Report of the

NORTH CAROLINA STATE CONSTITUTION STUDY COMMISSION

Raleigh / 1968

REPORT

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1968

To

The North Carolina State Bar

and the

North Carolina Bar Association

Raleigh

1968

NORTH CAROLINA STATE CONSTITUTION STUDY COMMISSION

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NORTH CAROLINA STATE CONSTITUTION STUDY COMMISSION

Raleigh

December 16, 1968

Mr. Claude V. Jones, President
The North Carolina State Bar
Durham

Mr. William J. Adams, President
North Carolina Bar Association
Greensboro

Gentlemen:

We submit to your respective organizations, and through them to the Governor and the General Assembly of 1969, the report of the North Carolina State Constitution Study Commission.

This Commission was created by the Council of The North Carolina State Bar and the North Carolina Bar Association, acting concurrently on the recommendation of His Excellency Governor Dan K. Moore. We were appointed to the Commission in mid-March and were instructed to "give consideration to the question whether there is need for either rewriting or amending the Constitution . . ." and to report the results of our study and our recommendations to your organizations by December 16, 1968. The task has been large, the time for it short. We have tried to perform it faithfully. How well we have met the high challenge given us is for others to determine. Whatever the fate of our proposals, however, we as individuals have gained much from the experience of serving on this Commission. For this opportunity we are grateful.

This report and the bills that will be prepared to carry out its recommendations propose changes -- some modest, some extensive -- in the fundamental charter of our State. In dealing with matters of such importance, unanimity of opinion on all points is not to be expected. Thus the approval of this report by the Commission should not be taken to represent unanimous agreement within the Commission on every aspect of the report. We believe, however, that all of our recommendations are entitled by the importance of their subject-matter to the most serious consideration by your organizations, the Governor, the General Assembly, and the people of the State. Our recommendations, taken all together, constitute a comprehensive revision of our State Constitution. Our proposals have been so drawn, however, that at no stage must they be approved or disapproved on an all-or-nothing basis. As will be more fully explained in the Introduction to this report, our amendments have been so designed that multiple choices will be available to the General Assembly and to the people. They may accept all, or any part, or none of our recommended changes. Each amendment can stand on its own merits, independent of the others.

We wish to record our thanks to several organizations and individuals who have contributed much to the work of this Commission:

- To the Z. Smith Reynolds Foundation for a generous grant underwriting the cost of the Commission's work.
- To the many witnesses who appeared before the Commission and its committees to advise us on the directions that our study and recommendations should take.

- To the Local Government Study Commission, which has pursued an inquiry closely parallelling a part of our own, and with which we have enjoyed close cooperation.

While the formal assignment of this Commission expires with the filing of this report, we will be available as individuals to assist your organizations, the Governor, and the General Assembly as they review our recommendations. The files of the Commission are available for inspection by any interested person.

Finally, we recommend our work to the careful examination -- and we trust the approval -- of The North Carolina State Bar, the North Carolina Bar Association, the General Assembly, and the people of North Carolina in whose service we have labored.

Respectfully submitted,

Emery B. Denny
Chairman
For the Commission

To His Excellency
Dan K. Moore, Governor
Raleigh, North Carolina

Dear Sir:

In accordance with the provisions of the "Plan For a Commission Study of the Constitution of the State of North Carolina," which provided that the Study Commission should report the results of its study and its recommendations, if any, to the two organizations initiating and sponsoring the study, namely, The North Carolina State Bar and The North Carolina Bar Association, said organizations herewith respectfully transmit to you the Report of the Study Commission in order that the Report may be made available to you, to the heads of the Administrative Departments, the members of the General Assembly and the people of North Carolina.

It is not the function or purpose of this letter of transmittal to state the position of the sponsoring organizations, or either of them, with respect to any recommendations contained in the Report, but The North Carolina State Bar and The North Carolina Bar Association would like to take this opportunity to commend the members of the Study Commission for the diligence, perseverance, dedication and ability with which they have performed the important public service entrusted to them, and to express the hope that the Report will receive the careful and detailed study and consideration which it deserves, to the end that the best interests of the State will be served.

Respectfully submitted,

THE NORTH CAROLINA STATE BAR

By _____
President

THE NORTH CAROLINA BAR ASSOCIATION

By _____
President

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I

INTRODUCTION

The Nature of a State Constitution

The purpose of a state constitution has been well described by the late John J. Parker, Chief Judge of the United States Court of Appeals for the Fourth Circuit (1931-58), in these words:

> The purpose of a state constitution is two-fold: (1) to protect the rights of the individual from encroachment by the State; and (2) to provide a framework of government for the State and its subdivisions. It is not the function of a constitution to deal with temporary conditions, but to lay down general principles of government which must be observed amidst changing conditions. It follows, then, that a constitution should not contain elaborate legislative provisions, but should lay down briefly and clearly the fundmental principles upon which the government shall proceed, leaving it to the people's representatives to apply these principles through legislation to conditions as they arise.

The legal nature of a state constitution derives from the nature of the state in the American system. In theory, the people of each state are sovereign -- the source of all political power within that state. Through the medium of their state constitution, they have endowed their state government -- especially the legislative branch -- with all of their governmental powers except those reserved to the people by the terms of the constitution itself. The states in turn, through the United States Constitution and its amendments, have delegated a portion of their powers to the United States. The result is that the United States is a government of enumerated powers, while the state governments possess all powers not denied them by the terms of their own constitutions or the federal constitution. A state constitution, in contrast, is not a grant of enumerated powers. To the extent that it grants powers, it does so in the broadest possible terms -- it says, for example, that "The legislative authority shall be vested

in . . . a Senate and House of Representatives." Thus when a question arises as to whether or not the General Assembly possesses the power to enact a proposed measure, the presumption is that it does have the power unless in the state constitution itself or in the federal constitution some denial of that power can be found.

It is essential to keep this point in mind in interpreting state constitutions, for what may appear in form to be a grant of authority to the General Assembly to act on a particular matter normally has in legal effect a limitation, not a grant. For example, Art. V, § 2, of the State Constitution states that "The General Assembly may also tax trades, professions, franchises, and incomes, Provided the rate of tax on income shall not in any case exceed ten percent (10%) . . . ." This is not the source of the General Assembly's power to tax income; it levied an income tax under its general legislative authority long before the Constitution mentioned the matter. The provision above quoted is a limitation on the rate of tax on incomes to a maximum of ten per cent. To repeal that provision would not take away the power of the General Assembly to levy an income tax; it would instead take away the top limit on the rate.

From this it follows that in drafting or amending state constitutions, it is desirable to avoid expressions that purport to grant authority to the General Assembly, since they lead at best to confusion and at worst to a serious misconception of the function of a state constitution and especially of the authority of the legislature.

The Need for Constitutional Revision

Despite their intended permanence, constitutions deal with the issues familiar to the time of their adoption and reflect the viewpoints, insights,

and limitations of their draftsmen. Convictions change over time, even as to what are the "general principles of government which must be observed amidst changing conditions." And constitution writers sometimes cannot forego the temptation to impose their own views as to details of policy and procedure on future generations to which those views may not be relevant.

Thus it is necessary that a state constitution be amended from time to time as problems arise that were not contemplated at the time the constitution was drafted, or as old solutions prove inadequate to governmental problems in their new manifestations. Amendments are, however, seldom comprehensive in scope. They usually are adopted in response to specific, present needs. They typically are aimed at getting a particular result and are so drawn as to make the minimum necessary change in the constitution and thus to excite the minimum opposition. Incompleteness and even inconsistency in the language of the constitution sometimes result. Therefore the piecemeal amendment process does not eliminate the need for an occasional review of the whole constitution to determine whether it speaks to present issues and in terms understandable to the age, and whether it constitutes a clear and effective expression of the current public will on the matters that it purports to cover.

Throughout the United States, the decade of the nineteen sixties has witnessed a great deal of effort aimed at the revision of state constitutions. Several states have undertaken general revisions of their state constitutions. Some of them, such as Michigan, Hawaii, and Florida, have been successful. Others, including New York, Maryland, and Rhode Island, have not. Yet other states, notably California and Pennsylvania, have undertaken to reform their constitutions in stages over several years. A major factor in opening the way to the current wave of constitutional revision has been the reapportionment of both houses of all state legislatures on the basis of population. This has

removed one of the chief former barriers to constitutional change -- the fear that it would result in a modification of the scheme of representation that enabled the dominant legislative group to retain its power.

The Constitution of North Carolina was adopted in 1868. In the intervening century, it has been amended 69 times, while 28 proposed amendments have been defeated at the polls. Each amendment has altered from one or two words to an entire article of the Constitution, although the tendency has been to make the minimum change essential to gaining the object at hand. No constitutional convention has met in this State since 1875, nor have the people voted since that time on whether to hold a convention. Commissions established by the General Assembly proposed extensive amendments to the constitution in 1913 and complete revisions of that document in 1933 and 1959. The 1913 amendments were rejected by the voters. The 1933 and 1959 revisions never reached the voters, although that of 1933 was approved by the General Assembly and that of 1959 by the Senate.

As a result, despite the frequency with which the constitution has been altered (especially in the last quarter-century), it has not undergone a thorough updating in a century. In consequence, it contains considerable matter that is clearly obsolete, having long ago served its intended purpose, such as provisions stating when the officers elected in 1868 should take office and an 1875 instruction to the General Assembly to establish a Department of Agriculture. It also contains several provisions that are invalid because in conflict with the Constitution of the United States, such as the provision on racial segregation in the public schools. More significantly, in some respects it handicaps effective governmental response to the needs of the people -- for instance, in the dispersion of the executive authority of state government and in some of the financial

restraints imposed on local government. For all of these reasons, the centennial year of 1968 was an auspicious time for a thorough re-examination of the Constitution of North Carolina

Establishment of this Commission

Governor Dan K. Moore reflected this conclusion in a speech to the North Carolina State Bar on October 27, 1967, wherein he urged the State Bar to take the leadership in sponsoring a study to determine whether the constitution needs "revising or even rewriting. . ." and to make the results of that study available to his successor and to the General Assembly.

The Council of the North Carolina State Bar accepted the Governor's challenge and obtained the agreement of the North Carolina Bar Association to make it a joint undertaking. The presidents of the two bar organizations appointed five members each to constitute a Steering Committee to develop a plan for the study, select the members to conduct it, and find the money to finance it.

The President of the North Carolina State Bar appointed to the Steering Committee the following attorneys:

Charles B. Aycock of Kinston

Davis C. Herring of Southport

Claude V. Jones of Durham

William D. Sabiston, Jr., of Carthage

Robert G. Sanders of Charlotte

The President of the North Carolina Bar Association appointed to the Steering Committee the following attorneys:

William J. Adams, Jr., of Greensboro

Richard C. Erwin, Sr., of Winston-Salem

Francis J. Heazel of Asheville

William T. Joyner of Raleigh

Lindsay C. Warren, Jr., of Goldsboro

Governor Moore, at the invitation of the two Presidents, designated Colonel Joyner as Chairman of the Steering Committee. The Committee chose Mr. Jones as its Vice Chairman.

Meeting on February 9 and March 8, 1968, the Steering Committee selected 25 persons to constitute the North Carolina State Constitution Study Commission. Fifteen lawyers and ten non-lawyers were chosen, representing all geographic sections of the State, the two political parties, and a variety of professional, economic, and ethnic backgrounds. It prepared and adopted a plan for the work of the Commission (see Appendix 1) in which it stated that the

> . . . Commission will make a study of the Constitution of North Carolina and give consideration to the question whether there is a need for either rewriting or amending the Constitution. Such study should consider not only the question of editorial improvements, [and] the elimination of archaic provisions, but also any broad and substantial matters concerning the present and future demands upon our State government. No limits are placed on the field of the Commission's study of the Constitution or on its recommendation.

The Commission was directed to report to the sponsoring bar organizations and to do so, if feasible, by December 16, 1968. It was contemplated that the Commission's report would be transmitted by those groups to the Governor and the General Assembly of 1969 for their consideration.

The Steering Committee, with the aid of Governor Moore, obtained a grant of $25,000 from the Z. Smith Reynolds Foundation, Incorporated, to meet the expenses of the Commission.

Organization of the Commission

At its initial meeting on April 5, the State Constitution Study Commission chose as its Chairman the former Chief Justice of the Supreme Court of North Carolina, Emery B. Denny. It elected as its Vice Chairmen Archie K. Davis of Winston-Salem and Judge Rudolph I. Mintz of Wilmington and as its Secretary Bert M. Montague of Raleigh. It engaged the Institute of Government to serve as its professional staff.

Four subject-matter committees of six members each were established by the Commission. They were:

I. Committee on Structure, Organization, and Powers of State Government

II. Committee on Structure, Organization, and Powers of Local Government and Government Finance

III. Committee on Education, Welfare, and Criminal Justice

IV. Committee on Declarations of Principles and Policies and Miscellaneous.

Much later in the course of its work, the Commission also established an Editorial Committee.

The Chairmen and members of these committees were appointed by the Chairman of the Commission. (Appendix 2 lists the chairmen and members of the committees.) Every member of the Commission except its Chairman served on one of the four subject-matter committees, and five of them also served on the Editorial Committee.

Commission Procedures

The Commission met four times during April and May. It heard numerous witnesses, some of whom came on the express invitation of the Commission and some of whom came in response to a general invitation to interested citizens to appear and discuss the need for constitutional revision. From June until mid-September, the work of the Commission was carried on by its four subject-

matter committees. Each committee held five or six meetings, usually in Raleigh. The members heard witnesses on the particular matters within their charge. They examined the constitutions of other states, especially those adopted or proposed in recent years. They carefully reviewed those portions of the Constitution of North Carolina assigned to them in order to determine the need for changes both editorial and substantive. They prepared drafts of revised articles and sections of the constitution for consideration by the Commission.

During the fall, the Commission held a series of four meetings at which it received and reviewed the recommendations of each of its subject-matter committees. Action on committee recommendations was in every instance delayed until the next meeting after the one at which presented.

The Commission then established the Editorial Committee and gave it the task of preparing a revised text of the proposed constitution and of the separate amendments in a clear and consistent style. The texts prepared by the Editorial Committee were twice reviewed, modified, and approved by the Commission. The text of this report was adopted by the Commission at its ninth and final meeting on November 27th.

Objective

Our ultimate objective throughout our study has been to help obtain for North Carolina a constitution that deals in a realistic, direct, and understandable way with the current and foreseeable problems of the State that are appropriate to be dealt with in the constitution. We would emphasize the phrase "appropriate to be dealt with in the constitution." The State and local governments face many needs and problems that raise no constitutional

change issue. Their solution is now within the competence of the General Assembly and of local governments.

In order to achieve this general objective of an up-to-date constitution, we consider it necessary to eliminate from the constitution obsolete and unconstitutional provisions, to simplify and make more consistent and uniform the language of the document, to reorganize its content in some instances for the sake of greater clarity, and especially to make several changes in the structure of the executive branch of state government and in the allocation of powers among the branches and levels of government that will enable our state and local governments to meet effectively the needs of the people for efficient and responsive governmental service and protection.

Approach

It has been apparent from early in our study that this objective could not be reached realistically by drafting a host of separate constitutional amendments. That route would be too complicated at every level, because the changes are too numerous and many of them are too interrelated for that approach to be practicable. Thus we were compelled to the same conclusion as that reached by the constitutional study commissions of 1931-33 and 1957-59: the constitution had to be revised as a whole.

Yet we were unwilling to follow the course of our predecessor commissions and incorporate all of our recommendations into a single revised constitutional text which the General Assembly and the voters would have to approve or disapprove as a unit. Included in our recommendations are some on which citizens of the State will differ strongly, as well as many on which we believe that virtually all informed citizens can

agree. We believe that the legislator or voter should not be forced to take all of our proposed changes in order to get any of them; and conversely, that he should not have to vote against all of our proposals merely in order to register his opposition to one or two proposals with which he disagrees.

Consequently, we have framed a series of ten interrelated but mutually independent amendments for submission to the General Assembly and the voters of the State.

At this point, it should be observed that the present Constitution of North Carolina (unlike those of some states) does not limit the number of amendments that can be submitted to the voters at any one time, nor does it limit each amendment to one subject or to one article of the constitution. Thus the General Assembly is free to submit as many amendments, and with such content, as it sees fit.

The first amendment effects a general editorial revision of the constitution, which will be referred to here as "the proposed constitution." The deletions, reorganizations, and improvements in the clarity and consistency of language will be found in the proposed constitution. Some of the changes are substantive, but none is calculated to impair any present right of the individual citizen or to bring about any fundamental change in the power of state and local government or the distribution of that power. We do not deem any of the changes contained in the proposed constitution to be of sufficient magnitude to justify its treatment as a separate amendment. Without detracting from the importance of the other amendments that we are recommending, we believe that the work of this Commission will have been justified if this proposal alone is approved by the General Assembly and the voters.

