HJR

4

HOUSE - ROLL CALL

_____ 19___

Subject HJR4

Effective date 6 year Gov Term

| | Yea | Nay | Absent |
|---|---|---|---|
| ANDERSON | | | |
| BEIRNE | | | |
| BRADLEY | | | |
| BRADNER | | | |
| BROWN | | | |
| BUCHHOLDT | | | |
| COTTEN | ✓ | | |
| COWPER | | | |
| DAVIS | | | |
| DUNCAN | | ? | |
| ELIASON | | | |
| FINK | | | |
| FISCHER | | | |
| FREEMAN | | | |
| GARDINER | ✓ | | |
| GRUENING | ✓ | | |
| GUY | | | |
| HACKNEY | | | |
| HAUGEN | | | |
| HERSHBERGER | | | |
| HUNTINGTON | | | |
| ITTA | | | |
| KELLEY | | | |
| MCKINNON | | | |
| MALONE | ✓ | | |
| MILLER | ✓ | | |
| NAUGHTON | ✓ | | |
| OSE | | | |
| OSTERBACK | | | |
| OSTROSKY | | | |
| PARKER | ✓ | | |
| PARR | | ? | |
| RHODE | | | |
| RUDD | | | |
| SMITH | ✓ | | |
| SPECKING | | | |
| SULLIVAN | | | |
| SWANSON | | | |
| URION | | | |
| WALLIS | | ? | |

YEAS _____

NAYS _____

ABSENT _____

EXCUSED _____

The _____ passed

The _____ did not pass

March 3, 1975

TO: Rep. Bill Parker

FROM: Terry Gardiner

SUBJECT: HJR 4

In case you hadn't heard, the House Judiciary Committee has moved out the Unicameral - HJR 1 - resolution with several amendments, with five "do pass" and one "do not pass, " (from Rep. Specking). Hopefully now you will take up my HJR requesting a six year term for the governor. Thank you for your very fine cooperation in this matter. Now is the time for all good show businessmen to act.

A M E N D M E N T S

TO: HOUSE JOINT RESOLUTION NO. 4 BY THE STATE AFFAIRS COMMITTEE

Page 1, line 20: after "intervened." insert:

"If a lieutenant governor succeeds to the office of governor under sec. 11 of this article and four or more years of the term of office of the governor whom he succeeded remain, the lieutenant governor may not succeed himself as governor until one full term has elapsed."

Page 1, after line 24, insert:

"Sec. 4. If the amendment proposed by this resolution is ratified by a majority of the qualified voters voting on the resolution, the following provision shall be ~~followed in~~ adhered to the transition from a four-year gubernatorial term of office to a six-year gubernatorial term: if the candidate elected governor at the 1978 general election is the incumbent in that office, he shall hold office only for two years; if the candidate elected in 1978 is not the incumbent in that office his term of office is six years."

Hammond 4pm

If a lieutenant governor succeeds to the office of governor under sec. 11 of this article and four or more years of the term of office of the governor whom he succeeded remain, the lieutenant governor may not succeed himself as governor until one full term has intervened.

Add amendment on Lt. Gov. from Mike Kelley

~~Lt Gov Legislature~~

State Admin is getting more complex

Cannot afford to have gov, com, and office running for election while in office

6 years would be sufficient time to launch program

only 2 yrs. less than present law

# *The 50 STATES* ☆☆☆☆☆ *and Their* ☆☆☆☆ *Local Governments*

*Karl A. Bosworth*
*James W. Fesler*
*Daylon D. McKean*
*Harvey C. Mansfield*
*Robert L. Morlan*
*Allan R. Richards*
*Victor G. Rosenblum*
*York Willbern*

Under the editorship of James W. Fesler
YALE UNIVERSITY

*Alfred·A·Knopf, Inc.*
NEW YORK

electoral constituency is the whole state, he has a claim to speak for the state's "general interest" in contrast to each legislator's identification with a much smaller constituency. Both of these factors give him a prominence that no legislator can match, while the dignity of the office and its range of concerns permit him to outshine any head of an administrative department, even if, like the governor, he is elected on a statewide basis.

TERM OF OFFICE. The states have been following what is generally regarded as a wholesome tendency to lengthen the governor's term to four years.[62] Thirty-nine of them had adopted this period as of 1966; the rest have two-year terms. Where his term is four years, the governor has an opportunity to develop his policy leadership out of his experience and to formulate ideas about how the administrative machinery can be improved. However, in 13 of the states with four-year terms, the constitutions forbid governors a second successive term [63] (and two states with two-year terms limit their governors to two successive terms, thereby also limiting tenure to four years). This contrasts with the national Constitution, whose Twenty-second Amendment permits the President to serve two four-year terms.[64]

So apparently prosaic and formal a matter as a constitutional barrier to reelection has in fact both theoretical and practical import. A good deal of theoretical writing about representative government assumes that those vested with large amounts of political power will normally be subject to the people's judgment of their stewardship at a subsequent election.[65] This assumption is supposed to have two consequences on the actual behavior of officeholders: (*a*) An incumbent will be more responsible, and more

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[62] *The wholesomeness of the trend from two- to four-year terms may be open to argument. Legislators are generally elected at two-year intervals. If at alternate elections there are no gubernatorial candidates to emphasize programs and to dramatize party differences, public interest may flag at these off-year elections and elected legislators may be less clearly bound to the governor's (or opposition party's) policies. Given the prevalently low degree of public interest in state government, some risk of greater discontinuity in the governorship may be a reasonable price to pay for increasing the meaningfulness of state elections.*

[63] *Most southern and border states have the one-term, four-year limit; of the total of 15 states with such a limit, only Indiana and Pennsylvania are in other regions.*

[64] *A person who acts as President or succeeds to the Presidency on the death or disability of the President may serve a maximum of six or ten years, depending upon whether he served more or less than two years of his predecessor's term. The first case under this provision of the Twenty-second Amendment was Lyndon B. Johnson, who may constitutionally serve two four-year terms in addition to his year and two months during President Kennedy's uncompleted term.*

[65] *For simplicity we state the assumption broadly. The earlier discussions of legislators' turnover and the remarks in this section about governors demonstrate that the assumption would need substantial rephrasing and qualification to be sound, even in the absence of formal obstacles to reelection.*

responsive to the people's needs and wishes, if he is constantly aware that his performance will be judged when he seeks reelection; and (*b*) his ability to win the support of other participants in policy making and politics during his term will be affected by their expectations as to whether he will or will not be likely to continue in office.

In the case of a key post such as the governorship there are further derivatives of these general consequences. A governor reasonably confident of long tenure in office is more likely to be interested in long-range development of the state; he can afford to take an interest in ten-year plans, in initiating projects whose benefits will not appear for several years (for example, highway or school construction programs), in planting seeds of policy ideas that will not grow to command popular and legislative majorities until several years of widespread discussion have passed. On the other hand, a governor whose vision is confined by a four-year limit on his period of service is likely to see his influence wane in the last year or two of his term; the ban on a second four years may thus reduce his period of practical power to two or three years. This is because he will already have dispensed most of the rewards at his disposal (patronage appointments, local projects, etc.) and so will have lost bargaining power with the men whose support he needs and who adapt their behavior to prospective rewards and deprivations.

Well before the governor's term ends, some key figures, even in his own party, will be emerging as his potential successors. Unless he has built up enough political strength to dictate who his party's nominee shall be or to make his endorsement a potentially critical factor, these prospective heirs (often in the legislature or the executive branch) will play their own game rather than his. Less prominent legislators, executive officials, and local party leaders will also tend to cultivate alliances useful in the future, rather than to follow the leadership of the "dying king." Some legislative measures may be postponed by the governor and his party if they see a likelihood that the opposition will win the next election (perhaps because the governor cannot be the party's candidate) and so can be made to bear the onus of passing unpopular but needed measures (tax increases, for example). Or the opposition party (which often controls one or both legislative houses) may postpone enactment of some measures if it anticipates winning the governorship and so wants to get credit for popular measures or wants to make patronage appointments under new and expanded programs.[66]

[66] *So far as the argument here depends on two-party competition, it identifies less the evils in states that now forbid a second term (since most such states are one-party*

This is of course no argument for granting lifetime tenure to governors. Nor does it assume that every governor, if there are not constitutional barriers to it, should or will seek renomination and reelection. The governorship for some is a stepping stone to nomination for the Presidency, appointment to the President's cabinet, or election to the United States Senate. And some governors must retire because of demonstrated unfitness in the post, or the emergence of abler and more attractive candidates in their own parties, or the opposition party's ability to win the electorate's preference. The basic position is that the governors who wish to seek reelection and can command sufficient party support to win renomination should not be barred from doing so. Most political scientists view the Twenty-second Amendment's limitation of the President to two four-year terms as an unwise provision. But one may leave open the question of the wisdom of some similar limitation on a governor's tenure[67] without weakening the case against the one-term, four-year limitation on such tenure.

CAREER PATTERNS. The governorship of a state is a position of high distinction, considerable power, and great responsibility. Among offices within the gift of the statewide electorate, its only rivals are the two United States senatorships. Though the relative prestige of the governorship varies among the states, over time, and with the personal qualities of the incumbent, it is often sufficient for its holder to play a national role concurrently with or subsequently to his governorship. He may do this as state party leader in a major national party (whose strength, as we have seen, lies in the state and local organizations), as head of the state's delegation to the national party convention, as a possible nominee for the Presidency or Vice Presidency, as an appointee to the President's cabinet or to an ambassadorship, or as a United States senator.[68] There is little doubt that many governors keep these possibilities in mind or that their performance as governors is affected by them. Most will prudently remain aware that their records during their gubernatorial service must be able to sustain searching scrutiny if their further ambitions are to be realized.

The paths to the governorship are varied, but some patterns can be

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*southern and border states) than the evils avoided by the two-party states that lack such a ban.*

[67] *Seven states set two successive four-year terms as the limit.*

[68] *Recent illustrations in the national appointive office field are the following former governors: Chief Justice Earl Warren (California); Secretary of the Interior Douglas McKay (Oregon); Secretary of Agriculture Orville L. Freeman (Minnesota); Secretary of Commerce Luther H. Hodges (North Carolina); Secretary of Health, Education, and Welfare Abraham Ribicoff (Connecticut); Under Secretary of State Averell Harriman (New York); Under Secretary of Commerce LeRoy Collins (Florida); Assistant Secretary of State G. Mennen Williams (Michigan); and U.S. Representative to the United Nations Adlai Stevenson (Illinois).*

# THE GOVERNOR:
# The Office and Its Powers

THE COUNCIL OF STATE GOVERNMENTS
Lexington, Kentucky

## Term of Office and Term Limitations

While Governors in the past were normally allowed short terms of office, there has been a strong recent trend toward the four-year term. Forty-two States in 1972 provided for four-year gubernatorial terms compared to 34 States in 1960 and 27 in 1950 (See Table II). During the last decade, Arizona, Massachusetts, Michigan, Minnesota, Nebraska, New Mexico, North Dakota and Wisconsin extended the gubernatorial term from two to four years. The people of Arkansas, Iowa, New Hampshire, South Dakota and Texas will vote on a four-year gubernatorial term during 1972; initial legislative action on a similar proposal has occurred in Vermont.

With the switch to four-year terms, more States have limited the maximum number of terms which a Governor may serve. Seventeen States which allow a maximum of two consecutive terms are listed below:

| | | |
|---|---|---|
| *Alabama* | *Maryland* | *Oklahoma* |
| *Alaska* | *Missouri* | *Oregon* |
| *Delaware* | *Nebraska* | *Pennsylvania* |
| *Florida* | *Nevada* | *South Dakota* |
| *Louisiana* | *New Jersey* | *West Virginia* |
| *Maine* | *Ohio* | |

Nine States which provide that the Governor cannot serve an immediate successive term are Georgia, Indiana, Kentucky, Mississippi, New Mexico, North Carolina, South Carolina, Tennessee and Virginia. Two States, Delaware and Missouri, have absolute two-term limitations. An amendment to the Indiana constitution permitting the same Governor to serve eight years in any 12 will be voted on at the 1972 general election.

# GOVERNMENT IN TENNESSEE

SECOND EDITION

Lee Seifert Greene
and
Robert Sterling Avery



THE UNIVERSITY OF TENNESSEE PRESS
KNOXVILLE

The governor (as a result of one of the 1953 amendments) is elected for a term of four years; he cannot succeed himself in office, although he may serve non-consecutive terms. What the length of the term should be is always debatable. Most states now use the four-year term. It is argued with considerable reason that the two-year term is too short. Political campaigns are expensive and arduous. The governor hardly has time to get his administration organized before he must run for re-election. Further, he has but one session of the legislature in which to obtain the program promised in his platform. The trend is in favor of the four-year term, and Tennessee has probably done well in adopting this practice.

Twenty-two states place some limitation on the number of consecutive terms which may be served by their governors. This is done on the theory that unless the terms are either limited or interrupted, the governor will be able to build a powerful machine and perpetuate himself in office. The argument is hard to follow. As long as the people have a voice in free periodic elections, their consent is essential to continuance in office. The limitation has the clearly bad effect of depriving the people of the services of a capable governor after he has served to the constitutional limit. Those who favor the limitation display a remarkable lack of faith in the democratic processes as well as a naïve belief in the utility of constitutional limitations in preserving freedom.

The governor is elected by the same voters who elect members of the legislature "on the first Tuesday after the first Monday in November" in alternate even-numbered years. The election takes place at the same time and places as the election of legislators. The election returns for the office of governor are sent to the speaker of the Senate. He opens and publishes them before a majority of each legislative house. A plurality vote elects. Tie votes (which are, of course, extremely unlikely) are broken by a joint vote of the two houses. Contested elections are also resolved by the two houses, but in any manner that they prescribe by law.

The session of the General Assembly begins on the first Monday in January following the election. The governor is inaugurated during this session and holds office thereafter for four years and until his successor is qualified. If a vacancy occurs in the office of governor, the powers and duties devolve on the speaker of the Senate, now called, by statute, lieutenant governor. Succession then follows to the speaker of the House of Representatives, the secretary of state, and the state comptroller.

## THE GOVERNOR AS CHIEF EXECUTIVE

Distinguishing between executive and administrative functions is a difficult task because the two are so closely related. All executives are administrators, but not all administrators are executives. The executive is the

# Modernizing State Constitutions 1966-1972


THE COUNCIL OF STATE GOVERNMENTS
Lexington, Kentucky

and provide more time for lawmaking. Persistent traditional popular distrust of legislators, however, was manifested in some States by rejections of proposals designed to achieve these ends.

### The Executive and Administration

Efforts to strengthen the gubernatorial office, reduce the number of elective officers, and streamline state administration along the same lines as had been advocated for decades continued during 1966–72. Provisions in all new and revised constitutions and amendments in no fewer than seven States further increased the number of States with four-year terms for the Governor. Limitation of the Governor to two successive terms, however, was provided by amendments in at least nine States during the seven-year period. The new Virginia constitution retains the prohibition against self-succession, and the proposed Delaware document contains a restriction to two consecutive terms for the Governor. Approximately one third of the States impose a two-term limit for the Chief Executive. The trend toward longer terms applies also to other state elective officials. Some amendments specify longer terms for all or for named elective officers of the State.

