Directs the legislature to establish debt ceilings for cities, counties, school districts, and community college districts. Voter approval would be required before a special district or authority could levy taxes for operating expenses or issue interest-bearing obligations.	*Provides that voter approval is required for taxes and bonds of certain special districts and authorities. Debt ceilings are provided only for certain special districts.*
10. Allows political subdivisions to enter into contracts and agreements with other units of government for the performance of various services and functions.	*Similar provision.*

11. **Allows the legislature to provide by general law for the consolidation of one or more governmental offices or transfer of functions of any one or more political subdivisions located within a county. Voter approval of a consolidation of offices or transfer of functions is required, except for the function of collecting taxes within a county, which may be provided for by general law.**	***Similar provisions, except there is no specific reference to tax collection.***

ARTICLE X
COMPARISON OF PROVISIONS ON GENERAL PROVISIONS

Proposed 1976 Revision	**Present Constitution**
1. Contains basic provisions relating to public officeholders such as the official oath of office and residency requirements.	*Similar provisions.*
2. Assures that elected and appointed officers of the state or political subdivisions will not lose the right to vote or to hold office because of absence from the state on public business.	*Similar provisions.*
3. Allows an officer to continue serving beyond the end of a term until a successor has qualified, but a limitation is placed on the period of time that an appointed officer	*Similar provision, but there is no limitation on the holdover period.*

may stay in office after the expiration of the term.	
4. Requires that persons elected to fill vacancies in office serve only for the unexpired term.	*Similar provision.*
5. Permits the legislature to provide grounds and procedures for suspension, disqualification, and removal from office for constitutional officers if the method of removal is not provided in the constitution.	*Similar provision in a different article plus several provisions relating to exclusion from office or forfeiture of office for bribery, withholding of salary, or suspension from office for failure to perform duties.*
6. Establishes the protection of the environment as a state policy and mandates the legislature to implement and enforce the policy.	*No similar provision.*
7. Requires the legislature to implement a policy of conservation and development of the state's natural resources.	*Similar provision except current restrictions on removal of water have been changed to allow removal if replaced by out-of-state water.*
8. Requires that the beaches on the seaward shore of the Gulf of Mexico and the coastal submerged lands be held in perpetual trust. Guarantees the use and benefit of the beaches to the public and requires that reasonable access be provided.	*No similar provision.*
9. Maintains community property system but	*Separate and community property is defined solely in*

defines separate and community property in terms of both spouses. Permits the spouses by written agreement to change community property into separate property and to create a right of survivorship in community property.	*terms of the wife. No provision for creation of right of survivorship.*
10. Protects the homestead from forced sale. Defines rural and urban homesteads and residential and nonresidential homesteads. Permits the legislature to increase the value of the urban homestead. Permits liens on nonresidential homestead.	*Similiar provisions providing protection from forced sale with the same exceptions. Does not permit liens on homestead nor authorize legislature to increase value of urban homestead.*
11. Requires the legislature to exempt certain items of personal property from forced sale by creditors.	*Similar provision.*
12. Prohibits the garnishment of current wages.	*Same as 1976 revision.*
13. Requires that private corporations be created under general laws.	*Same as 1976 revision.*
14. Prohibits foreign banks and branch banking by banks in Texas. Requires the legislature to regulate bank holding companies.	*Similar provisions concerning foreign banks and branch banking. No provision on bank holding companies.*
15. Preserves the system of local option elections for the prohibition or sale of	*Similar provision.*

alcoholic beverages in a county, justice precinct, or municipality.

16. Requires the legislature to set qualifications for the practice of medicine, but stipulates that no preferential treatment may be given to any school of medicine.	*Similar provision.*
17. Requires the legislature to prohibit lotteries but permits bingo and raffles conducted by nonprofit charitable organizations if the proceeds are used in this state solely for charitable purposes.	*Similar provision requiring the legislature to prohibit lotteries, but does not permit bingo and raffles.*
18. Grants lien to mechanics, artisans, and materialmen for materials and labor.	*Similar provision.*
19. Provides retirement, disability, and death benefit programs for teachers and other public employees and officers.	*Similar provision.*
20. Prohibits discrimination against handicapped persons.	*No similar provision.*
21. Establishes a goal of adequate health care for every resident as state policy.	*No similar provision.*

ARTICLE XI
COMPARISON OF PROVISIONS ON MODE OF AMENDING THE CONSTITUTION

Proposed 1976 Revision	Present Constitution
1. Establishes a procedure for constitutional amendments requiring a two-thirds vote of each house of the legislature and majority approval by the voters. Amendments limited to an article or less. Proposed amendments to be publicized as provided by law.	*Similar provision, except there is no limitation to an article or less. Manner of publicizing proposed amendments specified.*
2. Allows the legislature to submit to the people the question of whether to call a limited or unlimited constitutional convention upon a two-thirds vote of the membership of each house. Proposals submitted by the convention must be approved by a two-thirds vote of its membership.	*No similar provision.*
3. Requires that the question of whether to call a constitutional convention be submitted to the voters at least once every 30 years.	*No similar provision.*

V.

SAMPLE BALLOT FOR THE NOVEMBER 4, 1975 ELECTION ON THE PROPOSED REVISION OF THE TEXAS CONSTITUTION

ELECTION ON PROPOSED
REVISION OF THE CONSTITUTION OF TEXAS

_________________ County, Texas

November 4, 1975

No. 0000

_____ County, Texas

November 4, 1975

OFFICIAL BALLOT

INSTRUCTION NOTE: Place an "X" in the square beside the statement indicating the way you wish to vote.

PROPOSITION NO. 1

☐ FOR
☐ AGAINST

The constitutional amendment revising the SEPARATION OF POWERS, LEGISLATIVE, AND EXECUTIVE PROVISIONS of the Texas Constitution.

PROPOSITION NO. 2

☐ FOR
☐ AGAINST

The constitutional amendment revising the JUDICIARY PROVISIONS of the Texas Constitution.

PROPOSITION NO. 3

☐ FOR
☐ AGAINST

The constitutional amendment revising the VOTING AND ELECTION PROVISIONS of the Texas Constitution.

PROPOSITION NO. 4

☐ FOR
☐ AGAINST

The constitutional amendment revising the EDUCATION PROVISIONS of the Texas Constitution.

PROPOSITION NO. 5

☐ FOR
☐ AGAINST

The constitutional amendment revising the FINANCE PROVISIONS of the Texas Constitution.

PROPOSITION NO. 6

☐ FOR
☐ AGAINST

The constitutional amendment revising the LOCAL GOVERNMENT PROVISIONS of the Texas Constitution.

PROPOSITION NO. 7

☐ FOR
☐ AGAINST

The constitutional amendment revising the GENERAL PROVISIONS of the Texas Constitution.

PROPOSITION NO. 8

☐ FOR
☐ AGAINST

The constitutional amendment revising the MODE OF AMENDING PROVISIONS of the Texas Constitution.

IMPLEMENTATION SCHEDULE FOR AMENDMENTS ADOPTED

BY THE VOTERS ON NOVEMBER 4, 1975

The articles of the proposed revision of the constitution become effective on the following dates:

Article II, Separation of Powers – January 1, 1976

Article III, Legislative – January 1, 1976

Article IV, Executive – January 1, 1976

Article V, Judiciary – September 1, 1976

Article VI, Voter Qualifications and Elections – September 1, 1976

Article VII, Education – September 1, 1976

Article VIII, Finance – September 1, 1976

Article IX, Local Government – September 1, 1976

Article X, General Provisions – September 1, 1976

Article XI [XVII] Mode of Amending – September 1, 1976

If Proposition No. 1, revising the Separation of Powers, Legislative, and Executive provisions of the constitution is adopted alone or with other propositions, the legislature will convene in a regular 90 day session on the first Monday in January, 1976, for the limited purpose of implementing the adopted amendments and items submitted by the governor.

If Proposition No. 1 is not adopted but any of the following propositions is adopted, the governor is mandated to call the legislature into special session prior to July 1, 1976 for implementing (as determined by the governor) the revised articles:

Proposition No. 2 – Article V, Judiciary

Proposition No. 4 – Article VII, Education

Proposition No. 5 – Article VIII, Finance

Proposition No. 6 – Article IX, Local Government

Proposition No. 7 – Article X, General Provisions

Several provisions of the proposed revision of the constitution take effect at specified dates after September 1, 1976. These are:

Article III, Section 5. Legislative Redistricting – January 1, 1981 (after the next federal decennial census)

Article VII, Section 9. Higher Education Fund for Texas and Bonds and Notes – January 1, 1979 (at the conclusion of the current 10 year phase of constitutional funding for colleges and universities covered by the new fund)

Article VIII, Section 2(b) & (c). Uniform Standardization of Ad Valorem Appraisal – January 1, 1978 (to allow time for the passage of implementing legislation and adjustment to the new single appraisal concept)

Article VIII, Section 6(c). Authority and Duties of District Court in Tax Cases – January 1, 1979 (to allow time for the passage of appropriate legislation)

Office of Constitutional Research
Texas Legislative Council

FEB 14 1972

AMENDING THE Texas CONSTITUTION

by Janice C. May

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Juneau, Alaska 99811

TEXAS ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Texas Advisory Commission on Intergovernmental Relations was created by the Texas Legislature to improve coordination and cooperation between the state and its local governments and between the state and the federal government by providing continuing research, information, and advisory services to public officials and citizens of the state. The Commission's membership, which includes private citizens, is broadly representative of every level of government in Texas -- state, local, and federal.

AMENDING THE TEXAS CONSTITUTION: 1951-1972

Janice C. May

TEXAS ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Austin: 1972

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FOREWORD

Adopted almost a century ago, the Texas Constitution has had to change over time to meet the needs of a growing state. The manner of its development has influenced profoundly the shape of the present document. Whereas the United States Constitution has developed through judicial interpretation, the Texas Constitution has developed through amendment. Thus, the Texas Constitution is extraordinarily long, for it has been amended many times.

What are the causes and consequences of the need for frequent amendment? The question has been asked many times. In an attempt to find answers, the Texas Advisory Commission on Intergovernmental Relations requested this study as a part of its continuing constitutional studies program. The Commission always has recognized the significance of the Constitution for efficient and effective government. Prepared by Dr. Janice C. May, Assistant Professor of Government, The University of Texas at Austin, the study examines the amending process from 1951 to 1972. These years provide the best basis for assessing the impact of the amending process on modern Texas.

While the Commission is pleased to make the study available, the conclusions and opinions expressed therein do not represent any official position of the Commission or its members. They are the author's responsibility.

Austin, Texas
December, 1972

Tom J. Vandergriff
Chairman

PREFACE

It has been my privilege to write this technical report on amending the Texas Constitution at the request of the Texas Advisory Commission on Intergovernmental Relations.

I am particularly indebted to Professor John E. Bebout for his wise counsel and warm encouragement in the preparation of the manuscript and on so many other occasions. My appreciation goes to James F. Ray, Executive Director, and all the members of the staff of the Texas Advisory Commission on Intergovernmental Relations who facilitated the completion of the report and especially to Philip W. Barnes, Research Director, for his valuable suggestions and other assistance.

A special note of thanks is due my husband, Francis B. May, who helped with matters statistical. Any errors are mine.

Janice C. May

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SUMMARY

The Texas Constitution, the sixth longest in the United States, has been amended 212 times since it was adopted in 1876, almost one hundred years ago. From 1951 to 1972 it was amended 105 times; and if the trend continues, 345 amendments will have been added to the Constitution by the year 2001.

Why are there so many amendments? What are the consequences, including the costs, of the amendments and their frequency for Texas state and local governments -- their relations with one another and with the national government, and their capacity to serve the people of Texas? How do voters react to the constant trips to the polls and the long ballot? Were all the 212 amendments really necessary? Must we go on like this, amendment by amendment by amendment?

This research was undertaken to answer these and related questions about the Texas amendment process. Special emphasis has been given to the causes and consequences of amendments as they concern intergovernmental relations in Texas because the Texas Constitution is essentially an intergovernmental document. It provides the basic framework for the state government and its relations with all political subdivisions -- municipalities, counties, school districts and other special districts. It is also the state's basic law governing the relations among the state, local and national governments in the pursuit of common goals.

The research on which this report is based consisted of an analysis of the 131 amendments proposed and the 94 amendments adopted at 19 elections from 1951 to 1971 inclusive. The 14 amendments submitted to the voters at the November 1972 election, of which 11 were approved, are included also in selected portions of the report.

The 1951 to 1971-72 time period selected for the research proved to be a felicitous choice. As the most recent period in Texas history it is no doubt the best indicator of future trends. Moreover, the amendments proposed and ratified represented close to half of all such amendments since 1876. The 131 amendments proposed accounted for 40 percent of all those proposed; the 94 amendments approved, 47 percent of all ratified; and the 37 amendments defeated, 32 percent of all amendments rejected by the voters over the years.

The report was designed to be the beginning of a more systematic approach to the study of Texas amendments. Various statistical techniques, including correlation analysis and extrapolation, were applied to this end. The report was inspired by the thought that a careful, systematic study of the amendments might be the key to an understanding of the real nature of the Texas Constitution and its impact upon Texas.

The research project was divided into three parts, each intended to reveal certain basic dimensions about constitutional amendments, and their causes and consequences.

Classification of Amendments

The first section of the report is devoted to a classification of all amendments proposed during the 21-year period, including the 14 submitted to the voters in 1972. The initial classification consisted of the number of times each of the 17 articles of the Texas Constitution had been the target of proposed amendments. The purpose was to determine the articles generating the most amendments. The principal finding was that three articles were most subject to amendment, to wit: the legislative article (III) with 67 proposed amendments; the general provisions article (XVI) with 27 proposed amendments; and the article on taxation and revenue (VIII) with 15 proposed amendments.

The amendments were then classified by the causes or reasons for their submission, certain suggestive patterns having emerged from the initial classification. In order of relative importance as determined by the number of times amendments were proposed in a given category, 95 amendments were submitted in order to evade the Constitution's restrictions on state and local finance; 85 were proposed to amend earlier amendments; 46 were designed to overcome limitations on local governments; 28 were proposed in an effort to override an electoral defeat by the voters; 21 were responses to the national government; and 12 were proposed to accommodate decisions of Texas courts and the opinions of Texas Attorneys General.

An analysis of the more fundamental reasons underlying the submission of the numerous amendments concludes the first section. The analysis emphasizes the impact on intergovernmental relations of changes to an urban, industrialized society and the need for constant amendment of a rural-oriented Constitution to keep abreast of these developments.

Costs of Amendments

The second section of the research report consists of a largely original study of the costs incurred in holding elections on amendments. Costs are obvious consequences of the amendment process as it is practiced in Texas. It is important for the people of Texas to know how much in dollars and cents they pay as taxpayers for frequent amendment of the Constitution.

Two kinds of costs were analyzed. The first were expenditures of the state government for the purpose of publicizing amendments. The Constitution directs that the text of proposed amendments be published

in newspapers prior to each election.* The second were the expenditures of county governments for holding elections on amendments.

Adding together the two items of expenditures yielded an estimate of the total costs of amendments to state and local governments over the 21-year period of approximately $9 million. This amounts to about $68,700 for each of the 131 proposed amendments and $95,700 for each of the 94 ratified amendments.

Voters and Elections

Under the Texas system of self-government, the people must ultimately resolve basic constitutional questions at the ballot box. The Texas Constitution cannot be formally amended without the consent of the voters. The third part of the research project sought to answer questions about the fundamental relationship between the voters and the Constitution. In terms of causes and consequences of the amendment process, the relationship is very important. Support for the Texas constitutional system can be gauged to some extent by the degree of voter participation. The costs to the voters of time, energy, and thought resulting from a long ballot and many elections are important.

The results were based on election data never before collected. The most important discovery was that a minority, often a very small minority, of the Texas electorate votes on constitutional amendments. Amendments trail the presidential vote in presidential elections and the gubernatorial vote in the off-year by hundreds of thousands, sometimes almost a million votes. Moreover, the percentage of the electorate voting on constitutional amendments at special elections is even lower. As might be expected, the lowest voter participation in an election occurs when an amendment affects only one local area, such as an amendment creating or abolishing a hospital district for a single county.

Another very important finding was that 72 percent of all amendments submitted were approved by the voters over the 21-year period but that the approval rate at general elections was 30 percent higher than at special elections. Patterns of defeat and victory among the amendments were investigated as were many other questions of voter participation, including the effect of the number of amendments or the long ballot on voter participation.

Conclusions and Recommendations

In the fourth and closing section of the report, conclusions are drawn and recommendations made based on the research findings. The need

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*Amendment Number 10 approved by the voters at the November 1972 election changes the procedure for publicizing amendments.

for and the timeliness of a new approach to constitutional change are emphasized. Strongly recommended is comprehensive revision of the entire Texas Constitution or at a minimum, selective revision in an orderly fashion of key articles concerned with intergovernmental relations, primarily those affecting state and local governmental fiscal capacity and the powers of the Texas Legislature. These were the provisions causing the most amendments.

CLASSIFICATION OF AMENDMENTS

Amendments were classified in a great variety of ways. The classifications were used to answer several questions. The two most important were first, what provisions of the Texas Constitution accounted for the most amendments? Second, what were the reasons for the amendments?

Classification by Constitutional Article

The target of most of the amendments by far was the Legislative Article (III). Of the 145 amendments submitted, 67 concerned Article III in whole or in part. Of the 105 amendments passed, 47 also concerned this provision of the Constitution. One reason for the popularity of the Legislative Article as a subject of amendment is that it contains much more than one would expect from its title. In addition to legislative structure, procedures and basic powers and limitations, there are numerous substantive sections on subjects such as education, local government, rural fire prevention districts, welfare and the like. The dubious honor of breeding the most amendments from 1951-1972 goes to Section 51 of Article III. Some 20 amendments were proposed to this section and 16 passed.

The constitutional article attracting the next most attention is General Provisions (Article XVI). Many unrelated topics are included therein, such as liquor by the drink, county retirement plans, pensions for Texas Rangers, jury service for women, oaths of office, and loan shark regulation, among others. This article attracted 27 of the 145 amendments submitted; 19 of them were ratified.

As the table on the following page indicates, the remaining articles have not attracted as many amendments. Article VIII on Taxation and Revenue has been the subject of 15 proposed amendments, while Article IX on Counties has been the subject of 13. Others include: Article VII, Education, with ten proposed amendments; Article VI, Suffrage, and Article V, Judiciary, each with five; Article IV, Executive, with four; Article I, Bill of Rights, and Article XVII, the amending article, each with three. All other articles have each been the subject of one proposed amendment, except Article XV, Impeachment. The Impeachment article was untouched over the 21-year period. Article XIII, Spanish and Mexican Land Titles, was eliminated by its only amendment.

Classification by Reasons for Amendment

The classification by number of times each article has been amended shows clearly that the legislative article and the articles on counties and general provisions have prompted the largest number of amendments

TABLE I

PROPOSED AMENDMENTS TO THE TEXAS CONSTITUTION, 1951-1972: BY ARTICLE

Article		Number of Proposed Amendments	Number Approved
I.	Bill of Rights	3	3
II.	The Powers of Government	1	0
III.	Legislative Department	67	47
IV.	Executive Department	4	2
V.	Judicial Department	5	5
VI.	Suffrage	5	4
VII.	Education	10	9
VIII.	Taxation and Revenue	15	9
IX.	Counties	13	12
X.	Railroads	1	1
XI.	Municipal Corporation	1	1
XII.	Private Corporations	1	1
XIII.	Spanish and Mexican Land Titles	1	1
XIV.	Public Lands and Land Office	1	1
XV.	Impeachment	0	0
XVI.	General Provisions	27	19
XVII.	Mode of Amending the Constitution of this State	3	3
	TOTALS	158*	118*

*The actual numbers of amendments submitted and approved are 145 and 105, respectively. The totals here are larger because individual amendments occasionally affected more than one article.

submitted over the 21-year period. Certain subject areas of these articles obviously have required more attention than others. By identifying these subject areas we are on the road toward discovering reasons for the amendments.

(1) To Evade Financial Restrictions

A special tally was taken of amendments concerned with government finance with dramatic results, among the most significant in the entire research project. Considering provisions dealing with spending, taxing, borrowing and debt, and fiscal administration, including constitutional funds, we find that 98, or about two-thirds, of the 145 amendments submitted concerned finance; 72 percent were passed.

Of the finance amendments, 68 concerned state and 30 local finance. The largest state category consisted of the constitutional funds, which were categorized separately even though they could well be included with the spending, taxing and borrowing provisions as well as fiscal administration. There were 13 funds either established or amended during the 20-year period of the study. They are as follows:

Permanent University Fund
State Medical Education Fund
Teachers Retirement System
State Retirement, Disability and Death Compensation Fund
College Building Fund
Veterans Land Fund
Texas Water Development Fund
Permanent School Fund
Available School Fund
State Park Development Fund
Texas Opportunity Plan for Students
Confederate Pension Fund
State Building Fund

The importance of these funds is well illustrated by the fact that 29 amendments were proposed in relation to them. All have been subject to amendment during the past 21 years, and five were created during this period, some requiring hundreds of words. In addition, there were other earmarked funds for purposes such as payments to survivors of state officers killed in the line of duty and medical assistance to certain law enforcement personnel.

Of local finance amendments, 12 involved taxation; 9 were approved.

The large number of finance-related amendments stems from the restrictiveness of the Texas Constitution. For one thing, the 1876 Constitution flatly prohibited debt except for defense and related matters and casual deficiencies up to $200,000. This unrealistic approach to government finance has been evaded by consitutional amendments authorizing

debt for specific purposes. In addition, the section prohibiting the lending of credit to individuals, associations or corporations has been the subject of even more amendments.

Inextricably joined with debt are provisions on spending, and they have been the biggest problem of all. In addition to the normal safeguards against unauthorized spending, the Texas Constitution prohibits grants of public money. Section 51 of Article III, the section breeding the most amendments, prohibits the state from grants of public moneys "to any individual, association of individuals, municipal or other corporation whatsoever." Section 52 extends the prohibition to all local governments. The section has been amended often because such prohibitions are unworkable. Grants of public money are essential to the business of modern state government.

Welfare spending has been a consistent begetter of amendments; some 13 have been proposed and 10 ratified from 1951-1972. In addition to dollar limits on the welfare programs, the Texas Constitution at great length also delineates the kinds of programs authorized, eligibility for assistance, division of the available funds, and many other details that demand constant attention, often by federal mandate or in order to take advantage of federal programs.

The constitutional cross orne by local governments in fiscaldom has involved primarily taxation, although spending and borrowing are also affected; in fact, all are related. Constitutional restrictions on the authority of local governments to incur bonded indebtedness for water and road programs have created through amendments some of the most confusing sections of the Constitution. Similarly, local government financial limitations encourage the creation of hospital and other special districts. The number of hospital district amendments alone attests to the importance of finance as a breeder of amendments.

(2) To Amend Amendments

In terms of sheer numbers, the second most important reason for amendments has been amendments to amendments. This is a question of mode or method of constitutional change as well as substance; but method is important in understanding why the Texas Constitution is so long. Quite obviously, the tradition has been to patch, rather than to revise in a comprehensive and orderly fashion.

Eighty-five of the 145 amendments were changes in amendments already passed, many of them originally passed during the 1951-1972 period. This means that not only is the 1876 Constitution requiring amendment, but the amendments themselves must be changed. Of the 85 proposed amendments, 63 or 74 percent passed.

What requires so much tinkering? Once again, finances dominate the picture. Of the 85 amendments in question, 64 concerned finance.

Of these, 17 dealt with constitutional funds, 13 with welfare expenditures, 11 retirement programs, 7 education funds, 8 legislative salaries, and 6 veterans' land programs. (There is deliberate overlapping in some of these categories.)

The numerous amendments are understandable. If specific interest rates are to be set in the Constitution, specific investment portfolios, the specific apportionment of funds among programs, the specific amount of borrowing authority, and so on, obviously changes will have to continually be made to keep abreast of changing market and general economic conditions.

But another reason for continual amending of amendments is that many amendments simply are poorly drafted and have to be changed. It is not uncommon for the Legislature to fail to foresee the consequences of a given amendment on other related provisions of the Constitution, necessitating housekeeping amendments.

Among the amendments to amendments proposed for those purposes are the following, each described briefly below: (1) rural fire prevention amendment of 1951; (2) oaths of office of 1956, (3) terms of county officers, 1954 and 1958.

In 1949 the Legislature proposed and the electorate approved an amendment authorizing rural fire prevention districts, but the tax rate provided for was only three cents for each $100 valuation and was inadequate even to purchase fire fighting equipment. In 1951 the Legislature proposed a change from three to fifty cents in the tax rate. The news commentators dubbed it the "one word amendment" for obvious reasons. Unfortunately for rural fire fighters, the amendment failed.

In 1938 an amendment was passed omitting dueling from the oath required of officials (and making other changes), but it failed to include language appropriate for appointive officials. In 1956 an amendment was proposed which amounted to a seven word change, deleting these words: "the electi at which I was elected."

In 1954 an amendment changing the terms of county and district officers from two to four years was adopted by the voters. Unforeseen consequences soon dictated amendments to the amendment. At the 1958 election two amendments were submitted. One dealt with vacancies in the offices of county judge and justices of the peace; it simply deleted three words, namely, "for such office," so that the County Commissioners Court would not be able to fill vacancies for more than a relatively short period of time rather than for almost an entire four year period. Also, county officials running for another elective office were required to resign when more than one year of their term remained unserved.

Finally, many of the amendments are designed to expand a good thing. That is, an amendment limited to one county or group of counties or to any limited area, office or subject, is amended in order to expand

coverage. Possibly as many as 70 amendments could qualify in some manner under this rubric. Among many examples, the hospital district story is a good place to begin. Eight amendments have concerned these districts. After the voters turned down an amendment authorizing the Legislature to create hospital districts on a general basis, specific amendments were proposed authorizing districts in given areas until a comprehensive amendment was passed. Another example of extending a good thing is the 1970 amendment to the judicial article. A 1965 amendment established the Judicial Qualifications Commission and adopted new provisions on judicial removal, resignation, discipline, and retirement. Applicable originally only to district and appellate courts, it was extended to all courts by an amendment passed in 1970.

Workmen's compensation for government employees was first provided for state employees by a 1936 amendment; in 1948 it was extended to county employees; in 1952 to employees of municipalities; and finally in 1962 to all political subdivisions.

Provisions for retirement systems for government employees began in 1936 with the Teacher Retirement System. This was followed in 1946 by a system for appointive state employees and county employees. In 1948 a judicial retirement system was begun; in 1954 an exchange of credits from the teachers' to the State Employees' System was authorized; further changes in teachers' retirement occurred in 1957. In 1957 a retirement system for elected state officers and employees was instituted. Then the system was extended to employees of all political subdivisions. Had the original amendment authorized the Legislature to create retirement systems with or without a referendum, the remaining amendments would all have been avoided.

Finally, we might mention the three amendments pertaining to the consolidation of county offices and functions and authority to make intergovernmental contracts. The first amendment applied in effect only to Harris County by population bracket; the second specifically applied only to El Paso and Tarrant Counties; and the third amendment finally got around to all counties although it was originally introduced in the Legislature for Bexar County only.

What we have seen in this last series of amendments is piecemeal or incremental change. This method of constitutional revision is characteristic of the Texas constitutional amendment process, perhaps its most important feature.

(3) To Overcome Limitations on Local Government

A special tally was also taken of local government amendments in the hope that this would shed some light on the impact of the amendment process on intergovernmental relations in Texas. It is significant that over 30 percent of the amendments submitted to the electorate (46 of the 145) directly concerned local government: counties, municipalities,

special districts, school districts, or simply all political subdivisions. The approval rate was 78 percent.

The distribution of the amendments by the unit of government concerned is revealing:

counties (23)
municipalities (5)
special districts (14)
school districts (3)
"all political subdivisions" (5)

The fact that counties led in number of amendments can be explained by the numerous restrictions imposed by the Constitution upon this unit of government. These restrictions require relatively frequent constitutional change. This is in sharp contrast to the few amendments dealing solely or mainly with municipalities. The widely heralded Home Rule amendment for municipalities undoubtedly is an important explanation for the difference. The large number of special district amendments is primarily due to the so-called explosion of hospital districts during the period under review, which accounted for eight of the 14. Regionalism is at work here also, not only insofar as hospital districts are concerned, but also in such matters as regional airports.

Many of the local government amendments also concerned finance. The hospital districts, for example, were not loved for their sake alone but also for their value as a means of evading rigid constitutional restrictions on taxation. Medical services could be provided by the district without increasing tax rates.

The state of Texas is responsible for its political subdivisions which are its legal creatures, but the Texas Constitution has failed to treat this important subject in a consistent manner, observing no systematic theory. Most of the local government amendments have dealt with counties and more will be necessary until the state allows the counties more freedom and flexibility in handling their affairs.

(4) To Reverse an Electoral Decision

Another significant cause of amendments has been the desire to reverse a decision by the electorate on given amendments which have been defeated at the polls. Apparently the need for these amendments is so great that the Legislature feels compelled to resubmit them, sometimes time and time again. The Legislature resubmitted, in some form or another, at least 28 amendments and probably more from periods not covered in this research project. Proposals for legislative pay led the pack, accounting for nine or one-third. Fixing the legislative salary in the Constitution causes considerable constitutional business. When the voters prefer to reject the amendments increasing compensation, the amendment business booms. Among other repeaters are the following:

county retirement (3)
welfare (3)
veterans' land program (2)
poll tax (2)
maximum interest rate on state bonds (1)
four year terms for Governor and other state executives (1)
annual legislative sessions (1)
Permanent University Fund (1)
hospital districts for any area (1)
dual office holding (3)
proposing amendments at special sessions (1)

(5) To Respond to the National Government

Twenty-one amendments can be traced directly to the influence of the national government. No doubt many others were indirectly influenced. In addition to passing amendments in order to meet federal requirements for particular programs, others were passed as a result of federal court decisions or other federal mandates. The most important single group of amendments in this regard has been the 13 welfare proposals. Four of the five suffrage amendments are also the product of federal action, in some instances in anticipation of a new federal law or an amendment to the United States Constitution. Other examples are the amendments authorizing regional airport authorities and water development programs.

(6) To Accommodate Decisions of Texas Courts and the Opinions of Texas Attorneys General

Decisions of the Texas courts and Texas Attorney General Opinions have accounted for twelve amendments, one having been the result of both a judicial decision and an Attorney General opinion. Court decisions leading to amendments have included decisions on city workmen's compensation programs, commitment of the mentally ill without a trial by jury, terms for directors of Conservation and Reclamation Districts, dual office holding, the effect of changes of boundaries of school districts on taxes and bonds, and exchange of credits between the Teacher Retirement System and the State Employee Retirement System. Attorney General Opinions have concerned such problems as eligibility of employees of political subdivisions for social security coverage, terms of directors of Conservation and Reclamation Districts, dissolution of hospital districts, mental health expenditures by political subdivisions within a hospital district, and persons entitled to state assistance when officers are killed in the line of duty. As was true of the national government, no doubt the influence of the Texas courts and the Attorney General extends way beyond the few amendments listed here. In fact, the entire amendment process is significantly affected by the traditionally cautious view taken by the judiciary and the Attorney General on the meaning of constitutional provisions, which has the effect of increasing the burden on the amendment process. That is, instead of constitutional

change proceeding by interpretation it proceeds by numerous amendments. This cautious approach is no doubt facilitated by constitutional detail and it in turn prompts more detail. The only possible result of failure to change the pattern is a longer and more complicated constitution. Georgia and Louisiana have carried this to an extreme.

An Analysis of Reasons for Amendment

Underlying the reasons given above for the amendments submitted over the past 21 years are more basic forces or conditions, including societal and political changes. These have consequences for the Texas constitutional system and explain why many of the amendments were proposed.

As Texas has become an industrialized and urban state, having the fourth largest population of any state in the Union and the largest number of metropolitan areas, demands for more governmental services and other kinds of public activity have proved overwhelming. The amendments proposed during the past 21 years provide, in fact, a panoramic view of the problems facing Texas in the 20th Century -- water development, parks and recreation, welfare, education, law enforcement, medical care, and many others.

One constitutional response has been to permit intergovernmental cooperation as a means of handling areawide problems in an urban society. The amendments authorizing counties to consolidate offices and functions and to make intergovernmental contracts, the hospital districts, the regional airport authorities, and the water development programs are all good examples of this approach. In addition, there are amendments of limited application also reflecting regionalism, such as the ill-fated attempt to allow Texarkana, Texas, to get a refund on cigarette taxes in order to compete with its neighbor Texarkana, Arkansas.

Another constitutional response has been to authorize borrowing, spending and, in a few instances, tax exemptions or tax increases.

Changes in the political system are evidenced by suffrage amendments which have expanded the base of participation in Texas politics. In addition, fundamental social changes are reflected in the amendments traceable to the civil rights revolution, such as the amendment deleting the section requiring segregation by race in the public schools, the proposed Equal Rights Amendment on the 197[illegible] ballot, and perhaps the amendment allowing women to serve on juries in 1954.

As the national government has assumed more responsibilities for domestic concerns, it has made an imprint on the Texas Constitution, as already indicated above. Furthermore, a desire to modernize Texas state and local governments so that they can cope more effectively with modern problems has resulted in several amendments, including the five on the judicial branch; the various amendments to raise the salaries of legislators and the two proposing annual sessions; the county and special

district amendments already mentioned; and the four-year terms for state executive officials.

Finally, a word about the original Texas Constitution of 1876. The nature of this Constitution with its myriad restrictions and detail, mainly statutory, and its general tone has been the root cause of numerous amendments from 1951-1972. Despite the 212 amendments, the Constitution still maintains its original shape, creating formidable barriers to efforts to respond effectively to the pressures of modern society. The basic structure of government remains pretty much intact; the basic prohibitions on debt, spending, and taxation are all there although the amendments provide numerous exceptions; and so on. The amendments continue in the same manner as the original Constitution. So we get more of the same compounded. Finally, contributing to the need for amendments has been the generally strict construction given the Constitution by the Texas courts and Attorney General.

COSTS: THE NITTY GRITTY

One would assume that holding 19 elections in 21 years on 131 amendments would cost plenty. And it does, insofar as we can determine.

Publication Costs

The amending article of the Texas Constitution, Article XVII, requires that proposed amendments be published once a week for four weeks beginning at least three months before an election in one weekly newspaper of each county in which there is a newspaper. An amendment adopted in 1972 has changed these requirements, but whether the net cost will be less is not known. The new amendment states that amendments only have to be published twice and not in full; and all newspapers in the state qualifying for publication of legal notices would be required to publish a synopsis of the amendment. Also, the Legislature would be authorized to set the rate which the newspaper could charge, which could not be more than the newspaper's national published advertising rate per column inch. In addition, the entire text of each amendment would have to be posted at the courthouse of each county.

The cost of publishing amendments from 1951 to 1971, as required by the Constitution and statutes, amounted to $2,491,467, or about $19,000 an amendment. The range per amendment was from $6,818 to $39,500 fluctuating greatly from election to election. The costs have been rising in recent years, measured by either the cost per work or the average cost per amendment. An extrapolation to the year 2001 suggests that if nothing else changes, we can expect a publication cost per amendment of $50,000. Multiplying this figure by 36, the number of amendments we can expect to be proposed in 2001, the total publication cost for that biennium, 2001-02, will be an awe-inspiring $1.8 million.

Costs of Holding Elections

To the best of our knowledge, no one has attempted to find out how much it costs to hold elections for amendments in all Texas counties. In an attempt to provide reliable data on this subject, questionnaires were mailed to all counties; information was requested about the costs of the 1971 and 1969 special elections held on amendments and the 1970 general election at which amendments were submitted. Of the 254 counties, replies were returned from 145, including the big four -- Bexar, Dallas, Harris and Tarrant. The votes cast on amendments in the 145 counties represented 83 percent of all the votes in 1971; 77 percent of the votes in 1969; and 77 percent in 1970.

For the 1971 election, the cost per vote for the counties responding to the questionnaire was as follows:

Counties casting 0 - 999 votes	**$1.61**
Counties casting 1,000 - 4,999 votes	**1.08**
Counties casting 5,000 - 14,999 votes	**.99**
Counties casting 15,000 - 29,999 votes	**.66**
Counties casting 30,000 and above votes	**.55**

The estimated cost for all 254 counties was $622,228.98.*

For the 1969 election, the cost per vote for the counties responding was as follows:

Counties casting 0 - 999 votes	$1.12
Counties casting 1,000 - 4,999 votes	.80
Counties casting 5,000 - 14,999 votes	.60
Counties casting 15,000 - 29,999 votes	.52
Counties casting 30,000 and above votes	.73

The estimated cost for all counties was $498,052.46.**

The sharp differences in costs among the counties suggests something about the efficiency of devolving election administration upon 254 separate administrative units, some of which are extremely small.

Most constitutional amendments are submitted at general elections. It is virtually impossible to determine what percentage of the total cost can be attributed to the amendments on the ballot, but one would assume that the cost would be considerably less since it would not be necessary to crank up the entire election machinery for the amendments. The county officials receiving the questionnaire were asked to report the total cost of the 1970 General Eelction and then to make an estimate of the cost attributable to the amendments either by a percentage figure or in absolute dollars. The average estimate given by county officials was 18 percent of the total cost. Basing calculations

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*The costs varied widely from county to county and between groups of counties. In order to make a more reliable estimate of the election costs for all counties, the 145 counties were broken down into five groups on the basis of the number of votes cast for amendments. The cost per vote for each group of counties was calculated and then multiplied by the total cote cast by all counties within each group. The product of each group of counties was then summed to get the total cost for all 254 counties.

**It should be noted that the ballots in some counties included more than constitutional amendments. Hence, the estimated cost for the special elections is not wholly accounted for by the amendments.

upon this figure, the cost of amendments in the 1970 general elections was estimated to be $217,816.51 for all 254 counties.* The total, as anticipated, was less than that for special elections.

Combined Costs

From these figures, we can estimate that the total cost of holding the 19 elections on amendments from 1951 - 1971 was probably in the neighborhood of $6,500,000.** This figure includes the estimates of the costs at general elections and must be accepted with caution. If this figure is coupled with the publication costs of $2.5 million over the same period, the total direct cost to the taxpayers for holding constitutional amendment elections was $9.0 million or $95,744 for every amendment approved and $68,702 for every amendment submitted at elections from 1951 - 1971.

No public expenditures in these amounts should be dismissed lightly. One must always ask the question, whatever the expenditure: Are there better ways to spend the taxpayer's dollar?

*The total cost reported by the counties replying to the questionnaire was $936,837.05. This figure was multiplied by 18 percent, the estimate of the amount traceable to amendments. Then, the product, $168,630.67 was divided by the total number of votes cast by the 145 counties reporting. The dividend, $.11 was then multiplied by the total vote cast on amendments in all the counties in 1970 for the estimate of the cost of having amendments on the 1970 general election ballot.

**This assumes that the cost of a special election is about $500,000., which is the midpoint between the 1971 and the 1969 costs, and a general election cost of $200,000. There were nine special elections for a total of $4,500,000 and 10 general elections for a total of $2,000,000 giving us a grand total of $6,500,000.

VOTERS AND ELECTIONS

Number of Amendments and Elections

Between 1951 and 1972, the Legislature submitted and the people voted in 20 elections on 145 amendments to the Texas Constitution. The voters approved 105 for an approval rate of 72 percent. The highest number of amendments confronting the voter at any one time was 16 in the 1966 general election, and the largest number approved at a single election was 15, also in 1966. Table II on page 21 lists the date of the election, the number of amendments submitted, and the number approved. Table III on page 22 lists the number of amendments submitted and approved in rank order.

Texas has the sixth longest constitution in the United States, and it will continue to get longer if past trends persist. An extrapolation based on the 1951-71 base period indicates that by the year 2001 Texas will see a constitution with 345 amendments! We can also expect about 36 amendments to be proposed by the Legislature to the voters in 2001, of which 26 are likely to be approved.

Kinds of Elections: It Makes a Difference (1951 - 1971)

One of the most significant findings of the study was that there is a decided difference between special and general elections and even between presidential and off-year general elections insofar as the fate of amendments and other amendment questions are concerned.

A total of 43 amendments was voted on at 9 special elections for an average of 4.8 amendments per elections; and 22 of these were approved for an approval rate of only 51 percent. On the other hand, a total of 88 amendments were submitted at the 10 general elections, for an average of 8.8; of these, 72 were approved for a success rate of 82 percent. In other words, there was a differential of 30 percentage points in the number of amendments approved at special and general elections.

There were also significant differences between presidential and off-year elections within the general election category. In all but one of the five presidential elections, the voters approved every single one of the amendments offered; however, the overall approval rate was 77.4 percent because in one election only 7 of 14 amendments were approved. The totals in the presidential elections were 24 approved of 31 submitted. In the five off-year elections, the success rate was higher, 84.2 percent, 48 of 57 amendments being approved; but there was only one election in which the voters approved all the amendments.

Participation of Voters

What do the voters think about voting often on numerous amendments? Although we cannot probe further without interviews and precinct and county data, aggregate election data indicate that the voters do not particularly care about amendments. At least they keep away in droves from the ballot booth.

Only about one-third of the registered voters vote on amendments. Taking all 19 elections and averaging the number of registered voters participating, only 32 percent of those registered voted on amendments. In contrast, the participation rate for voting for President or for Governor in general elections is about two-thirds (67 percent) of the registered voters.

When we distinguish between general and special elections, the turnout becomes even more startling. In special elections without the pulling power of a race for President or for Governor, the percentage of registered voters participating drops precipitously to only 16 percent. The percentage of registered voters voting for amendments at general elections is about three times as great -- 45 percent -- although this is low also. A turnout of 6.7 percent occurred in one special election.

There is also a significant difference in turnout between presidential and off-year general elections. The percentage of registered voters casting ballots for amendments in Presidential elections is 51 percent in contrast to 39 percent in the off-year general elections.

Participation rates drop virtually to the vanishing point when resident voting age population is considered; this is the usual indicator of the potential electorate. Taking the number of voters as a percentage of the voting age population yields an average participation rate of only 17 percent. In the elections studied, the participation of the voting age population ranged from 3.7 percent to 28.9 percent. It is clear that a small minority of the people of Texas vote on amendments.

With these figures in hand, one would be hard put to argue that the voters are enthusiastic about amendments or that amendments draw voters to the polls. It is much closer to the truth to say that a candidate's race pulls the voter into the ballot booth; while there he may or may not vote on the amendments. When there are no races involving candidates, then the voting for amendments is not very popular, and one can assume from the data collected that the voters who do turn out are much more suspicious of the amendments offered and are more likely to defeat them than the voters in the general election.

Popular and Unpopular Amendments

What kinds of amendments attract the most votes and the least? The voters understandably pay the most attention to controversial and more

TABLE II

THE NUMBER OF PROPOSED AND ADOPTED AMENDMENTS TO THE TEXAS CONSTITUTION FROM 1951 TO 1972: BY YEAR

Year	Proposed	Adopted
1951	5	1
1952	2	2
1954	11	11
1956	8	8
1956	1	1
1957	3	3
1958	9	7
1960	4	4
1962	14	10
1963	4	1
1964	3	3
1965	1	0
1965	10	5
1966	16	15
1967	6	6
1968	14	7
1969	9	4
1970	7	5
1971	4	1
1972	14	11
Totals	145	105

TABLE III

RANK ORDER OF THE NUMBER OF PROPOSED
AND ADOPTED AMENDMENTS TO THE
TEXAS CONSTITUTION: 1951-1972

Proposed		Adopted
16		15
14		11
14		11
14		10
11		8
10		7
9		7
9		6
8		5
7		5
6	Median	4
5		4
4		3
4		3
4		2
3		1
3		1
2		1
1		1
1		0

basic amendments than to those having application to only a small area; or, are of concern to only a limited number of people; or, are of a highly technical nature. An examination of the 17 amendments drawing the most votes bears out this hypothesis.* Six or about one-third of the amendments dealt with welfare issues, a controversial matter in Texas. The other popular amendments involved the following issues: women on juries; interest rates, four-year terms for Governor and other high state executive officials; liquor by the drink; the veterans' land program; and retirement. Only one concerned a local government issue, and this was on the ballot with only one other competitor. It had to do with city employee's workmen's compensation. The approval rate for these popular amendments was about 71 percent.

The least popular amendments concerned local government issues, particularly those having limited application. Why should the people of San Antonio or Muleshoe be concerned about whether the Jefferson County Drainage District Number 7 and the Port Arthur Independent School District should combine for purposes of a hospital district? In total, over two-thirds of the amendments receiving the least votes in 17 elections concerned local government; and one-third or six concerned only one or a handful of local areas. Three of the other least popular amendments involved constitutional funds; one, maximum interest rates on state bonds; one, dual office holding; one, the state building commission; and one, proposing amendments at special elections. Of these seventeen amendments, five dealt with state finance.

The unpopularity of local government amendments was investigated further. Thirteen proposed amendments could be classified as local government amendments with limited application, meaning that they applied to only one or a handful of local government units. Six of these, almost half, received the least votes in the elections at which they were submitted; two others were next to the bottom of the list in order of votes received in the election; two were third from the bottom and two more, fourth. Only one of the 13 was anywhere near to the top in terms of voter drawing power; this was the amendment authorizing regional airport authorities, which at the time of adoption applied to only two areas.

It has often been remarked in Texas that unpopular amendments bring down other amendments in the same election. There might be some truth to this, but not too much. In each of the seven elections in which the rejection rate was 50 percent or higher, there was at least one unpopular amendment on the ballot. On the other hand, unpopular amendments were defeated at other elections in which the approval rate was much higher; and an amendment unpopular at one election has been approved at others even when the rejection rate is high. Welfare is a good example One is forced to conclude that the voter uses a "search and destroy"

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*Data were collected for the amendment at each election receiving the highest vote except for two elections where there was only one amendment.

tactic. Some amendments, such as increasing legislative pay, are going to have a sticky time of it, regardless of the popularity of the other amendments on the ballot. As earlier indicated, what is more important is whether the amendment is voted on at a special or general election.

The Rational Voter

Another item of interest was whether an amendment's position on the ballot affected its chance of passage. The present statute governing the place on the ballot of each proposed amendment assumes that it does; drawing by lot serves to give each amendment an equal chance of having first or any other place.

There is no evidence that ballot position makes much difference in the fate of an amendment. If a first place position is an advantage, one would expect amendments appearing first on the ballot to be adopted more frequently. Of the 17 amendments first on the ballot during the 21 year period covered by this study (excluding the two in elections in which there was only one amendment), 13 passed and 4 failed for an approval rate of 76 percent, several percentage points higher than the overall approval rate (72 percent) but not dramatically so. As for last place amendments, 12 of the 17 passed for an approval rate of 71 percent, virtually identical to the overall approval rate. Furthermore, the distribution of defeated and approved amendments showed no particular pattern by ballot position. For example, about the same number of approved amendments were in second and third place as in first.

The investigation also helps dispel the notion that the voter votes blindly. On the basis of fifty percent (there being two choices, yes or no) on 17 amendments in first place or last place, in no case was the success rate only 50 percent by ballot position. Apparently, the voter discriminates among the amendments offered to him.

Patterns of Defeat and of Victory

Can any pattern be detected in the amendments defeated and those approved by the voters? Although a wide variety of subjects was covered by both the defeated and the successful amendments, a few patterns were evident. About 70 percent of the rejected amendments concerned government financing. Within this group it is significant that five dealt with salaries of legislators, including in some cases the Lieutenant Governor. It was also significant that many proposed changes in the basic organization of government were rejected, suggesting a reluctance on the part of the voter to make fundamental changes incrementally. Examples of the defeated amendments of that character were those providing four-year terms for Governor and other high executive officials, although the voters finally approved these in 1972; four-year terms for Representatives; an enlarged Senate; and an Ethics Commission to get salary schedules subject to legislative approval. Tax exemptions were also relatively unpopular.

The 94 ratified amendments covered the constitutional rainbow. Nevertheless, it is significant that all amendments to the judicial article passed, including what might be classified as basic changes. Virtually all education proposals passed. Almost all hospital district amendments passed, as did all but three of the welfare proposals.

Other Patterns of Participation

In an effort to find out more about patterns of participation, an investigation utilizing correlation analysis was made of three important questions frequently asked about voter participation in the amendment process.

The first question was whether the number of amendments on the ballot makes a difference in the voter approval rate. For example, if the number of amendments gets very large, will the voters cry "Halt!" and reject them all? This happened in Louisiana recently. After years of approving large batches of amendments, the voters defeated all 53 proposed in 1970.

The experience during the past 21 years in Texas has been that the voters generally approve the amendments, regardless of the number on the ballot. For example, in the election in which the most amendments were proposed, 16, 15 were approved. Also, there have been eight elections in which all the amendments, ranging in number from 2 to 11, were approved. In fact, the correlation between the number of amendments proposed and ratified is a high .89. So the Louisiana syndrome has not yet been experienced in Texas.

On the other hand, there is a tendency in general elections for the voters to approve a smaller percentage of amendments as the number proposed gets larger. For example, in the only presidential election from 1951 to 1971 in which the approval rate was not 100 percent, the number of amendments submitted was 14, the largest number submitted at these elections.

A second question was whether the voters would be more likely to vote on the amendments if the number of amendments was large. In other words, are voters attracted to the polls when there are more choices, so to speak? There was some indication that this was true in special elections. The percentage of registered voters participating in these elections was greater when the number of amendments was greater. But this was not always true in general elections. The reason for this was probably the drawing power of the presidential race in which the number of amendments voted on tended to be smaller than in the off-year general elections.

A third question was whether a large turnout was a factor contributing to the victory or defeat of amendments. There was some evidence that insofar as special elections were concerned, the percentage of amendments approved tended to decline as the turnout increased. That is, a larger turnout has been associated to a limited extent with a higher

rejection rate. Perhaps a campaign to get voters to the polls in special elections would help to defeat amendments. As for general elections, the correlations analysis revealed no association between participation rates and the percentage of amendments approved or rejected. Turnout, then, was not important for victory or defeat in those elections as measured by that statistic.

CONCLUSIONS AND RECOMMENDATIONS

The findings reported in the three sections of the research project analyzing amendments to the Texas Constitution from 1951 to 1972 lead to the following general conclusions:

- Most of the amendments -- particularly fiscal and local in nature have been caused by the need to evade or otherwise to overcome the deficiencies of the Constitution of 1876 and to keep abreast of the rapid changes of an urban state.
- Amendments have in turn resulted in other amendments, contributing to the extreme length and detail of the Constitution and its statutory character, a document now containing over 50,000 words and 212 amendments.
- High costs of publishing amendments and holding elections have been an important consequence of the frequency of amendments.
- Only a small minority of the voters -- in fact a tiny minority in special elections -- vote on amendments, thereby making decisions affecting the future of Texas.

The analysis has highlighted the importance of the amendments for intergovernmental relations in Texas. As noted in the Summary, the Texas Constitution provides the basic framework for these relations; numerous amendments have had an impact upon that framework. In particular, the findings reveal that most of the amendments have concerned the fiscal capacity of state and local government, the structure and powers of local governments, and the powers and responsibilities of the Texas Legislature, generally. Hence, the story of constitutional amendments from 1951 to 1972 has been largely a story of the capacity of state and local governments to serve the people of Texas.

Shall we go on as we have in the past, amendment after amendment after amendment? Recommendations for a different course of action conclude this report.

Finance

Every state constitution should contain safeguards against raids on the public purse; and it should contain assurances of honest and orderly procedures in the handling of state money. The Texas Constitution provides these by requiring that public moneys be spent only in pursuance of an appropriation and only for a public purpose. The pay-as-you-go amendment of 1942 is an additional safeguard. But beyond this, the

Texas Constitution imposes restrictions and detail that have been evaded or changed by numerous amendments. The amendments themselves are proof that the restrictions do not work.

The prohibitions against grants to individuals, associations, and corporations should be deleted, relying instead as most state constitutions do on the injunction that public moneys should be spent only for public purposes. Even if Texans desire to retain restrictions on welfare spending, it is not necessary to have the lengthy provisions now incorporated in the Constitution for this purpose. The Legislature could be authorized expressly to provide for public welfare expenditures. If a dollar limit must be imposed, and Texas is the only state left that does so, then at least the Constitution should provide for a referendum on the raising of the ceilings rather than requiring a constitutional amendment each time the dollar limits are changed. Other restrictions, such as those on eligibility which are often contrary to federal regulations in any event, programs which are spelled out in detail, and similar provisions could have been deleted.

Then there are the constitutional funds. Is all this statutory detail necessary? Does anyone seriously think that the voters will or should inform themselves about the myriad details of the water development fund, the veterans land fund, the college building fund, the Permanent University Fund and the others? Funds, which in the public interest ought to have constitutional status, could be referred to in the Constitution without the statutory material; and safeguards stated in general terms requiring audit or review could have saved hundreds of words and more than 20 amendments, over the past 20 years.

The prohibition of public debt is unrealistic. Texas has a public debt: constitutional amendments authorize it. If a debt limit is politically necessary, it could be stated as a relationship to a general indicator such as a percentage of the Gross National Product. Thus, the debt ceiling would expand and contract with the economic trends. If the voters insist on a dollar limit, provision for a referendum for raising the ceiling would save countless amendments over the years.

In sum, the vast majority of the 98 amendments dealing with finance could have been avoided entirely if the Constitution had contained provisions for a realistic fiscal policy with adequate safeguards for the public interest.

Local Government

About one-third of all the amendments proposed from 1951 - 1972 have concerned local government, many of them involving fiscal matters. Most could have been avoided.

It is ironic that at least one constitutional restriction on taxation has actually increased the taxpayer's burden. The Constitution sets

the maximum tax for bonded indebtedness of home rule cities. Because of this limitation, many cities have had to pay a higher interest rate in order to borrow money. Apparently, bonding authorities are fearful that defaults could occur if local governments are forced to a tax effort near the constitutional maximum.

Similar tax limits, moreover, have made it difficult for Texas counties to take on urban-type functions and assume their rightful place in metropolitan areas. The numerous amendments concerning hospital districts might have been eliminated had cities and counties not needed to evade restrictions on taxing and borrowing power.

Finally, many amendments to county government provisions could have been eliminated had the organization of county government not been frozen in the Constitution. Although counties serve as administrative arms of the state, they are also local governments. More options to the voters and local officials would have reduced the number of amendments and permitted more effective county government tailored to the people's needs in each local area.

Legislature

All roads to constitutional revision lead eventually to the Texas Legislature. As observed earlier, the most amendments by far have concerned the legislative article. This article includes many of the financial restrictions, some of the local government sections, some of the constitutional funds, and other topics considered above. Many of these relate to the power and responsibilities of the Legislature. Others pertain to the structure and operation of the Legislature.

The Legislature needs to be strengthened if it is to play its proper role in a democratic society. Certain constitutional changes, often proposed but resisted by the voters, are needed. These include provisions for annual sessions, preferably of undetermined length, and for legislative compensation set by law, perhaps on recommendation of an independent commission.

As the Legislature is given the resources with which to govern more capably, the voters' confidence in their legislators should increase correspondingly. This in turn will contribute to the deletion of constitutional provisions based on mistrust, including many of the fiscal restrictions. Replacing them should be the normal political processes of elections, community action, petition, and lobbying whereby the citizens hold their legislators accountable.

Comprehensive and Piecemeal Revision

Texas has had almost a century of experience with piecemeal revision, amendment by amendment. Many of the consequences of this process have

been apparent from this study of amendments. It would appear virtually impossible to make any basic change in the Texas constitutional system by continuing on as we have in the past. For one thing, the Legislature cannot give proper attention to all the constitutional amendments required during the Regular Session and certainly not within a framework conducive to letting the constitutional right hand know what the constitutional left hand is doing. Indeed, mistakes are common, some necessitating amendments to amendments. One mistake proved particularly costly in 1956. An amendment intended to be voted upon at the general election in November of that year carried the wrong Tuesday in the wording, and a special election just for one amendment had to be held a week after the general election! The voters registered their dismay by staying home. Only about six percent of the voters actually came to the polls on that second round.

If the pitfalls of the past are to be avoided, it is essential that there be a new kind of revision, either a comprehensive overhaul of the entire document or orderly selective revision of important articles. At the minimum, those provisions concerned with state and local finance and legislative powers must be changed. We must have a constitutional framework that allows the state to serve the people in a responsive and efficient manner and to work in partnership with the national government toward common goals.

The voters voiced their firm support for a new approach to constitutional revision by adopting Amendment Number Four at the general election on November 7, 1972. Amendment Number Four provides for a constitutional revision commission to be established in January 1973 and for the members of the Legislature to serve as a constitutional convention during a special session in January 1974.

A comprehensive revision of the Texas Constitution has long been needed. The time for revision has clearly arrived. No longer should the people of Texas tolerate a mass of amendments with their attendant consequences resulting from deficiencies in the original document. With proper revision years ago, perhaps 90 percent of the amendments which have required the attention of the Legislature, the courts, state and local officials, and, most important, the citizens of Texas, could have been avoided. And this could have been accomplished without reducing the constitutional safeguards necessary to protect the public interest.

APPENDICES

APPENDIX A

RESEARCH METHODS, SCOPE, AND SOURCES

The texts of all the 145 amendments proposed during the period under review and analyses of each prepared by the Texas Legislative Council, the Texas Legislative Reference Library, the Institute of Public Affairs at the University of Texas at Austin, and news commentaries were collected and examined. In addition, the *Citizens' Guide to the Texas Constitution* by George Braden (published by the Texas Advisory Commission on Intergovernmental Relations), the 1968 Report of the Texas Constitutional Revision Commission, and the 1961 Report of the Texas Legislative Council on the Texas Constitution were frequently consulted.

On the basis of the texts and analyses of the amendments, all the amendments were classified in numerous ways including by subject matter; by constitutional provision affected; by passage or defeat; by position on the ballot; by order of vote received in the election; and by cause or reason for the amendment. The tallies yielded invaluable information.

The votes on the 131 amendments at the 19 elections from 1951 to 1971 were checked with the Index of Official Reports in the Secretary of State's Office after being collected initially from the *General and Special Laws of the State of Texas*. (The votes on the 14 amendments submitted at the 1972 election were not available at the time of the project.) A number of discrepancies and omissions were uncovered; these were corrected for the tabulation in the research on election studies.

The number of registered voters in Texas was secured from the reports of the Secretary of State's Office; the *Texas Almanac* (Dallas: A.H. Belo Corporation) was also relied upon, particularly for estimates of the total number of eligible voters during the poll tax period when some voters were not required to register in order to vote. The votes cast for President and for Governor were obtained from the *Texas Almanac*, the Secretary of State's Office, and *America Votes 4* (Pittsburgh: University of Pittsburgh Press) by Richard Scammon.

The election data were arranged in tabular form in order to give the number and percentage of registered voters voting on the amendment receiving the most votes at each election, the number of amendments submitted and approved at each election, and the number and percentage of registered voters voting for President in presidential years and for Governor in the off-years. The data were also arranged to distinguish between special and general elections and also between presidential and off-year elections. Totals and averages were calculated to give aggregate data as needed.

Extrapolations, using the base period 1951-71 in most cases, were calculated by least squares trend lines to indicate the number of amendments that will have been added to the Texas Constitution by the year 2001, the number of amendments to be submitted by the Legislature to the voters that year, and the number to be approved by the voters during the 2001-2002 biennium. The extrapolations assume no changes in constitutional amendment procedures or in constitutional revision.

Many costs are incurred in amending the Texas Constitution. Two kinds were investigated for this study. First, the publication costs incurred by the state were secured from the Secretary of State's Office for the years 1956 to 1971 and from the appropriations statutes for the years 1951-1954. (There were no elections in 1953 and 1955.) These costs were arrayed in tabular form by year, totaled, and averages taken to get the average publication cost for each amendment. Then, the costs were extrapolated to the year 2001 to give both totals and average costs. Again, the extrapolation assumes no changes in the constitutional requirements and procedures for publishing amendments and do not take into account changing price levels. However, changes in price levels during the base period are reflected in the extrapolation.

Second, the costs shouldered by counties in holding elections at which amendments are voted on were investigated. A questionnaire requesting data from county auditors and, in counties without auditors, county judges was mailed to each county. The officers were asked to report the cost of holding the August, 1969, and the May, 1971, special elections, in which a number of amendments were on the ballot. Also, the officers were asked to give the total cost of the 1970 general election and to make an estimate of the percentage of the total that could be attributed to the amendments on the ballot.