Each of the other nine amendments incorporates a substantive constitutional change of such importance that we believe that the voters should have a chance to act upon it independently of the other individual amendments and of the proposed constitution. Accordingly, each of these nine amendments has been drawn so that it can be adopted or rejected by the voters on its own merits. Take, for example, the amendment allowing the voters to elect a Governor to two successive terms of office. If a majority of those voting on that amendment favor it, and if a majority of those voting on the proposed constitution favor it, then the two-term amendment will become a part of the revised constitution. If a majority of those voting on the two-term amendment favor it while a majority disapprove the proposed constitution, then the two-term amendment will take effect as an amendment to the present constitution. If a majority disapprove the two-term amendment, of course the present one-term limit remains in force. The same illustration applies in the same way to the other eight individual amendments: if approved by the voters, each will take effect either as part of the present constitution or as part of the proposed constitution, depending on the fate of the latter.

In addition to the proposed constitution (which will constitute the first amendment), we are recommending separate amendments:

2. Requiring judges and solicitors to be licensed attorneys, and requiring the General Assembly to establish a mandatory retirement age for judges and procedures for the disciplining and removal of judicial officers;

3. Granting the veto power to the Governor;

4. Empowering the voters to elect a Governor and Lieutenant Governor for two successive terms;

5. Providing for a change in the mode of selection of certain state executive officers;

6. Reducing the residence time for voting in state elections to six months;

7. Authorizing trial on information and waiver of jury trial in noncapital cases;

8. Requiring the General Assembly to reduce the administrative departments to 25 and authorizing the Governor to reorganize the administrative departments, subject to legislative disapproval;

9. Revising the income tax provision to make possible joint returns by husband and wife and accommodation of the State to the federal income tax;

10. Reassigning future escheats.

Each of these amendments is explained more fully in Part V of this report, where the texts of the amendments are also set out.

Local Government Finance Amendment

In addition to these amendments which we are sponsoring, we wish to draw the reader's attention to another amendment which is set forth as Appendix 3 of this Report. That amendment proposes extensive changes in the provisions of the constitution affecting local government finance. It was prepared by the Local Government Study Commission, working in close cooperation with this Commission. It has been so drawn that it would dovetail with our proposed constitution and amendments. We have examined that amendment carefully and have approved it in principle. We believe, however, that the active sponsorship of that amendment should be left to the Local Government Study Commission.

II

Proposed

CONSTITUTION OF NORTH CAROLINA

1968

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Proposed

CONSTITUTION OF NORTH CAROLINA

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political, and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. The equality and rights of persons. We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Sec. 2. Sovereignty of the people. All political power is vested in and derived from the people; all government of right originates

from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 3. Internal government of the State. The people of this State have the inherent, sole, and exclusive right of regulating the internal government and policies thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Sec. 4. Secession prohibited. This State shall ever remain a member of the American Union; the people thereof are part of the American nation; there is no right on the part of this State to secede; and all attempts, from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Sec. 5. Allegiance to the United States. Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Sec. 6. Separation of powers. The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Sec. 7. Suspending laws. All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Sec. 8. Representation and taxation. The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Sec. 9. Frequent elections. For redress of grievances and for amending and strengthening the laws, elections shall be often held.

Sec. 10. Free elections. All elections shall be free.

Sec. 11. Property qualification. As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Sec. 12. Right of assembly and petition. The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

Sec. 13. Religious liberty. All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 14. Freedom of speech and press. Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Sec. 15. Education. The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Sec. 16. Ex post facto laws. Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Sec. 17. Slavery and involuntary servitude. Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Sec. 18. Courts shall be open. All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law, and right and justice shall be administered without favor, denial, or delay.

Sec. 19. Law of the land; equal protection of the laws. No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws;

nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Sec. 20. General warrants. General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Sec. 21. Inquiry into restraints on liberty. Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Sec. 22. Modes of prosecution. Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

Sec. 23. Rights of accused. In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Sec. 24. Right of jury trial in criminal cases. No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Sec. 25. Right of jury trial in civil cases. In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Sec. 26. Jury service. No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Sec. 27. Bail, fines, and punishments. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 28. Imprisonment for debt. There shall be no imprisonment for debt in this State, except in cases of fraud.

Sec. 29. Treason against the State. Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Sec. 30. Militia and the right to bear arms. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as

standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Sec. 31. Quartering of soldiers. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 32. Exclusive emoluments. No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Sec. 33. Hereditary emoluments and honors. No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Sec. 34. Perpetuities and monopolies. Perpetuities and monopolies are contrary to the genius of a free State and shall not be allowed.

Sec. 35. Recurrence to fundamental principles. A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Sec. 36. Other rights of the people. The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

ARTICLE II

LEGISLATIVE

Section 1. Legislative power. The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. Number of Senators. The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. Senate districts; apportionment of Senators. The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the Senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. Number of Representatives. The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. Representative districts; apportionment of Representatives. The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 6. Qualifications for Senator. Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Sec. 7. Qualifications for Representative. Each Representative, at the time of his election, shall be a qualified voter of the State and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Sec. 8. Elections. The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Sec. 9. Term of office. The term of office of Senators and Representatives shall commence at the time of their election.

Sec. 10. Vacancies. Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Sec. 11. Regular sessions. The General Assembly shall meet in regular session in 1971 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

Sec. 12. Oath of members. Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Sec. 13. President of the Senate. The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Sec. 14. Other officers of the Senate.

(1) President Pro Tempore - succession to presidency. The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) President Pro Tempore - temporary succession. During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) Other officers. The Senate shall elect its other officers.

Sec. 15. Officers of the House of Representatives. The House of Representatives shall elect its Speaker and other officers.

Sec. 16. Compensation and allowances. The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Sec. 17. Journals. Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Sec. 18. Protests. Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Sec. 19. Record votes. Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Sec. 20. Powers of the General Assembly. Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Sec. 21. Style of the acts. The style of the acts shall be: "The General Assembly of North Carolina enacts:".

Sec. 22. Action on bills. All bills and resolutions of a legislative nature shall be read three times in each house before they become laws, and shall be signed by the presiding officers of both houses.

Sec. 23. Revenue bills. No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three

several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Sec. 24. Limitations on local, private, and special legislation.

(1) Prohibited subjects. The General Assembly shall not enact any local, private, or special act or resolution:

(a) Relating to health, sanitation, and the abatement of nuisances;

(b) Changing the names of cities, towns, and townships;

(c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;

(d) Relating to ferries or bridges;

(e) Relating to non-navigable streams;

(f) Relating to cemeteries;

(g) Relating to the pay of jurors;

(h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;

(i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;

(j) Regulating labor, trade, mining, or manufacturing;

(k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;

(l) Giving effect to informal wills and deeds;

(m) Granting a divorce or securing alimony in any individual case;

(n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) Repeals. Nor shall the General Assembly enact any such local, private, or special act by the partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) Prohibited acts void. Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) General laws. The General Assembly may enact general laws regulating the matters set out in this Section.

ARTICLE III

EXECUTIVE

Section 1. Executive power. The executive power of the State shall be vested in the Governor.

Sec. 2. Governor and Lieutenant Governor: election, term, and qualifications.

(1) Election and term. The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) Qualifications. No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to either of these two offices shall be eligible for election to the next succeeding term of the same office.

Sec. 3. Succession to office of Governor.

(1) Succession as Governor. The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The

further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) Succession as Acting Governor. During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) Physical incapacity. The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) Mental incapacity. The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) Impeachment. Removal of the Governor from office for any other cause shall be by impeachment.

Sec. 4. Oath of office for Governor. The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of Governor.

Sec. 5. Duties of Governor.

(1) Residence. The Governor shall reside at the seat of government of this State.

(2) Information to General Assembly. The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) Budget. The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

(4) Execution of laws. The Governor shall take care that the laws be faithfully executed.

(5) Commander in Chief. The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) Clemency. The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) Extra sessions. The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) Appointments. The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) Information. The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

Sec. 6. Duties of the Lieutenant Governor. The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Sec. 7. Other elective officers.

(1) Officers. A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters

of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) Duties. Their respective duties shall be prescribed by law.

(3) Vacancies. If the office of any of these officers shall be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 30 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) Interim officers. Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) Acting officers. During the physical or mental incapacity of any one of these officers to perform the duties of his office, as

determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) Determination of incapacity. The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

Sec. 8. Council of State. The Council of State shall consist of the officers whose offices are established by this Article.

Sec. 9. Compensation and allowances. The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Sec. 10. Seal of State. There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina". All grants and commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina", and signed by the Governor.

ARTICLE IV

JUDICIAL

Section 1. Division of judicial power. The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Sec. 2. General Court of Justice. The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Sec. 3. Judicial powers of administrative agencies. The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Sec. 4. Court for the Trial of Impeachments. The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of the members shall be necessary to a

quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 5. Appellate division. The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Sec. 6. Supreme Court.

(1) Membership. The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge those duties.

(2) Sessions of the Supreme Court. The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Sec. 7. Court of Appeals. The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Sec. 8. Retirement of Justices and Judges. The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court from which he was retired.

Sec. 9. Superior Courts.

(1) Superior Court districts. The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) Open at all times; sessions for trial of cases. The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) Clerks. A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people

fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Sec. 10. District Courts. The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office.

Sec. 11. Assignment of Judges. The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or

specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Sec. 12. Jurisdiction of the General Court of Justice.

(1) Supreme Court. The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts.

(2) Court of Appeals. The Court of Appeals shall have such appellate jurisdiction as the General Assembly may provide.

(3) Superior Court. Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) District Courts; Magistrates. The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) Waiver. The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) Appeals. The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Sec. 13. Forms of action; rules of procedure.

(1) Forms of Action. There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) Rules of procedure. The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Sec. 14. Waiver of jury trial. In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Sec. 15. Administration. The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court. Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may provide.

Sec. 17. Removal of judges and clerks.

(1) Justices of Supreme Court, Judges of the Court of Appeals, and Judges of Superior Court. Any Justice of the Supreme Court, Judge of the Court of Appeals, or Judge of the Superior Court may be removed from office for mental or physical incapacity by joint resolution of two-thirds of the members of both houses of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to

proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon. Removal from office for any other cause shall be by impeachment.

(2) District Judges and Magistrates. The General Assembly shall provide by general law for the removal of District Judges and Magistrates for misconduct or mental or physical incapacity.

(3) Clerks. Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least ten days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Sec. 18. Solicitors and solicitorial districts.

(1) Solicitors. The General Assembly shall, from time to time, divide the State into a convenient number of solicitorial districts, for each of which a Solicitor shall be chosen for a term of four years by the qualified voters therof, at the same time and places as members of the General Assembly are elected. The Solicitor shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) Prosecution in District Court Division. Criminal actions in the District Court Division shall be prosecuted

in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Sec. 19. Vacancies. Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 30 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next elections for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held, and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Sec. 20. Revenues and expenses of the judicial department. The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Sec. 21. Fees, salaries, and emoluments. The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of judges shall not be diminished during their continuance in office. In no case shall the compensation of any judge or magistrate be dependent upon his decision or upon the collection of costs.

Sec. 22. Schedule. Immediately upon the certification by the Governor to the Secretary of State of the amendments constituting this Article, the Supreme Court and the Superior Courts shall be incorporated within the General Court of Justice, as provided in this Article. All Justices of the Supreme Court and Judges of the Superior Court shall continue to serve as such within the General Court of Justice for the remainder of their respective terms.

The statutes and rules governing procedure and practice in the Superior Courts and inferior courts, in force at the time the amendments constituting this Article are ratified by the people, shall continue in force until superseded or repealed by rules of procedure and practice adopted pursuant to Section 13(2) of this Article.

Upon certification of the Governor to the Secretary of State of the amendments constituting this Article, the General Assembly shall proceed, as rapidly as practicable, to provide for the creation of local court districts and the establishment of District Courts therein; District Courts shall be established to serve every county of the State by not later than January 1, 1971. As of January 1, 1971, all previously existing courts inferior to the Superior Court shall cease to exist, and cases pending in these courts shall be transferred as

provided in the next succeeding paragraph of this Section. Until a District Court has been thus established to serve a county, all of the courts of that county, including the Superior Court, shall continue to be financed and the revenues of these courts shall continue to be paid as they were immediately prior to the certification of the amendments constituting this Article; and the laws and rules governing these courts and appeals from the inferior courts to the Superior Court shall continue in force and shall be deemed to comply with the provisions of this Article.

As soon as a District Court has been established for a county, all of the provisions of this Article shall become fully effective with respect to the courts in that county, and all previously existing courts inferior to the Superior Court shall cease to exist. All cases pending in these inferior courts shall be transferred to the appropriate division of the General Court of Justice, and all records of these courts shall be transferred to the appropriate clerk's office pursuant to rule of the Supreme Court. Judges of these inferior courts, except mayors' courts and justice of the peace courts, shall become District Judges and shall serve as such for remainders of their respective terms.

As soon as a District Court has been established to serve every county of the State, all of the provisions of this Article shall become fully effective throughout the State.

This Section is repealed effective July 1, 1971.

ARTICLE V

FINANCE

Section 1. Capitation tax.

(1) Capitation tax limited. The General Assembly may levy a capitation tax on every male inhabitant of the State over 21 and under 50 years of age, not in excess of two dollars, and cities and towns may levy a capitation tax on persons subject to the State tax not in excess of one dollar. No other capitation tax shall be levied. The governing boards of the several counties and of the cities and towns may exempt from the capitation tax any special cases on account of poverty or infirmity.

(2) Proceeds. The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one fiscal year shall more than 25 per cent thereof be appropriated to the latter purpose.

Sec. 2. State and local taxation.

(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) Classification. Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis. No class shall be taxed except by a uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other local taxing unit of the State. The General Assembly's power to classify property shall not be delegated.

(3) Exemptions. Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other local taxing unit of the State. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) Twenty-cent limitation. The total of the State and county tax on property shall not exceed 20¢ on the $100 value of property, except when the property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act. This limitation shall not apply to taxes levied for the maintenance of the public schools of the State. The State tax shall not exceed five cents on the $100 value of property.

(5) Necessary expense limitation. No tax shall be levied or collected by the officers of any county, city or town, or other unit of local government, except for the necessary expenses thereof, unless approved by a majority of the qualified voters who vote thereon in any election held for the purpose.

(6) Income tax. The rate of tax on incomes shall not in any case exceed ten per cent and there shall be allowed the following

minimum exemptions, to be deducted from the amount of annual incomes: to the income-producing spouse of a married couple living together, or to a widow or widower having minor child or children, natural or adopted, not less than $2,000; to all other persons not less than $1,000; and there may be allowed other deductions, not including living expenses, so that only net incomes are taxed.

Sec. 3. Limitations upon the increase of State debt.

(1) Authorized purposes; two-thirds limitation. The General Assembly may contract debts and pledge the faith and credit of the State for the following purposes:

To fund or refund a valid existing debt;

To borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding 50 per cent of such taxes;

To supply a casual deficit;

To suppress riots or insurrections, or to repel invasions.

For any purpose other than these enumerated, the General Assembly shall have no power, during any biennium, to contract new debts on behalf of the State to an amount in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to a vote of the people of the State. In any election held in the State under the provisions of this Section, the proposed indebtedness shall be approved by a majority of the qualified voters who vote thereon.

(2) Gift or loan of credit prohibited. The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the

State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) Certain debts barred. The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 or 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

Sec. 4. Limitations upon the increase of local debt.

(1) Authorized purposes; two-thirds limitation. The General Assembly may authorize counties, cities and towns, and other units of local government to contract debts and pledge their faith and credit for the following purposes:

To fund or refund a valid existing debt;

To borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding 50 per cent of such taxes;

To supply a casual deficit;

To suppress riots or insurrections.

For any purpose other than these enumerated, the General Assembly shall have no power to authorize counties, cities and towns, and other units of local government to contract debts, and counties, cities and towns, and other units of local government shall not contract debts,

during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county, city or town, or other unit of local government shall have been reduced during the next preceding fiscal year, unless the subject is submitted to a vote of the people of the particular county, city or town, or other unit of local government and is approved by a majority of the qualified voters who vote thereon.

(2) Necessary expense limitation. No county, city or town, or other unit of local government shall contract any debt, pledge its faith, or lend its credit except for the necessary expenses thereof, unless approved by a majority of the qualified voters who shall vote thereon in any election held for that purpose.

(3) Certain debts barred. No county, city or town, or other unit of local government shall assume or pay, nor shall any tax be levied or collected for the payment of any debt, or the interest upon any debt, contracted directly or indirectly in aid or support of the rebellion.

Sec. 5. Acts levying taxes to state objects. Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Sec. 6. Inviolability of sinking funds and retirement funds.

(1) Sinking funds. The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created.

(2) Retirement funds. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used

any part of the funds of the Teachers' and State Employees' Retirement System for any purpose other than retirement, disability, and death benefits, administrative expenses, and refunds, except that retirement system funds may be invested as authorized by law.

Sec. 7. Drawing public money.

(1) State treasury. No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be annually published.