Procedural provisions for determining inability of the Governor to perform his functions are included in most new or revised constitutions. Amendments relating to this matter and further defining the line of succession to the governorship were adopted in at least half a dozen States. Of the States that created compensation commissions, at least two extended their mandate to state elective officers, including the Governor.

Expansion of the Governor's powers further enhanced the effectiveness of the executive office in some States. The trend in new and revised constitutions is to lengthen the period during which the Governor may act on legislative bills, both before and after adjournment of the lawmaking body; these documents all grant the item veto power on appropriation bills to the Governor. An important addition to the Governor's control over administration is the authority to propose reorganization of administrative agencies, subject to veto by the Legislature. Amendments extending or authorizing such power were approved in no fewer than five States.

Joint election of the Governor and Lieutenant Governor as a team, like the President and Vice President of the United States, is another significant development during the period of this analysis. Selection of the two top state elective officers as a team on the same ticket was approved by amendment in a fifth of the States during the 1966–72 period. Such provision is included in the new or revised constitutions of Florida, Hawaii, Illinois, Montana, and in the proposed Delaware document. Approximately a third of the States now provide this method of election.

# *The Government and Administration of* MISSISSIPPI

ROBERT B. HIGHSAW

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*Director of the Bureau of Public Administration*
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and

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AMERICAN COMMONWEALTHS SERIES
W. Brooke Graves, *Editor*

THOMAS Y. CROWELL COMPANY
New York

tions for the office have remained the same, with these exceptions, throughout Mississippi's history.

### Nomination and Election

Candidates for governor are nominated by direct primary, as are all other party candidates. A majority is necessary to nominate, a requirement that not uncommonly necessitates a second, or run-off, primary.

Mississippi's constitution provides that governors shall be elected in odd-numbered years on the first Tuesday after the first Monday in November every fourth year.* The effect of this timing of the general election is to prevent coincidence of state elections with the presidential elections and to make the gubernatorial contest an important and hard-fought race. The method of election, however, creates one important problem.

The division of the state into three districts is employed as a device in the election of the governor and other executive officers. The successful candidate must receive a majority of the popular vote and also of the electoral votes. The requirement provides that the candidate receiving in each county or district the highest number of votes shall receive as many electoral votes as the county or district is entitled to members in the house of representatives. If no candidate receives both a state-wide popular and electoral majority, the house selects one of the two highest candidates for the office.[7] By this requirement the basic law clearly is intended to safeguard white control of the office. Since the popular and electoral majorities have always coincided, the provision for electoral votes has never been of practical significance in the election process.

### Terms and Compensation

The governor's term of office is four years. Early constitutions specified a two-year term, and not until 1869 was the tenure lengthened.[8] The Constitution of 1890 included provision that the governor shall be ineligible to succeed himself immediately in office, a departure from the state's previous experience.

Compensation for the office is fixed by the legislature with the usual limitation that it may not be increased or diminished for any specific incumbent of the governorship. The governor currently receives a salary of $15,000 and the use of the executive mansion without rentals.

* Constitution of 1890, art. 5, sec. 140. Only two other states, Kentucky and Virginia, have made similar provisions.

### Vacancies and Removals

The governorship may be vacated temporarily or permanently in Mississippi by five methods: death, resignation, illness or other disability, temporary absence from the state, or impeachment.* The lieutenant governor succeeds to the office on the death of the governor. When the chief executive is absent from the state, the lieutenant governor also assumes the office and discharges its duties.† He is free to make important policy decisions and to exercise the powers of office just as the governor would.

If the lieutenant governor is incapable at the death or resignation of the chief executive, the president pro tempore of the senate succeeds to office, and following him the speaker of the house of representatives. When any doubt exists as to a vacancy in the governorship, the secretary of state is authorized to submit the question to the judges of the supreme court, whose opinion shall be in writing and is conclusive.[9]

The legislature possesses the customary impeachment power to remove the governor upon conviction of treason, bribery, or any high crime or misdemeanor. The house of representatives must bring the charges by a two-thirds vote, and the governor is tried by the senate with the chief justice of the supreme court presiding. A two-thirds concurrence is necessary for conviction. No governor has been removed by impeachment under the Constitution of 1890.[10]

## CONSTITUTIONAL POSITION

Article 5 of the Constitution of 1890 prescribes the powers of the governor as in the summary that follows:

Section 116. The chief executive power shall be vested in a governor.

Section 119. The governor shall be commander-in-chief of the military and naval forces of the State except when they are in the service of the United States.

Section 120. The governor may require written reports from officers of the executive departments.

Section 121. He may convene the legislature in extraordinary session.

Section 122. He shall report from time to time to the legislature on the state of the government and make recommendations for its improvement.

* There being no recall provided, this method of removal is not operative.

† Constitution of 1890, art. 5, sec. 131. Even though the governor be absent no more than a day, this provision applies.—*Montgomery* v *Cleveland*, 134 Miss. 132, 98 So. 111 (1923).

# INDEX DIGEST

of

# STATE CONSTITUTIONS

SECOND EDITION

LEGISLATIVE DRAFTING RESEARCH FUND

OF

COLUMBIA UNIVERSITY

GOVERNOR (Cont'd)
QUALIFICATIONS (Cont'd)
Dual Office Holding (Cont'd)
*United States Office* (Cont'd)

Person holding United States office at time of election ineligible. La V 3.

Member of Congress or person holding office or position of profit under United States not to be governor, and if governor or person administering office of governor shall accept any office or position of profit under United States, office of governor to be vacant. NJ V Sec I 3.

Person holding office of profit or trust under authority of Congress, other than commissioned or enlisted member of reserve components of United States armed forces while not on extended active duty, ineligible. Vt II 50.

Person holding office under United States not to exercise office of governor. Cal V 12.

Person holding office or place under United States not to exercise office of governor. Me V Pt I 5.

Member of Congress, or person holding office under authority of United States, not to exercise office of governor. Ark VI 11; Ohio III 14.

Person holding office under authority of United States not to exercise office of governor. Iowa IV 14.

*Office Outside State*

Person holding office under other power not to fill office of governor. Ore V 3.

Person holding office or place under any other power not to exercise office of governor. Mo V Pt I 5.

Not to hold office under other state or government. Ala V 130.

Not to hold place or office or receive pension or salary from any other state, government or power. NH II 93.

Not to hold place or office from any other state or government or power. Mass VI 2.

Not to hold office or other commission (except in militia) under authority of any other power. SC IV 3.

Electoral

Must be qualified elector to be eligible to office. Alas III 2; Conn IV 4; Fla IV 3; H IV 1; Nev V 3; ND III 73; SD IV 2; Wis V 2 ; Wyo IV 2.

Must be qualified elector at time of election. Md II 5; Utah VII 3.

Qualified state elector ten years next preceding election. Okla VI 3.

Engaging in Business

Not to practice profession and receive reward, fee or promise thereof, nor to receive salary, reward or compensation or promise thereof for service rendered while governor or to be thereafter rendered. Tex IV 6.

Failure to Qualify

*See below, this title,* SUCCESSION TO OFFICE.

Prior Service in Office

Ineligible as own successor. Ala V 116; Fla IV 2; La V 3; Miss V 116; Mo IV 17; Okla VI 4; Pa IV 3; SC IV 2; Tenn III 4; Va V 69.

Ineligible for four years after term for which elected. Ga V Sec I 1; Ky 71; W Va VII 4.

Not to be elected third time. Del III 5.

No person elected governor for two full successive terms again eligible until one full term intervenes. Alas III 5.

After two consecutive popular elective four year terms of office, governor ineligible to succeed self. Me V Pt I 2.

If served two consecutive popular elected terms as governor, ineligible to succeed self for term immediately following. Md II 1.

If elected for two successive terms, including an unexpired term, ineligible until third Tuesday in January of fourth year following expiration of second successive term. NJ V Sec I 5.

Ineligible to hold state office for two years after serving two consecutive terms. NM V 1.

Ineligible more than four in any period of eight years. Ind V 1.

Ineligible more than four in any period of eight years unless office cast on him as lieutenant-governor or president of senate. NC III 2.

Ineligible for period longer than two successive terms of four years. Ohio III 2, XVII 2.

Ineligible more than eight in any period of twelve years. Ore V 1.

Religious Test

No person eligible who denies existence of Supreme Being. SC IV 3.

Residence

Residence during term, *see below, this title,* RESIDENCE WHILE IN OFFICE.

In state, one year preceding election. Minn V 3.

In state, two years preceding election. Colo IV 4; Ida IV 3; Iowa IV 6; Mich VI 3; Mont VII 3; Nev V 3; NC III 2; SD IV 2.

In state, three years preceding election. Ore V 2.

ful execution of laws; by court action or proceeding brought in name of state, may enforce compliance with any constitutional or legislative mandate or restrain violation of any constitutional or legislative power, duty or right by any officer, department or agency of state; not to be construed as authorizing proceedings against legislative or judicial branches. NH II 41

¶ 7, insert after: Governor to supervise each principal executive department, unless constitution otherwise provides, Mich V 8; may make changes in organization of executive branch or in assignment of functions within its 20 prinicpal departments; where change requires the force of law, to be set forth in executive order and submitted to legislature which has 60 days to disapprove, after which the order becomes effective at date designated by governor. Mich V 2

**Powers and Duties—Membership on Boards**

**P 505 col 2**

¶ 3, insert after: Board of investment. Minn VIII 4

¶ 4, delete Ariz XI 3, NM XII 6

¶ 13, delete entry Ala XIV 266, and insert in lieu: Auburn University, ex officio president of board of trustees. Ala XIV 266 Am CLIXT

¶ 17, delete entry Cal XVI 3

¶ 25, add W Va VI 51B

**Qualifications—Age, Minimum**

**P 506 col 1**

¶ 8, delete Cal V 3

¶ 10, renumber Conn IV 4 to Conn IV 5, Mich VI 13 to Mich V 22

**P 506 col 2**

Part ¶ 1, delete NC III 2

¶ 2, add NC III 2

**Qualifications—Citizenship—In United States**

¶ 7 renumber Cal V 3 to Cal V 2

¶ 8, delete Mich VI 13

**Qualifications—Dual Office Holding—In General**

**P 507 col 1**

¶ 5, delete entry Mich VI 15

**Qualifications—Dual Office Holding—Office in This State**

¶ 6, delete entry Nebr IV 2

¶ 15, delete Cal V 12 and insert after: Not to hold other public office. Cal V 2

**P 507 col 2**

¶ 4, delete entry NH II 95 and insert in lieu: Judge, secretary of state, treasurer, attorney-general, military officers receiving pay from state (except militia officers called forth on emergency), register of deeds, sheriff, collector of state taxes, not to hold office of governor at same time; election or appointment to any of these offices and acceptance to operate as resignation of office of governor and vacancy to be filled. NH II 95

**Dual Office Holding—United States Office**

¶ 10, delete Mich VI 14

¶ 15 delete, entry NH II 95 and insert in lieu: Military officers receiving pay from United States, collectors of federal taxes, members of Congress, or persons holding United States office, not to hold office of governor; election or appointment to any of these offices and acceptance to operate as resignation of governorship and vacancy to be filled. NH II 95

**P 508 col 1**

¶ 4 delete entry Cal V 12

**Qualifications—Electoral**

¶ 14, renumber Conn IV 4 to Conn IV 5

¶ 16, insert after: Registered elector in state for four years next preceding his election. Mich V 22

**Qualifications—Prior Service in Office**

**P 508 col 2**

¶ 1, delete Mo IV 17, La V 3, Okla VI 4, Pa IV 3; add NC III 2

¶ 1 delete Ala V 116 and insert after: May not succeed himself for more than one additional term. Ala V 116

¶ 4, insert after: Eligible for two successive terms but not for term immediately following second successive term to which elected. La V 3

¶ 6 insert after: Not to be elected more than twice; no one having held the office, or acted as governor for more than two years of a term to which some other person was elected to the office may be elected to the office more than once. Mo IV 17

¶ 8 insert after: No person to be elected governor more than two times in succession. Okla VI 4

¶ 10, delete entry NC III 2

¶ 12, insert after: Ineligible for four years after two consecutive terms. Nebr IV 1

¶ 12, insert after: Eligible to succeed self for one additional term. Pa IV 3

**Qualifications—Residence**

¶ 15, delete Mich VI 3

Walker
Pol. Agencies

# CONSTITUTIONAL LIMITATIONS ON REËLIGIBILITY OF NATIONAL AND STATE CHIEF EXECUTIVES

JOSEPH E. KALLENBACH
*University of Michigan*

On March 1, 1951, the Administrator of General Services certified that the proposed presidential tenure amendment submitted to the states by Congress in 1947 had been ratified by thirty-six states, thus making it a part of the United States Constitution.[1] Adoption of this proposal, which becomes the Twenty-second Amendment to the United States Constitution, disposes of an issue that has agitated American politics periodically since the establishment of the Presidency. Hereafter no person will be eligible for a third term as President if he has served two full elective terms or one full elective term plus more than one-half of another term through succession to the office. President Truman, who would otherwise be rendered ineligible for reëlection following completion of his current term, is exempted from the ban by a qualifying clause which excludes from coverage "any person holding the office of President when this Article was proposed by the Congress."[2]

Hostility to long continuance in office, particularly for executive officers, has been a prominent feature of American political thinking since Revolutionary times. Seven of the original state constitutions, all of which were formulated prior to adoption of the federal Constitution, carried clauses limiting reeligibility of the state chief executive. These provisions reflected a widely-held belief that a rotation in executive office was essential to the preservation of liberty.[3] A sectional preference for the principle of limitation was noticeable;

[1] 16 Fed. Reg. 2019 (1951). Favorable action by the legislatures of Nevada and Utah on February 26 had brought the total of ratifying states to the constitutional three-fourths majority.

[2] The Amendment reads: "No person shall be elected to the office of President more than twice, and no person who has held the office of President, or acted as President for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.

"But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term."

[3] Article 31 of the Declaration of Rights in the Maryland constitution of 1776 endorsed the principle of rotation in the following language: "That a long continuance, in the first executive departments of power or trust, is dangerous to liberty; a rotation, therefore, in those departments, is one of the best securities of permanent freedom" (Francis Newton Thorpe, *The Federal and State Constitutions, Colonial Charters and Other Organic Laws of the States, Territories and Colonies*, Washington, 1909, Vol. 3, p. 1689).