One hundred and forty-five counties replied to the questionnaire. As the reports came in, the election costs were tabulated by county and date of election; the votes cast in each county for the amendment receiving the most votes at the elections in review were tabulated to give the cost per vote at amendment elections. In addition to the sums and averages calculated from the data available, the counties were divided into five groups on the basis of the number of votes for amendments cast. The first group consisted of counties in which 0 - 999 votes had been cast; the second, 1000 - 4,999; the third, 5,000 - 14,999; the fourth, 15,000 - 29,999; and the fifth, 30,000 and above. The cost per vote cast was then calculated for each group of counties. As anticipated, the larger counties show smaller costs per vote cast than the smaller counties.

Pearson product moment correlation analysis was used to help answer three questions often asked about voting on amendments: (1) Does the number of amendments make a difference in voter approval or rejection? (2) Are voters attracted to or repelled from the polls by the number of amendments on the ballot, that is, a short or a long ballot? (3) Does the size of the voter turnout help to defeat or approve amendments?

Correlations do not tell us whether variable A causes variable B. They can tell us whether there is an association between variables and its magnitude. If there is no association, it can be assumed that neither variable causes the other. For example, if the size of the voter turnout is not associated with either defeat or victory of amendments, then it may be assumed that defeat or victory is not caused by the number of voters participating.

Correlation coefficients may take on a value from -1 to +1, indicating a perfect negative correlation and a perfect positive correlation, respectively. The value 0 means there is no association between the variables. Correlation coefficients are designated by the letter "r".

The correlation coefficients calculated to answer the three questions referred to above were large with respect to the first question concerned with the number of amendments and voter approval or rejection. The "r" was .89 in all elections, .75 in special elections, and .89 in general elections. However, this calculation was based on absolute numbers. When the percentage of amendments approved or rejected was correlated with the number of amendments submitted, the correlation was negligible except for a negative correlation of -.52 in general elections.

Other correlations of some magnitude were as follows: (1) the number of amendments and the percentage of registered voters at special elections, .56; (2) the percentage of voters registered and the number of amendments approved at general elections, -.42; (3) the percentage of voters registered and the percentage of amendments approved at special elections, -.49.

Since the data constituted a universe and not a sample and in any event were not randomly selected, tests of significance were not appropriate and were not calculated.

APPENDIX B

SUBJECTS OF PROPOSED AMENDMENTS TO THE TEXAS CONSTITUTION: 1951-1972

Election Year	Article and Section	Subject
1951	III:48-d	*Permitting an increase in ad valorem tax for the creation of rural fire prevention districts.
	III:49-b	Enlarging amount of Veterans' Land Fund.
	III:51a	*Increasing the maximum amount spent for state welfare pensions.
	VII:11a	*Enabling UT Board of Regents to invest university fund in additional securities.
	XVI:63	*Authorizing a statewide retirement system for county employees.
1952	III:50a	Establishing a State Medical Education Fund to encourage rural medical practice.
	III:61	Providing for workmen's compensation insurance for city employees.
1954	III:51a	Increasing amount of old age assistance, aid to the blind and to dependent children.
	III:51b	Authorizing transfer of Confederate Pension Fund to the State Building Fund.
	III:51g	Providing social security coverage for proprietary employees.
	III:52b	Prohibiting lending of state credit or use of state funds for toll roads.
	IV:5, 21, 22, 23, III:24, 61	Allowing Legislature to set salaries of certain state officers; per diem.
	V:9, [illegible], 18, 20, 21, 23, 30, VIII:14, 16, XVI:41, 64, 65	Providing four year terms for elective district, county and precinct offices.
	VI:1, 2, 2a	Conferring voting privileges to members of the Armed Forces who were already Texas residents.
	VIII:16a	Allowing creation of tax assessor-collector in counties with less than ten thousand population.

*defeated

Election Year	Article and Section	Subject
1954 (cont.)	IX:4	Authorizing Legislature to create hospital districts in counties over 190,000 in population.
	XVI:19	Requiring women to serve on juries.
	XVI:63	Allowing exchange of retirement benefits for Teacher Retirement System and Employees Retirement System members.
1956	I:11a	Allowing denial of bail to habitual offender, except in capital cases.
	I:15a	Requiring medical testimony for commitment of persons of unsound mind.
	III:48a	Increasing benefits and coverage and revises investments of Teacher Retirement System.
	III:49-b	Increasing Veterans' Land Fund; altering membership of Veterans' Land Board.
	III:51b	Authorizing Legislature to provide for assistance to needy disabled persons.
	III:51-c	Permitting Legislature to grant aid and compensation to persons improperly fined or imprisoned.
	VII:11-a, 17, 18	Providing for improvements at state institutions of higher learning; investment of Permanent University Fund.
	VIII:9	Authorizing Commissioners Court to levy sums necessary for various fund purposes.
	XVI:1	Altering form of Oath of Office to include appointive officers of the state.
1957	III:49c	Providing for creation of the Texas Water Development Board and issuance of bonds for local water conservation and development projects.
	III:51-a	Increasing amount of old age assistance.
	XVI:62-a	Increasing retirement allowances and disability in State Employees Retirement System.
1958	III:5, 24, 24a	*Providing for annual Legislative session and salary increase.
	III:51-a	Authorizing the Legislature to provide funds for direct or vendor medical care for welfare recipients.
	V:28	Authorizing County Commissioners' Court to temporarily fill vacancies of county judge and justice of the peace.

*defeated.

Election Year	Article and Section	Subject
1958 (cont.)	IX:5	Authorizing the creation of four hospital districts: Amarillo, Wichita County, and Jefferson County.
	XI:11	Authorizing home rule and general law cities to provide term of office for officials.
	XVI:56	Authorizing the dissemination of information about Texas resources.
	XVI:62-b	*Providing retirement benefits for county officials and employees.
	XVI:65	Requiring resignation of county official if running for another office during four year term.
	XVI:66	Authorizing the Legislature to provide pensions for Texas Rangers.
1960	III:24	Increasing annual salaries for Legislators.
	III:49b	Increasing interest rate on Veterans' Land Bonds.
	IX:6, 7, 8	Authorizing the creation of special hospital districts in Lamar, Hidalgo, and Comanche Counties.
	XVI:11	Providing regulation of interest rates and classification of loans and lenders.
1962	II:2	*Authorizing Legislature to provide for trials de novo on all appeals from rulings of state administrative or executive agencies.
	III:49-b	Allowing resale of certain unsold lands by Veterans' Land Fund to non-veterans.
	III:49-d	Allowing development of water storage in reservoirs by Water Development Board.
	III:51a	Providing increase in old age assistance, aid to the blind, and aid to dependent children.
	III:51b	Providing for increase in assistance for the totally disabled.
	III:60	Providing workmen's compensation for employees of political subdivisions.
	III:62	Providing for Legislative System of emergency succession to public offices.
	VII:3-b	Validating all taxes and bonds voted by independent school districts in Dallas County.
	IX:1-A	Allowing counties to regulate use of their beach by the public.

*defeated

Election Year	Article and Section	Subject
1962 (cont.)	IX:9	Authorizing Legislature to create hospital districts statewide.
	IX:10	*Providing for creation of hospital district in Brazoria County and a home for the aged in Titus County.
	IX:11	Authorizing creation of hospital districts in Ochiltree, Castro, Hansford and Hopkins Counties.
	XVI:33	*Permitting dual office holding and compensation for state employees.
	XVI:62(b)	*Providing state retirement benefits for elected and appointed officers and employees of counties and other political subdivisions.
1963	III:49-b	*Permitting sale of additional bonds by Veteran's Land Board to finance the Veterans' Land Fund.
	III:51-a, 51-b-1	Removing of residence requirements for welfare; increase in assistance.
	VI:2, 4	*Providing for repeal of the poll tax and for voter registration.
	XVI:62	*Authorizing Jefferson County to provide their appointive officers and employees retirement benefits.
1964	III:51a-2	Providing medical care for needy 65 and over who are not recipients of old age assistance.
	VII:5	Removing authorization to transfer money from permanent school fund to available school fund.
	XVI:59(d)	Requiring notice of intention to create a conservation or reclamation district.
1965	III:2, 25	*Requiring apportionment of Senate according to population and increase of size of Senate.
	III:4	*Providing four year, staggered terms for State Representatives.
	III:24; IV:17	*Authorizing Legislature to set salaries of Lieutenant Governor and Speaker; increases per diem of Legislators.
	III:48b	Providing that assets of Teacher Retirement System be administered by Board of Trustees of the Teacher Retirement System.

*defeated

Election Year	Article and Section	Subject
1965 (cont.)	III:49-b	*Increasing amount of bonds issued by Veterans' Land Board.
	III:50b	Authorizing sale of bonds for Texas Opportunity Plan Fund loans to college students.
	III:51-a, 51a-1, 51-a-2	Expanding age limits and residency requirements for medical care for the aged and needy.
	IV:4, 22, 23	*Providing four year terms for state officials.
	V:1-a	Creating State Judicial Qualifications Commission for removal of district and appellate judges for misconduct and retirement for age or disability.
	VII:17	Increasing ad valorem tax for building construction by state institutions of higher learning.
	VIII:2-A	*Providing tax exemptions to charitable hospitals.
1966	III:3, 4	Establishing date newly-elected members of Legislature qualify and take office.
	III:49-d	Increasing amount of bonds issued by Texas Water Development Board and expansion of uses for fund.
	III:51-d	Providing assistance to survivors of certain officials suffering violent death in performance of duty.
	III:63	Authorizing consolidation of governmental functions within a county and intergovernmental contracts.
	V:4 & 5	Increasing number of judges on Texas Court of Criminal Appeals.
	VI:2	Allowing members of the armed forces to vote in Texas.
	VI:2 & 4	Repealing poll tax and requiring annual voter registration.
	VI:2a	Liberalizing residence requirements for voting for certain persons.
	VII:3-b	Authorizing that boundary changes will not nullify taxes or bonds previously approved by independent school district.
	VII:18	Withdrawing Arlington State College from participation in Permanent University fund.
	VIII:1-d	Assessing tax on agricultural lands based on land's value for agricultural purposes.

*defeated

Election Year	Article and Section	Subject
1966 (cont.)	IX:9	Providing method for dissolution of hospital districts.
	IX:12	Authorizing Legislature to provide for creation of airport authorities.
	XVI:6	Authorizing funds to assist the handicapped in becoming gainfully employed.
	XVI:30c	*Authorizing six year term for Directors of Conservation and Reclamation Districts.
	XVI:62-c	Authorizes Legislature to provide retirement benefits for officers and employees of a county or political subdivision.
1967	III:49-b	Authorizing sale of additional bonds and expands Veterans' Land Program to veterans of Viet Nam conflict.
	III:49-e	Authorizing Parks and Wildlife Department to sell bonds for Texas Park Development Fund.
	III:52-e	Authorizing counties to pay medical expenses of law enforcement officials injured in line of duty.
	VIII:9	Authorizing counties to combine all tax money into a single county tax fund.
	IX:13	Providing for the establishment of mental health or public health services within a hospital district.
	XVI:33	Permitting dual office holding and compensation for non-elective state officers and employees.
1968	III:18	Fixing time of ineligibility of Legislators for other offices.
	III:24	*Providing for Legislative salary increase and extension of per diem.
	III:48a	Removing ceiling on teacher contributions to Teacher Retirement System.
	III:51-a	Increasing financial assistance to the public welfare programs.
	III:52a	*Authorizing cities and counties to issue revenue bonds for industrial development.
	III:52e	Authorizing Dallas County to issue bonds for road construction and maintenance.
	III:64	Authorizing consolidation of governmental functions and intergovernmental contracts.
	VII:11a	Permitting UT Board of Regents more authority in investment of Permanent University Fund.

*defeated

Election Year	Article and Section	Subject
1968 (cont.)	VIII:1-e	Abolishing state ad valorem property tax except for amount for college building fund.
	VIII:1-f	*Authorizing ad valorem tax exemption for property stored in public warehouses.
	VIII:1-j	*Permitting tax refund on tobacco products for Texarkana.
	VIII:2-a	*Permitting property tax exemption for pollution abatement devices.
	XVI:21	*Removing some restrictions from state contract purchasing requirements.
	XVI:62a	Establishing the Employees Retirement System of Texas as a constitutional agency.
1969	III:5	*Providing for annual Legislative sessions.
	III:24	*Providing for Legislative salary increase; Legislature set its own salary and salary of Lieutenant Governor and Speaker.
	III:42, 46, 48 VII:3a, 7 VIII:12 IX:3 X:1, 3, 4, 5, 6, 7, 8, 9 XI:10 XII:3, 4, 5, 7 XIII:1, 2, 3, 4, 5, 6, 7 XIV:2, 3, 4, 5, 6, 7, 8 XVI:3, 4, 7, 13, 29, 32, 34, 35, 36, 38, 42, 45, 46, 54, 55, 57, 58, 60	Repealing of obsolete and unnecessary sections of the Texas Constitution.
	III:49-d-1	*Broadening the powers of the Texas Water Development Board.
	III:50b-1	Authorizing student loans under Texas Opportunity Plan.
	III:51-a	Increasing welfare assistance payments.
	III:51-d	Authorizing payment of benefits to survivors of certain governmental officers and employees.
	III:64	*Authorizing removal of constitutional interest rate limitations on certain bonds.

*defeated

Election Year	Article and Section	Subject
1969 (cont.)	VIII:2	*Exempting nonprofit water supply corporations from ad valorem taxation.
1970	III:51-b(a)	*Establishing State Building Commission as Governor-appointed commission.
	III:52	Authorizing counties to issue road bonds.
	III:64(a)	Authorizing counties to consolidate governmental functions and for intergovernmental contracts.
	V:1-a	Providing for the removal, retirement and censure of judges and justices.
	VIII:1-d	*Authorizing Legislature to provide uniform method of tax assessment of agricultural lands.
	XVI:20(a)	Regulating sale of mixed alcoholic beverages on a local option basis.
	XVI:51	Increasing amount of homestead exemption.
1971	III:24	*Providing for a State Ethics Commission to recommend Legislative salaries and govern Legislative conduct.
	III:49-d-1	Authorizing issuance of Water Development Bonds for water quality control.
	III:51-a	*Removing limitation on appropriations for assistance grants, except for aid to dependent children.
	XVII:1	*Permitting Legislature to propose constitutional amendments at special or called sessions.
1972	I:3a	Providing equal rights for women.
	III:24	*Providing for Legislative salary increase.
	III:65	Increasing maximum interest rate on certain bonds issued under constitutional authority.
	IV:4, 22, 23	Providing four year terms for constitutional and statutory executive officers.
	IV:17 III:24	*Providing for salary increase for Speaker and Lieutenant Governor.
	VII:66	Permitting county to distribute portion of County Permanent School Fund to school districts.
	VIII:1-b	Permitting homestead tax exemptions from property tax for those 65 or older.
	VIII:2	Permitting property tax exemptions to disabled veterans and their survivors.
	IX:6	Abolishing the Lamar County Hospital District.

*defeated

Election Year	Article and Section	Subject
1972 (cont.)	XVI:33, 40	*Permitting dual office holding of Directors of Soil and Conservation Districts.
	XVI:33, 40	Permitting dual office holding for state employees providing no compensation is received.
	XVI:61	Providing compensation for justices of the peace on a salary basis.
	XVII:1	Permitting proposal of constitutional amendments at special sessions and changes in publication notice.
	XVII:2	Authorizing the Legislature to establish a constitutional revision commission and to convene as a constitutional convention.

*defeated

APPENDIX C

VOTER PARTICIPATION IN ELECTIONS ON AMENDMENTS

TO THE TEXAS CONSTITUTION: 1951-1971

Year	Special/General Election Amendment Receiving the Most Votes	Number of Votes Received	Registered Voters	Percent of Registered Voters Voting on Most Votes Amendment	Votes Cast for President or Governor	Percentage of Registered Voters Voting for President or Governor	Number of Amendments Submitted and Approved	Percentage of Amendments Approved
1951	Special Election - Welfare	237,464	1,832,475	12.958	---	---	5 - 1	20.000
1952	General Election - City Employees Workmen's Compensation	1,088,578	2,456,169	44.320	2,075,946	84.519	2 - 2	100.000
1954	General Election - Women on Juries	527,580	1,935,319	27.260	636,892	32.900	11 - 11	100.000
1956	General Election - Teachers Retirement System	1,517,160	2,640,221	57.463	1,955,168	74.053	8 - 8	100.000
1956	Special Election - Welfare	177,448	2,640,221	6.720	---	---	1 - 1	100.000
1957	Special Election - Welfare	225,123	2,084,453	10.800	---	---	3 - 3	100.000
1958	General Election - Legislative-Annual Session Salaries	637,796	2,213,514	28.813	1,317,492	59.520	9 - 7	77.777
1960	General Election - Loan Shark	1,458,125	2,798,986	52.094	2,311,845	82.595	4 - 4	100.000
1962	General Election - Welfare	1,108,264	2,467,106	44.921	1,569,198	63.604	14 - 10	71.428
1963	Special Election - Poll Tax Repeal	559,895	2,068,506	27.067	---	---	4 - 1	25.000
1964	General Election - Welfare	1,476,861	3,014,597	48.990	2,626,811	87.136	3 - 3	100.000
1965	Special Election - Increase Senate Size	222,412	1,971,965	11.278	---	---	1 - 0	0.000
1965	Special Election - Four Year Terms Executive (State)	503,879	1,971,965	25.552	---	---	10 - 5	50.000
1966	General Election - Repeal Poll Tax, Annual Registration	1,125,723	2,968,483	37.922	1,425,861	48.033	16 - 15	93.750
1967	Special Election - Veterans Land Program	274,249	2,982,862	9.194	---	---	6 - 6	100.000
1968	General Election - Teachers Retirement System	2,108,768	4,073,576	51.176	3,079,406	75.594	14 - 7	50.000
1969	Special Election - Welfare	661,778	3,500,649	18.904	---	---	9 - 4	44.444
1970	General Election - Liquor by the Drink	1,894,349	4,149,261	45.655	2,306,765	55.594	7 - 5	71.428
1971	Special Election - Welfare	792,100	3,986,690	19.868	---	---	4 - 1	25.000
	19 Elections (10 General and 9 Special)	16,597,552	51,757,018	32.068	19,305,384	67.225	131 - 94	71.755

SOURCES:

Registered Voters: Official Reports from the Secretary of State's Office; *Texas Almanac* (Dallas: A. H. Belo Corporation, selected years). The number of poll tax receipts and exemption certificates are supplemented by an estimate of the number of persons in towns under 10,000 who might be eligible voters (1951-1965).

Votes on Amendment: Official Index from the Secretary of State's Office. These figures differ in a few instances from those in other sources such as the *General and Special Laws of the State of Texas* and the *Texas Almanac*.

Votes for President and Governor: *Texas Almanac;* Richard Scammon, *America Votes 4* (Pittsburg: University of Pittsburg, 1962).

APPENDIX D

STATE COSTS OF PUBLISHING AMENDMENTS: 1951-1971

Year of Election	Number of Amendments	Total Cost	Cost Per Amendment
1951	5	$ 54,571.45*	$10,714.28
1952	2	21,428.55*	10,714.28
1953	---	---	---
1954	11	75,000.00**	6,818.18
1955	---	---	---
1956	8,1***	103,511.95	11,501.33
1957	3	47,884.55	15,948.18
1958	9	94,515.40	10,501.71
1959	---	---	---
1960	4	39,265.30	9,816.45
1961	---	---	---
1962	14	254,192.10	18,156.58
1963	4	140,229.53	35,057.38
1964	3	52,257.84	17,419.28
1965	1	11,971.71	11,971.71
1966	10	394,189.53	39,418.95
1967	16	428,839.59	26,802.47
1968	6	187,677.06	31,279.51
1969	14	247,346.19	17,667.58
1970	9	121,120.09	13,457.77
1971	7	110,742.67	15,820.38
	4	107,723.49	26,930.86
Total	131	Total $2,491,467.06	Avg. $19,018.83

* The appropriation for publication of amendments for the 1951-52 biennium was $75,000. The average cost for each amendment for 1951 and 1952 was calculated by dividing $75,000 by seven. The total cost for each election was calculated by multiplying the cost for each amendment by five and two respectively.

**The appropriation for 1953-54 biennium was $75,000. The cost per amendment was calculated by dividing $75,000 by 11.

*** Two elections were held in 1956, eight amendments being on the ballot at the general election in November and one amendment on the ballot at a special election held one week later. The Secretary of State's data do not separate the costs of the two elections.

SOURCES: Office of the Secretary of State
General and Special Laws of the State of Texas, (1951 and 1953).

TEXAS ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

A New Constitution for Texas

A NEW CONSTITUTION FOR TEXAS

Prepared by

TEXAS CONSTITUTIONAL REVISION COMMISSION

SECOND PRINTING

November, 1973

Austin, Texas

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November 1, 1973

To the Honorable William P. Hobby
Lieutenant Governor

To the Honorable Price Daniel, Jr.
Speaker of the House of Representatives

To the Members of the 63rd Legislature

In accordance with Article XVII, Section 2(b) of the Constitution of 1876, transmitted herewith are the recommendations of the Texas Constitutional Revision Commission. The recommendations consist of proposed constitutional language which the Commission was directed to prepare by Senate Concurrent Resolution Number 1, enacted by the 63rd Texas Legislature.

The proposed new constitution for Texas contained in this document is the first thorough revision of the State's basic law since it was adopted in 1876. The document is the result of months of intensive work by the Constitutional Revision Commission which was appointed in February, 1973 in accordance with a constitutional amendment approved by the voters of Texas in November, 1972. As you know, the constitutional revision process envisioned by that amendment includes a preparatory study and submission of recommendations by the Revision Commission, and then the convening of the Legislature as a Constitutional Convention in 1974 to recommend changes in the basic law of the State to the people.

After months of study and debate, the Commission has prepared a new constitution based on the general framework of the 1876 Constitution, but substantially shortened, simplified, and revised to reflect the needs of modern Texas. The new constitution contains eleven articles as opposed to seventeen in the 1876 Constitution. Much statutory detail has been eliminated from the new document and, where appropriate, will be retained in statutory form.

Although this publication fulfills the requirements set forth in Article XVII, copies of a more comprehensive report are being

presented today to the Lieutenant Governor and Speaker of the House. The full report will be distributed to members of the Legislature as soon as printed copies are available. That report contains a text of the new constitution, a description of the process by which the Revision Commission reached its conclusions, and a complete discussion of each recommended article and section of the new constitution.

In order to provide for an orderly transition of governmental operations upon the adoption of a new constitution, a transition schedule has been prepared and is included in this document.

Respectfully yours,

Beryl Buckley Milburn

Mrs. Malcolm Milburn
Vice Chairman

Robert W. Calvert

Robert W. Calvert
Chairman

RWC/BBM:cwj

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(Includes Bill of Rights Without Change
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Preamble

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.

Article I
Bill of Rights

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

Section 1. Freedom and Sovereignty of State

Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Section 2. Inherent Political Power; Republican Form of Government

All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Section 3. Equal Rights

All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Section 3a. Equality under the Law

Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative. (Added Nov. 7, 1972.)

Section 4. Religious Tests

No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Section 5. Witnesses Not Disqualified by Religious Beliefs; Oaths and Affirmations

No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Section 6. Freedom of Worship

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 7. Appropriations for Sectarian Purposes

No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Section 8. Freedom of Speech and Press; Libel

Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Section 9. Searches and Seizures

The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Section 10. Rights of Accused in Criminal Prosecutions

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. (Added Nov. 5, 1918.)

Section 11. Bail

All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Section 11a. Multiple Convictions; Denial of Bail

Any person accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor may, after a hearing, and upon evidence substantially showing the guilt of the accused, be denied bail pending trial, by any judge of a court of record or magistrate in this State; provided, however, that if the accused is not accorded a trial upon the accusation within sixty (60) days from the time of his incarceration upon such charge, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to the Court of Criminal Appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder. (Added Nov. 6, 1956.)

Section 12. Habeas Corpus

The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Section 13. Excessive Bail or Fines; Cruel and Unusual Punishment; Remedy by Due Course of Law

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Section 14. Double Jeopardy

No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

Section 15. Right of Trial by Jury

The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury. (As amended Aug. 24, 1935.)

Section 15-a. Commitment of Persons of Unsound Mind

No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury. (Added Nov. 6, 1956.)

Section 16. Bills of Attainder; Ex Post Facto or Retroactive Laws; Impairing Obligation of Contracts

No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Section 17. Taking, Damaging or Destroying Property for Public Use; Special Privileges and Immunities; Control of Privileges and Franchises

No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Section 18. Imprisonment for Debt

No person shall ever be imprisoned for debt.

Section 19. Deprivation of Life, Liberty, Etc.; Due Course of Law

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Section 20. Outlawry or Transportation for Offense

No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

Section 21. Corruption of Blood; Forfeiture; Suicides

No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Section 22. 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 on confession in open court.

Section 23. Right to Keep and Bear Arms

Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Section 24. Military Subordinate to Civil Authority

The military shall at all times be subordinate to the civil authority.

Section 25. Quartering Soldiers in Houses

No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Section 26. Perpetuities and Monopolies; Primogeniture or Entailments

Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Section 27. Right of Assembly; Petition for Redress of Grievances

The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Section 28. Suspension of Laws

No power of suspending laws in this State shall be exercised except by the Legislature.

Section 29. Provisions of Bill of Rights Excepted from Powers of Government; to Forever Remain Inviolate

To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

Article II
Separation of Powers

Section 1. Separation of Powers

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

Article III
The Legislature

Section 1. Legislative Power

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

Section 2. Composition

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

Section 3. Qualification of Members

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

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

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

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

Section 4. Election and Terms of Members

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

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

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

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

Section 5. Redistricting

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

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

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

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

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

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

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

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

Section 6. Compensation

Each member of the Legislature shall receive compensation and allowances as provided by law, not to exceed the amount recommended by the salary commission. Any increase in compensation shall become effective only at the first regular session following the next general election.

Section 7. Sessions

(a) The Legislature shall meet at least once every two years and at such times and for such duration as provided by law.

(b) All legislative proceedings shall be open to the public.

(c) Neither house may adjourn or recess for more than three days without the consent of the other.

(d) The Legislature shall meet at the seat of government unless otherwise provided by law.

Section 8. Organization and Procedure

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

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

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

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

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

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

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

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

Section 9. Legislative Immunity

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

Section 10. Conflict of Interest

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

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

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

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

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

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

Section 11. Bills

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

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

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

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

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

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

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

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

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

Section 12. Local or Special Legislation

The Legislature may not enact a local or special law if a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

Section 13. Impeachment

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

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

(c) Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall affirm or take an oath to try impartially the party impeached. If the Governor or Lieutenant Governor is tried, the Chief Justice of the Supreme Court shall preside. A person may be convicted of impeachment charges only by record vote of two-thirds of the membership of the Senate.

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

Section 14. Advice and Consent of the Senate

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

Article IV
The Executive

Section 1. Officers Constituting the Executive Department

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

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

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

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

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

Section 4. Governor's Eligibility and Installation

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

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

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

Section 5. Gubernatorial Succession

(a) If before inauguration the person elected Governor fails to qualify, is disabled, or dies, the person elected Lieutenant Governor shall be inaugurated and shall serve as Governor

until the person elected Governor at the next general election assumes office for the remainder of the term.

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

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

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

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

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

Section 6. Disability of Elective Officers of Executive Department

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

Section 7. Compensation of Officers of Executive Department

The compensation of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, and Commissioner of the General Land Office shall be as provided by law, not to exceed the amount recommended by the salary commission. The compensation of officers of the Executive Department shall not be diminished during their term of office. The Governor shall have the use of the Governor's Mansion.

Section 8. Dual Office Holding; Other Compensation

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

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

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

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

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

Section 11. Convening the Legislature in Special Session

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

Section 12. Governor's Message

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

Section 13. Action on Bills and Resolutions

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

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

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

Section 14. Chief Planning Officer

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

Section 15. Budget Preparation

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

Section 16. Budget Execution

The Governor shall be responsible as provided by law for the proper execution and administration of the total State budget and shall require of all State governmental agencies such expenditure plans, fiscal reports, and accounts as deemed necessary to supervise the expenditure of previously appropriated funds.

Section 17. Administrative Reorganization

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

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

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

Section 19. Lieutenant Governor

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

Section 20. Secretary of State

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

Section 21. Attorney General

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

Section 22. Comptroller of Public Accounts

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

Section 23. General Land Office

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

Section 24. Vacancies in Statewide Offices

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

Section 25. State Agencies

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

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

Section 26. Seal of State and Commissions

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

Article V
The Judiciary

Section 1. Unified Judicial System

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

Section 2. Supreme Court

(a) The Supreme Court shall be the highest court of the State and shall consist of the Chief Justice of Texas and at least eight other justices. The court may sit in sections as designated by the court to hear argument of cases and to consider applications for writs of error or other preliminary matters, but a majority of the court shall be necessary to decide a case.

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

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

Section 3. Courts of Appeals

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

Section 4. District Courts

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

Section 5. County Courts

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

Section 6. Justice Courts

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

Section 7. Qualifications of Judges

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

Section 8. Merit Selection and Nonpartisan Election*

(a) There is hereby created a Judicial Nominating Commission of eleven members, a majority of whom shall be non-lawyers. The Governor, Lieutenant Governor, and Speaker of the House of Representatives acting together shall select the members of the Judicial Nominating Commission and designate the chairman. The selection of the members shall be on a nonpartisan basis with due regard to representation of the sexes, ethnic groups, and geographical regions of the State.

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

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

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

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

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

** The Commission voted its preference for merit selection of appellate judges but also recommends that the following proposal for nonpartisan election be submitted to the qualified voters as an alternative:*

ALTERNATIVE SUBMISSION

Section 8. Nonpartisan Election of Appellate Judges

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

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

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

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

Section 9. Compensation

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

Section 10. Mandatory Retirement of Judges

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

Section 11. Removal of Judges

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

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

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

Section 12. Judicial Council

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

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

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

Section 13. Clerks

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

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

Section 14. Juries

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

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

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

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

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

Section 15. Suspension of Sentence and Probation

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

Section 16. Appeal by State

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

Section 17. Appeal by Accused

The right of appeal granted to an accused by Article 1, Section 11a of this Constitution shall be direct to the Supreme Court of Texas.

Article VI
Suffrage

Section 1. Qualified Voter

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

Section 2. Elections

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

Section 3. General Elections

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

Article VII
Education

Section 1. Equitable Support of Free Public Schools

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

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

Section 2. Permanent and Available School Fund

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

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

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

Section 3. Prohibition of Aid to Non-Public Schools

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

Section 4. Dedicated School Tax

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

Section 5. State Board of Education

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

Section 6. School and Community College Districts

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

Section 7. First Class Colleges and Universities

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

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

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

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

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

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

bonds or notes issued by the Board of Regents of The University of Texas System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such two-thirds of the Available University Fund, plus the net income (that is, income less administrative expense) from grazing leases of Permanent University Fund land, shall be appropriated by the Legislature for the support and maintenance of The University of Texas at Austin.

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

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

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

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

(d) For the purpose of securing the payment of the principal and interest of these bonds or notes, the Boards are severally authorized to pledge the whole or any part of the respective interests of the Texas A&M University System and The University of Texas System in the Available University Fund. The Permanent University Fund may be invested in these bonds or notes. All bonds or notes issued pursuant to this Section shall be approved by the Attorney General of Texas and when so approved shall be incontestable.

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

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

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

(c) The Higher Education Tax Fund may be pledged to secure or refund bonds issued heretofore or hereafter for acquiring land, either with or without permanent improvements thereon, constructing, equipping, repairing, rehabilitating buildings or other permanent improvements, and for acquiring capital equipment and library books and materials at the in-

stitutions for which the Fund is created. After appropriating an annual sum sufficient to pay the principal and interest due on such bonds, the Legislature shall appropriate the remainder of the Fund for the support and maintenance of State institutions of higher education other than The University of Texas at Austin, Texas A&M University at College Station, the public community colleges, and the State technical institutes.

(d) The Legislature shall provide by law for each issue of bonds authorized by this Section and for equitable distribution of the proceeds on the basis of statewide needs. Responsibility for issuance of bonds and allocation of proceeds shall be vested as provided by law.

(e) From the date on which they became eligible to participate in the special tax fund established in this Section, the institutions participating in this fund shall not receive any general revenue funds for acquiring land or permanent improvements, or for constructing and equipping new buildings or other permanent improvements, except that in the case of fire or natural disaster the Legislature may appropriate from general revenue an amount sufficient to replace the uninsured loss.

(f) If for any reason the tax authorized by this Section is held invalid, the Legislature shall provide an equal amount of revenue from other sources.

Article VIII
Finance

Section 1. Taxation

Taxes shall be levied and collected by general law.

Section 2. Property Tax Exemptions

(a) There shall be exempt from all ad valorem taxation:

(1) The property of the State except as provided by law and all other public property used for public purposes;

(2) All household goods and personal effects not used for the production of income; and

(3) All farm products in the hands of the producer and family supplies for home and farm use.

(b) There shall be exempt from State ad valorem taxation:

(1) Three thousand dollars of the assessed value of all residence homesteads; and

(2) The property of political subdivisions of the State.

(c) The Legislature by general law may exempt from ad valorem taxation:

(1) Property used exclusively for educational or charitable purposes or places of burial not held for profit,

(2) Up to three thousand dollars of the assessed value of property owned by a disabled veteran of the armed services of the United States or by the surviving spouse and surviving minor children of a disabled veteran of the armed services of the United States;

(3) Up to three thousand dollars of the assessed value of property owned by the surviving spouse or surviving minor children of any member of the armed services of the United States whose life was lost while on active duty;

(4) Actual places of religious worship;

(5) Any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society if the property yields no revenue to the church or religious society, but such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; and

(6) Any other property validly exempt at the time of adoption of this Constitution.

(d) The governing body of any political subdivision may exempt from ad valorem taxes not less than three thousand dollars of the assessed value of a residence owned and occupied by persons sixty-five years of age or over. If no exemption has been granted, the governing body,

upon a petition signed by qualified voters equal in number to at least twenty percent of those voting in the last preceding election held by the political subdivision, shall call an election to determine by majority vote whether to grant such an exemption in the amount, not less than three thousand dollars, specified in the petition.

(e) The Legislature by general law may provide relief from residential ad valorem taxes for persons determined to be in need of such relief because of age, disability, or economic circumstances. Any such law shall provide for the reimbursement of political subdivisions for revenue losses caused by such relief.

(f) No exemptions from ad valorem taxation shall be granted except as authorized under this Section.

Section 3. Highway-User Revenues

Subject to legislative appropriation, allocation, and direction, all net revenues from motor vehicle registration fees and three-fourths of net revenues from all taxes on fuels and lubricants used to propel motor vehicles over public roadways, except gross production and ad valorem taxes, shall be deposited in the State Highway Fund. Such revenues shall be used solely for acquiring rights-of-way, constructing and maintaining a State highway system; for policing public roadways; and for administering laws pertaining to the supervision of traffic and safety on public roadways. One-fourth of net revenues from these taxes shall be allocated to the Available School Fund. The net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each county, or less than the percentage allowed to be retained, under the laws in effect at the time of adoption of this Constitution.

Section 4. State Taxes on Income

If a law is enacted levying an income tax, the tax may be on personal or corporate income, or both, and may be graduated or otherwise. The law may define income by reference to the laws of the United States as they then exist or may thereafter be changed.

Section 5. State Debt

(a) State debt shall mean bonds or other evidences of indebtedness which are secured by the general credit of the State or are to be repaid, directly or indirectly, from tax revenue and are incurred for the State or for an agency of the State.

(b) No State debt shall be authorized or incurred except as provided in this Constitution.

(c) State debt may be authorized by general law to refund outstanding State debt.

(d) State debt may be incurred if approved by two-thirds vote of the membership of each house of the Legislature and submitted to and approved by a majority of the qualified electors voting on the question.

Section 6. Appropriations

(a) Money may not be drawn from the State Treasury except in accordance with specific appropriations made by law.

(b) Any appropriation from the State Treasury expires two years after its effective date.

(c) No bill containing an appropriation may be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts certifies that the amount appropriated is within the estimated revenue for the applicable fiscal period.

(d) No appropriation in excess of the estimated revenue shall be valid unless it is made in response to imperative public necessity and approved by four-fifths vote of the membership of each house of the Legislature.

Section 7. Public Funds

Public money and public credit shall be used for public purposes only.

Section 8. Public Purposes

Public purposes, as that term is used in this Constitution, include, but are not limited to, purposes for which taxes could be levied or public money or public credit could be used before the adoption of this Constitution.

Article IX
Local Government

Section 1. Counties

The counties of the State are those that exist on the date of adoption of this Constitution. Changes in county boundaries, the merger and division of counties, and the removal of county seats shall be subject to the approval of a majority of the qualified voters voting on the question in each county affected.

Section 2. Powers of County Government

The powers of counties shall be those granted by this Constitution and by general law.

Section 3. County and District Officials

(a) The governing body of each county, to be known as the County Commission, shall consist of a County Judge elected by the qualified voters of the county and four County Commissioners, each elected by the qualified voters from separate and compact precincts containing as nearly as practicable an equal number of inhabitants. The County Judge shall serve as presiding officer.

(b) A Sheriff, Treasurer, Tax Assessor-Collector, County Clerk, and District Clerk shall be elected for each county, except that a single County Clerk may be elected to perform the duties of county and district clerk as provided by law.

(c) County Attorneys, District Attorneys, and Criminal District Attorneys shall be elected in such numbers and for such counties as provided by law.

(d) The County Commission may provide for the election of one or more Constables.

(e) The qualifications, duties, and functions of county officials and the grounds and procedure for disqualification, suspension, and removal shall be as provided by law.

(f) Notwithstanding any of the foregoing provisions, the qualified electors of a county, as provided by general law, may by charter, or by a majority vote of those voting on the question, alter the governing body, create additional offices, eliminate offices, combine the duties and functions of offices, and change the method of selection of any one or more county officials. In such an event the county shall provide for the performance of all duties and functions required by State law.

(g) Vacancies in county offices shall be filled as provided by general law or charter. Vacancies in district offices shall be filled as provided by law.

Section 4. County Charters and Ordinances

(a) The Legislature shall by law provide procedures by which any county with a population of not less than twenty-five thousand may adopt, amend, or repeal a charter with the approval of a majority of qualified voters voting on the question. A charter election may be initiated by petition of the qualified voters of the county or by resolution of the governing body as provided by law. No charter or ordinance shall be inconsistent with the Constitution or laws of the State.

(b) The qualified voters of a county without a charter may by a majority of those voting on the question grant the county governing body the power to enact ordinances as authorized by law.

(c) If a county ordinance conflicts with an ordinance of an incorporated city or town, the municipal ordinance shall prevail within its jurisdiction as defined by law.

(d) Neither county charters nor ordinances shall affect jurisdiction or venue or the duties of personnel of courts which are part of the State unified judicial system.

Section 5. General Law Cities

Cities and towns having a population of one thousand five hundred or less may be chartered only by general law. They may levy, assess, and collect such taxes as may be authorized by law.

Section 6. City Charters

Cities and towns having more than one thousand five hundred inhabitants may, by a majority vote of the qualified voters voting on the question, adopt, amend, or repeal their charters as provided by law. No charter or ordinance shall be inconsistent with the Constitution or general laws of the State. Cities which adopt charters under this Section may levy, assess, and collect any taxes authorized by law or charter. No city shall lose the power to amend or repeal its charter because its population drops below one thousand five hundred.

Section 7. Special Districts and Authorities

The Legislature shall provide by general law for establishing, financing, consolidating, and abolishing special districts and authorities and shall define their powers by general law. No special district or authority shall be created if the service it is to provide can be provided by an existing political subdivision. The provisions of this Section shall not be applicable to school and community college districts.

Section 8. Terms of Office

The terms of office for all elected officials of political subdivisions shall be as provided by law or charter.

Section 9. Compensation of Officials

Elected officials of political subdivisions shall be compensated only on a salary or per diem basis.

Section 10. Local Redistricting

Within the calendar year following that in which each federal decennial census is published, and at such other times as the governing body of any political subdivision may deem necessary, each governing body not entirely elected at large shall divide its geographical area into districts for the election of those representatives to the governing body not elected at large. The districts shall be composed of contiguous territory and shall be as compact and as nearly equal in population as practicable.

Section 11. Local Debt

Political subdivisions shall not issue general obligation bonds, except refunding bonds, unless approved by a majority of qualified voters voting on the question. No debt shall be

created by a political subdivision unless at the same time provision is made for paying the interest and principal when due.

Section 12. Intergovernmental Cooperation

A political subdivision may, by act of its governing body, cooperate or contract with one or more other political subdivisions, the State, or the United States with respect to the exercise of any function, power, or responsibility, or the use of public funds and credit in the public interest.

Article X
General Provisions

Section 1. Official Oath

All State and local officials shall take the following oath before they enter upon the duties of their office:

> "I, , do solemnly swear that I will faithfully execute the duties of the office of and will to the best of my ability preserve, protect, and defend the Constitutions and laws of the United States and of the State of Texas, so help me God."

Section 2. Residence of Civil Officials

All elected and appointed officials shall reside within the State. All elected and appointed officials of a political subdivision shall reside within the political subdivision which they serve, and shall keep their offices at such places as required by law. Failure to comply with these conditions shall vacate the office.

Section 3. Officials to Serve Until Successor Qualified

All officials may continue to perform the duties of their offices until their successors shall be duly qualified.

Section 4. Forfeiture of Residence by Absence on Public Business

No person shall forfeit the right of suffrage, or of election or appointment to any office because of absence from the State or a political subdivision on business of the United States, this State, or a political subdivision.

Section 5. Vacancies Filled for Unexpired Term

Except as otherwise provided in this Constitution, elections to fill vacancies in office shall be for the remainder of the term only.

Section 6. Disqualification from Constitutional Office

In addition to the grounds and procedures provided in this Constitution, the disqualification, suspension and removal from any constitutional office, withholding of salary, and temporary filling of vacancies shall be as provided by law, but no statute enacted under the authority of this Section may be applicable to conduct committed before its enactment.

Section 7. Qualification for and Disqualification from Statutory Office

Unless otherwise provided in this Constitution, the qualifications, grounds for disqualification, suspension and removal from office, withholding of salary, and temporary filling of vacancies for statutory officials shall be as provided by law.

Section 8. Appointments to State Agencies

The authority responsible for appointing the members or filling vacancies for State gov-

ernmental agencies shall make appointments that fairly and equitably represent the sexes, ethnic groups, economic groups, and geographical regions of the State.

Section 9. Salary Commission

(a) A salary commission shall be established to recommend rates of compensation for members of the Legislature, judges in the State unified judicial system, and officials of the executive branch, and to perform such other duties pertaining to compensation as may be provided by law. Compensation paid by the State shall not exceed the rates recommended by the commission.

(b) The salary commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate. Members of the commission shall serve six-year terms. Vacancies shall be filled by the Governor for the remainder of the term with the advice and consent of the Senate. No member of the commission may hold another public office at the same time.

Section 10. Environment

The State and each person shall maintain and improve a clean and healthful environment in Texas for present and future generations. The Legislature shall provide for the administration and enforcement of this duty. The Legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 11. Separate and Community Property of Husband and Wife

All property owned or claimed by each spouse before marriage, and that acquired afterward by gift, devise, or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of each spouse in relation to separate property as well as that held in common with one another. A husband and wife may from time to time and by written instrument partition between themselves in severalty or into equal undivided interests all or any part of their existing community property. In like manner, they may exchange between themselves the community interest of one in any property for the community interest of the other in other community property. The portion or interest set aside to each by partition or exchange shall be and constitute a part of the separate property of such spouse. A partition or exchange under this Section shall not prejudice the rights of preexisting creditors. This provision is self-operative, but laws may be passed prescribing reasonable requirements not inconsistent herewith.

Section 12. Homestead

(a) The homestead of a family and of such other persons as may be designated by law is protected from forced sale for the payment of all debts, except for purchase money therefor, taxes due thereon, and for work and material used in constructing improvements thereon when the work and material are contracted for in writing by the owner but, in the case of married persons, only if both spouses consent to the contract in the manner required when a homestead is sold. A homestead of married persons may be sold only with the consent of both spouses, except that when the homestead is the community property or the separate property of the spouse desiring to sell, it may be sold as provided by law without the consent of the other spouse if the latter is incompetent, has disappeared, or has abandoned the homestead, as provided by law. No mortgage, trust deed, or other lien on a residential homestead shall be valid except for the purchase money therefor or for improvements made thereon, as provided above. Liens may be created on non-residential homesteads but only in the manner required for a conveyance thereof. All pretended sales of the homestead involving any condition of defeasance shall be void.

(b) The homestead not in a city, town, or village shall consist of not more than two hundred acres of land, which may be in one or more parcels with the improvements thereon. Of the two hundred acres, only fifty acres on which the home is located shall be classified as residential and the remainder shall be classified as non-residential. The homestead in a city, town, or village shall consist of land valued at the time of establishment thereof, and without reference to the value of any improvements thereon, at no more than ten thousand dollars or any larger sum as may be provided by law. A homestead in a city, town, or village is a residential homestead if used as a home and is non-residential if used as a place for the exercise of the calling or business of the head of a family or such other person as may be designated by law. A home remains a homestead while temporarily rented only so long as no other homestead is acquired.

(c) The homestead of married persons shall descend and vest like any other real property, except that the homestead shall not be partitioned so long as it is used and occupied as a home either by the surviving spouse, or by minor children if the use and occupancy have been granted by the court.

Section 13. Protection of Personal Property from Forced Sale

The Legislature shall provide by law for the protection from forced sale of certain portions of the personal property of all adults and heads of families.

Section 14. Wages Not Subject to Garnishment

No current wages for personal service shall be subject to garnishment.

Section 15. Private Corporations

No private corporation shall be created except by general laws.

Section 16. Foreign Corporations with Banking and Discounting Privileges

No foreign corporation, other than national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State.

Section 17. Alcoholic Beverages

(a) The Legislature shall regulate the manufacture, sale, possession, and transportation of alcoholic beverages, and shall preserve the right of any county, justice precinct, or incorporated town or city to exercise local option by election to legalize or to prohibit the sale of alcoholic beverages of various types and various alcoholic content.

(b) In any county, justice precinct, or incorporated town or city in which the manufacture, sale, barter, or exchange of alcoholic beverages of any of various types and various alcoholic content was prohibited at the time of the adoption of this Constitution, the same shall continue to be unlawful unless and until a majority of the qualified voters in such political subdivision voting on the question in an election shall determine such to be lawful.

Section 18. Practitioners of Medicine

The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

Section 19. Gambling Enterprises

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

Section 20. Liens of Mechanics, Artisans, and Materialmen

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

Section 21. Pension and Retirement Systems

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

Article XI
Mode of Amending the Constitution of the State

Section 1. Amendments to the Constitution

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

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

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

Section 2. Constitutional Convention

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

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

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

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

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

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

Transition Schedule

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

Section 1. Accelerated Effective Date

(a) Sections 14 and 15 of Article IV shall become effective on January 1, 1975.

(b) Section 10 of this Transition Schedule shall become effective on January 1, 1975.

Section 2. Existing Laws, Rights, and Proceedings

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

Section 3. Validity of Issued and Unissued Bonds

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

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

Section 4. Continuation of Grants of Power to Counties

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

(a) Subsection (c) of Section 52 of Article III;

(b) Section 52d of Article III;

(c) That Section 52e of Article III that was added in 1967;

(d) That Section 52e of Article III that was added in 1968; and

(e) Section 6b of Article VII.

Section 5. Ten Cent State Ad Valorem Tax

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

Section 6. County Ad Valorem Tax

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

Section 7. Assessment of Agricultural Lands

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

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

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

Section 9. Compensation of Legislature and Lieutenant Governor

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

Section 10. Anticipatory Legislation

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

Section 11. Retirement Systems

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

(a) Article III, Section 48a; Fund for Retirement, Disability and Death Benefits for Employees of Public Schools, Colleges and Universities;

(b) Article III, Section 48b; Teacher Retirement System of Texas;

(c) Article III, Section 51-e; Municipal Retirement Systems and Disability Pensions;

(d) Article III, Section 51-f; State-wide Retirement and Disability System for Municipal Officers and Employees;

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

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

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

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

Section 12. Special Elections for Members of the Legislature

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

Section 13. Terms of Office

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

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

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

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

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

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

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

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

Section 15. Board of Pardons and Paroles

Until otherwise provided by law, the Board of Pardons and Paroles shall continue to be chosen and shall continue to operate as provided in Section 11 of Article IV of the Constitution of 1876, as amended.

Section 16. Constitutional Powers Omitted from Implementing Statutes

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

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

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

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

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

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

Section 17. Dual Officeholding

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

Section 18. Conflict of Interest

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

Section 19. The Judiciary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 20. Publicizing Proposed Amendments

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

Adoption Schedule

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

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

Section 1. Effective Date

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

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

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PREFACE

This bibliography on state constitutional revision and the Texas constitution has been prepared for the delegates to the 1974 Texas Constitutional Convention as a guide to the materials in the Legislative Reference Library. In addition to the items listed here, the Library also contains copies of all state constitutions and a newspaper clipping file on the Texas constitution and Texas constitutional revision.

Although this publication is a guide to one library collection, we are making the bibliography available to libraries throughout the state in the hope that it will encourage and aid citizen study of the constitutional revision process.

Malinda Allison
Assistant Director

Legislative Reference Library
Austin, Texas
Mr. James R. Sanders, Director

December 1973

PART A - STATE CONSTITUTIONAL REVISION

A1 - GENERAL WORKS ON STATE CONSTITUTIONS

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Comment

VOL. XXIV, NO. 2 LYNDON B. JOHNSON SCHOOL OF PUBLIC AFFAIRS, THE UNIVERSITY OF TEXAS AT AUSTIN FEBRUARY, 1978

The Meaning of the Vote on the Proposed Texas Constitution, 1975

John E. Bebout*

On November 7, 1972, Texas voters, by a vote of 1,549,982 to 985,282 or 61% to 39%, authorized the members of the next Texas legislature to serve, in 1974, as a constitutional convention to consider and propose revision of the Texas constitution. Three years later, on November 4, 1975 by the vote of less than half the number who voted on this authorization in 1972, a revised constitution submitted in the form of a series of eight amendments based on the work of the convention was defeated by margins, on the several amendments, of nearly three to one, or by an average of 73% to 27%.[1]

Murray and Forsbach report "Overall, support for the eight proposals ranged from just 25 percent to 28.1 percent."[2]

What do these votes, taken together, mean? What did the voters have in mind when they voted for or against, or failed to vote on, the constitution prepared in response to their instructions? What do their actions say about the attitude of Texans toward their present constitution? What do they portend for the prospects of future attempts to revise it?

These are important questions. The constitution is important in the governance of state, cities, and counties and affects individual citizens and organized private interests. It affects the role that Texas plays in the nation. The constitution has grown bigger and more complicated since 1876, as some 226 amendments have been adopted, in recent years at an increasing rate. Governors, legislators, civic groups, students of government, newspaper editors, and others have complained about it and repeatedly called for a general simplification, updating, and revision. Since Governor Beauford Jester in 1949 organized a Citizens Committee on the Constitution which called for a revision commission, the issue has been an increasingly active item on the public agenda. Governor John Connally sought legislation for a constitutional convention in 1966-67. There were studies of constitutional revision by the Legislative Council and an official Citizens Advisory Committee in the 1950s and studies and proposals by two constitutional revision commissions. The last was the prestigious Texas Constitutional Revision Commission of 1973 established to prepare for the Convention. This Commission put its conclusions in a draft for a complete new constitution that was widely acclaimed and substantially shaped and influenced the work of the Convention.

This history and the experience of other states strongly indicate that, despite the rejection of 1975, the issue of constitutional revision will not go away, or stay away very long. The better understanding Texans have of the meaning of the votes on the 1972 call for revision and the 1975 defeat of the resulting amendments, the better will be their ability to deal with the revision issue in the future.

There have been various attempts to assess these votes and explain their meaning, by journalists, political leaders, and political scientists. This report tries to synthesize some of the information and insights developed in a number of the attempts. A word about the principal sources drawn upon here may be in order.

From the beginning of the revision movement of the 1970s, the Institute for Urban Studies, University of Houston, offered a broad program of research, information, and technical assistance, pri-

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[1] Janice C. May, *The Texas Constitutional Revision Experience in the '70s* (Austin: Sterling Swift Publishing Co., 1975).

[2] Richard Murray and Curtis Forsbach, "Anatomy of a Landslide: An Analysis of Texas Voters' Rejection of a New State Constitution." Paper published by the Institute for Urban Studies, University of Houston, 1976.

Comment

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marily for officials and official bodies, especially the Legislature, the Constitutional Revision Commission, the Constitutional Convention, and the Texas Advisory Commission on Intergovernmental Relations. It also provided a certain amount of information to a broader public. In the process it enlisted the help of persons in a number of universities, and other individuals. One of the political scientists, Dr. Janice C. May, Professor of Government at The University of Texas, wrote, among other things, a book, *The Texas Constitutional Revision Experience in the '70s*, issued by the Institute for Urban Studies before the 1975 vote. The book was based not only on research but also on direct involvement of the author as a member of the last two constitutional revision commissions and almost daily attendance at the Constitutional Convention and the 1975 Legislature as it produced the package of amendments that were submitted to the people. Against this background, Dr. May also wrote an article, "Texas Constitutional Revision: Lessons and Laments," which appeared in the February, 1977 number of the *National Civic Review*. After the election, the Institute commissioned Professors Richard Murray and Curtis Forsbach of the University of Houston to do a paper entitled "Anatomy of a Landslide: An Analysis of Texas Voters' Rejection of a New State Constitution." The most distinctive effort of the Institute to find explanations of the 1975 results has been through a survey among residents of the Houston-Galveston Metropolitan Area, conducted as a part of the larger Houston Metropolitan Area Project.[3]

One other Texas source will be referred to, namely, an analysis of voting results by counties and regions, entitled "Patterns of County Support for Constitutional Revision in Texas, 1975" by James A. Curry and Michael W. Mansfield in Jones, Ericson, Brown, and Trotter, *Practicing Texas Politics*, 3rd edition (Houghton Mifflin Co., 1976). Finally, the significance of the Texas experience in these revision elections will be checked against experience in other states as reported in studies of a number of revision efforts in recent years.

Of special interest, because they are presented for the first time, are the results of the questions on the behavior or attitudes of voters and nonvoters with respect to the 1975 revision amendments as reported in the Houston Metropolitan Area survey (HouMAP). This effort to query people in order to assess the meaning of their performance in an election of this sort is highly unusual if not unique. For a variety of reasons, however, the real significance of its findings can be determined only with the help of information and analysis obtained from other sources. For one thing, the answers obtained from only one metropolitan area need to be interpreted by relating the vote in that area to the votes in other parts of the state. For another thing, the vote at a particular time in a given set of circumstances is relatively meaningless unless seen in historical and comparative perspective.

THE 1972 VOTE

Our starting benchmark is the 1972 vote on "Proposition Four," the amendment to the constitution that authorized the members of the next legislature to serve as a constitutional convention. Proposition Four was one of fourteen amendments voted on at the same time, eleven of which passed. Almost fifty (49.7) percent of the registered voters expressed themselves on the amendment, which ranked eighth among the fourteen in the size of the vote cast on it.

It is hard to interpret the full meaning of this vote. Dr. May points out that it attracted fewer votes than a majority of the other amendments and that the margin of "yes" votes was not unusually high for an approved amendment. On the other hand, the fact that more than three out of every five of the approximately half of the registered voters who voted on the question said they wanted to open the door to revision is impressive. Experience in Texas and elsewhere indicates that constitutional revision is seldom a big vote grabber and that people do not generally vote for it absentmindedly or out of mere curiosity. It is hard to escape the conclusion, therefore, that the vote was a meaningful reflection of a long term and fairly widespread dissatisfaction with the Texas constitution noted earlier. It was widely so interpreted at the time.

Dr. May, in Chapter Three of her book on the revision experience, analyzed the vote by Standard Metropolitan Statistical Areas (SMSAs) and by nine political regions.[4] All but two of the twenty-four SMSAs cast favorable votes on Proposition Four, from 87% in Laredo and 73% in El Paso to 51% in Tyler. Odessa and Sherman-Denison turned down the proposition by 51% and 54% respectively. All nine of the political regions went for revision by percentages ranging from 69% in Southwest Texas to 54% in West Texas. The second and third highest votes were cast in the South Texas and Gulf Coast regions, 68% and 66% respectively. The vote by counties is also interesting because it indicates that the most rural areas, in general, were the least supportive of revision, although all but two of the counties in South Texas did turn in majorities for it. However, sixty-two of the eighty-two counties immediately to the north rejected it.

THE VOTE ON THE 1975 REVISION

The vote that defeated the eight amendments in which the revision was embodied in 1975 was far lighter, although much more decisive in terms of percentages, than the vote in support of the *idea* of revision in 1972. The largest vote *on* any of the eight propositions, 1,172,803, was only about 75% of the vote cast *for* Proposition Four in 1972. The average vote cast against the 1975 amendments was about 55% of the "Yes" vote in 1972. These figures reflect the fact that whereas nearly 50% of the registered voters ex-

[3]HouMAP was a full random probability survey of households in the thirteen county, Houston-Galveston planning region. Approximately 3300 households were surveyed by telephone during the summer and fall of 1976.

[4]The regions were drawn from Charles Deaton, *The Year They Threw the Rascals Out* (Austin: Shoal Creek Press, 1973).

pressed themselves on Proposition Four, the largest vote cast on a single amendment in 1975 represented less than 25% of those registered. The most obvious explanation for this discrepancy lies in the fact that the vote in 1972 was in a general election in which voter interest had been aroused by a major state political scandal, whereas the 1975 election was a special election. In Houston, however, there was a lively contest for the office of mayor which brought out a sizeable vote. Constitutional revision, like most public questions, does not attract the kind of public interest that candidates for office do. Voting on constitutional amendments is, therefore, always much heavier in general than in special elections.

This is not to suggest that the result would have been different if revision had been submitted in a general election, although the closest students of the returns[5] think that the margin of victory for the opponents would probably have been somewhat smaller. The important point here is to recognize that the final decisions on constitutional issues in Texas are made by small minorities of the potential *voters* in Texas. Less than 18% of the registered voters piled up the largest negative vote on any of the amendments. To make the point on the power exercised by a small minority more emphatic, Murray and Forsbach observe: "When one considers that about 40 percent of the adults in Texas are not registered, this means that only about one in seven Texans over eighteen years old voted on the constitutional questions." And this means that less than eleven percent of the *potential* voters in Texas, even according to the 1970 census, which is out of date, defeated the revision. Since registration and voting in Texas have nowhere to go but up, the effect of nonparticipation in elections represents a large unknown for the future.

THE HouMAP SURVEY

Since the HouMAP survey in the Houston metropolitan area gives the only direct testimony of voters and nonvoters themselves on the 1975 revision election, it will provide the focus for further analysis of the meaning of that election. When it is useful, this evidence from a single area will be put in the context of statewide returns as they have been analyzed by counties in the light of socioeconomic information about the counties.

[5]Murray and Forsbach, Curry and Mansfield, and Janice May.

At the outset, it is necessary to point out certain limitations of the HouMAP survey. These result from the fact that the questions on the revision election had to be included in a much larger, more comprehensive survey which was not conducted until several months after the election. Consequently, it was not possible to ask all the questions that might have been desirable. The time lag meant that memories had grown dim, with the result that answers on some questions were not always as reliable as they would have been immediately after election. However, it is clear from relating the returns from the survey to other information that they are, for the most part, reasonably reliable and that they contribute significantly to an understanding of what went on.

Persons registered to vote were asked if they had voted in the 1975 election. If the answer was "Yes," voters were asked if they had voted for all the propositions, against all, or for some and against others. They were then asked why they thought they had decided to vote as they did. Registered persons who did not vote in 1975 were asked why they did not vote and whether, if they had, they thought they would have favored the new constitution or opposed it. Voters and persons not registered were asked if they could recall whether the governor was *for* or *against* the amendments at the time of the election. All persons were asked whether they thought that the question of constitutional revision should be dropped or, rather, that the state should continue to try to revise the present constitution.

For the purposes of this report, some of the answers have been analyzed separately for the city of Houston and the remainder of the Houston-Galveston metropolitan area. One reason for this is the fact that the mayoralty election brought out a larger vote than in most other parts of the area or the state. The returns have then been broken down by several characteristics of the population: age, ethnicity, education, party affiliation, political ideology (conservative, liberal), and income. There appear to be significant differences in voting behavior for all or most of these variables. Consideration of these differences can be important for at least three reasons. First, they provide some clues as to kinds of influences affecting voting behavior. Second, since the distribution of these characteristics in the population is subject to change, in some cases more or less predictably, the differences give some indication of possible future directions in the way with which the revision issue might be dealt. Finally, they contribute to our general knowledge of the fascinating subject of Texas politics.