(2) Local government treasuries. No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. Who may vote. Every person born in the United States and every person who has been naturalized, 21 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. Qualifications of voter.

(1) Residence period for State elections. Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) Residence period for presidential elections. The General Assembly may reduce the time of residence for person voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) Disqualification of felon. No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Sec. 3. Registration and election laws. Every person offering to vote shall be at the time a legally registered voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws uniformly applicable throughout the State governing the registration of voters and the conduct of all elections for federal, State, district, and county officers. The General Assembly shall enact general laws governing the registration of voters and the conduct of all elections for city and town officers.

Sec. 4. Qualification for registration. Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. Elections by people and General Assembly. All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. Eligibility to elective office. Every qualified voter in North Carolina, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. Oath. Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as ....., so help me God."

Sec. 8. Disqualifications for office. The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. Dual office holding.

(1) Prohibitions. It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices of places of trust or profit, except as the General Assembly shall provide by general law.

(2) Exceptions. The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

ARTICLE VII

LOCAL GOVERNMENT

Section 1. General Assembly to provide for local government. The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

Sec. 2. Sheriffs. In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. Merged or consolidated counties. Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution.

ARTICLE VIII

CORPORATIONS

Section 1. Corporate charters. No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, education, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Sec. 2. Corporations defined. The term "corporation" as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

ARTICLE IX

EDUCATION

Section 1. Education encouraged. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Sec. 2. Uniform system of schools.

(1) General and uniform system; term. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) Local responsibility. The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may add to or supplement from local revenues any public school or post-secondary school program.

Sec. 3. School attendance. The General Assembly shall provide that every child, subject to conditions established by the State Board of Education, shall attend the public schools unless educated by other means approved by the State Board of Education.

Sec. 4. State Board of Education.

(1) Board. The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in

joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) Superintendent of Public Instruction. The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Sec. 5. Powers and duties of Board. The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Sec. 6. State school fund. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that

purpose, shall be faithfully appropriated and used for establishing and maintaining a uniform system of free public schools.

Sec. 7. County school fund. All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used for maintaining free public schools.

Sec. 8. Higher education. The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Sec. 9. Benefits of public institutions of higher education. The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Sec. 10. Escheats. All property that has heretofore accrued to the State or shall hereafter accrue from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of The University of North Carolina.

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Section 1. Personal property exemptions. The personal property of any resident of this State, to a value fixed by the General Assembly but not less than $500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Sec. 2. Homestead exemptions.

(1) Exemption from sale; exceptions. Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than $1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town, with the dwellings and buildings used thereon, occupied by the owner, and to the same value, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) Exemption for benefit of children. The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) Exemption for benefit of widow. If the owner of a homestead die, leaving a widow but no children, the homestead shall be exempt from the debts of her husband, and the rents and profits thereof shall inure to her benefit during her widowhood, unless she is the owner of a homestead in her own right.

(4) Conveyance of homestead. Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by the owner of a homestead shall be valid without the signature and acknowledgement of his wife.

Sec. 3. Laborer's lien. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption, or a mechanic's lien for work done on the premises.

Sec. 4. Property of married women secured to them. The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Sec. 5. Insurance. The husband may insure his own life for the sole use and benefit of his wife or children or both, and upon his death the proceeds from the insurance shall be paid to or for the benefit of the wife or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his estate. Any insurance policy which insures the life of a husband for the sole use and benefit of his wife or children or both shall not be subject to the claims of creditors

of the insured during his lifetime, whether or not the policy reserves to the insured during his lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

ARTICIE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. Punishments. The following punishments only shall be known to the laws of this State: death, imprisonment, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Sec. 2. Death punishment. The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Sec. 3. Charitable and correctional institutions and agencies. Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Sec. 4. Welfare policy; board of public welfare. Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

ARTICIE XII

MILITARY FORCES

Section 1. Governor is Commander in Chief. The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICIE XIII

CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. Convention of the People. No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and except the proposition, "Convention or No Convention," be first submitted to the qualified voters of the State, at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition be in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act submitting the convention proposition, propose limitations upon the authority of the Convention; and should a majority of the votes cast upon the proposition be in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters of the State at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention shall have been called.

Sec. 2. Power to revise or amend Constitution reserved to people. The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exer-

cised by either of the methods set out hereinafter in this Article, but in no other way.

Sec. 3. Revision or amendment by Convention of the People. A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Sec. 4. Revision or amendment by legislative initiation. A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

ARTICLE XIV

MISCELLANEOUS

Section 1. Mechanic's lien. The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor.

Sec. 2. Continuation in office. In the absence of any contrary provision, all officers in this State, whether elected or appointed, shall hold their positions only until other appointments are made, or, if the offices are elective, until their successors shall have been chosen and qualified.

Sec. 3. Seat of government. The permanent seat of government of this State shall be at the City of Raleigh.

Sec. 4. State boundaries. The limits and boundaries of the State shall be and remain as they now are.

Sec. 5. General laws defined. Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to that subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable

in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every county, city and town, and other unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Sec. 6. Continuity of laws; protection of office holders. The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

III

COMMENTARY ON THE

PROPOSED CONSTITUTION OF NORTH CAROLINA

Introduction

In preparing this proposed constitution, we have taken the first step towards providing North Carolina with a constitution that deals in a realistic, direct, and understandable way with the current and foreseeable problems of the State that are appropriate to be dealt with in the constitution. To gain that objective fully will require that the separate amendments that follow later in this Report be adopted as well. The proposed constitution is, however, an essential beginning toward that goal, for it is in this document that the editorial pruning, rearranging, rephrasing, and modest amendments occur. The more substantial changes have been reserved for handling in separate amendments.

In this commentary, we will explain the editorial rules followed in preparing this proposed constitution and then offer an article-by-article explanation of our recommended text.

Editorial Rules

1. We have retained the current division of the constitution into 14 articles, and while the captions of those articles have been altered slightly in some instances, their subject matter is the same as in the present constitution.

2. In several instances, we have reorganized the contents of an article in order to set forth its provisions in more logical sequence as an aid to ready understanding. Articles I and II have been so treated, for example.

3. In several instances we have transferred sections from one article to another in order to gain a more logical grouping by subject matter -- for instance, to group in Article V the finance provisions now found in five separate articles.

4. We have omitted clearly obsolete matter, such as transitional provisions that have served their purpose and instructions to the General Assembly to take action long ago accomplished.

5. We have omitted provisions that are clearly invalid because contrary to the Constitution of the United States, such as the requirement of racial segregation in the public schools and the grandfather clause under which certain illiterate men were allowed to register prior to 1908.

6. We have omitted provisions that we deemed to be legislative in nature and therefore inappropriate to the constitution, such as the present enumeration in Article XI of the types of charitable and correctional institutions to be maintained by the State.

7. We have tried to make the language of the constitution uniform throughout where uniformity of meaning was intended. For example, the phrase "qualified voters" has been substituted throughout for the various expressions now used to mean the same thing - "voters," "electors," "qualified electors," "the people," "them," and the like. The term "legislature" has been changed to read "General Assembly".

8. We have tried to make the language more direct and contemporary and to avoid archaic legalisms, where these changes would make the document more understandable to all.

9. We have altered expressions that appear to be grants of power to the General Assembly but in fact are limitations on its authority, so that the nature of those provisions will not be mistaken.

10. We have sought to impose standardization of style in spelling, punctuation, capitalization, paragraphing, and the expression of numbers and dates that the original Constitution of 1868 never had and its 69 amendments have further denied it.

11. Abbreviation of the constitution for brevity's sake has not been a primary consideration but has been an incident of our work, since the great majority of the changes embraced in the proposed constitution take the form of deletions of or contractions in language. In a few instances, however (in dealing with the public debt provisions, for example), we have decided that clarity would be aided by a more detailed statement of the constitutional provisions in lieu of the present language, even where no substantive change was sought.

Notwithstanding all of these enumerated changes, there are many sections of the proposed constitution that reflect no change from their statement in the present constitution, save perhaps a new section number. We have not engaged in wholesale tinkering with the constitution for mere nicety of expression, but have recommended change only where there was some good result to be anticipated.

Article I. Declaration of Rights

The bulk of the Declaration of Rights was brought forward by the Convention of 1868 from the Constitution of 1776, with several significant changes and additions being made at that time. In the intervening century, there have been few substantive amendments to the Declaration. Thus it is to be expected that the Declaration deals with problems fresh and meaningful to its authors of 1776 and its revisors of 1868 -- for example, it regulates the quartering of troops in private houses and forbids imprisonment for debt. We do not propose the removal from the Constitution

of any of these ancient guarantees of liberty. We have sought instead to express them in some instances in more direct and understandable language, and in a few instances, to augment them by adding similar guarantees of a more current character.

Proposed Sec. 14 adds a guarantee of freedom of speech.

Proposed Sec. 19 adds to the present law of the land provision a guarantee of equal protection of the laws and a prohibition of improper discrimination by the State.

Proposed Sec. 22 now makes clear in the constitution what previously could be learned only from an obscure constitutional provision and its judicial gloss: that misdemeanants need not be tried upon indictment in most cases.

Proposed Sec. 26 prohibits the exclusion of anyone from jury service on account of sex, race, religion, and national origin.

Proposed Sec. 36 eliminates an ambiguous and potentially troublesome inference in present Sec. 38 that the General Assembly possesses only those powers specifically delegated to it by the Constitution, which is directly contrary to the strongly prevailing theory in North Carolina (and elsewhere) that the General Assembly, by virtue of the general grant of the legislative power in Art. II, §1, possesses all legislative powers not denied to it by the terms of the State or federal constitution.

In addition to these substantive changes, we have proposed the transfer, without change, of present Sec. 6 (dealing with the Confederate and Reconstruction debts) to the article on finance, and the transfer of present Sec. 34 (dealing with state boundaries) to the miscellaneous article.

In order to make it clear that the rights secured to the people by the Declaration of Rights are commands and not merely admonitions to proper

conduct on the part of the government, the words "should" and "ought" have been changed to read "shall" throughout the Declaration.

In a few instances, obsolete words have been replaced by current words to make the meaning of the Declaration clear to today's readers.

Finally, the present Declaration of Rights is casually arranged, with related sections scattered throughout the Article in no consistent order. We propose a new and more logical grouping of the sections in the foregoing text, because we believe that this will aid the reader in understanding this lengthy and important Article of our Constitution.

Article II. Legislative

While Article II, dealing with the General Assembly, has been reorganized, the text found in the proposed constitution contains almost no substantive changes.

The new organization is intended to set forth in a more logical sequence than does the present constitution the provisions dealing with the establishment of the General Assembly; the number, apportionment, qualifications, election, and terms of members of the Senate and House of Representatives; filling vacancies in the membership of the legislature; frequency of sessions; officers of the two houses and their selection; compensation; journals; legislative powers and procedure; and limitations upon the powers of the General Assembly.

The provisions governing the apportionment of the two houses, adopted by the people in November 1968, have been brought forward in the proposed text with no substantive change. The sections on qualifications of members have been clarified by specifying that those qualifications apply as of the time of the election, since members take office at that time.

In order to make clear the authority of either house to adjourn over the weekend and omit the formal Saturday sittings of the General Assembly proposed Art. II, § 20, states that "Either house may, of its own motion, adjourn for a period not in excess of three days."

Three present sections prescribing limitations on the power of the General Assembly to enact local and private legislation (Art. II, §§ 10, 11, and 29) have been combined into proposed Sec. 24. One minor change in that section deserves notice. Present Art. II, § 29, adopted in 1916, prohibits local legislation "Extending the time for the assessment or collection of taxes ...." The term "assessment of taxes" is subject to more than one interpretation. It may mean the determination of the value of property for tax purposes, or it may mean the imposition or fixing of a rate of taxation, for example. In the interest of avoiding ambiguity and of making clear what we believe to have been the intended meaning of the term "assessment" as used in the 1916 amendment, we have substituted the word "levy" for "assessment," so that the prohibition now bars the enactment of local legislation "Extending the time for the levy or collection of taxes ...." Logic also supports this change, since it is more appropriate for the constitution to deal with the time when taxes are imposed on property than for it to deal with the time when property is valued for tax purposes.

We propose the transfer from Article II to Article V (Finance) of present Secs. 30 and 31, protecting sinking funds and retirement funds from diversion. We recommend the deletion of a long-meaningless and consistently ignored requirement that notice be given of an intention to enact private laws and of a long ago performed direction to the legislature to regulate entails.

Article III. Executive

We are recommending several amendments that affect the executive branch of state government and especially the Governor, but these are of sufficient moment that they take the form of separate amendments. Article III of the proposed constitution, while reorganized and abbreviated by the omission of repetitive, legislative-type, and executed provisions, contains few substantive changes of note.

The proposed Article III opens by vesting the executive power in the Governor; this parallels the provisions vesting the legislative power in the General Assembly and the judicial power in the courts. It provides for the election of the Governor and Lieutenant Governor for four-year terms and continues to make them ineligible for immediate re-election (Sec. 2). The qualifications for those offices are not changed, but it is made clear that they must be met at the time of election. The provision that the Governor may take his oath in the presence of the General Assembly is omitted (Sec. 4), since he does not in fact do so at present, the legislative convening date falling about two weeks after the inauguration of the Governor.

The Governor's duties, now randomly set forth in several sections of Article III, have been collected in Sec. 5. The only addition to the list gives constitutional status to the Governor's present statutory responsibility for preparing and recommending the state budget to the General Assembly and then for administering it after enactment (Sec. 5(3)). The detail about reports to the General Assembly on the exercise of the clemency power is omitted as more appropriate for statutory than constitutional coverage. The 1953 direction to the General Assembly to establish the Board of Paroles, long since accomplished, is omitted as obsolete (Sec. 5(6)). The detailed

provision about reports to the Governor from various officers has been reduced to a simple statement that the Governor may require written information from any administrative department head at any time (Sec. 5(9)).

The statement of the Lieutenant Governor's duties (Sec. 6) has been broadened to make clear what is already the fact: that the Governor may delegate to him and the General Assembly may assign to him additional duties as they see fit.

The present list of eight elected executive officers (in addition to the Governor and Lieutenant Governor) is found in proposed Sec. 7, and their duties continue to be prescribed by law.

The membership of the Council of State (now seven of the elected executives with the Governor serving as its Chairman and the Attorney General sitting in as its legal adviser) is enlarged to include all of the elected executives, the Lieutenant Governor being the only one who has not regularly sat with the Council (Sec. 8). This is in fulfillment of the idea that the Lieutenant Governor should be a better informed and more active participant in the work of the executive branch. A few procedural details regarding the Council have been omitted because they clearly are within the competence of the Council itself or of the General Assembly. The main duties of the Council of State will continue to be prescribed by law.

Provisions of present Article III directing the General Assembly to establish a Department of Agriculture (1875) and authorizing it to establish a Department of Justice (1937) are omitted, as their purpose was long ago accomplished.

Article IV. Judicial

The judicial article was entirely rewritten by an amendment approved by the voters in 1962. Thus it now requires few changes of an editorial or substantive nature.

Proposed Art. IV, § 8, sets forth a general instruction to the General Assembly to provide for the retirement and recall of Justices and Judges of the General Court of Justice. This provision replaces separate provisions in present Art. IV, §§ 6(1) and 6A (pertaining to the retirement of Justices of the Supreme Court and Judges of the Court of Appeals), and broadens the coverage to include Superior and District Court Judges.

The old language giving the Supreme Court long-unused jurisdiction to hear claims against the State is omitted from proposed Sec. 12(1). This type of claim is heard by the Industrial Commission under a statutory procedure.

The authority of the Attorney General to recommend revision of the solicitorial districts is omitted from Sec. 18(1), as that duty is now performed under statutory assignment by the Director of the Administrative Office of the Courts.

Present Sec. 20, defining various types of general laws for the purposes of Article IV, has been transferred to Article XIV and made applicable to the entire constitution.

Article V. Finance

Article V has been rearranged and edited to present its subject matter in a more logical and understandable order. Several sections have been transferred to Article V from elsewhere in the constitution, so that all of the constitutional matter concerning public finance is contained therein. Several clarifying amendments have been made, and two substantive amendments are proposed.

Substantive Amendments

Present Art. V, § 3, grants a $2,000 income tax exemption to "a married man with a wife living with him." Thus a married woman whose husband has no taxable income is not constitutionally entitled to a $2,000 exemption even though she may be the principal support of the family. Since 1951, however, G.S. § 105-149(2) has permitted a husband to allow his wife to claim his $2,000 exemption when she has taxable income but he does not. Proposed Art. V, § 2(6), grants a $2,000 exemption "to the income-producing spouse of a married couple living together." This amendment gives constitutional status to the present provisions of G.S. § 105-149(2) and requires no amendment of the existing income tax laws.