In a similar vein Section 5 of the Bill of Rights of the Virginia constitution of 1776 declared: "that the [members of the legislative and executive branches of government] may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from

for it was found only in the constitutions of the group of states lying from Pennsylvania to the southward.[4] The method by which the governor was chosen was evidently a factor in the situation. Legislative selection was the mode of choice in all of the seven states where limitations on reëlection were imposed; while New Jersey was the only state employing this mode of selection without imposing also a tenure restriction. In the four New England states and New York, where the governor was chosen by popular election, there were no provisions barring reëlection. Prevention of intrigue and bargaining with the legislature by a governor intent upon securing his own continuance in office seems to have been a major objective of these early state constitutional restrictions on reëligibility. A survey of the record demonstrates that continuation of chief executives in office for term after term was by no means viewed everywhere as dangerous in Revolutionary times. In those states where tenure limitations were lacking, repeated reëlections of governors were common during the Revolutionary period and immediately after.[5]

These differences in attitudes and practices among the original states help to explain the vacillations of the framers of the federal Constitution on the question of reëligibility of the President. The issue was closely associated in their minds with the manner of his election and the length of term. If the President was to be chosen by Congress, it was generally conceded that a reëligibility limitation was necessary in order to avoid, as George Mason expressed it, "a temptation on the side of the Executive to intrigue with the Legislature for a re-appointment."[6] Consequently the advocates of this mode of selection tended

which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct" (*ibid.*, Vol. 7, p. 3813).

[4] Georgia's constitution of 1777 was the most restrictive in providing that no one should be eligible for the office of governor more than one year in any three-year period. As a further precaution the governor was obliged by his oath to relinquish his office "peaceably and quietly" at the end of his term. South Carolina's constitution of 1778 gave the governor a two-year term, but made him ineligible for more than one term in any six-year period. Delaware, with a three-year term for its "president," forbade an immediate reëlection. Virginia, Maryland, and Pennsylvania permitted no more than three one-year terms in any seven-year period; while North Carolina set a limit of three annual terms in any six-year period.

[5] New Jersey's first governor, William Livingston, was elected for fourteen consecutive annual terms, running from 1776 to 1790. George Clinton, the first governor of New York, was elected for six consecutive three-year terms running from 1777 to 1795. Jonathan Trumbull served as colonial and state governor in Connecticut by annual election from 1769 to 1786. John Hancock, the first governor of Massachusetts, served five consecutive annual terms from 1780 to 1785 and was returned to office in 1787 for six additional terms. William Greene, second governor of Rhode Island, served eight consecutive annual terms running from 1778 to 1786. Meshech Weare, "president" of New Hampshire under its temporary constitution, served nine consecutive annual terms extending from 1776 to 1785; while John T. Gilman, the sixth governor, was elected for eleven consecutive annual terms from 1794 to 1805.

[6] "Debates in the Federal Convention of 1787 as Reported by James Madison," in Charles C. Tansill (ed.), *Documents Illustrative of the Formation of the Union of the American States* (1927), p. 135.

to favor also the idea of a comparatively long term, since only in this way could continuity in the administration over a fairly long period of time be assured. Establishment of a term of six, seven, or eight years accordingly became their objective. Opponents of the principle of legislative selection emphasized the point that to place the choice of the President in the hands of an authority other than Congress would eliminate the necessity for a reëligibility limitation and make feasible the establishment of a relatively short term.[7] These considerations were undoubtedly factors of considerable importance in inducing acceptance of the plan of selection finally adopted. While a few members were firm in their conviction that the President should not be eligible for reëlection regardless of the mode of selection and others were opposed to a limitation of this nature in any case, the controlling factor in the minds of a decisive majority of the Convention on the point of reëligibility was whether his election was to be achieved through Congress or by some other mode.

The lack of a clause limiting the reëligibility of the President was a point advanced against the Constitution by some of its critics during the ratification struggle.[8] Hamilton felt obliged to devote the major part of one of the *Federalist Papers* to a defense of the Convention's conclusions on this point.[9] Three of the state conventions adopted recommendations that Congress should immediately submit to the states an amendment establishing a limitation on presidential tenure;[10] but the First Congress failed to act in accordance with these recommendations.

The fact that the idea of tenure restriction was associated so closely with the device of legislative election in the thinking of many of the founding fathers suggests that as popular election was substituted for legislative selection in the choosing of state governors, constitutional restrictions on reëligibility would be relaxed or abandoned. A trend in this direction did become manifest in the decade following the adoption of the Constitution. The constitution of Vermont, which was admitted to the Union as a full-fledged state in 1791, and that of Kentucky, admitted in 1792, provided for independent modes of choosing the governor and carried no clauses limiting reëligibility.[11] Tennessee, ad-

[7] For example, Gouverneur Morris and James Wilson, who were the leading advocates of the idea of direct popular election, favored a two-year and a three-year term, respectively, provided there was no limitation on reëligibility (*ibid.*, pp. 134, 410–411).

[8] For criticisms of this nature see the remarks of George Mason in the Virginia convention in Jonathan Elliot (ed.), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (2nd ed., 1836–59), Vol. 3, pp. 484–485; and of James Lincoln in the South Carolina convention, *ibid.*, Vol. 4, p. 314.

[9] No. 72 of the *Papers* contains an excellent theoretical analysis of the problem. In later debates in Congress and elsewhere on the issue, little has been added to the analysis of the principle of tenure limitation there presented.

[10] The New York convention recommended an amendment prohibiting the election of a President for a third term; while the conventions in Virginia and North Carolina advocated an amendment that would limit service to eight years in any sixteen-year period. *Documents Illustrative of the Formation of the Union*, pp. 1032, 1042, 1049.

[11] In line with the practice of the other New England states, Vermont provided for popular election, with the legislature making the choice in case no candidate received a

mitted in 1796, permitted three successive two-year terms under a system of popular election, followed by a two-year period of ineligibility. Georgia, although not adopting the direct election idea until 1824, abandoned the ineligibility rule in 1789 when it lengthened the term of the governor to two years. Pennsylvania in 1790 adopted direct popular election for a three-year term and at the same time liberalized the eligibility rule so as to permit three three-year terms in any twelve-year period. When Delaware went over to the popular election principle in 1792, however, it retained its original prohibition against a second successive three-year term.

The principle of rotation in office was a cardinal point in the lexicon of Jeffersonian and Jacksonian democratic thought. As elements deriving their political philosophy from these leaders became dominant in American politics, their thinking was reflected in constitutional developments relating to executive tenure and reëligibility at both the national and state levels of government. Jefferson's refusal to seek a third term as President on grounds of principle laid the foundation for the "two-term tradition" with respect to that office. In 1824 and again in 1826 the Senate passed constitutional amendment proposals designed to incorporate this rule in the written Constitution.[12] Although Jackson accepted a second nomination and election to the Presidency, he repeatedly urged the adoption of a constitutional amendment limiting a President to a single term of four or six years.[13] Meanwhile, as the remaining original states which had at first embraced the legislative election device for choosing their governors changed to the system of popular election, they saw fit to retain strict limitations on reëligibility. Adoption of the principle of popular election in North Carolina in 1835, in Maryland in 1837,[14] in New Jersey in 1844, in Virginia in 1850, and in South Carolina in 1865 produced no change or only slight modification of their original constitutional rules limiting reëligibility of their governors. Of the fourteen states admitted to the Union between 1800 and 1850, nine entered with constitutions containing limitations of one kind or another on gubernatorial tenure, and one of the remaining five

popular majority. Kentucky provided for a system of election by specially chosen electors, the system of choice being somewhat similar to the national plan for choosing the President. In 1799 the Kentucky constitution was revised to provide for direct popular election, and at the same time a provision prohibiting an immediate reëlection was adopted. Thorpe, *op. cit.* (above, n. 3), Vol. 6, p. 3755; Vol. 3, pp. 1268, 1281. The analysis which follows of state constitutional practices on the matter of reëligibility up to 1908 is based on documentary materials in this source.

[12] Herman V. Ames, *The Proposed Amendments to the Constitution of the United States During the First Century of its History*, 54th Cong., 2nd sess., H. Doc. No. 353, pt. 2 (Ser. 3550, 1897), pp. 124–125. On the first occasion the proposal was passed by a vote of 36 to 3 in the Senate; the second time it was favored by a 32 to 7 majority.

[13] *Ibid.*, p. 127.

[14] The system in effect in Maryland from 1837 to 1864 was unique in that it required a rotation of the office of governor among different areas of the state. The constitution divided the state into three districts and required that the office be rotated in order among them; consequently no individual was eligible for the office for more than three years in any nine-year period.

(Mississippi) adopted a provision of this type soon after achieving statehood.

By 1850 approximately two-thirds of the states had constitutional limitations of this character. A sectional preference for the idea, as in Revolutionary times, was still discernible. The states with restrictions included all those, with the exception of Georgia, comprising the block extending from Pennsylvania and New Jersey to the South and West. The six New England states, New York, Michigan, Wisconsin, and Iowa, along with Georgia, were the only ones in which the idea of a rotation in office, enforced by constitutional rule, had failed to win acceptance. In most of the states with restrictive clauses at that time, the prohibition was in the form of a limit of one term of two, three, or four years. It is significant that by 1860 a one-term tradition with regard to the office of President seemed also in process of establishment. Most of the amendment proposals designed to limit presidential tenure introduced in Congress from 1825 to 1860 were directed to this end.[15] No President from the time of Jackson to Lincoln, a period covering seven full presidential terms, was able to win reelection and only one, Van Buren, obtained renomination by his party for a second term. In his inaugural address in 1841, President Harrison pledged himself to one term only,[16] and the Whig party's platform of 1844 endorsed the single-term principle.[17]

Abandonment of the constitutional restriction on reëligibility of the governor by Ohio in 1851 marked the beginning of a period of reaction against this principle in the states. From 1850 to the decade of the 1870's, the idea was definitely on the wane as the Republican party, in some degree the intellectual heir of the original Federalist party which was not hostile to the idea of unrestricted executive tenure, rose to ascendancy. With the exception of Oregon in 1857, none of the eight new states admitted between 1850 and 1880 limited reëligibility of the governor by constitutional rule. Revision of constitutions in the southern states under Republican auspices during the era of Reconstruction brought about a general abandonment of the principle in that region.[18] Revisions in Maryland in 1864 and in Illinois in 1870 resulted in removal of reëligibility limitations on their governors. By 1880 only 12 of the 38 states comprising the Union at that time had constitutional provisions limiting in any way reëlection of their governors. Meanwhile the election of Lincoln in 1864 and of Grant in 1872 to second terms had laid to rest the "one-term tradition" in respect to the Presidency which had earlier seemed to be in process of establishment.

[15] Ames, p. 127. It should be noted also that the constitution of the Confederate states adopted in 1861 limited the President to one six-year term.

[16] *Ibid.*

[17] Kirk H. Porter (comp.), *National Party Platforms* (New York, 1924), p. 15.

[18] The Georgia constitution of 1865, drawn up under the terms of President Johnson's milder reconstruction policies, ran contrary to the trend in that it adopted a restriction on reëligibility of the governor, although that state had not had such a provision since 1789; but this constitution was replaced by another one in 1868 in which the reëligibility clause was omitted. Louisiana's revised constitution of 1864 omitted the restrictive clause of its original constitution. It was restored in the revised constitution of 1868 only to be omitted again in the constitution of 1879.

Near the close of President Grant's second administration suggestions began to be heard from some quarters in his party that he should be renominated for a third term. Opposition to the suggestion at once was quickly voiced by elements within the Republican party as well as by the rival party. On December 15, 1875, the House of Representatives passed by a vote of 234 to 18 a resolution introduced by Representative Springer, Democrat, declaring that a departure from the two-term tradition would be "unwise, unpatriotic and fraught with peril to our free institutions."[19] Nevertheless, four years later this tradition was subjected to its first serious challenge when in the Republican convention of 1880 a nearly successful effort was made to nominate Grant for what would have been a third, but nonsuccessive, term.[20] This rebuff to the third-term suggestion at the national level coincided with a reversal in the trend in state practice with regard to the governorship, particularly in the South. West Virginia, which had entered the Union in 1863 with a constitution carrying no limitation on reëligibility of its governor, adopted such a rule in 1872, and Georgia restored its provision in 1877. Eventually all but two of the former Confederate states which had more or less willingly abandoned the principle at one time or another, returned to it.[21] Two new states, Oklahoma in 1907 and New Mexico in 1912, entered the Union with provisions of this nature in their constitutions. The most recent converts to the principle have been Idaho (1944) and Maryland (1948). Although some states have modified their reëligibility provisions in recent years, none has abandoned the principle since 1880.[22]

Currently the constitutions of 21 states carry provisions limiting the reëligibility of the governor in some fashion. Fifteen states[23] limit him to one four-year term but permit his election again after an interval of four years. Three states[24] permit two successive four-year terms followed by a four-year period of ineligibility. New Mexico permits two successive two-year terms followed by two years of ineligibility, while Tennessee has continued its original plan of permitting election to three two-year terms in an eight-year period. Only one state, Delaware, has a provision similar to that recently applied to the President by the Twenty-second Amendment. In that state after two four-year terms a governor is disqualified from ever holding that office again. In addition to those states which limit the tenure of governors by constitutional rule, in a

[19] Ames, p. 125.

[20] Grant, who led the balloting on 33 roll calls, secured at one point a total of 314 votes, with 378 being necessary to win nomination. Fred Rodell, *Democracy and the Third Term* (New York, 1939), p. 73.

[21] The dates of restoration were Florida, 1885; Mississippi, 1890; Louisiana, 1899; Alabama, 1901; and South Carolina, 1926. Texas and Arkansas are the only ex-Confederate states which have failed to reinstate their reëligibility limitations.

[22] In 1941 the Georgia provision was changed from a prohibition of more than two successive two-year terms to a prohibition of a successive four-year term. New Jersey in 1947 liberalized its prohibition of an immediate reëlection under a three-year-term plan by permitting two successive four-year terms.

[23] Pennsylvania, West Virginia, Virginia, Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Indiana, Missouri, Oklahoma and Idaho.

[24] New Jersey, Maryland and Oregon.

number of otners "two-term traditions" of more or less force have been observed for some time.[25] But as was demonstrated with respect to the presidential two-term limit in 1940, traditional barriers do not always prove effective in barring reëlection of incumbents.[26]

Implicit in the system of limiting executive tenure by constitutional rule is the question of whether such a limitation shall apply to a person who falls heir to the office by reason of the death, resignation or removal of the regularly elected incumbent. The framers of the Twenty-second Amendment were aware of the problem of the partial term and disposed of it explicitly in the Amendment. The debates over whether Theodore Roosevelt and Calvin Coolidge would have been given "third" terms if they had been elected in 1912 and 1928, respectively, were sufficiently fresh in mind to account for the inclusion of specific language on this point; and the case of President Truman, who was at the time of submission of the Amendment serving out the remainder of F. D. Roosevelt's fourth term, was also directly at hand. Few of the states have had the foresight to deal explicitly with this question in their constitutional provisions. The matter is further complicated by the fact that in a number of states, including New Jersey, Delaware, Kentucky, Georgia, and Oregon, a vacancy in the office of governor occurring during the first part of a four-year term is filled by special election at the next succeeding general election. In all these states except Delaware, the ensuing election is for the unexpired portion of the current term. In Delaware the special election is for a full four-year term.[27]

The constitutions of only two states deal specifically with this question. North Carolina under its one-term rule excludes from consideration service as governor by an incumbent "when the office shall have been cast upon him as lieutenant-governor or president of the senate."[28] The New Jersey constitution of 1947 provides that election to complete an unexpired term shall be regarded as election to a full term under its rule prohibiting more than two successive terms; but the reëligibility limitation does not apply to an officer who succeeds only temporarily to the powers and duties of the governorship.[29] Immediate reëlection of incumbents who have served partial terms in recent years in Mississippi, Georgia and Kentucky, all of which have a one-term limit of four years, indicates that their constitutional limitations are not construed to forbid an immediate reëlection of a succeeding officer who has served less than a full

[25] States with two-year terms in which a two-term limit has been observed for more than half a century are Kansas, Maine, South Dakota, and Texas. No governor has been elected for a third successive two-year term in Arkansas since 1905.