PRINCIPAL FINDINGS FROM THE HouMAP SURVEY

The salient facts about constitutional revision revealed by the survey can be analyzed under three main headings: (1) what they show about the attitudes of voters toward the Texas constitution; (2) what they show about the level of voter interest and understanding relative to the revision issue; and (3) what they show about differences among voter groups or communities with respect to constitutional revision. The findings under these heads, combined with information derived from other sources, lead to conclusions about the reasons for the 1975 result and the prospect for future efforts toward general revision of the constitution.

(1) Attitudes of voters toward the Texas Constitution. Probably the most significant revelation of the survey is that rejection of the 1975 amendments did not amount to an endorsement of the present constitution. On the contrary, when asked whether constitutional revision should be dropped or continued, only about 25% of respondents said revision should be dropped, while nearly 60% in Houston and Harris County and over 53% in the other twelve counties said it should be continued, the remainder being uncertain.

Answers to certain other questions point in the same direction. When asked why they voted as they did, slightly more than 12% of respondents said: because revision was needed. About the same number said flatly that revision was not needed, but about 29% gave as their reason the fact that they wanted to split their vote, which presumably indicated the feeling

The answers to the question: "Do you recall how you voted?" are puzzling. About 17% of those who said they remembered, both in Houston and in Harris County as a whole, claimed to have voted for all eight propositions and the same number claimed to have voted against all, while more than 65% said they split their vote. In view of the fact that the difference in support between the least and the most popular amendments statewide was only three percentage points, Murray and Forsbach concluded that

most people had probably voted straight tickets, for or against all. That 65% of respondents split their votes seems improbable, although it is statistically possible. Perhaps a number of split votes resulted from failure to vote at all on certain amendments about which voters felt no conviction one way or the other, although the fact is that the vote turnout was about the same on all amendments. Perhaps some voters did not remember correctly. No matter what the explanation, the fact that almost 83% of the respondents think they remember having voted either for all or for at least some proposed amendments seems consistent with the position of a substantial majority that revision should go on.

Further support for this position is found in the response of nonvoters to the question: "If you had voted, do you think you would have favored the new constitution or opposed it?" About 59% of Houston voters said they would have favored it, 41% that they would have opposed it. The corresponding figures for the whole survey region were 56.5% and 43.5% respectively. Whether the nonvoters would really have lined up that way, had they voted, is open to serious question, but their responses are anything but an endorsement of the present constitution.

The evidence of this survey of voters and nonvoters in the Houston-Galveston metropolitan area does not reveal any inherent inconsistency between the decisive vote of 1972 to embark on revision of the present constitution and the decisive vote against the 1975 revisions. Rather, the testimony of respondents, like the vote for Proposition Four in 1972, reflects a persistent feeling that Texas should try to provide itself with a better constitution. The 1975 vote simply means that the people were not satisfied that they had yet been offered such a constitution.

(2) **Level of voter interest and understanding relative to constitutional revision.** Although the survey reveals an endemic dissatisfaction with the present constitution, it also reveals the relative shallowness of any understanding, conviction, or feelings about the constitution on the part of most citizens. This comes out in various ways and is supported by evidence inherent in the very small turnout of voters who took the trouble to express themselves on the eight amendments.

For example, less than 46% of those who said they had voted on the new constitution recalled how they had voted. Of those who answered the question "Why do you think you decided to vote as you did?" more than 40% could not remember or gave a nonanswer. When nonvoters were asked why they had not voted, one third gave no reason. Eight percent gave what could be a very good reason: that they did not know the issues.

Some measure of the information with which voters went to the polls is afforded by answers to the question: "Do you recall at the time of the election whether the governor was *for* or *against* the proposed constitution?" Only 25.6% said correctly that the governor was against it, while 18.2% thought he was for it. More (56%) said they could not recall or did not know. Interestingly, more Houston Republicans (who voted more heavily against revision than either Democrats or Independents) thought Governor Briscoe was for the revision than those who thought he was against it. Houston Republicans apparently had the prize for miscalling the Governor's position, 29.8% thinking he was for the revision to 24.2% that he was against it. The Independents were the best informed, 34.5% reporting that he was against it to 18.8% who thought he was for it.

It is evident that very few Texans cared enough and knew enough about the state constitution to cast informed votes on the revision questions in 1975. This is not surprising in the light of experience in other states. The visibility of state constitutions is too low and the issues raised in connection with their revision are too complex to make it easy and natural for most voters under their own steam to interest and inform themselves enough to go to the polls and cast votes. A large and reasonably confident vote on constitutional revision seldom occurs unless there has been a prolonged and prodigious campaign, involving well-known leaders who play active roles, very extensive public information or education programs, usually on both sides, and a large number of volunteers carrying the word and working the precincts. Obviously, neither the proponents nor the opponents were sufficiently visible and active in 1975 to stir most voters out of their indifference or their sense of incompetency in the face of the revision issue.

(3) **Differences among voter groups.** The HouMap survey reveals significant differences in behavior on revision among various segments of the population as defined by political affiliations, political ideology, age, education, ethnicity, economic status, and geographic location. These have been analyzed in detail for the city of Houston and for the remainder of Harris County, and can be summarized fairly briefly.

Party differences. More Houston Democrats reported voting for all amendments than against all of them, 22.9% to 13.3%, while the Republicans split, 11% for all to 23.5% against, the remainder in each case splitting their votes. The Independents were in between, 14.1% for all to 18.8% against all. As with most other groupings, all three broke more heavily against revision in Harris County outside of Houston, where, for example, more Democrats reported voting against all the amendments than for all. As for continuing the revision effort, there was little difference between Republicans who registered and Democrats who registered (including nonvoters as well as voters) in support for continuing the revision effort. In this case, the Independents opted most heavily for continuation (67% of Houston Independents supporting this position).

Differences by ideology. Among Houston voters who classified themselves by political ideology, the conservatives were most heavily against the revision, (10.3% for all amendments to 19.5% against all) while the moderates were more evenly divided (19.7% for all and 17.6% against all). The liberals were most supportive (26.4% for all to 10.7% against all). However, over 70% of the conservatives reported splitting their votes as against just under 63% of the moderates and liberals. This appears to indicate a readiness to support some revision among voters of all persuasions. It is interesting, and puzzling, that as many as 50% of the nonvoting conservatives said they would have voted for the new constitution had they gone to the polls, while 56.4% of the moderates and 73.4% of the liberals said they would have done the same. It is to be presumed that confronted with the ballot, some of these would have joined the ranks of the ticket splitters and others the "nay" sayers.

Differences by age. The report of voting by age groups presents a somewhat confusing pattern. Of those Houston voters under thirty, 19.2%, and of those sixty or over, 25.5%, reported voting for all amendments as against only 14.9% in the thirty to fifty-nine age group. This would suggest that those in the middle years, who reported no larger percentage of "no" voters than the others, but a larger percentage of vote

splitters, were likely to be more cautious or more deliberate in their voting than the young or the old. A straw in the wind that may point in the same direction is the fact that the middle group were better informed on the position of the Governor than the others. Other figures in the HouMAP survey tend to the conclusion that, in general, the older people were less likely to be receptive to revision than others. They voted more heavily against revision in Harris County outside of Houston than either of the other age groups. Moreover, the older people were much more inclined to say that revision should be dropped than the others, 35.5%, as against 18.9% of those under thirty and 24% of those in the middle years who favored dropping revision. Finally, the nonvoters in the oldest group reported almost two to one that they would have voted against the revision, close to the reverse of the reports from the nonvoters in the remaining age groups. These figures take on added significance when we note that people in both the two upper age groups showed a much higher percentage of registered voters than the under thirties and that the sixty year olds and over showed the highest percentage of those voting, 66.1%.

Differences by education. Respondents were classified by educational attainment: non-high school graduates, high school graduates, some college (one to three years), and college graduates. The answers to the question on how they voted are puzzling, largely because an unusual 93% of the non-high school graduates claimed to have either voted for all amendments or split their votes. The total for high school graduates was 76.7%, while the total for those with some college and those with college degrees were 82.2% and 81.1% respectively. As for the straight ticket voters, those with some, or a full college education, were fairly evenly divided, the proponents having the edge by about one percentage point.

Answers to another question show consistent differences along the rising educational scale. When asked why they voted as they did, more than twice as many persons with college degrees either said they felt revision was needed or wanted to split their vote than persons with less than a high school diploma. As education increased so did support for some revision, while inability to remember why they voted as they did decreased.

Two other questions show striking differences between college graduates and all others. In all categories except college graduates, more thought the Governor supported revision than those who thought correctly that he opposed it. Among college graduates 18% thought he supported it; 41.2% thought he opposed, while only 40.8% said they didn't know or couldn't recall. Among those with some college education, 50.3% admitted that they didn't know, but a whopping 26.6% who thought the Governor supported it obviously didn't know either, as well as some who simply guessed luckily that he did not. Maybe a little college education teaches people to bluff, since almost two thirds of those without its benefits admitted they didn't know.

Differences among ethnic groups. The breakdown by ethnic groups is fairly clear. Black and Hispanic voters were much more supportive of revision than Whites. Only 6.1% of the Black voters in Houston who responded and 8.1% of the Hispanic voters said they voted against all amendments, while over 22% in each case voted for all of them with the remainder splitting their vote. On the other hand, only 15.5% of the Whites said they voted for all, to the 22.3% who said they voted against all. The answers to the question of why they voted as they did were consistent with the answers to the first question. Similarly, 73.8% of the Blacks and 70% of the Hispanics who did not vote said that had they voted they would have been for the revision, as against 53.7% of the Whites. It was only on the question of continuation of the revision effort that the responses of all three groups were fairly close. Slightly more than 60% of the Whites favored continuation, to 55.4% of the Blacks and 65.2% of the Hispanics. At the same time, a larger proportion of Whites than of Blacks or Hispanics favored dropping revision.

These differences undoubtedly show the effect of active leadership and organization support in the Black and Hispanic communities that was lacking in the White. It should be remembered, however, that the potential effect of the Black and Hispanic vote is depressed because of the fact that a smaller percentage of those eligible to vote in these groups actually went to the polls than of those among the Whites.

Among the ethnic groups, the Hispanics in Houston had the best record of reporting the position of the Governor, 34.3% saying he was against it to 22.2% who thought he was for it. The Whites followed, 30.5% saying he was against it, 21.4% that he was for it. More Houston Blacks (17.6%) thought he was for it than against it (9.8%).

Differences by income. When Houston respondents are divided by income levels, we find the largest proportionate vote for all amendments in the lowest income group, under $8,000: 23.7% reporting votes for all, 15.5% against all, the remaining 60.8% reporting split votes. This contrasts with the records of the top income group, $26,000 and over: 16.9% for all amendments to 19.9% against and 63.2% split ballots. The record for the second lowest income group, $8,000-$15,999, is close to that of the lowest income group and the record of the next to highest income group, $16,000-$25,999, is close to that of the top level except that there are fewer reported straight ballots for or against and more split votes. This breakdown for Houston is somewhat atypical. For example, in the remainder of Harris County, 20.9% of the voters in the under $8,000 group voted against all amendments to 15.9% who voted for all. This may be accounted for in part at least by the fact that Houston had a higher proportion of Black and Hispanic voters, who tended to be more favorable to revision, in the lower income groups.

Geographical differences. When responses are broken down by place of residence, we find that Houston voters were most likely to support revision, while voters in the remainder of Harris County were less likely and those in the other twelve counties taken together were least likely. Whereas 17.6% of respondents in Houston said they voted for all amendments, only 14.4% of those in the outlying counties said they had done so, while 17% of Houston voters reported a straight "no" vote against 20.8% in the area outside Harris County. On the other hand, the regional differences among the nonvoters who said whether they would have favored or opposed the new constitution were relatively slight. However, on the question of whether constitutional revision should be continued or dropped, the percentage who would drop it rose from 24.1% in Houston to 28.8% in the area outside of Harris County, while those for continuance of the effort dropped from 59.8% to 53.3%.

A few summary statements may now be made. Among ethnic groups, the strongest support for revision was found among Blacks, followed by Hispanics. Among political and ideological groups the strongest opposition was found among

conservatives and Republicans. Support for revision was significantly greater among Democrats and liberals. The most educated were more likely than others to support revision, especially the continuation of revision efforts. While there are differences among voters related strictly to income levels, they are hard to evaluate because of the distribution of Black and Hispanic voters who were decidedly more favorable to revision than Whites. Similarly, the residential distribution of ethnic groups accounts in part for the greater support for revision found in Houston than in areas outside the city.

It is important, however, not to make too much of these differences. No matter how the respondents are classified, the whole range of reactions toward revision can be found in each group. Significant numbers of conservatives and Republicans lined up with liberals and Democrats. Substantial numbers of Hispanics and Blacks placed themselves among the opponents. Differences in the tendencies of groups to support or oppose constitutional revision are obviously not due to inherent differences in basic attitudes shared by all members. Rather, they are more likely to be due to differences in the messages that the members are likely to receive. This means that members of all groups are wide open to changes in messages from trusted sources with respect to revision in the future. Having noted this, it is important to remember two stubborn facts. One is that there seems to be a pretty durable notion that the Texas constitution ought to be revised sometime, somehow. The other is that any messages about constitutional revision have so far been too weak or too confusing to get most people who are eligible to vote to express themselves clearly at the polls or elsewhere.

FINDINGS FROM ANALYSIS OF ACTUAL VOTES CAST

Some of the findings of the HouMAP survey are worth comparing with findings from analyses of actual votes on the revision amendments throughout the state, done by Murray/Forsbach and Curry/Mansfield in papers referred to earlier. Both of these papers show that counties with large numbers of Hispanics or an unusually high percentage of Blacks gave revision substantially more support than others. They also show that support for revision was largely an urban phenomenon. As Murray and Forsbach put it, the "mostly rural counties usually voted down all the proposals by margins of nine to ten to one." It may be remembered that rural counties were least supportive of Proposition Four in 1972. The only urban county that voted in favor of revision (for seven of the eight amendments) was El Paso by an average vote of 59% on all propositions. There, 66% of the voters in heavily Hispanic precincts and 56% in White precincts supported revision. Murray and Forsbach report that some observers attribute the atypical behavior of El Paso County to "the area's relative isolation from the general political currents of the state; currents which apparently swung strongly against the revision in the days prior to the election." However, this can hardly be the whole explanation. There appears to have been a more active campaign for the new constitution in El Paso than in other counties, a campaign which insulated the voters against the negative tide that turned an expected statewide moderate defeat into a rout for revision.

In general, these and other conclusions from analysis of the votes are compatible with the findings of the HouMAP survey already set forth. For example, the more rural areas of the survey region were much more heavily against revision than the city of Houston. There is one significant difference. As was pointed out, lower income Houstonians were slightly more prone to vote for revision than those in the top economic brackets, whereas, statewide, the reverse was the case. We attributed this in part to the large numbers of Blacks and Hispanics in the lower economic groups in Houston. Other probable factors were the vigorous opposition of the local Republican Party and the mayoral election in Houston that brought out large numbers of affluent White conservatives. Murray and Forsbach found that Harris County was the only one of the ten most urban counties in which precincts largely inhabited by lower income Whites voted more heavily for revision than upper income White precincts. The tendency outside Harris County of more affluent Whites to vote more heavily for revision than lower income Whites is consistent with findings of a comparative study of the politics of revision in seven states that "people of higher socioeconomic status (SES) would be more likely to support the revised constitution than people of lower SES."[6]

[6] Elmer E. Cornwell, Jr., et al., *State Constitutional Conventions: The Politics of the Revision Process in Seven States* (New York: Praeger Publishers, 1975) pp. 204-205.

In Houston as elsewhere the strongest opposition to revision came from conservative voters, whether Republicans or Democrats who tend to vote for conservative candidates in the primaries. Again, to quote Murray and Forsbach, "the best indicator of a county's strong opposition to revision was a past record of high support for conservatives in contested Democratic primaries."

The voting record by ethnic groupings as indicated by the actual votes in precincts selected by Murray and Forsbach as predominately White, Black, or Hispanic in ten urban counties is revealing. In every county where there were predominantly Black or Hispanic precincts, those precincts voted more decisively for revision than White precincts. The mean support percentage for the eight amendments by Black precincts ranged from 48% in Lubbock County to 83% in Nueces. Even in Harris County the affirmative vote in Black precincts was 54%. The range for Hispanic precincts was from 36% in Lubbock and 39% in Harris to 79% in Nueces. Hispanic precincts carried revision in four counties and defeated it in three. Black precincts carried it in six counties and very narrowly defeated it in three, by 51% in Bexar and Dallas and 52% in Lubbock.

As we have said, El Paso was the only urban county in which White precincts carried revision. The mean support among Whites in other counties ranged from a low of under 15% in Lubbock to a high, for upper and lower SES Whites respectively, of 38% and 34% in Bexar, 39% and 31% in Jefferson, and 38% for all White precincts in Travis.

The significance of these figures must be interpreted against the fact of extremely low turnout of eligible Black and Hispanic voters in most counties, from only 4% to 11% in all counties except Harris, where due presumably to the Houston mayoralty election, 20% of the Blacks and 21% of the Hispanics voted. The turnout for White precincts ranged generally in the twenties or low thirties, except in Harris, where 49% came out in the upper SES precincts and 35% in the lower.

LESSONS FROM OTHER STATES

No student of constitutional revision elections in other states would be likely to be much surprised by the "landslide" vote against the eight amendments. Since Missouri adopted a new constitution in 1945, a number of states have adopted

substantially revised constitutions. In almost every case, including Missouri, New Jersey, Michigan, Pennsylvania, Florida, Hawaii, Illinois, Montana, and Louisiana, vigorous well financed and well staffed state-wide campaigns for the new constitution were mounted by its proponents. Virginia won with a relatively low key campaign. In every case, the active proponents included top political leaders and the bulk of the delegates to the convention or, in the case of Florida, the Commission that prepared the constitution. In most cases the incumbent governor played active supporting roles. Governor Edwards was the spark plug in the campaign for the Louisiana constitution. The lack of firm support from the governor in Missouri was made up for by an exceptionally astute and well organized campaign conducted by a coalition of civic and political forces, a prototype for campaigns to come in New Jersey and other states. The opposition of Governor Swainson of Michigan was more than neutralized by the dynamic leadership given to the revision forces by a governor in the making, George Romney. A classic formula for success developed in Pennsylvania, where the current governor was strongly supportive, the two preceding governors, Scranton and Leader, provided bipartisan leadership for the campaign, and 161 of the 163 convention delegates became active members of the Committee for Five "Yes" Votes which the former governors headed.

None of these conditions existed in Texas in 1975. The Governor opposed the constitution, although three other top elected officials, the Lieutenant Governor, the Attorney General, and the Land Commissioner, as well as the Speaker of the House campaigned for it. Some of the legislators who submitted the constitution gave it visible and audible support, but many of the members displayed a notable lack of enthusiasm, while several of them led the opposition. Judge Calvert, Chairman of the Constitutional Revision Commission that had prepared the way for the Convention, made a valiant effort to create a campaign organization but was unable to obtain the money or muster the staff, the political support, or the army of volunteers that have been evident in successful revision campaigns elsewhere. This effort was no match for general opposition mounted by conservative establishment business interests and strong opposition to individual amendments by particular interest groups. So Texas joined the ranks of other states—Maryland, Rhode Island, New York, Arkansas, and New Mexico—where new constitutions have been defeated in recent years. It shared with all those states a failure to put together a vigorous campaign by a strong, well led and well financed coalition of proponent forces. Maryland failed to mount an effective campaign, partly because of overconfidence resulting from widespread "expert" acclaim for the integrity of the convention and the excellence of its work, and revision suffered a stunning defeat. New Mexico lost its new constitution by a narrow margin because of sheer inertia. Arkansas, by a wide margin, partly through ineptness and lack of drive on the part of proponents, also failed to adopt a new constitution.

The Texas convention shared image problems with recent conventions in New York and Rhode Island. Whether justifiably or not, all three conventions were seen by many voters, and many newspaper writers from whom the voters gained impressions, as exemplifying state house politics as usual. This was partly the result of the role of legislators in each convention. Although the Texas assembly was the only all-legislator convention, the other two had large and self-assertive minorities of legislators who carried disproportionate weight in the proceedings. In New York, a number of judges, dedicated to preserving the existing judicial system, accentuated the impression of a body of self-serving delegates. Other adverse political factors in each state marred the ideal image of a body of devoted founding fathers (and mothers). In Texas, the failure of the convention to agree on a document, after thirty-two submission resolutions were turned down under intense lobbying, produced a very sour feeling in the electorate which evidently was not fully neutralized by the salvage operation by which the next legislature repackaged the document in eight intricately interrelated amendments.

It is appropriate to compare the Texas experience with that of New Jersey in the forties. The 1944 New Jersey legislature, authorized by vote of the people to act in lieu of a convention, submitted a new constitution, which the voters decisively rejected. Yet, three years later, a very similar document, submitted by a specially elected convention, was approved by almost 78% of the votes cast. The difference derived partly from the contrasting images of the two bodies, and more importantly from the leadership of a new governor and extremely adroit political footwork that turned opponents of the legislative draft into supporters of the convention draft without making drastic changes in basic features of the document. The final outcome also represented the payoff of sustained campaigning for a new constitution that started in the gubernatorial campaign in 1940 when both candidates for governor called for a convention.[7]

Constitutional revision is serious and difficult business. It requires a sense of important purposes shared by people of diverse views and interests, astute and energetic civic and political leadership that commands the confidence of a fairly broad spectrum of the electorate, and a readiness to stick with the enterprise regardless of setbacks and the stretching out of time. Needless to say it costs considerable money and a great deal of manpower, most of it not compensated in the coin of the realm. Unless these conditions and assets exist or can be developed, an effort at constitutional revision may be educational and may set the stage for more gradual constitutional change as it has in Maryland, but it will not produce a new constitution approved by the people. No matter what the merits, people always appear who fear the consequences of change and communicate that fear to others. In the absence of strong reasons to believe that the benefits of changes proposed will exceed the risks, most voters will abstain or vote "no." Without a forceful positive campaign that reaches large numbers of people, the nay sayers will almost certainly have their way. This clearly is the way it was in Texas in 1975. The campaigns in New York, New Mexico, and Rhode Island have been described as "examples of virtual noncampaigns" and that in Arkansas as "almost a copy book case study of an ineffectual campaign effort," or in the words of its executive director, as "amateurish, uninspiring and ineffective." The Maryland campaign has

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[7] For reports on experience in other states, see Albert L. Sturm, *Thirty Years of State Constitution Making: 1938-1968*, New York: National Municipal League, 1970, and a series of books published by the League on constitutional revision efforts in a number of states. See also Elmer E. Cornwell, et al., *Constitutional Conventions: The Politics of Revision*, New York: National Municipal League, 1974, and by the same authors, *State Constitutional Conventions, op. cit.*

been characterized by the same authorities as a clear "instance of too little and too late."[8]

Of course, a vigorous campaign does not in itself guarantee victory at the polls for a new constitution or a candidate for public office. There must be a product that can have positive appeal to the voters. Mistakes in judgment or accidents of timing may overturn a promising prospect. However, after reviewing the record of successes and failures, and admitting that "there are no sure bets," three of the closest students of the revision process arrive at this conclusion about the importance of campaigning: "the first point that we want to stress is that a major campaign effort on the part of those supporting ratification is a must."[9]

As we have already pointed out, the data available to us do not indicate that the chronic feeling of uneasiness about the present Texas constitution cannot be translated into an effective revision effort. Whether or when that will be done depends upon the coming together of such prerequisites for success as have spelled victory for revisionists in such diverse states as New Jersey, Illinois, Montana, and Louisiana. The next Texans who undertake the effort should bear heavily in mind one clear lesson of their own experience and that of others: "there is no adequate substitute for unremitting effort in achieving a favorable vote."[10] That effort must, of course, start long before the final "campaign" on adoption. The groundwork must be laid for it in dedication and purpose tempered by a degree of realism and flexibility on the part of the sponsors of the enterprise. Much depends on the image and demeanor of the ultimate constitution-writing body, and the behavior of its members in presenting their handiwork to the people. The members of the Texas legislator-convention and the subsequent legislature were not necessarily seeking the task of writing a new constitution. That responsibility was thrust upon them as an added and in many cases an unwanted burden. It is not likely that Texas will again ask its legislatures to perform this dual role. Members of a specially elected convention would be more likely to take a less passive role than many members of the legislature in sending a new constitution to the voters. As the record shows, the more active most of the members of a convention are in explaining and advocating their proposals, the better the chances of adoption. When Texas does get a new constitution, it will be partly because many people who worked and voted against the 1975 revision have been persuaded that the new one is worth working for.

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[8] Cornwell et al., *Constitutional Conventions*, op. cit., pp. 74, 77 and 78.

[9] Ibid., p. 80 and p. 74.

[10] Sturm, op. cit., p. 102.

FEBRUARY, 1978

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CORPUS CHRISTI CALLER

Will legislators feel backlash?

11-11-75

Caller Austin Bureau

AUSTIN — "No, no, a million times no. We'd rather die than say yes."

That was the word the Texas Legislature got from the voters, who slapped flat the new and modernized constitution Tuesday.

The Legislature which wrote the discredited document in two years of hard work may be wondering if the same resounding "no" will be echoing against them if and when they run again in 1976.

Speculation in 1974 that the voters would turn out the Legislature which spent half a year in session and failed to produce a new constitution was smothered when virtually all of the legislators of 1974 who ran again were re-elected. Only one senator and four House members were defeated.

Now, perhaps, that can be interpreted as a vote of approval of their failure as a Constitutional Convention, to submit a new document to the voters.

If so, then will the voter reaction in 1975 be just the opposite — a turn-'em-out attitude on the legislators who submitted a new constitution which was so distasteful that only a bare handful of counties gave a majority vote to even one of the eight propositions.

And, on the other hand, the state officials who supported it so warmly can be grateful that they do not have to face the voters in 1976 because of the switch to four-year terms.

Defeat of the new constitutional proposals will mean, of course, that there will be elections in 1976 for members of the two high courts, the Supreme Court and Court of Criminal Appeals. Had the judiciary article been adopted and the two high courts combined, it might have been six or eight years before there would have been an opening for the new high court. Defeat of that proposition means that Justices Martin Dies Jr., of the Beaumont Court of Civil Appeals and Charles W. Barrow can get on with their races for the Supreme Court they had announced early this year.

Of course, there is the problem of Associate Justice Ross Doughty of Uvalde, now serving in the place Associate Justice Ruel Walker held.

If Doughty should decide to run for a full six-year term, the two younger men would be up against a decision of taking on an incumbent, even though he is an appointed incumbent.

Of course, there are the 16 senators who were lucky on the draw and got four year terms in the 1975 drawing. But the other 15 senators and all 150 members of the House of Representatives will be facing the voters again in 1976 if they want to keep on making laws.

The list of those not planning to run again will be growing, since the prospect of an increase in the $120-a-week salary was dashed by the voters last Tuesday.

The reaction of most leaders for constitutional revision right after the election was there would be no point in trying again for several years at least. But some went back to the idea of submitting one article each two years to the voters, which some conservatives have felt all along would be the better way to approach revision.

Others will play with the idea of asking the Legislature to ask the voters to call a new Constitutional Convention made up of citizens who do not hold public office. The experience of Illinois, Maryland and other states has been that the voters will buy a citizens' constitution after turning down a legislators' constitution.

But decisions can't be made now. The voters will say what's to be done in 1976, by voting for candidates who want to do what the electorate wants to do about constitutional revision — if, indeed, they want anything at all done about constitutional revision.

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SAN ANTONIO LIGHT
NOV 10 1975

Let People Write Our New Constitution

11-10-75

WE'VE SAID it before; we'll say it again:

Texas needs a new constitution.

And, we believe we still have a chance to get one.

Texans this past week rejected a new constitution because they felt—rightly or wrongly—that the proposed document gave too much power to the state legislature.

We believe that if Texans are presented a new constitution which is written at the hands of the people, rather than through the legislature, they will approve it.

We hope the powers that be move immediately to set in motion the plans to call a constitutional convention of citizen delegates to draft a new state charter.

The Light's Don Politico yesterday summed it up this way:

"The feeling among many analysts is that those who voted 'no' last week weren't so much against a new constitution for Texas as they were against THAT new constitution. If Texans were served up a proposed constitution they feel is better than the 100-year-old, over-amended one we have now, they'd quite possibly go for it.

"It just makes sense to the Old Don that if the PEOPLE THEMSELVES write a new constitution, the PEOPLE THEMSELVES will vote for it."

We agree with the Old Don.

Texas is being governed under a constitution which was written for a different time, a different situation. The Texas of 1876 can be compared but in few ways to the Texas about to enter our nation's 200th birthday celebration.

Let's celebrate our nation's 200th year with a citizen-represented constitutional convention to bring Texas into the 20th century—even the 21st century—constitutionally.

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SAN ANGELO STANDARD TIMES

11-10-75

Legislators Get The Word: 'No, No, A Million Times No'

By STU LONG

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If Doughty should decide to run for a full six-year term, the two younger men would be up against a decision of taking on an incumbent, even though he is an appointed incumbent.

Of course, there are the 16 senators who were lucky to the draw and got four year terms in the 1975 drawing. But the other 15 senators and all 150 members of the House of Representatives will be facing the voters again in 1976 if they want to keep on making laws.

The list of those not planning to run again will be growing, since the prospect of an increase in the $128-a-week salary was dashed by the voters last Tuesday.

The reaction of most leaders for constitutional revision right after the election was that there would be no point in trying again for several years at least. But some went back to the idea of submitting one article each two years to the voters, which some conservatives have felt all along would be the better way to approach revision.

Others will play with the idea of asking the Legislature to ask the voters to call a new Constitutional Convention made up of citizens who do not hold public office. The experience of Illinois, Maryland and other states has been that the voters will buy a citizens' constitution after turning down a legislators' constitution. It might perhaps be the old cartoon of "would you buy a used car from this man?," and the answer is that the public is more likely to buy from the public than from those immersed in the business of state government.

Indications are strong that 1975 was a year in which the voters didn't want to do anything about constitutional revision. At least, they didn't want to do anything like what had been proposed this time.

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NOV 10 1975

DALLAS NEWS

Carolyn Barta

Revision election to be issue?

11-10-75

Political Writer of The News

If you think you've heard the last of the constitutional revision question for a while, think again. There are likely to be reverberations from last Tuesday's election throughout the local campaigns of 1976.

At least there are some who intend to make the constitutional election an issue in 1976—primarily in legislative races, but it could spill over into others.

Those who actively campaigned in favor of the document are going to be targeted for defeat by some of the opponents.

Stance to affect election

Dallas County Democratic Chairman Manuel DeBusk as much as said election night that the Democrats will be using the constitution as an issue in going after Republicans Bob Maloney and Frank Gaston.

Maloney, in the Park Cities 33-E district, and Gaston, in the East Dallas-White Rock 33-M district, both actively campaigned in favor of the document which failed miserably.

While DeBusk did not say he will try to displace some of his own Democrats, he feels John Bryant's pro-new constitution campaigning will affect his re-election campaign in the Pleasant Grove District 33-L.

Bryant had some particularly unkind words about DeBusk's own opposition to the proposed constitution, which may come to haunt him if a "DeBusk Democrat" gets into that primary.

It undoubtedly will become an issue in the county chairman's race if former State Rep. Jim Vecchio of Grand Prairie challenges DeBusk, as he is threatening.

That would provide a clear head-on confrontation between DeBusk, who quite early jumped out on his limb of opposition, and Vecchio, who became the co-chairman of Dallas County forces in favor of the proposed Constitution.

DeBusk further predicts that Jim Mattox will be called to answer for his support of six of the propositions in his campaign for the 5th Congressional District.

Some of the real leaders of the local "fors" will be spared, however. Rep. Dick Geiger of Oak Cliff won't be running again if he gets his judge's appointment, as expected. Rep. Ray Hutchison has already said he will not run again since he is now Republican state chairman, and Sen. Oscar Mauzy is the only one of Dallas County's four state senators whose term is not up next year.

There are some, however, who do not buy the "DeBusk doctrine" on the constitutional spillover.

Bryant, for one, is comfortable with his position on the issue, noting that he had a lot of company.

If voters turn out of office all legislators who favored the document, there would be a bigger turnover than resulted from Sharpstown.

AND DALLAS voters surely will remember that it was they who, in 1972, voted by greater than 60 per cent to authorize the Legislature to sit as a constitutional convention and write a new document to be submitted in a popular election.

Our best guess is that people are sick of hearing about the issue, will have forgotten about it by next year's election, or could care less.

Sen. Ron Clower puts it even stronger. "People forgot about constitutional revision when the TV was turned off Tuesday night . . . It was a $5 million bad dream."

An analysis of the returns by the staff of the organized opposition shows, incidentally, that little influence was exerted by those legislators actively speaking in favor of the document—at least in their own legislative districts.

The Oak Cliff district of Dick Geiger (co-chairman of the local forces in favor) voted 12 boxes against, one in favor and four split. Bryant's 16 precincts voted against. Hutchison's northeast Dallas district went 21 against and 3 split, while Gaston's district voted 19 boxes against, one for. Mattox's East Dallas district voted 12 against, 3 split.

Eddie Bernice Johnson may have obtained the greatest success in her Oak Cliff district by obtaining 7 split boxes (favoring some propositions and defeating others) and only eight totally against.

Mauzy affirms position

ODDS AND ENDS: Republican Tom Pauken is trying to build his base in the 16th Senatorial District by expanding Republican and financial establishment support. Russell Perry, prominent Republican and Dallas Chamber board chairman, was host for a luncheon to raise seed money recently from other key GOP financiers.

State Sen. Oscar Mauzy said at his 49th birthday celebration-fund-raiser last week he is not, repeat not, looking seriously at Dale Milford's 24th Congressional District.

County Commissioner Jim Jackson showed last week that fund-raisers don't have to be fun-less, with a western dance and dinner at Brook Hollow which drew 500 Republicans and Democrats alike. Among the dancers was former Democratic County Judge W.L. (Lew) Sterrett.

If Rep. Chris Semos should hang 'em up, for some reason after this, his 5th legislative term, former Democratic state committeeman Guy Callison, treasurer of the Carpenters Federal Credit Union here, wouldn't waste any time jumping in a 33-F race.

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NOV 9 1975

HOUSTON POST

Charter voting not attack on reform

11-9-75

By DARRELL HANCOCK
Post State Capital Bureau

AUSTIN — The defeat of the proposed new constitution by Texas voters is not a repudiation of the great "reform" movement of 1972. It is, instead, a return to the century-old conservative political tradition in the state.

Shocked by scandals, the voters three years ago purged the top ranks of Texas' government. A lot of worthwhile changes resulted. Lawmakers, particularly in the Texas House, made their procedures more democratic and wrote open meetings, open records and disclosure laws that let the sunshine into many previously dark corners.

In that same 1972 election voters overwhelmingly asked that the poorly constructed 1876 state constitution be overhauled.

Many observers saw those events as a fundamental shift in the state's political history — something akin to the great revolutions in the state's economy as it shifted from the farm to the oil field and finally to skyscrapers, refineries and other industrial plants.

It appeared that Texas had a new class of political leaders. Most of those elected in 1972 were, while not liberals, at least more progressive than previous Texas politicians.

It even seemed that the state had begun a tradition of public service by heirs of the old Texas families — similar to the practices of the Rockefellers, Kennedys and other eastern families — as Lt. Gov. Bill Hobby and House Speaker Price Daniel Jr., both sons of former governors, took up the gavels in the Senate and House.

If there had been a fundamental shift, it stood to reason that the constitution should also have been ratified as the new leaders gave the state a new direction. Hobby, Daniel, Atty. Gen. John Hill and new House Speaker Bill Clayton all endorsed the document.

But it was crushed better than two-to-one as voters elected to keep the severely limited form of government adopted by agrarians during the unsettled post-Reconstruction era.

The sparkplug for the anti-revision movement was the old Houston business establishment. A restricted government is good for the economic climate, its members said.

The Houston leaders are part of the business elite which has strongly influenced, if not controlled, Texas government in recent decades. Business figures have financed the campaigns, their lobbyists have helped write the laws and their corporations and banks have provided good jobs for friendly politicians who retired.

In killing the constitution, they had valuable allies in the real estate industry, county courthouse officials and local school officials who also preferred the status quo.

And while the campaign against the new constitution, financed largely by a handful of Houston businessmen, oversimplified many issues, ignored others, and resorted occasionally to outright falsehoods, it was not the million-dollar hard-sell campaign predicted by revision advocates. It skillfully raised doubts and fears, especially about such volatile subjects as an income tax, property taxes on cars and a runaway legislature.

In the end, rather than following the leadership of the new class of politicians, voters heeded the warnings of the old establishment that the state had prospered under the present system and that change was dangerous.

After a century, it was now clear, Texans still distrusted strong government. And their distrust was freshly nurtured by the general national conservative reaction to the calamities in New York City and to the liberalism of the 1960s.

From this new perspective, the events of 1972 take on a different meaning. When voters threw out the rascals, they were evidently calling for more honest and trustworthy public stewards, not basic changes in the structure of government.

Or perhaps they just changed their mind like Dolph Briscoe, the governor they elected that year and a man whose rural, business-oriented conservatism perfectly symbolizes the old order.

He praised the revision process and wished it well, but offered no leadership. In the end, confronted with a document that would have strengthened government, he voted with thousands of other Texans against the change.

The immediate prognosis is clear — the legislature will be allowed to write annual budgets, the governor will be given control of the sprawling bureaucracy, the property tax system will be overhauled and the court system will be streamlined only when the old order agrees to such changes. New politicians are in office, but old-time conservativism still governs the people.

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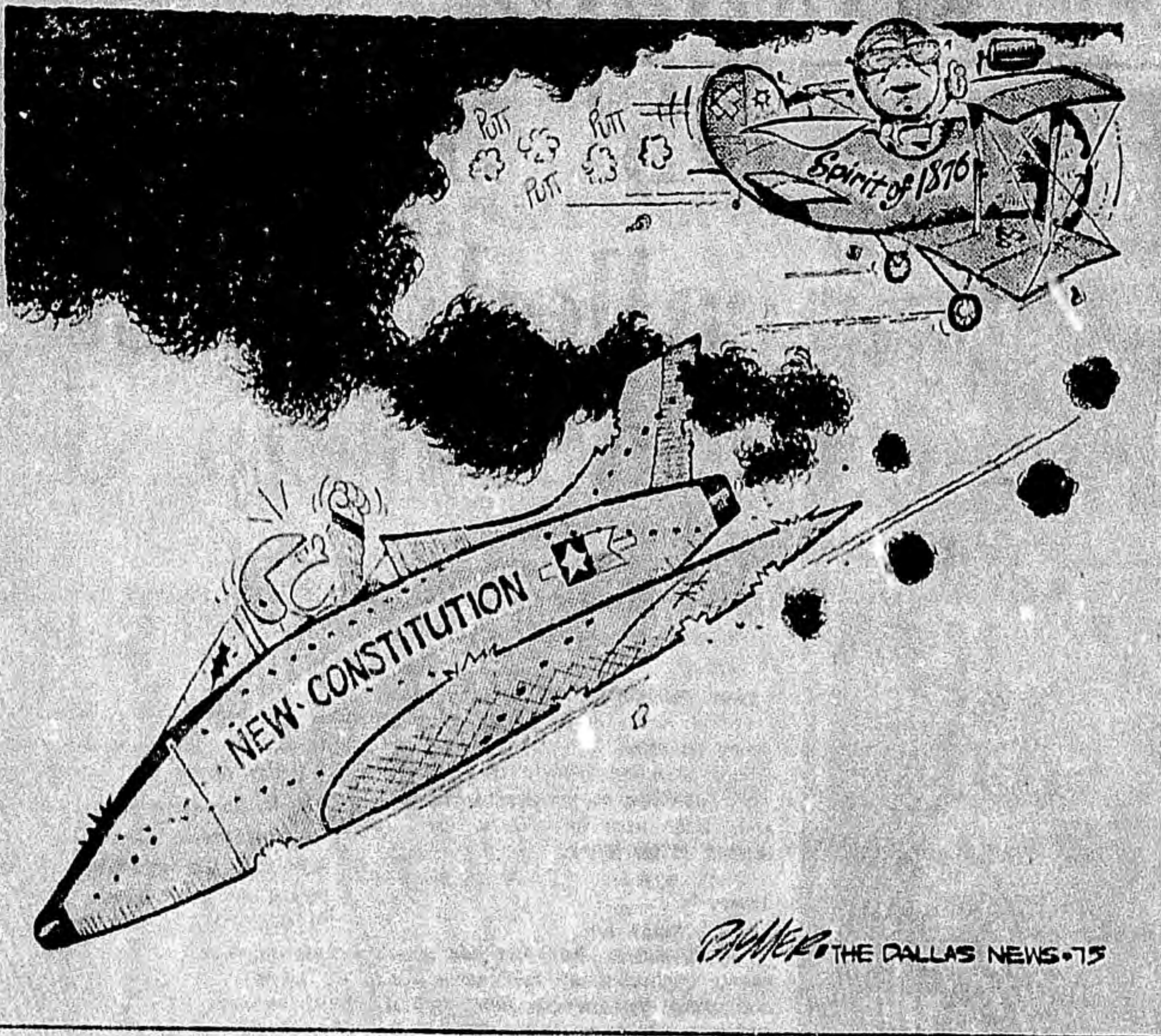
NOV 9 1975

DALLAS NEWS

'Curse You, Dolph Briscoe!'

11-9-75

By JIM PALMER
Dallas News Staff Cartoonist



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NOV 6 1975

DALLAS NEWS

New state charter defeated badly in large counties

11-6-75

By SAM KINCH JR.

AUSTIN—Semi-final statewide totals showed Wednesday that all eight of the constitutional revision amendments were defeated by margins of at least 2 to 1.

Further, the proposed new state charter was beaten badly in the very places where it had to win big margins in order to have any chance of adoption statewide—in the big city counties.

In addition, the small percentage of split-ticket voting—that is, voting for some propositions and against others—obviously indicated the Legislature's strategy of mix-and-match adoption was a failure.

With the exception of the finance article, the difference between the biggest and smallest vote for a proposition was only 2.5 per cent—and even with finance included, it was only 6 per cent.

LEGISLATORS had split the proposed new constitution into eight parts on the theory that voters might object to one or two, but would accept the others.

The proposed new constitution, in fact, was approved by voters in only three counties—El Paso, Webb and Duval. And in the [illegible]gest-vote counties, which in 1972 provided a 470,000-vote margin in favor of the revision process, the document was defeated by a margin of more than 250,000.

But even with the revision proposal buried alive by the voters, proponents of constitutional change plotted future activities—after a decent interval for analysis of what went wrong.

League of Women Voters President Betty Anderson of Lubbock vowed "renewed vigor" in the battle for revision, beginning with a pitch — a New Citizens' convention to do the drafting.

Mrs. Anderson said the league is taking that approach "in the hopes that the polarized politicization which contributed to the defeat of the (new constitution) can be avoided."

BUT LEGISLATIVE leaders were less anxious to begin moving right away, particularly since the lawmakers are not scheduled to meet again until January, 1977.

Lt. Gov. Bill Hobby flatly declared the revision movement dead in its tracks, but left an avenue open for future options. He had been a citizens' convention advocate after the 1974 Constitutional Convention failed, and was converted late to support the Legislature's submission of the document on Tuesday's ballot.

House Speaker Billy Clayton, however, indicated the Legislature should get on with the revision effort as soon as lawmakers can figure out exactly what went wrong and why. He predicted a "pulse of the people" eventually will show the way.

But Clayton absolutely rejected any attempt to compromise with leading legislative opponents of the proposed constitution—Sens. Peyton McKnight of Tyler and O. H. (Ike) Harris of Dallas, for example. "How could you —why would you—(compromise) when they wouldn't participate in the writing process this time?" Clayton asked.

OTHER LEGISLATORS indicated, however, they will force legislative opponents of the document to be good to their word—particularly McKnight's concession that some "deadwood" can be eliminated from the 100-year-old Texas Constitution.

Indeed, Rep. Ray Hutchison of Dallas, who is not seeking another House term next year, said the "logical and feasible" approach is to put a clean-up version of the current constitution —without any substantive changes—on the ballot as soon as possible.

Then, over a decade or more, the Legislature can propose amendments to make the changes that will be forced on the state by the federal courts, he said.

Rep. Lyndon Olson of Waco, another leader in the revision effort, agreed that a "no gimmicks" rewrite of the constitution is needed in order to satisfy the voters. He said voters then might become convinced that article-by-article change is needed to "solve our problems before the federal courts jump in and deal with them."

LAMB COUNTY, Clayton's home, rejected the revision proposal by an 8 to 1 margin. Hutchison's Dallas County rejection rate was 2 to 1, while Olson's McLennan County rejection margin was 6 to 1.

McKnight, whose Smith County constituents voted 8 to 1 against the document, was not talking about a citizens' convention to rewrite the constitution, as some proponents thought he implied throughout the campaign.

Instead, McKnight said any changes that are needed "should be made by the orderly process of amendment rather than through wholesale revision."

Both McKnight and his top antirevision supporter, Gov. Dolph Briscoe, didn't gloat about their triumph, however. Briscoe, by long distance, called on both sides to continue working on his 1974 campaign theme of "Cooperation for Progress."

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NOV 6 1975

AUSTIN AMERICAN STATESMAN

'Not enough of the body left for an autopsy'

11-6-75

By JON FORD
Political Editor

Only one group — the League of Women Voters — had anything optimistic to say about the future of Texas constitutional revision Wednesday.

Margin of defeat for a proposed new constitution — nearly 3 to 1 — in Tuesday's statewide election humbled most proponents and sent them off to lick their wounds in silence. Some stated frankly they hope voters will soon forget their roles in the campaign.

Others read stern warnings for legislators (who submitted the revision document with its broadened powers for lawmakers and government in general) from the election returns.

"There was some mighty strong feeling expressed to us by the voters," said a Central Texas legislator. "I'm going to keep a low profile for a while."

Asked for his analysis of the crushing defeat, Lt. Gov. Bill Hobby reportedly answered: "There is not enough of the body left for an autopsy."

State Rep. Ronald Earle of Austin Tuesday night indicated an interest in starting legislative action toward a new citizens constitutional convention in 1977. But Earle appeared to have cooled a little on the subject Wednesday.

The League of Women Voters of Texas issued a statement that its members, long-time proponents of revision, are "undaunted by defeat (and) will work with renewed vigor for a revised constitution for Texas."

State League President Betty Anderson said the group remains convinced the rejected document was better than the present constitution.

"We will now seek the establishment of a citizens convention to draft a new document in the hopes that the polarized politicization which contributed to the defeat of the constitution can be avoided. And we will continue our efforts to educate citizens toward an understanding of the needs for revising our present constitution," said Anderson.

"There will be no overall revision in the near future," said House Speaker Bill Clayton. "It would be futile for the legislature to try to deal with (another total revision) in view of the voters' expression."

Only a handful of Texas' 254 counties supported the proposed new constitution.

Duval and Webb in South Texas apparently were the only counties voting for all eight propositions on the Tuesday ballot. El Paso County voters endorsed seven, but rejected Proposition 1 (to rewrite the legislative-executive-separation of powers articles).

Black precincts provided the only bloc support for revision in Houston, where the propositions were rejected about 70-30. Three articles were approved and five rejected by Kenedy County voters.

Final unofficial election returns from all 254 counties (with only about 800 votes from five boxes in four counties uncounted) to Texas Election Bureau showed these results of the Tuesday voting:

Proposition 1 — 300,466 for to 863,090 against; judiciary article — 327,713 for to 830,342 against; voting and elections article — 322,878 for to 836,179 against; education article — 319,425 for to 840,443 against; finance article — 251,706 for to 865,346 against; local government — 305,901 for to 851,963 against; general provisions — 305,300 for to 853,252 against, and mode of amending the constitution — 320,336 for to 837,252 against.

The total voter turnout was about 1,164,000 — a little more than 23 per cent of an estimated 4.9 million eligible.

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NOV 6 1975

FT. WORTH STAR-TELEGRAM

Why proposed constitution got a no-no

11-6-75

No.

Not only no but heck no.

That was the word from Texans — or, at least, from the less than one in four qualified-to-vote Texans who bothered to go to the polls — on the proposed, new state constitution, a proposal which cost $5 million and took five years to formulate.

By as much as 30 to 1 in some places and as little as 2 to 1 in other places, Texans pointedly made their position clear.

Why?

A complete analysis will take a while.

But some points can be made now.

Point 1 — The proposal should not have been written by the legislature. A citizens committee should have done it. Many, including this newspaper, felt the proposal would have made the legislature too powerful.

Point 2 — Many did not understand the proposal. Many Texans no doubt do not understand the 63,000-word present constitution either. But they know what kind of government they have under the present document and they were not sure of what they would get under the proposed document. Fearful of what the proposal might permit, they said no.

Point 3 — There appears to be a growing mood that there already is too much government and too much government spending. Gov. Dolph Briscoe and State Sen. Peyton McKnight of Tyler, two leading opponents of the proposal, expressed this opinion during the campaign. They said voters would reject the proposal for these reasons and the outcome backs up their contention.

Point 4 — The opposition organized sooner and may have been better funded than the proponents. The opposition hammered away at the contention more government would result and governmental costs would rise and the proponents, obviously, were not able to overcome the opposition's effective strategy.

Point 5 — Governor Briscoe, who emerged as the man in the white hat on the issue, greatly influenced many Texans to oppose it. The governor, who had little input into the proposed document, came out strongly against it only weeks before Tuesday's election. Proponents, to stand any real chance of winning, needed the governor's considerable influence plus that part of the state Democratic party machinery which he can deliver.

Point 6 — The effort to get a new constitution was poorly handled from the start. As stated, it was badly conceived as a project for the legislature when it should have been handled by a citizens committee. Then, the campaign to "sell" the proposal to Texans was slow to jell — if indeed, it ever fully did.

Point 7 — Many Texans obviously voted a straight ticket — either for all eight propositions or against all eight propositions.

Point 8 — Voter apathy had its effect. Some Texans didn't care. In Tarrant County, only about one in five qualified voters bothered to go to the polls. Around the state, the figure was about one in four.

Other points can be made, of course, but the point right now is that the nays have it in Texas. They have etched their no in convincing fashion. They have said they prefer the constitution which has served Texas for nearly a century.

And, judging from the overwhelming way they said it, it appears it may be a spell before a serious effort is made to get Texans to say yes to the idea of writing a new constitution.

HAWAII STRATEGY?

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NOV 6 1975

HOUSTON POST

New charter demands still kicking

11-6-75

By FELTON WEST
Chief, Post State Capital Bureau

AUSTIN — Demands for a "citizens' constitutional convention to revise the 1876 Constitution continued Wednesday after the voters' overwhelming rejection of a proposed constitution written by the all-legislator 1974 convention and submitted to the people by the 64th Legislature.

State League of Women Voters President Betty Anderson said her organization, a longtime agitator for constitutional revision, would work with renewed vigor for that goal.

Anderson said the league was disappointed by defeat of the proposed charter Tuesday, but "we will now seek the establishment of a citizens' convention to draft a new document, in the hopes that the polarized politicization which contributed to the defeat of the constitution can be avoided." She added the league will continue efforts to "educate citizens toward an understanding of the needs for revising our present constitution."

Meanwhile, State Rep. Ron Waters, D-Houston, called for a special session of the legislature to pass legislation necessary to call a "citizens' convention." He urged Lt. Gov. Bill Hobby, House Speaker Bill Clayton and Atty. Gen. John Hill to join him in "pressuring" Gov. Dolph Briscoe to call a special session.

Waters viewed Tuesday's defeat of the proposed constitution was not a rejection of revision but "rejection of the politicians in the legislature" who wrote it.

Unless convention legislation is passed now, he said, it would be 1978 before a new revision effort could begin.

His proposal was likely to receive a cool reception from Gov. Briscoe, Hobby and Clayton.

After the proposed charter was defeated, Gov. Briscoe, who had opposed all eight parts of it, said the existing constitution had served Texas well and would continue to serve well for years to come.

Lt. Gov. Hobby said he considered constitution revision "dead for the foreseeable future," while Clayton said he thought it had been set back for "quite a few years."

Sen. Peyton McKnight, D-Tyler, who led the statewide group that fought to retain the present charter, said future revision should be attempted by the normal amendment process rather than wholesale rewriting of the document.

Final unofficial returns from the Texas Election Bureau showed Wednesday that each of the eight propositions that were to make up the new constitution was beaten by a landslide.

Statewide they lost by margins ranging from 2.5 to 1 to almost 3 to 1.

In Harris County, where proponents of the document had hoped to roll up the bulk of their support to offset rural-area opposition, the propositions were likewise all defeated. The margins ranged from 2.2 to 1 to 2.7 to 1 against them.

Only in two of the state's 254 counties — Duval and Webb, both in South Texas, did all eight propositions win approval. In El Paso County the controversial Proposition 1, embracing changes in the executive and legislative branches of the state government, was defeated, but the other seven propositions were approved.

Voters in sparsely populated Kenedy County, in South Texas, approved the first three propositions and rejected the last five.

Otherwise the proposed charter lost overwhelmingly everywhere. In Andrews County in West Texas, it was rejected about 30-1.

Voter turnout — unofficially 1,163,556 — was less than most advance predictions. This showed Texans of 1976 much less interested in constitutional revision than Texans were in 1876, when the present constitution (since amended 220 times) was adopted.

About 15 per cent of the state's population voted then, but less than 10 per cent of the population — now 10 times as big — voted Tuesday, even though the percentage of eligible voters has more than doubled because of enfranchisement of women and 18 to 21-year-olds since 1876.

Harris County's voter turnout, about 30 per cent of the registered voters, amounted to only about 22 per cent of the statewide turnout, despite advance predictions that the Houston city and school board elections might pull out 40 per cent of the state vote.

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BEAUMONT ENTERPRISE JOURNAL

NOV 5 1975

Area nixes change

11-5-75

By SHARON ENGLADE
Staff Writer

Jefferson, Orange and Chambers county voters followed the statewide trend Tuesday, defeating the proposed rewrite of the century-old state constitution.

Almost 20 per cent of Jefferson County's almost 105,000 registered voters turned up at the polls, with the vote running heaviest against the eight amendments in south county.

The finance revision amendment, proposition 5, was defeated by the largest margin, 13,043-6,219.

The voters in Jefferson County turned the entire revision effort down by almost a 3-1 margin.

Members of the Southeast Texas legislative delegation who, as a body, endorsed the entire document laid the blame for defeat at a poor job of educating the public.

"This is another example of the public is not supporting something it does not fully understand," said 172nd District Judge Thomas A. Thomas.

Former House Speaker Price Daniel Jr., president of the constitutional convention, called the negative vote a "major setback," adding that opponents were able to raise enough questions, fears and doubts "that it seemed the safest thing to do" to vote against it.

"I think the people were completely confused," said Orange State Rep. Wayne Peveto. On one hand you have the governor and the comptroller urging its defeat and then other top state officials calling for its adoption, he said.

He and Beaumont State Reps. Pike Powers and Chester Slay predicted that full-scale revision efforts are dead for many years to come.

"This is a real shame," Powers said, "not so much for the people who voted today, but for their children and grandchildren."

Slay said he feels it will be 25 or 30 years before people once again clamor for a new constitution. Peveto suggested the first area which will be hit with one-shot revision would be the judiciary which is "at crisis proportions now."

Jefferson County Criminal District Judge Larry Gist, who actively sought the defeat of proposition 2, the judicial revision article, agreed, saying reform in this area is vitally needed..."but this (constitutional amendment proposal) was not the method or technique to choose."

He added he hopes those people who were so anxious to see the proposition pass, "and I know they were genuinely interested in improving the quality of justice, will settle down and get together and find something more acceptable."

Port Arthur Rep. Carl Parker said he thinks those proponents of a revised constitution "did not have the machinery to make the people understand the difference between the proposed and present constitution. We're part-time representatives and didn't have the wherewithal to inform the public."

In Jefferson County, the proposed document came closest to victory, turning it down by a 5-4 margin. The vote in the mid-county and Port Arthur boxes was a more than 2-1 against the document.

The county vote on the eight amendments was:

— Proposition 1, calling for the revision of the separation of powers, executive and legislative articles, 12,267-6,115.

— Proposition 2, the judiciary, 11,803-6,556.

—Proposition 3, changing the voting and election provisions of the present constitution, 11,704-6,681.

— Proposition 4, revising the education provisions, 11,822-6,664.

— Proposition 5, affecting the finance provisions of the present constitution, 13,043-6,219.

— Proposition 6, the local government issue, 12,620-6,608.

— Proposition 7, the general, or "catch-all" provision revision, 12,551-6,712.

— Proposition 8, revision of the method of amending the constitution, 12,459-6,829.

Only the Bill of Rights contained in the 1876 document was retained in the proposed new constitution.

Orange County

Voters in Orange County overwhelmingly rejected all eight propositions by a 3-2 margin as 16.9 per cent of eligible voters turned out.

Only one of the 28 polling places showed any real support for the new constitution, Box 10 at the Orange Community Center. A total of 415 votes were cast with all eight propositions winning by modest margins.

Box 4 in the predominantly black area of Navy Park, where 54 votes were cast, the last seven proposition carried by two to eight votes and the first lost by a single ballot.

Out of a total of 32,103 registered voters, only 5,443 went to the polls.

Chambers County

Chambers County voters defeated all propositions by margins ranging from 82 to 86 per cent.

Proposition 4 got the most "for" votes, 267 to 1,284 against, and proposition 5 suffered the worst defeat, 203 to 1,315.

The turnout was larger than the absentee vote had indicated, with 1,576, or 27.3 per cent of the county's registered vote of 5,760, going to the polls.

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NOV 5 1975

SAN ANGELO STANDARD TIMES

New Constitution Defeated

11-5-75

By The Associated Press

From the big cities to the small towns, Texas voters overwhelmingly rejected a new state constitution in a special election Tuesday.

The metropolitan areas of Houston, Dallas, San Antonio, and Austin, beat down the eight proposals by margins of 2-to-1 to 3-to-1.

The smaller counties, from the piney woods of East Texas to the plains of West Texas, were even more lopsided.

Polk County in deep East Texas rejected the constitutional changes by an 11-to-1 margin.

Sterling County in far West Texas voted against 9-to-1.

Less than two hours after polls closed, Lt. Gov. Bill Hobby, one of the pilots of constitutional revision, conceded the the cause was lost.

Voters spoke loud and clear from the beginning of vote tabulations.

"The voters of Texas have rejected five years of effort directed toward constitutional revision by as decisive a margin as anyone could imagine. I want to thank all the civic groups and concerned citizens who have devoted countless months of efforts in this attempt to modernize our state government. It was a good fight but we lost," Hobby told The Associated Press.

When only less than 10 per cent of the expected 1 million votes were counted it seemed obvious voters were on their way to beating down the constitutional changes.

Eighty-five per cent of the rural voters were against the constitution at that point.

It fared a little better in urban areas where it was losing by a two to one margin.

Voting against the proposed revision was heavy in conservative East Texas, perhaps due in part to criticism that the new constitution favored big timber companies in that heavily forested part of the state.

Articles in the constitution would have allowed farm, ranch and timberland in production to be considered separately for property taxation from other real estate.

Poll watchers expected voters in Harris County (Houston) to swing the big stick because of a mayorial election which would draw out more voters than could be expected ordinarily. Voting was running four to one against revision with 66,500 of Houston's expectd 350,000 votes counted. Worst loser on the ballot in Houston was Proposition 5 dealing with finances which was failing 49,922 against and 15,631 for. The amendments proposal was doing best of the eight although losing 44,971 to 17,723.

Webb and Duval counties were the only two found late in the evening which had approved of the constitution. The two South Texas counties, however, also voted for George McGovern in the 1972 presidential election.

Nueces County, the first big county where vote counts were completed, defeated the measure by a two to one margin.

In Lamb County, it went down eight to one. In Smith County (Tyler), home of state Sen. Peyton McKnight, a leading opponent of constitutional change, the revision lost by an eight to one edge.

In Austin, voter opposition ran 55 to 60 per cent against all eight propositions.

Waco area voters turned down the proposals with heavy negative votes. The separate powers article lost 14,080 to 2,492.

McKnight said he was gratified by the massive disapproval and hoped the legislature realized change in the constitution must come through amendment, not wholesale revision.

"If there is any lesson we should have learned from this election it is that the people have a right to impose restraints upon their government and they still want to do so," McKnight said.