Present Art. V, § 4, forbids the State to lend its credit to private corporations without a direct vote of the people, except to aid in the completion of railroads unfinished as of 1868 "or [to railroads] in which the State has a direct pecuniary interest." The language referring to railroads unfinished as of 1868 has been deleted and the exception recast to permit the State to lend its credit without a vote of the people to "a corporation in which the State has a controlling interest" (Sec. 3[2]). Thus, the State would be permitted to lend its credit to any corporation in which it owns or controls a majority of the voting stock, but may not lend its credit without a vote of the people to corporations in which it owns or controls less than a majority of the voting stock. For example, under the proposed amendment the State will continue to have authority to aid the North Carolina Railroad, a corporation in which the State owns a majority of the voting stock, but may not lend its credit to General Motors without a vote of the people even though it may have a "direct

pecuniary interest" in that corporation through ownership of shares in the corporation by the Teachers' and State Employees' Retirement System.

Clarifying Amendments

In proposed Sec. 1 it is made clear that municipal capitation (poll) taxes may be levied only on persons subject to the county capitation tax. This has always been the practice, but the present language is not clear on the point.

Prior to the decision of the Supreme Court in Sykes v. Clayton, 274 N.C. --- (decided October 30, 1968), there was some doubt as to whether the phrase "other subjects" in the portion of present Art. V, § 3, relating to classification of property for taxation, prohibited the General Assembly from authorizing the levy of any tax other than privilege license taxes on a local option basis. Sykes v. Clayton held that the classification provisions apply only to the property tax. In view of this decision, we have deleted from proposed Art. V, § 2(2), as unnecessary the word "subject" and the sentence specifically permitting local classification for privilege license tax purposes.

The decision of the Supreme Court in Harris v. Board of Commissioners, 274 N.C. 343 (1968), rendered meaningless the phrase in present Art. V, § 6, exempting school taxes levied "for the term required by Article IX, Section 3, of the Constitution . . ." from the 20 cent limitation on the county property tax rate. The phrase has therefore been omitted from proposed Art. V, § 2(4), as unnecessary and confusing.

The language in present Art. V, § 3 purporting to grant authority to the General Assembly to tax "trades, professions, franchises, and incomes," is omitted from proposed Art. V, § 2(6). This language is not the source of the General Assembly's authority to tax these subjects, and it has never

described the full range of the taxing power; thus it is surplusage at best and is a potential source of misunderstanding. (The present maximum income tax rate of ten per cent and the minimum exemptions are retained.)

Proposed Art. V, §§ 3 and 4, express in two separate sections, one for the State and one for local government, the debt restrictions now set out in Art. V, § 4, and incorporate the provisions of present Art. VII, § 6, concerning voter approval of debt for "necessary expenses" in excess of the two-thirds limitations. The tax aspect of present Art. VII, § 6 (dealing with necessary expense), has been transferred to proposed Art. V, § 2(5). In proposed Sec. 4, authority for local governments to borrow without a vote "to repel invasions" has been deleted as obsolete.

Article II, § 31, of the present Constitution, protecting State retirement funds from diversion, has been transferred to proposed Sec. 6(2) in a substantially edited but substantively unchanged form, except that the use of retirement system funds for disability and death benefits is expressly permitted, as is now provided by statute.

Present Art. VII, § 7, limiting expenditures to appropriations, is transferred to become proposed Sec. 7(2), rewritten to make it applicable to cities as well as counties and to delete an obsolete reference to township treasuries.

Editorial Amendments

The remaining amendments to Article V are editorial in nature. Attention is directed to two of these. Throughout the proposed constitution the terms "municipality" and "municipal corporation" have been avoided except where substantive results might follow from the use of another term, as in present Art. V, § 5 (proposed Sec. 2[3]), concerning exemption from taxation

of the property of "municipal corporations." The phrase "cities and towns and other units of local government" has been uniformly substituted for these terms. Also, whenever a vote of the people is required by the Constitution, a standard phrase has been employed to replace the present variety of expressions.

Article VI. Suffrage and Eligibility to Office

The substantive changes proposed in Article VI are few.

The constitution now bars from voting and office holding a person who has been found guilty of committing a felony against the State of North Carolina, unless he has been restored to the rights of citizenship in a judicial proceeding. The proposed constitution extends that bar to those who have been convicted of felonies against the United States or another state.

It is desirable, in the interest of ease and uniformity of administration as well as voter understanding, that the election laws of this State exhibit a greater degree of uniformity than is now required by the constitution or found in the laws. Accordingly, proposed Art. VI, § 3, requires that all laws governing the registration of voters and the conduct of elections for federal, state, district, and county offices be uniform throughout the State. The General Assembly is required to enact general laws (thus permitting classification on the basis of population or other appropriate factors) governing voter registration and the conduct of elections for all municipal officers. (Variations by local act would not be prohibited as to elections other than for officers.)

Art. VI, § 6, now provides that "Every voter . . . shall be eligible to office." The State Supreme Court says that this provision means also that only voters are eligible to office. It is commonly supposed that it is also necessary that a person be a registered voter in the jurisdiction that he is to serve. This has created problems for state and local governments in filling appointive positions that are at least technically classified as offices and for which it may be necessary to seek applicants from outside the jurisdiction. One not already a registered voter of the jurisdiction is not eligible for appointment. As a practical matter, this restriction is often overlooked because the necessities of governmental recruiting force an employer to look outside the boundaries of the jurisdiction. Proposed Art. VI, § 6, deals with this problem by providing that every qualified voter shall be eligible for election to office (and by inference that only qualified voters are eligible for election to office). Proposed Art. VI, § 8, makes this clear by requiring that a candidate for an elective office be qualified to vote in an election for that office. These changes leave the General Assembly with the authority to determine to what extent the holders of appointive offices must be qualified voters in the jurisdiction they serve, either at the time of appointment or later.

The dual office holding provision has been moved from Article XIV to become Art. VI, § 9. While extensively rewritten, the chief effect of the revision is to enable the General Assembly to permit by general law the concurrent holding of two or more appointive offices, or one elective and one or more appointive offices. This will allow the General Assembly to do directly what is now done by assigning the duties of one office to be performed by another, or by declaring the holder of an office

to be a "commissioner for a special purpose," or by other indirect means. Thus, for example, the General Assembly could provide that the same man can be both tax collector and tax supervisor. Otherwise, the proposed ban on double office holding is fully as effective as at present. It expressly forbids the holding of two elective offices at the same time.

We recommend the omission of the obsolete and unconstitutional grandfather clause under which certain illiterate males were allowed to register prior to December 1, 190 , and other obsolete transitional provisions from the 1900 suffrage amendment.

Article VII. Local Government

Although present Article VII sets out a form of county government, the General Assembly has authority, by virtue of present Sec. 10, to modify by statute any of its provisions, except Secs. 5, 6, 7, and 9. It has often exercised that power. The proposed Constitution transfers Secs. 6, 7, and 9 (dealing with financial matters) to Article V, leaving only Sec. 5 (providing for the office of Sheriff) beyond the power of the General Assembly to modify by statute. In view of this fact, the proposed constitution omits all of the remainder of present Art. VII except Sec. 5, and substitutes as Sec. 1 a general description of the General Assembly's power to provide for the organization and powers of local government. (Sec. 1 is not a delegation of power to the General Assembly but is merely a recognition of its power in this regard.)

Present Sec. 5 (providing for the Sheriff) is retained as proposed Sec. 2 with minor amendments. The method of filling vacancies in the office of Sheriff is left to legislative discretion, and it is made clear that the General Assembly may provide a procedure for removing unfit Sheriffs from office, which has already been done by N.S. § 12 -16.

A final Sec. 3 is added to make it clear that a merged or consolidated city-county shall be deemed to be both a city and county for such constitutional purposes as legislative representation and restrictions on the power of local governments to tax and incur debt.

Article VIII. Corporations

Present Article VIII contains three sections dealing with business corporations and other non-municipal corporations and a fourth section dealing with cities and towns. This last section (Sec. 4) we recommend be transferred to Article VII (Local Government) with some modifications.

The three sections dealing with non-municipal corporations date from 1868, with an amendment adopted in 1916 requiring in effect that business corporations be incorporated under general laws, rather than by special act of the General Assembly as had been the frequent practice prior to that time. We have retained present Secs. 1 and 3, with no substantive change. Present Sec. 2 is obsolete and meaningless and is deleted.

Article IX. Education

Article IX has been rearranged to improve the order of treatment of the subjects dealt with by that article, and its language has been modified to eliminate obsolete provisions and to make the article reflect current practice in the administration and financing of schools.

Proposed Sec. 1 adds "libraries" to the list of institutions that the General Assembly is urged to encourage.

Proposed Sec. 2 extends the mandatory school term from six months to a minimum of nine months and eliminates the possibly restrictive age limits on tuition-free public schooling. It also authorizes units of local government to which the General Assembly assigns a share of the

responsibility for financing public education to finance educational programs (including both public schools and technical institutes and community colleges) from local revenues. It omits the now-unconstitutional language on the separation of the races in the public schools.

Proposed Sec. 3 makes it mandatory (rather than permissive) that the General Assembly require public school attendance and omits the obsolete limitation on compulsory attendance to a total of sixteen months.

Proposed Sec. 4(1) modifies the State Board of Education slightly by eliminating the Superintendent of Public Instruction as a voting member of the Board while retaining him as the Board's secretary and chief administrative officer. He is replaced by an additional at-large appointee. Continuity of board membership is not otherwise affected. The Superintendent of Public Instruction will continue to be popularly elected, as required by Art. III, § 7(1). A potential conflict of authority between the Superintendent and the Board is eliminated by making clear that he is the administrative officer of the Board (Sec. 4[2]), which is to administer the public schools (Sec. 5).

Proposed Sec. 5 restates, in much abbreviated form, the duties of the State Board of Education, but without any intention that its authority be reduced.

Proposed Sec. 6 restates present Sec. 4, dealing with the state school fund, without substantive change.

Proposed Sec. 7 restates present Sec. 5, dealing with the county school fund, without change except to delete obsolete references to "proceeds from the sale of estrays" and militia exemption payments.

Proposed Sec. 8 extends present Sec. 6 (which deals only with the University) to take account of the duty of the State to maintain institutions of higher education in addition to the University of North Carolina.

Two present sections are omitted: Sec. 10, which has served its intended purpose, and Sec. 12, (the Pearsall Amendment), which has been judicially declared to be unconstitutional in its entirety.

Article X. Homesteads and Exemptions

The provisions of this Article date from 1868, with few amendments. The amounts of the homestead and personal property exemptions ($1,000 and $500 respectively) are absolute, and were set in 1868. If these figures were reasonable then, they long ago ceased to be so. While we do not propose any specific amount by which they should be increased (or indeed that they be increased at all), we do believe that the General Assembly should be able to set the amounts of the personal property and homestead exemptions at what it considers reasonable levels from time to time, with the present constitutional figures being treated as minimums.

The provision as to married women's property (proposed Art. X, § 4) is retained unchanged.

In the interest of clarity, the sections of Article X have been rearranged and the language has been simplified, without intended change in meaning except to broaden the protection given insurance for the benefits of the wife and children of the insured.

Article XI. Punishments, Corrections, and Charities

This article, which dates from 1868 with minor amendments adopted in 1876 and 1880, has been substantially abbreviated by the elimination of

eight sections of 1868 vintage that have served their intended purpose or are so detailed as to be more appropriate for statutory than for constitutional treatment. In their place we recommend proposed Sec. 3, a broadly-phrased mandate to the General Assembly to provide appropriate institutions and agencies to minister to the charitable and correctional needs of the State.

Proposed Sec. 4 replaces the more detailed statement regarding the Board of Public Welfare and its duties.

Proposed Secs. 1 and 2 restate present Secs. 1 and 2, dealing with permissible punishments for crime and the crimes punishable by death, without change except for the elimination of the 1876 provision authorizing the farming out of prisoners, an obsolete practice that is adequately covered by statute.

Article XII. Military Forces

Proposed Article XII substitutes a single-section statement of the Governor's authority as commander in chief of the military forces of the State for the more detailed present Article XII. The omitted provisions are adequately dealt with by statute.

Article XIII. Conventions; Constitutional Amendment and Revision.

The two sections of present Article XIII, dealing with conventions of the people and amendments to the Constitution, date from 1875. They are vague and incomplete, especially with respect to conventions. The proposed language incorporates established North Carolina theory and practice with respect to the matters covered.

Article XIV. Miscellaneous

Our proposed revision of the Miscellaneous article calls for the omission of Sec. 1, which was an 1868 transitional provision, of Sec. 2, which is obsolete, and of Sec. 8, which is inconsistent with the Constitution of the United States and therefore void. It proposes the transfer of Sec. 2, Sec. 3, and Sec. 7 to more appropriate articles of the Constitution, and the transfer of one section from the Declaration of Rights to Article XIV. Present Secs. 4, 5, and 6 of this article are retained as Secs. 1, 2, and 3 without substantive change.

Proposed Sec. 5 defines various types of general laws required of authorized by the constitution. It is adopted from present Art. IV, §20.

Proposed Sec. 6 provides for the continuity of laws not in conflict with the proposed constitution and specifies that the adoption of the proposed constitution will not cut short any term of office begun under the present constitution.

Time of Election on Proposed Constitution

The bill to submit the proposed constitution to the voters will call for it to be voted on "at the next general election," as required by present Art. XIII, § 2. Unless the General Assembly exercises its authority to call for an earlier vote, "the next general election" will be that of November 3, 1970.

Effective Date

The bill submitting the proposed constitution to the voters will provide that the constitution, if ratified by the people, will take effect on January 1, 1971.

IV

AMENDMENTS

PREFACE TO AMENDMENTS

On the following pages are set out the texts of the nine separate amendments that are being recommended by the State Constitution Study Commission in addition to the proposed constitution. Following each proposed amendment is an explanatory commentary.

These amendments were drawn so that the voters may express their judgment on each of them independent of their judgment on the proposed constitution. Therefore each of these nine amendments sets forth the text of the sections of the proposed constitution as they would be altered if both the proposed constitution and that particular amendment should be approved by the voters, and it also sets forth the text of the sections of the present constitution as they would be altered if the proposed constitution fails but that separate amendment is approved by the voters.

For the sake of brevity, only the constitutional texts as affected by the nine amendments are set out in this part of the report. For an example of the format of each of the nine bills that will be introduced embodying these amendments, see Appendix 4 of the report.

Amendment No. 2

Requiring Judges and Solicitors to be Licensed Attorneys and Requiring the General Assembly to Establish a Mandatory Retirement Age for Judges and Procedures for the Disciplining and Removal of Judicial Officers

PROPOSED CONSTITUTION

Article IV

Sec. 8. Retirement of Justices and Judges. The General Assembly shall provide by general law for the mandatory retirement for age of any Justice or Judge of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court from which he was retired.

Sec. 10. [Add after the fourth sentence of this section (which provides for the election of District Judges) the following:] No person who does not possess a license to practice law in North Carolina shall be eligible to the office of District Judge. A District Judge who is in office on the effective date of this Constitution but who does not possess a license to practice law in North Carolina may complete the term that he is then serving.

Sec. 16. [Add at the end of this section (which provides for the election of Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court), the following:] No person who does not possess a license to practice law in North Carolina shall be eligible to the office of Justice of the Supreme Court, Judge of the Court of Appeals, or Judge of the Superior Court.

Sec. 17. Removal of judicial officers. The General Assembly shall provide by general law for the disciplining and removal of Justices, Judges, and Solicitors of the General Court of Justice, Clerks of the Superior Court,

and Magistrates for misconduct, incompetence, or mental or physical incapacity.

Sec. 18(1). [Add at the end of the first sentence of this subsection (which provides for the election of Solicitors of the Superior Court) the following:] No person who does not possess a license to practice law in North Carolina shall be eligible to the office of Solicitor.

PRESENT CONSTITUTION

Article IV

Sec. 6. Supreme Court

(1) Membership. [Delete the following:] The General Assembly may provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

Sec. 6A. Court of Appeals. [Delete the following:] The General Assembly may provide for the retirement of members of the Court of Appeals and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

Sec. 6B. Retirement of Justices and Judges. The General Assembly may provide by general law for the mandatory retirement for age of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court from which he was retired.

Sec. 8. [Add after the fourth sentence of this section (which provides for the election of District Judges) the following:] No person who does not possess a license to practice law in North Carolina shall be eligible to the office of District Judge. A District Judge who is in office on the effective date of this amendment but who does not possess a license to practice law in North Carolina may complete the term that he is then serving.

Sec. 14. [Add at the end of this section (which provides for the election of Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court) the following:] No person who does not possess a license to practice law in North Carolina shall be eligible

to the office of Justice of the Supreme Court, Judge of the Court of Appeals, or Judge of the Superior Court.

Sec. 15. Removal of judicial officers. The General Assembly shall provide by general law for the disciplining and removal of Justices, Judges, and Solicitors of the General Court of Justice, Clerks of the Superior Court, and Magistrates for misconduct, incompetence, or mental or physical incapacity.

Sec. 16(1). [Add at the end of the first sentence of this subsection (which provides for the election of Solicitors of the Superior Court) the following:] No person who does not possess a license to practice law in North Carolina shall be eligible to the office of Solicitor.