[26] Thus Governor Albert C. Ritchie, of Maryland, in winning reëlection three successive times beginning in 1924, broke a one-term tradition of long standing in that state. Governor John G. Winant, by winning a second, but nonsuccessive term in New Hampshire in 1930, defied a tradition against a second election; and in 1932 he set a new precedent by obtaining another, successive term. In 1926 Governor John E. Weeks, of Vermont, by his reelection to a second successive term, broke a one-term tradition which had persisted in that state for over fifty years.

[27] Constitution of Delaware, Art. 3, Sec. 9.

[28] Constitution of North Carolina, Art. 3, Sec. 2.

[29] Constitution of New Jersey, Art. 5, Sec. 1, par. 5.

term.[30] On the other hand, by judicial interpretation the Oklahoma constitution has been held to forbid immediate reëlection of an incumbent who succeeded to the office after removal of the regularly elected governor.[31]

The continuing support given to the principle of limited tenure for chief executives, as evidenced in the adoption of the Twenty-second Amendment and in the practices of a considerable number of states, invites inquiry into the factors accounting for its wide acceptance. As has already been shown, one of the main considerations which led to its adoption originally has long since vanished with the abandonment of legislative election of chief executives. Modern defenders of the principle of limited tenure, however, are still able to capitalize upon the traditional popular distrust of the executive which had its origins in American experience prior to the Revolution. The modern tendency toward strengthening the legislative and executive powers of chief executives at the national and state levels operates to keep such fears alive. Supporters of tenure limitation therefore continue to stress the arguments that it will tend to give an executive greater freedom from narrow partisan considerations in the conduct of his office; curb his lust for power; free him from the temptation to use his powers, especially the patronage power, to achieve his own renomination and reëlection; and in general afford greater security against the threat of "dictatorship." They deny or discount materially the counterarguments that adequate protection is afforded against executive usurpation in a limited term of office, the system of separation of powers, and a written constitution; that the opportunity of securing a vote of confidence from the people by obtaining reelection gives a chief executive a powerful incentive to deport himself with rectitude and administer his office with due consideration to the public interest and desire; and that in time of crisis an enforced rotation in the office of chief executive may be highly undesirable. They ignore the contention that a genuine would-be "dictator" would have ample time to attempt to accomplish his

[30] Governor Fielding L. Wright, of Mississippi, served out the last fourteen months of the term of Governor Thomas Bailey, who died in office. Wright was then elected for a full four-year term in 1947. Governor Herman Talmadge of Georgia, now serving a regular four-year term to which he was elected in 1950, was elected in 1948 to complete the last two years of the 1947–1951 term. To clear the way for his reelection to a full term immediately after serving an elective partial term, the Georgia Legislature passed two statutes in 1949. One provided that the state executive committee of a party should determine all questions relating to the qualifications of a candidate for nomination for state office at its primary, including the question of his eligibility for the office sought. The other made the General Assembly the sole judge of the constitutional qualifications and eligibility of the person elected as governor. See *Georgia Laws* (1949), pp. 967, 1948. The Georgia constitution provides that a governor "shall not be eligible to succeed himself and shall not be eligible to hold the office until after the expiration of four years from conclusion of his term of office" (Art. 5, Sec. 1, par. 1).

In October, 1939, Lieutenant-Governor Keen Johnson, of Kentucky, who was subsequently chosen for a full term as governor in the November, 1939, election, succeeded briefly to the governorship upon the resignation of incumbent Governor Chandler, who had resigned to accept appointment to the United States Senate. Johnson thus served some two months more than the normal period of four years.

[31] *Fitzpatrick v. McAlister*, 121 Okla. 83, 248 Pac. 509 (1926).

purposes during one term of office, to say nothing of two, and would be as little inclined to respect a written constitutional limitation on his tenure as any other part of the constitutional plan which stood in his way.

While public reaction to the debate on the issue in terms of these arguments accounts in some measure for current practice, considerations of party advantage of the moment, personal politics, the traditional jealousy of legislative bodies toward the executive, and the character of the party system are factors which also help to account for constitutional limitations on the chief executive. The records of the two major parties on the issue since the time of the Civil War have been curiously inconsistent. By and large, up to 1940 the Democratic party had shown more hostility to the idea of unlimited tenure for chief executives than had the Republicans. The two most serious challenges to the anti-third term tradition in connection with the Presidency were made in the Republican conventions of 1880 and 1912; while Democratic members of Congress more consistently supported efforts to prevent its violation than did their Republican colleagues.[32] In most of the states which limit the tenure of governors the Democrats are the majority party. But in the struggle over the Twenty-second Amendment, these party roles were in large measure reversed.

The fact that this proposal came so soon after the two-term tradition had been successfully challenged by a Democratic President gave it the character of a pro-Roosevelt, anti-Roosevelt partisan issue in much the same sense that earlier actions by Congress had reflected anti-Grant, anti-Theodore Roosevelt and anti-Coolidge partisan sentiment. Not a single Republican vote was cast against it in either House of Congress. Those Democrats in Congress who supported it were for the most part identified with the anti-Roosevelt faction of the party. In the first three years of the period in which the Amendment was before the states for ratification, Democratic-controlled legislatures generally showed a reluctance to act favorably upon it, while Republican-dominated legislatures rushed to approve it. Only after political developments in the post-war period had begun to raise increasing doubts in Democratic ranks concerning the soundness of President Roosevelt's judgment as a policy-maker did Democratic-dominated state legislatures display in any numbers a favorable attitude toward the Amendment. During 1950 and 1951 reaction against President Truman's leadership within the Democratic party also played a part in bringing about favorable action in states where this party controlled the legis-

[32] The Springer Resolution of 1875, noted above, was passed by a Democratic-controlled House of Representatives. On February 1, 1913, shortly before the inauguration of President Wilson, the Senate passed, by a vote of 47 to 23, an amendment resolution which would have limited a President to a single six-year term. It was favored by 28 Democrats and 19 Republicans and Progressives, and opposed by one Democrat and 22 Republicans and Progressives. *Congressional Record*, 62nd Cong., 3rd sess., Vol. 49, p. 2419 (1913). On February 10, 1928, the Senate passed the La Follette Resolution, which was essentially a restatement of the sentiment expressed in the Springer Resolution of 1875 opposing the third-term idea. The 56 votes in its favor were cast by 37 Democrats, 18 Republicans, and one Farmer-Laborite, and the opposing votes were cast by four Democrats and 22 Republicans. *Congressional Record*, 70th Cong., 1st sess., Vol. 69, p. 2842 (1928). For reviews of efforts in the past to limit presidential tenure see Rodell, *op. cit.* (above, n. 20); *The Congressional Digest*, Vol. 26, pp. 14–23 (Jan., 1947).

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an argument that rotation in executive office must be enforced to permit the rise of a new leadership.[34] Naturally enough, the legislators who advance this argument see no need to apply this principle to themselves as holders of positions of power and importance in the party hierarchy.[35]

A constitutional restriction on reëligibility is in the final analysis an expression of lack of faith in the electorate's ability to make an intelligent decision on whether to continue in office a chief executive who has had an opportunity to make a record upon which he can be judged. It is a denial of power to the voters to retain in office a chief executive who would otherwise win renomination and reëlection, for a fixed term of office provides them with opportunity at periodic intervals to dismiss an unsatisfactory incumbent. Consequently the attitude of the people on the general issue, rather than that of persons of influence in party affairs who may be suspected of reflecting a certain amount of bias arising from their own partisan or personal interests is of particular significance.

Popular approval of state constitutional amendments of this character in three states since 1925 and popular rejection of a proposal to repeal the tenure limitation provision of the New Mexico constitution in 1937 indicate that the idea has some measure of support by the people. However, the issue was not presented to the electorate in clear-cut fashion in all these referenda. When South Carolina reinstituted the reëligibility limitation for its governors in 1926, the question was submitted as a part of a proposal to extend the term from two to four years.[36] When Idaho's voters approved a similar limitation in 1944, the issue was again complicated by being made part of a proposal to extend the term of the governor and of other major state administrative officers to four years and to require them to reside in the county where the seat of government is located during their incumbency in office.[37] Modifications of tenure limitations

[34] In the Senate debate on the presidential tenure proposal, Senator O'Conor, of Maryland, stated the point as follows: "Certainly nothing could act more definitely to halt or impede development of potential leadership in the city, State, or Nation than to permit any one man or any one party to persuade the people that he or they alone are competent and therefore must be perpetuated in office" (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, p. 1780 [1947]).

[35] When in the course of deliberations upon the presidential tenure proposal Senator O'Daniel, of Texas, offered an amendment to apply a six-year limitation to the Presidency and to legislative officers as well, it received only his own vote. Senator Kilgore, of West Virginia, also questioned the logic of limiting executive tenure without likewise limiting the tenure of legislators, but his query stirred no debate (*ibid.*, pp. 1963, 1947).

[36] *South Carolina Acts and Joint Resolutions* (1924), p. 1492; *South Carolina Acts and Joint Resolutions* (1926), p. 960. For a considerable time prior to adoption of this amendment, a "two-term tradition" under which a governor was limited to two consecutive two-year terms had been observed in this state.

[37] In *Keenan v. Price*, 68 Idaho 423, 195 Pac. (2nd) 662 (1948), the Supreme Court of Idaho overruled a contention that the amendment was invalidly submitted in that the electorate was not permitted to vote separately on the different propositions contained in it. In 1928 a similar amendment, but lacking the ineligibility clause for the governor, was ratified by the state electorate. It was declared by the Idaho Supreme Court to have been invalidly submitted on the ground that the question as presented on the referendum

in Georgia in 1941 and in New Jersey in 1947 also were approved in connection with changes in the length of term of office, and therefore provided no clear test of popular sentiment on the general issue of tenure limitation. The refusal of the electorate in New Mexico in 1937 to abandon the reëligibility limitation of that state,[38] and the adoption of a two-term limit in Maryland in 1948, after the electorate had earlier refused to approve a more restrictive proposal,[39] were clearer expressions of popular approval of the general principle. Over against these indications of popular support for the principle of tenure limitation stand the actions of many state electorates which have in recent times refused to be bound by the anti-third term rule and have retained governors in office for three consecutive terms or longer.[40]

Whether the Twenty-second Amendment is merely a "politician's amendment," introduced into the Constitution by action of national and state legislators who registered only their own partisan and personal views, or was the reflection of a strong, genuine public opinion remains a debatable point. Provision for its reference to popularly chosen state conventions, as was made in in the case of submission of the Twenty-first Amendment, was deliberately avoided by its backers in Congress.[41] In view of the fact that the two-term tra-

ballot was stated as whether the terms of the state officers involved should be "limited" to four years. *Lane v. Lukens*, 48 Idaho 517, 283 Pac. 532 (1929).

[38] *New Mexico Laws* (1937), p. 693. The provision which the voters refused to eliminate was one which forbids a third consecutive two-year term. In November, 1948, a proposed constitutional amendment extending the term of office of the governor and other state administrative officials from two to four years, and making such officers ineligible to succeed themselves after one term, was defeated by an affirmative vote of 28,914 and a negative vote of 30,364 (*New Mexico Statutes Anno.*, 1949 Supp., Vol. 1, p. 13).

[39] *Laws of Maryland* (1949), p. 1968. The popular vote in favor of the anti-third term proposal was 162,043 to 106,255. Senator O'Conor of Maryland asserted on the Senate floor that the two-term limit proposal had the unanimous support of the 123 members of the House of Delegates when it was voted on by the legislature in 1947 (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, p. 1780 [1947]). In 1940 the voters of Maryland rejected a constitutional amendment which would have prohibited an immediate reëlection of the governor to a second four-year term (*Laws of Maryland*, 1939, p. 828).

[40] States in which governors have been elected for three consecutive two-year terms in the period since 1900 include Arizona, Arkansas, Colorado, Connecticut, Idaho, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New York, North Dakota, Ohio, Rhode Island, Tennessee, Wisconsin and Wyoming. States in which governors have been elected for three consecutive four-year terms include California, Maryland, Montana and New York. The "record" for number of terms elected in recent times is held by the first governor of Arizona, George W. P. Hunt, Democrat, who was elected for seven two-year terms in the period from 1912 to 1932. Governor Albert C. Ritchie, Democrat, of Maryland, had the longest period of continuous service, which extended over four four-year terms running from 1920 to 1935.

[41] An attempt to make the convention method of ratification applicable to the proposal failed in the House by a vote of 134 to 74. The Senate Judiciary Committee report on the resolution recommended use of the convention device, but this recommendation was rejected 63 to 20 (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, pp. 871, 1862 [1947]). Discussion of the alternative modes of ratification revealed a startling lack of understanding by members of Congress of this aspect of the amending process. Cf. Everett S. Brown, "The Term of Office of the President," AMERICAN POLITICAL SCIENCE REVIEW, Vol. 41, pp. 447-452 (June, 1947).

dition had been repudiated by the voters of the nation by the reëlection of President Roosevelt in 1940 and 1944, supporters of the proposal in Congress had good reason to mistrust a ratification method which would have, in effect, permitted a popular referendum, state by state, on the issue.[42] Polls of popular opinion on the issue of maintaining the two-term tradition with reference to the Presidency showed a considerable shifting of attitudes in the nation from 1936 to 1947. Prior to 1937 there was majority support for the two-term principle. Then, in line with the action of the voters in breaking the tradition with the reëlection of President Roosevelt in 1940, there was a shift to the contrary view. Republican voters consistently favored the principle by a heavy margin; while Democratic voters opposed it by a somewhat lesser margin.[43] These polls suggest that the Amendment might still have been approved if its ratification had been left to popularly chosen conventions; but the public's attitude on the issue was by no means so clear as to have assured this outcome.[44]

[42] In the congressional debate no backer of the proposal frankly stated this as a reason for opposing the use of the convention device. Reasons advanced in support of the legislative method of ratification were that it was more expeditious, less complicated, and less expensive than the convention method; that the public was not greatly concerned and interested in so "technical" a question; and that conventions might be "manipulated." Perhaps the most astounding statement was that of Senator McClellan, of Arkansas, who in opposing the convention system declared: "I know that the process of ratification through action of the State Legislatures affords the best opportunity for getting the correct sentiment of the people, because legislators are elected, whereas in many States delegates to conventions are appointed and the question is not made an issue and debated before the citizenship and the electorate, before the votes are cast" (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, p. 1800 [1947]).