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A New Constitution for Texas

Text, Explanation, Commentary

Texas Constitutional Revision Commission

A New Constitution For Texas

Text, Explanation, Commentary

Report of the

Texas Constitutional Revision Commission

November, 1973

Austin, Texas

Texas Constitutional Revision Commission

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James F. Ray, Executive Director

November 30, 1973

To the Honorable William P. Hobby
Lieutenant Governor

To the Honorable Price Daniel, Jr.
Speaker of the House of Representatives

To the Members of the 63rd Legislature

The Constitutional Revision Commission is pleased to submit this report of recommendations for change in the State constitution as directed by Article XVII, Section 2 of the Constitution of 1876 and Senate Concurrent Resolution Number 1 enacted by the 63rd Texas Legislature.

This report is the second of a series which together will portray the results of the intensive constitutional research which has occurred during the months of the Commission's life. In an earlier report submitted to the Legislature on November 1, 1973, the Commission, as required by Senate Concurrent Resolution Number 1, presented recommendations for the text of a new constitution. This second report provides a more detailed description of the Commission's work and a commentary on each section of that new document.

The new constitution submitted by this Commission represents the first thorough attempt to draft a new constitution for Texas since the present one was adopted in 1876. Perhaps the most noticeable difference between the Commission's recommended draft and the present constitution is the difference in length. This is due to the fact that the 1876 Constitution contains a number of duplicative or overlapping provisions as well as a considerable amount of obsolete material. There was a conscious effort on the part of the Commission to keep unnecessary details out of the new document. In general, the new constitution is intended as a source of fundamental guidance for the future. It will allow greater opportunity for the modification of State law without

constitutional amendments as unpredictable needs and circumstances arise in the years ahead.

Any change in the constitution of the State is a matter for serious and thoughtful consideration because it is a change in the fundamental law which governs the relationship between the people of Texas and their government. The attention given to the recommendations of this Commission should be consistent with the thorough change which this report suggests for the fundamental law of the State.

Similarly, the importance of the Commission's task is reflected in the consideration and debate of many issues for which the unanimous agreement of each member could not be reached. The Commission agreed early in its deliberations that there should be an opportunity for members to prepare and submit statements in support of views which did not prevail and could not therefore be reflected in the Commission recommendations. Statements of minority viewpoints will be included in a separate document to be published at a later date.

Although the viewpoints of individual Commission members vary on a number of the recommendations, all agree that the new constitution represents a very significant improvement over the existing document. The Commission voted unanimously to submit the new constitution contained in this report for the consideration of the members of the constitutional convention.

Respectfully yours,

Beryl Buckley Milburn
Mrs. Malcolm Milburn
Vice Chairman

Robert W. Calvert
Robert W. Calvert
Chairman

RWC/BBM:cwj

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Chapter One

Text of the New Constitution

ALL POLITICAL POWER
IS INHERENT IN THE
PEOPLE AND ALL FREE
GOVERNMENTS ARE FOUNDED
ON THEIR AUTHORITY
AND INSTITUTED FOR THEIR BENEFIT;---
FIRST CONSTITUTION, STATE OF TEXAS, 1845

Preamble

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.

Article I
Bill of Rights

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

Section 1. Freedom and Sovereignty of State

Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Section 2. Inherent Political Power; Republican Form of Government

All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Section 3. Equal Rights

All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Section 3a. Equality under the Law

Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative. (Added Nov. 7, 1972.)

Section 4. Religious Tests

No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Section 5. Witnesses Not Disqualified by Religious Beliefs; Oaths and Affirmations

No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Section 6. Freedom of Worship

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 7. Appropriations for Sectarian Purposes

No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Section 8. Freedom of Speech and Press; Libel

Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Section 9. Searches and Seizures

The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Section 10. Rights of Accused in Criminal Prosecutions

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. (Added Nov. 5, 1918.)

Section 11. Bail

All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Section 11a. Multiple Convictions; Denial of Bail

Any person accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor may, after a hearing, and upon evidence substantially showing the guilt of the accused, be denied bail pending trial, by any judge of a court of record or magistrate in this State; provided, however, that if the accused is not accorded a trial upon the accusation within sixty (60) days from the time of his incarceration upon such charge, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to the Court of Criminal Appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder. (Added Nov. 6, 1956.)

Section 12. Habeas Corpus

The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Section 13. Excessive Bail or Fines; Cruel and Unusual Punishment; Remedy by Due Course of Law

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Section 14. Double Jeopardy

No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

Section 15. Right of Trial by Jury

The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury. (As amended Aug. 24, 1935.)

Section 15-a. Commitment of Persons of Unsound Mind

No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury. (Added Nov. 6, 1956.)

Section 16. Bills of Attainder; Ex Post Facto or Retroactive Laws; Impairing Obligation of Contracts

No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Section 17. Taking, Damaging or Destroying Property for Public Use; Special Privileges and Immunities; Control of Privileges and Franchises

No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Section 18. Imprisonment for Debt

No person shall ever be imprisoned for debt.

Section 19. Deprivation of Life, Liberty, Etc.; Due Course of Law

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Section 20. Outlawry or Transportation for Offense

No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

Section 21. Corruption of Blood; Forfeiture; Suicides

No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Section 22. 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 on confession in open court.

Section 23. Right to Keep and Bear Arms

Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Section 24. Military Subordinate to Civil Authority

The military shall at all times be subordinate to the civil authority.

Section 25. Quartering Soldiers in Houses

No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Section 26. Perpetuities and Monopolies; Primogeniture or Entailments

Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Section 27. Right of Assembly; Petition for Redress of Grievances

The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Section 28. Suspension of Laws

No power of suspending laws in this State shall be exercised except by the Legislature.

Section 29. Provisions of Bill of Rights Excepted from Powers of Government; to Forever Remain Inviolate

To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

Article II
Separation of Powers

Section 1. Separation of Powers

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

Article III
The Legislature

Section 1. Legislative Power

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

Section 2. Composition

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

Section 3. Qualification of Members

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

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

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

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

Section 4. Election and Terms of Members

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

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

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

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

Section 5. Redistricting

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

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

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

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

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

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

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

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

Section 6. Compensation

Each member of the Legislature shall receive compensation and allowances as provided by law, not to exceed the amount recommended by the salary commission. Any increase in compensation shall become effective only at the first regular session following the next general election.

Section 7. Sessions

(a) The Legislature shall meet at least once every two years and at such times and for such duration as provided by law.

(b) All legislative proceedings shall be open to the public.

(c) Neither house may adjourn or recess for more than three days without the consent of the other.

(d) The Legislature shall meet at the seat of government unless otherwise provided by law.

Section 8. Organization and Procedure

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

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

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

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

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

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

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

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

Section 9. Legislative Immunity

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

Section 10. Conflict of Interest

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

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

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

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

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

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

Section 11. Bills

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

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

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

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

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

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

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

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

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

Section 12. Local or Special Legislation

The Legislature may not enact a local or special law if a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

Section 13. Impeachment

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

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

(c) Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall affirm or take an oath to try impartially the party impeached. If the Governor or Lieutenant Governor is tried, the Chief Justice of the Supreme Court shall preside. A person may be convicted of impeachment charges only by record vote of two-thirds of the membership of the Senate.

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

Section 14. Advice and Consent of the Senate

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

Article IV
The Executive

Section 1. Officers Constituting the Executive Department

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

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

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

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

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

Section 4. Governor's Eligibility and Installation

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

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

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

Section 5. Gubernatorial Succession

(a) If before inauguration the person elected Governor fails to qualify, is disabled, or dies, the person elected Lieutenant Governor shall be inaugurated and shall serve as Governor

until the person elected Governor at the next general election assumes office for the remainder of the term.

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

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

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

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

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

Section 6. Disability of Elective Officers of Executive Department

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

Section 7. Compensation of Officers of Executive Department

The compensation of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, and Commissioner of the General Land Office shall be as provided by law, not to exceed the amount recommended by the salary commission. The compensation of officers of the Executive Department shall not be diminished during their term of office. The Governor shall have the use of the Governor's Mansion.

Section 8. Dual Office Holding; Other Compensation

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

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

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

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

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

Section 11. Convening the Legislature in Special Session

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

Section 12. Governor's Message

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

Section 13. Action on Bills and Resolutions

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

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

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

Section 14. Chief Planning Officer

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

Section 15. Budget Preparation

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

Section 16. Budget Execution

The Governor shall be responsible as provided by law for the proper execution and administration of the total State budget and shall require of all State governmental agencies such expenditure plans, fiscal reports, and accounts as deemed necessary to supervise the expenditure of previously appropriated funds.

Section 17. Administrative Reorganization

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

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

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

Section 19. Lieutenant Governor

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

Section 20. Secretary of State

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

Section 21. Attorney General

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

Section 22. Comptroller of Public Accounts

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

Section 23. General Land Office

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

Section 24. Vacancies in Statewide Offices

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

Section 25. State Agencies

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

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

Section 26. Seal of State and Commissions

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

Article V
The Judiciary

Section 1. Unified Judicial System

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

Section 2. Supreme Court

(a) The Supreme Court shall be the highest court of the State and shall consist of the Chief Justice of Texas and at least eight other justices. The court may sit in sections as designated by the court to hear argument of cases and to consider applications for writs of error or other preliminary matters, but a majority of the court shall be necessary to decide a case.

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

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

Section 3. Courts of Appeals

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

Section 4. District Courts

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

Section 5. County Courts

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

Section 6. Justice Courts

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

Section 7. Qualifications of Judges

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

Section 8. Merit Selection and Nonpartisan Election*

(a) There is hereby created a Judicial Nominating Commission of eleven members, a majority of whom shall be non-lawyers. The Governor, Lieutenant Governor, and Speaker of the House of Representatives acting together shall select the members of the Judicial Nominating Commission and designate the chairman. The selection of the members shall be on a nonpartisan basis with due regard to representation of the sexes, ethnic groups, and geographical regions of the State.

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

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

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

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

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

** The Commission voted its preference for merit selection of appellate judges but also recommends that the following proposal for nonpartisan election be submitted to the qualified voters as an alternative:*

ALTERNATIVE SUBMISSION

Section 8. Nonpartisan Election of Appellate Judges

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

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

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

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

Section 9. Compensation

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

Section 10. Mandatory Retirement of Judges

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

Section 11. Removal of Judges

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

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

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

Section 12. Judicial Council

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

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

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

Section 13. Clerks

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

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

Section 14. Juries

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

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

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

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

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

Section 15. Suspension of Sentence and Probation

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

Section 16. Appeal by State

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

Section 17. Appeal by Accused

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

Article VI
Suffrage

Section 1. Qualified Voter

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

Section 2. Elections

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

Section 3. General Elections

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

Article VII
Education

Section 1. Equitable Support of Free Public Schools

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

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

Section 2. Permanent and Available School Fund

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

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

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

Section 3. Prohibition of Aid to Non-Public Schools

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

Section 4. Dedicated School Tax

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

Section 5. State Board of Education

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

Section 6. School and Community College Districts

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

Section 7. First Class Colleges and Universities

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

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

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

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

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

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

bonds or notes issued by the Board of Regents of The University of Texas System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such two-thirds of the Available University Fund, plus the net income (that is, income less administrative expense) from grazing leases of Permanent University Fund land, shall be appropriated by the Legislature for the support and maintenance of The University of Texas at Austin.

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

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

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

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

(d) For the purpose of securing the payment of the principal and interest of these bonds or notes, the Boards are severally authorized to pledge the whole or any part of the respective interests of the Texas A&M University System and The University of Texas System in the Available University Fund. The Permanent University Fund may be invested in these bonds or notes. All bonds or notes issued pursuant to this Section shall be approved by the Attorney General of Texas and when so approved shall be incontestable.

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

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

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

(c) The Higher Education Tax Fund may be pledged to secure or refund bonds issued heretofore or hereafter for acquiring land, either with or without permanent improvements thereon, constructing, equipping, repairing, rehabilitating buildings or other permanent improvements, and for acquiring capital equipment and library books and materials at the in-

stitutions for which the Fund is created. After appropriating an annual sum sufficient to pay the principal and interest due on such bonds, the Legislature shall appropriate the remainder of the Fund for the support and maintenance of State institutions of higher education other than The University of Texas at Austin, Texas A&M University at College Station, the public community colleges, and the State technical institutes.

(d) The Legislature shall provide by law for each issue of bonds authorized by this Section and for equitable distribution of the proceeds on the basis of statewide needs. Responsibility for issuance of bonds and allocation of proceeds shall be vested as provided by law.

(e) From the date on which they became eligible to participate in the special tax fund established in this Section, the institutions participating in this fund shall not receive any general revenue funds for acquiring land or permanent improvements, or for constructing and equipping new buildings or other permanent improvements, except that in the case of fire or natural disaster the Legislature may appropriate from general revenue an amount sufficient to replace the uninsured loss.

(f) If for any reason the tax authorized by this Section is held invalid, the Legislature shall provide an equal amount of revenue from other sources.

Article VIII
Finance

Section 1. Taxation

Taxes shall be levied and collected by general law.

Section 2. Property Tax Exemptions

(a) There shall be exempt from all ad valorem taxation:

(1) The property of the State except as provided by law and all other public property used for public purposes;

(2) All household goods and personal effects not used for the production of income; and

(3) All farm products in the hands of the producer and family supplies for home and farm use.

(b) There shall be exempt from State ad valorem taxation:

(1) Three thousand dollars of the assessed value of all residence homesteads; and

(2) The property of political subdivisions of the State.

(c) The Legislature by general law may exempt from ad valorem taxation:

(1) Property used exclusively for educational or charitable purposes or places of burial not held for profit;

(2) Up to three thousand dollars of the assessed value of property owned by a disabled veteran of the armed services of the United States or by the surviving spouse and surviving minor children of a disabled veteran of the armed services of the United States;

(3) Up to three thousand dollars of the assessed value of property owned by the surviving spouse or surviving minor children of any member of the armed services of the United States whose life was lost while on active duty;

(4) Actual places of religious worship;

(5) Any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society if the property yields no revenue to the church or religious society, but such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; and

(6) Any other property validly exempt at the time of adoption of this Constitution.

(d) The governing body of any political subdivision may exempt from ad valorem taxes not less than three thousand dollars of the assessed value of a residence owned and occupied by persons sixty-five years of age or over. If no exemption has been granted, the governing body,

upon a petition signed by qualified voters equal in number to at least twenty percent of those voting in the last preceding election held by the political subdivision, shall call an election to determine by majority vote whether to grant such an exemption in the amount, not less than three thousand dollars, specified in the petition.

(e) The Legislature by general law may provide relief from residential ad valorem taxes for persons determined to be in need of such relief because of age, disability, or economic circumstances. Any such law shall provide for the reimbursement of political subdivisions for revenue losses caused by such relief.

(f) No exemptions from ad valorem taxation shall be granted except as authorized under this Section.

Section 3. Highway-User Revenues

Subject to legislative appropriation, allocation, and direction, all net revenues from motor vehicle registration fees and three-fourths of net revenues from all taxes on fuels and lubricants used to propel motor vehicles over public roadways, except gross production and ad valorem taxes, shall be deposited in the State Highway Fund. Such revenues shall be used solely for acquiring rights-of-way, constructing and maintaining a State highway system; for policing public roadways; and for administering laws pertaining to the supervision of traffic and safety on public roadways. One-fourth of net revenues from these taxes shall be allocated to the Available School Fund. The net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each county, or less than the percentage allowed to be retained, under the laws in effect at the time of adoption of this Constitution.

Section 4. State Taxes on Income

If a law is enacted levying an income tax, the tax may be on personal or corporate income, or both, and may be graduated or otherwise. The law may define income by reference to the laws of the United States as they then exist or may thereafter be changed.

Section 5. State Debt

(a) State debt shall mean bonds or other evidences of indebtedness which are secured by the general credit of the State or are to be repaid, directly or indirectly, from tax revenue and are incurred for the State or for an agency of the State.

(b) No State debt shall be authorized or incurred except as provided in this Constitution.

(c) State debt may be authorized by general law to refund outstanding State debt.

(d) State debt may be incurred if approved by two-thirds vote of the membership of each house of the Legislature and submitted to and approved by a majority of the qualified electors voting on the question.

Section 6. Appropriations

(a) Money may not be drawn from the State Treasury except in accordance with specific appropriations made by law.

(b) Any appropriation from the State Treasury expires two years after its effective date.

(c) No bill containing an appropriation may be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts certifies that the amount appropriated is within the estimated revenue for the applicable fiscal period.

(d) No appropriation in excess of the estimated revenue shall be valid unless it is made in response to imperative public necessity and approved by four-fifths vote of the membership of each house of the Legislature.

Section 7. Public Funds

Public money and public credit shall be used for public purposes only.

Section 8. Public Purposes

Public purposes, as that term is used in this Constitution, include, but are not limited to, purposes for which taxes could be levied or public money or public credit could be used before the adoption of this Constitution.

Article IX
Local Government

Section 1. Counties

The counties of the State are those that exist on the date of adoption of this Constitution. Changes in county boundaries, the merger and division of counties, and the removal of county seats shall be subject to the approval of a majority of the qualified voters voting on the question in each county affected.

Section 2. Powers of County Government

The powers of counties shall be those granted by this Constitution and by general law.

Section 3. County and District Officials

(a) The governing body of each county, to be known as the County Commission, shall consist of a County Judge elected by the qualified voters of the county and four County Commissioners, each elected by the qualified voters from separate and compact precincts containing as nearly as practicable an equal number of inhabitants. The County Judge shall serve as presiding officer.

(b) A Sheriff, Treasurer, Tax Assessor-Collector, County Clerk, and District Clerk shall be elected for each county, except that a single County Clerk may be elected to perform the duties of county and district clerk as provided by law.

(c) County Attorneys, District Attorneys, and Criminal District Attorneys shall be elected in such numbers and for such counties as provided by law.

(d) The County Commission may provide for the election of one or more Constables.

(e) The qualifications, duties, and functions of county officials and the grounds and procedure for disqualification, suspension, and removal shall be as provided by law.

(f) Notwithstanding any of the foregoing provisions, the qualified electors of a county, as provided by general law, may by charter, or by a majority vote of those voting on the question, alter the governing body, create additional offices, eliminate offices, combine the duties and functions of offices, and change the method of selection of any one or more county officials. In such an event the county shall provide for the performance of all duties and functions required by State law.

(g) Vacancies in county offices shall be filled as provided by general law or charter. Vacancies in district offices shall be filled as provided by law.

Section 4. County Charters and Ordinances

(a) The Legislature shall by law provide procedures by which any county with a population of not less than twenty-five thousand may adopt, amend, or repeal a charter with the approval of a majority of qualified voters voting on the question. A charter election may be initiated by petition of the qualified voters of the county or by resolution of the governing body as provided by law. No charter or ordinance shall be inconsistent with the Constitution or laws of the State.

(b) The qualified voters of a county without a charter may by a majority of those voting on the question grant the county governing body the power to enact ordinances as authorized by law.

(c) If a county ordinance conflicts with an ordinance of an incorporated city or town, the municipal ordinance shall prevail within its jurisdiction as defined by law.

(d) Neither county charters nor ordinances shall affect jurisdiction or venue or the duties of personnel of courts which are part of the State unified judicial system.

Section 5. General Law Cities

Cities and towns having a population of one thousand five hundred or less may be chartered only by general law. They may levy, assess, and collect such taxes as may be authorized by law.

Section 6. City Charters

Cities and towns having more than one thousand five hundred inhabitants may, by a majority vote of the qualified voters voting on the question, adopt, amend, or repeal their charters as provided by law. No charter or ordinance shall be inconsistent with the Constitution or general laws of the State. Cities which adopt charters under this Section may levy, assess, and collect any taxes authorized by law or charter. No city shall lose the power to amend or repeal its charter because its population drops below one thousand five hundred.

Section 7. Special Districts and Authorities

The Legislature shall provide by general law for establishing, financing, consolidating, and abolishing special districts and authorities and shall define their powers by general law. No special district or authority shall be created if the service it is to provide can be provided by an existing political subdivision. The provisions of this Section shall not be applicable to school and community college districts.

Section 8. Terms of Office

The terms of office for all elected officials of political subdivisions shall be as provided by law or charter.

Section 9. Compensation of Officials

Elected officials of political subdivisions shall be compensated only on a salary or per diem basis.

Section 10. Local Redistricting

Within the calendar year following that in which each federal decennial census is published, and at such other times as the governing body of any political subdivision may deem necessary, each governing body not entirely elected at large shall divide its geographical area into districts for the election of those representatives to the governing body not elected at large. The districts shall be composed of contiguous territory and shall be as compact and as nearly equal in population as practicable.

Section 11. Local Debt

Political subdivisions shall not issue general obligation bonds, except refunding bonds, unless approved by a majority of qualified voters voting on the question. No debt shall be

created by a political subdivision unless at the same time provision is made for paying the interest and principal when due.

Section 12. Intergovernmental Cooperation

A political subdivision may, by act of its governing body, cooperate or contract with one or more other political subdivisions, the State, or the United States with respect to the exercise of any function, power, or responsibility, or the use of public funds and credit in the public interest.

Article X
General Provisions

Section 1. Official Oath

All State and local officials shall take the following oath before they enter upon the duties of their office:

"I, ..., do solemnly swear that I will faithfully execute the duties of the office of............................and will to the best of my ability preserve, protect, and defend the Constitutions and laws of the United States and of the State of Texas, so help me God."

Section 2. Residence of Civil Officials

All elected and appointed officials shall reside within the State. All elected and appointed officials of a political subdivision shall reside within the political subdivision which they serve, and shall keep their offices at such places as required by law. Failure to comply with these conditions shall vacate the office.

Section 3. Officials to Serve Until Successor Qualified

All officials may continue to perform the duties of their offices until their successors shall be duly qualified.

Section 4. Forfeiture of Residence by Absence on Public Business

No person shall forfeit the right of suffrage, or of election or appointment to any office because of absence from the State or a political subdivision on business of the United States, this State, or a political subdivision.

Section 5. Vacancies Filled for Unexpired Term

Except as otherwise provided in this Constitution, elections to fill vacancies in office shall be for the remainder of the term only.

Section 6. Disqualification from Constitutional Office

In addition to the grounds and procedures provided in this Constitution, the disqualification, suspension and removal from any constitutional office, withholding of salary, and temporary filling of vacancies shall be as provided by law, but no statute enacted under the authority of this Section may be applicable to conduct committed before its enactment.

Section 7. Qualification for and Disqualification from Statutory Office

Unless otherwise provided in this Constitution, the qualifications, grounds for disqualification, suspension and removal from office, withholding of salary, and temporary filling of vacancies for statutory officials shall be as provided by law.

Section 8. Appointments to State Agencies

The authority responsible for appointing the members or filling vacancies for State gov-

ernmental agencies shall make appointments that fairly and equitably represent the sexes, ethnic groups, economic groups, and geographical regions of the State.

Section 9. Salary Commission

(a) A salary commission shall be established to recommend rates of compensation for members of the Legislature, judges in the State unified judicial system, and officials of the executive branch, and to perform such other duties pertaining to compensation as may be provided by law. Compensation paid by the State shall not exceed the rates recommended by the commission.

(b) The salary commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate. Members of the commission shall serve six-year terms. Vacancies shall be filled by the Governor for the remainder of the term with the advice and consent of the Senate. No member of the commission may hold another public office at the same time.

Section 10. Environment

The State and each person shall maintain and improve a clean and healthful environment in Texas for present and future generations. The Legislature shall provide for the administration and enforcement of this duty. The Legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 11. Separate and Community Property of Husband and Wife

All property owned or claimed by each spouse before marriage, and that acquired afterward by gift, devise, or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of each spouse in relation to separate property as well as that held in common with one another. A husband and wife may from time to time and by written instrument partition between themselves in severalty or into equal undivided interests all or any part of their existing community property. In like manner, they may exchange between themselves the community interest of one in any property for the community interest of the other in other community property. The portion or interest set aside to each by partition or exchange shall be and constitute a part of the separate property of such spouse. A partition or exchange under this Section shall not prejudice the rights of preexisting creditors. This provision is self-operative, but laws may be passed prescribing reasonable requirements not inconsistent herewith.

Section 12. Homestead

(a) The homestead of a family and of such other persons as may be designated by law is protected from forced sale for the payment of all debts, except for purchase money therefor, taxes due thereon, and for work and material used in constructing improvements thereon when the work and material are contracted for in writing by the owner but, in the case of married persons, only if both spouses consent to the contract in the manner required when a homestead is sold. A homestead of married persons may be sold only with the consent of both spouses, except that when the homestead is the community property or the separate property of the spouse desiring to sell, it may be sold as provided by law without the consent of the other spouse if the latter is incompetent, has disappeared, or has abandoned the homestead, as provided by law. No mortgage, trust deed, or other lien on a residential homestead shall be valid except for the purchase money therefor or for improvements made thereon, as provided above. Liens may be created on non-residential homesteads but only in the manner required for a conveyance thereof. All pretended sales of the homestead involving any condition of defeasance shall be void.

(b) The homestead not in a city, town, or village shall consist of not more than two hundred acres of land, which may be in one or more parcels with the improvements thereon. Of the two hundred acres, only fifty acres on which the home is located shall be classified as residential and the remainder shall be classified as non-residential. The homestead in a city, town, or village shall consist of land valued at the time of establishment thereof, and without reference to the value of any improvements thereon, at no more than ten thousand dollars or any larger sum as may be provided by law. A homestead in a city, town, or village is a residential homestead if used as a home and is non-residential if used as a place for the exercise of the calling or business of the head of a family or such other person as may be designated by law. A home remains a homestead while temporarily rented only so long as no other homestead is acquired.

(c) The homestead of married persons shall descend and vest like any other real property, except that the homestead shall not be partitioned so long as it is used and occupied as a home either by the surviving spouse, or by minor children if the use and occupancy have been granted by the court.

Section 13. Protection of Personal Property from Forced Sale

The Legislature shall provide by law for the protection from forced sale of certain portions of the personal property of all adults and heads of families.

Section 14. Wages Not Subject to Garnishment

No current wages for personal service shall be subject to garnishment.

Section 15. Private Corporations

No private corporation shall be created except by general laws.

Section 16. Foreign Corporations with Banking and Discounting Privileges

No foreign corporation, other than national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State.

Section 17. Alcoholic Beverages

(a) The Legislature shall regulate the manufacture, sale, possession, and transportation of alcoholic beverages, and shall preserve the right of any county, justice precinct, or incorporated town or city to exercise local option by election to legalize or to prohibit the sale of alcoholic beverages of various types and various alcoholic content.

(b) In any county, justice precinct, or incorporated town or city in which the manufacture, sale, barter, or exchange of alcoholic beverages of any of various types and various alcoholic content was prohibited at the time of the adoption of this Constitution, the same shall continue to be unlawful unless and until a majority of the qualified voters in such political subdivision voting on the question in an election shall determine such to be lawful.

Section 18. Practitioners of Medicine

The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

Section 19. Gambling Enterprises

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

Section 20. Liens of Mechanics, Artisans, and Materialmen

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

Section 21. Pension and Retirement Systems

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

Article XI
Mode of Amending the Constitution of the State

Section 1. Amendments to the Constitution

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

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

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

Section 2. Constitutional Convention

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

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

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

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

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

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

Transition Schedule

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

Section 1. Accelerated Effective Date

(a) Sections 14 and 15 of Article IV shall become effective on January 1, 1975.

(b) Section 10 of this Transition Schedule shall become effective on January 1, 1975.

Section 2. Existing Laws, Rights, and Proceedings

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

Section 3. Validity of Issued and Unissued Bonds

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

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

Section 4. Continuation of Grants of Power to Counties

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

(a) Subsection (e) of Section 52 of Article III;

(b) Section 52d of Article III;

(c) That Section 52e of Article III that was added in 1967;

(d) That Section 52e of Article III that was added in 1968; and

(e) Section 6b of Article VII.

Section 5. Ten Cent State Ad Valorem Tax

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

Section 6. County Ad Valorem Tax

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

Section 7. Assessment of Agricultural Lands

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

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

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

Section 9. Compensation of Legislature and Lieutenant Governor

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

Section 10. Anticipatory Legislation

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

Section 11. Retirement Systems

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

(a) Article III, Section 48a; Fund for Retirement, Disability and Death Benefits for Employees of Public Schools, Colleges and Universities;

(b) Article III, Section 48b; Teacher Retirement System of Texas;

(c) Article III, Section 51-e; Municipal Retirement Systems and Disability Pensions;

(d) Article III, Section 51-f; State-wide Retirement and Disability System for Municipal Officers and Employees;

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

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

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

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

Section 12. Special Elections for Members of the Legislature

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

Section 13. Terms of Office

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

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

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

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

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

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

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

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

Section 15. Board of Pardons and Paroles

Until otherwise provided by law, the Board of Pardons and Paroles shall continue to be chosen and shall continue to operate as provided in Section 11 of Article IV of the Constitution of 1876, as amended.

Section 16. Constitutional Powers Omitted from Implementing Statutes

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

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

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

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

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

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

Section 17. Dual Officeholding

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

Section 18. Conflict of Interest

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

Section 19. The Judiciary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 20. Publicizing Proposed Amendments

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

Adoption Schedule

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

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

Section 1. Effective Date

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

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

Chapter Two

Introduction

Chapter Two

Introduction

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

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

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

The current effort for constitutional revision began with the adoption of a resolution by the 62nd Texas Legislature in May, 1971. The resolution called for an amendment to be submitted to the voters in November, 1972. If approved, the amendment would set in motion a process leading to a thorough study and recommended revision of the state's fundamental law. (The amendment is reproduced as Appendix A.) With the support of numerous legislators, civic leaders, and private citizens the amendment was approved by the people by a substantial margin. The amendment specifically called for the creation of a citizens' commission whose recommendations for constitutional change would be acted upon by the Legislature sitting as a constitutional convention. Proposals for constitutional change agreed upon by the Legislature would then be submitted to the voters of Texas for their approval.

The Constitutional Revision Commission

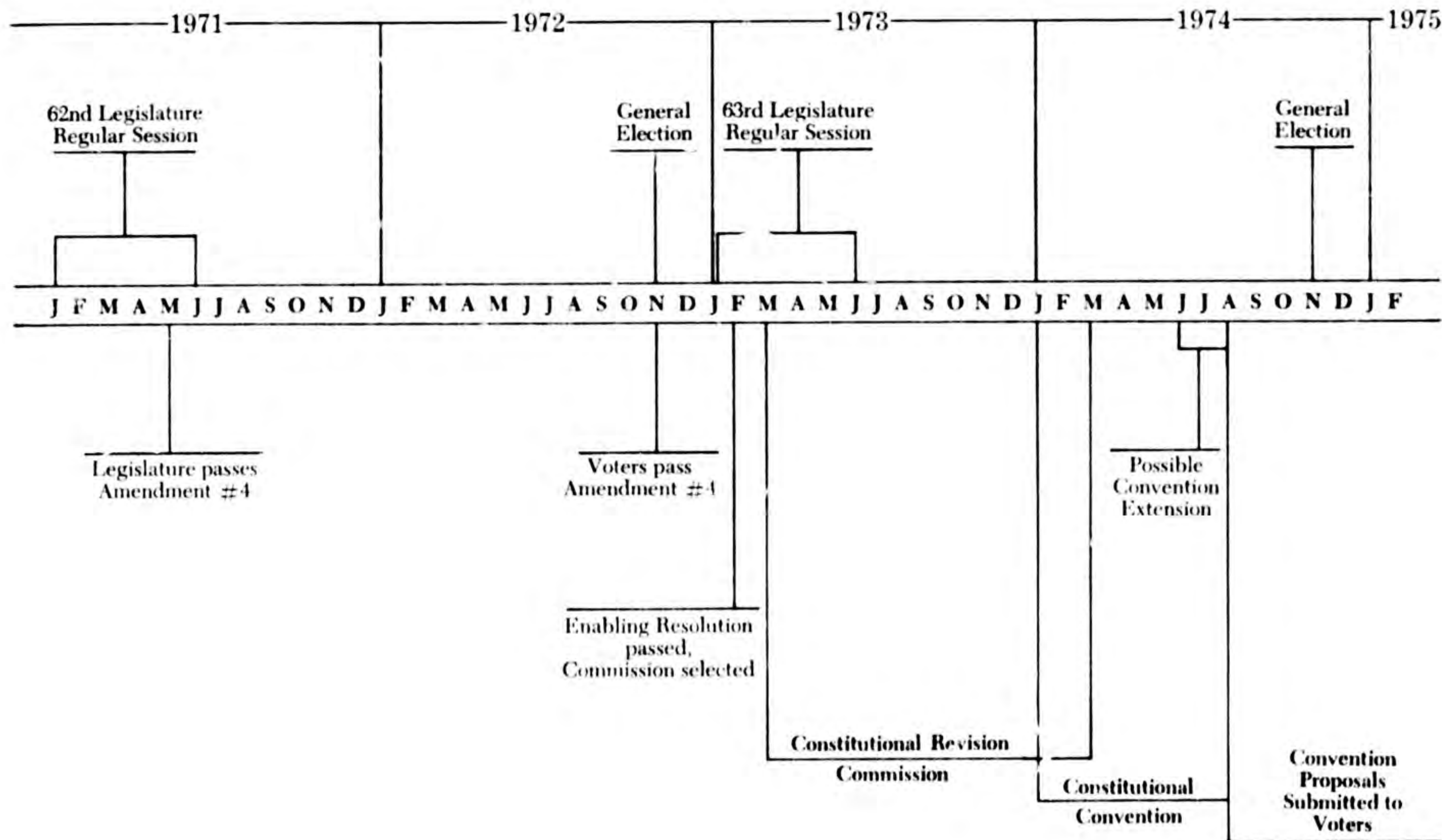
Within a few months after approval of the proposal for constitutional reform by the voters, the Legislature passed a resolution establishing the Texas Constitutional Revision Commission. On February 12, 1973, Senate Concurrent Resolution Number 1 (S.C.R. 1), was signed into law, creating the Commission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

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

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

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

Figure 2.1
Significant Dates in the Implementation of Constitutional Revision



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

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

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

Public Participation in the Revision Process

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

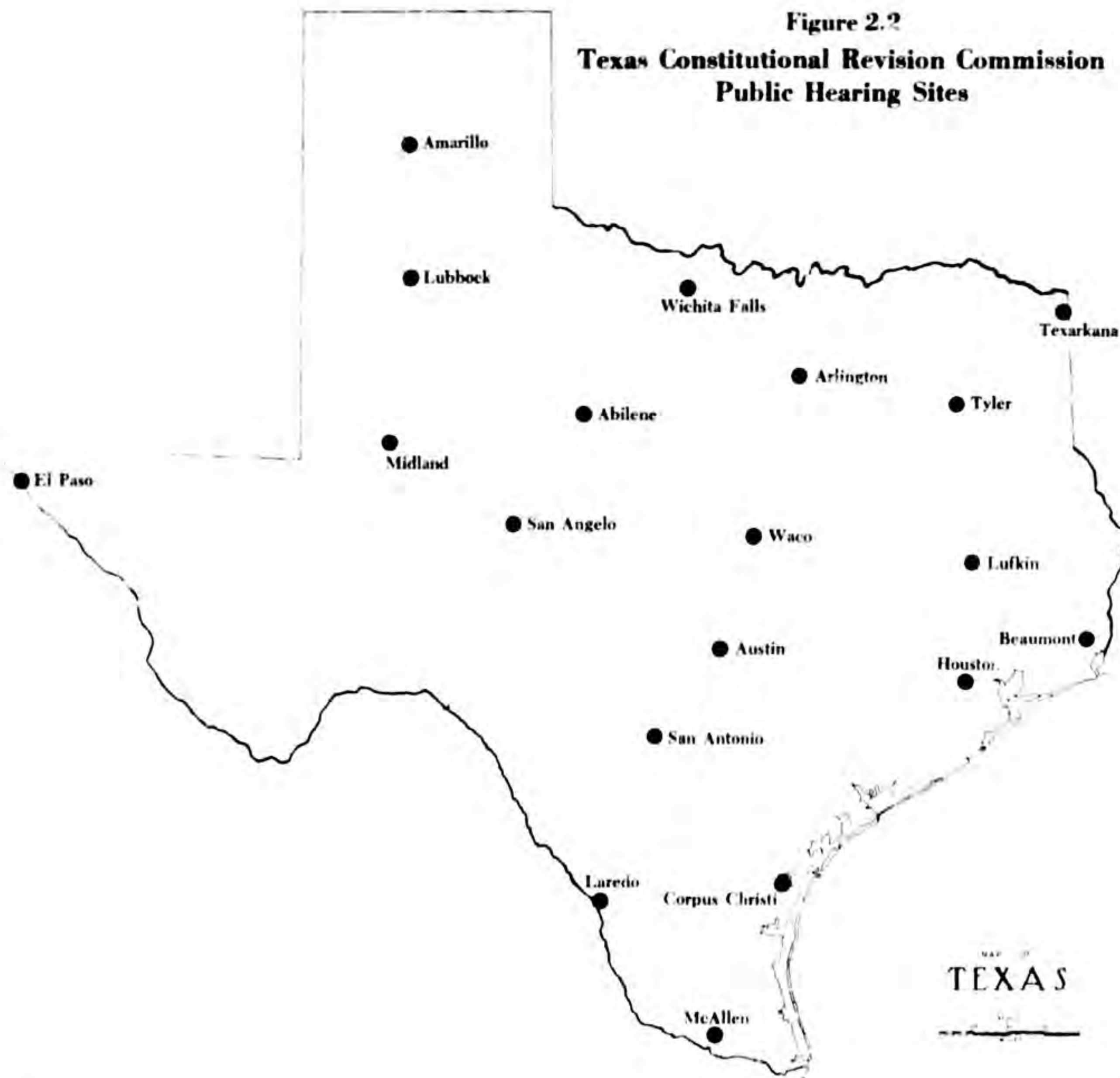
Beginning on April 25, 1973, in Amarillo, and ending on June 30, 1973, in Austin, the Revision Commission toured the state and listened to citizens in every geographic area express their thoughts and concerns on what should or should not be included in a new constitution for Texas. An average of approximately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

Many of those testifying at the hearings presented detailed recommendations. In several cases, a complete new constitution was presented for consideration. At the other extreme were those who made very broad recommendations with regard to the length or general content of a new constitution. Still another viewpoint was that no changes should be made in the Constitution of 1876.

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

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

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



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

In almost every city the Commission's expectations were realized by involving sizeable numbers of local residents through the advisory committees. Citizens in practically every area of the state turned out enthusiastically for advisory committee meetings. To encourage maximum local flexibility, the Commission did not issue any standardized rules or procedures, but allowed the committees to organize and set about their tasks in different ways. In many localities, citizen advisory committees held additional hearings to supplement Commission hearings in their areas. Others conducted public opinion polls with questionnaires mailed out to individuals and printed in local newspapers. Still others appointed subcommittees to study the various sections of the constitution and recommend changes to their full advisory committees and subsequently to the Revision Commission.

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

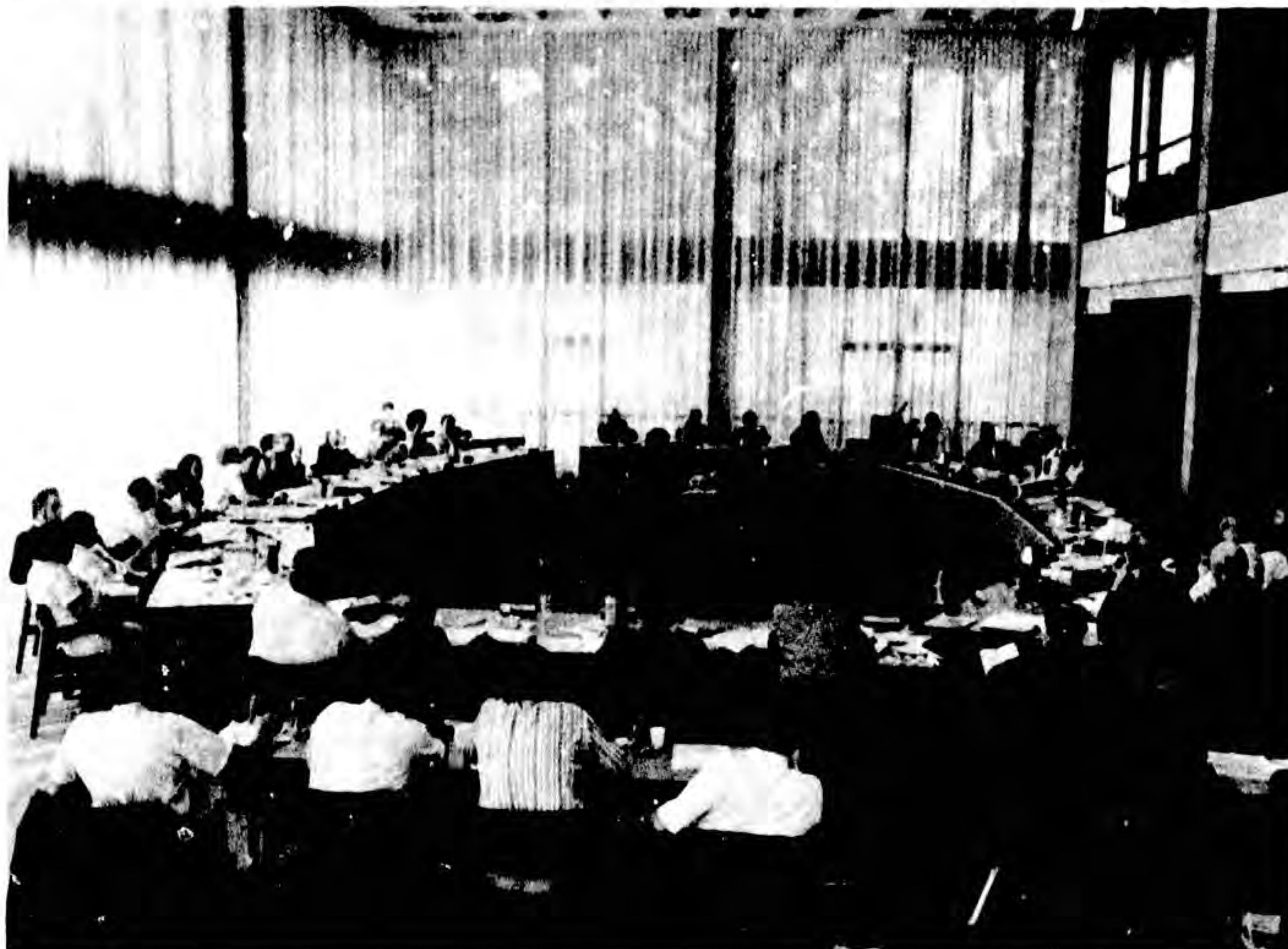
basis. Advisory committees were regularly sent draft recommendations as they were formulated by the Commission and asked to respond to them. In addition, at a special meeting for advisory committee chairmen held in Austin on August 22, 1973, representatives of the committees were given detailed explanations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

Drafting a New Constitution

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

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

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



Chapter Three

Overview of the Commission's Report

Chapter Three

Overview of the Commission's Report

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

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

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

Major Proposals Contained in the New Constitution

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

Article I, Bill of Rights

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

Article II, Separation of Powers

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

Article III, The Legislature

Composition. The Commission recommends flexibility in the number of members of the Senate and the House of Representatives. The Senate would consist of not fewer than 31 nor more than 50 members, and the House of not fewer than 93 nor more than 155 members. A fixed ratio of House and Senate seats would be required. For example: either 2-1, 3-1, 4-1, or 5-1.

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

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

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

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

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

Article IV, The Executive

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

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

(a) A retention of the current line-item veto, and the additional authority of a new reduction veto for certain appropriation items;

(b) Budget execution authority, as provided by the Legislature;

(c) Authority to submit administrative reorganization plans to the Legislature that would take effect unless disapproved; and

(d) The constitutional duty of submitting a budget bill to be considered by the Legislature.

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

Article V, The Judiciary

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

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

Merit Selection and Nonpartisan Elections. Justices and judges of the Supreme Court and courts of appeals remain in office subject to voter approval of their judicial records. Vacancies in the appellate courts are filled by appointment of the Governor from a list of nominees provided by the Judicial Nominating Commission. District and county judges in the unified judicial system are elected on nonpartisan ballots.

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

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

Article VI, Suffrage

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

Article VII, Education

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

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

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

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

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

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

Article VIII, Finance

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

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

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

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

Article IX, Local Government

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

Additional Flexibility for Counties.

(a) Upon a favorable vote of the county voters, counties may combine existing offices or create new offices.

(b) Counties may enact ordinances if that power is granted by vote of the people.

(c) Upon a favorable vote of the county voters, counties over 25,000 population may adopt charters and exercise powers similar to that of cities.

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

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

Article X, General Provisions

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

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

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

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

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

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

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

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

Usury. Since the provisions of the 1876 Constitution concerning usury and rates of interest have not proved effective, the Commission recommends that the Legislature regulate such matters by law.

Article XI, Amending the Constitution

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

Chapter Four

Text of the New Constitution with Commentary

Chapter Four

Text of the New Constitution with Commentary

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

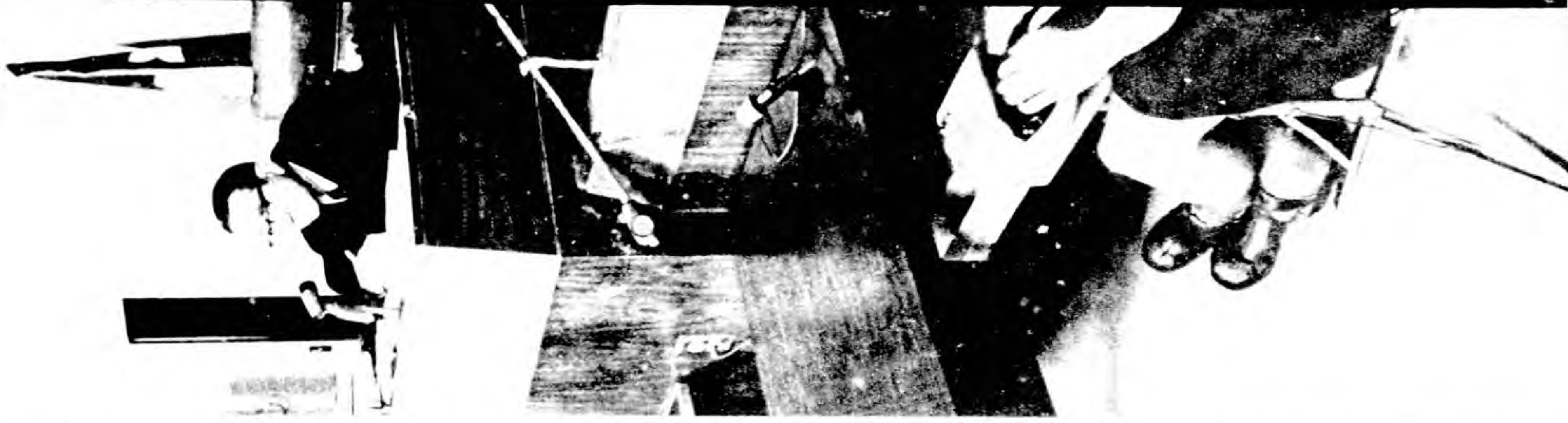
The following format is used throughout.

1. Article. . . ., Section. . . . .
   (Text of recommended section)
2. **Origin**
   (In this space, the relevant sections of the Constitution of 1876 are listed. Consistent terminology is used to indicate the relationship of the new section to the old section or sections. The term *revises* is used to indicate substantive changes, whether by addition or deletion. The term *rewords* is used to indicate grammatical changes, reordering of sentences, or other nonsubstantive changes. The term *new provision* is self-explanatory and is included to indicate that no similar provision is contained in the 1876 Constitution. In a few cases sections of the 1876 Constitution have been retained without change and this fact is reflected by *retained unchanged.*)
3. **Commentary**
   (Under this heading each section is discussed to explain what the proposed language means, the intended legal effect of the section, the reasoning behind its adoption, and in some cases other alternatives which were considered.)

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

Article II

Separation of Powers



Article II
Separation of Powers

Section 1. Separation of Powers

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

Origin

Revises Article II, Section 1.

Commentary

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

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

(1) The Governor exercises legislative power by vetoing acts of the Legislature;

(2) The Lieutenant Governor, although a member of the Executive Department, presides over the Senate;

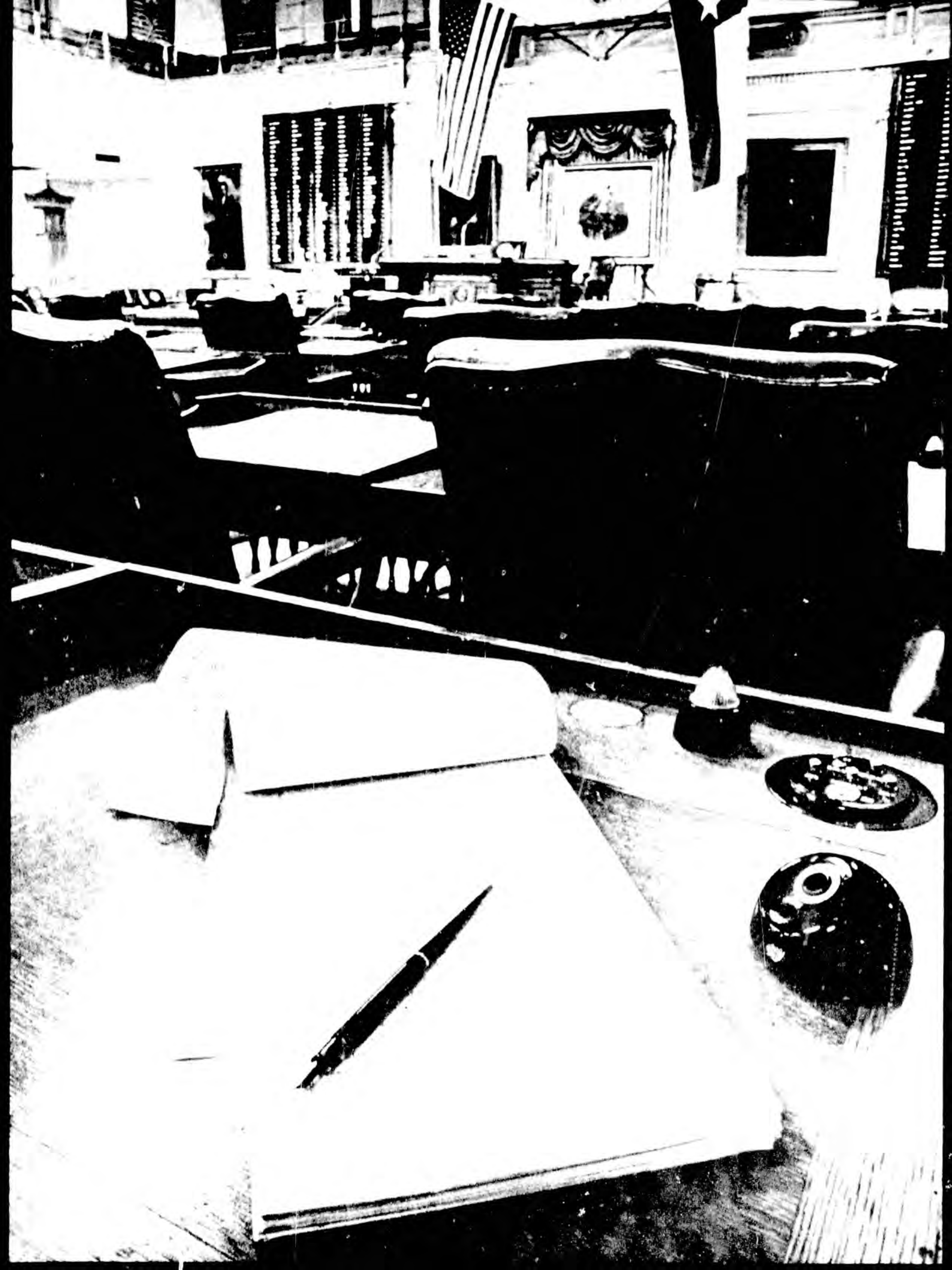
(3) The Supreme Court is permitted to exercise legislative power in making certain rules; and

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

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

Article III

The Legislature



Article III
The Legislature

Section 1. Legislative Power

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

Origin

Rewords Article III, Section 1.

Commentary

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

In considering the legislative process, the Commission discussed the possible adoption of limited procedures for direct legislation by initiative and referendum. However, it is the feeling of the Commission that such procedures are mostly of historical significance and would be of little real value in the legislative process. Initiative and referendum procedures would logically belong in the first part of the Legislative Article if adopted.

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

Section 2. Composition

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

Origin

Revises Article III, Section 2.

Commentary

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

With the rapid growth of the state, it is felt that a recommendation allowing the Legislature to take into account the geographic and demographic variances of Texas in setting the number of members for each house is necessary. This section requires that the number of members of the House of Representatives be a whole multiple of the number of members of the Senate. Each senatorial district can contain two, three, four, or five representative districts. Some possible membership ratios for the Senate and House are: 50-100 (1-2); 50-150 (1-3); 38-152 (1-4); 31-155 (1-5).

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

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

Section 3. Qualification of Members

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

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

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

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

Origin

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

Commentary

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

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

Consideration was given to lowering the age for eligibility to the House of Representatives from 21 to 18. The age limit was retained at 21, however. The Commission feels that the age for representing others carries with it different responsibilities from those of voting. Although Texas law now recognizes 18 year olds as adults, the maturity and training required to serve in the Legislature may not be present.

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

Subsection (d) has made a substantial change in Article III, Section 19 of the Constitution of 1876. The 1876 document does not allow an officeholder to resign and to run for the Legislature during the term for which that officeholder was elected or appointed. This prevents many elected officials of state and local government from running for the Legislature. The revised section allows an officeholder to serve in the Legislature if elected and contains no requirement that the officeholder resign before running for the Legislature. However, in order to serve, the newly elected legislator would have to resign the other public office. The Commission feels that this change will be beneficial since it will allow many experienced state, county, and district officials to run for the Legislature if they desire. Subsection (d) also applies to legislators after they assume office and prevents dual office holding by a legislator except in certain instances in which it is expressly allowed by the revised constitution.

Section 4. Election and Terms of Members

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

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

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

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

Origin

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

Commentary

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

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

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

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

Section 5. Redistricting

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

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

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

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

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

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

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

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

Origin

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

Commentary

Section 5 retains some of the redistricting procedures of the Constitution of 1876, but there are also some significant changes. Changes are made in the composition and operation of the Legislative Redistricting

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

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

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

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

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

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

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

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

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

Section 6. Compensation

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

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

Origin

Revises Article III, Section 24.

Commentary

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

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

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

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

Section 7. Sessions

(a) The Legislature shall meet at least once every two years and at such times and for such duration as provided by law.

(b) All legislative proceedings shall be open to the public.

(c) Neither house may adjourn or recess for more than three days without the consent of the other.

(d) The Legislature shall meet at the seat of government unless otherwise provided by law.

Origin

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

Commentary

Several significant changes from the 1876 Constitution are reflected in this provision. Section 7 contains no time limitation on regular sessions of the Legislature and requires only that the Legislature meet in regular session every biennium. Another change is to make all legislative proceedings open to the public.

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

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

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

Section 7 provides maximum flexibility because the Legislature could provide by law for a biennial session, annual sessions, or a biennial regular session with an interim budget session. None of these alternatives is dictated by the constitutional language, but all are possible. This flexible provision is not novel. About 33 states have annual legislative sessions, and, approximately one-half of these have no time limits on the length of the session.

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

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

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

Section 8. Organization and Procedure

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

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

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

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

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

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

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

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

Origin

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

Commentary

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

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

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

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

Subsection (e) would require the election of all legislative officers to be open. The major effect of this recommendation is to require the open election of the Speaker of the House. Each member's vote would be recorded in the journal. The words "individual voice votes" are intended to preclude all members from voting by machine at the same time. It is the Commission's belief that public voting will make it more difficult for behind the scenes maneuvering in the election of a Speaker. A Speaker elected by open vote might, in making committee assignments, be less likely to express ill will toward the opposition since the votes for opposing candidates are public. The public would be aware if those members were discriminated against because of their vote for Speaker.

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

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

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

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

vacancy is created upon expulsion of a member and a special election is called to fill the vacant seat. In the *Journal of the House of Representatives of the Regular Session of the Fortieth Legislature* (1927) on pages 442 and 443, resolutions can be found which provide for the expulsion of certain members and declare their seats vacant. An expelled member can be elected to fill the vacant seat and cannot be expelled a second time for the same offense.

Section 9. Legislative Immunity

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

Origin

Rewords Article III, Section 21.

Commentary

In Section 9 the words "legislative proceeding" are substituted for "either house" which appear in Article III, Section 21 of the Constitution of 1876. The change in wording was made in order to coincide with the judicially interpreted scope of that language. See *Tenny v. Brandhove*, 341 U.S. 367 (1951); cf. *Canfield v. Gresham*, 17 S.W. 390 (Tex. 1891). Freedom of legislative speech and debate is a great and vital privilege to assure the proper functioning of the legislative process. This provision gives absolute immunity to a speech made by a member on the floor of either house, before committees, or in any other proceedings directly connected with the Legislature.

Section 10. Conflict of Interest

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

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

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

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

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

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

Origin

(a) Rewords Article III, Section 18.
(b) Rewords Article III, Section 18.
(c) Rewords Article III, Section 22.
(d) Revises Article III, Section 18.
(e) New provision.
(f) New provision.

Commentary

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

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

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

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

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

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

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

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

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

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

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

some abuse, and the fact that on occasions it has appeared that such mandatory continuances have been used solely for the purpose of delay. . . .

See Tex. Laws 1973, ch. 428 at 1130, 1131. Under subsection (f), it would still be possible for a legislator to obtain a continuance if a party or attorney in a case. However, there must be a good reason, other than legislative membership, for such a continuance. The decision to grant a continuance would be discretionary with the judge and not mandatory.

Section 11. Bills

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

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

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

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

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

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

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

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

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

Origin

(a) Rewords Article III, Section 30.
(b) Rewords: Article III, Section 30;
Article III, Section 31.
Revises Article III, Section 33.
(c) Revises Article III, Section 35.
(d) Rewords Article III, Section 36.
(e) Revises Article III, Section 37.
(f) Rewords Article III, Section 32.
(g) Rewords Article III, Section 34.
(h) Rewords Article III, Section 38.
(i) Revises Article III, Section 39.

Commentary

Section 11 provides for a continuation of the basic provisions of the Constitution of 1876 concerning the enactment of bills. However, Section 11 contains some changes in existing law. Subsection (b) would allow revenue bills to originate in the Senate; (e) establishes the requirement that a bill be reported from

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

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

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

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

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

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

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

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

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

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

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

stitution of 1876. Because Section 7 of this article allows flexibility in setting the duration of sessions, the continuation of the existing provision could delay acts from taking effect much longer than is needed. A delay of 90 days after a bill is signed by the Governor or filed with the Secretary of State should provide adequate time for the publication and implementation of a new law. Since the Commission feels that 90 days is needed to adequately inform the public of a new law, only an extraordinary majority should be allowed to permit an earlier effective date. Consequently, the vote to authorize an earlier effective date is raised from two-thirds to three-fourths of the membership of each house.

Section 12. Local or Special Legislation

The Legislature may not enact a local or special law if a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

Origin

Revises Article III, Section 56.

Commentary

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

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

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

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

Section 13. Impeachment

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

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

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

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

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

Origin

(a) Revises: Article XV, Section 1;
Article XV, Section 2.
(b) Rewords Article XV, Section 5.
(c) Revises Article XV, Section 3.
(d) Rewords Article XV, Section 4.

Commentary

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

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

Subsection (b) is a slight rewording from Article XV, Section 5 of the Constitution of 1876. A temporary suspension during the impeachment process can be justified. An accusation of misconduct in office is of such a serious nature that the public should be protected against a chance of continuing misconduct which might take place if the accusation proved to be true. Furthermore, such a provision works for the benefit of the accused. It gives the accused an opportunity to prepare a defense without being encumbered with the responsibilities and daily burdens which go hand-in-hand with the holding of public office.