Commentary on Amendment No. 2

This amendment calls for three changes designed to protect the people of the State from unqualified, incompetent, or corrupt judicial officials.

Qualifications of Judges and Solicitors

Today the Constitution of North Carolina does not demand, nor can the General Assembly require, that a person be trained in the law as a condition for seeking any judgeship in the State, even the highest, or the position of solicitor.

The law of this State requires that would-be practitioners of more than 25 trades and professions, from plumbing to medicine, possess certain minimum educational qualifications and demonstrate their proficiency by passing qualifying examinations. Yet a man can be appointed or elected as a Justice or judge of any court of the State, there to exercise immense power over the lives, liberties, and property of his fellow citizens, without meeting any higher standard than those required for registration as a voter.

The first change sought by this amendment would require that anyone seeking the office of Justice or judge of any court of the State be licensed to practice law in this State. The same requirement would be imposed on Superior Court Solicitors.

Such a requirement has never been imposed by the Constitution of this State. Why is it timely now?

It has long been assumed -- and experience has generally supported the assumption -- that no layman would presume to seek the office of Superior Court Judge or an appellate judgeship. (The fact that most Justices and judges first reach their positions through appointment by the Governor to fill vacancies has further strengthened that assumption.) Clearly these

positions call for legal learning of a high order, as well as other qualities of mind and temperament, if Justices and judges are to interpret and apply the law correctly and fairly. Good will and a desire to serve one's fellow citizens -- and even the ability to attract their votes -- do not insure these needed qualities. Nor does possession of a law license guarantee them, but at least it is a minimum assurance of professional training.

Heretofore many recorder's court judges have been non-lawyers. Since those courts normally exercised only misdemeanor jurisdiction and a new trial in the Superior Court was available to one convicted in the recorder's court, this was a tolerable situation. But the District Court has supplanted the recorder's court in 83 counties, and by 1970 it will have replaced all of the old inferior courts. The District Court has jurisdiction of all misdemeanors, of all domestic relations cases, and of civil cases involving $5,000 or less. Jury trials are available in civil cases. The District Court Judge must now instruct juries and perform other duties very much like those performed by the Superior Court Judge, and he should be as well-trained as the latter. Yet today there are about eight non-lawyers serving as District Court Judges. We believe that to continue to permit persons without demonstrated proficiency in the law to fill these posts will tend to defeat the improvement in the quality of justice that the new District Court system was designed to accomplish. Therefore we consider the adoption of this amendment imperative. The amendment would allow any non-lawyer District Judge who is in office when it takes effect to complete the term he is then serving. This qualification is equally necessary in the case of the Solicitor, because of the legal skills required for the proper performance of his duties.

The second change called for by this amendment requires the General Assembly to fix by general law a retirement age for Justices and judges. There is currently no upper age limit for judicial service, except for a statutory provision that a Superior Court Judge cannot enter upon a new term if he has reached the age of 70 and is eligible for retirement benefits. This law operates unevenly, forcing some Superior Court Judges into retirement at 69 while permitting others to serve until 77, without regard for mental or physical fitness. In many states, mandatory retirement provisions (operating most often at ages 65 to 72) avoid the problem of the judge whose ambition to serve has outlasted his capacity to serve effectively. Retired judges would be available for temporary service, and so their abilities would not be lost to the State.

The implementing statute could provide for different retirement ages for different divisions of the General Court of Justice. Thus the retirement age for appellate judges and Justices might be greater than for trial judges, in view of the rigors of the latters' duties. The statute should allow judges in office at the time of its adoption who are beyond the retirement age to complete the term then being served.

The third change effected by this amendment authorizes the General Assembly to provide by general law for the disciplining and removal of justices, judges, solicitors, clerks, and magistrates for misconduct, incompetence, or mental or physical incapacity.

At present Supreme Court Justices, Judges of the Court of Appeals, and Superior Court Judges can be removed for misconduct or incompetence only by conviction upon impeachment. They can be removed for physical or mental incapacity only by a two-thirds vote of the members of both houses of the General Assembly. Solicitors can be removed for misconduct or incompetence

only by impeachment. These remedies have never been used. Indeed, they are as a practical matter virtually unuseable. District Judges, Magistrates, and Clerks are removable in judicial proceedings. There is no provision for the disciplining of any judicial officer except by removal.

Taken all together, the current constitutional and statutory means of dealing with judicial misconduct or incapacity are fragmentary, illogical, and too often ineffective. Modern, uniform procedures for disciplining and removing unfit judicial officers are necessary parts of an efficient and responsible judicial system. The existence of these procedures is perhaps more important than their actual use, which would be rare. The experience of states such as Oklahoma, Florida, and California demonstrates the need for realistic procedures for this purpose. And the fact that the number of affected officers is growing rapidly adds urgency to the case.

Amendment No. 3

Granting the Veto Power to the Governor

PROPOSED CONSTITUTION

Article II

Sec. 22. Action on bills.

(1) Three readings; signatures of presiding officers. All bills and resolutions of a legislative nature shall be read three times in each house and shall be signed by the presiding officers of both houses.

(2) Action by Governor. Every bill that has passed both houses, before it becomes law, shall be presented to the Governor. If he approves the bill, he shall sign it; but if not, he shall disapprove and return it with his objections to that house in which it originated, which shall enter his objections at large on its journal and proceed to reconsider it. If after reconsideration, three-fifths of all the members of that house agree to pass the bill, it shall be sent, together with the Governor's objections, to the other house, by which it shall also be reconsidered, and if approved by three-fifths of all the members of that house, it shall become law. In all cases, the votes in both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively.

(3) Time for action by Governor. The Governor shall have ten days to consider bills presented to him ten or more days prior to the adjournment sine die of the General Assembly. If he fails to return within ten days a bill so presented to him, it shall become law without his signature. The Governor shall have 30 days after the General Assembly adjourns sine die to consider bills presented to him less than ten days before adjournment sine die. Every bill presented to the Governor less than ten days before

adjournment sine die shall become law without his signature on the 30th day after adjournment sine die, unless he disapproves it prior to that day. If he disapproves a bill or bills after adjournment sine die, the Governor may convene the General Assembly in extra session, without the necessity of obtaining the advice of the Council of State, for the sole purpose of acting upon the bill or bills so disapproved by him. If the Governor fails to convene the General Assembly in extra session by the 45th day after adjournment sine die for the purpose of acting on a bill or bills disapproved by him after adjournment sine die, a majority of all the members of both houses, by petition filed in the manner prescribed by law, may require the convening of an extra session for that purpose. If the General Assembly fails to convene, the bill or bills shall not become law.

(4) Appropriation bills. The Governor may strike out or reduce items in any appropriation bill passed by the General Assembly and the procedure in that case shall be the same as in the case of the disapproval of an entire bill by the Governor.

(5) Bills to be submitted to vote of the people. The Governor shall not disapprove any bill or resolution that is to be submitted to a vote of the people.

PRESENT CONSTITUTION

Article II

Sec. 23. [Text same as Sec. 22, above.]

Commentary on Amendment No. 3

This amendment grants to the Governor of North Carolina for the first time the power to veto legislation enacted by the General Assembly. North Carolina alone, of all the states, does not give its Governor this formal role in the legislative process.

Basically, this amendment provides that the Governor can veto any bill except one submitting an issue to the voters for their approval (for example, a constitutional amendment or a bond issue). In every instance of veto, however, the General Assembly will have an opportunity to reconsider the vetoed measure and by a three-fifths vote to override the Governor's veto. This makes the proposed veto weaker than that found in the United States Constitution, the Confederate States Constitution, and the constitutions of 36 states, since they require a vote of two-thirds (and in one state, three-fourths) of the legislators to override the chief executive's veto. The proposed veto is also weaker than that found in the federal and most state constitutions in that it does not allow the post-session pocket veto, whereby a governor or president who receives a bill late in the legislative session may hold it until after adjournment and then allow it to die without his signature, under circumstances where the legislature has no recourse.

The adoption of the veto power in North Carolina has been advocated by two recent Governors, the incumbent Governor, and the Governor-elect. It is designed to require the Governor to assume a direct responsibility for the legislation enacted by the General Assembly by requiring that he take a stand, positive or negative, on all non-referendum legislation

enacted by the General Assembly. It is intended to add to the legislative process one participant who is responsible to a statewide constituency, and who is in a position to consider the impact of a bill on the state as a whole and in the light of considerations perhaps not known to the majority of the General Assembly. It also would make possible a review of legislation to determine whether it contains technical defects that would cause it to have effects other than those anticipated by the legislators who voted for it.

It is unusual that a measure passes either house of the General Assembly by less than a three-fifths majority. On a measure that commands wide legislative support, it should be relatively easy to muster the three-fifths vote necessary to override a Governor's veto. By means of the veto, however, the Governor at least could force the General Assembly to re-examine its earlier decision, and to do so in the light of his criticisms of the bill and such further expressions of public opinion as a veto would tend to elicit.

One further factor weighs in favor of adding this power to the Governor's office at this time. In North Carolina, most of the Governor's powers derive from statute, not the constitution. A legislature which was seriously at odds with a Governor for partisan or other reasons could, in a moment of rashness, seriously impair the effectiveness of the Governor's office by stripping it of many of its present powers. To allow the Governor the power to veto such acts and thus require their reconsideration under calmer circumstances would tend to bring greater balance into the legislative-executive relationship.

Having said all this, we do not anticipate that a Governor would often exercise the veto power. It is not likely that he would choose to frustrate the legislative will on any except matters of major importance, lest he irreparably damage his relationship with the General Assembly. He probably would continue to use wherever possible his present persuasive powers to discourage the enactment of legislation he opposes. Nevertheless, we believe that the time has come to follow the well-established pattern in the American system of state government and make the Governor a full and open participant in the legislative process.

Under our proposal, if a bill is presented to the Governor ten days or more prior to the adjournment sine die of the General Assembly, he will have ten days in which to (1) sign it, in which case it becomes law; (2) take no action on it, in which case it becomes law at the end of ten days without his assent; or (3) veto it and return it to the house of origin. There it will be reconsidered, and if passed by vote of three-fifths of all the members of that house, it will go to the other house. There it is also reconsidered and if passed by a three-fifths vote, it becomes law.

If the bill is presented to the Governor less than ten days before the adjournment sine die of the General Assembly (and recent experience suggests that much of the major legislation of the session will reach him during that period), he is allowed 30 days after adjournment within which to (1) sign the bill, in which case it becomes law; (2) take no action on it, in which case it becomes law without

his assent on the 30th day after adjournment; or (3) veto it. If the Governor vetoes a bill after adjournment in most states, or if the President vetoes a bill after Congress adjourns, it is dead. But under the proposed amendment, the General Assembly must be given an opportunity to override the veto. This is done in one of two ways: (1) the Governor may call an extra session of the General Assembly to reconsider the vetoed bill, or (2) if the Governor fails to call an extra session within 45 days after adjournment, the holding of an extra session may be forced by a petition signed by a majority of the members of both houses. In a special session called in either manner, the procedure is the same as that described with respect to bills vetoed during the session.

One feature of the proposal [redacted] found in the constitutions of four-fifths of the states (but not that of the United States) is the item veto with respect to appropriation bills. The Governor may strike out or reduce any appropriation item in a bill, in which case the procedure shall be the same as in case of a veto. This provision (which was adapted from the Constitution of the Confederate States) is intended to enable the Governor to avoid legislative appropriations that he deems unwise or likely to unbalance the budget, even where they are part of a bill the bulk of which he approves and does not wish to veto.

Amendment No. 4

Empowering the Voters to Elect the Governor and Lieutenant Governor for Two Consecutive Terms

PROPOSED CONSTITUTION

Article III

Sec. 2(2). Qualifications. No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to either of these two offices shall be eligible for election to more than two consecutive terms of the same office.

PRESENT CONSTITUTION

Article III

Sec. 2. [Text same as Sec. 2(2), above.]

Commentary on Amendment No. 4

We believe that the time has come that the people of North Carolina should have the right to elect a Governor to a second consecutive term of office -- a right the State constitution now denies them. And they should have the same right with respect to the Lieutenant Governor.

From 1776 until 1835, the General Assembly elected the Governor of North Carolina for a one-year term, and a person was eligible for election for only three years in any period of six successive years. In 1836, the Governor became popularly elective for a two-year term, but one was eligible for only two terms in any period of eight years. Finally, in 1868, the present four-year term was adopted, with the limitation that a person elected to the office of Governor is not eligible for election to the next succeeding term. (If he attains the office by succession from another office, he is eligible for election to the next full term as Governor.)

Nationally, the experience has been similar except that change did not cease in 1868. The trend has been from two-year to four-year terms, and from strict limitations on the number of successive terms a Governor may serve to unlimited eligibility. Today the pattern is as follows:

	Four-Year Term	Two-Year Term	Total
No limit on eligibility to consecutive terms	16	9	25
Limit of two consecutive terms	12	2	14
Limit of one term, with opportunity to seek re-election after intervening term	11	0	11
	39	11	50

Justice William Gaston said to the Constitutional Convention of 1835, in describing the Governor of North Carolina:

> Except the right of granting reprieves and pardons, all that is required of him is, that he should be a gentleman in character and manners, and exercise a liberal hospitality.

However accurate Gaston's observation was in 1835, no one would argue for so limited a role for the Governor today. State government is rapidly becoming more complex, its concerns more ramified, its operations more expensive, and its management more difficult and demanding. It is the Governor who is looked to to give direction and leadership to this massive activity. No one else in state government has the breadth of view and responsibility and no one else has the authority to do the job.

A Governor reaches office in January after at least a year -- often much longer -- spent in intensive and almost continuous campaigning for the post. He has only sixty days from the time of his election (and less than two weeks from his inauguration) until he faces his first session of the General Assembly. He is handed a budget prepared by his predecessor -- a lengthy, intricate, and carefully balanced plan for financing all of the activities of the State for the next fiscal biennium, or half of his term. He must present a budget message to the General Assembly shortly after it convenes, and he has not the time -- even if he has the inclination -- to revise the proposed budget in detail. At most he can add a few features and emphases of his own, if he can find the additional revenue to finance them. And in the meantime, he must formulate and present to the General Assembly most of his legislative program for the next four years. He will have an opportunity to present another legislative program to the session convening at the mid-point of his term, and to present to that session a budget of his own making. By the time that session adjourns, however, his term is

practically two-thirds gone and his opportunity to put new programs into effect is greatly diminished. As one of his final acts, he completes preparation of the budget that he will hand over to his successor, to begin the cycle once more.

Four years is not long enough for a Governor to familiarize himself with the office and its powers and limitations, to staff and to establish the tone and direction of his administration, to develop his legislative programs, to deal with the myriad problems that come to his desk unsought, and to initiate and develop to a level of full effectiveness his own programs and policies. By the time he has mastered the job he must leave it.

Continuity of executive leadership over a substantial period -- or at least the opportunity for it -- is becoming increasingly important. Yet we have by our constitution declared that the most relevant preparation for the governorship -- experience in the job -- is an absolute disqualification for it. We have insured that we will be governed by a person whose length of experience would, in almost any professional or business enterprise, make him a novice.

Out of a fear of a dangerous accumulation of executive power, we have built into the top executive position in state government an automatic break in continuity every four years. And the discontinuity is not simply in the personality at the head of the government; it extends to many of the principal department heads and to some extent to policies and programs. It entails an automatic period of uncertainty and a loss of momentum in those phases of the government that look to the Governor for direct leadership.

We do not suggest that continuity and stability of leadership are to be preferred above all other values; to do so would argue for the election of a Governor for life. We believe that the voters should continue to choose their Governor every four years. But we do not believe that they should be denied the opportunity to retain in office a Governor who is in their view doing an effective job.

It is not enough to say that a Governor who has been elected and served may, after a term out of office, again seek the position. Only one Governor (Zeb Vance) has regained the office in this manner since we began electing Governors by popular vote in 1836.

We do not propose that the Governor of North Carolina be allowed, as are one-half of his fellow governors, to run for an unlimited number of successive terms. We would limit him to election to two consecutive terms. We believe that this would allow him ample time to develop his programs and policies, gain legislative and popular acceptance of them, and see them well begun. Moreover, it may be that the pace of life and work required of a Governor is so strenuous that it is fair neither to him nor to the State to ask more of him in continuous service to the State in this position.

It is sometimes argued in opposition to the possibility of a second successive term for the Governor that it would encourage a Governor to spend his first term campaigning for re-election. We discount that risk. In fact, it might tend to make the Governor more responsive to the people's will if he knew that they would have a chance to pass judgment on his performance, as today they cannot. And we believe that the citizens are sufficiently alert to strategems aimed primarily at vote-getting that they would not be deluded by them.

It is most significant to us that the men most familiar with the facts -- the two living former Governors of North Carolina, the incumbent Governor, and the Governor-elect -- have agreed that one four-year term does not allow a Governor the time that he needs to do the job properly expected of the Governor. With them, we believe that the State can no longer afford the luxury of automatically retiring a Governor, regardless of his ability, at the end of four years. For these reasons, we urge the adoption of this amendment.