[43] American Institute of Public Opinion polls, as reported in the *Detroit News* for June 14, 1936, and the *Public Opinion Quarterly*, Vol. 2, pp. 304–305 (1947–1948), show the following results:

| Date | Per Cent For Two-Term Limit | Per Cent Against | Democrats | | Republicans | |
|---|---|---|---|---|---|---|
| | | | For | Against | For | Against |
| June, 1936 | 57 | 43 | 44 | 56 | 78 | 22 |
| 1937 | 49 | 51 | | | | |
| 1938 | 48 | 52 | | | | |
| 1939 | 42 | 58 | | | | |
| 1940 | 41 | 59 | | | | |
| 1943 (April | 46 | 54 | | | | |
| 1943 (Dec.) | 54 | 46 | | | | |
| 1944 (April) | 57 | 43 | 32 | 68 | 84 | 16 |
| 1945 (May) | 60 | 40 | | | | |
| 1947 (Feb.) | 57 | 43 | 41 | 59 | 74 | 26 |
| 1947 (May) | 59 | 41 | 43 | 57 | 79 | 21 |

[44] It may be contended, of course, that the fact that the amendment proposal received a two-thirds majority vote in each House of Congress and majority approval in the legisla-

The ultimate effect on the Presidency of the now-formalized rule of compulsory retirement after two terms is difficult to assess. A backward projection gives some indication of its future impact. If the Twenty-second Amendment had been in effect since 1789, it appears that the outcome of two presidential elections in addition to those of 1940 and 1944 would have been affected. If General Grant had not been a strong contender for a third-term nomination in 1880, the "dark horse" Garfield might well have never emerged as the candidate of the Republicans, and the election of that year would probably have placed some one else in the White House. Again in 1912 Theodore Roosevelt would not have been eligible for the Presidency, and the split in the Republican party which resulted from his candidacy and made possible the election of Woodrow Wilson conceivably would not have occurred. Of the 32 persons who have occupied the office of President, ten would have been rendered ineligible for further service. Those who would have been forever disqualified include six of the seven Presidents who are generally recognized as having been our most outstanding and able ones.[45]

To judge from the experience of the states in connection with the governorship, one probable result of the Amendment will be to diminish somewhat the effectiveness of the President as a legislative leader as the time for his enforced retirement nears. Competent observers agree that this is an effect of reëligibility restrictions on state governors.[46] The reasons for this are rather obvious.

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tive bodies of 36 states is *prima facie* evidence that it had overwhelming popular support. However, eighteen of the state ratifications were given by state legislatures within less than three months of its submission. Obviously few, if any, of them could be said to have acted in accordance with a popular mandate on this question, since it was not formally before the voters as an issue when the members of these legislative bodies were elected. It may also be questioned whether the issue of ratification of the pending amendment played any significant part in the election of members of the remaining state legislatures which ratified at later dates.

[45] Washington, Jefferson, Jackson, Theodore Roosevelt, Wilson and Franklin D. Roosevelt. The other outstanding President, Lincoln, would not have been affected since he was assassinated before the end of his second term. Some might include Grover Cleveland, who would also have been disqualified, among the "outstanding and able" Presidents.

[46] Dealing with this point in the Senate debate on the presidential tenure, Senator Kilgore of West Virginia asserted: "I have had the opportunity during the past 8 years to study the record of governors in States in which there are limitations as to terms, and I have discovered that the last half of the term was a record of failure" (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, p. 1949 [1947]).

Another observer states: "One state official felt very strongly that the inability of the governor to succeed himself placed him in a position where 'he has no incentive for good administration other than his own desire to perform efficiently.' Others interviewed were skeptical about the effect of this provision on the administration of the governor's program, pointing out that the people, even if they had an opportunity to express themselves, 'weren't interested in good administration,' but judged a governor by his ability to get his promised program through the legislature. It was generally conceded, however, that this provision did have a deleterious effect on the governor's relation with the legislature. This is particularly true of the second half of his term when the legislators were more concerned with the programs of potential candidates for the governorship and with potential

On the one hand, his fellow partisans in the legislative branch, knowing that he can not present himself to the voters again as a candidate seeking vindication for his party and its record under his leadership, will be under less compulsion to remain loyal to him. As election time approaches they will become more and more concerned with promoting the candidacies of the various aspirants to the succession. The chief executive on his part may feel less inclined to pursue a course calculated to maintain party harmony and solidarity. In such an atmosphere the relationship between the executive and the legislative branch can hardly fail to become less cordial and coöperative. This is not to say, of course, that as the time of his enforced retirement approaches, the executive will become wholly powerless and ineffectual as a party leader. He will retain to the end of his term his constitutional powers, which are the basis of his control over his party; and the realization by him and by his fellow partisans in the legislative branch that they and the party will be judged at the next election in large part on the record achieved under its current head will operate as a restraining influence against these divisive tendencies.

Comparison of the practices of those states which impose limitations on reeligibility of their governors with the system prescribed by the Twenty-second Amendment reveals two major differences which to some minds should be assessed in favor of the prevailing state practice, if it be conceded that a tenure limitation should be imposed by constitutional rule. The Twenty-second Amendment, in contrast to the constitutions of three-fourths of the states having limitations of this character, fails to prevent an incumbent chief executive from seeking to succeed himself in office. One of the most persuasive arguments for a limitation on reëligibility is that it discourages the use of official powers by a chief executive to promote his own renomination and reëlection. His ineligibility to succeed himself permits him to render judgment on public issues with which he must deal without taking into account his immediate personal ambitions and interests. A President, moreover, acquires such a grip on the party machinery that it becomes difficult, if not impossible, for the party to refuse him renomination if he seeks it.[47] If the evil to be eliminated is an incumbent's prostitution of official power for personal and partisan ends, then a prohibition upon an immediate reëlection, rather than a prohibition of a third

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patronage from those candidates than with the incumbent who had distributed most of the lucrative state positions and contracts and who could not be looked upon as a candidate for at least another four years, if at all" (Coleman B. Ransone, Jr., *The Office of Governor in the South*, University, Alabama, 1951, pp. 59–60).

Key, *op. cit.* (above, n. 33), p. 102, summarizes the observations of an official in the state house in Florida, where a single four-year term rule obtains: "A governor usually goes out of office with many enemies. He can control his first legislature with patronage and favors, but the second is often beyond his control. As his term wears on even his own appointees become independent .... Among the enemies of the administration, those seeking to organize a group powerful enough to take over the governorship find their most willing recruits."

[47] Every one of the ten Presidents since Grover Cleveland who has lived to complete a first full term or partial term has been renominated by his party. Six were returned to office and a seventh, Cleveland, was reëlected after an intervening term.

term, is the logical remedy. If it be answered that a President or a governor should be entitled to win vindication once on his record at the hands of his party and the voters, the question arises, if once, why not a second or a third time?[48]

In the second place the Twenty-second Amendment rule stands in contrast to those of the states in that it imposes a permanent ineligibility upon an incumbent who has occupied the Presidency for the permissible length of time. With the exception of Delaware, all the states with reëligibility restrictions on their governors impose only a temporary disqualification. A temporary ineligibility makes possible the return to office of a chief executive whose performance affords a basis upon which the voters may render a judgment, without their being influenced by his direct use of the powers and prestige of the chief executive's office. While the number of governors who have been returned to office after a period of ineligibility is not large,[49] there have been enough instances to demonstrate that the voters, on occasion, may prefer such an experienced chief executive over an untried one. If the people can be trusted at all to choose their chief executives, they ought to be capable of making an intelligent choice under these conditions. A similar disposition of this aspect of the issue as it relates to Presidents who have served the permissible period of time would have rescued them from the role of "discontented ghosts, wandering among the people and sighing for a place which they are destined never more to possess,"[50] and saved to the nation their talents as leaders in case of future need.

[48] "In their haste to register disapproval of the late President for seeking a third and then a fourth term, these gentlemen [who sponsored the Twenty-second Amendment] neglected or ignored the really critical issue, which is *whether a President should be permitted to succeed himself at all.* Inasmuch as the Presidency is a 'killing job,' to which few men come until they have passed the peak of their physical vigor, few Presidents will be likely to seek a third term, and certainly not a fourth, remembering the penalty which Mr. Roosevelt paid for doing so.

"The chief objection to presidential reëligibility, to my mind, is just as valid against a *second* successive term as it would be against a *third* one. It consists in the fact that a President who is looking forward to reëlection will evaluate all programs and policies primarily for their probable effect on his political fortunes and will, in fact, be expected and required by his party to do so" (Edward S. Corwin, *The President: Office and Powers*, 3rd ed. rev., New York, 1948, pp. 48–49).

[49] Among state governors of recent years who have been returned to office after periods of ineligibility are Gifford Pinchot, of Pennsylvania; A. Harry Moore, of New Jersey; Olin Johnston, of South Carolina; David Bibb Graves, of Alabama; Eugene Talmadge, of Georgia; Theodore Bilbo and Hugh White, of Mississippi; and Henry Schricker, of Indiana. The number of governors who have been returned to office after a period of ineligibility would undoubtedly be larger were it not for the fact that many of them in the meantime successfully sought federal offices, especially seats in the Senate, which they have preferred to retain rather than to seek the governorship a second time.

[50] Cf. Alexander Hamilton in Number 72 of the *Federalist Papers*. During senate consideration of the presidential tenure proposal Senators Holland, of Florida, and Magnuson, of Washington, strongly urged an amendment which would have made possible the later reëlection of a President who had served the permissible two consecutive elective terms. The proposed amendment was rejected 50–34 (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, pp. 1941, 1955 [1947]).

The fundamental problem toward which constitutional limitations on executive tenure are advanced as solutions is the dangerous accretion of power in the hands of the chief executive. The trend toward concentration of authority and influence in the office of chief executive has become more pronounced at both the national and state levels of government in recent decades. That developments in this direction have carried to the point where there is ample cause for grave concern can hardly be questioned, particularly in the case of the Presidency. It may be seriously doubted, however, whether a constitutional limitation on executive tenure offers any substantial measure of relief. The causes for the recent growth of executive power and influence are to be found in the expansion of the functions of government generally, in the increasing complexity of the matters with which government must grapple in a period of worldwide economic and political dislocation induced by two world wars in one generation, and in the increasing reliance which must be placed upon a bureaucracy functioning under the immediate direction of the chief executive to effectuate the purposes of government. In the case of the Presidency, the rise of the United States to a position of leadership among the free nations of the world is another factor of momentous consequence in the situation.

Constitutional limitations on executive tenure fail to come to grips with the basic issue. By promoting a false sense of security, they may actually hinder the development of those types of safeguards in which salvation against the evils of an overweening executive power really lies. A reshaping of our political institutions to make the opposition party a more effective instrument for holding the administration to account, reëxamination by the legislative branch of the question of its proper role and function in the governmental process and the devising of means and methods to give it a more powerful voice in various areas of high-level policy-making, and insistence upon a rigid regard for the right of the people generally to criticize and oppose within the broad limits assumed by the democratic dogma—these are lines of action which offer far greater promise as safeguards against the threat of "dictatorship" than do measures of the sort illustrated by the Twenty-second Amendment.

# THE AMERICAN CHIEF EXECUTIVE

## THE PRESIDENCY AND THE GOVERNORSHIP

JOSEPH E. KALLENBACH

*The University of Michigan*



HARPER & ROW, PUBLISHERS NEW YORK, AND LONDON

popular vote, was favored in the New England states. Under the Connecticut and Rhode Island charters the freemen of the colony had been privileged to participate in the choice of the governor from among their "Company." This practice was continued in these states after statehood was achieved. A majority vote was required for election; if there was no popular majority the assembly chose the governor. Massachusetts in 1780 and New Hampshire in 1784 also adopted this system, with one refinement: their constitutions provided that in case there was no candidate with a popular majority the choice should be made by the upper house of the legislature from a panel of two selected by the lower house from among the four highest in the popular voting. The New York constitution of 1777 was unique in that it anticipated the modern mode in providing for direct election of the governor by the state's freeholders, i.e., those owning property in land, the candidate with a popular plurality to be deemed elected without further recourse.

In all the states from Pennsylvania and New Jersey southward the principle of legislative appointment was favored. The most common method of choice was by joint vote of the two houses. Ordinarily a majority in the joint vote was required, successive ballots being taken until a majority was mustered for one candidate. The Maryland constitution of 1776 provided that in case there was a tie vote between the two leading candidates after a second ballot the issue should be decided by lot. Under Georgia's constitution of 1777, election of the governor from among its own membership was a function of the unicameral assembly. A variation from the general practice was found in Pennsylvania, where the "president" was chosen annually by the unicameral assembly from among the 12 executive councilmen who were themselves popularly elected for a term of three years.

### TERM AND RE-ELIGIBILITY

The idea that executive and legislative officers should hold office for a specific term was accepted without question by the framers of the original state constitutions. In keeping with the aphorism of John Adams in his *Thoughts on Government* that "where annual elections end, there slavery begins," all but three of the original state constitutions gave the chief executive a one-year term. Exceptions were Delaware and New York, with three-year terms, and South Carolina, which allowed a two-year term. The temporary plan of government in effect in Georgia for a brief time in 1776 provided for only a six-month term, but it was replaced the next year by a more complete plan of government under which the chief executive enjoyed a one-year term.

In seven states, all lying from Pennsylvania southward, tenure in office was further limited by various restrictions upon re-eligibility. It should be noted that these were all states in which the principle of legislative election prevailed. Georgia's constitution of 1777 was the most restrictive in that it limited an individual to no more than one one-year term in each three-year period. Despite the further provision obligating a governor through his oath of office "peaceably and quietly" to relinquish his office at the end of one year, that state was the only one to become involved in a squabble over occupancy of the governorship during the Revolutionary War period.[21] In the New England states as well as in New York and New Jersey there were no re-eligibility limitations. Continuance of the same person in office for long periods through successive elections was the usual practice in these states both during and after the Revolutionary War. For example, George Clinton was governor of New York for six successive three-year terms from 1777 to 1795; William Livingston, the first governor of New Jersey, served 14 successive one-year terms from 1776 to 1790; Jonathan Trumbull of Connecticut served as colonial governor and state governor from 1769 to 1786; and except for a two-year interlude (1785–1787), John Hancock was governor of Massachusetts from 1780 to 1793.

## CONSTITUTIONAL POWERS AND FUNCTIONS

The role assigned the chief executive under most of the original state constitutions, while not an insignificant one in all cases, was considerably less important than that of the colonial governor in the royal and proprietary provinces. The influence of colonial practice was seen in the fact that in every state a conciliar body or bodies was provided to advise, assist, and in some respects restrict the governor in the exercise of certain powers. The agency created took various forms. In Pennsylvania and Vermont and under the temporary plans of government in Massachusetts, New Hampshire, and Georgia, the executive powers were actually in the hands of the executive council itself, rather than in those of the chief executive officer, but under the other forms of government a clearer distinction was made between the chief executive and the body associated with him in the exercise of his powers.