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

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

Section 14. Advice and Consent of the Senate

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

Origin

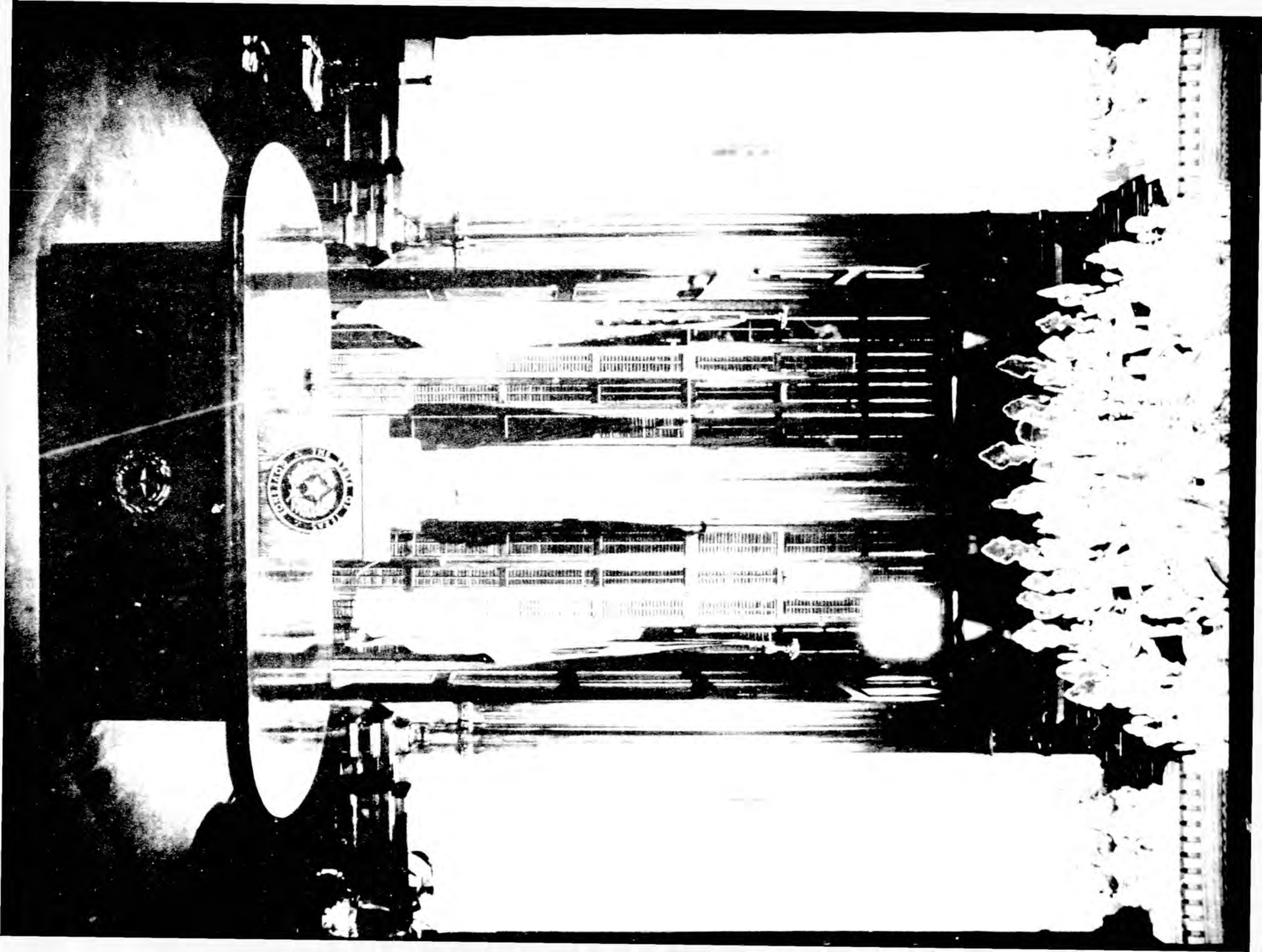
New provision.

Commentary

The words "with the advice and consent of the Senate" appear throughout the new constitution. They are explained to avoid misunderstanding as to the voting requirements for Senate confirmation.

Article IV

The Executive



Article IV
The Executive

Section 1. Officers Constituting the Executive Department

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

Origin

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

Commentary

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

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

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

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

Origin

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

Commentary

The election process constitutes the traditional method of selecting the Governor and Lieutenant Governor and this section preserves that democratic principle. The election process is also the most commonly accepted method of ensuring the independence of officers of government. The necessity of an independent check on the governmental actions of both executive and legislative officers was the rationale for the continued

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

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

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

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

Origin

Revises Article IV, Section 3.

Commentary

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

The Secretary of State was chosen because this office has traditionally been responsible for conducting elections and processing returns for all statewide and district elections except that of Governor and Lieutenant Governor. In order to establish uniformity, this provision includes the other elected officers of the Executive Department.

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

Section 4. Governor's Eligibility and Installation

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

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

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

Origin

Revises Article IV, Section 4.

Commentary

Subsection (a) retains the same qualifications for Governor as in the Constitution of 1876. Subsections (b) and (c) attempt to deal with the problems encountered when a new Governor takes office. In order to provide a newly elected Governor with the opportunity to organize a staff and become familiar with the responsibilities of the office, a provision allowing the Governor lead time before the convening of the Legislature is included in subsection (b). Under the new provision a newly elected Governor, once certified, is able to hire a staff and rent office space from money appropriated by the preceding Legislature. If an incumbent wins reelection, the funds would revert to the Treasury. Also, the new Governor is entitled to receive all reports to which the incumbent Governor is entitled. This will allow a new Governor to begin work on the budget bill, to consider the appointments which need to be made shortly after inauguration, and to begin work prior to inauguration on the programs the new Governor was elected to carry out. The Governor's budget preparation authority is discussed in the *Commentary* for Article IV, Section 15.

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

Section 5. Gubernatorial Succession

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

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

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

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

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

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

Origin

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

Commentary

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

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

Section 6. Disability of Elective Officers of Executive Department

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

Origin

New provision.

Commentary

Section 5, preceding, deals with the disability of the Governor and Lieutenant Governor, and it is conceivable that the problem might also arise with regard to the other elected Executive Department officers. This section is designed to provide a method for resolving the issue of disability. The question of who can initiate disability proceedings presents a problem, and the various state constitutions have suggested a number of possibilities. Recognizing the danger which indiscriminate or punitive action in raising the question of disability might have on the officer, this section requires that a majority of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Commissioner of the General Land Office, Speaker of the House, and President pro tempore of the Senate vote to initiate the question before the Supreme Court of the state.

Section 7. Compensation of Officers of Executive Department

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

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

Origin

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

Commentary

This section retains the compensation provisions of the 1876 Constitution but allows a salary commission to be implemented. Article X, Section 9 of the new constitution provides for the establishment of a salary commission. The Lieutenant Governor would receive compensation as a member of the Executive Department and not as a member of the Senate. The Salary Commission recommends rates of compensation which may be approved by the Legislature. In setting the salaries the Legislature may not exceed the recommendations of the commission. The change in the salary provisions concerning the Lieutenant Governor was necessary due to the increased responsibility and time involved in performing the duties of the office.

Section 8. Dual Office Holding; Other Compensation

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

Origin

Revises Article IV, Section 6.

Commentary

Section 8 was revised to include all officers of the Executive Department. A prohibition in the 1876 Constitution against holding military office was removed in consideration of the number of citizens who are members of the reserve corps of the armed services.

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

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

Origin

Revises Article IV, Section 7.

Commentary

The only change in this section from the 1876 Constitution was the deletion of the phrase "and protect the frontier from hostile incursions by Indians or other predatory bands."

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

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

Origin

Revises Article IV, Section 10.

Commentary

This section includes the authority of the Governor to conduct the state's relations and business with foreign nations. The revised Section 10 gives constitutional status to actions which Governors have taken in recent years to encourage social and economic ties with other countries. There is no other change from the predecessor section.

Section 11. Convening the Legislature in Special Session

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

Origin

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

Commentary

Section 11 retains the Governor's authority to call the Legislature into special session when necessary and provides that the Governor shall determine the subjects to be considered and the length of the session.

Section 12. Governor's Message

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

Origin

Rewords Article IV, Section 9, first sentence.

Commentary

Section 12 was reworded for clarity. The fiscal provisions of Article IV, Section 9 of the Constitution of 1876 have been relocated in Section 15 of this article.

Section 13. Action on Bills and Resolutions

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

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

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

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

Origin

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

Commentary

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

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

An example of the problem which has confronted the Governor in recent years is evident from a comparison between the Department of Agriculture appropriations for 1947 and 1971. In 1947 the amount appropriated to the Department of Agriculture for the fiscal year 1947-1948 was $784,658. This appropriation contained 88 line items, any or all of which the Governor could veto. In 1971, the Legislature passed an appropriation for the Department of Agriculture for fiscal year 1971-1972 of $7,926,528. There were only fourteen line items. Item number 11 of the appropriation encompassed all the Department's major programs and was for the amount of $2,837,925. The Governor's options were either to retain all the programs or to veto all of them.

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

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

Section 14. Chief Planning Officer

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

Origin

Revises Article IV, Section 24.

Commentary

Section 14 recognizes the role of the Governor in planning for the coordinated operation of state government. The Governor now chairs several interagency planning councils in such diverse fields as health, transportation, and natural resources. He is also increasingly responsible for planning the state implementation of new federal programs, such as revenue sharing, which affect both state and local agencies. As a related matter, this section retains the provisions of Article IV, Section 24 of the Constitution of 1876 with regard to the Governor's authority to request and receive reports from governmental agencies.

Section 15. Budget Preparation

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

Origin

New provision.

Commentary

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

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

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

Section 16. Budget Execution

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

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

Origin

New provision.

Commentary

Section 16 is intended to settle any question of whether the Legislature can grant budget execution power to the Governor under the separation of powers doctrine. This is not a grant of authority to the Governor, but it allows the Legislature to grant such authority to the Governor. Although a direct grant of authority was discussed as a possibility, the inability to determine what budget execution power might be necessary in the future was decisive in providing a flexible system.

Section 17. Administrative Reorganization

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

Origin

New provision.

Commentary

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

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

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

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

Origin

Revises Article IV, Section 11

Commentary

Under Section 18 the Governor retains the authority to grant death sentence execution reprieves, and to grant commutation of sentences, pardons, and the remission of fines and forfeitures, subject to relevant laws enacted by the Legislature. The Board of Pardons and Paroles is included in the Constitution of 1876 but is restricted

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

There is no modification of the authority provided in the 1876 Constitution with regard to reprieves from execution of death sentences. This section does, however, leave the issue of administrative reprieves for illness, holiday, or emergency leaves flexible so that the Legislature can provide for these as it deems necessary, rather than requiring in the constitution that a board and the Governor act on these questions.

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

Section 19. Lieutenant Governor

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

Origin

Revises Article IV, Section 16.

Commentary

Section 19 provides for the election of the Lieutenant Governor and stipulates that the Lieutenant Governor is to serve as President of the Senate. The gubernatorial succession provision for the Lieutenant Governor is contained in Section 5 of this article.

Section 20. Secretary of State

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

Origin

Revises Article IV, Section 21.

Commentary

Section 20 provides for a continuation of the constitutional office of Secretary of State. Provisions concerning the method of selection, compensation, and duty to receive all bills passed by the Legislature are included, respectively, in Sections 2, 7, and 13 of this article.

Section 21. Attorney General

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

Origin

Revises Article IV, Section 22.

Commentary

Much of the language in Article IV, Section 22 of the Constitution of 1876 is statutory, especially the Attorney General's detailed authority over corporations and charters. These provisions were not included in the re-

vised constitution, although they will be retained through existing statutes. The concept of the Attorney General having common law authority, that is, the inherent authority to protect the public interest through the courts, is a basic principle which should be included in the constitution. Common law powers have been recognized in various states to include among others: challenging the constitutionality of legislative or administrative actions; enforcing anti-trust laws; preventing air and water pollution; instituting quo warranto actions against public officers; and abating offenses against morality. The attorneys general in most states have some form of common law authority, and the Texas courts have peripherally indicated that the Texas Attorney General is no exception. The provision that the Legislature can remove or modify common law power would check any abuses which might arise.

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

Section 22. Comptroller of Public Accounts

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

Origin

Revises Article IV, Section 23.

Commentary

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

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

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

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

Section 23. General Land Office

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

Origin

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

Commentary

The provision for a General Land Office in the constitution reflects the importance of that office due to its responsibility for public lands and the potential for environmental work. The Commissioner of the General Land Office is designated as an officer of the Executive Department by Section 1 of this article.

Section 24. Vacancies in Statewide Offices

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

Origin

Revises Article IV, Section 12.

Commentary

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

This section brings the filling of vacancies in elective statewide offices into conformity with the succession provisions to the governorship, as found in Section 5 of this article. An appointee to a vacancy within sixteen months after an elected officer assumes office serves only until another officer, elected at the following general election, assumes office for the remainder of the unexpired term. The rationale for this decision was that the people should retain their right to elect a replacement as soon as possible, consistent with the schedule of the election process and the requirements for a campaign. The provision is sufficiently flexible to provide for filling vacancies in elected offices for terms which are neither four nor six years.

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

Section 25. State Agencies

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

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

Origin

Revises Article XVI, Section 30a.

Commentary

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

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

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

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

Section 26. Seal of State and Commissions

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

Origin

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

Commentary

Section 26 was reworded only for clarity.

Article V

The Judiciary

Article V
The Judiciary

Section 1. Unified Judicial System

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

Origin

Revises Article V, Section 1.

Commentary

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

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

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

Texas is one of only two states which has a special court of final resort for civil cases and another for criminal cases. This provision eliminates that specialization and moves Texas in line with the other forty-eight states.

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

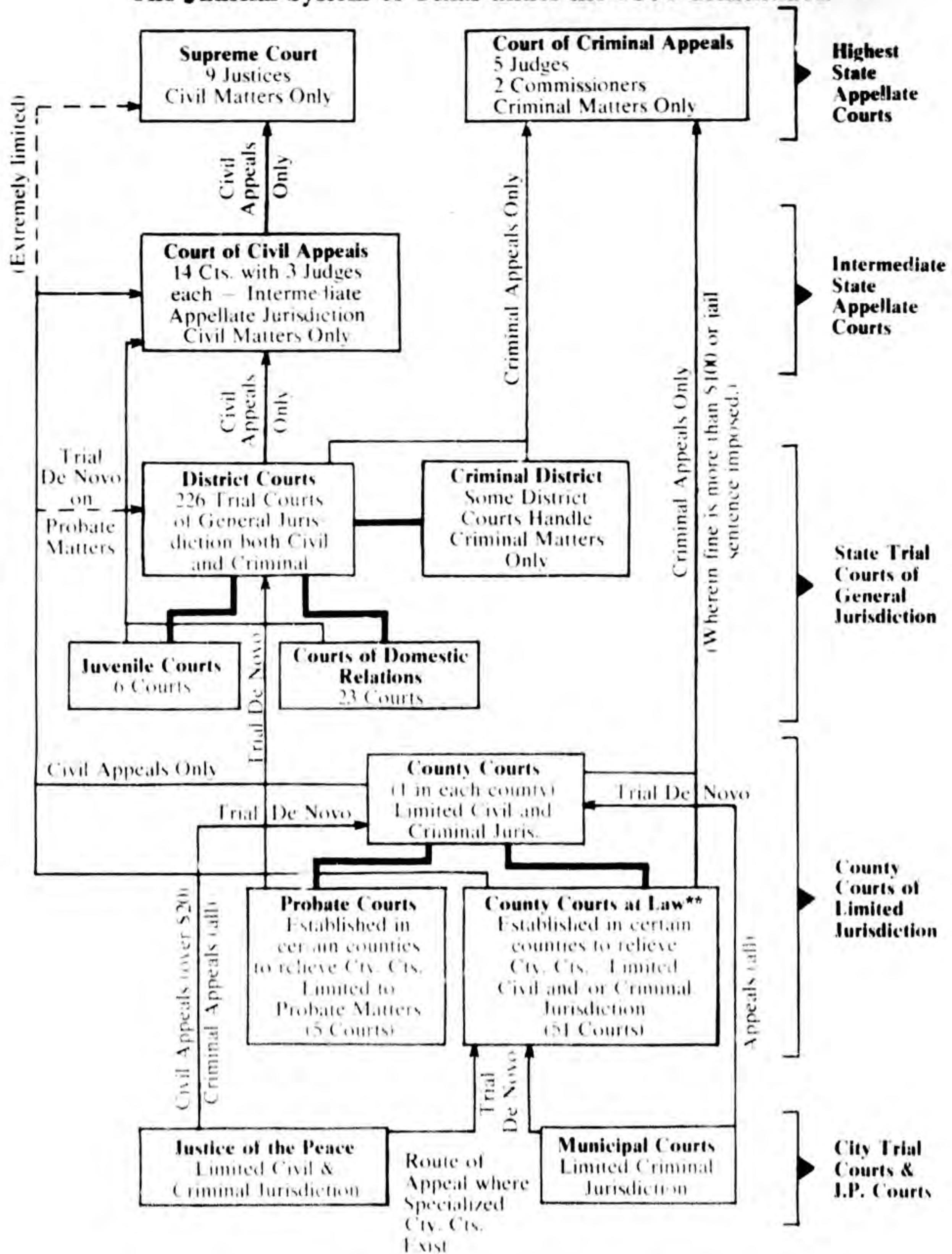
As part of the plan to unify the judicial system, proposed Section 1 removes the Legislature's prerogative to create courts other than those listed in the constitution. Under the power granted to the Legislature in Article V, Section 1 of the Constitution of 1876, the Legislature has created many courts,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

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

Section 2. Supreme Court

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

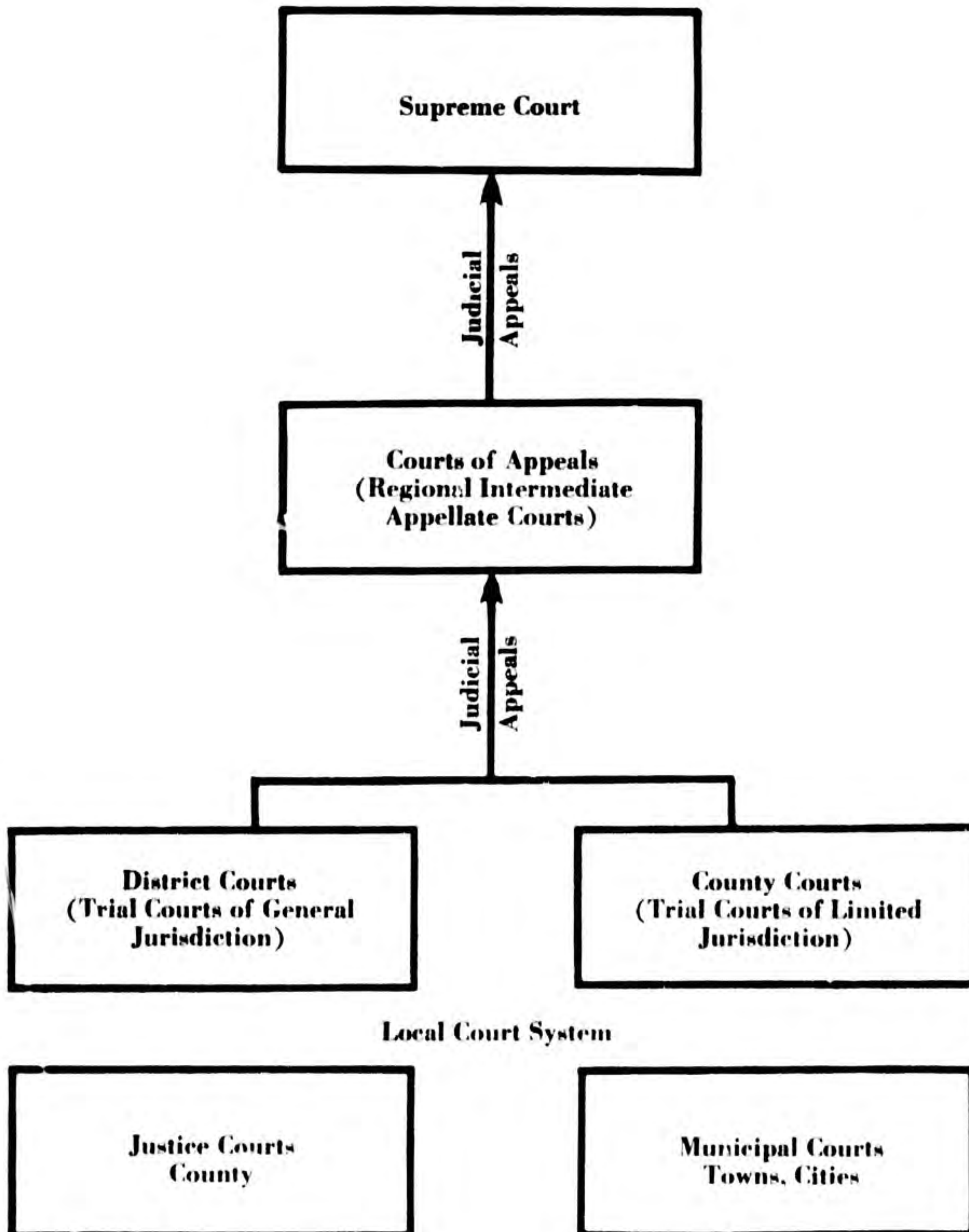
Figure 4.1
The Judicial System of Texas under the 1876 Constitution



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

Figure 4.2

Proposed Judicial System of Texas



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

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

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

Origin

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

Commentary

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

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

Subsection (b) also gives the Supreme Court the authority to transfer cases horizontally between courts of appeals and vertically from a trial or appellate court to a superior court. Horizontal transfer of cases between courts of appeals is presently done by the Supreme Court to equalize the dockets of the intermediate appellate courts. Vertical transfer of cases from a trial or appellate court to a superior court is a new provision added to expedite appeal of a case affected with such public interest that it should be given immediate attention by an appellate court.

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

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

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

Section 3. Courts of Appeals

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

Origin

Revises Article V, Section 6.

Commentary

This provision deletes the specialization inherent in the name "courts of *civil* appeals" and makes it possible for the intermediate appellate court to review appeals of both civil and criminal cases. It also permits the Legislature to increase the membership of the intermediate courts to handle the increased workload such courts may have. Under Section 8 of this article, judges of the courts of appeals will serve six-year terms and will be selected under the merit plan.

Section 4. District Courts

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

Origin

Revises Article V, Section 7.

Commentary

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

Under Section 8 of this article, district judges will serve six-year terms and will be elected on a nonpartisan ballot. Section 4 authorizes the Legislature to staff district courts with "such other officials as provided in this article or by law." This provision allows the Legislature to provide for such court support personnel as associate judges, marriage counselors, or other professional personnel.

Section 5. County Courts

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

Origin

Revises Article V, Section 15.

Commentary

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

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

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

Section 6. Justice Courts

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

Origin

Revises Article V, Section 18.

Commentary

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

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

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

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

Section 7. Qualifications of Judges

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

Origin

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

Commentary

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

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

Section 8. Merit Selection and Nonpartisan Election

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

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

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

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

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

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

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

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

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

Origin

(a) New provision.
(b) New provision.
(c) New provision.
(d) Revises: Article V, Section 2;
Article V, Section 6;
Article V, Section 28.
(e) New provision.
(f) Revises: Article V, Section 7;
Article V, Section 15;
Article V, Section 28.

(g) **Revises: Article V, Section 18;**
Article V, Section 28.

(h) New provision.

Commentary

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

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

The nominative-appointive method for filling vacancies and voter approval or rejection of the appointee's judicial record in succeeding elections, as described in the preceding paragraph, constitute the merit plan for the selection of judges. The Commission regards the merit plan of selecting judges as preferable to the present partisan election method because of the shortcomings inherent in partisan elections, namely: (1) judges must neglect their judicial duties and demean their judicial office by actively soliciting support, both financial and political, for election and re-election; (2) many of the persons best qualified to serve as judges are unwilling to undergo the pressures, expense, and uncertainties of election campaigns and, thus, the public is sometimes deprived of the best judicial personnel available; (3) the danger exists that judges may be elected, not on the basis of their qualifications, but on the basis of unrelated issues or popular political name; (4) political obligations may dissipate judicial independence and influence decisions in particular cases; and (5) the general public is rarely well informed of a judicial candidate's qualifications and many citizens find it undesirable to vote under such conditions.

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

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

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

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

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

Alternative Submission

Section 8. Nonpartisan Election of Appellate Judges

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

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

Origin

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

Commentary

The Commission voted its preference for the merit plan for selecting appellate judges but believes this alternative for nonpartisan election should be submitted to the voters separately. The Commission considered partisan election as a third method for selecting judges. However, that suggestion was rejected because the Commission feels that the qualifications of the candidate, rather than partisanship, should determine the success or failure of a judicial candidate.

Section 9. Compensation

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

Origin

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

Commentary

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

Some of the urban counties supplement the salaries of local judges. This provision permits the continuation of that practice. There is no intention to discourage supplementation of the basic salary paid by the state.

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

Section 10. Mandatory Retirement of Judges

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

Origin

Revises Article V, Section 1a.

Commentary

Section 10 carries forward the mandatory retirement provisions for justices and judges contained in Article V, Section 1a of the Constitution of 1876. This section applies only to justices and judges in the unified court system and does not affect county judges who preside over the county commission, justices of the peace, or municipal court judges. Retired judges may be temporarily assigned to various courts as provided by Section 12(c) of this article.

Section 11. Removal of Judges

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

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

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

Origin

(a) Revises Article XV, Section 8.
(b) Revises: Article V, Section 1a;
Article XV, Section 6.
(c) Revises Article V, Section 1a.

Commentary

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

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

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

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

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

Section 12. Judicial Council

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

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

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

Origin

New provision.

Commentary

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

Responsibilities of the Judicial Council pertain to administrative rules or guidelines such as assignment of judges, description of the duties of court support personnel, and preparation of a budget for the judicial system. These are the housekeeping items which an independent branch of the government should have the inherent right to provide.

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

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

This provisior does not interfere with the independence of a judge to make judicial decisions. Judicial decisions must be independent and unbiased. On the other hand, judicial independence should not be confused with administrative independence. Any organization of substantial size should have central administration.

Section 13. Clerks

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

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

Origin

(a) Rewords: Article V, Section 3;
Article V, Section 6.
(b) Rewords Article V, Section 24.

Commentary

Section 13 carries forward the provisions of the 1876 Constitution concerning the appointment and removal of clerks of the appellate courts and removal of clerks of the district courts without change. Provisions for the district and county clerks are contained in Article IX, Section 3 of the new constitution.

Section 14. Juries

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

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

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

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

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

Origin

(a) Rewords Article V, Section 13.
(b) Revises Article V, Section 13.
(c) Revises Article V, Section 17.
(d) Rewords Article XVI, Section 19.
(e) Revises Article V, Section 10.

Commentary

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

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

Subsection (c) is written to conform to the provisions of subsection (b). Article V, Section 17 of the 1876 Constitution merely states that "A jury in the County Court shall consist of six men. . . ." Subsection (c) allows the Legislature or the Supreme Court pursuant to its rule-making power to provide for less than unanimous verdicts in civil cases.

Subsection (d) rewords Article XVI, Section 19. No change is intended even though the proviso in Article XVI, Section 19 that "neither the right nor the duty to serve on grand or petit juries shall be denied or abridged by reason of sex" is not included in this revision because the same protection is provided in Section 3a of the Bill of Rights.

Subsection (e) revises Article V, Section 10 of the 1876 Constitution. It guarantees any party a right of trial by jury in civil causes in the district and county courts. The right exists in Article V, Section 10 of the 1876 Constitution as to causes in the district courts, but not to causes in the county courts.

Ostensibly, the right to trial by jury guaranteed in subsection (e) is the same right of trial by jury guaranteed in Article I, Section 15 of the 1876 Constitution. However, the cases of *White v. White*, 196 S.W. 508 (Tex. 1917) and *Hickman v. Smith*, 238 S.W.2d 838 (Tex. Civ. App.—Austin 1951, writ ref'd) have held that the right of trial by jury guaranteed in the Bill of Rights is limited to the right as it existed at common law or as provided for by statutes when the Constitution was adopted in 1876. On the other hand, the cases of *Tolle v. Tolle*, 104 S.W. 1049 (Tex. 1907) and *Hatten v. Houston*, 373 S.W.2d 525 (Tex. Civ. App.—Houston 1963, writ ref'd n.r.e.) have held that the right of trial by jury guaranteed in Article V, Section 10 of the 1876 Constitution [illegible] not dependent on the existence of the right at the time the Constitution was adopted in 1876. The guarantee extends to any "cause" instituted in the district court. A "cause" is defined as a suit or action concerning any question, civil or criminal, contested before a court of justice.

Section 15. Suspension of Sentence and Probation

Courts having original jurisdiction of criminal cases shall have power to suspend sentence, place a defendant on probation, and reimpose sentence, subject to regulation by law.

Origin

Rewords Article IV, Section 11a.

Commentary

Section 15 rewords Article IV, Section 11a of the Constitution of 1876. The Commission believes that the courts of this state should have the power, after conviction, to suspend the imposition or execution of sentence. Otherwise, the courts may revert to earlier judicial decisions which held legislation giving the courts that power an unconstitutional infringement of the executive pardon.

Section 16. Appeal by State

The State shall have no right of appeal in criminal cases.

Origin

Retained unchanged from Article V, Section 26.

Commentary

Section 16 retains intact Article V, Section 26 of the 1876 Constitution. The prohibition of a state appeal in criminal cases recognizes that such an appeal may cause economic hardship upon the defendant and that state appeal may be used as an instrument of oppression.

Section 17. Appeal by Accused

The right of appeal granted to an accused by Article I, Section 11a of this Constitution shall be direct to the Supreme Court of Texas.

Origin

New provision.

Commentary

This provision was added to protect the right of an accused whose bail has been denied pursuant to Article I, Section 11a of the 1876 Constitution to appeal directly to the Supreme Court. Article I, Section 11a authorizes a judge of any court of record or a magistrate to deny bail to any person accused of a felony less than capital but who has been convicted twice before of a felony. It also expressly accords the accused the right to appeal an order denying bail direct to the "Court of Criminal Appeals." The direct appeal shall be made to the Supreme Court as a result of the merger provided by Section 1 of this article.

Article VI

Suffrage

Article VI
Suffrage

Section 1. Qualified Voter

Any citizen of the United States eighteen years of age or older who meets the registration and residence requirements provided by law, who is not serving a sentence for a felony, whether incarcerated, on parole, or on probation, and who is not of unsound mind as determined by a court, shall be a qualified voter.

Origin

Revises: Article VI, Section 1;
Article VI, Section 2;
Article VI, Section 2a;
Article VI, Section 3;
Article VI, Section 4.

Commentary

The provisions on suffrage and elections were substantially revised and simplified. Changes in voter qualifications were made in order to conform with recent United States Supreme Court decisions, especially those concerning residence requirements. There was also a change in the age for voting from 21 to 18 to conform with the Twenty-Sixth Amendment to the United States Constitution.

The residence requirements for voting in state and local elections have been in a state of flux because of recent United States Supreme Court decisions. Therefore, a flexible approach was adopted which would allow the Legislature to set the residence requirements in conformity with any federal laws or decisions. For further discussion of recent federal decisions, see the *Commentary* for Article VI, Section 2.

Section 1 does not continue the disenfranchisement of convicted felons contained in the 1876 Constitution. In the new provision, persons who have served their terms for felonies would regain the right to vote. This is consistent with the idea of returning individuals who have served sentences to a useful role in society. However, if a felon is serving a sentence which would include actual incarceration, or parole or probation supervision, that person would be unable to vote.

There have been a few recent cases throughout the country which have dealt with a felon's right to vote. The attack on the prohibition on voting has been based on the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. There is no definitive ruling in this area at present.

Section 2. Elections

All elections by the qualified voters shall be by secret ballot. The Legislature by law shall provide the requirements for residence, registration, absentee voting, and administration of elections, and shall ensure the purity of elections and guard against abuses of the electoral process.

Origin

Revises: Article VI, Section 2;
Article VI, Section 2a;
Article VI, Section 3;
Article VI, Section 4.

Commentary

The proposed Section 2 would allow the Legislature to set voter registration and residence requirements, rather than list such details in the constitution.

Recent United States Supreme Court decisions have cast considerable doubt on the residence requirements of one year in the state and six months in the county

now contained in the 1876 Constitution. In *Dunn v. Blumstein*, 92 S. Ct. 995 (1972), the Supreme Court struck down Tennessee's residence requirements of one year in the state and three months in the county. The Court held that residence requirements of such duration impinge on the right to vote and the right to travel. In a more recent United States Supreme Court case, *Marston v. Lewis*, 93 S. Ct. 1211 (1973), the Court held that a cutoff date for registration 50 days prior to the elections approached the outer constitutional limits. In the light of these cases, it appears appropriate to allow for flexibility by leaving residence and registration requirements as a statutory matter.

Section 3. General Elections

General elections shall be held in even-numbered years on a date provided by law.

Origin

New provision.

Commentary

Section 3 provides a single definition for the term "general election" as it appears throughout this constitution. The section continues the current practice of holding general elections every two years. See TEX. ELECTION CODE ANN. art. 2.01 (1967). The Commission feels that the dates for a general election should be provided by law to insure that there is always a definite time for a general election; and, as a result, a definite time for the operation of certain constitutional provisons. Article III, Section 6 of the recently adopted Illinois Constitution has a provision similar to the one proposed here.

Article VII

Education

Article VII
Education

Section 1. Equitable Support of Free Public Schools

(a) A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature to establish and make suitable provision for the equitable support and maintenance of an efficient system of free public schools and to provide equal educational opportunity for each person in this State.

(b) In distributing State resources in support of the free public schools, the Legislature shall ensure that the quality of education made available shall not be based on wealth other than the wealth of the State as a whole and that State supported educational programs shall recognize variations in the backgrounds, needs, and abilities of all students. In distributing State resources, the Legislature may take into account the variations in local tax burden to support other local government services.

Origin

Subsection (a) of Section 1 incorporates all of Article VII, Section 1 of the 1876 Constitution, with addition of the words "equitable" and "and to provide equal educational opportunity for each person in this State."

Subsection (b) is a new provision.

Commentary

Proposed Section 1 requires the Legislature to support the free public schools equitably, guarantee each person an equal educational opportunity, and ensure that the quality of education available to each person, insofar as the quality of education is a function of financial resources, shall depend only on the wealth of the state as a whole. It imposes a requirement that variations in the backgrounds, needs, and abilities of students be taken into account by the Legislature in providing resources for the free public schools. Also, it recognizes that taxpayers in urban areas are burdened with taxes to support a wide range of municipal services and it allows the Legislature to take that fact into account in distributing state resources. The Commission decided not to prescribe or suggest a specific formula to accomplish the requirements of Section 1. Such a provision would be statutory in nature and would unnecessarily limit the options available to the Legislature. The Commission intends Section 1 to be a strong statement of the educational policy of this state and a mandate to the Legislature to support the free public schools equitably.

The Commission focused its attention on the inequities in public school financing and decided to emphasize the Legislature's responsibility for equitable support of the free public schools. Currently there are two elements which contribute greatly to the inequities in public school financing: disparities in local spending per pupil caused by the differences in taxable wealth of school districts and the failure of the Minimum School Foundation Program to compensate for the differences in the taxable wealth of school districts. For example, the Texas Education Agency reports that in the fiscal year 1970-71, Deer Park Independent School District (Harris County) expended $1,552 per student from state and local resources while North Forest Independent School District (Harris County) expended only $491 per student from state and local resources. *Annual Audit Report of School Districts* (Texas Education Agency, 1972). *Superintendents Annual Report for Average Daily Attendance, Part 1* (Texas Education Agency, 1972).

Texas plaintiffs complained about these inequities in *San Antonio Independent School District v. Rodriguez*, 93 S. Ct. 1278 (1973). Although the Court reversed the lower court opinion which had held public school finance in Texas a violation of the Fourteenth Amendment Equal Protection Clause, the United States Supreme Court made specific reference to the inequities of the system and cited the state's responsibility for correcting these inequities.

Indeed, as a result of widespread litigation over the issue of public school finance, many states, notably Minnesota, Michigan, Utah, New Jersey, California and Florida, have reformed their public school financing systems. No doubt Texas will soon follow suit. The

Commission feels that Section 1 is responsive to the needs of the public school system and has incorporated general constitutional principles as guides to the Legislature in correcting the inequities in Texas public school finance. The Commission believes that adherence to these principles will effect substantial improvement in the quality of education provided to all Texans in our free public schools.

Section 2. Permanent and Available School Fund

(a) The Permanent School Fund consists of all property set apart for support of the free public schools. The Permanent Fund shall not be expended but shall be preserved and invested at the direction of the State Board of Education in the manner prescribed by law.

(b) The Available School Fund consists of income from the Permanent Fund together with all State taxes dedicated to support the free public schools.

(c) The Available Fund shall be appropriated by the Legislature to support the free public schools, including the provision of free textbooks and such other instructional materials as may be required in academic programs.

Origin

(a) Rewords: Article VII, Section 2;
Article VII, Section 4;
Article VII, Section 5.
(b) Rewords Article VII, Section 5.
(c) Revises: Article VII, Section 3;
Article VII, Section 5.

Commentary

The requirements in the 1876 Constitution that the Available School Fund be distributed according to each county's scholastic population and that the State Board of Education be responsible for providing free textbooks have been revised. The requirement of support for free "instructional materials as may be required in academic programs" is a new provision.

The value of the Permanent School Fund now exceeds $1 billion. Good management over the years has preserved this fund for the benefit of school children for generations to come. Distribution of the money available in this fund might be a short-term solution to the financial crisis confronting the school system, but if the Legislature is permitted to appropriate the fund to finance current operations, the fund will quickly dissipate and the school children of this generation and future generations will suffer as a result of that action.

Section 2 simplifies the provisions of the 1876 Constitution. However, subsection (c) contains a significant change. Rather than follow the existing inflexible requirement that the Available School Fund be distributed according to each county's scholastic population, this provision allows the Legislature to appropriate the Available School Fund in a manner consistent with the requirements of proposed Section 1. Solution of the financial crises confronting the state's school system dictates flexibility. Also, Section 2(c) retains the provision for free textbooks and adds a new provision for free instructional materials. This addition was deemed necessary to emphasize the Legislature's responsibility to provide a free public school system.

Section 3. Prohibition of Aid to Non-Public Schools

Public funds shall not be used for support of religious, church-affiliated, or proprietary schools that provide education below the college level; nor shall public funds be provided to any students for payment of expenses incurred by attending such schools.

Origin

Revises Article VII, Section 5.

Commentary

Section 3 prohibits public aid to any non-public school or aid to any student to defray the cost of attending such school. It combines the prohibitions contained in Article I, Section 7 and Article VII, Section 5 of the 1876 Constitution against expending public money for the support of religious or church-affiliated schools, with the requirement in Article VII, Section 5, that the Permanent and Available School Funds be used only for support of the free public schools. This provision is also consistent with recent United States Supreme Court decisions invalidating legislative enactments which provided public aid to sectarian schools. The Supreme Court has ruled that any legislative act which advances or inhibits religion or invites administrative entanglement by the state in the affairs of the church violates the Establishment Clause of the First Amendment to the United States Constitution. *Committee for Public Education v. Nyquist*, 93 S. Ct. 2903 (1973); *Hunt v. McNair*, 93 S. Ct. 2868 (1973).

Section 4. Dedicated School Tax

One-fourth of the revenue from State occupation taxes and one-fourth of the net revenue from the State motor fuel tax are dedicated to the Available School Fund.

Origin

Rewords: Article VII, Section 3;
Article VIII, Section 7a.

Commentary

Rather than require the Legislature to levy and collect a new tax to replace the taxes levied in the 1876 Constitution, the provisions of Article VII, Section 3 and Article VIII, Section 7a, which dedicate one-fourth of the revenue from occupation and motor fuel taxes to the Available School Fund, were left unchanged. This reworded provision does not carry forward the one dollar poll tax dedicated to the Available School Fund in Article VII, Section 3 because it has been inoperative for several years.

Section 5. State Board of Education

There shall be a State Board of Education which shall have the duties provided in this Article and by law. The Legislature may provide either for appointed or elected members whose terms shall not exceed six years. If the board is elective, the Governor shall appoint four additional members to the board. In making appointments the Governor shall give consideration to fair and equitable representation of the sexes, ethnic groups, social groups, and economic groups.

Origin

Revises Article VII, Section 8.

Commentary

Provision for the State Board of Education was retained in the new constitution because of the amount of interest focused on education as a result of the *Rodriguez* case. However, under the present elective system members of the State Board of Education may not adequately represent the population of the state. For that reason, this provision leaves the Legislature with the option of providing for either an appointive or elective board, but if the Legislature provides for an elective board, this provision requires the Governor to appoint four members to the board in such a manner as to improve the representative character of the board.

Section 6. School and Community College Districts

The Legislature shall define by general law the duties and functions of school and community college districts and shall provide for establishing, financing, altering, consolidating, and abolishing such districts.

Origin

Rewords Article VII, Section 3.

Commentary

The Legislature has delegated much of the fiscal and administrative responsibility for the everyday operation of the public schools below the college level to the various independent school districts. As a reminder to the Legislature of its ultimate responsibility to equitably support a free public school system, this provision makes it mandatory for the Legislature to define the duties of the school districts and to provide for their formation and alteration.

Community college districts are not mentioned in Article VII, Section 3 of the 1876 Constitution, but the Texas Supreme Court has interpreted that section to include such districts. See *Shepherd v. San Jacinto Junior College District*, 363 S. W. 2d 742 (Tex. 1962). Therefore, specific mention of community college districts in this reworded provision conforms with existing law.

Section 7. First Class Colleges and Universities

The Legislature shall provide for a system of higher education of the first class which shall include The University of Texas System, the Texas A&M University System, universities, colleges, community colleges, and other first class institutions or systems as may be provided by law.

Origin

Revises: Article VII, Section 10;
Article VII, Section 13.

Commentary

Article VII, Section 10 of the 1876 Constitution directs the Legislature to provide for the maintenance of a university of the first class to be located by a vote of the people of this state. The people voted to locate the university at Austin. Section 10 also states that the Legislature shall provide for the maintenance of an Agricultural and Mechanical Department of the first class. Section 13 of Article VII located that Department in Brazos County, which is now known as Texas A&M University at College Station, and made it a branch of The University of Texas.

Subsequent to the formation of The University of Texas at Austin and Texas A&M University at College Station, the Legislature created community colleges and institutions of higher education throughout the state. Rather than leave the impression that the Legislature may maintain these institutions at a level less than first class, this provision requires the Legislature to maintain all colleges and universities on a first class basis.

The University of Texas System and the Texas A&M University System are specifically mentioned in proposed Section 7 for the historical reason mentioned in the first paragraph and also because of the succeeding sections which provide for the investment and use of the Permanent University Fund. Although the framers of the Constitution of 1876 did not envision The University of Texas at Austin and Texas A&M University at College Station expanding into systems, the constitution has since been amended to allow certain named institutions in The University of Texas and Texas A&M Systems to share in the Permanent University Fund. Proposed Section 7 reflects that change.

Section 8. Permanent University Fund, Its Administration, Its Investments; Available University Fund and Its Expenditure

(a) The Permanent University Fund consists of the two million acres of land set apart and appropriated for the establishment and maintenance of The University of Texas by the Constitution of 1876 and the Legislative Act of April 10, 1883, together with the proceeds of the sale of such land, including the sale of oil, gas, and other minerals from such land, and the securities and other assets purchased with the proceeds. All proceeds shall be invested, and only the income from the Permanent University Fund may be appropriated and expended.

(b) The Permanent University Fund shall be held in trust for the people of Texas and for the use and benefit of the Texas A&M University System and The University of Texas System. The land set apart to the Permanent University Fund, if sold, shall be sold under such regulations, at such times, and on such terms as may be provided by law.

(c) The Board of Regents of The University of Texas System may invest the Permanent University Fund in securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States Government, or any of its agencies, in bonds issued by the State of Texas or any political subdivision thereof, and in such bonds, debentures, obligations, preferred stocks, or common stocks issued by corporations, associations, or other institutions as the Board of Regents of The University of Texas System may deem to be proper investments for the Permanent University Fund. However, not more than one percent of the Fund shall be invested in the securities of any one corporation nor shall more than five percent of the voting stock of any one corporation be owned by the Fund. In making each and all investments, the Board of Regents shall exercise the judgment and care under the circumstances then prevailing that men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The Board of Regents shall make full disclosure of all investments as provided by law.

(d) The net income (that is, dividends, interest, and other income less administrative expense) of the Permanent University Fund, exclusive of net income attributable to grazing leases of Permanent University Fund land, shall constitute the Available University Fund. Out of one-third of the Available University Fund, the Legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Directors of the Texas A&M University System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such one-third of the Available University Fund shall be appropriated by the Legislature for the support and maintenance of Texas A&M University at College Station. Out of the other two-thirds of the Available University Fund, the Legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Regents of The University of Texas System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such two-thirds of the Available University Fund, plus the net income (that is, income less administrative expense) from grazing leases of Permanent University Fund land, shall be appropriated by the Legislature for the support and maintenance of The University of Texas at Austin.

Origin

(a) Rewords: Article VII, Section 11,
Article VII, Section 15.
(b) Rewords Article VII, Section 12.
(c) Revises: Article VII, Section 11;
Article VII, Section 11a.
(d) Revises Article VII, Section 11a.

Commentary

Section 8 considerably shortens and simplifies the corresponding sections of the Constitution of 1876. The Permanent University Fund, which currently exceeds $600 million, cannot be expended, but the income from

the fund, known as the Available University Fund, can be appropriated to service bonds sold to finance construction of permanent improvements at specified institutions within The University of Texas and Texas A&M Systems and to achieve academic excellence at The University of Texas at Austin and Texas A&M University at College Station. The Permanent and Available University Funds have made it possible for this state to have two outstanding universities which rank prominently among the institutions of higher education in the United States.

The proposed Section 8 defines the Permanent and Available University Funds, provides for the investment of the Permanent University Fund, and provides for the distribution of the Available University Fund. It also requires the Board of Regents to make full disclosure of its investments, as is now the case, so that interested citizens may be kept well informed of the disposition of the property which is held in trust for the benefit of the people of this state. The applicable sections of the 1876 Constitution restrict the investment authority of the Board of Regents of The University of Texas in the type and amount of investments that can be made. This provision includes the same restrictions except the limitation in Article VII, Section 11a of the 1876 Constitution which prohibits the Board of Regents from purchasing stock in a corporation which has not paid dividends for the past five consecutive years and which is not listed upon an exchange registered with the Securities and Exchange Commission.

Subsection (d) revises Article VII, Section 11a of the 1876 Constitution. This revision reflects the statutory division of the Available University Fund after payment of the principal and interest due on Permanent University Fund bonds or notes. One-third of the remainder is appropriated to Texas A&M University at College Station, and two-thirds of the remainder is appropriated to The University of Texas at Austin.

Except for the specific changes listed above, it was the Commission's intent not to increase or decrease the constitutional authority of The University of Texas System Board of Regents to invest the Permanent University Fund.

Section 9. Texas A&M University System; The University of Texas System; Permanent University Fund Bonds or Notes

(a) The Board of Directors of the Texas A&M University System and the Board of Regents of The University of Texas System for the benefit of all the institutions now included in their respective systems are each hereby authorized to issue in amounts not to exceed for the Texas A&M System ten percent, and for The University of Texas System twenty percent, of the value of the Permanent University Fund exclusive of real estate at the time of any issuance, negotiable bonds and notes for the following purposes: (1) acquiring land either with or without permanent improvements; (2) constructing new buildings or other permanent improvements; (3) repairing and rehabilitating existing buildings or other permanent improvements; (4) acquiring library books and materials; (5) acquiring capital equipment; and (6) refunding any bonds heretofore or hereafter issued.

(b) Any bonds or notes issued pursuant to this Section shall be payable solely out of the Available University Fund. Bonds or notes so issued shall mature serially or otherwise not more than thirty years from their respective dates.

(c) Institutions now included in the Texas A&M University System and The University of Texas System, and entitled to participate in the Permanent University Fund, shall not receive any general revenue funds for acquiring land either with or without permanent improvements, or for constructing and equipping new buildings or other permanent improvements except in case of fire, flood, storm, or earthquake occurring at any such institution. In such an event an appropriation in an amount sufficient to replace the uninsured loss may be made by the Legislature from general revenue funds.

(d) For the purpose of securing the payment of the principal and interest of these bonds or notes, the Boards are severally authorized to pledge the whole or any part of the respective interests of the Texas A&M University System and The University of Texas System in the

Available University Fund. The Permanent University Fund may be invested in these bonds or notes. All bonds or notes issued pursuant to this Section shall be approved by the Attorney General of Texas and when so approved shall be incontestable.

Origin

Revises: Article VII, Section 14;
Article VII, Section 18.

Commentary

Section 9 provides that: (1) the Permanent University Fund bond proceeds may be used for acquiring land with or without permanent improvements, constructing and equipping new buildings or other permanent improvements, repairing and rehabilitating existing buildings and other improvements, and acquiring capital equipment; and (2) the constitutional limit on bond sales is raised from 20 percent to 30 percent of the value of the Permanent University Fund.

Article VII, Section 14 of the 1876 Constitution specifically prohibits the Legislature from appropriating any money from general revenue for the purpose of erecting buildings at The University of Texas. Until 1947, the Board of Regents of The University of Texas and the Board of Directors of Texas A&M University relied solely on income from the Permanent University Fund to finance capital improvements at their respective institutions. In 1947, Article VII, Section 18 was added to the constitution to permit the Board of Regents and the Board of Directors to issue negotiable bonds and notes to finance a much needed building program at their respective institutions.

Article VII, Section 18 was amended again in 1966 to liberalize the amount of the Permanent University Fund which could be pledged to secure the bonds and notes issued for capital improvements. Also, the number of institutions entitled to share in the Permanent University Fund building program was increased to include those institutions which were made a part of the Texas A&M University System and The University of Texas System.

Section 9 continues the basic provisions of the 1876 Constitution but authorizes additional uses of the bond proceeds. For example, proceeds can now be used for the repair and rehabilitation of existing buildings, for the acquisition of capital equipment, and for the acquisition of library materials. There is no longer the emergency for additional buildings which existed in 1947, and the emphasis has now shifted to enrichment of the academic programs. Only those institutions now included in the two systems are entitled to share in bond proceeds under this proposal.

Section 10. State Higher Education Tax Fund for the Benefit of Certain Institutions of Higher Education

(a) The Legislature shall levy a State ad valorem tax on property at a rate not less than ten cents on the one hundred dollars valuation sufficient to provide a level of support necessary to promote the attainment of first class status for all State institutions of higher education except those institutions included in the Texas A&M University System and The University of Texas System, all public community colleges, and all State technical institutes.

(b) The proceeds of this tax shall comprise the Higher Education Tax Fund.

(c) The Higher Education Tax Fund may be pledged to secure or refund bonds issued heretofore or hereafter for acquiring land, either with or without permanent improvements thereon, constructing, equipping, repairing, rehabilitating buildings or other permanent improvements, and for acquiring capital equipment and library books and materials at the institutions for which the Fund is created. After appropriating an annual sum sufficient to pay the principal and interest due on such bonds, the Legislature shall appropriate the remainder of the Fund for the support and maintenance of State institutions of higher education other than The University of Texas at Austin, Texas A&M University at College Station, the public community colleges, and the State technical institutes.

(d) The Legislature shall provide by law for each issue of bonds authorized by this Section and for equitable distribution of the proceeds on the basis of statewide needs. Responsibility for issuance of bonds and allocation of proceeds shall be vested as provided by law.

(e) From the date on which they became eligible to participate in the special tax fund established in this Section, the institutions participating in this fund shall not receive any general revenue funds for acquiring land or permanent improvements, or for constructing and equipping new buildings or other permanent improvements, except that in the case of fire or natural disaster the Legislature may appropriate from general revenue an amount sufficient to replace the uninsured loss.

(f) If for any reason the tax authorized by this Section is held invalid, the Legislature shall provide an equal amount of revenue from other sources.

Origin

Revises Article VII, Section 17.

Commentary

Subsection (a) authorizes the Legislature to increase the tax rate for institutions of higher education beyond the ten cent per $100 valuation level of taxation provided in the 1876 Constitution. The Legislature is required to establish a tax rate which will enable the participating institutions to acquire first class status. The institutions are not listed individually in this revised section but would include all institutions designated by the new constitution or by law.

Subsection (c) provides greater flexibility in the use of the tax fund. The participating institutions may use the tax fund to secure or refund bonds issued for acquisition of land, construction and rehabilitation of buildings, acquisition of capital equipment, and purchase of library books and materials. A new provision authorizes the Legislature to appropriate any tax revenue remaining after payment of the principal and interest due on outstanding bonds among all the institutions of higher education except The University of Texas at Austin and Texas A&M University at College Station. The University of Texas at Austin and Texas A&M University at College Station are ineligible to receive any of the excess money, since they receive additional income from the Permanent University Fund under Section 8. The amount of such tax funds, if any, will be dependent on the tax rate set by the Legislature.

Under Article VII, Section 17 of the 1876 Constitution the Comptroller of Public Accounts is responsible for allocating the tax fund among the participating institutions, and the individual institutions are responsible for issuing the bonds. Under Section 10(e) responsibility for the allocation of the fund and the responsibility for the issuance of the bonds is to be vested in an agency designated by the Legislature. However, the Legislature is responsible for determining the amount of the bond issue and it is also responsible for devising distribution formulas based on statewide needs.

Subsection (e) carries forward the prohibition in Article VII, Section 17 of the 1876 Constitution against the use of general revenue funds to finance capital improvements at the institutions of higher education which share in this special tax fund. Subsection (f) is a new provision. It commands the Legislature to find a substitute in the event this tax fund becomes inoperative.

All of the institutions of higher learning experienced an acute building shortage near the end of World War II. The University of Texas and Texas A&M University could use the income from the Permanent University Fund to finance their building programs, even though that fund was found inadequate to finance the immediate need for more buildings. The other institutions had nothing to draw on except annual appropriations from the general revenue fund which were certainly inadequate. As a result, the constitution was amended in 1947 to authorize the Board of Regents of The University of Texas and the Board of Directors of Texas A&M University to issue bonds to finance their building programs. That same year a special tax fund was created in the constitution for the benefit of those institutions which did not share in the Permanent University Fund (Article VII, Section 17).

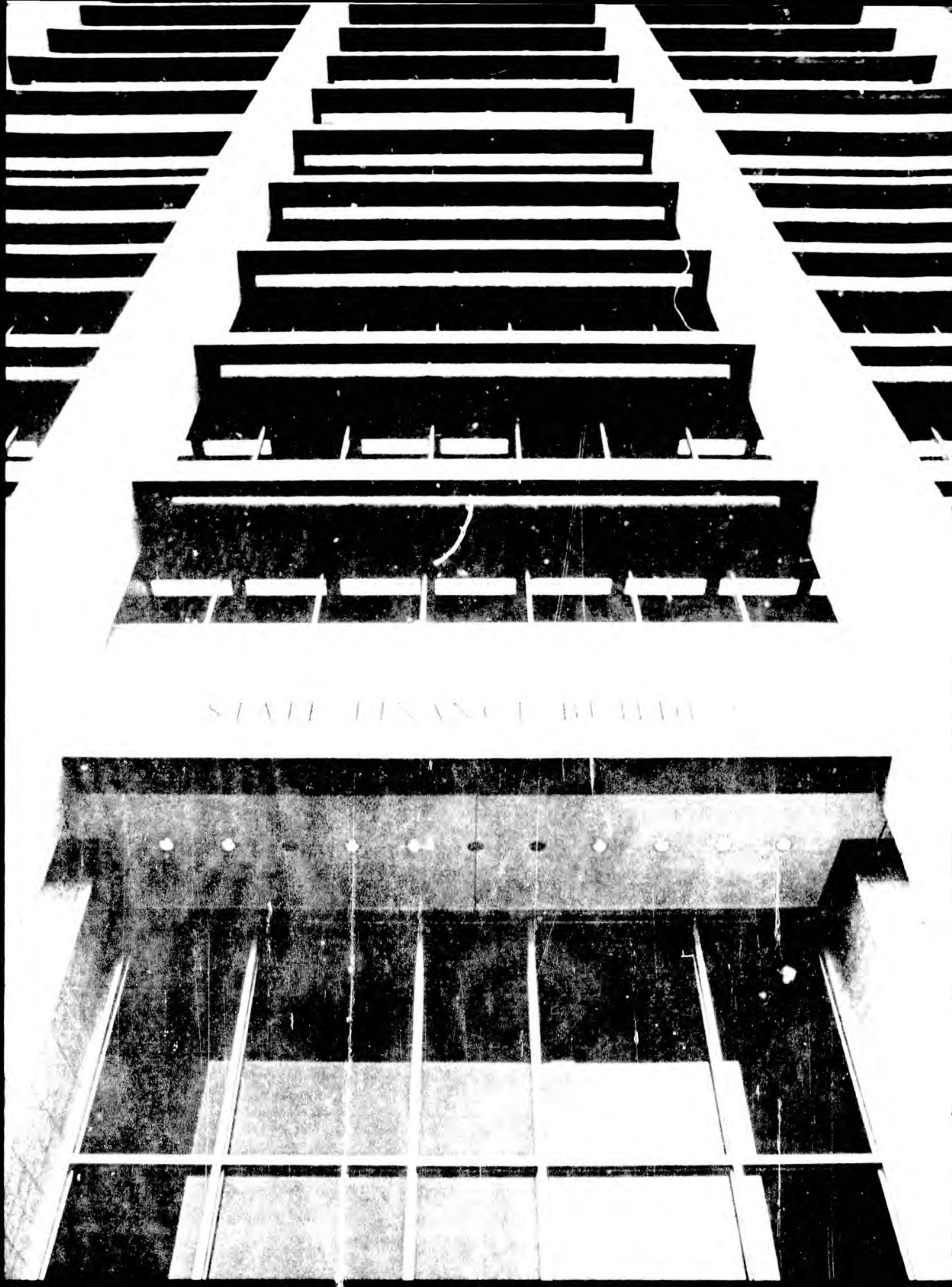
The proposed Section 10 continues the tradition of treating all the institutions of higher education in the same manner. The Higher Education Tax Fund may be pledged to secure bonds issued for the same purposes that the Permanent University Fund bonds are issued. Section 10 also authorizes the Legislature to increase the rate of tax to a level sufficient for the operation of a first class college or university.

Although bonds issued pursuant to Article VII, Section 17 of the 1876 Constitution will mature in 1978, there is no requirement in proposed Section 10 to defer its implementation until that time. Rather, Section 10 should be immediately implemented so that those institutions eligible to participate in this special tax fund may initiate long-term planning to take advantage of the provisions of this section.

In 1971, a federal district court in Alabama declared that state's tax on property unconstitutional, *Weissinger v. Boswell*, 330 F. Supp. 615 (M.D.N.D. Alabama 1971), because of inequities in its application. The State of Alabama did not appeal that judgment, nor has it replaced the ad valorem tax with another tax. Theoretically, a Texas court could declare this state's ad valorem tax unconstitutional, although that possibility does not appear to be imminent. Out of caution, a new provision was added to require the Legislature to appropriate an equal amount of revenue from other sources in the event a court invalidates the Higher Education Tax Fund.

Article VIII

Finance



Article VIII
Finance

Section 1. Taxation

Taxes shall be levied and collected by general law.

Origin

Revises: Article VIII, Section 1;
Article VIII, Section 1e;
Article VIII, Section 2;
Article VIII, Section 3;
Article VIII, Section 4.

Commentary

The state's power to tax is plenary. Unless some limitation is placed on that taxing power by the state or federal constitution, no constitutional authorization to levy taxes or to exempt from taxation is necessary. The Taxation Article of the 1876 Constitution is a rambling, disorganized, and occasionally inconsistent collection of authorizations directing or allowing taxation and contains a series of restrictions on the power of government to tax or to exempt from tax. Virtually all of these authorizations and restrictions have been deleted in the new constitution. The only specific limitations are contained in Article VIII, Sections 1 and 2 and in Article I, Section 3 of the new constitution as well as those general restrictions on the power of government contained in the Fourteenth Amendment to the United States Constitution.

The new constitution provides greater flexibility in the subject of property taxation than did the 1876 Constitution. The provisions of the new constitution permit the Legislature to prescribe for the taxation of certain classes of property and not of others, to value one class of property in a different method than used in valuing another class of property, and to provide different tax rates for different classes of property. This was not possible under the 1876 Constitution.