Amendment No. 5

Providing for a Change in the Mode of Selection of Certain State Executive Officers

PROPOSED CONSTITUTION

Article III

Sec. 5(8). Appointments. Except as otherwise provided in this Constitution, the Governor shall appoint and may remove the heads of all administrative departments and agencies of the State. All other officers in the administrative service of the State shall be appointed and may be removed as provided by law.

Sec. 7(1). Officers. An Auditor, a Treasurer, and an Attorney General shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

Article IX

Sec. 4(2). Superintendent of Public Instruction. The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. He shall be elected by the State Board of Education.

PRESENT CONSTITUTION

Article III

Sec. 1. Executive power; Governor and Lieutenant Governor. The executive power of the State shall be vested in the Governor. The Governor and the Lieutenant Governor shall be elected by the qualified voters of the State

in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

Sec. 3. Contested elections. A contested election for any office established by this Article shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 7. Information. The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

Sec. 10. Appointments. Except as otherwise provided in this Constitution, the Governor shall appoint and may remove the heads of all administrative departments and agencies of the State. All other officers in the administrative service of the State shall be appointed and may be removed as provided by law.

Sec. 12. Succession to office of Governor. [In paragraph 3, strike "Secretary of State" and insert "Attorney General" in lieu thereof.]

Sec. 13. Other elective officers.

(1) Officers. An Auditor, a Treasurer, and an Attorney General shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) Duties. Their respective duties shall be prescribed by law.

(3) Vacancies. If the office of any of these officers shall be vacated

by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 30 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) Interim officers. Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) Acting officers. During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) Determination of incapacity. The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

Sec. 14. Council of State. The Council of State shall consist of the officers whose offices are created by this Article.

Sec. 16. Seal of State. There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina". All grants and commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina", and signed by the Governor.

Article IX

Sec. 8. State Board of Education.

(1) Board. The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired term and shall not be subject to confirmation.

(2) Superintendent of Public Instruction. The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. He shall be elected by the State Board of Education.

Commentary on Amendment No. 5

We recommend that the list of elected state executive officers be reduced from ten to five. We propose that the Governor, Lieutenant Governor, Auditor, Treasurer, and Attorney General continue to be elected by the people for four-year terms; that the Superintendent of Public Instruction be chosen by the State Board of Education; and that the Secretary of State, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance be appointed by the Governor.

From 1776 until 1835, the General Assembly elected the Governor. From 1776 until 1868 it also elected all of the other state executive officers and a seven-member Council of State, a part-time body that served solely as a check on the exercise of the Governor's few powers. The Constitution of 1868, belatedly reflecting the influence of Jacksonian democracy, made all of the state executives subject to popular election for four-year terms. The elected list then comprised the Governor, Lieutenant Governor (established in 1868), Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Public Instruction, and Superintendent of Public Works. (The last-named officer was eliminated in 1873.) In 1944, an amendment was adopted adding the Commissioners of Agriculture, Labor, and Insurance to the list of those constitutionally required to be elected, although they had been elected by requirement of statute for many decades.

In 1868, the elected executives were all of the principal executive officers of the State. As other executive offices were created in the late 1800's, they too were made elective -- the Commissioners of Agriculture, Labor, and Insurance being the only extant examples. Many executive offices with large responsibilities have been created since 1900, but none is filled by popular election. This group includes, for example, the Chairman of the

State Highway Commission, Commissioner of Motor Vehicles, Commissioner of Revenue, Commissioner of Public Welfare, Commissioner of Correction, Director of Conservation and Development, and Director of Administration, to name but a few. All are appointed by the Governor or (in two instances) are chosen by a board with the Governor's approval. Thus whether one of the state executive offices is filled today by vote of the people or by appointment appears to have more to do with the age of the office than with the nature and weight of its responsibilities.

The result is that each four years, the voter is confronted by a ballot listing candidates for ten executive positions. Relatively few of the State's two million voters have more than a faint idea of the duties of most of these offices; still fewer are in position to know the qualities of the occupants of and candidates for most of those posts. Thus the vast majority of the voters are poorly prepared to make an understanding selection of the men who are to fill those posts. The fact is that for many decades, nearly all of these officers (other than the Governor and Lieutenant Governor) have reached their places by appointment by the Governor to fill a vacancy, have won nomination in the party primary without significant opposition, and have shared the success of the Democratic state ticket in the general election.

From the constitutional standpoint, these officers nevertheless hold their offices by gift of the voters, and so are only indirectly subject to supervision by the Governor. Thus the Governor's ability to coordinate the activities of state government and to mount a comprehensive response to the problems of the day are handicapped if the elected department heads choose not to cooperate with him.

We believe that reducing the list of elected officers would make possible a more knowledgeable choice on the part of the voters, who would have a

smaller list of offices and candidates to consider; and it would make possible more effective coordination of the administrative operations of state government.

We would retain on the elective list the Governor and Lieutenant Governor, for obvious reasons; the Auditor, because of his function as the post auditor of state financial transactions; the Treasurer, because of his responsibilities as the custodian of state funds; and the Attorney General, because of his function as counsel to state government. These last three officers serve in part as observers of the Governor and should be sufficiently independent of his control to raise objections in case of fiscal or legal irregularities on his part.

These five officers would also constitute the Council of State. That body historically has not functioned in a manner comparable to the President's Cabinet. Its members have never been "the Governor's men," holding office by his appointment and subject to removal by him. For a long time, it has not included all of the heads of major state departments. Its assigned functions (most of them statutory) have been to serve as a check on the Governor and his actions. Currently the Council's concerns are largely confined to approving the Governor's actions with respect to property acquisitions and dispositions by the State, the borrowing of money, and the calling of extra sessions of the General Assembly. We believe that these functions could be as well and as independently performed by the revised Council of State as they could at present.

Our reasons for eliminating the Superintendent of Public Instruction from the ballot differ from those applying to the other four. Today, any voter in the State can be elected to any of these five offices, including that of Superintendent. Yet the job of administering a statewide school

system serving over 1,100,000 children is a difficult and complex one, requiring professional knowledge and ability of a high order. We believe that the choice of a person to fill this important post can be better made by the State Board of Education than by the voters at large or even by the Governor. The change would, among other things, relieve the Superintendent of the kind of political pressures and obligations that may logically accompany a periodic political candidacy.

We note that the Superintendent-elect has advocated that the office be filled by appointment of the Board, as did his opponents in the primary and general elections of 1968. (We note also that only 21 of the states now choose their Superintendent of Public Instruction or equivalent officer by popular election.)

While the office of Secretary of State is one of great antiquity and of prestige, we do not consider its present duties to be of such character as to require that it be filled by popular election.

The Commissioner of Agriculture heads an important state department, and is responsible for assistance and regulatory programs affecting not only the farmers but the processors, distributors, and consumers of farm products as well. For this reason, we believe that the post is one that should be subject to supervision and direction by the Governor, through his own appointee, as is the case with other comparable line agencies of the State (Of the 47 states with an officer equivalent to our Commissioner of Agriculture, only 12 choose him by popular election.)

The Commissioners of Labor and Insurance perform essentially regulatory functions of a nature that makes it more appropriate that their offices be filled by appointment than by popular election. (Only eight states elect their Commissioner of Insurance and only five elect their Commissioner of

Labor or equivalent.)

Even if taken out of the constitution, these five offices would continue to exist unless abolished by legislative action. Their duties would be subject to legislative determination, as they now are.

While the portion of this amendment dealing with the present constistution appears to be somewhat more extensive than is the portion dealing with the proposed constitution, that merely reflects the simpler and briefer character of the proposed document. As to the matter that Amendment No. 5 covers, the legal effects would be the same, whether it is adopted as an amendment to the proposed constitution or as an amendment to the present constitution.

Amendment No. 6

Reducing the Residence Time for Voting in State Elections to Six Months

PROPOSED CONSTITUTION

Article VI

Sec. 2(1). Residence period for State elections. Any person who has resided in the State of North Carolina for six months and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

PRESENT CONSTITUTION

Article VI

Sec. 2. [Rewrite the first sentence of this section to read the same as Sec. 2(1), above.]

Commentary on Amendment No. 6

The period of residence in the State required as one of the conditions for voting was set at one year in 1868, increased to two years in 1900, and restored to one year in 1920. In 1962, the voters agreed to reduce the in-state residence time required for voting in presidential elections only, and the General Assembly fixed that period at sixty days.

We recommend that the period of residence in the State required for participation in state elections be reduced to six months. (Seventeen states now require a residence period of six months or less as a condition for voting.) The increasing mobility of our population, the ready means of informing newcomers about local political issues and candidates, and the desire to make the franchise available to significant numbers to whom length of residence alone denies it, all combine to prompt this recommendation.

Amendment No. 7

Authorizing Trial on Information and Waiver of Jury Trial in Noncapital Cases

PROPOSED CONSTITUTION

Article I

Sec. 22. Modes of prosecution. Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, impeachment, or information. Trial upon information shall be allowed only in noncapital cases in which the accused is represented by counsel, subject to regulations prescribed by the General Assembly.

Sec. 24. Right of jury trial in criminal cases. No person shall be convicted of any crime but by the unanimous verdict of a jury in open court, except that a person accused of a noncapital crime may, in writing and with the consent of counsel and the trial judge, waive jury trial, subject to regulations prescribed by the General Assembly. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

PRESENT CONSTITUTION

Article I.

Sec. 12. [Text same as that of Sec. 22, above.]

Sec. 13. [Text same as that of Sec. 24, above.]

Proposed Amendment No. 7

Proposed Sec. 22 of Article I authorizes the solicitor, in a non-capital case in which the defendant is represented by counsel, to proceed to trial on an information (a charge drawn by the solicitor), rather than on an indictment returned by a grand jury. A probable majority of states now permit trial upon information. This apparently reflects a growing realization that the grand jury, in the vast majority of cases, has become a mere time-consuming and expensive arm of the solicitor, no longer serving its historical, screening function between the police and the trial jury.

The possibility of abuse of power by an overzealous solicitor is obviated by provision for the General Assembly to prescribe regulations in the nature of additional safeguards on use of the information. Thus, the General Assembly may require continued use of the indictment procedure in any category of cases in which it feels the possibility of abuse was real. So regulated, trial on information can serve as a useful procedure in the hands of the solicitor to expedite the trial of criminal cases.

Proposed Sec. 24 of Article I would eliminate a hobbling legal anachronism in our present criminal procedure. As interpreted by our Supreme Court, our Constitution requires a defendant in Superior Court, if he pleads not guilty, to submit to a jury trial in all cases, whether he wants it or not. He cannot waive a jury trial and let the issue of guilt or innocence be determined by the judge, no matter what reasons satisfactory to himself (and his counsel) he may have for wanting to do so. He can, of course, plead guilty and dispense with a trial altogether.

The right of trial by jury was provided solely for the benefit of the accused. If, when he is represented by counsel and the trial judge consents,

he should elect to waive his right to a jury trial and be tried by the judge alone, why should he not be able to do so? If further safeguards on waiver of this right are deemed desirable, the General Assembly, by the terms of this proposal, could prescribe them.

This proposal would bring our criminal procedure in line with almost universal modern thinking on this matter, and result in increased efficiency in the administration of criminal justice. It will affect the procedure in felony cases only; the procedure for the disposition of misdemeanors will continue to be trial in all cases on the warrant -- initially in the District Court, and on appeal in the Superior Court.

Amendment No. 8

Requiring the General Assembly to Reduce the Administrative Departments to to 25 and Authorizing the Governor to Reorganize the Administrative Departments, Subject to Legislative Disapproval

PROPOSED CONSTITUTION

Article III

Sec. 5(10). Administrative reorganization. The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly while it is in session, and shall become effective and shall have the force of law 60 days after submission, or upon the adjournment sine die of the session, whichever is sooner, unless specifically modified or disapproved by joint resolution of both houses of the General Assembly.

Sec. 11. Administrative departments. Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

PRESENT CONSTITUTION

Article III

Sec. 18. [Text same as Sec. 11, above.]

Sec. 19. [Text same as Sec. 5(10), above.]

Commentary on Amendment No. 8

Most of our effort with respect to state government has been directed at improving the organizational and administrative effectiveness of the executive branch. This amendment is another result of that effort. It would require the General Assembly to make a substantial reduction in the number of state departments and agencies, and it would give the Governor the initiative in reorganizing the state administrative structure, subject to legislative disapproval.

The Governor is elected to administer state government. Yet he must do so through an array of 200 state agencies of various titles and descriptions, all of them responsible to him in some way but many of them subject to little or no effective coordination or direction by him. He does well to recognize on sight the heads of all of these state agencies, much less to be able to have an informed view of the competence with which they are performing their jobs. His coordinative function is thwarted because it takes most of his term for a Governor to learn what all of these units under his nominal command are supposed to be doing.

One obvious prescription is to reduce to a reasonable number the agencies that the Governor must oversee. Yet each session of the General Assembly sees a net addition of five or ten agencies to the chart. The General Assembly has the authority to cut the number of state agencies to manageable proportions through consolidation and elimination, but experience indicates that it is most unlikely to do so in the absence of a clear mandate from the people that it be done. Hence this amendment.

Proposed Art. III, § 11, following a precedent found in several states, directs the General Assembly to reduce the number of administrative departments and agencies to not more than 25, and to do so by July 1, 1975. (Thus

it would have three regular sessions in which to accomplish the task.) This would have the effect of reducing the number of department heads whom the Governor must supervise to 25 -- a large number but still only one-eighth of the present number. Not only would the Governor be enabled to manage the business of the State more effectively, but in the course of reorganization, it should be possible to eliminate overlapping and duplication of functions among agencies now independent. The objective is not simply a more efficiently administered government, but one more capable of responding effectively to the needs of the people of the State.

The structure and powers of state agencies are prescribed in considerable detail by statute. Any significant reorganization of state government now requires legislative action changing the relevant statutes. The responsibility for pursuing in a continuous fashion the reorganization of state government in the interest of attaining a more efficiently designed and responsive structure of government is nowhere fixed in the constitution.

The second feature of this amendment (proposed Art. III, § 5[10]) attempts to meet these needs. It vests in the Governor the authority to prepare and submit to the General Assembly proposals for state governmental reorganization. The General Assembly will have 60 days or until the end of the session, whichever comes sooner, in which to act upon the plans. If it does not by joint resolution disapprove the proposed plans, they take effect.

The General Assembly will not be deprived of any of its present authority over the structure and organization of state government. It retains the power to make changes on its own initiative, it can disapprove any change initiated by the Governor, and it can alter any reorganization plan which it has allowed to take effect and then finds to be working

unsatisfactorily. The significant difference is that the amendment settles on the Governor the responsibility and authority for taking the initiative in state administrative reorganization.

Amendment No. 9

Revising Income Tax Provision

PROPOSED CONSTITUTION

Article V

Sec. 2(6). Income tax. The rate of tax on incomes shall not in any case exceed ten per cent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

PRESENT CONSTITUTION

Article V

Sec. 3. [rewrite fifth sentence to read:] The rate of tax on incomes shall not in any case exceed ten per cent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

Commentary on Amendment No. 9

The constitution now guarantees to a man with a wife living with him, or to a widow or widower having a minor child or children, a minimum state income tax exemption of $2,000. It guarantees to "all other persons" a minimum exemption of $1,000. The $1,000 exemption is available to a married woman with separate income, although her husband receives the $2,000 exemption. Thus an inequity is created as between the couple in which the wife has no separate income (in which case they collectively receive $2,000 in exemptions) and the couple in which the wife does have separate income (in which case they collectively receive $3,000 in exemptions). The inequity becomes more obvious when the wife's income is derived not from personal earnings but from income-producing property transferred to her by her husband.

Two other inconveniences flow from the present specification of minimum exemptions in the constitution. First, a husband and wife cannot file a joint income tax return; if each has income, each must file a return. Second, North Carolina cannot accommodate its income tax scheme to that of the federal government and thus simplify for the taxapyer the process of preparing tax returns.

The Tax Study Commission, in a report to the Governor dated December 2, 1968, recommended that the income tax provision be amended by deleting the present minimum income tax exemptions and by authorizing the General Assembly to fix those exemptions. We concur in the recommendations of that Commission.

The adoption of this amendment will not bring any automatic consequences to the taxpayer. It will enable the General Assembly (1) to change the exemptions so as to eliminate the present additional $1,000 exemption received by a wife with separate income, (2) to allow the filing of joint income tax

returns by husbands and wives, and (3) to accommodate North Carolina's income tax to that of the federal government, through the adjustment of exemptions and otherwise, so that the duplication of labor required in preparing the state tax form can be minimized.

The present maximum tax rate of ten per cent is retained by this amendment.

Amendment No. 10

Reassigning Future Escheats

PROPOSED CONSTITUTION

Article IX

Sec. 10. Escheats.