[21] Conditions in Georgia were particularly chaotic after British military forces occupied the major portion of the state in 1778. Choice of a successor to the first governor elected under the Constitution of 1777 could not be effected by the new assembly because of British occupation of Savannah, the capital. Rival groups comprised of remnants of the assembly later met and each chose a set of executive officials. For some years there was a succession of rival claimants to the post of governor in that state. See Green, *op. cit.*, pp. 124–126; and Ethel Kime Ware, *A Constitutional History of Georgia* (New York: Columbia University Press, Columbia University Studies in History, Economics and Public Law, No. 528, 1947), p. 52.

HJR

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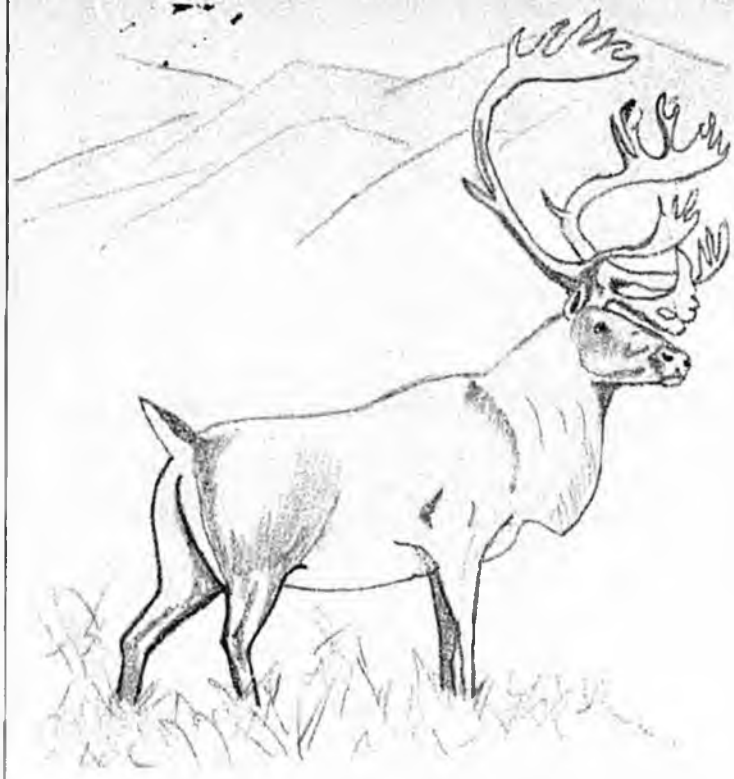
HJR 10



# ALASKA CONSERVATION SOCIETY

UPPER COOK INLET
CHAPTER
BOX 3395
ANCHORAGE, ALASKA
99501

March 1, 1975

Rep. Terry Gardiner, Chairman
House Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Terry:

The Upper Cook Inlet Chapter of the Alaska Conservation Society strongly supports HJR 10 - An Environmental Bill of Rights, Constitutional Amendment. We urge your committee to report favorably on the resolution and to press for passage in both houses of the Legislature.

The need and rationale for this action has been well expressed by Dr. Charles Konigsberg on several occasions including the Dinner for Legislators held in January in Anchorage and sponsored by the Upper Cook Inlet Chapter and the local and state Sierra Club organizations. The Upper Cook Inlet Chapter represents more than 100 Anchorage area citizens. All present and future generations of Alaskans will be the beneficiaries if favorable action is taken this year.

Now is certainly the time to add these needed safeguards to the Alaska Constitution - before serious inroads have been made on our near pristine Alaskan air, lands and waters. As you well know our State is poised on the brink of a massive effort to extract and develop its oil, gas and mineral resources. Alaskans must have the assurance that in the process we will not be called upon to sacrifice our rights to a clean and liveable environment. This Environmental Bill of Rights must be considered as a necessary companion to other legislation which will be acted upon this session in order to foster and control wise land and resource use by the oil industry and other extractive industries. It is especially important that favorable action on HJR 10 precede the large influx

of population which the State can expect which will bring increased pressures to our rural and urban environments.

As a Constitutional amendment, it will serve as an expression of our environmental and social goals and will thus guide our development and growth, and our efforts to formulate land and water use plans with the fullest respect for the people's need for and right to the highest quality of iar, land and water. It will provide the most effective assurance that the maximum possible protection will be given to Alaska's natural resources, wildlife, scenic beauty and opportunity for quiet - those qualities which have attracted a major portion of us to choose Alaska as our home.

We urge your committee to act favorably on HJR 10 and to work for passage in both houses of the legislature. It is vitally important that the State take this action to recognize the rights of its citizens. We are fortunate in Alaska in being able to provide assurance of these rights. Elsewhere they have already been denied by the thoughtless actions of countless numbers of people and organizations.

Sincerely yours,

Ian W. McLeod

Ian W. McLeod, President
Upper Cook Inlet Chapter, ACS

cc: Members of the House
Judiciary Committee
Also:

Rep. Susan Sullivan
Rep. Nels Anderson
Rep. Mike Bradner
Rep. Brenda Itta
Rep. Mike Hershberger
Rep. James Huntington

# HJR

# 11

"Amending the Constitution of the State of Alaska to provide for consideration of vetoed bills during special sessions of the legislature."

# COMMITTEE REPORT

2/28/75

## HOUSE

Mr. Speaker: Date 4/1/75

The Committee on JUDICIARY has had HJR 11 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HJR 11 AND THAT CS FOR HJR 11 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

Introduced: 2/13/75
Referred: State Affairs and Finance

BY URION,BOWMAN,BRADNER, ELIASON,FINK,FREEMAN,MILLER, PARKER AND WALLIS

IN THE HOUSE

HOUSE BILL NO. 164 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to consideration of vetoed bills during special sessions; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 24.05.100(1) is amended to read:

(1) The governor may call the legislature into special session by issuing a proclamation at least 15 days in advance of the convening date stated in the proclamation. At a special session called by the governor, legislation is limited to the subjects designated by the governor in his proclamation or to the subjects presented by him. This provision does not curtail the duty of the legislature to consider a bill that has been vetoed following adjournment of the last regular session of that legislature.

* Sec. 2. AS 24.30.100 is amended to read:

Sec. 24.30.100. ACTION UPON VETO. When the governor vetoes a bill or by veto strikes or reduces an item in an appropriation bill, during a regular session of the legislature, the legislature shall proceed to act in accordance with sec. 16, art. II, of the state constitution as it is implemented by the rules of the legislature. A bill vetoed after adjournment of a regular session shall be reconsidered by the full membership of the legislature sitting as one body no later than the fifth day of the next regular or special session convened during that legislature.

* Sec. 2. EFFECTIVE DATE. This Act takes effect immediately upon the date

House Judiciary Committee
March 4, 1975

The meeting was called to order at 1:20 p.m. by Chairman Gardiner. All members were present except Mr. Brown.

The committee agreed that a public hearing should be scheduled on medical malpractice and that representatives of the medical, law and insurance professions be invited.

HJR 11 Special Session Veto

The following possible amendments were discussed:

page 2 line 2 insert regular or special session/ change the title to eliminate reference to special session.

Mandate a veto session to take place 30 days after the regular second session for a maximum number of days.

The committee decided to consider this bill further at a later time.

HB 27 School Bus Drivers

Mr. Fink moved the bill out of committee with the HESS amendment. There being no objection, the bill was passed out.

HB 48 Transfer of Interest in Realty

Mr. Bradley moved that in line 11 after no person ADD other than a natural person. This amendment was meant to disinclude individuals but not corporate persons. Amendment 1 passed.

Mr. Bradley moved that in 19 the following be added (language to be worked on) The Commissioner of the Department of Commerce may exempt federal agencies if he finds that they will stop activities in Alaska as a result of the bill. Amendment 2 passed but the committee requested that the language drawn up to accomplish this amendment be approved by Commissioner Motley.

Mr. Fink requested that a letter of intent be drawn up by committee staff to state that there are lending institutions in the state following the practice prohibited by this bill, to explain what a natural person is, and to explain why certain agencies may be exempted.

Mr. Fink moved the bill out of committee as CS HB 48. There being no objection, the bill was passed out of committee.

House Judiciary Committee
April 3, 1975

The meeting was called to order at 7:20 p.m. by Chairman Gardiner, and was ruled a continuance of the afternoon meeting.

HB 191 Transportation Tariff

Commissioner Motley testified that the ATC would like to give 45 days notice, but this creates problems in administration. It would be theoretically possible to have two different rates in effect at the same time. He felt that this problem could be worked out, possibly by giving the federal notice earlier than required.

Mr. Specking suggested making the language similar to that of the ICC. He questioned whether the commission or the shipper was required to notify the public.

Mr. Bradley moved HB 191 out of committee and asked unanimous consent. Mr. Parr objected. Mr. Bradley withdrew his motion. Mr. Parr requested that the ATC be notified for one final time and requested to present justification as to why they oppose the 45 days notice.

HJR 11 Veto, special session

The following amendments were adopted:

page 1, line 7: in the title -- after "bills" insert a period and delete the rest of the title.

page 2, line 2: delete the underlined language in lines 2 and 3 and insert: "than the fifth day of the next regular or special session of that legislature."

CS HJR 11 was moved out of committee.

HJR 4 Governor's term

Mr. Gardiner turned the chair over to Mr. Bradley. Mr. Gardiner, sponsor of the bill, testified that the adverse effects of an election in the middle of a governor's possible term must be weighed against the public accountability that the election provides. He said that work in an election year is just as important as any other time and should not be sacrificed to political ambition. He suggested that language be put in the bill to state that a governor having a 4 year term previous to election to a six year term would be allowed to serve the full six year term. This would hold true not only for transitional periods but could also be incorporated to cover a lt. governor who serves more than 4 years of a governor's term -- who would then not be eligible to run, but who serves less than four years -- would be eligible for a six year term of his own.

It was decided that proposed amendments would be drawn up.

HJR

39

Proposing an amendment to the Alaska Constitution, establishing a permanent fund for certain proceeds derived from non-renewable resources.

# COMMITTEE REPORT

3/10/76

## HOUSE

Mr. Speaker: Date 3/24

The Committee on JUDICIARY has had SSHJR 39 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR SSHJR 39 AND THAT CS FOR SSHJR 39 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

hjr 39

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

February 4, 1976

The Honorable Hugh Malone
Chairman
House Finance Committee
Alaska State Legislature
State Capitol Building
Juneau, AK 99811

Re: Sponsor Substitute for House Joint Resolution No. 39

Dear Mr. Malone:

Sponsor Substitute for House Joint Resolution No. 39, proposing an amendment to the Alaska Constitution, establishing a permanent fund for certain proceeds derived from non-renewable resources was introduced on January 15, 1976 by the Rules Committee at the request of the Governor and was referred to the House Finance and Judiciary Committees.

For the consideration of the House Finance Committee, I am enclosing a copy of a fiscal note prepared by Lawrence P. Eppenbach, Deputy Commissioner, Treasury, Department of Revenue along with a copy of a memorandum from the same employee detailing fiscal note comments.

If you or any members of the House Finance Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Mr. Eppenbach for further information or testimony at a hearing.

Very truly yours,

R. D. Stevenson
Special Assistant

Enclosures

cc: The Honorable Terry Gardiner
Chairman
House Judiciary Committee

Lawrence P. Eppenbach
Deputy Commissioner, Treasury
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Title: Joint Resolution - Permanent Fund
Requested by: Governor Date: January 12, 1976
Return Date Requested:
Agency: Revenue Program: State Investment Advisory Committee

II. FISCAL DETAIL
Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

| OBJECT | | FY 76 | FY 77 | FY 78 | FY 79 | FY 80 | FY 81 |
|---|---|---|---|---|---|---|---|
| 100 | PERSONAL SERVICES | | | | | | |
| 200 | TRAVEL | | | | | | |
| 300 | CONTRACTUAL | | 150,000 | | | | |
| 400 | COMMODITIES | | | | | | |
| 500 | EQUIPMENT | | | | | | |
| 600 | LAND & STRUCTURES | | | | | | |
| 700 | GRANTS, CLAIMS, ETC. | | | | | | |
| | TOTAL | | 150,000 | | | | |

B. FUNDING: (Thousands of dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | 150,000 | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |

C. POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| | / | / | / | / | / | / |

STATE of ALASKA

# MEMORANDUM

TO: Sterling Gallagher
Commissioner
Department of Revenue

DATE: January 12, 1976

FROM: Lawrence C. Ippenbach
Deputy Commissioner, Treasury
Department of Revenue

SUBJECT: Fiscal Note Comments - Permanent Fund Concept

The proposed Constitutional initiative would establish a permanent fund composed of 10 percent of all mineral lease revenue and production taxes received by the State. The amendment calls for the fund to be invested in income yielding projects and investments, with the income transferred to the general fund.

The amendment language is broad in nature and a comprehensive piece of enabling legislation will be required to make the concept work. Many topics will have to be addressed by this enabling legislation such as the investment objectives, the creation of development financing institutions, new loan programs, and even the organizational framework. To study these questions and to have draft legislation ready for introduction at the beginning of the 1977 session will require research to commence right away. In addition, since the success of this fund will hinge on the quality of management personnel work must also proceed in identifying and recruiting qualified managers.

This fiscal note assumes that the present State Investment Advisory Committee will research and draft this legislation and that it will be completed by January 15, 1977. This Committee is presently responsible for advising the Commissioner of Revenue with respect to investments and its membership (legislative, executive, and public) is broadly representative of Alaskan interests.

The State Investment Advisory Committee does not have a permanent staff; this fiscal note would provide funds for securing the necessary research capability. In addition, new members may be appointed to the Committee to enhance its ability to undertake this responsibility. Even though the approach taken ultimately will be up to the Committee, the following outline might represent a typical plan. It divides the work into four phases:

1. Preliminary/Conceptual Research: Typical assignments would include a study of the experience of similar funds in other states; a thorough cataloging of Alaska's renewable and non-renewable resources; an examination of the need for credit expansion in Alaska; the evaluation of present loan programs; the identification of alternative administrative frameworks for the fund; and background data gathering on the State's financial position.

2. Economic Research: Work in this area might consist of the classification of present and potential revenue sources into recurring and non-recurring components; the identification of possible recurring revenue increments related to development activity, and the identification of environmental costs associated with that activity. This should provide a ranking of potential economic projects with respect to long term net economic benefit to Alaskans. Careful coordination with the development plans of Native Regional and Village Corporations, State authorities, municipal, and private sector corporations will be required.

3. Financial Research: Here the detail work begins in identifying alternative investments that may qualify for permanent fund participation. Each project would have to be ranked according to its ability to stimulate net recurring revenue benefits to the entire State. Measurements of the impact of fund operation on State budget expenditures would also have to be made.