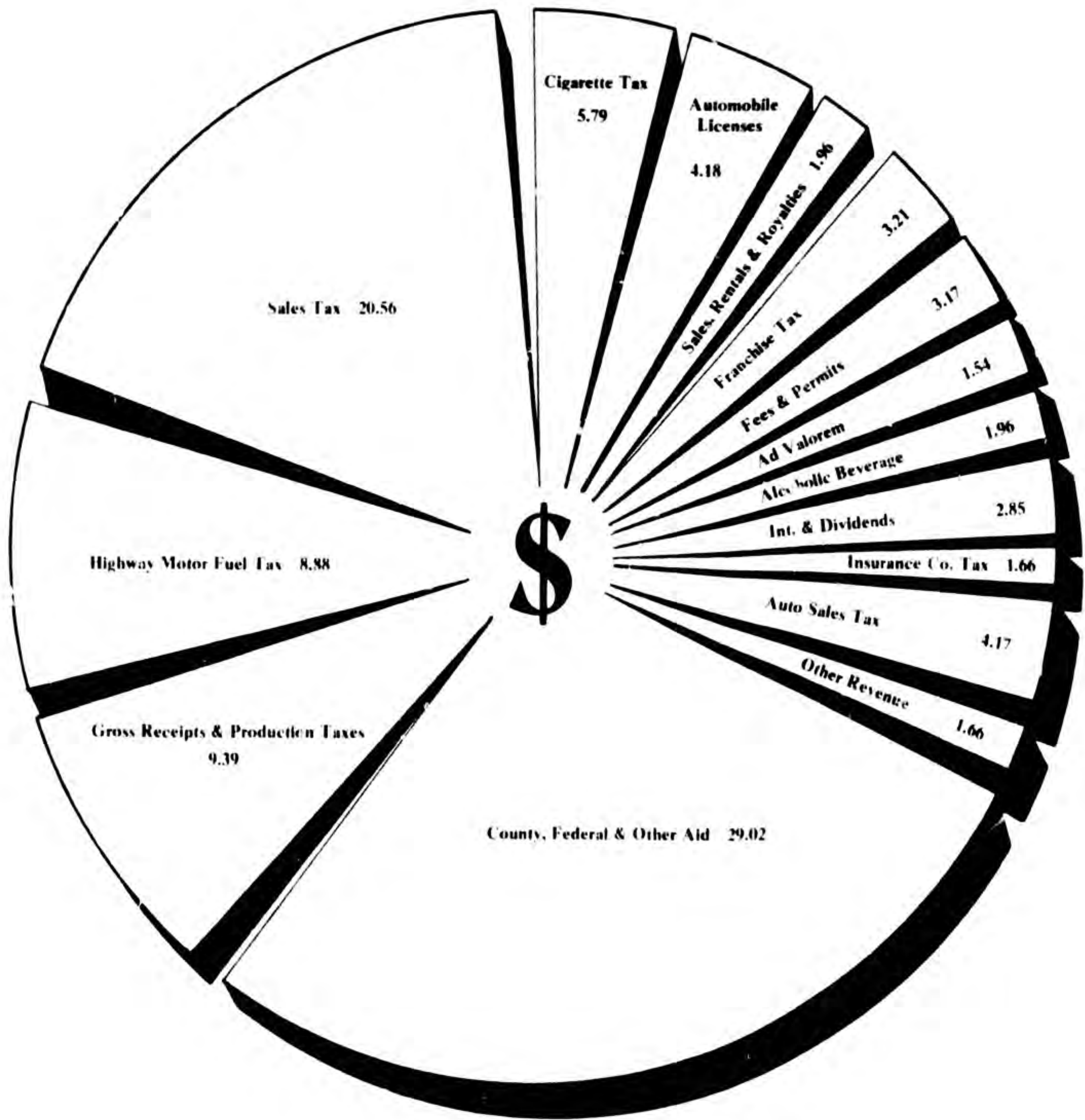
Neither is there any inflexible restriction in the new constitution on the levy and collection of taxes other than property taxes. This is a continuation of the same policy expressed in the 1876 Constitution which provided only that: (1) taxes be levied and collected by general law for public purposes only; (2) the power to tax corporations not be surrendered; (3) occupation taxes be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; (4) occupation taxes not be levied on mechanical or agricultural pursuits; and (5) occupation taxes be levied by political subdivisions in an amount not to exceed one-half of those taxes levied by the state. Otherwise, the 1876 Constitution places no restraint upon the mode and method of taxation other than those restraints imposed on the property tax. This is reflected by the fact that 97 percent of state revenue is now obtained from sources other than ad valorem taxes on property.

Some general restrictions on taxation are retained in the new constitution. The requirement that taxes be levied and collected by general law is retained in this section. The requirement that taxes be collected "for public purposes only" has been interpreted to control the use rather than the collection of tax monies. The requirement is retained in Section 7 of this article. The prohibition against surrendering the power to tax corporations, now present in Article VIII, Section 4 of the Constitution of 1876, dates from 1876 and has had virtually no judicial interpretation. The Commission considered expanding the prohibition to forbid the surrender of the taxing power under any circumstances, but decided that the guarantee of equal rights and the prohibition against special laws offer better protections against taxing favoritism. It is also possible that the prohibition might interfere with the state's taxing ability by preventing the use of federal tax standards. For these reasons the prohibition was not retained in this constitution.

Requirements concerning occupation taxes were not included in the new constitution. Exemptions from occupation taxes for agricultural and mechanical pursuits contained in the 1876 Constitution have not been of historical importance.

Most of the Taxation Article of the Constitution of 1876 is devoted to the subject of property taxation. It imposes several important limitations: (1) all property in the state shall be taxed; (2) property shall be taxed in proportion to value; (3) taxation shall be equal and uniform; and (4) the state may not provide for a state ad valorem tax after 1978. None of these limitations is re-

Figure 4.3
Sources of State Net Receipts for Fiscal Year 1972



Source: **Texas Comptroller of Public Accounts, Report to the Governor**, pt. Ia, Receipts and Disbursements of State Funds 5 (1972).

tained in the new constitution. The changes made by the Commission in regard to property taxation are substantive and were influenced by the nature of existing property tax problems and the need for legislative flexibility to provide solutions for these problems.

The relative importance of the property tax as a source of government revenue in Texas has declined, particularly at the state level. It continues, however, to provide approximately 87 percent of local tax revenue and 40 percent of the total of state and local tax revenue. In 1971, revenues from the property tax in Texas totaled $1.5 billion. It is likely that the property tax will continue to be the single greatest source of local government revenue.

Despite its great importance, the local property tax has been characterized as resulting in widespread inequities. Interjurisdictional and intrajurisdictional inequalities are the rule rather than the exception in Texas. Possible solutions to all or part of the problem are being studied by a variety of state and private authorities.

Some reforms of the property tax are precluded by the Constitution of 1876. To a large extent, constitutional limitations on property taxation, rather than assuring an equitable tax system as they were intended to do in 1876, have contributed to the present problems in Texas. By preventing the Legislature from legally classifying property, they create a tax scheme which, for practical and political reasons, cannot be administered. Because changes in the scheme itself have been impossible except by constitutional amendment, the net effect has been to discourage true reform and to encourage solution through the extra-legal classification of property by local tax assessors. Recent studies indicate that because of the gap between constitutional principles and taxing practice, inconsistencies in legal doctrine are commonplace, and the individual taxpayer suffers in his inability to identify and to challenge effectively even flagrant violations of the property tax laws.

The experience in this state and elsewhere has been that it is impossible to tax all property equally and uniformly by means of a general property tax. Not all property is alike; nor can it be located or taxed in the same manner. In recognition of this fact, an increasing number of states have acted to exclude certain classes of property from the general ad valorem tax base—the latest being Illinois where all personalty will be removed by 1979 by constitutional fiat. Virtually all states have taken steps to exclude all or the greater part of intangible personalty such as stocks, bonds, and bank deposits. In Texas, however, such property is supposed to be taxed, along with all other property, in proportion to its value. In actual practice, Texas assessors do *not* assess and tax intangibles with the single exception of the capital stock of banks because the property is, as a rule, highly mobile, easily concealed, and can be manipulated to avoid taxation. This indicates that the Legislature should either make a real effort to make intangibles taxable on an ad valorem basis as the Constitution of 1876 dictates, or it should act to recognize the impossibility of doing so and exclude intangibles from the property tax base and tax them by some other method. Under the Constitution of 1876, this alternative, along with many others, is not available.

There are many arguments for and against the institution of a classified property tax. Theoretically, the Constitution of 1876 prevents property classification. It does prevent the state or a political subdivision from officially prescribing a system of taxation which excludes certain classes of property or provides for varying effective rates of taxation on different classes of property. But even the best respected taxing jurisdictions of the state have developed extra-legal classifications to accomplish the same purposes. The classifications have been prompted by a variety of social and political considerations. Clearly, if such classifications are desirable, they should come through the political process and be created by law rather than by the operation of local tax offices. This revised section would allow the Legislature to decide whether the classification of property is desirable and to prescribe rules and guidelines for any classification scheme which is established.

Considerable debate occurred over whether the new constitution should continue a requirement that taxation be equal and uniform. Several alternatives were considered. The Finance Study Committee of the Commission recommended that the new constitution read that "taxation shall be equal and uniform within the jurisdiction of the taxing authority." This version, intended as a restatement of present law, was included as part of a recommendation which would have continued many of the limitations on taxation which were present in the 1876 Constitution. The Commission rejected the recommendation in favor of this section for the reasons discussed previously. Subsequent efforts to include a provision that "taxation shall be equal and uniform" or that "taxation shall be equal and uniform on similarly situated taxpayers" were rejected. "Equal and uniform," if interpreted consistently with the weight of opinion in previous Texas cases, provides essentially the same protection for the taxpayer that is already available under Article I, Section 3 of the Texas Constitution and the Fourteenth Amendment to the United States Constitution. See *Hurt v. Cooper*, 110 S.W. 2d 896 (Tex. 1937).

On the other hand, there is the possibility that the

phrase could be interpreted to reinstate the inflexible scheme of property taxation which exists under the Constitution of 1876 on the rationale that "equal and uniform," as applied to property taxation, has an historical meaning which restricts classification, even when the constitution no longer requires that all property must be taxed in proportion to its value. See generally W. J. NEWHOUSE, CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION (1959). To avoid the possibility that including "equal and uniform" could have this effect, and in reliance on the protection against unreasonable discrimination that is available under Article I, Section 3 of this constitution, the Commission decided not to include any uniformity requirement.

Recently revised or enacted constitutions have been divided on the subject of including or retaining a requirement for taxing uniformity. Illinois and Pennsylvania retained uniformity provisions, although Illinois took steps to allow its General Assembly to treat personal property separately from real property. Montana, Hawaii, and Alaska did not include a uniformity provision in their new constitution.

The present prohibitions against a state property tax were not continued in the new constitution. In 1968, an amendment to the Constitution of 1876 called for the end of the tax by 1978, except for the ten cent per $100 valuation dedicated to institutions of higher education. As the state ad valorem tax on property now operates, it is even more inequitable than the local property tax because, though levied statewide, it is based on local assessments. Some authorities believe that the tax may be in violation of the United States Constitution. Why allow the tax to continue? First, the constitution should not foreclose any source of revenue for the future. Increasingly, the state is encountering funding difficulties, particularly in regard to financing public education on an equitable basis. A state administered property tax may be the best method for accomplishing such financing. Second, although in recent years many states have moved out of the property tax field, some authorities expect that that trend may soon be reversed. Third, perhaps the surest method for assuring that property tax reform will take place is to continue the participation of the state in the tax. If reform is to come, it must almost certainly be initiated at the state level.

The new constitution does not levy a state ad valorem tax. Section 5 of the Transition Schedule continues the levy of the ten cent per $100 valuation tax for institutions of higher learning until the Legislature acts to levy a tax for that purpose pursuant to Section 10 of Article VII of the new constitution. With the exception of a tax of two cents per $100 valuation for confederate pensions and the State Building Fund, all other state ad valorem taxes levied by the Constitution of 1876 will have been phased out by 1975. Under Article VIII, Section 1e of the 1876 Constitution, the two cent tax is to end in 1976. Unless the Legislature acts by law to levy the tax, it will end with the adoption of this constitution, if such adoption occurs before 1976.

Section 2. Property Tax Exemptions

(a) There shall be exempt from all ad valorem taxation:

(1) The property of the State except as provided by law and all other public property used for public purposes;

(2) All household goods and personal effects not used for the production of income; and

(3) All farm products in the hands of the producer and family supplies for home and farm use.

(b) There shall be exempt from State ad valorem taxation:

(1) Three thousand dollars of the assessed value of all residence homesteads; and

(2) The property of political subdivisions of the State.

(c) The Legislature by general law may exempt from ad valorem taxation:

(1) Property used exclusively for educational or charitable purposes or places of burial not held for profit;

(2) Up to three thousand dollars of the assessed value of property owned by a disabled veteran of the armed services of the United States or by the surviving spouse and surviving minor children of a disabled veteran of the armed services of the United States;

(3) Up to three thousand dollars of the assessed value of property owned by the surviving spouse or surviving minor children of any member of the armed services of the United States whose life was lost while on active duty;

(4) Actual places of religious worship;

(5) Any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society if the property yields no revenue to the church or religious society, but such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; and

(6) Any other property validly exempt at the time of adoption of this Constitution.

(d) The governing body of any political subdivision may exempt from ad valorem taxes not less than three thousand dollars of the assessed value of a residence owned and occupied by persons sixty-five years of age or over. If no exemption has been granted, the governing body, upon a petition signed by qualified voters equal in number to at least twenty percent of those voting in the last preceding election held by the political subdivision, shall call an election to determine by majority vote whether to grant such an exemption in the amount, not less than three thousand dollars, specified in the petition.

(e) The Legislature by general law may provide relief from residential ad valorem taxes for persons determined to be in need of such relief because of age, disability, or economic circumstances. Any such law shall provide for the reimbursement of political subdivisions for revenue losses caused by such relief.

(f) No exemptions from ad valorem taxation shall be granted except as authorized under this Section.

Origin

(a) (1) Revises: Article VII, Section 16.
Article XI, Section 9.
(2) Revises Article VIII, Section 1, Sentence 6.
(3) Revises Article VIII, Section 19.
(b) (1) Revises Article VIII, Section 1b.
(2) Revises Article VIII, Section 1, Sentence 2.
(c) (1) Revises Article VIII, Subsection 2(a).
(2) Revises Article VIII, Subsection 2(b).
(3) Rewords Article VIII, Subsection 2(b).
(4) Rewords Article VIII, Subsection 2(a).
(5) Rewords Article VIII, Subsection 2(a).
(6) New provision.
(d) Rewords Article VIII, Section 1b.
(e) New provision.
(f) Rewords Article VIII, Subsection 2(a).

Commentary

In general, this section provides for continuation of those exemptions from property taxation which were allowed under the Constitution of 1876 and prohibits the Legislature from granting new exemptions except as authorized by the constitution. Read in conjunction with the revised Section 1 of this article, the prohibition against exemptions does not prevent the Legislature from providing classifications of property for purposes of taxation or assessment and does not prevent the Legislature from providing reasonable laws for the release of delinquent taxes and for discounts for the prompt payment of taxes.

Subsection (a) continues, with minor revisions, exemptions which are present in the Constitution of 1876. In subsection (a) (1) the exemption of all public property used for public purposes is continued, except that the Legislature may provide for the taxation of state land. This provision is intended to permit certain exceptions, such as the taxation of University of Texas Permanent School Fund lands by counties, which exist under the Constitution of 1876. The exemption of household goods in subsection (a)(2) is enlarged from the $250 amount which was present in the original Constitution of 1876. The taxing of household goods and personal effects, when they are not used for the production of income, is administratively unfeasible. This exemption is not applicable to the furniture and fixtures of hotels, restaurants and other commercial operations or to the property of individuals that is used to produce income. In subsection (a)(3) the exemption of farm products is continued from the Constitution of 1876, but the right of the Legislature to remove the exemption by two-thirds vote is not continued in the belief that if the right has not been exercised since the exemption was granted in 1879, it is unlikely to be exercised in the future.

Subsection (b) provides exemptions from *state* property taxation for all resident homesteads and the property of political subdivisions. The exemption of resident homesteads is virtually unchanged from the Constitution of 1876. Only the phrase "as now defined by law" has been deleted to allow all persons that qualify for a homestead, as that term may be prospectively defined by law, to also qualify for the tax exemption. The exemption in subsection (b)(2) for the property of all political subdivisions is new, but is limited to state taxation and is consistent with the argument that taxing government property is an inefficient method for moving public money from one pocket to another.

It is important to note that subsection (c) does not grant exemptions as is the case with (a) and (b), but rather merely grants authority to the Legislature to exempt, if it chooses, certain property. One change from the Constitution of 1876 is made concerning the exemption of property used exclusively for education and charitable purposes. Under the provisions of subsection (c)(1) it is no longer necessary that such property be owned by institutions of purely public charity in order to qualify for exemption.

The exemptions for disabled veterans, their families, and the families of veterans whose lives were lost on active duty have not yet been granted by statute. The exemptions were approved by amendment in 1972, however, and the Legislature should have the opportunity to choose whether to grant the exemptions.

To assure that exemptions presently granted by statute will not become unconstitutional under this revised constitution, subsection (c)(6) was added. Subsection (c)(6) applies only to exemptions which are now validly granted and does not mean that the Legislature may continue to grant new exemptions under authority which it had under the Constitution of 1876 but which it no longer possesses under this revised section. For an indication of exemptions which may be continued see TEX. REV. CIV. STAT. ANN. art. 7048a (1960); TEX. REV. CIV. STAT. ANN. art. 7150 (1960), as amended, (Supp. 1972).

Subsection (d) continues, without substantive change, the provision of the Constitution of 1876 which directly allows political subdivisions to exempt, from their own taxes, the property of those sixty-five years of age or older. There was some debate over the wisdom of this exemption because it provides for an exemption of "at least" $3,000 rather than the customary "up to" $3,000. The difference is considerable. It means that there is no ceiling on the exemption and this, combined with the local public initiative aspect, allows for the sudden removal of considerable property from the local tax base. This is particularly true in small cities and towns where the number of qualified property owners is relatively high. A sudden depletion of the tax base could upset the security for outstanding bonds and place a disproportionate tax burden on ineligible taxpayers. On the other hand, an exemption of this nature, without a ceiling, is more realistic in a time of increasing land values.

Subsection (e) is a new provision. In anticipation of possible future exemptions for social reasons, subsection (e) authorizes the Legislature to provide tax relief for those found to be in need of relief because of age, disability, or economic circumstance. The national trend appears to be toward the granting of more social exemptions and the assumption of the financial burden by the state rather than local government. By July 1, 1973, every state had enacted some form of property tax relief program, and only thirteen of these required their localities to provide relief but did not provide at least some money. Increasingly, these social exemptions have been keyed to the need of the individual applicant rather than a blanket application to a particular class of property owners. Subsection (e) allows the Legislature to enact tax relief, without constitutional amendment, if it is found to be desirable. If the Legislature provides for such social exemptions, it must simultaneously provide for reimbursement of local jurisdictions for lost revenue.

Under subsection (f), the Legislature may not exempt property from taxation except as specifically allowed by the constitution. Amendment is necessary to authorize new exemptions.

Section 3. Highway-User Revenues

Subject to legislative appropriation, allocation, and direction, all net revenues from motor vehicle registration fees and three-fourths of net revenues from all taxes on fuels and lubricants used to propel motor vehicles over public roadways, except gross production and ad valorem taxes, shall be deposited in the State Highway Fund. Such revenues shall be used solely for acquiring rights-of-way, constructing and maintaining a State highway system; for policing public roadways; and for administering laws pertaining to the supervision of traffic and safety on public roadways. One-fourth of net revenues from these taxes shall be allocated to the Available School Fund. The net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each county, or less than the percentage allowed to be retained, under the laws in effect at the time of adoption of this Constitution.

Origin

Revises Article VIII, Section 7a.

Commentary

Section 3 is a simplified version of Article VIII, Section 7a of the 1876 Constitution which dedicates highway-user revenues. It continues the dedication of the net revenue of motor vehicle registration fees and 75 percent of motor fuel taxes for the state highway system and 25 percent of the net revenues of the motor fuel tax to the Available School Fund. It also preserves the county share of motor vehicle registration fees. Section 3 introduces the new term "State Highway System" as a substitute for "public roadways." This reflects the present use of the revenues which is limited to streets or roadways that are part of the state-maintained highway network.

Much has been written about the general undesirability of earmarking or dedicating governmental revenues for specific uses. But most state constitutions do dedicate revenues. In fact, some 28 states have constitutional provisions which dedicate state motor vehicle and gasoline taxes for highway purposes. Even recently revised constitutions, such as that of Montana, have retained such dedications. Highway-user taxes are defended as an exception to the rule against earmarked revenues because such taxes are directly related to the use of the facilities which are built and maintained by the funds. The dedication of a portion of these taxes to the Available School Fund provides a secure source of revenue for public education.

Constitutional dedication of highway user revenues is even more appropriate in Texas than in other states. Texas has the largest state highway system of any state (70,000 miles). The system constitutes the most extensive network of transportation in the state and affords considerable benefits through increased citizen mobility and through lower costs for food and other essential commodities. This system has been built at a relatively low cost and without the incurrence of long-term state debt. The presence of constitutionally dedicated funds has contributed to the success of the Texas highway system because it has allowed thoughtful advance planning with the assurance of revenue and without the political pressures and uncertainties of legislative appropriation.

Although there is a recognized need for support for all types of transportation systems, the need for highway funds in the future is likely to remain high. One disadvantage of having the largest highway system in the nation is that costly upkeep, maintenance, and revamping are required. It is important to public safety that roads and bridges be constantly improved and updated to accommodate increased traffic and different types of vehicles. The Commission believes that Texas should continue to have a high quality system of highways.

Several alternatives to the provision of Section 3 were discussed, including: (1) eliminating the constitutional earmarking; (2) allowing the future use of the revenues for other purposes, such as mass transit; or (3) allowing a change in the ratio of the revenue allotted to the highway system and the Available Fund. Although these alternatives received serious consideration, the majority of the Commission favored retention of the dedicated tax fund in the form of this section.

Section 4. State Taxes on Income

If a law is enacted levying an income tax, the tax may be on personal or corporate income, or both, and may be graduated or otherwise. The law may define income by reference to the laws of the United States as they then exist or may thereafter be changed.

Origin

Revises Article VIII, Section 1, Sentence 5.

Commentary

Article VIII, Section 1 of the Constitution of 1876 specifically authorizes the Legislature to "tax incomes of both natural persons and corporations other than municipal." Such constitutional authorizations to tax are unnecessary, and there is no question that the Legislature could enact an income tax today, even if no constitutional authorization were present. But concern has been expressed that under the Constitution of 1876: (1) an income tax could not be enacted unless it taxed *both* corporate and personal incomes; (2) a graduated income tax would be violative of the constitutional requirement for uniformity in taxation; and (3) a state tax on income could not be based on the federal income tax without unconstitutionally delegating the legislative power of the state. This section is intended to overcome these objections and to allow the Legislature the freedom to select the most effective structure for an income tax if one is found to be desirable.

Whether Texas should enact an income tax or how such a tax should be patterned are questions which arouse considerable debate. These are questions which should be considered carefully, but which should be considered in the legislative process. An increasing number of states have found a tax on income to be a valuable and legitimate source of revenue. If the day arrives when such a tax is found to be desirable for Texas, the constitution should not prevent its enactment or dictate its form.

It is possible that this section may not grant the Legislature any power which it does not now possess. For example, there is no question that the Legislature may enact a tax on income without constitutional authorization. During past legislative sessions, however, it has been argued that Article VIII, Section 1, sentence 5 of the Constitution of 1876 requires that if an income tax is enacted, it must be upon the income of both persons and corporations. Even if this construction of the 1876 provision is correct, the specific language was deleted from the new constitution, and the authorization contained in this section for a tax on "either" personal or corporate income may be unnecessary.

Similarly, a graduated income tax may be possible under the 1876 Constitution. Many states have enacted graduated income taxes without constitutional amendment. Challenge to the constitutionality of a graduated income tax has come on the grounds that a graduated tax is not "equal and uniform" as required under Article VIII, Section 1 of the 1876 Constitution. Repeatedly, the pivotal issue for courts in other states has been the identification of the income tax as an excise tax rather than a property tax on the theory that the uniformity required of nonproperty taxes is different from that required of property taxes. See *Thorpe v. Mahin*, 250 N.E. 2d 633 (Ill. 1969); *Tax Commission v. Fine*, 247 N.E. 2d 701 (Mass. 1969). But see *Amidon v. Kane*, 279 A. 2d 53 (Penn. 1971). In Texas, there is reason to believe that an income tax would be found to be a nonproperty tax, *Community Public Service Co. v. James*, 167 S. W. 2d 588 (Tex. Civ. App.-Austin 1943, writ ref'd w.o.m.), and could be graduated. See *State v. Hogg*, 72 S.W. 2d 593 (Tex. Comm'n App. 1934, opinion adopted). *Hurt v. Cooper*, 110 S.W. 2d 896 (Tex. 1937). In fact, in the 1931 *Report of the Tax Survey Committee of the 42nd Legislature*, the Attorney General of Texas considered in some depth the question of the constitutionality of a graduated income tax and concluded that one was permissible under the Constitution of 1876. See also TEXAS ATT'Y GEN. OP. No. 2902 (1932). The need for the constitutional authorization of a graduated income tax is further diminished by the omission of the equal and uniform provision from Section 1 of this article.

The third objection which this section is intended to overcome is that a statute which incorporates the definitions of the federal income tax may be an unconstitutional delegation of the legislative power of the state, particularly when such definitions may be subsequently changed by the federal government. Several states have recently amended their constitutions to include language similar to that contained in this section to enable the Legislature to incorporate the federal standards. One authority has suggested a method, presently in use in Michigan, which could make constitutional authorization unnecessary. In general, the approach is to incorporate the federal definitions at a point in time and then to allow the use of prospec-

tive federal changes at the option of the state taxpayer. Whether this method would be desirable or could be successfully utilized in Texas is unknown.

It is recognized that specifically mentioning the income tax in a proposed constitutional revision could create opposition from voters even though an authorization for the tax is now present in the Constitution of 1876. This section is the surest method, however, for allowing the Legislature to enact such a tax in the future without constitutional amendment.

Section 5. State Debt

(a) State debt shall mean bonds or other evidences of indebtedness which are secured by the general credit of the State or are to be repaid, directly or indirectly, from tax revenue and are incurred for the State or for an agency of the State.

(b) No State debt shall be authorized or incurred except as provided in this Constitution.

(c) State debt may be authorized by general law to refund outstanding State debt.

(d) State debt may be incurred if approved by two-thirds vote of the membership of each house of the Legislature and submitted to and approved by a majority of the qualified electors voting on the question.

Origin

Revises Article III, Section 49.

Commentary

Article III, Section 49 of the Constitution of 1876 states that "no debt shall be created by or on behalf of the State." The prohibition has not prevented state borrowing. For example, between 1961 and 1970 the public debt of the State of Texas and its agencies increased 300 percent from $330 million to $1 billion. Since 1970, the figure has climbed to approximately $1.6 billion in 1973. This revised section is intended to modernize the constitutional debt limit to provide a more effective control over state borrowing.

Through the years, "debt" as used in the 1876 Constitution has come to have a limited rather than inclusive meaning. Courts have held that obligations which run current with revenues, *Charles Scribner's Sons v. Marrs*, 262 S.W. 722 (Tex. 1924), and obligations which are incurred by state agencies to be paid from revenues of the agency, *Texas Turnpike Authority v. Shepperd*, 279 S.W. 2d 302 (Tex. 1955), are not "debts" within the prohibition of Article III, Section 49. Debts are created when the general credit of the state is obligated, when future revenues are obligated by expenditures in excess of appropriations, or when contracts are made which run for longer than the term of the appropriation.

Section 5 is intended to change the definition of debt to include bonds or evidences of indebtedness which are to be paid directly or indirectly from tax revenue. Otherwise, obligations which are now prohibited under Article III, Section 49 are still prohibited. Likewise, obligations which run current with revenues are not "debt" under the new Section 5. The change in the meaning of debt is made to require a statewide referendum for the approval of state borrowing which now occurs without any election.

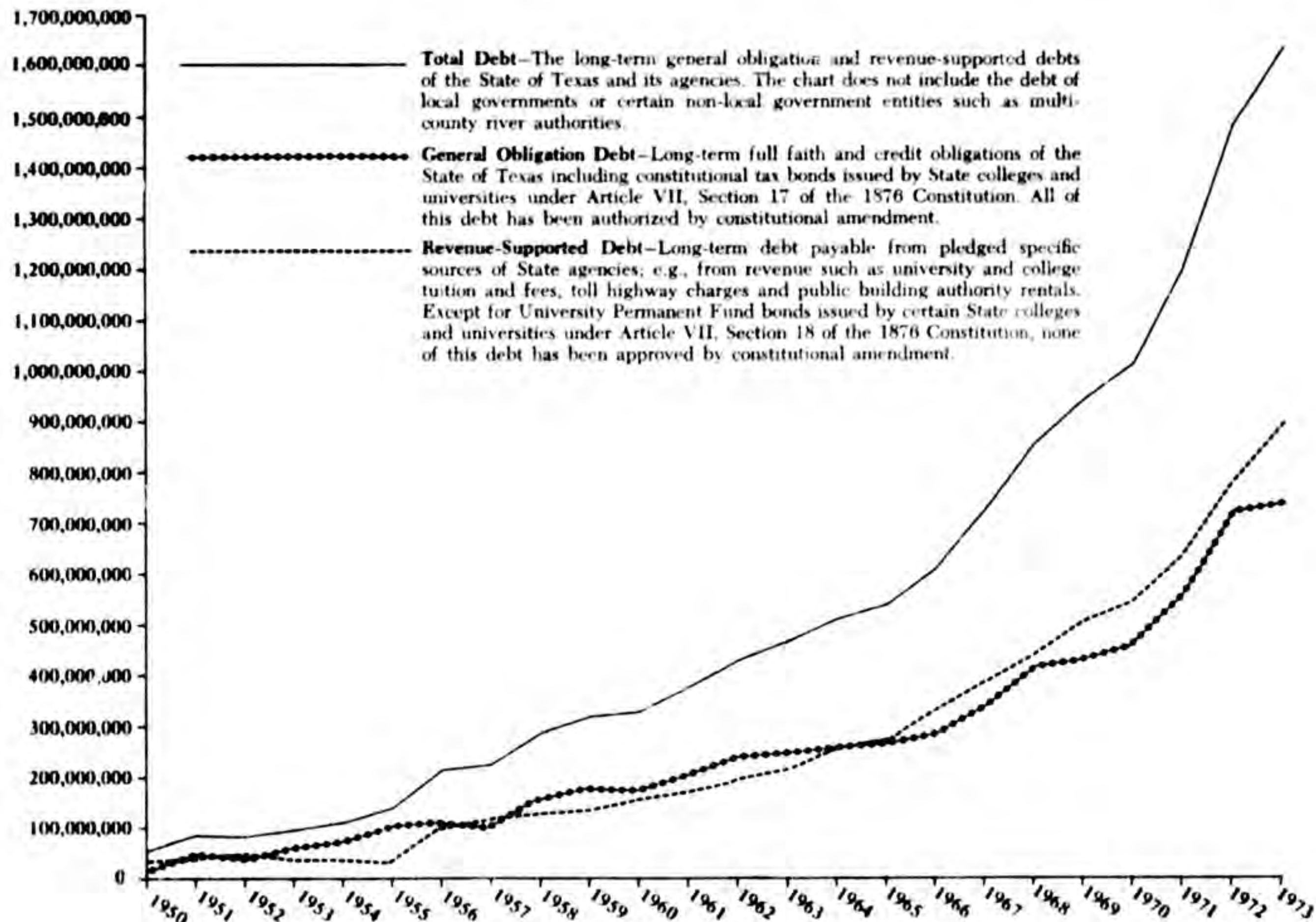
State borrowing has come about through three methods. First, the 1876 Constitution has been amended to authorize $1.2 billion ($750 million having been issued) in debt for particular purposes, including Veteran Land Bonds, Student Loan Bonds, Water Development Bonds and Texas Park Development Bonds. Sections 17 and 18 in Article VII of the 1876 Constitution authorize certain senior colleges to issue bonds which are backed by tax revenue or by revenue from the University Permanent Fund. These obligations, by virtue of their inclusion in the constitution, have been authorized by election.

A second method of borrowing has been through bonds issued by state agencies and senior colleges without constitutional authorization. These bonds are revenue-supported obligations which are designed to be self-liquidating from non-tax revenue of the issuing agency or enterprise. Examples include bonds backed by revenue from college dormitory housing rentals and traffic facility tolls. Traditionally, such bonds have not been prohibited by the constitution because they do not obligate the general credit or tax revenue of the state. These obligations do not lend themselves to an election and constitute a logical and longstanding exception to the requirement for a referendum.

During recent years, borrowing without constitutional

Figure 4.4

The Growth of the Debt of the State of Texas and Its Agencies 1950 - 1973



Source: All figures for the years of 1950-1971 are derived from the appropriate annual issue of U.S. **Bureau of the Census, State Government Finances.** Figures for 1972 and 1973 are compiled from data provided by the Texas Municipal Advisory Council.

authorization has come in the guise of bonds designated as revenue bonds, but which depend on state taxes for retirement. Examples include state building authorities which pledge rentals paid by the state and senior colleges which pledge revenues which otherwise would go to the operation of the school and which must be replaced by money from general tax sources. In either case, the ultimate source of the money is state tax revenue. Indebtedness which is repaid indirectly from tax revenues is recognized by authorities as a subterfuge for circumventing the constitutional debt limitation. It is an expensive subterfuge since the bonds are sold by the state agency or college at a higher rate of interest than state full faith and credit obligations. Moreover, the borrowing is accomplished with a minimum of legislative control, even though some courts have recognized that retirement of the indebtedness is at least a "moral obligation" of the state. Such borrowing has only recently reached major proportions in Texas. But because the legal precedent is established, see *Texas National Guard Armory Board v. McCraw*, 126 S.W. 2d 627 (Tex. 1939), Texas may be vulnerable to the gross abuses that can be identified in other states.

The precise meaning of "indirectly from tax revenue" is left to judicial interpretation. Clearly it applies to a situation in which the state or an agency of the state creates an authority to float bonds to acquire structures which are leased back to the state for rentals adequate to retire the bonds. Similarly, pledging state revenues, such as senior college tuition, which, if pledged for bond retirement must be replaced with state tax revenue, creates a debt which is payable "indirectly from tax revenues." This same principle applies to the pledging of other revenue which is not customarily set aside for bond retirement.

There are many alternatives for incurring state debt, ranging from the continuation of Article III, Section 49 of the 1876 Constitution to the deletion of all constitutional limitations. A variety of possibilities may be found in the constitutions of other states. Several states have recently adopted provisions which permit the Legislature to incur debt without public referendum under particular circumstances or up to specific ceilings; e.g., Illinois, Pennsylvania and Hawaii. Illinois also allows unlimited debt to be incurred by either a vote of three-fifths of the General Assembly or by referendum. On the other hand, many states continue to require constitutional amendment.

It has been argued by many authorities that imposing a constitutional limit on state indebtedness is undesirable. Such limits often prove ineffective and expensive because almost invariably the government finds a method for circumventing the limit with the result that the cost of borrowing is increased by higher interest rates and higher administrative costs. This has occurred in Texas with the creation of building authorities and the issuance of quasi-revenue bonds.

Other authorities have concluded, however, that "constitutional debt limitations tend to keep down state debt, despite the loopholes discovered by state officials and courts." THE TAX FOUNDATION, CONSTITUTIONAL DEBT CONTROL IN THE STATES (1954). Limits may exert more of a psychological restraint than a legal impediment. Most importantly, however, the presence of a requirement for a referendum or other procedure that focuses popular attention on state borrowing helps make the citizen aware of the fiscal activities of government.

Under subsection (d), state debt would continue to require a two-thirds vote of the total membership of both houses of the Legislature and approval at a statewide election. Combined with the new definition of debt in subsection (a), this constitutional approach is intended:

(1) To encourage that state borrowing be backed by the full faith and credit of the state (to reduce interest costs);

(2) To promote greater legislative control over state borrowing;

(3) To assure that the citizen is aware of the debt being incurred by state government; and

(4) To afford the citizen an opportunity to judge the desirability of such borrowing.

In Article III, Section 49 of the 1876 Constitution unlimited debt could be incurred to repel invasion, suppress insurrection, and defend the state in war. These exceptions are antiquated and have never been used. As a result, they have not been included in Section 5. The 1876 Constitution also allows debt for casual deficiencies in revenue up to $200,000. At present this exception is the basis for deficiency warrants issued by the Governor under TEX. REV. CIV. STAT. ANN. art. 4351a (1966) to cover an "unforeseen shortage in a specific appropriation to meet a situation that unexpectedly arises and requires immediate attention at a time when the legislature cannot act." Comment, *Contracting With the State of Texas; Fiscal and Constitutional Limitations*, 44 TEXAS L. REV. 106, 146 (1965). The warrants are subsequently paid by legislative appropriation at the next legislative session ($53,243 was appropriated to pay warrants issued in 1972 and 1973). See also TEX. CODE CRIM. PROC. ANN. art. 35.27 (1965). The warrants are often discounted considerably because of the delay in payment. Elimination of the debt exception for casual deficiencies means that if the Governor is to have the authority to meet unexpected shortages in an appropriation, the Legislature must appropriate an amount to be utilized for that purpose during the fiscal period, as is presently done to pay tort claims arising while the Legislature is not in session.

Subsection (c) of Section 5 is intended to allow the state to refund outstanding bonds to take advantage of reduced interest rates, if that opportunity were to occur. Similar provisions are present in the constitutions of several other states, including Illinois.

Section 6. Appropriations

(a) Money may not be drawn from the State Treasury except in accordance with specific appropriations made by law.

(b) Any appropriation from the State Treasury expires two years after its effective date.

(c) No bill containing an appropriation may be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts certifies that the amount appropriated is within the estimated revenue for the applicable fiscal period.

(d) No appropriation in excess of the estimated revenue shall be valid unless it is made in response to imperative public necessity and approved by four-fifths vote of the membership of each house of the Legislature.

Origin

(a) Rewords Article VIII, Section 6.
(b) Rewords Article VIII, Section 6.
(c) Rewords Article III, Section 49a.
(d) Rewords Article III, Section, 49a.

Commentary

Section 6 is a shortened but substantively unchanged version of the requirement in the 1876 Constitution for a "pay-as-you-go" policy for legislative appropriations. The section continues to require that money be drawn from the state treasury only by specific appropriation and that the appropriation be limited to two years and be no greater than the revenue estimated to be available for that period. Spending in excess of the revenue estimate is permitted only in response to imperative public necessity on the four-fifths vote of both houses of the Legislature.

Despite some difficulties in implementation, the "pay-as-you-go" policy for appropriations has served as a valuable complement to the limitation on state debt which is now contained in Section 5 of this article. It has succeeded in keeping state appropriations near actual revenues and in avoiding the need for state borrowing to meet deficit spending. For example, at the conclusion of the fiscal period ending August 31, 1972, the State General Revenue Fund showed a cash balance of $53 million. The success of the policy for appropriations has contributed to the high ratings for state general obligation bonds and to the resulting decrease in the cost of state general obligation borrowing.

Although there was unanimous agreement on the need for this section in the revised constitution, there was some dispute over who should serve as the state official responsible for certifying that appropriations are within the revenue estimated to be available for the fiscal period. Presently the function is performed by an elected official, the Comptroller of Public Accounts. It was suggested that an appointed Auditor, elevated to constitutional status, could perform the duties in conjunction with other responsibilities including post-audit and performance audit of government activities. Such an officer would have the advantage of being a qualified certified public accountant and would not be subject to the temptations and pressures of political campaigning.

The Comptroller of Public Accounts was continued as the certifying officer because of the success of the certifying process as it presently operates and because of the greater independence afforded by election as opposed to the appointment of an Auditor. In the opinion of the Commission, certification by an independent officer is essential to the "pay-as-you-go" policy.

Section 7. Public Funds

Public money and public credit shall be used for public purposes only.

Origin

Revises: Article III, Section 44;
Article III, Section 50;
Article III, Section 51;
Article III, Section 52;
Article III, Section 52b;
Article VIII, Section 3;
Article XI, Section 3;
Article XVI, Section 6.

Commentary

The Commission believes that imposing a constitutional limitation on the use of public funds is sound policy. Most state constitutions impose such a limitation, at least on extending state credit to private groups. The pervasive taxing power of government should not be used to produce money for private rather than governmental use. By imposing a limitation on government's use of public funds, the constitution provides the courts with the power to review governmental expenditures and to establish a check on expenditures which serve only private economic or purely political interests. Perhaps, as in some jurisdictions, the courts could exercise the same power and imply a similar restriction despite constitutional silence, but including the limitation in the constitution assures that such a judicial check, which is traditional in this state, will continue to be present.

In the 1876 Constitution there are several sections which purport to prevent the use of public funds for private purposes by prohibiting "grants" or "loans" to "individuals" and "corporations, including municipal." See generally, Article III, Sections 50, 51, and 52. Due to the antiquated, confused, and inconsistent wording of the sections, great uncertainty has occurred in regard to the specific nature of the rule. For example, Texas courts have approved government expenditures for such diverse purposes as retirement and pension systems, *Byrd v. City of Dallas*, 6 S.W. 2d 738 (Tex. Comm'n App. 1928, opinion adopted), primary elections, *Bullock v. Calvert*, 480 S.W. 2d 367 (Tex. 1972) and subsidized housing for the poor, *Housing Authority v. Higginbotham*, 143 S.W. 2d 79 (Tex. 1940). But courts and attorneys general have disallowed other seemingly similar expenditures for workmen's compensation, *City of Tyler v. Texas Employer's Ins. Assn.*, 288 S.W. 409 (Tex. Comm'n App. 1926, holding approved), contributions to the building fund of a public nonprofit library, Texas Att'y Gen. Op. No. V-953 (1949), and sanitary private privies for war-time installations, Texas Att'y Gen. Op. No. O-5025 (1942). There are many more decisions and opinions which only add to the confusion. The inability to predict court outcomes has affected the willingness of government officials, particularly at the local level, to undertake new programs. In addition, it has contributed to repeated and perhaps unnecessary amending of the constitution to authorize retirement and pension programs for public employees, state welfare assistance, grants and loans to municipal corporations, and appropriations affecting undefined public interests such as historical memorials.

This section permits an appropriation or expenditure if it is for "public purposes only." The determination of what constitutes a public purpose depends on the particular facts in each case. The term *public purpose* has been defined through the years by a body of law in this and other states, with the result that there are established guidelines from which the Legislature, courts, and government planners can determine the validity of appropriations. In addition, the term is valuable in its generality because its meaning can adjust to accommodate social change as new public purposes are identified.

The Commission rejected efforts to apply a more specific meaning to "public purposes only." In particular, the Commission rejected interpretations which (1) would have limited the use of state funds and credit to statewide purposes, (2) would have prevented a political subdivision from using its credit or funds outside its jurisdiction and (3) would have required that governments receive a "comparable value" for any use of public funds or credit which directly benefits a private interest. The Commission did adopt a provision, included as Section 8 of this article, which was intended to "unequivocably" assure that uses of public money which are permissible under the 1876 Constitution could be continued under the new one.

Section 8. Public Purposes

Public purposes, as that term is used in this Constitution, include, but are not limited to, purposes for which taxes could be levied or public money or public credit could be used before the adoption of this Constitution.

Origin

New provision.

Commentary

The reason for including this section in the new constitution is to "unequivocably" assure that no court will interpret "public purpose" in such a manner as to hold invalid appropriations or expenditures which

were specifically authorized under the Constitution of 1876 and its amendments. It is not intended to direct by inference or implication that those purposes for which taxes could be levied or public money or public credit could be used under the Constitution of 1876 are to provide the criteria for determining the prospective meaning of "public purpose."

The "public purposes" requirement of Section 8 of this article imposes a different test from the one which the framers of the Constitution of 1876 intended to be applied under the specific grants and loans prohibitions of Article III, Sections 50, 51, and 52. Those prohibitions focused on the form of the expenditure rather than on the purpose and have led some Texas courts to require that the government receive a clear quid pro quo before spending public funds in a manner which directly or indirectly benefits private interests. This is somewhat inconsistent with the national rule:

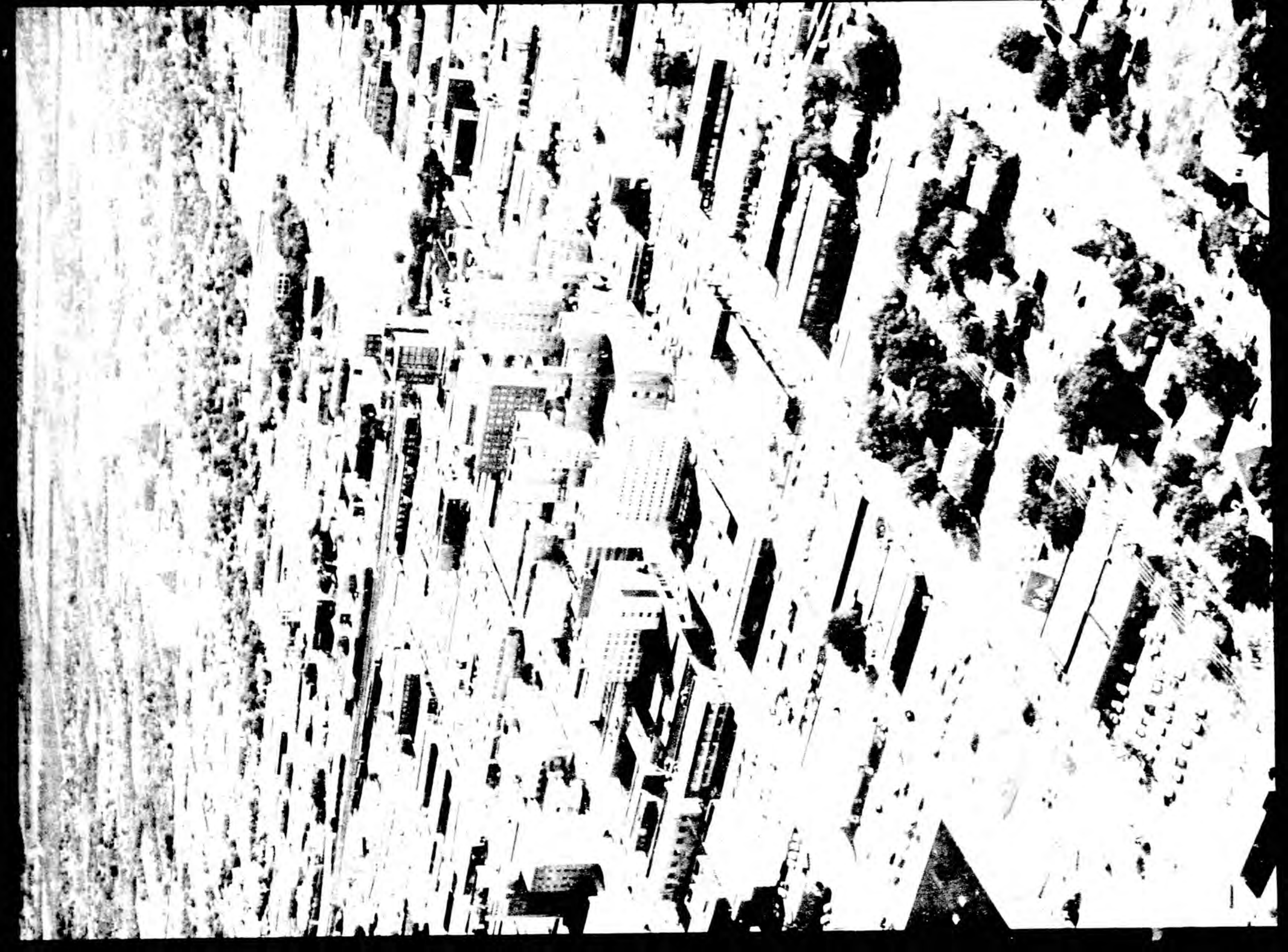
> A constitutional limitation, expressly or implied, on gifts of public money does not generally apply to a disbursement, appropriation or other fiscal statute for a public purpose, or to carry out a function of government, even though private persons may be benefited therefrom.
>
> 81 *C.J.S.* Section 134b (1953).

Some authorities argue that the public purpose limitation has become the current law of Texas. Recent court decisions and attorney general opinions have utilized "public purpose" language to uphold expenditures, but there remain cases and attorney general opinions which have invalidated expenditures without mention of the public purpose test. These latter decisions and opinions have served, at least in part, as the reason for a number of amendments to the constitution to authorize particular uses for public money or credit: for example, workmen's compensation for public employees, social security coverage for proprietary employees of political subdivisions, and assistance for the blind or handicapped. Very few of these uses of public funds appear to present a problem under a public purpose test, but to be "unequivocably" certain, this section was added to the constitution.

It would have been possible to specifically list in the constitution those currently permissible uses of public money which otherwise might be challenged under the public purpose test. But allowing flexibility through judicial interpretation of a general limitation is preferable to a constitutional listing which could be interpreted to be exclusive. For the same reason, the Commission chose not to designate some newly proposed uses for public money, such as industrial revenue bonds, as permissible and as being for a public purpose. Likewise, no specific prohibition against industrial revenue bonds was included although it was the view of the Finance Study Committee of the Commission that such bonds do obligate the public credit for private use in violation of Section 7 of this article.

Article IX

Local Government



Article IX
Local Government

Section 1. Counties

The counties of the State are those that exist on the date of adoption of this Constitution. Changes in county boundaries, the merger and division of counties, and the removal of county seats shall be subject to the approval of a majority of the qualified voters voting on the question in each county affected.

Origin

Revises: Article IX, Section 1;
Article IX, Section 2;
Article XI, Section 1.

Commentary

The first sentence of Section 1 is a new provision intended to insure the continuity of the state's 254 counties as legal and geographical subdivisions of the state. The remainder of this section replaces the detailed provisions in Article IX, Sections 1 and 2 of the 1876 Constitution concerning the creation of new counties, changes in boundaries, and removal of county seats.

The proposed Section 1 is intended to preserve the legal existence of the counties of this state and to require that any future changes in county boundaries or county seats be approved by a vote of the people in each county affected. It was the belief of the Commission that changes in county lines are not likely to occur in the immediate future, but that this option should be available to county residents if they should find the need to make adjustments for their convenience in the future.

The Commission believes that the principle of local approval over changes in local government structure needs to be retained from the 1876 Constitution, but that detailed requirements concerning such changes should be provided by statute.

Section 2. Powers of County Government

The powers of counties shall be those granted by this Constitution and by general law.

Origin

New provision.

Commentary

The intent of Section 2 is to emphasize that counties should be able to perform an functions and exercise such powers necessary for the benefit of the people consistent with the requirements of general law. The provision recognizes the role of a county as a local government as well as an administrative arm of the state.

The powers and responsibilities of county government are ill-defined in the 1876 Constitution. There is no single provision which describes the general functions and responsibilities of the county. Counties are described by Article XI, Section 1 as "legal subdivisions," and there are scattered provisions which refer to county functions such as jails, courthouses, bridges, roads, and poorhouses. Several sections establish limits on the taxing power of counties. One recent amendment to the 1876 Constitution sets forth county authority to regulate traffic and littering.

Section 2 would clarify the role of the county as a local government which can levy taxes and provide a variety of governmental services as needed by county residents. County activities would be subject to regulation by general law as is currently the case. Counties would also perform functions of the state government as required by law. However, there would no longer be any question about the constitutional authority of the county to establish and enforce regulations in unincorporated areas, make public improvements, and

provide services consistent with the programs and activities of county government. This section should help prevent the need for future constitutional amendments to allow counties to take on new responsibilities and functions as required.

Section 3. County and District Officials

(a) The governing body of each county, to be known as the County Commission, shall consist of a County Judge elected by the qualified voters of the county and four County Commissioners, each elected by the qualified voters from separate and compact precincts containing as nearly as practicable an equal number of inhabitants. The County Judge shall serve as presiding officer.

(b) A Sheriff, Treasurer, Tax Assessor-Collector, County Clerk, and District Clerk shall be elected for each county, except that a single County Clerk may be elected to perform the duties of county and district clerk as provided by law.

(c) County Attorneys, District Attorneys, and Criminal District Attorneys shall be elected in such numbers and for such counties as provided by law.

(d) The County Commission may provide for the election of one or more Constables.

(e) The qualifications, duties, and functions of county officials and the grounds and procedure for disqualification, suspension, and removal shall be as provided by law.

(f) Notwithstanding any of the foregoing provisions, the qualified electors of a county, as provided by general law, may by charter, or by a majority vote of those voting on the question, alter the governing body, create additional offices, eliminate offices, combine the duties and functions of offices, and change the method of selection of any one or more county officials. In such an event the county shall provide for the performance of all duties and functions required by State law.

(g) Vacancies in county offices shall be filled as provided by general law or charter. Vacancies in district offices shall be filled as provided by law.

Origin

(a) Revises Article V, Section 18.
(b) Revises: Article V, Section 23;
Article XVI, Section 44;
Article VIII, Section 14;
Article V, Section 9;
Article V, Section 20.
(c) Revises Article V, Section 21.
(d) Revises Article V, Section 18.
(e) Revises Article V, Section 24.
(f) New provision.
(g) New provision.

Commentary

Subsections (a) through (d) of this section provide for the county governing body, county elective offices, and certain district elective offices. There are minor changes from the 1876 Constitution concerning the governing body, the office of county judge, and the elected offices of county government. This section omits reference to three county officers mentioned in the 1876 Constitution: county surveyor; public weigher; and inspector of hides and animals. These offices would be continued as statutory offices as provided by the Legislature.

This section would also allow the Legislature to establish uniform provisions for qualifications and duties of county officials, as well as grounds and procedures for

their disqualification, suspension, and removal. These provisions are contained in subsection (e).

Subsection (f) is a new provision which would allow the residents of a county to modify county offices in any manner deemed appropriate to local circumstances. In such cases it would be necessary for the county to provide for the performance of any duties and functions of county officers required by state law which might be affected by the changes.

Subsection (g) allows the Legislature to establish methods for filling vacancies in all county offices. There are scattered provisions in the 1876 Constitution which prescribe methods of filling vacancies for some county offices, but not for all.

The Commission concluded that the revised constitution should not impose any drastic changes on the existing elective offices and governing bodies of county government. Although the Commission considered the possibility of leaving the definition of the county governing body and elective offices for legislative determination, it was felt that a new constitution should not make any mandatory changes other than the removal from the constitution of the few constitutional county offices not entrusted with significant policy-making responsibilities. These offices would be retained as statutory offices.

While many counties are satisfied with the present system of county government, it became apparent in the Commission hearings that other county officials and residents of counties across the state desire greater flexibility in the pattern of organization as well as in the functions and methods of operation of county government. This is particularly true in some of the large urban areas where Commission hearings were held. Therefore, the Commission has recommended in subsection (f) above that the county electorate be allowed to approve changes in the county structure including the addition, combination, or deletion of offices. Recommendations contained in subsequent sections would also allow counties to assume additional responsibilities and make further changes in their organization and functions if approved by the local electorate.

Section 3 also provides a new designation for the county governing body which better reflects its modern responsibilities. Commissioners courts have no significant judicial responsibilities, and the name "county commission" is more descriptive of their functions. The county judge would serve as the administrative head of county government since the judicial functions of that office would be eliminated by the creation of a unified judicial system that includes the county courts. For an explanation of the unified judicial system see the *Commentary* for Article V, Sections 1 and 5 of this constitution. If a lawyer, the county judge would have the option of becoming a judge of the new county court. The provisions of the 1876 Constitution which allow the sheriff to be tax assessor-collector in counties with a population of under 10,000 are not included in the new document. Testimony received by the Commission indicated that these two offices are not compatible in relation to the experience and knowledge required to perform the duties of both.

The office of constable would be continued by Section 3 although it would not be mandatory that the county provide for the election of a constable, or constables, if not needed. The 1876 Constitution requires that four to eight constables be elected from corresponding precincts in each county. Many counties do not fill this office, and it was felt that the number of constables needed, if any, could best be determined by each county governing body. The county sheriff now assumes the duties of constable in cases where the office is not filled.

A proposal which was considered would allow the county commission to appoint additional county officials to carry out necessary functions. This proposal was not adopted, however, as additional offices can be created by law.

Section 4. County Charters and Ordinances

(a) The Legislature shall by law provide procedures by which any county with a population of not less than twenty-five thousand may adopt, amend, or repeal a charter with the approval of a majority of qualified voters voting on the question. A charter election may be initiated by petition of the qualified voters of the county or by resolution of the governing body as provided by law. No charter or ordinance shall be inconsistent with the Constitution or laws of the State.

(b) The qualified voters of a county without a charter may by a majority of those voting on the question grant the county governing body the power to enact ordinances as authorized by law.

(c) If a county ordinance conflicts with an ordinance of an incorporated city or town, the municipal ordinance shall prevail within its jurisdiction as defined by law.

(d) Neither county charters nor ordinances shall affect jurisdiction or venue or the duties of personnel of courts which are part of the State unified judicial system.

Origin

New provision.

Commentary

Subsection (a) would allow counties of over 25,000 population to exercise self-government powers by local option. Implementation of the provision would depend on legislative action. Subsection (b) would allow county residents to confer legislative authority on the county governing body. This provision would apply to counties which do not elect to adopt charters. Charter powers would include, by implication, full legislative authority subject to any restrictions contained in state law or the constitution. Subsection (c) limits the applicability of county charters and establishes the supremacy of municipal ordinances if county and municipal ordinances conflict. Municipal ordinances applicable to the extraterritorial jurisdiction of cities would also prevail over county ordinances. Subsection (d) restricts the authority which can be exercised by county charter. This provision is necessary since certain officials, such as the county clerk, would serve the county court under the unified judicial system and also remain as an official of county government. The duties of the county clerk would necessarily conform with laws concerning the unified judicial system.

The effect of Section 4 is to extend the options available to county government to provide additional control over matters of local concern. Counties which do not elect to adopt charters may, upon approval by the voters, enact ordinances in accordance with the requirements of general law. If authorized by the Legislature, ordinances might be enacted on such matters as subdivision standards, building codes, land use, motor vehicle traffic, littering, sanitation, and environmental protection. Testimony before the Commission indicated that such controls are needed to prevent undesirable conditions in unincorporated areas.

Although it was the feeling of the Commission that most counties would not choose to avail themselves of charter governments within the near future, the Commission believes that this option should be available to those areas which might desire to make substantial changes in the organization and functions of their county government. Sixty-six of the 254 counties in the state had a population of more than 25,000 in 1970.

Counties which adopt charters would have broad discretion over their organization and functions in the same manner as cities which have adopted their own charters. The grant of self-government powers to counties would not be absolute as any ordinance or exercise of powers would be subject to any restrictions or prohibitions of the general laws of the state.

The procedures set forth by law for adopting charters should include details concerning the methods of selecting the charter commission, hearings, length of the charter preparation process, and elections for the adoption and amendment of a charter. Further issues and alternatives to be considered concerning county charters include:

(1) The possibility of requiring legislative action by a certain date;

(2) The possibility of "self-enacting" charter provisions; and

(3) The possibility of listing additional details concerning charter powers—for example, alter the structure, functions, and powers defined by this constitution and general law.

As provided by subsection (c), charter counties and those which adopt only ordinance-making powers could not adopt ordinances which interfere with municipal governments. The resolution of possible conflicts between county and municipal functions in areas of overlapping jurisdiction can be addressed further by the enabling legislation providing for the adoption of county charters.

Section 5. General Law Cities

Cities and towns having a population of one thousand five hundred or less may be chartered only by general law. They may levy, assess, and collect such taxes as may be authorized by law.

Origin

Revises Article XI, Section 4.

Commentary

Section 5 defines general law cities. Three substantive changes were made in the revision of Article XI, Section 4 of the 1876 Constitution: the reference to taxing limits was not included; the population limit was reduced from 5,000 to 1,500; and, the requirement that taxes be collected only in "current money" was not included.

This section and Section 6 of the new constitution continue the distinction in the 1876 Constitution between general law cities and home rule cities. The population limit for home rule was reduced because the requirement of 5,000 is rather arbitrary and excludes a large number of cities which could function effectively under their own charters. Sixteen Texas cities which adopted charters have now dropped below the 5,000 population limit. The smallest of these is Gorman in Eastland County with a 1970 population of 1,236.

The removal of tax limits for general law cities is consistent with the Commission's belief that all tax limits for local government should be removed from the constitution. Also, the reference to collection of taxes, licenses, fines, forfeitures, and penalties only in "current money" is of doubtful importance in the constitution and can be dealt with as a legislative matter.

As their name implies, general law cities are chartered by general law and function under the provisions of state laws that apply to cities, towns, and villages of the appropriate class. General law cities may incorporate under two separate provisions.