(1) Escheats prior to 1971. All property that prior to January 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) Escheats after 1970. All property that, after December 31, 1970, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

PRESENT CONSTITUTION

Article IX

Sec. 7. Benefits of the University; escheats.

(1) Benefits. The General Assembly shall provide that the benefits of The University of North Carolina, as far as practicable, be extended to the youth of the State free of expense for tuition.

(2) Escheats prior to 1971. All property that prior to January 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(3) Escheats after 1970. All property that, after December 31, 1970, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

Commentary on Amendment No. 10

The General Assembly of 1789 chartered The University of North Carolina and granted it as an endowment all property escheating to the State as sovereign by reason of the death of the owner without heirs or a will making other disposition of the property. For nearly a century, this was the only continuing State support of The University. The General Assembly of 1800, in an effort to deprive The University of this income source, repealed the escheats statute of 1789. The State's highest court invalidated this effort to take away the escheats on the ground that it constituted a taking of vested property other than by the law of the land, in violation of the constitution.

From time to time, various types of unclaimed property have been assigned to the University.

Until 1946, both the principal and interest of the escheats were used for any purpose approved by the University Trustees. In that year, however, the Trustees determined that the principal of the escheats fund should be kept intact, that the net income should be distributed among the three (now four) campuses of The University in proportion to enrollment, and that it should be used only for scholarships to needy North Carolina residents enrolled in one of those four institutions. The principal of the escheats fund is now about $5,500,000, and it produces a net annual income of about $180,000 which is distributed in scholarships.

At the time the escheats were assigned to The University, it was the only institution of higher education sponsored by the State. Today there are, in addition to The University of North Carolina with its four campuses, four regional universities and seven senior colleges maintained by the State.

We believe that equity requires that the benefits of the escheats, being derived from property owners throughout the entire State, be made available to any needy and worthy North Carolinian who is enrolled in any public institution of higher education in this State. This amendment would carry out that policy.

As for the property that has already escheated to The University prior to the time this amendment will take effect, January 1, 1971, we consider it to be vested in The University and would leave it there. But as to property escheating from that day forward, we believe that it should be managed in such manner as the General Assembly thinks appropriate, and the income (or the income and principal, as the General Assembly may direct) should be applied to aid worthy and needy students who are residents of this State and are enrolled in any public institution of higher education in this State.

V

A BRIEF HISTORY OF THE CONSTITUTION OF NORTH CAROLINA

North Carolina has had but two Constitutions in her history as a State: the Constitution of 1776 and the Constitution of 1868.

Constitution of 1776

Drafted and promulgated by the Fifth Provincial Congress in December, 1776, without submission to the people, the Constitution of 1776 and its accompanying Declaration of Rights sketched the main outlines of the new government and secured the rights of the citizen from interference by it. While the principle of separation of powers was explicity affirmed and the familiar three branches of government were provided for, the true center of power lay in the General Assembly. That body not only exercised the legislative power; it chose all the state executive and judicial officers, the former for short terms and the judges for life.

Profound distrust of the executive power is evident. The Governor was chosen by the legislature for a one year term and was eligible for only three terms in six years. The little power granted him was hedged about in many instances by requiring for its exercise the concurrence of a seven-member Council of State chosen by the legislature.

Judicial offices were established, but the court system itself was left to legislative design. No system of local government was prescribed by the constitution, although the offices of justice of the peace, sheriff, coroner, and constable were created.

The system of legislative representation was based on units of local government. The voters of each county elected one Senator and two members of the House of Commons, while six (later seven) towns each sent a member

to the House. It was distinctly a property owner's government, for only landowners could vote for Senators until 1857, and progressive property qualifications were required of members of the House, Senators, and the Governor until 1868. Legislators were the only state officers who were elected by the people until 1836.

Defects in the legislative representation system, which gave no recognition to population, resulted in the Convention of 1835. Constitutional amendments adopted by that Convention and ratified by the people fixed the membership of the Senate and House at their present levels, 50 and 120. The House apportionment formula devised in 1835 remained in force until 1966. It allocated one seat to each county and the remainder among the more populous counties. The Senators were from 1836 until 1868 elected from districts laid out according to the amount of taxes paid to the State from the respective counties.

The Amendments of 1835 also made the Governor popularly elective for a two-year term, greatly strengthening that office; relaxed the religious qualification for office holding; abolished free Negro suffrage; equalized the capitation tax on slaves and free white males; prohibited the General Assembly from granting divorces, legitimating persons, or changing personal names by private act; specified procedures for the impeachment of officers and the removal of judges for disability; made legislative sessions biennial instead of annual; and provided methods of amending the Constitution.

The Convention of 1861-62 took the State out of the Union and into the Confederacy and also adopted several constitutional amendments. The Convention of 1865-66, with popular endorsement, nullified secession and abolished slavery. It also drafted a revised constitution in 1866. This was largely a restatement of the 1776 constitution and the 1835 amendments, but with several new features. It was rejected by vote of the people.

Constitution of 1868

The Convention of 1868, called upon the initiative of Congress but with a popular vote of approval, wrote a new Constitution which the people ratified. Drafted and put through the Convention by a combination of native Republicans and a few Carpetbaggers, the Constitution of 1868 long was for this reason unpopular in the State. Yet for its time it was a progressive and democratic instrument of government. In this respect it differs markedly from the proposed Constitution of 1866. The Constitution of 1868 is an amalgam of provisions copied or adapted from the Declaration of Rights of 1776, the Constitution of 1776 and its amendments, the proposed Constitution of 1866, and the constitutions of other states, together with some new material. Although often amended, a majority of the provisions of that document remain intact today.

The Constitution of 1868 added to the old Declaration of Rights several important provisions. To the people was given the power to elect state executive officers and judges and all county officials, as well as legislators. All property qualifications for voting and office holding were abolished. The Senate was thenceforth apportioned on the basis of population and not property values. Annual legislative sessions were restored.

The executive branch of government was strengthened by popular election of the executive officers for four-year terms of office and the Governor's powers were increased significantly.

A simple and uniform court system was established with the jurisdiction of each court fixed in the constitution. The distinctions between actions at law and suits in equity were abolished.

For the first time, detailed constitutional provision was made for a system of taxation and for free public schools. Homestead and personal property exemptions were granted, and the maintenance of penal and charitable institutions by the State was commanded. A uniform scheme of county and township government was prescribed.

Despite Conservative threats to repeal the Constitution of 1868 at the earliest opportunity, the changes actually effected by amendments adopted in 1873 and 1876 were more modest in scope. These amendments left to the legislature the method of electing University trustees; gave the General Assembly full power to revise or abolish the form and powers of county and township governments; made legislative sessions biennial again; abandoned the simplicity and uniformity of the court system by giving General Assembly power to determine the jurisdiction of all courts below the Supreme Court and to establish such courts inferior to the Supreme Court as it might see fit; reduced the Supreme Court from five to three members; required Superior Court judges to rotate among all judicial districts of the State; disqualified for voting persons guilty of certain crimes; required non-discriminatory racial segregation in the public schools; and simplified the 1835 procedure for constitutional amendment. The rest of the constitution was left substantially intact. The main effect was to restore in considerable measure the former power of the General Assembly, particularly as to the courts and local government.

In 1900 the suffrage article was revised to add the literacy test and poll tax requirement for voters. A slate of ten amendments prepared by a constitutional commission was rejected by the people in 1914. With the passage of time and amendments, the attitude towards the Constitution of 1868

had changed from resentment to a reverence so great that until the last 35 years, even the most necessary amendments were very difficult to obtain. During the first third of this century, however, amendments were adopted lengthening the school term to six months, authorizing special Superior Court judges, further limiting the General Assembly's powers to levy taxes and incur debt, abolishing the poll tax requirement for voting, and reducing the residence qualification for voters. Amendments designed to restrict the legislature's power to enact local, private, and special legislation were adopted but were made partly ineffective by judicial interpretation.

A significant effort at general revision of the Constitution came in 1931-33. A Constitutional Commission created by the General Assembly of 1931 drafted and the General Assembly of 1933 approved a revised Constitution. Blocked by a technicality raised by an advisory opinion of the State Supreme Court, the proposed Constitution of 1933 never reached the people for approval. It would have granted the Governor the veto power; given to a Judicial Council composed of all the judges of the Supreme and Superior Courts power to make all rules of practice and procedure in the courts inferior to the Supreme Court; required the creation of inferior courts by general laws only; removed most of the limitations on the taxing powers of the General Assembly; required the General Assembly to provide for the organization and powers of local governments by general law only; established an appointive State Board of Education with general supervision over the public school system; and set forth an enlightened policy of state responsibility for the maintenance of educational, charitable, and reformatory institutions and programs.

Several provisions of the proposed Constitution of 1933 were later incorporated into the Constitution by individual amendments, and to a limited extent it served as a model for the work of the 1957-59 Constitutional Commission.

During the quarter-century that intervened between the Constitutional Commission of 1931-33 and that of 1957-59, the increased receptiveness to constitutional change resulted in amendments authorizing the classification of property for taxation; strengthening the limitations upon public debt; authorizing the General Assembly to enlarge the Supreme Court, divide the State into judicial divisions, increase the number of Superior Court judges, and create a Department of Justice under the Attorney General; enlarging the Council of State by three members; creating a new State Board of Education with general supervision of the schools; permitting women to serve as jurors; transferring the Governor's power to assign judges to the Chief Justice and his parole power to a Board of Paroles; raising the pay of the General Assembly; and authorizing the closing of public schools on a local option basis and the payment of educational expense grants in certain cases.

On recommendation of Governor Luther H. Hodges, the General Assembly of 1957 established the North Carolina Constitutional Commission, a 15-member group appointed by the Governor. After nearly a year's study, the Commission submitted to the Governor and the General Assembly of 1959 a revised constitution. That document (with a few exceptions to be noted presently) represented in the main a work of editorial revision and rearrangement, clarification, and cautious modification of the present constitutional guarantees of personal rights and the framework of state and local government, not one of deep-running reform.

The principal changes incorporated in the redrafted constitution were an extensive revision of the court system of the State, including the establishment of a uniform system of District Courts to replace all courts inferior to the Superior Court; procedures designed to expedite periodic legislative reapportionment; provisions for executive succession and the determination of incapacity on the part of the Governor; requirements that the powers to classify property for tax purposes and to exempt property from taxation be exercised by the General Assembly only and on a state-wide, uniform basis; the elimination of the requirement that the General Assembly provide for a general and uniform system of free public schools; the repeal of the constitutional authority of the State Board of Education to supervise and administer the public schools; and clarification of the procedures for amending the Constitution.

In the 1959 legislative session, the course of the proposed Constitution became fatally intertwined with that of a separately developed and substantially differing proposal for the revision of the court system, resulting ultimately in the failure of both measures.

Subsequent legislative sessions submitted and the people approved several independent amendments dealing with the same subjects as several of the more substantial changes embodied in the proposed Constitution of 1959. In some instances, these amendments were taken almost verbatim from the 1959 text. They include the establishment of the General Court of Justice; the revision of provisions for executive succession and for the determination of incapacity on the part of the Governor; the requirement that the powers to classify property for tax purposes and to exempt property from taxation be exercised by the General Assembly only and on a state-wide, uniform basis; and the clarification of the right of a married woman to dispose of her property.

Two amendments were approved by the voters at the general election of 1968. One eliminates the pay schedule for legislators now fixed in the Constitution and authorizes the General Assembly to fix its own compensation, effective for the next legislative session. The other conforms the constitutional language on legislative representation to the realities of the scheme now in effect following litigation and legislative reapportionment in conformity with the requirements imposed by the court.

Since they ratified the Constitution in 1868, the people of North Carolina have had 97 opportunities to amend that document. They have voted favorably on 69 amendments and unfavorably on the other 28. Since 1938, of the 44 amendments submitted to the people, 37 have been ratified, reflecting an increased readiness on the part of the voters to approve changes in the Constitution.

Appendix 1

PLAN FOR A COMMISSION STUDY OF THE CONSTITUTION OF THE STATE OF NORTH CAROLINA

[Adopted by the Steering Committee, March 8, 1968]

1. A Study Commission has been selected by the Steering Committee to study the Constitution of the State. Such Study Commission consists of lawyers and of non-lawyers representative of various phases of life and activities of our State.

2. It is contemplated that such Commission will make a study of the Constitution of North Carolina and give consideration to the question whether there is a need for either rewriting or amending the Constitution. Such study should consider not only the question of editorial improvements, the elimination of archaic provisions, but also any broad and substantial matters concerning the present and future demands upon our State Government. No limits are placed on the field of the Commission's study of the Constitution or on its recommendation.

3. The Study Commission should report the result of its study and its recommendations, if any, to the two organizations initiating and sponsoring the study, namely: the North Carolina State Bar and the North Carolina Bar Association. If feasible, such report should be made not later than December 16, 1968. Such report should be made available to the members of the General Assembly, to the Governor and Administrative Heads then in office, and to the people of North Carolina.

4. The Steering Committee and the two organizations sponsoring the study have undertaken the burden of seeking donations adequate to take care of the expenses of the Study Commission.

5. It is recommended to the Study Commission that it request suggestions, relative to the Constitution and to the needs, if any, of changing or rewriting it, from the Governor of the State, from the Heads of the several State Departments, from the Deans of the law schools within the State, from the Judges of the Superior Court, from the Judges of the Court of Appeals, from the Justices of the Supreme Court, from the several legislative Study Commissions, and from the members of the public desiring to make recommendations. It is further recommended that the Study Commission arrange for the holding of advertised public hearings on the subject of its study.

6. If the Study Commission finds, at any time, that its membership should be enlarged it should request that such enlargement be accomplished by the Steering Committee. Vacancies which occur in the membership of the Study Commission are to be filled by action of the Study Commission.

7. It is the intent of the Steering Committee that no limitation be put upon the organization or upon the studies or upon the recommendations of the Study Commission. Further, the Steering Committee considers it desirable and appropriate that it make clear to the Study Commission and to the people of North Carolina that the actions of the Steering Committee, in undertaking its duties and in setting up the Study Commission, are not to be construed as indications that the Steering Committee has reached or expressed any opinion that the North Carolina Constitution either should or should not be amended or rewritten. The Steering Committee leaves that decision completely

to the Study Commission. However, the Steering Committee considers it appropriate that it make clear to the public, what is surely well-known to the members who it has selected for service on the Study Commission, that ours is a Constitutional Democracy, and that a written Constitution is one of the bedrock foundations of our Democratic Government. As was said so impressively by the late Judge John J. Parker -

> "The purpose of a state Constitution is two-fold: (1) to protect the rights of the individual from encroachment by the state; and (2) to provide a framework of government for the state and its subdivisions. It is not the function of a constitution to deal with temporary conditions, but to lay down general principles of government which must be observed amid changing conditions. It follows, then, that a constitution should not contain elaborate legislative provisions, but should lay down briefly and clearly the fundamental principles upon which the government shall proceed, leaving it to the people's representatives to apply these principles through legislation to conditions as they arise."

Any proposed changes which would jeopardize these purposes should be approached with caution and made with deliberate care.

Appendix 2

NORTH CAROLINA STATE CONSTITUTION STUDY COMMISSION

Committee Structure and Membership

I. COMMITTEE ON STRUCTURE, ORGANIZATION, AND POWERS OF STATE GOVERNMENT

Charles B. Aycock
Luther H. Hodges
Claude V. Jones
L. P. McLendon, Jr. - Chairman
Rudolph I. Mintz
Bert M. Montague

II. COMMITTEE ON STRUCTURE, ORGANIZATION, AND POWERS OF LOCAL GOVERNMENT AND GOVERNMENT FINANCE

Archie K. Davis - Chairman
Albert J. Ellis
Roberts H. Jernigan, Jr.
William A. Johnson
John T. Morrisey, Sr.
Asa T. Spaulding

III. COMMITTEE ON EDUCATION, WELFARE, AND CRIMINAL JUSTICE

James M. Baley, Jr.
Mrs. Harry B. Caldwell
Irving E. Carlyle - Chairman
Julius L. Chambers
Charles W. Phillips
William D. Snider

IV. COMMITTEE ON DECLARATIONS OF PRINCIPLES AND POLICIES AND MISCELLANEOUS

Millard Barbee
William Britt - Chairman
Robert L. Gavin
Robin L. Hinson
E. L. Loftin
Hector McLean

V. EDITORIAL COMMITTEE

William R. Britt
Irving E. Carlyle - Chairman
Robin L. Hinson
L. P. McLendon, Jr.
Bert M. Montague

Appendix 3

Amendment Revising State and Local Finance Provisions, Except as to Income Tax

PROPOSED CONSTITUTION

ARTICLE V

FINANCE

Section 1. No capitation tax to be levied. No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Commentary

This section abolishes the capitation (poll) tax. In the fiscal year 1965-66, all counties and 319 cities levied capitation taxes. The county taxes amounted to $1,244,536 or 0.7% of the total of all county revenues and the city taxes amounted to $210,270 or 0.2% of the total of all municipal revenues. The capitation tax is therefore an insignificant source of local revenue. It is typically not collected unless the individual also lists real or personal property for taxation, since the cost of collecting a $2.00 tax would exceed the tax itself. Moreover, the tax is erroneously thought to have some relation to the right to vote.