4. Legal Research: Reviews of legal investments, the legal status of investing in quasi-public institutions, and the actual writing of proposed legislation would logically fall into this category.

LCE:ge
Enclosure

# Amendments to HJR 39

(1) Page 1 line 6
Changed title to Alaska Permanent Fund from "a permanent fund

(2) lines 13 & 14 changed "except as provided in sec 15, and" to as provided in sec 15 of this artical or" The deletion of "when required" is a type This is better language construction

(3) line 21 added the word "ALASKA" to title to be consistant with HJR title

(4) line 21 changed "10%" to "25%" Reason is more bucks

(5) line 22 added "fedral mineral"

(6) line 23 added "all" see committee report for reason

(7) line 25 through 28. The original words were "shall be used for income investment". The committee amended this to read "shall be used only in a manner to be provided by law". This was again changed without committee aprovel to say "shall be used only for those income producing investments specifically designated by law as eligible for permanent fund investment" This was done so a state employee could

not argue That any chang in present law, i.e vet loans, which had fical emplications was emplidly "in a manner to be provided by law" and hence tapo the fund.

(8) Page 2 line one; added "unless otherwise provided by law."

Reason: Standard language and to be consistant with amendment 7

(9) Page 2 line 6 Through 8 added Sec 4 at request of Fiance

Constitution ~~has~~ says an amendment bellcomes effective 30 days after certification unless amendment ~~say~~ give another time. This ~~Amer~~ section says 90 days from certification. I dont finow the reasoning

Introduced: 1/15/76
Referred: Finance and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 39

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Alaska Constitution, establishing a permanent fund for certain proceeds derived from non-renewable resources.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article IX, Section 7, Constitution of the State of Alaska, is amended to read:

SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 and except when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this constitution by the people of Alaska.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 15. PERMANENT FUND. [Ten] 25 per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments, bonuses, and all mineral production taxes received by the state shall be placed in a permanent fund, the principal of which shall be used only for income investments which shall be established by law. The legislature may appropriate additional amounts to the permanent fund which shall become a part of the principal of the fund. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

# AMENDMENT #1

OFFERED IN THE HOUSE: BY: FINANCE COMMITTEE

To: _____ HOUSE BILL No. SSHJR 39

SENATE BILL No. _____

1) PAGE: 1 LINE: 6 Title

after "estab shing" insert: an ALASKA PERMANENT FUND

2) 1 22

before PERMANENT FUND insert: ALASKA

before "per cent" delete: Ten

insert: Twenty-five

3) 1 23

before "revenue" insert: federal mineral

4) 1 26

after "investments" insert: In a manner to be provided by law which shall be established by law

5) 1 29

after "fund" add: In a manner to be provided by law unless otherwise provided by law

6) 2 5

add another section: * Sec. 4. The amendments proposed by this resolution if adopted by the voters at the next general election shall become effective 90 days after the certification of the election returns by the lieutenant governor.

Before the House Judiciary Committee
Regarding: HJR 39 Exception for Dedication of Revenues
Constitutional Amendment for a "permanent fund"

Testimony by Norman Bailey of Anchorage, Alaska - March 15, 1976

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

As the permanent fund concept is before you for passage during this Legislature we cannot stress its importance to the State, and to the future of its citizens, enough.

Alaska is to be the recipient of an additional one billion dollars each year (if tax laws remain unchanged). As oil begins to flow in 1978 and continues on for nearly 20 years, we will be awash in "petro-dollars".

Prudence dictates that we begin now to set up a mechanism for the management of these monies we will receive from the sale of one of our non-renewable resources.

The permanent fund, or placement of a certain percentage, is a fund to preserve the money while it waits to be placed in the State economy to help that economy be more self-reliant. In the past we have seen the negative results of economic exploitation.

The gold industry, once the most influential in Alaska, now presents only closed up mines, ghost towns, and old cabins as evidence of the period. The wealth left Alaska to New York, Seattle, San Francisco, Chicago, and elsewhere. It did Alaskans little good and left no economic benefit for Alaskans of today.

The fishing industry, once strong and thriving, has been exploited nearly beyond recovery. For the most part the wealth has left Alaska. The canneries are owned, still today, almost all by outside interests. The wealth from exploiting that resource has been of little benefit to Alaskans.

The story line is almost the same in each industry. The permanent fund can alter that line. It can allow Alaska the ability to exercise a greater degree of control that ever before over its economic and financial destiny.

Through no acts of our own, we are heir to the benefits of this ONCE occuring treasure. It is doubtful that another Prudhoe Bay will come Alaska's way. It is the obligation and duty of the members of this Legislature to offer all Alaskans the opportunity to decide - since this time they have a chance - what they think the policy of the State ought to be with regard to the preservation of our oil wealth.

I urge you pass HJR 39 out of Committee and give it early attention on the floor.

Norman Bailey

## ASSUMPTIONS

### NATIVE CLAIMS
(millions)

FY76 - $ 6.4 FY77 - $ 5.9 FY78 - $ 71.6
FY79 - $90.8 FY80 - $124.6 FY81 - $140.9
FY82 - $59.8

This is the payment schedule which is included in State Expenditures.

### PROPERTY TAX
(millions)

FY76 - $16.3 + $70.1 = $86.4 FY77 - $70.1 + $58.1 = $128.2
FY78 - $128.2 + $23.9 = $152.1 FY79 - $152.1 + $2.3 = $154.4
FY 1980 = $154.4 FY 1981 = $154.4 FY 1982 = $148.2

The Petroleum industry property is depreciated at 4% per year from FY81 on.

The aforementioned assumes a move up in the effective payment date from Sept. to June. This is why the additional (+) revenues appear from FY76 to FY79.

### BONUS SALES

No Anticipated Bonus Sale Receipts Included

### RESERVE TAX CREDIT
(millions)

The Permanent Fund is calculated on the total reserve tax before the companies receive credits. This is in conformity with the intent of the bill.

| | | | |
|---|---|---|---|
| Receipts | $220 in FY76 | $269 in FY77 | for a total of $489 |
| Paybacks | $109.2 in FY78<br>$ 39.4 in FY81 | $142 in FY79 | $198.4 FY80 |

### INTEREST RATES

The Permanent Fund earns 6% on the previous year's balance which is deposited in the General Fund.

The General Fund earns 6% on the previous year's balance which is deposited into the General Fund.

ANALYSIS OF PERMANENT FUND - AT 25% CONTRIBUTION RATE
(in millions of current dollars)

| FISCAL YEAR | TOTAL UNRESTRICTED GENERAL FUND REVENUE BEFORE CONTRIBUTION | TOTAL REVENUE SUBJECT TO PERMANENT FUND CONTRIBUTION | 25% CONTRIBUTION TO PERMANENT FUND PER YEAR | PERMANENT FUND BALANCE | TOTAL UNRESTRICTED GENERAL FUND REVENUE AFTER CONTRIBUTION | TOTAL UNRESTRICTED GENERAL FUND EXPENDITURES + ALASKA NLC | GENERAL FUND SURPLUS (DEFICIT) | GENERAL FUND BALANCE |
|---|---|---|---|---|---|---|---|---|
| FY75 | 333.4 | --- | --- | --- | 333.4 | 490.0 | (156.6) | 379.3 |
| FY76 | 650.0 | 68.6 | 17.2 | 17.2 | 632.8 | 626.4 | 6.4 | 385.7 |
| FY77 | 728.7 | 63.5 | 15.9 | 33.1 | 712.8 | 705.9 | 6.9 | 392.6 |
| FY78 | 986.4 | 688.7 | 172.2 | 205.3 | 814.2 | 871.6 | (57.4) | 335.2 |
| FY79 | 1181.5 | 874.3 | 218.6 | 423.9 | 962.9 | 990.8 | (27.9) | 307.3 |
| FY80 | 1493.0 | 1198.9 | 299.8 | 723.7 | 1193.2 | 1124.6 | 68.6 | 375.9 |
| FY81 | 1871.3 | 1374.9 | 343.7 | 1067.4 | 1527.6 | 1240.9 | 286.7 | 662.6 |
| FY82 | 2111.7 | 1526.4 | 381.6 | 1449.0 | 1730.1 | 1259.8 | 470.3 | 1132.9 |
| FY83 | 2403.8 | 1757.1 | 439.3 | 1888.3 | 1964.5 | 1300.0 | 664.5 | 1797.4 |
| FY84 | 2651.7 | 1931.0 | 482.8 | 2371.1 | 2168.9 | 1400.0 | 768.9 | 2566.3 |
| FY85 | 2819.8 | 2018.5 | 504.6 | 2875.7 | 2315.2 | 1500.0 | 815.2 | 3381.5 |

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

HJR 39

I. REQUEST
********* Joint Resolution - Permanent Fund
Title:
Requested by: Governor Date: January 12, 1976
Return Date Requested:
Agency: Revenue Program: State Investment Advisory Committee

II. FISCAL DETAIL
Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

| | OBJECT | FY 76 | FY 77 | FY 78 | FY 79 | FY 80 | FY 81 |
|---|---|---|---|---|---|---|---|
| 100 | PERSONAL SERVICES | | | | | | |
| 200 | TRAVEL | | | | | | |
| 300 | CONTRACTUAL | | 150,000 | | | | |
| 400 | COMMODITIES | | | | | | |
| 500 | EQUIPMENT | | | | | | |
| 600 | LAND & STRUCTURES | | | | | | |
| 700 | GRANTS, CLAIMS, ETC. | | | | | | |
| | TOTAL | | 150,000 | | | | |

B. FUNDING: (Thousands of dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | 150,000 | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |

C. POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| PERMANENT/TEMPORARY | / | / | / | / | / | / |
| MAN MONTHS (P./T.) | / | / | / | / | / | / |

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This fiscal note displays the reasonable minimum in research expenses to draft bills for introduction in the 1977 legislative session to implement the permanent fund. It does not describe the longer term revenue impact of such a fund.

IV. ATTACHMENTS

V. DATE: January 12, 1976 PREPARED BY: Lawrence C. Eppenbach

Lawrence C. Eppenbach

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

MEMO TO: Terry Gardiner

FROM: Rick Svobodny

RE: SS HJR 39 Permanent Fund

March 16, 1976

After the Committee meeting of March 15 I discussed the question of broadening the language concerning taxation of mineral products and severance with Av Gross. Av suggested I contact John Messenger, the attorney in the Department of Law who deals with tax matters. On March 16, Messenger and I discussed the committee's desire to broaden the language of sec. 15 while at the same time restricting the income to the fund to proceeds of mineral production or severance. Messenger and I suggest that on page 1, line 24 the word "all" be added after the word "and". The addition of this word makes the language more explicit but is not overly broad. We discussed other language but given the propensity for the Supreme Court to liberally construe the Constitution we felt that any other language will be overly broad.

The proposed amendment should be coupled with a Chairman's Report to read as follows:

Introduced: 1/15/76
Referred: Finance and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 39

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Alaska Constitution, establishing a permanent fund for certain proceeds derived from non-renewable resources.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 and except when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this constitution by the people of Alaska.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 15. PERMANENT FUND. Twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments, bonuses, and all mineral production taxes received by the state shall be placed in a permanent fund, the principal of which shall be used only for income investments as provided by law. The legislature may appropriate additional amounts to the permanent fund which shall become a part of the principal of the fund. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

> x sec. 4 ...

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M

March 15, 1976

SUBJECT: SSHJR 39 and amendments proposed by the House Finance Committee

TO: Representative Gardiner, Chairman
House Judiciary Committee

FROM: Randolph Berry
Revisor of Statutes

I have examined the amendments proposed by the House Finance Committee to SSHJR 39 and do not find any problems or internal inconsistencies created by those amendments. I would, however, recommend that for grammatical clarity and to conform to the cross-citation form used elsewhere in the constitution, the amendment to the constitution made by sec. 1 of the resolution be worded in the following manner:

> SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this constitution by the people of Alaska.

RB/sm

# Permanent fund: new independence

By CLARK GRUENING

ALASKA FORUM

(Today's Alaska Forum writer is Clark Gruening, a Democratic state representative from Anchorage District 7.)

The Fourth of July came three days early to Alaska in 1958. Alaskans paraded in the streets, exploded fireworks, and generally showed their pleasure over President Eisenhower's signature of the Alaska Statehood Act. Passage of the Act culminated nearly a century of struggle by Alaskans for political self-determination enjoyed by the rest of the Union.

The future of the new state could not have looked brighter. Two factors weighed in the state's favor – a scarcity of population and an abundance of natural resources. Even though lack of population was not universally seen as an asset, it has allowed the state to apply a liberal per capita dose of money to social ills.

**TODAY, THE ORIGINAL** optimism is tempered by a growing recognition that statehood was an important, but not final victory in a larger struggle. The continuing struggle is both political and economic.

On the political front, Alaska has much to lose if, true to historical patterns, federal decisions to lease the Gulf of Alaska for offshore oil development and to classify large acreages of 17 d-2lands are made with indifference to state needs and rights.

On the economic front, it was hoped statehood would provide relief from the political impotence that seemed to allow financial subjugation of the Territory by outside interests. It is significant that when Alaskans overwhelmingly approved their State Constitution on April 24, 1956, the ordinance to abolish fish traps placed on the same ballot also passed by a wide margin.

**ALTHOUGH THE FISH TRAP** issue was often debated in terms of conservation and fair competition, the reality was that fish traps, being owned and operated by absentee-owned cannery interests, were a symbol of the worse kind of economic exploitation. Yet, today, as fish traps fade from memory, the processing and marketing segment of Alaska's fishing industry is still largely owned by absentee interests.

As oil exploitation finances an increasing portion of the state's operating budget, Alaskans with an eye to the future are wondering with some apprehension what happens when the oil runs out. Oil and gas production will fund some 29 per cent of the operating budget now under consideration for Fiscal Year 1977. By 1982, oil revenues (projected at current tax rates) will supply at least 80 per cent of all available state revenues.

Of course, other non-renewable resource revenues will be found, but like the Prudhoe Bay oil, these too will dwindle as the resource is extracted. Prudhoe Bay revenues will begin to wane around 1985 and if the present trend of oil consumption continues, use of oil as an energy source, as well as a revenue source, will become history within one generation of Alaskans.

**HOW MUCH OF THIS OIL** wealth will benefit future generations of Alaskans? The answer is precious little, unless some of today's mineral wealth is set aside in a permanent fund, the principle of which is invested and reinvested in the Alaska economy.

The concept of a permanent fund was debated right after the state fell heir to the $900 million Prudhoe Bay bonus lease sale monies. But at that time there were, as there are now, many immediate needs crying for immediate relief. The temptation of being able to meet present needs without raising taxes was too much and the permanent fund idea was shelved.

It would be unfair to say that the total expenditure of the $900 million between 1970 and 1976 will provide little future benefit for Alaska. The lion's share of the bonus money was dedicated to education which is an investment in people (who certainly should be considered a renewable resource). Indeed, people have proven to be a much more renewable resource than fish, to whose propagation the state has also devoted a large segment of the Prudhoe bonuses.