(1) Municipalities which incorporate under TEX. REV. CIV. STAT. ANN. art. 1133 et seq. (1963), as amended, (Supp. 1972), are known as "towns or villages." The minimum population for incorporation is 201.

(2) Municipalities which incorporate under TEX. REV. CIV. STAT. ANN. art. 961 et seq. (1963), as amended, (Supp. 1972), are described as "cities, towns, or villages." The minimum population for incorporation is 600.

The distinction between "cities, towns, and villages" lies primarily in the statute under which the municipality incorporates and the name which is chosen for the municipality. All are commonly referred to as "general law cities" and fall under the definition of the general term "municipalities."

Section 6. City Charters

Cities and towns having more than one thousand five hundred inhabitants may, by a majority vote of the qualified voters voting on the question, adopt, amend, or repeal their charters as provided by law. No charter or ordinance shall be inconsistent with the Constitution or general laws of the State. Cities which adopt charters under this Section may levy, assess, and collect any taxes authorized by law or charter. No city shall lose the power to amend or repeal its charter because its population drops below one thousand five hundred.

Origin

Revises Article XI, Section 5.

Commentary

Section 6 is a revision of Article XI, Section 5 of the 1876 Constitution. There are several important changes:

(1) The population figure is reduced from 5,000 to 1,500;

(2) The tax rate limitation of $2.50 per $100 valuation is not included;

(3) The requirements for approval at an election were made to conform with judicial interpretations;

(4) The sinking fund requirements for creation of debt are removed; and

(5) The two-year restriction on frequency of amending charters is not included.

Section 6 continues the basic grant of home rule powers to cities which elect to adopt their own charters. It also removes a number of restrictions which are outmoded or are more properly dealt with by statute. The Commission believes that cities which adopt charters should have the latitude required for effective self-government and that the basic power of charter cities to provide for their own needs should be continued. As Article XI, Section 5 of the 1876 Constitution has been interpreted by the courts in Texas, home rule cities may exercise any powers or enact ordinances on any matters which the Legislature could authorize. There have been a number of "landmark" cases which interpreted city home rule powers. For example:

. . . If the legislature has placed no limitations on the power of a city to act, and the provision is inconsistent with no provision of the constitution or general laws of the state, the power of the city is as general and broad as is the power of the legislature to act . . . *LeGois v. State*, 190 S.W. 724, 725 (Tex. Crim. App. 1916).

The authority of home rule cities is not absolute, however. Municipal ordinances may be declared invalid if they are in direct conflict with state law, deal with matters that are not purely a local concern, are preempted by state regulation, or are prohibited by state law. In essence, charter cities are still subject to the requirements of general law and the constitution.

Changes which the Commission recommends will provide a measure of additional flexibility for charter cities. The rationale for the recommended changes is as follows:

(1) *Population limit.* The Commission considered the possibility of removing any population limit, but the 1,500 figure represents what the Commission feels is a limit that encompasses the vast majority of cities that would desire to adopt their own charters.

(2) *Tax rates.* Tax rate limits should be a matter for local determination or statutory regulation if necessary.

(3) *Election requirements.* A change was made for clarification to ensure that a charter could be adopted, amended, or repealed by a majority of those voting on the question.

(4) *Sinking funds.* Requirements for retirement of local debt are dealt with by Section 11 of this article and by statute. The requirements contained in the 1876 Constitution are obsolete.

(5) *Frequency of amendment.* Many cities have found it desirable at times to amend their charters more often than every two years. This is especially true in periods of rapid population expansion and development.

Section 7. Special Districts and Authorities

The Legislature shall provide by general law for establishing, financing, consolidating, and abolishing special districts and authorities and shall define their powers by general law. No special district or authority shall be created if the service it is to provide can be provided by an existing political subdivision. The provisions of this Section shall not be applicable to school and community college districts.

Origin

New provision.

Commentary

Section 7 is a new provision providing for the establishment, functions, and taxing authority of special purpose districts other than school and community college districts. This provision would replace several sections of the 1876 Constitution, including: Article III, Section 48d—rural fire prevention districts; Article III, Section 52(b)(c)—various road and water resource districts; Article IX, Sections 4, 5, 7, 9, and 11—various hospital districts; Article IX, Section 12—airport authorities; Article XVI, Section 59(b)(c)(d)—conservation and reclamation districts. The continuity and bonding authority of special districts currently operating under authority of the amendments listed are preserved by transitional provisions.

The Commission believes that the special districts and authorities authorized by the Constitution of 1876 should continue to exist and perform their designated functions, but that constitutional authority for their creation beyond what is provided in this section is unnecessary. The Legislature has plenary power to create and regulate special districts subject to any restrictions contained in the constitution. A wide variety of special districts and authorities have been created by statute or in accordance with provisions of the 1876 Constitution. These include such diverse entities as school districts, water control and improvement districts, navigation districts, hospital districts, airport authorities, soil and water conservation districts, waste disposal authorities, river authorities, and public housing authorities. All such governmental agencies fall within the general classification of "political subdivisions" and are thus subject to legislative control.

A significant change would be brought about by the requirement that all districts and authorities be created only according to the provisions of general law. At present many individual special districts are

created by special or local laws, while others are created and regulated according to general laws which set forth the general requirements for establishment by local initiative. The general law procedure is typified by the procedure for incorporating new municipalities, which is required by Article XI, Section 4 of the 1876 Constitution. Under general law procedure, a petition for the creation of a special district is presented to the appropriate local or state officials and an election is held in the area to be encompassed by the proposed district in order to determine its creation. After establishment, the operation of the district is subject to general laws pertaining to districts of a certain type or class.

The rapid increase in special districts in Texas has been aided in part by the large number of individual water districts created by local laws enacted by the Legislature. Typically such laws receive little scrutiny and, in the case of small, developer-oriented water districts, may not serve the best interests of residents affected. General law procedures should provide appropriate safeguards against the creation of districts which may be unnecessary or inappropriately established.

An intended effect of the new special district provision would be to encourage existing local governments—primarily cities and counties—to assume responsibility for new services or services in areas that would otherwise require the creation of a special district. The removal of constitutional tax limits for local governments in the new constitution should further encourage this approach. The Legislature can, by the enactment of appropriate legislation, implement the policy enunciated in this section that special districts should not be created to perform a service unless that is the only viable alternative.

Section 8. Terms of Office

The terms of office for all elected officials of political subdivisions shall be as provided by law or charter.

Origin

New provision.

Commentary

Section 8 would allow the Legislature to provide by law for terms of office of local elected officials. Under the 1876 Constitution there are several specific restrictions on terms of office. Article XVI, Section 64 provides a term of office for county officials of four years, and Article XI, Section 11 authorizes municipalities to set terms of office for elected officials between two and four years. Since the two year limitation on terms of office contained in Article XVI, Section 30 is not carried forward in the new constitution, there is no longer any necessity of specifying the terms of office for local officials in the constitution. Allowing terms of office to be set by general law or charter will allow the Legislature and the residents of local jurisdictions maximum flexibility to meet the needs of local governments in the future.

Section 9. Compensation of Officials

Elected officials of political subdivisions shall be compensated only on a salary or per diem basis.

Origin

Revises Article XVI, Section 61.

Commentary

Section 9 is intended to bring about a uniform policy for compensating local elected officials. This subject is dealt with by Article XVI, Section 61 of the 1876 Constitution which requires that all county and district officers except public weighers and county surveyors be paid on a salary basis. Section 61 also allows commissioners courts in counties under 20,000 population to determine whether certain county officers shall be compensated on a fee basis or salary basis.

The Commission believes that the fee system of compensation is subject to potential abuse and that a uniform policy should be established in the constitution to eliminate this practice. Section 9 does not apply to appointed officials and employees of local government and would not prevent a local government from contracting for services and providing appropriate compensation for the work performed by contract.

Section 10. Local Redistricting

Within the calendar year following that in which each federal decennial census is published, and at such other times as the governing body of any political subdivision may deem necessary, each governing body not entirely elected at large shall divide its geographical area into districts for the election of those representatives to the governing body not elected at large. The districts shall be composed of contiguous territory and shall be as compact and as nearly equal in population as practicable.

Origin

New provision.

Commentary

The Commission believes that the one-man, one-vote principle should apply to local elections in the same manner as elections for representatives to state and national bodies. Recent federal court decisions have mandated this requirement for representative bodies at various governmental levels, but it would be desirable for state policy to reflect this concern as well. The revised Legislative Article contains requirements for redistricting senatorial and representative districts following each federal census. Section 10 imposes a similar requirement upon the governing bodies of cities, counties, and other political subdivisions which elect at least part of the representatives to the governing body on a district basis.

Section 11. Local Debt

Political subdivisions shall not issue general obligation bonds, except refunding bonds, unless approved by a majority of qualified voters voting on the question. No debt shall be created by a political subdivision unless at the same time provision is made for paying the interest and principal when due.

Origin

New provision.

Commentary

Section 11 was included by the Commission in order to ensure that residents of a local government have the opportunity to vote on the issuance of general obligation bonds which are to be repaid from the taxes raised by the local government. The section provides basically for a continuation of the statutory provisions now in effect for cities, counties, and other political subdivisions concerning voter approval of general obligation bonds.

Short-term debt which is to be repaid from revenues received within the year in which the debt is incurred would not be affected by this provision. Revenue bonds are likewise excluded from the requirements of this provision. If authorized by law, cities, counties, and other political subdivisions could also issue certificates of obligation, time warrants, and refunding bonds without voter approval. These exceptions to the voter approval requirement are a continuation of present law.

Other proposals which were considered by the Commission included requiring voter approval of all debts to be repaid from taxes which exceed one percent of the assessed valuation of property within a political subdivision. The governing body, under this approach, would be able to issue bonds and other evidences of indebtedness without voter approval so long as the outstanding debt issued in this manner did not exceed one percent of assessed valuation.

The Commission also strongly considered the possibility of not including any requirements pertaining to local debt in the new constitution. The 1876 Constitution contains no general requirement for voter approval of bonds nor does it establish limits on the amount of debt which can be issued except for Article III, Section 52 which relates to bonds for roads and other specified improvements. Proponents of the statutory approach felt that adequate safeguards governing the incurring of local debt can be provided by law.

The last sentence of Section 11 requires that a local government, upon the incurring of a debt covered by this section, must make provision for paying the interest and principal by levying a tax or earmarking funds for such payments. The 1876 Constitution contains provisions in Article XI, Sections 5 and 7 which

require that a sinking fund of two percent be established by cities and counties at the time a debt is incurred. This provision is obsolete and would be replaced by the more general language contained in Section 11.

Section 12. Intergovernmental Cooperation

A political subdivision may, by act of its governing body, cooperate or contract with one or more other political subdivisions, the State, or the United States with respect to the exercise of any function, power, or responsibility, or the use of public funds and credit in the public interest.

Origin

Revises Article III, Section 64.

Commentary

Section 12 carries forward the basic authority for cities, counties, and other political subdivisions to enter into contracts for various governmental and proprietary functions that is provided by Article III, Section 64(b) of the 1876 Constitution. Section 12 contains several changes from its predecessor section:

(1) The grant of authority is automatic—no implementing legislation is required; and

(2) The grant of authority is couched in broad terms which should allow the initiation of any contracts which would not be prohibited by the Constitution or general law.

Cooperative agreements are very common among cities, counties, and other political subdivisions. These include such diverse arrangements as water and sewer service, sanitary landfills, libraries, tax administration, and fire and police protection. Contracts and agreements between local governments almost always result in better service to local citizens and reduced costs of operation.

Contracting among local governments is presently regulated by a number of laws including TEX. REV. CIV. STAT. ANN. art. 4413-32c (Supp. 1972). The Commission recommendations envision no change in existing law or practices of local governmental units, except to the extent that the ability to enter contracts will be enhanced.

Article X

General Provisions

Article X
General Provisions

Section 1. Official Oath

All State and local officials shall take the following oath before they enter upon the duties of their office:

"I, ______________, do solemnly swear that I will faithfully execute the duties of the office of ______________ and will to the best of my ability preserve, protect, and defend the Constitutions and laws of the United States and of the State of Texas, so help me God."

Origin

Revises Article XVI, Section 1.

Commentary

The 1876 Constitution contains two slightly different oaths, one for elected officials and another for appointed officials. They require the potential officeholder to swear innocence of bribery to obtain election or appointment.

The oath is merely a formal recognition of undertaking the duties of public office. As such, the detailed disclaimers in the present oaths serve no real purpose. In view of this, the Commission reached the conclusion that one concise oath would be appropriate for all public officials.

Under federal law, no person may be denied the right to hold office because of a refusal to recite the words "so help me God" in the oath of office. Consequently, this phrase is a formality to be sworn to by those who do not object, but is unenforceable for those who do not wish to observe it.

Section 2. Residence of Civil Officials

All elected and appointed officials shall reside within the State. All elected and appointed officials of a political subdivision shall reside within the political subdivision which they serve, and shall keep their offices at such places as required by law. Failure to comply with these conditions shall vacate the office.

Origin

Revises: Article III, Section 23;
Article XVI, Section 14.

Commentary

Article XVI, Section 14 of the 1876 Constitution requires that district and county officers reside within their district or county. Because of the ambiguity in the term "district," the recommended language substitutes "any political subdivision" for "district or county."

The underlying rationale for the requirement of this section is that the problems and needs of any governmental unit are best understood by persons residing within the unit and subject to its jurisdiction. In order to make the officials more responsive to these needs, it is desirable to require that they share the experiences of the persons they serve.

This section is intended to apply to members of the Legislature as well as to other officials of the state and local political subdivisions who hold policy-making positions. The section does not apply to local government personnel such as policemen, firemen, and other employees.

Section 3. Officials to Serve Until Successor Qualified

All officials may continue to perform the duties of their offices until their successors shall be duly qualified.

Origin

Revises Article XVI, Section 17.

Commentary

This section provides a continuation of the policy expressed in Article XVI, Section 17 of the 1876 Constitution. The purpose of this section is to encourage a smooth transition of duties from one officeholder to the successor by providing that there will be no termination at the end of the term if, for some reason, the new officeholder is not able to assume the office at the proper time. Although it is unlikely that the section of the 1876 Constitution was intended to be mandatory, it has been interpreted by the courts to require the incumbent to remain in office until the successor qualifies. Substitution of the word "may" for "shall" in the Commission proposal clarifies that the continuation in office is merely permissive and thus imposes no undue hardship on an incumbent by refusing to permit that person's retirement until a successor can be found.

Section 4. Forfeiture of Residence by Absence on Public Business

No person shall forfeit the right of suffrage, or of election or appointment to any office because of absence from the State or a political subdivision on business of the United States, this State, or a political subdivision.

Origin

Revises Article XVI, Section 9.

Commentary

The recommended language makes no substantive change in existing law as to statewide offices. It provides an exception to the general rule that residence for purposes of suffrage and election to public office is forfeited by absence from the jurisdiction. The proposed section extends the rationale of Article XVI, Section 9 of the 1876 Constitution to cover residency requirements of political subdivisions as well as state residency requirements.

Section 5. Vacancies Filled for Unexpired Term

Except as otherwise provided in this Constitution, elections to fill vacancies in office shall be for the remainder of the term only.

Origin

Rewords Article XVI, Section 27.

Commentary

The proposed section makes no substantive change in present law. When vacant offices were filled under common law the new official served a full term, not merely the remainder of the current term. Section 5 results in greater convenience because the terms of public officials continue to expire at the same time. This reduces the number of elections required and assures that elections for new terms of various offices will coincide.

Section 6. Disqualification from Constitutional Office

In addition to the grounds and procedures provided in this Constitution, the disqualification, suspension and removal from any constitutional office, withholding of salary, and temporary filling of vacancies shall be as provided by law, but no statute enacted under the authority of this Section may be applicable to conduct committed before its enactment.

Origin

Revises: Article XV, Section 7;
Article IV, Section 25;
Article XVI, Section 2;
Article XVI, Section 5;
Article XVI, Section 10;
Article XVI, Section 41.

Commentary

The 1876 Constitution describes in detail the conduct on the part of a public official that will result in disqualification from office. Article IV, Section 25 of that document permits suspension and removal of custodians of public funds for reasonable cause. Article XVI, Section 2 allows persons convicted of certain crimes to be excluded from any public office. Article XVI, Sections 5 and 41 concentrate on the offense of bribery and prescribe disqualification and exclusion from office for persons guilty of that offense. Article XVI, Section 10 permits deductions from the salary of public officials who neglect their duties. Article XV concerns procedures for impeachment and removal. Except in the case of bribery, the 1876 Constitution does not disqualify anyone from office, but permits the Legislature to do so.

Section 6 permits the Legislature to prescribe grounds and procedures for disqualification and removal from any constitutional office. Section 7 accomplishes this result in the case of statutory offices.

Since it is virtually impossible to predict what conduct may occur in the future, a sensible approach is to permit the Legislature the flexibility to deal with grounds upon which an official may be removed from office. Therefore, Section 6 allows the Legislature to disqualify public officials from holding office for reasons which it deems necessary.

Section 7. Qualification for and Disqualification from Statutory Office

Unless otherwise provided in this Constitution, the qualifications, grounds for disqualification, suspension and removal from office, withholding of salary, and temporary filling of vacancies for statutory officials shall be as provided by law.

Origin

Revises: Article XV, Section 7;
Article IV, Section 25;
Article XVI, Section 2;
Article XVI, Section 5;
Article XVI, Section 10;
Article XVI, Section 41.

Commentary

For a discussion of the purpose of this section, see the *Commentary* for Section 6 of this article.

In order that no negative inferences be drawn from the grant of legislative power to disqualify constitutional officials found in Section 6, this section specifically provides that the Legislature has that power with regard to holders of statutory offices. The power to establish grounds for disqualification and removal of officials of a home rule political subdivision is delegated to the political subdivision when not in conflict with general law.

Section 8. Appointments to State Agencies

The authority responsible for appointing the members or filling vacancies for State governmental agencies shall make appointments that fairly and equitably represent the sexes, ethnic groups, economic groups, and geographical regions of the State.

Origin

New provision.

Commentary

Section 8 has been included in the constitution to set forth a strong statement against discrimination in governmental appointments. The provision would include all appointments by the Governor, Lieutenant Governor, Speaker of the House, or any other officer of the state who has or will be granted authority to make appointments.

In a 'dition to the large number of appointments made each year by the Governor, the Lieutenant Governor and the Speaker in particular are also called upon to make numerous appointments to commissions or legislative study committees. This section mandates consideration and equitable representation among sexes, ethnic groups, economic groups, and geographical areas in making these appointments.

Section 9. Salary Commission

(a) A salary commission shall be established to recommend rates of compensation for members of the Legislature, judges in the State unified judicial system, and officials of the executive branch, and to perform such other duties pertaining to compensation as may be provided by law. Compensation paid by the State shall not exceed the rates recommended by the commission.

(b) The salary commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate. Members of the commission shall serve six-year terms. Vacancies shall be filled by the Governor for the remainder of the term with the advice and consent of the Senate. No member of the commission may hold another public office at the same time.

Origin

New provision.

Commentary

Since 1965, twenty states have taken steps to create permanent salary commissions. These salary commissions vary in function; some are advisory and others make recommendations that are final. Ten states have salary commissions that serve in an advisory capacity. The Salary Commission proposed in this section would be of an advisory nature.

The commentary under Article III, Section 6 of the new constitution points out that an advisory salary commission is intended to mitigate the negative effects of public opinion which often accompany legislators' attempts to raise their own salaries. The Legislature could set salary rates not exceeding the recommendations of the Salary Com nission.

The Salary Commission would be required to recommend rates of compensation for members of the Legislature, judges in the state unified judicial system, and officials of the executive branch. The commission would compare the rates of compensation with other states' officials, as well as with the pay in private indust y. The "other duties" that may be provided by law would be to recommend rates for per diem, mileage, and other expenses.

There was consideration by the Commission as to the composition of the Salary Commission and the method of selecting its members. It was thought by some that all three branches of government should be able to appoint members to the commission. However, it was decided to let the Governor alone appoint the Salary Commission with the advice and consent of the Senate. Some states set up their salary commissions in the constitution; other states do it by statute. Section 9 provides that the commission is to consist of nine members who will serve six-year terms. It also provides that the Governor shall fill vacancies, with the advice and consent of the Senate, and requires that no member of the commission hold another public office. Otherwise, the mechanics of the creation and operation of the Salary Commission were left to be provided by law to allow flexibility and to keep what seems to be a mass of statutory material out of the constitution.

Section 10. Environment

The State and each person shall maintain and improve a clean and healthful environment in Texas for present and future generations. The Legislature shall provide for the admini-

stration and enforcement of this duty. The Legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Origin

New provision.

Commentary

Section 10 is an expression of a basic responsibility of the state for the protection of the environment and its natural resources. This section is unusual among environmental statements in state constitutions in that it defines the responsibility of each individual citizen as well as the state government and Legislature to maintain and improve the environment. The basic effect of the section is to direct the Legislature to enact appropriate laws to carry out the intent which is expressed.

In the process of its deliberations, the Commission considered several environmental proposals. One alternative which was considered would allow individual citizens to sue polluters. Such a provision can be found in Article XI, Section 2 of the recently adopted Illinois Constitution. Michigan has given a similar right to citizens by statute. The legal significance of the Illinois and Michigan authorizations is that they provide an individual "standing" to sue to correct a wrong suffered by the public in general. Without such an authorization, an individual would have to show that an injury has been suffered by that person which is significantly different from the effect on the public. If unable to do so, the individual would have no "standing" and would not be afforded the opportunity to seek relief.

Another alternative which was considered would establish the concept of a public trust of the state's natural resources. The effect of such provisions in other state constitutions has not been fully determined by the courts, but it could mean that citizens would have "standing" to sue state agencies and public officials if they were to breach their duty to administer the natural resources and environmental laws of the state in a proper manner.

Both alternatives discussed above were considered but finally rejected as the Commission feels that the Legislature has adequate authority now to enact environmental laws and provide for their enforcement. A number of important laws pertaining to environmental quality have been enacted by the Legislature within the past few years, and the Commission believes that legislative and administrative actions by the state provide the most certain and efficient means of ensuring the quality of the state's environment. The uncertain effect of the two alternatives listed above was also a factor in the Commission's decision.

The Constitution of 1876 does not contain a provision directly comparable to Section 10 of this article. However, Article XVI, Section 59(a) of the 1876 Constitution defines the right and duty of the state to provide for the conservation and development of natural resources, particularly for water control and conservation, irrigation, navigation, reclamation, and drainage. Article XVI, Section 59 was added by amendment in 1917. Its primary purposes are to allow the creation of special governmental districts for conservation and reclamation purposes and to allow such districts to exercise taxing authority. Pursuant to this amendment the Legislature has established hundreds of water districts of various types as well as river authorities with responsibility for conservation and reclamation for each of the state's major river basins. Article IX, Section 7 of the new constitution provides continuing authority to the Legislature to establish special districts as needed.

Section 11. Separate and Community Property of Husband and Wife

All property owned or claimed by each spouse before marriage, and that acquired afterward by gift, devise, or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of each spouse in relation to separate property as well as that held in common with one another. A husband and wife may from time to time and by written instrument partition between themselves in severalty or into equal undivided interests all or any part of their existing community property. In like manner, they may exchange between themselves the community interest of one in any property for the community interest of the other in other community property. The portion or interest set aside to each

by partition or exchange shall be and constitute a part of the separate property of such spouse. A partition or exchange under this Section shall not prejudice the rights of preexisting creditors. This provision is self-operative, but laws may be passed prescribing reasonable requirements not inconsistent herewith.

Origin

Revises Article XVI, Section 15.

Commentary

No change in existing substantive law is intended by Section 11. Other than minor drafting changes, the only difference from the corresponding provision of the 1876 Constitution is that the new section speaks in terms of both spouses rather than only the wife.

The basis of the decision to retain a community property provision in the constitution was that property rights are fundamental and should not be subject to change by statute. In the past the Legislature has in fact tried to make significant changes in community property rights and its attempts have been frustrated by this constitutional provision. At one point a law was enacted which purported to change the established principle in Texas that income from separate property is community property. This would have produced a significant change in the community property system had the law been upheld in the courts.

Although generally the best policy may be to provide the Legislature with flexibility in its actions, there lies an exception to the rule in the area of property rights. Even though there is very little chance that the Legislature might attempt to abolish the community property scheme entirely, there is reason to retain this provision in the constitution to prevent the adoption of variations of the community property concept.

In this connection it should be noted that there really is no one community property system, but the jurisdictions which purport to follow it show vast differences from one another. On its face, Article XVI, Section 15 of the 1876 Constitution may not appear to be a proper statement of commitment to the community property system since it speaks only in terms of the wife and her separate property. But the fact that the precise language of the section has undergone extensive judicial interpretation suggests caution before changing the language in any material respect. The courts have relied on the present wording in formulating a comprehensive set of rules implementing the community property system. The importance of stability and certainty in the area of property rights is recognized. Any substantial rewording of Article XVI, Section 15 might result in reversal of certain of these interpretations or at least create an unsettling effect on these rights until a new set of rules could be evolved. Since the complexity of the subject does not lend itself well to explicit codification, especially in a constitution, the present community property provision, along with its extensive interpretations, has been substantially retained.

The provision has been amended to define the separate property of both husband and wife although Article I, Section 3a of the 1876 Constitution no doubt accomplishes this purpose also.

Section 12. Homestead

(a) The homestead of a family and of such other persons as may be designated by law is protected from forced sale for the payment of all debts, except for purchase money therefor, taxes due thereon, and for work and material used in constructing improvements thereon when the work and material are contracted for in writing by the owner but, in the case of married persons, only if both spouses consent to the contract in the manner required when a homestead is sold. A homestead of married persons may be sold only with the consent of both spouses, except that when the homestead is the community property or the separate property of the spouse desiring to sell, it may be sold as provided by law without the consent of the other spouse if the latter is incompetent, has disappeared, or has abandoned the homestead, as provided by law. No mortgage, trust deed, or other lien on a residential homestead shall be valid except for the purchase money therefor or for improvements made thereon, as provided above. Liens may be created on non-residential homesteads but only in the manner required for a conveyance thereof. All pretended sales of the homestead involving any condition of defeasance shall be void.

(b) The homestead not in a city, town, or village shall consist of not more than two hundred acres of land, which may be in one or more parcels with the improvements thereon. Of the two hundred acres, only fifty acres on which the home is located shall be classified as residential and the remainder shall be classified as non-residential. The homestead in a city, town, or village shall consist of land valued at the time of establishment thereof, and without reference to the value of any improvements thereon, at no more than ten thousand dollars or any larger sum as may be provided by law. A homestead in a city, town, or village is a residential homestead if used as a home and is non-residential if used as a place for the exercise of the calling or business of the head of a family or such other person as may be designated by law. A home remains a homestead while temporarily rented only so long as no other homestead is acquired.

(c) The homestead of married persons shall descend and vest like any other real property, except that the homestead shall not be partitioned so long as it is used and occupied as a home either by the surviving spouse, or by minor children if the use and occupancy have been granted by the court.

Origin

Revises: Article XVI, Section 50;
Article XVI, Section 51;
Article XVI, Section 52.

Commentary

The homestead provisions of the 1876 Constitution are altered in three material respects by this section. The new language provides that a non-residential homestead may be subjected to voluntary encumbrance, that the Legislature may define the classes of persons eligible for the homestead exemption, and that the Legislature may define the amount or value of exempt property. The 1876 Constitution sets out the amount and value of property that can be designated as a homestead at a maximum of 200 acres of rural property, or city lots of the value of $10,000 or less at the time of designation as a homestead. A recent case indicates that the effect of exceeding the $10,000 limitation at the time of designation is to permit forced sale, with the proceeds to be divided between the creditor and the homestead claimant. In such a case the debtor receives an amount of the proceeds proportional to the ratio of $10,000 to the value at the time of designation. See *Love v. Hoffman*, 494 S.W. 2d 519 (Tex. Civ. App. 1973, writ ref'd. with per curiam opinion, 17 S.Ct. Journal 5).

The homestead exemption arose as an extension of the civil law concept of exemption of certain personal property from forced sale by creditors, and was a Texas invention to adapt that general policy to an agricultural society. As under the 1876 Constitution, the proposed language protects the homestead from forced sale by creditors for any debts except purchase money, taxes, and improvements contracted for in writing. It requires consent of the wife before the homestead can be conveyed and invalidates all mortgages on the residential homestead, except for purchase money or improvements. Subsection (c) of the revised section carries forward language of the 1876 Constitution and prevents partition of the homestead on the death of one spouse as long as the surviving spouse or minor children continue to occupy it as such.

In the 1876 Constitution, these provisions extend homestead protection only to married persons, single persons with dependents, and their survivors. The proposed section makes the homestead exemption available to these persons and additionally to such other persons as the Legislature may designate. In this way it will become possible for the Legislature to protect the homesteads of invalids or of all single persons or of any other group, as it from time to time determines to be in the public interest. A voluntary mortgage of the business or non-residential homestead is allowed by the proposed provisions. The business homestead may tie up much needed capital if it cannot be mortgaged as collateral for a loan. Permitting voluntary encumbrance of the place of business might help to secure beneficial financial assistance.

The homestead exemption has become so firmly entrenched as a Texas institution that it should keep its constitutional status as a protection device against loss

of the family home to creditors. These sections also have the beneficial effect of preventing the debtor and the debtor's family from becoming dependent on public welfare by preserving a place to live and to produce income. There is no corresponding disadvantage to the creditors who are not allowed to foreclose on the homestead, since they certainly must have known the homestead exemption exists and thus could not have relied on that property for the satisfaction of the debts owing to them.

One further change in Section 12 would permit one spouse to convey or to contract for improvements on the homestead without the consent of the other if the other is incompetent or has disappeared or abandoned the homestead.

Section 13. Protection of Personal Property from Forced Sale

The Legislature shall provide by law for the protection from forced sale of certain portions of the personal property of all adults and heads of families.

Origin

Rewords Article XVI, Section 49.

Commentary

This language preserves the protection afforded by Article XVI, Section 49 of the 1876 Constitution. The provision affirmatively commands the Legislature to protect from forced sale "a certain portion of the personal property" of heads of families and unmarried adults. The recommendation that this section be kept in the constitution, along with a homestead provision and a general prohibition against garnishment of wages, follows a long established policy of this state to protect for a debtor the means of livelihood so that the person has a means of support and does not become dependent on public welfare. Although no such exemption ever existed at common law, chattel exemptions were well recognized at civil law and have existed in Texas since 1839. Since the philosophy of this provision is an expression of fundamental public policy, the constitution should continue to have a provision that mandates the protection of certain personal property from forced sale.

Although an objection might generally be raised against inclusion in a constitution of a provision that is nothing more than a policy statement, this case is an exception and does accomplish a purpose. If the Legislature were to attempt to repeal the existing and traditional exemptions of such items as family clothing and work tools, such a law might possibly be declared unconstitutional under this section.

Section 14. Wages Not Subject to Garnishment

No current wages for personal service shall be subject to garnishment.

Origin

Rewords Article XVI, Section 28.

Commentary

The prohibition against garnishment of wages is an expression of an enlightened, compassionate public policy to protect a debtor and the debtor's family. It is not only in the interest of the debtor to provide protection against such harassment by creditors, but it is in the public interest as well, since the garnishment prohibition helps to provide an opportunity for self support and hence prevents the debtor from becoming a burden on society.

The effect of this provision has been beneficial, and there was no serious consideration of deleting this section altogether. However, there was discussion of providing a limited exception to permit garnishment of up to 25 percent of wages for court-ordered child support. Proponents of this exception emphasized the ineffectiveness of the contempt remedy currently available in securing funds for a child and urged that a threat of garnishment would in most instances make delinquent parents pay. Their conclusion was that garnishment would in fact seldom have to be invoked if the threat of it were present. The Commission ultimately rejected that position and concluded that the garnishment prohibition should be absolute and with-

out exception, reasoning that the garnishment approach to the child support problem is an undesirable one.

The disadvantage of allowing garnishment even for child support is that employers are hesitant to employ or retain a worker whose financial condition is such that the employer must at every pay period deduct a portion of the worker's wages and pay them to the court. The imposition of this burden on the employer could encourage replacement of the debtor, and in that event both the debtor and the children become candidates for public welfare. If the reason the parent has been delinquent in child support payments is inability to earn enough to support a split home, the garnishment remedy may actually worsen the problem if it causes loss of employment.

Section 15. Private Corporations

No private corporation shall be created except by general laws.

Origin

Retained unchanged from Article XII, Section 1.

Commentary

In the early 1800's, the prevailing practice was to establish corporations by special acts of the Legislature. This practice led to pressure on members of the Legislature to enact new special laws granting additional powers to these corporations. This often led to abuses. In order to curb this legislative propensity, the first three Texas constitutions required a two-thirds vote of both houses of the Legislature on all incorporation bills. In 1869 this provision was discontinued but was later revived when Article XII, Section 1 was included in the Constitution of 1876.

The effect of this provision has been a desirable one. The Texas Business Corporation Act (1956), as amended, (Supp. 1972), affords wide latitude for the formation of corporations, so that no general benefit would result from holding out the possibilty of certain businesses gaining preferential treatment from the Legislature. To permit such a practice might do significant harm to the competitive system of free enterprise, since in that way undue advantage might flow to the favored corporation to the detriment of others. Access to the corporate structure should be available on an equal basis to all, and retention of that limitation will further this goal.

Section 16. Foreign Corporations with Banking and Discounting Privileges

No foreign corporation, other than national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State.

Origin

Rewords Article XVI, Section 16, third paragraph.

Commentary

The proposed language is almost identical to the last paragraph of Article XVI, Section 16 of the 1876 Constitution.

The financial organizations within the state exercise far reaching influence in all other facets of Texas business. Since this is the case, the Commission felt that it is undesirable to permit institutions from other states and other countries to wield the power gained by engaging in banking within the State of Texas. To permit such a situation might cause a foreign bank to deplete assets otherwise available for use in Texas by making most of its loans in other states, thereby decreasing the capital available to Texas borrowers.

Branch Banking. Article XVI, Section 16 of the 1876 Constitution also contains a prohibition of branch banking. Because of the dual state-national banking system and because of the control that one bank may have over another through stock acquisition and the like, the Commission feels that the regulation of the business of banking is a difficult matter that should be entrusted to the Legislature. The issue is not whether branch banking should be permitted or prohibited, but rather whether such public policy should be established through a constitutional provision or through legislative enactment. In considering this problem the following possibilities were taken into account:

(1) Congress can subvert any state constitutional prohibition against branch banking by allowing national banks to open branches by authority of the Comptroller of Currency. Such federal legislation would supersede any state prohibition against branch banking, and state chartered banks would be hard pressed to urge amendment of the present constitution so as to be able to compete with national banks.

(2) The apparent ease with which national banks can create affiliate banks and otherwise acquire or merge with smaller suburban banks renders the constitutional prohibitions against branch banking considerably less meaningful.

(3) The acquisition of banks through bank holding company arrangements likewise makes the constitutional prohibition against branch banking less meaningful.

Any consideration of whether the prohibition against branch banking in the present constitution should be retained should be based not solely on the history of other states, but on the state's unique, diversified political and economic climate.

For these reasons, the constitutional prohibition against branch banking contained in the 1876 Constitution was not included in this revision. By repealing this constitutional prohibition the Legislature can and should be in a better position to respond either to congressional enactment permitting branch banking for all national banks in all states or to the unharnessed growth in the number of affiliate banks, bank mergers, and bank holding company acquisitions.

Those favoring the retention of the branch banking prohibition in the constitution contend that the Legislature should not be allowed to alter that provision because it has had a beneficial effect on the banking industry in Texas. Because banks are not allowed to operate in more than one location, Texas is a state where the number of banks owned and operated by local interests is high. It is argued that retaining the branch banking prohibition will help ensure that many of the smaller, independent banks will not be merged into a larger chain, with a possible decrease in the quality of service, or be at a disadvantage because of the greater financial resources of larger banks.

Section 17. Alcoholic Beverages

(a) The Legislature shall regulate the manufacture, sale, possession, and transportation of alcoholic beverages, and shall preserve the right of any county, justice precinct, or incorporated town or city to exercise local option by election to legalize or to prohibit the sale of alcoholic beverages of various types and various alcoholic content.

(b) In any county, justice precinct, or incorporated town or city in which the manufacture, sale, barter, or exchange of alcoholic beverages of any of various types and various alcoholic content was prohibited at the time of the adoption of this Constitution, the same shall continue to be unlawful unless and until a majority of the qualified voters in such political subdivision voting on the question in an election shall determine such to be lawful.

Origin

Revises Article XVI, Section 20.

Commentary

Section 17 retains the substance of the local option requirement of Article XVI, Section 20 of the 1876 Constitution. The Commission concluded that any issue so directly connected with the moral convictions of the persons affected should be decided on a local option basis. The provision is a limitation on the power of the Legislature to establish either statewide prohibition or uniform statewide sale of alcoholic beverages.

The history of the sale of alcoholic beverages in Texas has shown vacillation from one extreme to the other. In this area stability on middle ground is a desirable goal. A constitutional provision can best accomplish that result. Although the authorization under the Constitution of 1876 for the Legislature to establish a statewide monopoly for the sale of alcoholic beverages has not been included in Section 17, the Legislature still possesses such power under this section if it determines that such a monopoly is in the public interest.

Section 18. Practitioners of Medicine

The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

Origin

Retained unchanged from Article XVI, Section 31.

Commentary

Section 18 retains the language of Article XVI, Section 31 of the 1876 Constitution. No change in existing law is intended.

The judicial history of Article XVI, Section 31 of the 1876 Constitution demonstrates that the provision has required all persons who undertake to treat the entire human body to be subject to the same requirements and the same qualifications and to pass the same examination in order to be licensed. As a consequence, naturopaths have not been permitted to practice in Texas because they have not been able to meet the qualifications for obtaining a license to treat the ills of the entire human body, although they undertake to do so. The history of this constitutional provision is that pursuant to it, and the judicial construction given it, there has been maintained in the State of Texas a higher standard of requirements for medical practice than has existed in many other states that do not have such protection and where some statutory authorization has allowed unqualified persons to endanger human health and prey upon the public.

Section 19. Gambling Enterprises

Neither the State nor any political subdivision thereof shall sponsor or operate lotteries or any other gambling enterprises.

Origin

Revises Article III, Section 47.

Commentary

The 1876 Constitution prohibits the Legislature from legalizing any lottery or gift enterprise. The proposed section prohibits government-sponsored or government-operated lotteries, but leaves to the Legislature the question of which, if any, private gambling enterprises are to be legalized.

This change does not mean that the legalization of private lotteries and gambling enterprises is now likely to occur because the recently adopted Penal Code, Tex. Laws 1973, ch. 399, sections 47.01 et seq., prohibits such activities. State laws will, with little doubt, continue to prohibit profiteering gambling operations. The Commission feels that the real danger lies in the possibility that the state or a political subdivision of the state could be tempted to rely on a public lottery as a revenue-raising device. Section 19 eliminates such a possibility.

Section 20. Liens of Mechanics, Artisans, and Materialmen

Mechanics, artisans, and materialmen of every class shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Origin

Rewords Article XVI, Section 37.

Commentary

It has been held by the courts in Texas that a mechanic, artisan, or materialman who does not comply with the requirements of the statutory mechanic's lien may, as between that person and the debtor, still acquire

a constitutional lien under this section for labor and materials. While it is sensible to require filing of a lien in order to validate it as to third parties without notice, there is little reason to deny a lien as against the debtor to a mechanic who fails to comply with the filing requirements of the statutory lien designed to protect third parties. The constitutional mechanic's lien accomplishes that result.

Section 21. Pension and Retirement Systems

Any pension or retirement system of this State, or of any political subdivision thereof, or of any governmental agency of either, now in effect shall be continued. No funds held pursuant to any such system shall be used for any purposes inconsistent therewith.

Origin

Revises: Article III, Section 48a;
Article III, Section 48b;
Article III, Section 51e;
Article III, Section 51f;
Article V, Section 1a;
Article XVI, Section 62;
Article XVI, Section 63;
Article XVI, Section 66.

Commentary

The sections of the 1876 Constitution listed above provide a detailed description of the operation of pension and retirement systems for public employees. Article III, Sections 48a and 48b and Article XVI, Section 63 concern teacher retirement; Article III, Sections 51e and 51f deal with the retirement of municipal employees; Article V, Section 1a authorizes a retirement system for judges; Article XVI, Section 62 regulates state and county employees' retirement; and Article XVI, Section 66 provides for a retirement plan for certain Texas Rangers.

The proposed language protects the constitutional safeguards presently enjoyed by persons in such a system but removes the current restrictions on the Legislature's ability to improve the system. The intent of this section is to assure persons who currently enjoy governmental pension and retirement rights that they will not be adversely affected by the adoption of the new constitution. This recommendation assures that funds belonging to a pension or retirement system will not be diverted to other uses. Additionally, it requires that no system presently in effect shall ever be abolished, which is a protection not enjoyed under the present constitutional provisions. This section does not preclude the Legislature from creating other retirement systems in the future.

One of the original justifications for including retirement system provisions in the Constitution of 1876 was the possibility that such a system might otherwise be unconstitutional under the grants and loans prohibitions of Article III, Sections 50, 51, and 52. Today it seems clear that provisions for pension and retirement rights are, in substance, a form of employee compensation and therefore would not fall under the prohibition against grants to individuals contained in the 1876 Constitution. At any rate the constitutionality of a municipal retirement plan was upheld eight years before the teacher retirement system amendment was adopted in 1936, *Byrd v. City of Dallas*, 6 S.W. 2d 738 (Tex. Comm'n App. 1928, opinion adopted). In the new constitution, retirement programs are clearly for a public purpose and therefore do not constitute an exception to any existing provision. The *Commentary* for Article VIII, Section 7 contains additional discussion of the public purpose concept.

Another consideration concerning retirement systems is a guarantee of rights. Whether the constitutional provisions in the 1876 Constitution provide an adequate guarantee of rights is questionable. The provisions do not mandate funding by the state, for example, but authorize the Legislature to appropriate funds. On the other hand, the provisions contain some important limitations concerning benefits. Article III, Section 48a limits the state contribution to the retirement fund to no more than six percent of an employee's compensation each year. Also, Article III, Section 48a requires at least ten years of creditable service before a member may receive benefits under the system.

The detailed constitutional restrictions on the investment of assets of the retirement funds in the 1876 Constitution are another reason for providing the Legislature more flexibility to regulate retirement sys-

tems. Changing economic conditions over the years may substantially alter the desirability of certain types of investments.

The Commission believes that the language of Section 21 will assure the continuation of retirement rights currently in effect, and will allow the Legislature greater flexibility in the future in order to improve the systems to meet changing needs and circumstances.

Sections of the 1876 Constitution Considered by the General Provisions Committee

Many of the miscellaneous sections, or "general provisions," of the 1876 Constitution have not been carried forward in this document. Those dealt with by the General Provisions Study Committee of the Constitutional Revision Commission deserve special attention since the work of that Committee largely consisted of determining which sections assigned to it for study should be included in the new document. While in some cases the removal was the result of an intent to change policy, in others the rationale was that the subject matter belongs in a statute rather than in the constitution. A summary of the major sections of the 1876 Constitution which have no counterpart in the proposed document and the reasons underlying the decisions not to retain them is as follows:

A. Dual Officeholding

Article XVI, Section 12, Members of Congress; Officers of United States or Foreign Power; Eligibility to Hold Office;

Article XVI, Section 33, Salary or Compensation Payments to Agents, Officers or Appointees Holding Other Offices; Exceptions; Non-Elective Officers and Employees;

Article XVI, Section 40, Holding More Than One Office; Exceptions; Right to Vote.

The listed sections deal with the subject of dual officeholding. They have been amended on several occasions but do not yet provide a definitive standard concerning which positions may not be held concurrently. It was felt that the complexity of the dual officeholding problem makes such provisions inappropriate in the constitution, and that this matter can be handled better by statute. It will therefore become a matter to be dealt with in the legislative process, except as to members of the Legislature and Executive Department officers who will still be constitutionally restrained from holding other offices. The Transition Schedule carries forward the prohibitions of the listed sections until the Legislature can undertake a solution to the problem.

B. Welfare

Article III, Section 51a, Assistance Grants and Medical Care for Needy Aged, Disabled and Blind Persons, and Needy Children; Federal Funds; Supplemental Appropriations.

The welfare provision, Article III, Section 51a, along with a number of other sections, was included in the 1876 Constitution as an exception to the prohibition against grants or gifts of public money to individuals, corporations, and municipal corporations. The proposed document contains a spending limitation based on the purpose of the expenditure rather than a grants and gifts prohibition. Since this is the case it is no longer necessary to retain the welfare exception, and others which were necessary because of that prohibition, in order to authorize such use of the funds. (See the *Commentary* for Article VIII, Section 7 for a discussion of spending limitations in the new constitution.)

That disposition of the welfare authorization also applies to the welfare ceiling, which was considered by the Commission as an arbitrary limit which is likely to result in further amendments over the years.

Other important spending authorizations which are no longer necessary in light of the removal of the grants and gifts prohibitions include workmen's compensation, aid to survivors of peace officers, and aid to persons wrongfully imprisoned.

C. Usury

Article XVI, Section 11, Usury; Rate of Interest in Absence of Contract.

This section originally set a maximum legal interest rate of ten percent per annum on all contracts. It was later amended to permit the Legislature to regulate loans and lenders, so that it presently has no real beneficial effect as a constitutional provision. The Legislature has undertaken a comprehensive regulatory scheme in the Consumer Credit Code, TEX. REV. CIV. STAT. ANN. art 5069 (Supp. 1972), so that failure to carry forward this section will have no substantive effect.

D. Fence Laws

Article XVI, Section 22, Fence Laws.

The fence laws provision is an exception to the prohibition against passage of local and special

laws. It permits the Legislature to require fencing of livestock in some areas while allowing free grazing in others. The conclusion of the Commission was that the local and special laws prohibition, as it has come to be interpreted, would no longer bar the Legislature from undertaking to regulate the fencing of livestock on a nonuniform but reasonable basis.

E. Branch Banking

Article XVI, Section 16, Corporations with Banking and Discounting Privileges.

The Commission concluded that regulation of branch banking should be under legislative control rather than in the constitution. For a discussion of the rationale, see the *Commentary* for Article X, Section 16.

F. Miscellaneous Sections

Article X, Railroads;

Article XVI, Section 21, Public Printing and Binding; Repairs and Furnishings; Contracts;

Article XVI, Section 23, Regulation of Live Stock; Protection of Stock Raisers; Inspections; Brands;

Article XVI, Section 24, Roads and Bridges;

Article XVI, Section 25, Drawbacks and Rebatement to Carriers, Shippers, Merchants, etc.;

Article XVI, Section 26, Homicide; Liability in Damages;

Article XVI, Section 43, Exemptions from Public Duty or Service;

Article XVI, Section 47, Conscientious Scruples as to Bearing Arms.

The Commission's decision was to recommend that the above topics be treated in statutes rather than in the constitution. For each of the listed sections a statute is already in existence which accomplishes the same result as the constitutional provision. The Commission determined that none of these subjects is so fundamental to the operation of government that it should be included in the constitution. The decision will produce no change in existing law but will afford an opportunity for such future changes as the Legislature finds to be in the public interest.

Article XI

Mode of Amending the Constitution of the State

H.J.R. No. 18.

No. 4.

Joint Resolution

To amend section 11. of article 7. of the Co
of the State of Texas.

Section 1. Be it resolved by the Legislatu
State of Texas: That Section 11. of Arti
Constitution of the State of Texas be s
as to read as follows, to wit:

Section 11. It is hereby declared that
and other property heretofore set apar
propriated for the establishment and
tenance of the University of Texas, to
all the principal of the proceeds of
same heretofore made or hereafter to
and all grants, donations and app
that may hereafter be made by th
of Texas or from any other source
stitute and become a permanent
fund. And the same as realized and
into the treasury of the State (together
sum belonging to the fund as may no

Article XI
Mode of Amending the Constitution of the State

Section 1. Amendments to the Constitution

(a) Amendments to this Constitution may be proposed to the qualified voters of the State by a record vote of two-thirds of the membership of each house. Before either house votes, a proposed amendment shall be submitted to the Attorney General who shall within twenty days of receipt of a request render an opinion on its effect on other provisions of this Constitution and on whether the proposal can be enacted without a constitutional amendment.

(b) A proposed amendment shall be submitted at the next general election following the expiration of ninety days after it is proposed by the Legislature. Procedures shall be provided by law for publicizing proposed amendments.

(c) A proposed amendment shall become a part of this Constitution on approval by a majority of the qualified voters voting on the question.

Origin

Revises Article XVII, Section 1.

Commentary

Section 1 provides for the same basic amendment procedure contained in the Constitution of 1876. The Commission feels that this relatively easy amendment procedure has served well in the past and should be retained. Some changes were made, however.

The requirement in subsection (a) that a proposed amendment be submitted to the Attorney General for an opinion is new. Although the Attorney General's opinion is advisory in nature, it could help prevent unneeded constitutional amendments. In cases where an amendment is unnecessary, the Legislature could instead enact a statute. Besides reviewing the substance of a proposed amendment, the Attorney General could also make suggestions as to form. The Constitution of 1876 varies in its language, mainly because there has never been a reviewing agent for form.

Subsection (b) replaces the detailed statutory material concerning publication of proposed amendments. The requirement that amendments be placed on the ballot not less than 90 days after approval guarantees adequate time for publication. Another change is that amendments could no longer be voted on in special elections but would have to be submitted at general elections where there is usually a larger turnout of voters.

Section 2. Constitutional Convention

(a) The Legislature by a record vote of a majority of the membership of each house may submit to the qualified voters of the State the question of whether to call a constitutional convention. The question shall be submitted at the first general election occurring at least six months after the Legislature proposes the question. A constitutional convention shall be called if approved by a majority of the qualified voters voting on the question.

(b) The question of whether to call a constitutional convention shall be submitted to the qualified voters at least once every twenty years.

(c) The Legislature shall, at the next legislative session following approval of a constitutional convention by the qualified voters, provide by law for the time, place, and duration of the convention; fix and provide for the pay, allowances, and expenses of delegates and offi-

cers; and provide for the expenses of the convention. The first meeting of the convention shall be within three months after the election of delegates.

(d) One delegate shall be elected from each representative district and shall have the same qualifications for office as a member of the House of Representatives. Delegates shall be elected and vacancies filled as provided by law, except that no justice or judge, no member of the Legislature, and no elective official of the executive branch may serve as a delegate.

(e) The constitutional convention may, by a majority vote of its membership, propose any revision or amendments to the Constitution. The convention shall determine the manner of submission, the date of the election, which shall be not less than two nor more than six months after the convention adjourns, and the manner of publicizing the proposals to be voted on.

(f) Any proposed revision or amendments shall become effective, as the convention provides, if approved by a majority of qualified voters voting on the question.

Origin

New provision.

Commentary

Thirty-eight states provide for constitutional conventions in their constitutions. Of these states, approximately twelve require a periodic mandatory submission to the voters of the question of whether to call a constitutional convention.

Except for the 1972 amendment which provides for a constitutional convention in 1974, the 1876 Constitution is silent concerning procedures for calling a convention. The proposed Section 2 outlines the procedures by which the Legislature can submit the question of calling a constitutional convention to the people. It also requires that the question be submitted to the people at least once every twenty years so that they may consider whether a new constitution is needed. The procedures outlined in Section 2 will prevent the need for a constitutional amendment each time the question of calling a convention is to be submitted to the people. If a constitutional convention is approved, the Legislature shall provide by law for the time, duration, and expenses of the convention.

No state judge or justice, member of the Legislature, or elected official of the executive branch of state government may serve as a delegate to a future constitutional convention according to the provisions of subsection (d). The Commission felt that such state officeholders could be subject to a conflict of interest which would not be present in citizen members. Revision of the state's fundamental law would take the time and energy of public officials away from managing the day-to-day operations of government and therefore properly should be the responsibility of representatives elected specifically for the purpose of revising the constitution.

Citizen delegates would not be likely to have an immediate vested interest in the structure of state government or in a particular office which might be affected by constitutional change. Convention delegates who are private citizens can be expected to provide broad representation of the population of the state as a whole, and can be expected to take an objective view of decisions affecting state governmental institutions. Typically, citizen delegates reflect the enthusiasm and sense of purpose which are essential ingredients for a successful undertaking of this magnitude.

Transition to a New Constitution

Transition to a New Constitution

There are always some transitional problems in replacing an old constitution with a new one. Such problems can be dealt with in the body of the new constitution, but this results in language that quickly becomes obsolete and then remains as part of the new document for the indefinite future. Several transition provisions were incorporated into the 1876 Constitution at the time it was drafted, and these sections remain although their usefulness has long been outlived. Article XI, Section 6, for example, provides for the repayment of debt incurred by cities and counties prior to 1876.

A constitution should contain only those provisions necessary for the continuing future operation of government. The appropriate method of handling transitional problems is to include the necessary provisions in a schedule which is a separate part of the constitution. As the transitional matters become obsolete they can be removed according to a procedure established in the schedule.

A Transition Schedule has been prepared as part of the new constitution printed at the front of this report. The provisions contained in the schedule can be classified into four general categories.

1. ***Provisions with an accelerated effective date.*** **To assist in a smooth transition it is desirable to have some provisions of the new constitution become effective prior to the effective date of the entire document. This allows the necessary lead time for implementation of the other provisions. (See Sections 1 and 10 of the Transition Schedule.)**

2. ***Terms of office and officeholding.*** **Several transition provisions are necessary to ensure continuity for those offices affected by a change in length of term, reorganization, or other changes in their status. (See, for example, Sections 13, 14, and 19 of the Transition Schedule.)**

3. ***Continuation of powers of government.*** **There are many provisions of the 1876 Constitution which are not carried forward in the new document because they contain statutory detail or are not of constitutional significance. In most cases the removal of a particular provision from the constitution will not affect the continuity of governmental operation because statutes usually exist which provide essentially the same authority. In those cases where a constitutional provision is removed and no statute exists, a transition provision can be used to keep the section which has been removed in effect until the Legislature has the opportunity to enact appropriate laws. After the Legislature has acted, the transition provision is no longer needed and can be removed according to the procedure established in the schedule. (See, for example, Sections 4, 5, 6, and 7 of the Transition Schedule.)**

4. ***Preservation of existing laws and rights.*** **All transition schedules contain some type of statement that all laws and rights of action not inconsistent with the constitution will be carried forward, and that the validity of outstanding bonds and other evidences of indebtedness is preserved. (See Sections 2 and 3 of the Transition Schedule.)**

In providing for continued powers of government in the Transition Schedule, only those powers not now provided by statute need to be included. This criterion for including material in the schedule is best illustrated by an example. Section 6 of the Transition Schedule provides for a continuation of the county ad valorem tax of 80 cents per $100 valuation that is authorized by the 1876 Constitution. This provision was necessary since there is no statutory authorization for counties to levy the 80 cent tax. The Constitution of 1876 also authorizes separate county ad valorem taxes of 30 cents per $100 valuation and 15 cents per $100 valuation. Since the 30 cent and 15 cent taxes are now authorized by statute, no transition provision is necessary for their continuation.

In addition to the Transition Schedule, an Adoption Schedule accompanies the new constitution. The Adoption Schedule printed with the constitution at the front of this report is not complete. It was included only to illustrate the general framework and purposes of such a schedule. The details of the completed schedule will depend on the nature of proposals made by the constitutional convention.

The Adoption Schedule is part of the constitution only for the purpose of providing for its adoption and establishing the effective dates of its provisions. It may be used to provide for the implementation of alternative provisions if any such proposals are submitted to the voters separately. The completed Adoption Schedule should also provide for the form of the ballot which will be submitted to the people for approval of the new document.

Appendices

Appendix A

Article XVII, Section 2, Constitution of 1876

(Adopted November 7, 1972 as Amendment 4)

Section 2. (a) When the legislature convenes in regular session in January, 1973, it shall provide by concurrent resolution for the establishment of a constitutional revision commission. The legislature shall appropriate money to provide an adequate staff, office space, equipment, and supplies for the commission.

(b) The commission shall study the need for constitutional change and shall report its recommendations to the members of the legislature not later than November 1, 1973.

(c) The members of the 63rd Legislature shall be convened as a constitutional convention at noon on the second Tuesday in January, 1974. The lieutenant governor shall preside until a chairman of the convention is elected. The convention shall elect other officers it deems necessary, adopt temporary and permanent rules, and publish a journal of its proceedings. A person elected to fill a vacancy in the 63rd Legislature before dissolution of the convention becomes a member of the convention on taking office as a member of the legislature.

(d) Members of the convention shall receive compensation, mileage, per diem as determined by a five member committee, to be composed of the Governor, Lieutenant Governor, Speaker of the House, Chief Justice of the Supreme Court, and Chief Justice of the Court of Criminal Appeals. This shall not be held in conflict with Article XVI, Section 33 of the Texas Constitution. The convention may provide for the expenses of its members and for the employment of a staff for the convention, and for these purposes may by resolution appropriate money from the general revenue fund of the state treasury. Warrants shall be drawn pursuant to vouchers signed by the chairman or by a person authorized by him in writing to sign them.

(e) The convention, by resolution adopted on the vote of at least two-thirds of its members, may submit for a vote of the qualified electors of this state a new constitution which may contain alternative articles or sections, or may submit revisions of the existing constitution which may contain alternative articles or sections. Each resolution shall specify the date of the election, the form of the ballots, and the method of publicizing the proposals to be voted on. To be adopted, each proposal must receive the favorable vote of the majority of those voting on the proposal. The conduct of the election, the canvassing of the votes, and the reporting of the returns shall be as provided for elections under Section 1 of this article.

(f) The convention may be dissolved by resolution adopted on the vote of at least two-thirds of its members; but it is automatically dissolved at 11:59 p.m. on May 31, 1974, unless its duration is extended for a period not to exceed 60 days by resolution adopted on the vote of at least two-thirds of its members.

(g) The Bill of Rights of the present Texas Constitution shall be retained in full.

Appendix B

Senate Concurrent Resolution Number 1

BE IT RESOLVED by the Senate of the State of Texas, the House of Representatives concurring:

Sec. 1. CONSTITUTIONAL REVISION COMMISSION. Pursuant to Article XVII, Section 2, of the Texas Constitution, the Texas Constitutional Revision Commission is created.

Sec. 2. DEFINITIONS. In this resolution:

(1) "Commission" means the Texas Constitutional Revision Commission.

(2) "Convention" means the Texas Constitutional Convention of 1974, created by Article XVII, Section 2, of the Texas Constitution.

Sec. 3. COMPOSITION OF COMMISSION. (a) The commission shall be composed of 37 members, and it is the legislative intent that the appointment committee give consideration to fair and equitable representation of the sexes, ethnic groups, social groups, economic groups, and geographical regions of the state.

(b) No elected officer who receives compensation by warrant drawn on the state treasury is eligible to serve as a member of the commission. The service of any other public officer or employee as one of the 37 members of the commission shall be considered an additional duty of his regular office or employment, and such officer or employee appointed pursuant to the provisions of this resolution shall be an ex offico commissioner. Such ex officio commissioners shall have all rights, powers, and privileges that are accorded the other members by this resolution.

(c) The members shall be appointed by an appointment committee composed of the governor, the lieutenant governor, the attorney general, the speaker of the house of representatives, the chief justice of the supreme court, and the presiding judge of the court of criminal appeals. The governor shall be chairman of the appointment committee. The governor shall call meetings of the appointment committee and shall guide it toward completing the appointment process at the earliest possible date.

(d) Except as otherwise provided in this subsection, all meetings and deliberations of the appointment committee shall be open to the public and shall be subject to the public notice requirements of the Open Meetings Law, Chapter 271, Acts of the 60th Legislature Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes). Once a meeting begins following compliance with these requirements, the committee by majority vote may close the meeting for the purpose of deliberating and considering proposed appointees, but shall reconvene in the place where the meeting began before adjourning. Whenever any deliberation or any portion of a meeting is closed to the public as permitted by this subsection, no final action, decision, or vote with regard to any matter considered in the closed meeting shall be made except in a meeting which is open to the public and in compliance with the requirements prescribed in this subsection.

(e) The appointment shall be formalized by filing with the secretary of state a certificate of appointment identifying all 37 persons appointed to the commission and the appointment committee shall designate one of them chairman and one of them vice-chairman of the commission. The certificate of appointment must be signed by at least four members of the appointment committee.

(f) The secretary of state shall transmit a true copy of the certificate of appointment to the lieutenant governor and to the speaker. On the same day or the next legislative day, the lieutenant governor and the speaker shall each announce in open session the names of those appointed. The secretary of state shall prepare and make available in his office a petition of nonconcurrence. During the period ending with the 10th calendar day following the day the appointments are announced in open session, or if the 10th day is a Saturday, Sunday, or legal holiday, the next following business day of the secretary of state, any member of the legislature may personally appear in the office of the secretary of state during regular business hours and sign the petition of nonconcurrence. If, during the prescribed period, fewer than 76 members of the house or fewer than 16 members of the senate sign the petition, the appointments shall be considered in all respects ratified and confirmed. If, during that period, as many as 76 members of the house and 16 members of the senate sign the petition, the appointments shall be considered rejected, the secretary of state shall so notify the governor, and the appointment committee shall submit another certificate of appointment which shall be subject to the same process of legislative review as was the original. The appointment committee may reappoint any one or more or all of those persons named as appointees in any

earlier appointment process, and the entire appointment and review process shall be repeated as many times as necessary to achieve confirmation.

(g) The secretary of state shall officially notify each member of his appointment. With the exception of eligible public officers (ex officio members), who shall be qualified for service on the commission by virtue of their office, members shall qualify by taking the oath of office before an officer authorized to administer oaths and by filing the oath with the secretary of state.

Sec. 4. TERM OF OFFICE; VACANCIES. (a) Members of the commission hold office until 60 days after the second Tuesday in January, 1974, which is the day the constitutional convention will be convened.

(b) Any vacancy on the commission caused by death, disability, or resignation shall be filled by certificate of appointment signed by at least four members of the appointment committee and filed with the secretary of state.

Sec. 5. MEETING, CONDUCT OF BUSINESS. (a) The commission shall meet initially in Austin, Travis County, Texas, at the call of the chairman not later than 14 days after the date the appointment process is completed. The commission shall adopt rules to govern the calling and holding of meetings and the conduct of its business generally; provided, however, that the commission upon organization shall submit a budget and rules governing payment for staff, per diem, travel (including out-of-state travel) and consultants to the appointment committee.

(b) A majority vote of the appointment committee shall be necessary for the approval of such rules and budget. On November 1, 1973, the commission shall be required to submit a budget to the appointment committee for the conduct of its business from November 1, 1973, until the expiration date of said commission, which budget must be approved by a majority of the appointment committee.

Sec. 6. PER DIEM; EXPENSES. Each member of the commission is entitled to a per diem of $50 for each day he spends attending to the business of the commission, including time spent in traveling, as provided by rule of the commission. Each member of the commission is entitled to reimbursement for actual and necessary travel and other expenses incurred while attending to the business of the commission, as provided by rule of the commission.

Sec. 7. OFFICE SPACE, EQUIPMENT, SUPPLIES, ETC. The commission may obtain office space, equipment, supplies, printing, and services through the State Board of Control or by contract, including interagency contract.

Sec. 8. STAFF. (a) The commission shall employ and fix the compensation of an executive director.

(b) The executive director, to the extent authorized by the commission, shall employ and fix the compensation of staff and consultants within approved budget limits.

Sec. 9. DUTIES AND FUNCTIONS OF COMMISSION. (a) As provided by Article XVII, Section 2, of the Texas Constitution, the commission shall study the need for constitutional change and shall report its recommendations to the members of the legislature not later than November 1, 1973.

(b) The commission shall provide for the maximum participation at the grass roots level by scheduling and holding open public hearings in a minimum of six geographical areas of the state. To facilitate these public hearings, the commission is empowered to select citizen committees who shall serve without compensation or expenses in each of the geographical areas to assist in its work. The open public hearings shall be given as much advance publicity as possible as to time and place so that as many citizens as possible may participate.

(c) The commission shall issue publications of its findings and recommendations from time to time, and shall disseminate information through appropriate media to insure public awareness of its work.

(d) The commission shall issue a final report and make copies widely available to the citizens of Texas, including distribution to all public libraries. Copies of the report, which is due to the legislature on November 1, 1973, shall be made available to citizens and public libraries not later than December 31, 1973.

(e) The commission shall provide information, briefings, and other appropriate support to the constitutional convention.

(f) The commission shall submit legal drafts to the convention of all changes or alternative changes it proposes be made in the constitution.

(g) All papers, documents, and work product of the commission shall be public records, and shall be made available to the public for inspection and copying at reasonable times and places.

Sec. 10. FINANCIAL SUPPORT. The commission may receive appropriations only from the Texas Legislature for its operations.

Sec. 11. ASSISTANCE OF STATE AGENCIES. All departments and agencies of the state, including the Texas Advisory Commission on Intergovernmental Relations and the Texas Legislative Council, shall cooperate with the commission and its staff, and shall make all reports and other materials available.

Sec. 12. SEVERABILITY. If any provision of this resolution or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

____________________	____________________
President of the Senate	Speaker of the House

I hereby certify that S.C.R. No. 1 was adopted by the senate on January 24, 1973; February 1, 1973, senate refused to concur in house amendments and requested appointment of conference committee; February 5, 1973, house granted request of the senate; February 6, 1973, senate adopted conference report by the following vote: Yeas 26, Nays 1.

____

Secretary of the Senate

I hereby certify that S.C.R. No. 1 was adopted by the house on January 31, 1973, with amendments, by the following vote: Yeas 146, Nays 1; February 5, 1973, house granted request of the senate for appointment of conference committee; February 7, 1973, house adopted conference report by the following vote: Yeas 121, Nays 24.

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Chief Clerk of the House

Approved:

____

Date

____

Governor

Appendix C
Brief Biographies of Commission Members

CALVERT, JUDGE ROBERT W.–(Commission Chairman) Attorney. Former State Representative, Hill and Navarro Counties for three terms. House Speaker his last term. Elected to the Texas Supreme Court in 1950 and elected Chief Justice in 1960, re-elected in 1966. Elected Chairman, National Conference of State Chief Justices in 1970. 1411 W. 29th, Austin, Texas 78703

BASS, BILL–Attorney. Three terms as State Representative from Van Zandt County. Member of the Constitutional Amendments Committee of the House and author of several constitutional amendments approved by the voters. Director of the Van Zandt County Farm Bureau and District Director of the Boy Scouts. Graduate of Texas A&M and SMU Law School. Route 2, Ben Wheeler, Texas 75754

MILBURN, MRS. MALCOLM – (Commission Vice Chairman) Civic worker. Former President of the Texas Federation of Republican Women and former Vice Chairman of the Texas Republican Party. 2606 Pecos St., Austin, Texas 78703

BETO, DR. GEORGE–Clergyman. Former Director of the Texas Department of Corrections. Member of the General Research Study Section for the Department of Health, Education and Welfare. Past President of the American Correctional Association. Sam Houston State University, Huntsville, Texas 77340

BARBOUR, LOYS D. – Farmer. Helped organize the Texas Farm Bureau and served on the TFB Board until 1959. Served as Chairman of the Rural Roads Committee. Legislative representative for TFB for 10 years. P. O. Box 236, Iowa Park, Texas 78367

BONILLA, TONY–Attorney. Former State Representative, Nueces County and State Director of the League of United Latin American Citizens. 2590 Morgan Ave., Corpus Christi, Texas 78405

BARRERA, ROY R.–Attorney. Former Assistant Bexar County District Attorney. Former Texas Secretary of State. President of the San Antonio Bar Association. 424 E. Nueva, San Antonio, Texas 78205

BRIENT, MRS. MARY BETH–Civic worker. Organizer and former President of the League of Women Voters of El Paso. Former Board member of the LWV of Texas. Member of the Texas Urban Development Commission. 2011 North Kansas, El Paso, Texas 79902

CHAPPELL, MRS. DAVID F. (ANN)—Consultant and journalist. Former Research Associate, Institute of Urban Studies at The University of Texas at Arlington, and former Urban Analyst for the Regional Office of HUD. 2321 Mistletoe Blvd., Fort Worth, Texas 76110

FROST, M. F. "MIKE"—Farmer. Former Vice President of the Texas Farm Bureau. Manager and part owner of the McAllen Fruit and Vegetable Co., and the McAllen Gin Co. P. O. Box 100, McAllen, Texas 78501

CULVER, BARBARA – County Judge, Midland, Texas. Vice-Chairman of the West Texas County Judges and Commissioners Association and serving on the National Advisory Council on the Education of Disadvantaged Children. Has served 10 years on the bench. Active in regional planning. 315 Permian, Midland, Texas 79701

GARCIA, DR. CLOTILDE—Physician. Regent of Del Mar College. Former schoolteacher. Served on the Board of Directors of the Nueces County Community Action Agency. Member of the U.S. Senate Committee on Aging's Advisory Council. State Director of the American G.I. Forum Committee on Education and Aged. 3017 Ocean Drive, Corpus Christi, Texas 78404

DONNELL, WILLIAM – Rancher. President of the Texas and Southwestern Cattle Raisers Association. Past Chairman of the Board of Regents, State Senior Colleges in Texas. Director of the American National Cattleman's Association. P. O. Box 845, Marathon, Texas 79842

HAMILTON, MRS. C. F. (SIBYL)—Married to a physician. Mother of three. Grandmother. Former member of the Dallas City Council. Member of President Nixon's Air Quality Advisory Board. Citizen Representative from Dallas County to the North Central Texas Council of Governments. District Director of Public Information, Dallas County Community College District. 6683 Lakewood Blvd., Dallas, Texas 75214

FISHER, BEEMAN—Retired Board Chairman of Texas Electric Service Co., formerly with Texas Power & Light Co., the Associated Press and WOAI Radio in San Antonio. Past President of the Fort Worth and West Texas Chambers of Commerce. Immediate Past Chairman, Texas Water Conservation Association and Texas Research League. P. O. Box 970, Fort Worth, Texas 76101

HARTMAN, BILL—Journalist. Editor and Publisher of the *Beaumont Enterprise and Journal*, past Director, Texas Daily Newspaper Association, Director, St. Elizabeth's Hospital, Member of the Advisory Committee for the Texas Advisory Commission on Intergovernmental Relations. 380 Walnut St., Beaumont, Texas 77701

FLAWN, DR. PETER T.—Educator. President of The University of Texas at San Antonio and former Executive Vice-President of UT Austin. Professor of geological sciences and public affairs. Former Director of The Bureau of Economic Geology (State Geologist) 1960-1970. 4242 Piedras Drive East, Suite 250, San Antonio, Texas 78284

HOLMES, REV. ZAN—Clergyman. District Superintendent of Dallas Metropolitan District for the United Methodist Church. Former State Representative, Dallas County. Former Assistant Director of the Dallas War on Poverty. 6910 Robin Road, Dallas, Texas 75209

HOLUB, MRS. FAYE—Communications. Vice President of the Austin AFL-CIO. Business Services Instructor for Southwestern Bell. Served 21 years as an officer in the Communications Workers of America. 1515 Suffolk, Austin, Texas 78723

KRONZER, W. JAMES JR.—Attorney. Former President of The University of Texas Law School Association and former President of the Houston Bar Association. Member of the House Interim Committee on Governmental Immunity. President of the Houston Legal Foundation. 711 Fannin, Houston, Texas 77002

JAWORSKI, LEON—Immediate Past President of the American Bar Association and Past President of the American College of Trial Lawyers. Former Special Assistant U.S. Attorney General. Presidential Advisor, 1964-1969. Chairman of the Governor's Committee on Public School Education. Chief of U.S. Army War Crimes Trial Section, European Theatre, World War II. 3665 Ella Lee Lane, Houston, Texas 77027

LEWIS, EARL—Professor of political science and Director of the graduate Urban Studies Program at Trinity University. Has served as consultant to the United States Office of Education and as vice-chairman of the Texas Urban Development Commission. On the Board of the United Way of San Antonio. Trinity University, 715 Stadium Dr., San Antonio, Texas 78212

JEFFERS, LEROY—Attorney. President of the State Bar of Texas. Past Chairman of the American Bar Association Anti-Trust Section. Past Chairman, University of Texas Board of Regents and past Chairman of the Board of the Texas Bill of Rights Foundation. 674 Piney Point Rd., Houston, Texas 77024

LIGARDE, HONORE – Attorney, banker. Board Chairman of the International Bank of Commerce of Laredo. State Representative from Webb County for 10 years. Drawer 1359, Laredo, Texas 78040

JEFFERSON, ANDREW JR. – Judge, Harris County Court of Domestic Relations No. 2. Former Chief Assistant United States Attorney for the Western District of Texas, and former Chief of the Criminal Section, U. S. Attorney's Office. Former Vice Chairman of the American Bar Association Committee on Organized Crime, Criminal Law Section. 310 San Jacinto, Houston, Texas 77002

MADDEN, WALES JR. – Attorney and businessman. Member of the Coordinating Board of the Texas College and University System. Former member of the Governor's Committee on Public School Education. Former Regent of The University of Texas System. 2701 Teckla, Amarillo, Texas 79101

KEETON, PAGE – Educator. Dean of The University of Texas Law School since 1949. Former member of the President's Advisory Committee on Labor-Management Policy. A Fellow of the American Bar Foundation and former Chairman of the State Bar Advisory Committee on penal code revisions. 5316 Western Hills, Austin, Texas 78731

MARTIN, MARK – Attorney. Board Chairman, State Bar of Texas, past President of the Dallas Bar Association and Texas Association of Defense Counsel. Trustee of The University of Texas Law School Foundation. 3525 Wentwood, Dallas, Texas 75225

MAY, JANICE–Educator. Assistant Professor of Government, The University of Texas at Austin. Member of the 1967-68 Texas Constitutional Revision Commission. Author of *Amending the Texas Constitution: 1951-1972* and co-author of *The Texas Constitution: Problems and Prospects for Revision*. Past President of the Austin League of Women Voters. 6504 Auburnhill Drive, Austin, Texas 78723

RIVES, DON – Attorney. Former United States Commissioner for the Marshall Division of The Eastern District of Texas. Former instructor in business law at East Texas Baptist College. Marshall National Bank Building, Marshall, Texas 75670.

McLAUGHLIN, MARK – Attorney, rancher. Former Assistant Attorney General of Texas. Vice Chairman of the Continuing Legal Education Committee of the State Bar of Texas. Member of the Texas Board of Corrections. First Savings Building, San Angelo, Texas 76901

SHIRLEY, PRESTON – Attorney. Past President of the Galveston County Bar Association, and the Texas Association of Defense Counsel. Former member of the Committee on Administration of Justice of the Texas Bar Association. Director of the Sealy & Smith Foundation for the John Sealy Hospital. 4602 Sherman, Galveston, Texas 77550

MOORE, L. G.–Operating engineer. International Representative of the International Union of Operating Engineers, AFL-CIO, for the last 8 years. 2418 Hillshire Dr., Deer Park, Texas 77536

WEATHERBY, JIM W. – Attorney and rancher. Former County Attorney and County Judge of Kerr County; former District Attorney, and former District Judge of the 2nd 38th Judicial District. Former President of the Charles Schreiner Bank. P. O. Box 168, Kerrville, Texas 78028

NASHER, RAYMOND – Developer and businessman. Member of the Advisory Committee to HUD of National Service Foundation. Former Executive Director of the White House Conference on International Cooperation. Former U.S. Delegate to the General Assembly of the United Nations. 318 St. Paul St., Dallas, Texas 75201

YARBOROUGH, RALPH W.–Attorney. Instructor at The University of Texas Law School. United States Senator for 13 years. Former Assistant Attorney General of Texas and former District Judge in Austin. Served on the Texas Board of Law Examiners and as a director of the Lower Colorado River Authority. Brown Building, Austin, Texas 78701

OAKES, E. L. JR.–Business Agent for Ironworkers Local 84 in Houston for six years. Former Assistant Coordinator of Houston Ironworkers Apprenticeship and Training. 3821 Old College Road, Bryan, Texas 77801

Appendix D

Texas Constitutional Revision Commission Study Committees

Chairman—Judge Robert W. Calvert
Vice-Chairman—Mrs. Malcolm Milburn

Education Committee
L. G. Moore, *Chairman*
Peter Flawn, *Vice-Chairman*
Clotilde Garcia
Earl Lewis
Wales Madden, Jr.

Executive Branch Committee
Preston Shirley, *Chairman*
Mary Beth Brient, *Vice-Chairman*
William Donnell
Raymond Nasher
Don Rives

Finance Committee
Beeman Fisher, *Chairman*
Mark McLaughlin, *Vice-Chairman*
Mike F. Frost
Faye Holub
Janice C. May

General Provisions Committee
Honore Ligarde, *Chairman*
Leroy Jeffers, *Vice-Chairman*
Ann S. Chappell
Page Keeton
Jim Weatherby

Judiciary Committee
Leon Jaworski, *Chairman*
Andrew Jefferson, *Vice-Chairman*
Roy R. Barrera
Bill Bass
Mark Martin

Legislative Committee
Zan Holmes, Jr., *Chairman*
Loys D. Barbour, *Vice-Chairman*
George Beto
W. James Kronzer, Jr.
Ralph Yarborough

Local Government
Barbara Culver, *Chairman*
Bill Hartman, *Vice-Chairman*
Tony Bonilla
Sibyl Hamilton
E. L. Oakes, Jr.

Style and Drafting Committee
Mark Martin, *Chairman*
Earl Lewis, *Vice-Chairman*
Sibyl Hamilton
Leroy Jeffers
W. James Kronzer, Jr.
Janice C. May
Preston Shirley

Appendix E

Disposition of Articles from Constitution of 1876

Note: The disposition of each section of the Constitution of 1876 is indicated by the terms defined below.

1. **Revised** indicates that substantive changes were made.
2. **Reworded** indicates grammatical changes, reordering of sentences, or other nonsubstantive changes.
3. **Statutory** indicates that the section is not carried forward in the new constitution, and that the Legislature may enact laws to continue the substance of the section in statutory form if it has not already done so. In most cases, statutes already exist which carry forward the substance of these sections.
4. **Deleted** indicates that the section is obsolete or otherwise unnecessary.
5. **Retained** indicates that the section is carried forward without change.

Section	Disposition

Article I
Bill of Rights

Article I of the Constitution of 1876 is retained in full.

Article II
Separation of Powers

Sec. 1 *Division of Powers; Three Separate Departments; Exercise of Power Properly Attached to Other Departments.*	**Revised:** See Article II, Section 1, Separation of Powers.

Article III
The Legislature

Sec. 1 *Senate and House of Representatives.*	**Reworded:** See Article III, Section 1, The Legislature.
Sec. 2 *Membership of Senate and House of Representatives.*	**Revised:** See Article III, Section 2, The Legislature.
Sec. 3 *Election and Term of Office of Senators.*	**Revised:** See Article III, Section 4(b), The Legislature.
Sec. 4 *Election and Term of Members of House of Representatives.*	**Revised:** See Article III, Section 4(c), The Legislature.
Sec. 5 *Meetings; Order of Business.*	**Revised:** See Article III, Section 7(a), The Legislature.

Sec. 6 *Qualifications of Senators.*	**Revised:** See Article III, Section 3(a), The Legislature.
Sec. 7 *Qualifications of Representatives.*	**Reworded:** See Article III, Section 3(b), The Legislature.
Sec. 8 *Each House Judge of Qualifications and Election; Contests.*	**Reworded:** See Article III, Section 8(a), The Legislature.
Sec. 9 *President Pro Tempore of Senate; Speaker of House of Representatives.*	**Reworded:** See Article III, Section 8(c) and (d), The Legislature.
Sec. 10 *Quorum; Adjournments From Day to Day; Compelling Attendance.*	**Reworded:** See Article III, Section 8(f), The Legislature.
Sec. 11 *Rules of Procedure; Expulsion of Member.*	**Revised:** See Article III, Section 8(b) and (h), The Legislature.
Sec. 12 *Journals of Proceedings; Entering Yeas and Nays.*	**Reworded:** See Article III, Section 8(g), The Legislature.
Sec. 13 *Vacancies; Writs of Election.*	**Revised:** See Article III Section 4(d), The Legislature.
Sec. 14 *Privileged From Arrest.*	**Statutory:** See Transition Schedule, Section 2.
Sec. 15 *Disrespectful or Disorderly Conduct; Obstruction of Proceedings.*	**Deleted.**
Sec. 16 *Open Sessions.*	**Revised:** See Article III, Section 7(b), The Legislature.
Sec. 17 *Adjournments.*	**Reworded:** See Article III, Section 7(c), The Legislature.
Sec. 18 *Ineligibility for Certain Other Offices; Interest in Contracts.*	**Revised:** See Article III, Section 10(a), (b), and (d), The Legislature.
Sec. 19 *Ineligibility of Persons Holding Other Offices.*	**Revised:** See Article III, Section 3(d), The Legislature.
Sec. 20 *Collectors of Taxes; Persons Entrusted with Public Moneys; Ineligibility.*	**Statutory.**
Sec. 21 *Words Spoken in Debate.*	**Reworded:** See Article III, Section 9, The Legislature.

Sec. 22
Disclosure of Private Interest in Measure or Bill; Not to Vote.

Reworded:
See Article III, Section 10(c), The Legislature.

Sec. 23
Removal From District or County From Which Elected.

Revised:
See Article X, Section 2, General Provisions.

Sec. 23a
John Tarleton Contract Validated.

Statutory.

Sec. 24
Compensation and Expenses of Members of Legislature.

Revised:
See Article III, Section 6, The Legislature.

Sec. 25
Senatorial Districts.

Revised:
See Article III, Section 5(b), (c), and (d), The Legislature.

Sec. 26
Apportionment of Members of House of Representatives.

Revised:
See Article III, Section 5(b), (c), and (d), The Legislature.

Sec. 26a
Counties With More Than Seven Representatives.

Deleted.

Sec. 27
Elections.

Reworded:
See Article III, Section 4(a), The Legislature.

Sec. 28
Time For Apportionment; Apportionment by Legislative Redistricting Board.

Revised:
See Article III, Section 5(a), (e), (f), (g), and (h), The Legislature.

Sec. 29
Enacting Clause of Laws.

Statutory.

Sec. 30
Laws Passed by Bill; Amendments Changing Purpose.

Reworded:
See Article III, Section 11(a) and (b), The Legislature.

Sec. 31
Origination in Either House; Amendment.

Reworded:
See Article III, Section 11(b), The Legislature.

Sec. 32
Reading on Three Several Days; Suspension of Rule.

Reworded:
See Article III, Section 11(f), The Legislature.

Sec. 33
Revenue Bills.

Revised:
See Article III, Section 11(b), The Legislature.

Sec. 34
Defeated Bills and Resolutions.

Reworded:
See Article III, Section 11(g), The Legislature.

Sec. 35
Subjects and Titles of Bills.

Revised:
See Article III, Section 11(c), The Legislature.

Sec. 36
Revival or Amendment by Reference; Reenactment and Publication at Length.

Reworded:
See Article III, Section 11(d), The Legislature.

Sec. 37
Reference to Committee and Report.

Revised:
See Article III, Section 11(e), The Legislature.

Sec. 38
Signing Bills and Joint Resolutions; Entry on Journals.

Reworded:
See Article III, Section 11(h), The Legislature.

Sec. 39
Time of Taking Effect of Laws; Emergencies; Entry on Journal.

Revised:
See Article III, Section 11(i), The Legislature.

Sec. 40
Special Sessions; Subjects of Legislation; Duration.

Revised:
See Article IV, Section 11, The Executive.

Sec. 41
Elections by Senate and House of Representatives.

Revised:
See Article III, Section 8(e), The Legislature.

Sec. 42
Laws Carrying Provisions of Constitution Into Effect.

Repealed August 5, 1969.

Sec. 43
Revision of Laws.

Statutory.

Sec. 44
Compensation of Public Officers, Servants, Agents and Contractors; Extra Compensation; Unauthorized Claims; Unauthorized Employment.

Revised:
See Article VIII, Section 7, Finance.

Sec. 45
Change of Venue in Civil and Criminal Cases.

Statutory.

Sec. 46
Vagrant Laws.

Repealed August 5, 1969.

Sec. 47
Lotteries and Gift Enterprises.

Revised:
See Article X, Section 19, General Provisions.

Sec. 48
Taxes; Restrictions on Levy; Permissible Purposes.

Repealed August 5, 1969.

Sec. 48a
Fund For Retirement, Disability and Death Benefits for Employees of Public Schools, Colleges and Universities.

Revised:
See Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Sec. 48b
Teacher Retirement System of Texas.

Revised:
See Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Sec. 48d
Rural Fire Prevention Districts.

Statutory:
See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 49
State Debt.

Revised:
See Article VIII, Section 5, Finance.

Sec. 49a
Financial Statement and Estimate by Comptroller of Public Accounts; Limitation of Appropriations; Bonds.

Reworded:
See Article VIII, Section 6(c) and (d), Finance.

Sec. 49b
Veterans' Land Program.

Statutory:
See Transition Schedule, Sections 3 and 16.

Sec. 49c
Texas Water Development Board; Bond Issue; Texas Water Development Fund.

Statutory:
See Transition Schedule, Sections 3 and 16.

Sec. 49d
Acquisition and Development of Water Storage Facilities; Filtration, Treatment and Transportation of Water; Enlargement of Reservoirs.

Statutory:
See Transition Schedule, Sections 3 and 16.

Sec. 49d-1
Additional Texas Water Development Bonds.

Statutory:
See Transition Schedule, Sections 3 and 16.

Sec. 49e
Texas Park Development Fund.

Statutory:
See Transition Schedule, Section 3.

Sec. 50
Loan or Pledge of Credit of State.

Revised:
See Article VIII, Section 7, Finance.

Sec. 50a
State Medical Education Board; State Medical Education Fund; Purpose.

Statutory.

Sec. 50b
Student Loans.

Statutory:
See Transition Schedule, Section 3.

Sec. 50b-1
Additional Student Loans.

Statutory:
See Transition Schedule, Section 3.

Sec. 51
Grants of Public Money Prohibited; Exceptions.

Revised:
See Article VIII, Section 7, Finance.

Sec. 51a
Assistance Grants and Medical Care for Needy Aged, Disabled and Blind Persons, and Needy Children; Federal Funds; Supplemental Appropriations.

Statutory.

Sec. 51b
State Building Commission; State Building Fund.

Statutory.

Sec. 51c
Aid or Compensation to Persons Improperly Fined or Imprisoned.

Statutory.

Sec. 51d
Payment of Assistance to Survivors of Law Enforcement Officers.

Statutory.

Sec. 51e
Municipal Retirement Systems and Disability Pensions.

Statutory:
See Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Sec. 51f
State-Wide Retirement and Disability System for Municipal Officers and Employees.

Statutory:
See Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Sec. 51g
Social Security Coverage of Proprietary Employees of Political Subdivisions.

Statutory.

Sec. 52
Counties, Cities or other Political Corporations or Subdivisions; Lending Credit; Grants.

Revised:
See Article VIII, Section 7, Finance; Transition Schedule, Section 4.

Sec. 52a
Vacant.

Sec. 52b
Loan of State's Credit or Grant of Public Money for Toll Road Purposes.

Revised:
See Article VIII, Section 7, Finance.

Sec. 52c
Vacant.

Sec. 52d
County or Road District Tax for Road Purposes.

Statutory:
See Transition Schedule, Section 4.

Sec. 52e
Payment of Medical Expenses of Law Enforcement Officials.

Statutory:
See Transition Schedule, Section 4.

Sec. 52e
Dallas County Bond Issues for Roads and Turnpikes.

Statutory:
See Transition Schedule, Section 4.

Sec. 53
County or Municipal Authorities; Extra Compensation; Unauthorized Claims.

Deleted.

Sec. 54
Liens on Railroad, Release, Alienation or Change.

Deleted.

Sec. 55
Release or Extinguishment of Indebtedness to State, County, Subdivision or Municipal Corporation.

Statutory.

Sec. 56
Local and Special Laws.

Revised:
See Article III, Section 12, The Legislature.

Sec. 57 *Notice of Intention to Apply for Local or Special Law.*	**Statutory.**
Sec. 58 *Seat of Government.*	**Reworded:** See Article III, Section 7(d), The Legislature.
Sec. 59 *Workmen's Compensation Insurance for State Employees.*	**Statutory.**
Sec. 60 *Workmen's Compensation Insurance for Employees of Counties and Other Political Subdivisions.*	**Statutory.**
Sec. 61 *Workmen's Compensation Insurance for Municipal Employees.*	**Statutory.**
Sec. 61 *Minimum Salaries.*	**Deleted.**
Sec. 62 *Continuity of State and Local Governmental Operations.*	**Deleted.**
Sec. 63 *Consolidation of Governmental Functions of Political Subdivisions in Counties of 1,200,000 or More.*	**Deleted.**
Sec. 64 *Consolidation of Governmental Offices and Functions.*	**Revised:** See Article IX, Section 12, Local Government.
Sec. 65 *Public Bonds; Interest Rate; Conflicting Rates Repealed.*	**Statutory:** See Transition Schedule, Section 3.

Article IV
The Executive

Sec. 1 *Officers Constituting the Executive Department.*	**Revised:** See Article IV, Section 1, The Executive.
Sec. 2 *Election of Officers of Executive Department.*	**Revised:** See Article IV, Section 2, The Executive.
Sec. 3 *Returns of Election; Declaration of Election; Tie Votes; Contests.*	**Revised:** See Article IV, Section 3, The Executive
Sec. 3a *Death, Disability or Failure to Qualify of Person Receiving Highest Vote.*	**Revised:** See Article IV, Section 5, The Executive.

Sec. 4
Installation of Governor; Term; Eligibility.

Revised:
See Article IV, Section 4, The Executive.

Sec. 5
Compensation of Governor.

Revised:
See Article IV, Section 7, The Executive.

Sec. 6
Holding Other Offices; Practice of Profession; Other Salary Reward or Compensation.

Revised:
See Article IV, Section 8, The Executive.

Sec. 7
Commander-in-Chief Military Forces; Calling Forth Militia.

Revised:
See Article IV, Section 9, The Executive.

Sec. 8
Convening Legislature on Extraordinary Occasions.

Revised:
See Article IV, Section 11, The Executive.

Sec. 9
Governor's Message and Recommendations; Accounting for Public Money; Estimates of Money Required.

Revised:
See Article IV, Sections 12, 14, 15, and 17, The Executive.

Sec. 10
Execution of Laws; Conduct of Business With Other States and United States.

Revised:
See Article IV, Section 10, The Executive.

Sec. 11
Reprieves, Commutations and Pardons; Remission of Fines and Forfeitures.

Revised:
See Article IV, Section 18, The Executive.

Sec. 11a
Suspension of Sentence and Probation.

Reworded:
See Article V, Section 15, The Judiciary.

Sec. 12
Vacancies in State or District Offices.

Revised:
See Article IV, Section 24, The Executive.

Sec. 13
Residence of Governor.

Revised:
See Article IV, Section 2, The Executive.

Sec. 14
Approval or Disapproval of Bills; Return and Reconsideration; Failure to Return; Disapproval of Items of Appropriation.

Revised:
See Article IV, Section 13, The Executive.

Sec. 15
Approval or Disapproval of Orders, Resolutions or Votes.

Revised:
See Article IV, Section 13, The Executive.

Sec. 16
Lieutenant Governor.

Revised:
See Article IV, Sections 2, 5, and 19, The Executive

Sec. 17
Death, Resignation, Refusal to Serve, Removal, Inability to Serve, Impeachment or Absence; Compensation.

Revised:
See Article IV, Sections 5 and 7, The Executive.

Sec. 18
Restrictions and Inhibitions.

Deleted.

Sec. 19
Seal of State.

Reworded:
See Article IV, Section 26, The Executive.

Sec. 20
Commissions.

Reworded:
See Article IV, Section 26, The Executive.

Sec. 21
Secretary of State.

Revised:
See Article IV, Sections 2, 7, and 20, The Executive.

Sec. 22
Attorney General.

Revised:
See Article IV, Sections 2, 7, and 21, The Executive.

Sec. 23
Comptroller of Public Accounts; Treasurer; Commissioner of General Land Office; Fees, Costs and Perquisites.

Revised:
See Article IV, Sections 1, 2, 7, 22, and 23, The Executive.

Sec. 24
Accounts and Reports; Information To, and Inspection By, Governor; Perjury.

Revised:
See Article IV, Section 14, The Executive.

Sec. 25
Custodians of Public Funds; Breaches of Trust and Duty.

Revised:
See Article X, Sections 6 and 7, General Provisions.

Sec. 26
Notaries Public.

Statutory.

Article V
The Judiciary

Sec. 1
Judicial Power; Courts in Which Vested.

Revised:
See Article V, Section 1, The Judiciary.

Sec. 1a
Retirement, Censure, and Removal of Justices and Judges; State Judicial Qualifications Commission.

Revised:
See Article V, Sections 10 and 11, The Judiciary; Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Sec. 2
Supreme Court; Justices; Sections; Eligibility; Election; Vacancies.

Revised:
See Article V, Sections 2(a), 7, 8(d), and 9, The Judiciary.

Sec. 3
Jurisdiction of Supreme Court; Writs; Sessions; Clerk.

Reworded:
See Article V, Section 13(a), The Judiciary.

Sec. 3a
Sessions of Court.

Statutory.

Sec. 4
Court of Criminal Appeals; Judges.

Deleted:
See Transition Schedule, Section 19.

Sec. 5
Jurisdiction of Court of Criminal Appeals; Terms of Court; Clerk.

Deleted:
See Transition Schedule, Section 19.

Sec. 6
Courts of Civil Appeals; Transfer of Cases; Terms of Judges.

Revised:
See Article V, Sections 3, 7, 8(d), and 9, The Judiciary.
Reworded:
See Article V, Section 13(a), The Judiciary.

Sec. 7
Judicial Districts; District Judges; Terms or Sessions; Absence, Disability or Disqualification of Judge.

Revised:
See Article V, Sections 4, 7, 8(f), and 9, The Judiciary.

Sec. 8
Jurisdiction of District Court.

Statutory:
See Transition Schedule, Section 19.

Sec. 9
Clerk of District Court.

Revised:
See Article IX, Section 3(b). Local Government.

Sec. 10
Trial by Jury.

Revised:
See Article V, Section 14(e), The Judiciary.

Sec. 11
Disqualification of Judges; Exchange of Districts; Holding Court for Other Judges.

Statutory.

Sec. 12
Judges to be Conservators of the Peace; Style of Writs and Process; Prosecutions in Name of State; Conclusion.

Statutory.

Sec. 13
Number of Grand and Petit Jurors; Number Concurring.

Revised:
See Article V, Section 14(a) and (b), The Judiciary.

Sec. 14
Judicial Districts and Time of Holding Court Fixed by Ordinance.

Deleted.

Sec. 15
County Court; County Judge.

Revised:
See Article V, Sections 5, 7, 8(f), and 9, The Judiciary.

Sec. 16
County Courts; Jurisdiction; Appeals to Court of Civil Appeals and Court of Criminal Appeals; Disqualification of Judge.

Statutory:
See Transition Schedule, Section 19.

Sec. 17
Terms of County Court; Prosecutions; Juries.

Revised:
See Article V, Section 14(c), The Judiciary.

Sec. 18
Division of Counties into Precincts; Election of Constable and Justice of the Peace; County Commissioners and County Commissioners Court.

Revised:
See Article V, Sections 6 and 8(g), The Judiciary; Article IX, Section 3(a), Local Government

Sec. 19
Justices of the Peace; Jurisdiction; Appeals; Ex Officio Notaries Public; Times and Places of Holding Court.

Statutory:
See Transition Schedule, Section 19.

Sec. 20
County Clerk.

Revised:
See Article IX, Section 3(b), Local Government.

Sec. 21
County Attorneys; District Attorneys.

Revised:
See Article IX, Section 3(c), Local Government.

Sec. 22
Changing Jurisdiction of County Courts.

Statutory.

Sec. 23
Sheriffs.

Revised:
See Article IX, Section 3(b), Local Government.

Sec. 24
Removal of County Officers.

Reworded:
See Article V, Section 13(ι), The Judiciary.
Revised:
See Article IX, Section 3(e), Local Government.

Sec. 25
Rules of Court.

Revised:
See Article V, Section 2(c), The Judiciary.

Sec. 26
Criminal Cases; No Appeal by State

Retained:
See Article V, Section 16, The Judiciary.

Sec. 27
Transfer of Cases Pending at Adoption of Constitution.

Deleted.

Sec. 28
Vacancies in Judicial Offices.

Revised:
See Article V, Section 8(d), (f), and (g), The Judiciary.

Sec. 29
County Court; Terms of Court; Probate Business; Commencement of Prosecutions; Jury.

Statutory.

Sec. 30
Judges of Courts of County-Wide Jurisdiction; Criminal District Attorneys.

Statutory.

Article VI
Suffrage

Sec. 1
Classes of Persons Not Allowed to Vote.

Revised:
See Article VI, Section 1, Suffrage.

Sec. 2
Qualified Elector; Registration; Absentee Voting.

Revised:
See Article VI, Sections 1 and 2, Suffrage.

Sec. 2a
Voting for Presidential and Vice-Presidential Electors and Statewide Officers; Qualified Persons Except for Residence Requirements.

Revised:
See Article VI, Sections 1 and 2, Suffrage.

Sec. 3 ***Municipal Elections; Qualifications of Voters.***	**Revised:** **See Article VI, Sections 1 and 2, Suffrage.**
Sec. 3a ***Bond Issues; Loans of Credit; Expenditures; Assumption of Debts; Qualifications of Voters.***	**Statutory.**
Sec. 4 ***Election by Ballot; Numbering, Fraud and Purity of Elections; Registration of Voters.***	**Revised:** **See Article VI, Sections 1 and 2, Suffrage.**
Sec. 5 ***Privilege of Voters from Arrest.***	**Statutory.**

Article VII
Education

Sec. 1 *Support and Maintenance of System of Public Free Schools.*	**Revised:** See Article VII, Section 1, Education.
Sec. 2 *Perpetual School Fund.*	**Reworded:** See Article VII, Section 2, Education.
Sec. 3 *Taxes for Benefit of Schools; School Districts.*	**Revised:** See Article VII, Section 2, Education. **Reworded:** See Article VII, Sections 4 and 6, Education.
Sec. 3a *Validation; Formation of Districts; Bonds; Levy of Tax Authorized; Election of Trustees.*	Repealed August 5, 1969.
Sec. 3b *Independent School Districts and Junior College Districts; Taxes and Bonds; Changes in Boundaries.*	**Statutory:** See Transition Schedule, Sections 3 and 8.
Sec. 4 *Sale of Lands; Investment of Proceeds.*	**Reworded:** See Article VII, Section 2, Education.
Sec. 5 *Permanent School Fund; Available School Fund; Use of Funds, Distribution of Available School Fund.*	**Reworded:** See Article VII, Section 2, Education. **Revised:** See Article VII, Section 3, Education.
Sec. 6 *County School Lands; Proceeds of Sales; Investment; Available School Fund.*	**Statutory.**
Sec. 6a *County Agricultural or Grazing School Land Subject to Tax.*	**Statutory.**
Sec. 6b *Additional Grant of Power to County.*	**Statutory:** See Transition Schedule, Section 4.

Sec. 7
Separate Schools.

Repealed August 5, 1969.

Sec. 8
State Board of Education.

Revised:
See Article VII, Section 5, Education.

Sec. 9
Lands for Benefit of Asylums; Permanent Fund; Sale and Investment of Proceeds.

Statutory.

Sec. 10
Establishment of University; Agricultural and Mechanical Department.

Revised:
See Article VII, Section 7, Education.

Sec. 11
Permanent University Fund; Investment; Alternate Sections of Railroad Grant.

Revised:
See Article VII, Section 8(a) and (c), Education.

Sec. 11a
Investment of Permanent University Fund.

Revised:
See Article VII, Section 8(c) and (d), Education.

Sec. 12
Sale of Lands.

Reworded:
See Article VII, Section 8(b), Education.

Sec. 13
Agricultural and Mechanical College.

Revised:
See Article VII, Section 7, Education.

Sec. 14
College or Branch University for Colored Youths; Taxes and Appropriations.

Revised:
See Article VII, Section 9(c), Education.

Sec. 15
Grant of Additional Lands to University.

Reworded:
See Article VII, Section 8(a), Education.

Sec. 16
Terms of Office.

Statutory.

Sec. 16
County Taxation of University Lands.

Revised:
See Article VIII, Section 2, Finance.

Sec. 17
State Ad Valorem Tax for Pensions and for Permanent Improvements at Institutions of Higher Learning.

Revised:
See Article VII, Section 10, Education.

Sec. 18
Texas A&M University System; University of Texas System; Bonds or Notes Payable From Income of Permanent University Fund.

Revised:
See Article VII, Section 9, Education.

Article VIII
Finance

Sec. 1
Equality and Uniformity; Tax in Proportion to Value; Poll Tax; Occupation Taxes; Income Tax; Exemption of Household Furniture.

Revised:
See Article VIII, Sections 1, 2(b), and 4, Finance.

Sec. 1a
No State Ad Valorem Tax Levy; County Levy for Roads and Flood Control; Tax Donations.

Statutory.

Sec. 1b
Residence Homestead Exemption.

Revised:
See Article VIII, Section 2(b) and (d), Finance.

Sec. 1c
Effectiveness of Resolution.

Deleted.

Sec. 1d
Assessment of Lands Designated for Agricultural Use.

Statutory:
See Transition Schedule, Section 7.

Sec. 1e
Abolition of Ad Valorem Property Tax.

Revised:
See Article VIII, Section 1, Finance.

Sec. 2
Occupation Taxes, Equality and Uniformity; Exemptions from Taxation.

Revised:
See Article VIII, Sections 1 and 2(c) and (f), Finance.

Sec. 3
General Laws; Public Purposes.

Revised:
See Article VIII, Sections 1 and 7, Finance.

Sec. 4
Surrender Suspension of Taxing Power.

Revised:
See Article VIII, Section 1, Finance.

Sec. 5
Railroad Property; Liability to Municipal Taxation.

Statutory.

Sec. 6
Withdrawal of Money from Treasury; Duration of Appropriation.

Reworded:
See Article VIII, Section 6(a) and (b), Finance.

Sec. 7
Borrowing, Withholding or Diverting Special Funds.

Statutory.

Sec. 7a
Revenues From Motor Vehicle Registration Fees and Taxes on Motor Fuels and Lubricants; Purposes for Which Used.

Revised:
See Article VIII, Section 3, Finance.
Reworded:
See Article VII, Section 4, Education.

Sec. 8
Railroad Companies; Assessment and Collection of Taxes.

Statutory.

Sec. 9
Maximum State Tax; County, City and Town Levies; County Funds; Local Road Laws.

Statutory:
See Transition Schedule, Section 6.

Sec. 10
Release from Payment of Taxes.

Statutory.

Sec. 11
Place of Assessment; Value of Property Not Rendered by Owner.

Statutory.

Sec. 12
Unorganized Counties; Assessment and Collection of Taxes.

Repealed August 5, 1969.

Sec. 13
Sales of Lands and Other Property for Ta.es; Redemption.

Statutory.

Sec. 14
Assessor and Collector of Taxes.

Revised:
See Article IX, Section 3(b), Local Government.

Sec. 15
Lien of Assessment; Seizure and Sale of Property.

Statutory.

Sec. 16
Sheriff to Be Assessor and Collector of Taxes; Counties Having 10,000 or More Inhabitants.

Deleted.

Sec. 16a
Assessor-Collector of Taxes; Counties Having Less Than 10,000 Inhabitants.

Deleted.

Sec. 17
Specification of Subjects Not Limitation of Legislature's Power.

Deleted.

Sec. 18
Equalization of Valuations; Classification of Lands.

Statutory.

Sec. 19
Farm Products and Family Supplies; Exemption.

Revised:
See Article VIII, Section 2(a), Finance.

Sec. 20
Fair Cash Market Value Not to Be Exceeded; Discounts for Advance Payment.

Statutory.

Article IX
Counties

Sec. 1
Creation of Counties.

Revised:
See Article IX, Section 1, Local Government.

Sec. 1a
Counties Bordering on Gulf of Mexico or Tidewater Limits Thereof; Regulation of Motor Vehicles on Beaches

Statutory.

Sec. 2
Removal of County Seats.

Revised:
See Article IX, Section 1, Local Government.

Sec. 3
County Home Rule Charters.

Repealed August 5, 1969.

Sec. 4
County-Wide Hospital Districts.

Statutory:
See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 5
City of Amarillo; Wichita County; Jefferson County; Creation of Hospital Districts.

Statutory:
See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 6
Lamar County Hospital District; Abolition; Transfer of Assets.

Statutory.

Sec. 7
Hidalgo County; Hospital District; Creation; Tax Rate.

Statutory:
See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 8
County Commissioners Precinct No. 4 of Comanche County; Hospital District; Creation; Tax Rate.

Statutory:
See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 9
Hospital Districts; Creation, Operation, Powers, Duties and Dissolution.

Statutory:
See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 10

Vacant.

Sec. 11
Hospital Districts; Ochiltree, Castro, Hansford and Hopkins Counties; Creation, Taxes.

Statutory:
See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 12
Airport Authorities.

Statutory:
See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 13
Participation of Municipalities and Other Political Subdivisions in Establishment of Mental Health, Mental Retardation or Public Health Services.

Statutory.

Article X
Railroads

Sec. 1
Construction and Operation of Road; Connnections.

Repealed August 5, 1969.

Sec. 2
Public Highways; Common Carriers; Regulation of Tariffs, Correction of Abuses and Prevention of Discrimination and Extortion; Means and Agencies.

Statutory.

Sec. 3 through 9

Repealed August 5, 1969.

Article XI
Municipal Corporations

Sec. 1
Counties as Legal Subdivisions

Revised:
See Article IX, Section 1, Local Government.

Sec. 2
Jails, Court-Houses, Bridges and Roads.

Statutory.

Sec. 3
Subscriptions to Corporate Capital; Donations; Loan of Credit.

Revised:
See Article VIII, Section 7, Finance.

Sec. 4
Cities and Towns With Population of 5,000 or Less; Chartered by General Law; Taxes; Fines, Forfeitures and Penalties.

Revised:
See Article IX, Section 5, Local Government.

Sec. 5
Cities of 5,000 or More Population; Adoption or Amendment of Charters; Taxes; Debt Restrictions.

Revised:
See Article IX, Section 6, Local Government.

Sec. 6
Taxes to Pay Interest and Create Sinking Fund to Satisfy Indebtedness.

Deleted.

Sec. 7
Counties and Cities on Gulf of Mexico; Tax for Sea Walls, Breakwaters and Sanitation; Bonds; Condemnation of Right of Way.

Statutory.

Sec. 8
Donation of Portion of Public Domain to Aid in Construction of Sea Walls or Breakwaters.

Statutory.

Sec. 9
Property Exempt from Forced Sale and from Taxation.

Revised:
See Article VIII, Section 2(a), Finance.

Sec. 10
City or Town as Independent School District; Maintenance of Institution of Learning.

Repealed August 5, 1969.

Sec. 11
Maximum Four Year Terms of Office For Elective and Appointive City Officials Authorized.

Statutory:
See Transition Schedule, Section 13.

Article XII
Private Corporations

Sec. 1
Creation by General Laws.

Retained:
See Article X, Section 15, General Provisions.

Sec. 2
General Laws to be Enacted; Protection of Public and Stockholders.

Statutory.

Sec. 3, 4, 5, 7

Repealed August 5, 1969.

Sec. 6
Consideration for Stock or Bonds; Fictitious Increase.

Statutory.

Article XIII
Spanish & Mexican Land Titles

Repealed August 5, 1969.

Article XIV
Public Lands and Land Office

Sec. 1
General Land Office.

Revised:
See Article IV, Section 23, The Executive.

Sec. 2 through 8

Repealed August 5, 1969.

Article XV
Impeachment

Sec. 1
Power of Impeachment.

Revised:
See Article III, Section 13(a), The Legislature.

Sec. 2
Trial of Impeachment of Certain Officials by Senate.

Revised:
See Article III, Section 13(a), The Legislature.

Sec. 3
Oath of Affirmation of Senators; Concurrence of Two-Thirds Required.

Revised:
See Article III, Section 13(c), The Legislature.

Sec. 4
Judgment; Indictment, Trial and Punishment.

Reworded:
See Article III, Section 13(d), The Legislature.

Sec. 5
Suspension Pending Impeachment; Provisional Appointments.

Reworded:
See Article III, Section 13(b), The Legislature.

Sec. 6
Judges of District Court; Removal by Supreme Court.

Revised:
See Article V, Section 11(b), The Judiciary.

Sec. 7
Removal of Officers When Mode Not Provided in Constitution.

Revised:
See Article X Sections 6 and 7, General Provisions.

Sec. 8
Removal of Judges by Governor on Address of Two-Thirds of Each House of Legislature.

Revised:
See Article V, Section 11(a), The Judiciary.

Article XVI
General Provisions

Sec. 1
Official Oath.

Revised:
See Article X, Section 1, General Provisior

Sec. 2
Exclusion from Office, Jury Service and Right of Service; Protection of Right of Service.

Revised:
See Article X, Sections 6 and 7, General Provisions.

Sec. 3
Fines and Costs; Discharge by Manual Labor.

Repealed August 5, 1969.

Sec. 4
Dueling.

Repealed August 5, 1969.

Sec. 5
Disqualification to Office by Giving or Offering Bribe.

Revised:
See Article X, Sections 6 and 7, General Provisions.

Sec. 6
Appropriations for Private Purposes; State Participation in Programs Financed With Private or Federal Funds for Rehabilitation of Blind, Crippled, Physically or Mentally Handicapped Persons.

Revised:
See Article VIII, Section 7, Finance.

Sec. 7
Issuance of Paper Intended to Circulate as Money.

Repealed August 5, 1969.

Sec. 8
County Poor House and Farm.

Statutory.

Sec. 9
Forfeiture of Residence by Absence on Public Business.

Reworded:
See Article X, Section 4, General Provisions.

Sec. 10
Deductions from Salary for Neglect of Duty.

Revised:
See Article X, Section 6.

Sec. 11
Usury; Rate of Interest in Absence of Contract.

Statutory.

Sec. 12
Members of Congress; Officers of United States or Foreign Power; Ineligibility to Hold Office.

Revised:
See Article III, Section 3(d), The Legislature; Transition Schedule, Section 17.

Sec. 13
Arbitration.

Repealed August 5, 1969.

Sec. 14
Civil Officers; Residence; Location of Offices.

Revised:
See Article X, Section 2, General Provisions.

Sec. 15
Separate and Community Property of Husband and Wife.

Revised:
See Article X, Section 11, General Provisions.

Sec. 16
Corporations with Banking and Discounting Privileges.

Revised:
See Article X, Section 16, General Provisions.

Sec. 17
Officers to Serve Until Successors Qualified.

Revised:
See Article X, Section 3, General Provisions.

Sec. 18 ***Existing Rights of Property and of Action; Rights or Actions Not Revived.***	**See Transition Schedule, Section 2.**
Sec. 19 *Qualifications of Jurors.*	**Reworded:** See Article V, Section 14(d), The Judiciary.
Sec. 20 *Mixed Alcoholic Beverages; Intoxicating Liquors.*	**Revised:** See Article X, Section 17, General Provisions.
Sec. 21 *Public Printing and Binding; Repairs and Furnishings; Contracts.*	**Statutory.**
Sec. 22 *Fence Laws.*	**Statutory.**
Sec. 23 *Regulation of Live Stock; Protection of Stock Raisers; Inspections; Brands.*	**Statutory.**
Sec. 24 *Roads and Bridges.*	**Statutory.**
Sec. 25 *Drawbacks and Rebatement to Carriers, Shippers, Merchants, Etc.*	**Statutory.**
Sec. 26 *Homicide; Liability in Damages.*	**Statutory.**
Sec. 27 *Vacancies Filled for Unexpired Term.*	**Reworded:** See Article X, Section 5, General Provisions.
Sec. 28 *Wages Not Subject to Garnishment.*	**Reworded:** See Article X, Section 14, General Provisions.
Sec. 29 *Barratry.*	Repealed August 5, 1969.
Sec. 30 *Duration of Offices; Railroad Commission.*	**Statutory.**
Sec. 30a *Members of Boards; Terms of Office.*	**Revised:** See Article IV, Section 25, The Executive.
Sec. 30b *Civil Service Offices; Duration.*	**Deleted.**
Sec. 31 *Practitioners of Medicine.*	**Retained:** See Article X, Section 18, General Provisions.
Sec. 32 *Board of Health and Vital Statistics.*	Repealed August 5, 1969.

Sec. 33
Salary or Compensation Payments to Agents, Officers or Appointees Holding Other Offices; Exceptions; Non-Elective Officers and Employees.

Statutory:
See Transition Schedule, Section 17.

Sec. 34
Leases and Sales to United States Government for Military Purposes.

Repealed August 5, 1969.

Sec. 35
Protection of Laborers on Public Buildings and Public Works.

Repealed August 5, 1969.

Sec. 36
Payment or Funding of Amounts Due Teachers.

Repealed August 5, 1969.

Sec. 37
Liens of Mechanics, Artisans and Material Men.

Reworded:
See Article X, Section 20, General Provisions.

Sec. 38
Commissioner of Insurance, Statistics and History.

Repealed August 5, 1969.

Sec. 39
Appropriations for Historical Memorials.

Statutory.

Sec. 40
Holding More than One Office; Exceptions; Right to Vote.

Statutory:
See Transition Schedule, Section 17.

Sec. 41
Bribery and Acceptance of Bribes.

Revised:
See Article X, Sections 6 and 7, General Provisions.

Sec. 42
nebriate Asylum.

Repealed August 5, 1969.

Sec. 43
Exemptions from Public Duty or Service.

Statutory.

Sec. 44
County Treasurer and County Surveyor.

Revised:
See Article IX, Section 3(b), Local Government.

Sec. 45
Historical Records, Rolls, Correspondence and Other Documents.

Repealed August 5, 1969.

Sec. 46
Militia.

Repealed August 5, 1969.

Sec. 47
Conscientious Scruples as to Bearing Arms.

Statutory.

Sec. 48
Existing Laws to Continue in Force.

See Transition Schedule, Section 2.

Sec. 49
Protection of Personal Property from Forced Sale.

Reworded:
See Article X, Section 13, General Provisions.

Sec. 50
*Homestead; Protection from Forced Sale; **Mortgages**, Trust Deeds and Liens.*

Revised:
See Article X, Section 12, General Provisions.

Sec. 51
Amount and Value of Homestead; Uses.

Revised:
See Article X, Section 12(b), **General Provisions.**

Sec. 52
Descent and Distribution of Homestead; Restrictions on Partition.

Revised:
See Article X, Section 12(c), General Provisions.

Sec. 53
Process and Writs Not Executed at Adoption of Constitution.

See Transition Schedule, Section 2.

Sec. 54
Indigent Lunatics, Custody and Maintenance.

Repealed August 5, 1969.

Sec. 55
Pensions to Soldiers and Volunteers; Signers of Declaration of Independence; Widows.

Repealed August 5, 1969.

Sec. 56
Appropriations for Development and Dissemination of Information Concerning Texas Resources.

Statutory.

Sec. 57
Public Lands for State Capitol and Public Buildings.

Repealed August 5, 1969.

Sec. 58
Prison System.

Repealed August 5, 1969.

Sec. 59
Conservation and Development of Natural Resources; Conservation and Reclamation Districts.

Statutory:
See Article X, Section 10, General Provisions; Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 60
Texas Centennial.

Repealed August 5, 1969.

Sec. 61
Compensation of District, County and Precinct Officers; Salary or Fee Basis; Disposition of Fees.

Revised:
See Article IX, Section 9, Local Government.

Sec. 62
State and County Retirement, Disability and Death Compensation Funds.

Revised:
See Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Sec. 63
Teachers and Employees Retirement Systems, Service Credit.

Revised:
See Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Sec. 64
Terms of Office, Certain Offices.

Statutory:
See Transition Schedule, Section 13.

Sec. 65
Transitior from Two-Year to Four-Year Terms of Office.

Statutory:
See Transition Schedule, Section 13.

Sec. 66
Texas Rangers; Retirement and Disability Pension System for Rangers Ineligible for Membership in Employees Retirement System.

Revised:
See Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Article XVII Mode of Amending The Constitution of the State

Sec. 1
Proposed Amendments; Submission to Voters; Adoption.

Revised:
See Article XI, Section 1, Mode of Amending the Constitution of the State.

Sec. 2
Constitutional Revision Commission; Establishment; Report; 1974 Constitutional Convention.

Deleted:
See Article XI, Section 2, Mode of Amending the Constitution of the State.

Appendix F

Tabular Summary of Attendance at Texas Constitutional Revision Commission Public Hearings

Public Hearing	*Date*	*Number Attending*	*Number Testifying*
Amarillo	April 25	334	52
Lubbock	April 26	199	40
El Paso	April 27	78	20
Midland	May 2	173	31
San Angelo	May 3	196	27
San Antonio	May 4	142	31
Arlington	May 11, 12	298	*93
Texarkana	May 16	56	15
Tyler	May 17	142	31
Lufkin	May 18	62	21
Houston	May 25, 26	292	*92
Corpus Christi	June 6	500	74
McAllen	June 7	150	26
Laredo	June 8	238	38
Beaumont	June 15, 16	200	*84
Abilene	June 21	185	34
Wichita Falls	June 22	125	30
Waco	June 28	236	35
Austin	June 29, 30	422	*97
Other Committee hearings			40
	Totals	4,028	911

Average number at each public hearing (excluding committee hearings) was 212
Average number testifying (excluding committee hearings) was 36
*Includes those testifying before committees.

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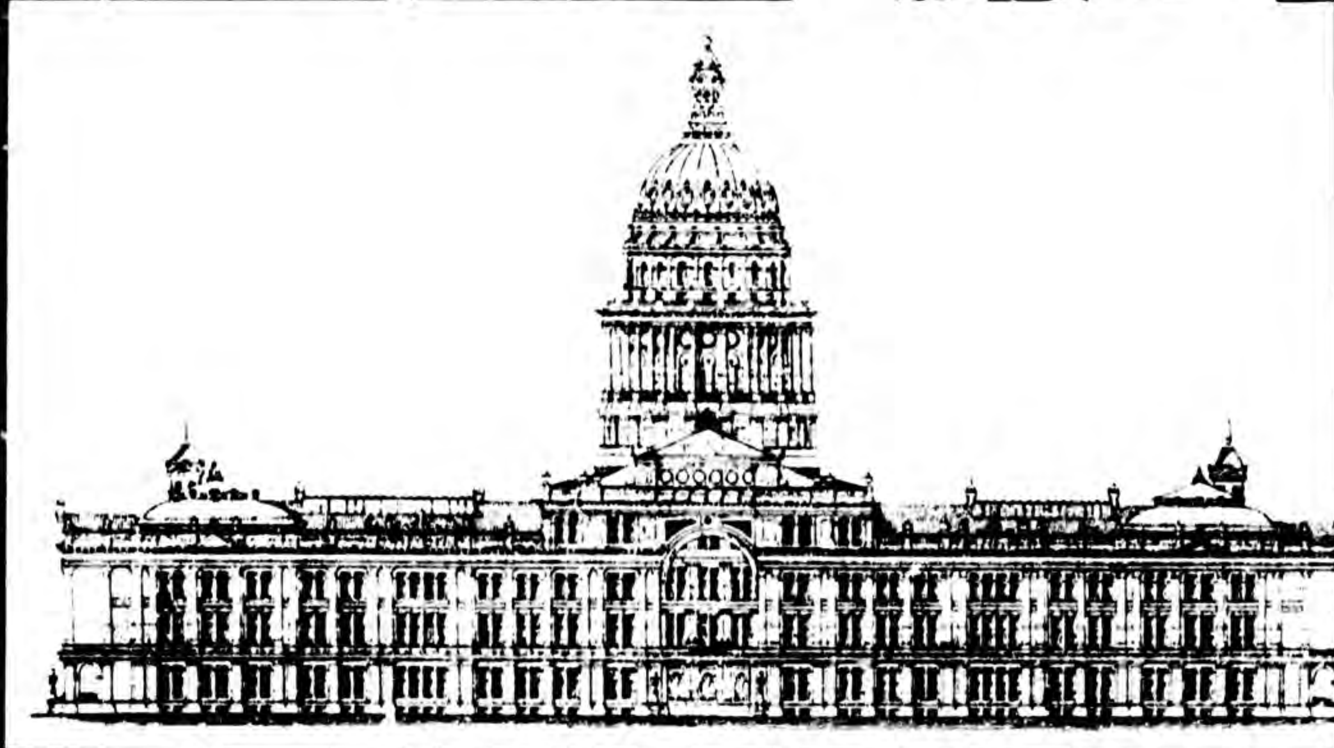

Public Hearing
TEXAS CONSTITUTIONAL
REVISION COMMISSION