**IN GENERAL, HOWEVER,** the bonus money has helped to promote a governmental boom which is responsible for the present flurry of economic activity as the construction of the pipeline.

Today, one out of every three Alaskans is employed by federal, state, or local government. The number of permanent full-time state employes has blossomed from 5,790 in 1969 to over 12,000 in fiscal year 1976. Nearly one-half of the state's general funds is allocated to salaries and benefits for state employes.

The permanent fund, by reducing the amount of money available for use in the state's operating budget, would limit the operation of Parkinson's Law. Nevertheless, the main purpose of the fund would be to accumulate a meaningful capital pool for investment within the state. Investment by the fund would help smooth out the boom and bust cycles and reduce outside financial domination.

Last session, the legislature passed House Bill 324 which provided for the placing of 50 per cent of the state's mineral lease bonuses into a perpetual trust ". . . for the benefit of both present and future generations of Alaskans." The governor, although voicing support for the concept, vetoed the bill, ostensibly on technical grounds.

**THIS SESSION, THE GOVERNOR** has introduced Sponsor Substitute for House Joint Resolution 39; a proposal for a constitutional amendment to establish a permanent fund of at least 10 per cent of all mineral lease rentals, royalties, bonuses, as well as mineral production taxes, the principal of which may only be used for income producing investments. Commissioner of Revenue Sterling Gallagher, in a hearing before the House Finance Committee on HJR 39, testified that the 10 per cent is intended as a floor.

The establishment of a permanent fund of revenue from the production of the state's mineral wealth is a task this legislature and the administration should not postpone. Passage of HJR 39 will require two-thirds concurrence of each house. If the resolution passes, the permanent fund will be before the voters in the upcoming general election in November of this year.

After a thorough study of possible alternative investment strategies, a more detailed design of the investment programs can be incorporated in a bill to be considered either this session or by the next Legislature. In either event, the purpose of the fund would be to provide a capital pool for investments which will maximize the benefits of our renewable resources and help promote a viable Alaskan economy.

**A RECURRENT BUT SHALLOW** criticism of the permanent fund concept is that it would be arrogant for one legislature to tell future legislatures how to spend the state's money. If by chance too much of the state's revenues is earmarked for specific purposes, future legislatures will be unable to respond effectively to changing priorities and problems.

However, the real problem facing the state is just the opposite extreme — too much is being spent to meet supposed immediate needs by auctioning off non-renewable resources which in some part rightfully belong to future generations.

The supreme arrogance is the supposition that any one administration or legislature has all the answers. The annual allocation of 100 per cent of current non-renewable resource revenues to what are then perceived as priorities hardly gives future governments much to work with. A permanent fund should and can be structured to as to be flexible enough to meet future needs. On the other hand, given the present level of per capita government spending in Alaska, a modest 25 per cent set aside of revenues from one time only mineral development will not hamstring necessary government operations.

**THE CANADIAN PROVINCE** of Alberta, with current annual government expenditures nearly equal to Alaska, has established the "Alberta Heritage Savings Trust Fund" funded from 30 per cent of all non-renewable resource revenues.

The preface to the Alberta act states that ". . . it would be improvident to spend all non-renewable resource revenues as they are received . . ." and ". . . it is appropriate that a substantial portion of those revenues be set aside and invested for the benefit of the people of Alberta in future years."

The kind of foresight Alberta has shown is needed in Alaska. Given Alaska's need for a greater degree of financial independence, the establishment of a permanent fund makes good sense in the continuing battle for statehood.

HJR

42

9- anti trust

January 27, 1975

Jan Van Dort
Faulkner, Banfield, Doogan,
Gross & Holmes
Suite 201
311 Franklin Street
Juneau, Alaska 99801

Dear Mr. Van Dort:

Thank you for your comments regarding the anti-trust bill. We will probably be working on HB 42 some time next week. We will certainly notify you of the meetings.

I would be interested in obtaining a copy of a report mentioned in Mr. Banfield's letter of March 12, 1971, "Insurance Underwriting Under Antitrust" by Mr. Edwin M. Zimmerman.

Sincerely,

Terry Gardiner
Representative

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN, GROSS & HOLMES

HERBERT L. FAULKNER (1882-1972)
NORMAN C. BANFIELD
FRANK M. DOOGAN
AVRUM M. GROSS
MICHAEL M. HOLMES

SANFORD SAGALKIN
RANDALL J. WEDDLE
WILLIAM B. ROZELL
JAN VAN DORT
LAWRENCE T. FEENEY

SUITE 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

TEL. 586-2210
AREA CODE 907

January 24, 1975

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Pouch V, State Capitol
Juneau, Alaska 99801

Re: House Bill No. 42

Dear Mr. Chairman:

As a representative of the American Mutual Insurance Alliance, I am interested in House Bill No. 42, which would provide an anti-trust law for the State of Alaska. House Bill No. 42 appears to be identical to Senate Bill No. 5 which was identical to House Bill 142 which was introduced in the previous legislature. None of these bills contained an exemption for the insurance industry when it was introduced. I am enclosing a copy of a letter which Mr. Banfield wrote to Mr. Jalmar Kerttula on March 12, 1971 when he was the Chairman of the House Commerce Committee. This letter describes the impact of an earlier bill on the insurance industry and explains why the industry should be exempt from the bill's provisions.

The House Commerce Committee which considered the bill recognized the problems that the bill created for the insurance industry and therefore prepared a substitute bill which contained the following exemption:

> Persons engaged in the business of insurance, to the extent they are regulated under AS 21, are exempt from the provisions of this chapter.

I would appreciate the opportunity to discuss this subject with your committee when the bill comes up for

consideration. Please let me know when work sessions or committee hearings will be held on House Bill No. 42.

Very truly yours,

FAULKNER, BANFIELD, DOOGAN & HOLMES

By Jan Van Dort

JVD/aw

Enc.

March 12, 1971

The Honorable Jalmar M. Kerttula
Chairman, Commerce Committee
House of Representatives
Juneau, Alaska 99801

Dear Mr. Chairman:

Re: H.B. No. 164, Anti-Trust Bill

I previously wrote to you on February 23, as a representative of American Mutual Insurance Alliance, stating I would investigate the impact which H.B. No. 164 would have on the insurance industry in Alaska and report to you.

Congress has the right to regulate the insurance industry by reason of the fact that it is engaged in interstate commerce. In 1945, it passed the McCarran-Ferguson Act (15 USCA 1011,et seq), which provides that the business of insurance shall be subject to the laws of the several states which relate to the regulation and taxation of the industry. It also provided that the Sherman Anti-Trust Act, the Clayton Act, the Federal Trade Commission Act and the Robinson-Patman Anti-Discrimination Act would not apply to the business of insurance until June 30, 1948, and after that date said Acts shall be applicable to the business of insurance "to the extent that such business is not regulated by state law." Therefore, the states have the right to regulate monopolies and combinations in restraint of trade in the insurance industry. Many states have anti-trust statutes such as proposed by H.B. 164, but New York is the only state which did not exempt the insurance industry. However, when New York did enact such a law on January 1, 1970, it specifically exempted the setting of rates through rating bureaus. The reason various states other than New York have not attempted such regulation is that the Insurance Departments have complete control over discrimination, unfair trade practices, etc., under the Insurance Code. The Insurance Departments, therefore, have control insofar as they care to exercise it, but they recognize that rating bureaus are an absolute necessity. There are other practices in the industry which might be said to be combinations in restraint of trade, such as formulating and adhering to standard insurance policies, the content of which are, in turn, under the control of the State Commissioners. The State Commissioners have their own

association to which the industry goes for guidance with the result that the standard fire insurance policy is used everywhere and any deviations from it can be used only with the approval of the State Director of Insurance. You can understand what a chaotic situation would be created, especially for the consumers, if you had 200 different types of insurance policies in Alaska and how difficult it would be for the Director to regulate the industry.

The reason the companies use rating bureaus to recommend how much they should charge and the State Commissioners use the same bureaus to ascertain what they should allow to be charged, is because the loss experience of all the companies in an area especially under standard policies, is more reliable for rate making than individual loss experience. Therefore, our Director is a subscriber to and pays to support the various bureaus which specialize in rate making for particular purposes. These must be continued, but H.B. No.164 would prohibit such use of, rating bureaus.

From the foregoing, I think it is evident that the industry should be exempt from H.B. No. 164 since it is completely regulated in the same respects by the Insurance Code. If the state should decide to do like New York and prohibit monopolies and regulate the insurance industry under a bill of this type, then it is necessary to work out some specific exemptions such as has been done in New York. Whereas New York is the state in which most of the big companies are incorporated and it is the insurance center of the Western Hemisphere, Alaska is at the opposite end of the spectrum and is in no position to competently regulate the insurance industry except through its Director of Insurance. Therefore, unless the industry is exempt from the provisions of this bill there is a need for specific amendments which can be patterned after the recent New York law. I am furnishing to your staff and particularly Mr. Rhode, a copy of a report made by Mr. Edwin M. Zimmerman, of Washington, D.C., who talked on "Insurance Underwriting Under Antitrust" at a meeting of the 1970 Mutual Insur-

ance Technical Conference at Philadelphia, last November. It will give him some idea of the complexity of the subject of trying to regulate insurance companies under limited exemptions such as are contained in the New York Act.

Yours very truly,

N. C. Banfield

c.c. Mr. Charles A. Brown
Mr. Kenneth H. Nails
Mr. F. O. Eastaugh
Mr. W. W. Fritz
NCB:k

GOV

February 10, 1975

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The Honorable Mike Bradner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Pursuant to the Uniform Rules of the Legislature, I am transmitting a bill to prohibit monopolies and combinations in restraint of trade.

Mor than forty states have already enacted antitrust legislation. Consequently, we have had the benefit of reviewing a large and diverse body of state antitrust law in preparing this bill. In addition, antitrust bills have been introduced in the Alaska Legislature regularly for several years. The attached bill retains many of the provisions of these earlier bills but also attempts to improve upon those provisions which were weak or deficient, and adds provisions which are lacking in earlier bills.

The substantive provisions of this bill follow closely the language of the corresponding federal law. The advantage to using language closely paralleling the federal antitrust laws is that a large body of case law interpreting this language is already in existence.

SECTION-BY-SECTION ANALYSIS

Section 10 prohibits combinations and conspiracies in restraint of trade. For example, this prohibits price fixing agreements, agreements between competitors to allocate markets, exclusive dealing contracts, tying arrangements, and group boycotts, to name but a few.

Section 20 prohibits monopolies and attempts to monopolize.

Section 30 prohibits agreements and conditions which would have the effect of limiting a purchaser or lessee from using products of the seller or lessor's competitor. Examples of this might include exclusive dealing arrangements and tying arrangements. This will at times overlap with section 10, but it also covers situations which would not be reached by section 10 (such as where no agreement exists).

Section 40 prohibits unfair competition and deceptive practices. This provision prohibits many of the acts proscribed above, but also some which might not be covered; for example, price discrimination and boycott by one individual firm.

Section 50 makes unlawful mergers which substantially lessen competition or tend to create a monopoly. It applies to acquisitions by private individuals as well as acquisitions by corporations. The court is authorized to order divestiture in such cases if that is necessary to eliminate the injurious effect.

Section 60 proscribes interlocking directorates and other arrangements of a similar nature. The attorney general is given authority to bring an action to terminate the interlocking relationship.

Section 70 provides the customary exemptions for labor unions, agricultural organizations, and commercial fishermen. In addition, exemptions are provided for bank holding companies organized under AS 06.05.236 and for organizations established under the Cooperative Corporation Act, AS 10.15.

Section 100 makes any contract or agreement made in violation of this chapter voidable by either party, but allows the court the latitude to prevent unjustified gain by a guilty party.

Section 110 provides that persons suffering injury as a result of a violation (including the state, a city, borough, or other government entity) may sue for treble damages, an injunction, or both.

Section 120 makes it a misdemeanor punishable by a fine and imprisonment not exceeding one year to restrain trade (section 10), monopolize or attempt to monopolize (section 20), or make agreements or conditions of sale not to deal with competitors (section 30).

Section 130 authorizes the attorney general to bring an injunctive action, even if the State is not an injured party (for which case the attorney general would be authorized to maintain an injunctive action under section 110). Thus, the attorney general might seek an injunction in combination with an action charging a criminal violation.

Section 140 states that actions under this chapter must be brought in the superior court.

Section 150 acknowledges the use of consent judgments and establishes rules for entry of such judgments in court. It allows any interested party to file objections to the consent judgment or decree during a 60-day period after which it is filed and provides for a hearing on the objections.

Section 160 permits a final judgment in an action brought by the State to be used as prima facie evidence in any subsequent action brought by the State or other party. A consent judgment or decree may not be used in this fashion.

Section 170 establishes a four-year statute of limitation with a tolling of the statute once an action is commenced by the attorney general.

Section 200 gives the attorney general the power to compel production of documents or testimony during investigation for possible antitrust violations and prior to commencement of any action in court.

Section 210 establishes specific guidelines for the contents of the demand and method of serving the demand upon a person, where the material demanded is documentary evidence. It provides that no demand may seek material which is privileged nor may it be unreasonable. Subsection (e) forbids disclosure of the documentary evidence to anyone other than an authorized state employee without the permission of the person who produced the material. Finally, it is made a misdemeanor to disobey or deliberately thwart the demand; however, if the demand is improper, the person on whom it is served is authorized to obtain a court order protecting him from compliance.

Section 220 is substantially identical to section 210, but deals with the procedures for compelling testimony. It provides that when a witness declines to give testimony on the grounds of self-incrimination, he may be given "transactional immunity" and then compelled to testify.

Section 300 contains definitions for the terms "asset," "documentary evidence," and "trade and commerce." "Documentary evidence" is defined to cover all possible forms business records might take.

SUMMARY

Article 1 contains the substantive provisions. It prohibits restraints of trade, monopolies and attempts to monopolize, agreements not to deal with competitors, unfair competition and deceptive practices, mergers which substantially lessen competition or tend to monopoly or interlocking directorates. It also exempts certain organizations from coverage.

Article 2 of the bill contains the provisions on enforcement. Any person injured by a violation of the act may bring a civil action for treble damages, or an action to enjoin the unlawful practice, or an action for both. This remedy is available to the State, a city, borough, or other government entity, as well as all private persons. In addition, any contract made in violation of the anti-trust law is voidable by either party.

Violations of the provisions prohibiting combinations in restraint of trade, monopolies and attempts to monopolize, and transactions and agreements not to use or deal in commodities or services constitute a misdemeanor punishable by a fine, imprisonment not exceeding one year, or both. It is desirable that these violations constitute a misdemeanor since that penalty will no doubt provide a strong deterrent to those who might otherwise engage in such unlawful activities. Furthermore, there is no question of unfairly criminalizing the legitimate activities of businessmen since these violations are seriously harmful to the public and quite easily understood as such by the business community. On the other hand, violations of these provisions prohibiting unfair competition and deceptive practices, mergers which lessen competition, and interlocking directorates, are not made criminal acts