Sec. 2. State and local taxation.

(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

This is the first sentence of present Art. V, § 3, without change.

(2) Classification. Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other local taxing unit of the State.

This language is substantially the same as that of the present second and third sentences of Art. V, § 3, except for elimination of the phrase "other subjects" in two places and deletion of the present fourth sentence dealing with delegation of the classification power for local privilege license tax purposes. These provisions were rendered unnecessary by the decision of the Supreme Court in Sykes v. Clayton, 274 N.C. -- (decided October 30, 1968), which held that the classification portions of present Art. V, § 3, apply only to the property tax. This subdivision therefore makes no substantive change in the present constitution.

(3) Exemptions. Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other local taxing unit of the State. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

This is present Art. V, § 5, with no substantive change.

(4) Special tax areas. The General Assembly may enact general laws authorizing the governing body of any county, city, or town, to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, and maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

Under the decisions of the Supreme Court in Banks v. Raleigh, 220 N.C. 35 (1941), and Anderson v. Asheville, 194 N.C. 117 (1927), there is serious doubt that any classification of property for

taxation solely on the basis of services provided or the level of such services would be valid, unless the formality of creating a special service district administered by its own governing board were followed. This new paragraph specifically permits the General Assembly by general law to authorize units of local government to establish subordinate service districts without their own governing boards and to levy taxes in the districts in order to finance the services provided therein but not throughout the unit. The paragraph will have its major application in the context of city-county merger or consolidation. The governing board of a merged or consolidated county could be empowered to define urban service districts consisting of the territory formerly included within city limits. Within the urban service districts municipal services could be continued as they were before consolidation and additional taxes be levied to finance services beyond the level of those available throughout the county, but only one governing board would administer all county (or city-county) affairs. The same result can be accomplished under the present Constitution only by creating urban service districts governed by boards appointed by the central county governing board. Thus the main thrust of the new paragraph is to make possible a more efficient and economical method of administering the affairs of a consolidated city-county.

(5) Purposes of property tax. The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax be approved by a majority of the qualified voters of the unit who vote thereon.

Under Art. VII, § 6, of the present Constitution taxes may be levied and debt incurred by cities and counties without a vote only for "necessary expenses," as that term is defined from time to time by the Supreme Court. (The "necessary expense" doctrine never applied to State expenditures and taxes.) Governmental functions which are not "necessary expenses" may be financed by tax funds or borrowed money only with voter approval. This does not seem to be a question of law for the courts but rather one of State policy more properly within the legislative domain. At the present, the method of shifting functions from the "necessary expense" category to the voter approval category or vice versa is as follows: The General Assembly must enact legislation authorizing a tax for a function either not yet categorized under the "necessary expense" clause or heretofore declared not a"necessary expense." A local governing board must purport to act under the delegated legislative authority. A private citizen must initiate a lawsuit seeking an injunction against the levy of the tax. Then, and only then, may the courts determine whether the function in question is a "necessary expense." In so doing, the constitution and the common law afford no assistance to the Court in making its decision. Rather, the Court must make a legislative

decision reallocating the line between functions of vital State-wide interest and functions which should remain within the province of the voters of an individual county or city to approve or disapprove. When the Court renders its decision, the function in question is declared to be (or not to be) a "necessary expense" for every county or every city in the State without regard to the effect of local circumstances (Purser v. Ledbetter, 227 N.C. 1 [1946]). Also, the Court is precluded by the nature of the judicial process from expressing its opinion on functions not involved in the particular lawsuit before it.

The philosophy of the proposed amendment to the "necessary expense" concept is that the General Assembly ought to make State policy on the allocation of functions between the State and its local governments. For this reason, the "necessary expense" concept as a judicial question is discarded and the General Assembly is permitted to determine what local taxes and bonds must be submitted to a vote of the people. However, the General Assembly is not permitted to authorize non-voted taxes and bonds by local act or even by classified general laws. Any authority for counties or cities to levy taxes or issue bonds without a vote must be State-wide in application. If but one county or one city is excepted from a bill authorizing the levy of property taxes without a vote, the act is unconstitutional and voter approval is required in every instance. Thus the end result of the proposed amendment is the same as the present "necessary expense" clause except that the General Assembly rather than the Supreme Court decides what functions require voter approval for their financing. The Commission feels that the political and constitutional controls on the General Assembly in authorizing non-voted taxes are sufficient to protect the people against hasty or unwise legislative decisions. Under present Art. II, § 14, (proposed Constitution Art. II, § 23) bills authorizing the levy of taxes directly or indirectly must be enacted by roll call votes on three separate days in each house and the vote entered upon the journal. Since no local legislation will be permitted concerning non-voted taxes, all such bills will be public bills and this be exposed to the glare of publicity. The Commission believes that hasty action is unlikely on a public bill applying throughout the State and requiring two recorded roll call votes in each house. And General Assembly action would merely authorize -- not require -- action by county or city governing boards.

(6) Income tax. The rate of tax on incomes shall not in any case exceed ten per cent and there shall be allowed the following minimum exemptions, to be deducted from the amount of annual incomes: to the income-producing spouse of a married couple living together, or to a widow or widower having minor child or children, natural or adopted, not less than $2,000; to all other persons not less than $1,000; and there may be allowed other deductions, not including living expenses, so that only net incomes are taxed.

This section is identical to Art. V, § 2(6) in the Proposed Constitution.

(7) Contracts. The General Assembly may enact general laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

This paragraph partially codifies in the Constitution the rule of the cases of Dennis v. Raleigh, 253 N.C. 400 (1960), and Horner v. Burlington Chamber of Commerce, 235 N.C. 77 (1952). These cases, read together, hold that local governments may make appropriations to private organizations for the accomplishment of public purposes so long as the object of expenditure is identified as a public purpose and so long as the local government retains ultimate control over the disposition of public funds. The proposed amendment removes any possible doubt that government may cooperate with private enterprise in the accomplishment of public purposes.

Sec. 3. Limitations upon the increase of State debt.

(1) Authorized purposes; two-thirds limitation. The General Assembly shall have no power to contract debts which pledge the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;

(b) to borrow in anticipation of the collection of taxes due and payable within the fiscal year, to an amount not exceeding 50 per cent of such taxes;

(c) to suppress riots or insurrections, or to repel invasions;

(d) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(e) to borrow money secured by a pledge of the revenues of enterprises financed by the loan;

(f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

In Vance County v. Royster, 271 N.C. 53 (1967), the Supreme Court held that a debt within the meaning of the Constitution is any enforcible contractual obligation, except bonds secured by a pledge of the revenues of public enterprises. While this decision is supported by prior cases and reached a proper result on the facts before the Court, it raises substantial questions as to the feasibility of constitutionally required voter approval of all "enforcible contractual obligations." For example, a lease of land for three years very probably is a "debt" within the rule of Vance County v. Royster. The proposed amendment requires voter approval of State debt only when the faith and credit of the State is pledged -- in other words, for general obligation bonds or notes. In proposed Sec. 3(3) a "debt" is defined as being incurred when money is borrowed or a contractual obligation "not funded by current appropriations" is incurred. A "pledge of the faith and credit" is defined as an express pledge of the taxing power or an "express and unlimited pledge of the faith of the State to secure a debt." When proposed Sec. 3(3) is read with proposed Sec. 3(1), the amendment requires voter approval for general obligation debt only, that is to say debts secured by a pledge of the faith and credit. (This was generally understood to be the intent of the present Constitution before the decision in Vance County v. Royster.)

Two new "enumerated exceptions" to the requirement of voter approval of debt are added. Exception (d) permits the General Assembly to authorize the Governor to borrow within limits prescribed by law "to meet emergencies immediately threatening the public health or safety." This clause would be useful in the event of a major natural disaster, civil disturbance, or war and would permit the Governor to act swiftly to replace destroyed or damaged capital facilities which are essential to the public health or safety. An example might be a major prison riot necessitating emergency repairs for which funds could not be found without borrowing. Under the present Constitution, borrowing under these circumstances could be accomplished only by the convening of a special session of the General Assembly and possible submission of a bond issue to the people (if there were no authority under the "two-thirds limitation" in that particular year). The Governor is made the sole judge of what constitutes a threat to the public health or safety, since the whole thrust of the exception is to permit swift action in emergencies. Otherwise, a decision of the Supreme Court would be required in each instance at the insistence of bond counsel, and the resulting delay might substantially defeat the whole purpose of the exception.

The second new exception codifies the rule of Williamson v. High Point, 213 N.C. 96 (1938), and other cases which hold that revenue bonds are not "debt" within the meaning of the Constitution and need

not be submitted to a vote of the people. Since the word "debt" is given a definition in Sec. 3(3) broad enough to include revenue bonds, a specific exception for revenue bonds is added to Sec. 3(1).

The existing exception allowing borrowing without a vote "to supply a casual deficit" is deleted. No satisfactory explanation of the meaning of this phrase has been advanced, it has never been used, and the Commission feels that it serves no useful purpose.

(2) Gift or loan of credit prohibited. The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

This section is identical to Sec. 3(2) in the Proposed Constitution.

(3) Definitions. A debt is incurred within the meaning of this Section when the State borrows money or incurs a contractual obligation not funded by current appropriations. A pledge of the faith and credit within the meaning of this Section is an express pledge of the taxing power or an express and unlimited pledge of the faith of the State to secure a debt. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation, but does not occur when the State guarantees the debts of its local governments.

This section is discussed in the comments on Sec. 3(1). The proposed paragraph also defines a "loan of credit" so as to exclude State guarantees of the obligations of local governments. Any such guarantee would probably have to comply with Sec. 3(1) and could only be made to the extent of two-thirds of net debt reduction within the preceding biennium, but would not require voter approval within this limitation. Any guarantee of the debts of a private individual, association, or corporation would require direct voter approval in all instances, except for State-controlled corporations such as the North Carolina Railroad.

(4) Certain debts barred. The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject be submitted to the people of the State and be approved by a majority of all the qualified voters at a referendum held for that sole purpose.

This is present Art. I, § 6, edited but substantively unchanged.

Sec. 4. Limitations upon the increase of local debts.

(1) Regulation of borrowing and debt. The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

This paragraph introduces a new concept into State regulation of local government debt: There can be no local legislation on local debt matters. All laws concerning local debt must be "general". This term is defined in proposed Art. XIV, § 5, of the proposed constitution (alternatively, in Art. V, § 8 of the present Constitution) to permit classified acts.

(2) Authorized purposes; two-thirds limitation. The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts and pledge its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;

(b) to borrow in anticipation of the collection of taxes due and payable within the fiscal year, or estimated to become due and payable within the next succeeding fiscal year, which estimate shall not exceed the actual tax levy of the current fiscal year, to an amount not exceeding 50 per cent of such taxes;

(c) to suppress riots or insurrections;

(d) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(e) to borrow money secured by a pledge of the revenues of enterprises financed by the loan;

(f) to enter into contracts and agreements of not more than ten years duration, which do not pledge the faith and credit of the unit, with individuals, associations, or private corporations, as authorized by general laws;

(g) to enter into contracts and agreements with any agency of the State or federal government, or any other unit of local government, as authorized by general laws;

(h) for purposes authorized by general laws uniformly applicable throughout the State, to an amount not in excess of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

The decision in Vance County v. Royster, discussed in the comments on Sec. 3(1), raised the same problems of debt definition for local governments as for the State. The problem is resolved for local governments as for the State. The problem is resolved for local governments by retaining the Court's definition of debt for local governments, but adding specific and limited exceptions to the requirement of voter approval of debt. The new exceptions are as follows:

1. Local units are permitted in exception (b) to borrow in anticipation of the taxes of the next succeeding fiscal year, to the extent of 50% of such taxes, provided that the estimate of next year's taxes may not exceed this year's levy. This authority has been conferred by G.S. Sec. 153-125 (counties) and Sec. 160-410.6 (cities) for many years, limited to 5% of the tax levy for the current year, but has never been used because of its doubtful constitutionality under the present Constitution. Thus, the amendment would require no implementing legislation.

2. Exception (d) grants authority to borrow without a vote to meet emergencies immediately threatening the public health or safety. (See the comments under Sec. 3[1].)

3. Exception (e) codifies the rule of Williamson v. High Point, discussed in the comments under Sec. 3(1).

4. Exception (f) permits the making of contracts which create debt under the rule of Vance County v. Royster, without a vote, subject to three important limitations: (1) such contracts may not exceed 10 years duration; (2) the contract may not pledge the faith and credit of the local unit as this term is defined in Sec. 4(5); and (3) the contract must be one authorized by general laws.

5. Exception (g) permits the making of contracts without a vote which create debt under the rule of Vance County v. Royster or which pledge the faith and credit of the local unit, subject to two limitations: (1) the contract is made with another governmental agency; and (2) there is general law authority for the contract.

6. Exception (h) incorporates the debt aspect of present Art. VII, § 6 ("necessary expense") into the two-thirds limitation of the present constitution. (See the discussion under Sec. 2[5].)

(3) Gift or loan of credit prohibited. The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to give or lend its credit in aid of any person, association, or private corporation except for public purposes as authorized by general law unless approved by a majority of the qualified voters of the unit who vote thereon.

This is a new paragraph which adds a prohibition against loans of credit to private organizations parallel to the prohibition against State loans of credit in Sec. 3(2).

(4) Certain debts barred. No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

This is present Art. VII § 9, with only minor editorial changes.

(5) Definitions. A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money or incurs a contractual obligation not funded by current appropriations. A pledge of faith and credit within the meaning of this Section is an express pledge of the taxing power or an express and unlimited pledge of the faith of a county, city or town, special district, or other unit, authority, or agency of local government to secure a debt. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

See the comments under Sec. 3(3).

(6) Outstanding debt. Nothing in this Section shall be construed to invalidate or impair the obligation or any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of the date of ratification of this Section.

This new paragraph is self-explanatory.

Sec. 5. Acts levying taxes to state objects.

Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

This is present Art. V, § 7, without change.

Sec. 6. Inviolability of sinking funds and retirement funds.

(1) Sinking funds. The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created.

This is present Art. II, § 30, with minor editorial amendment.

(2) Retirement funds. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement, disability, and death benefits, except that retirement system funds may be invested as authorized by law.

This is present Art. II, § 31, substantially edited but substantively unchanged except that the amended version applies also to the Local Governmental Employees' Retirement System, and specifically permits disability and death benefits as is now provided by law.

Sec. 7. Drawing public money.

(1) State treasury. No money shall be drawn from the State Treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

This is present Art. XIV, § 3, with an editorial amendment.

(2) Local treasury. No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

This is present Art. VII, § 7, identical to Sec. 7(2) of the proposed constitution.

Article XIV

Sec. 5. General laws defined.

Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout

the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every county, city and town, and other unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

The purpose of this section is to make clear what is required of the General Assembly when uniform laws are constitutionally required and to prohibit local legislation on these subjects.

"General laws" are defined as classified general laws, permitting some degree of flexibility in defining different classes according to population or other criteria. General laws are required by the proposed amendments to Article V for (a) authority to establish subordinate service districts (Sec. 3[4]); (b) all laws relating to debt (Sec. 4[1]); and (c) laws authorizing contracts which create debt (Sec. 4[2][e] and [f]).

"General laws uniformly applicable throughout the State" require uniformity according to types of local units, allowing one law for counties and another for cities, but all counties or all cities must be subject to the act. This is a new concept of uniform legislation for North Carolina, and is required by the proposed amendments to Article V for authority to levy taxes or contract debt without a vote of the people (Secs. 2[5] and 4[2] [g]).

"General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district," must be made applicable without exception in every unit of local government or local court district in the State. These laws are required by the present constitution and the proposed amendments for classification and exemption of property from taxation. (Sec. 2[2] and [3])

PRESENT CONSTITUTION

ARTICLE V

FINANCE

Secs. 1 - 7. [Text same as Secs. 1 - 7, above.]

If the proposed constitution is rejected but this amendment dealing with finance is approved by the General Assembly and the voters, the amendment will alter the present constitution by re-writing present Art. V, §§ 1 - 7, to read the same as the foregoing text of Article V, with the addition of the following section.

Sec. 8. Effect of uniform laws requirements.

Whenever the General Assembly is directed or authorized by this Article to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city or town, and other unit of local government, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government shall be made applicable without classification or exception in every unit of local government in the State. The General Assembly may at any time repeal any special, local, or private act.

See comment under Art. XIV, § 5, above, which is identical to this section except that this section applies only to Article V and its concerns.

Sec. 9. Merged or consolidated counties.

Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Article.

This section makes clear that a merged or consolidated city-county shall be deemed to be both a city and a county for such constitutional purposes as legislative representation and restrictions on the power of local governments to tax and incur debt.

a resident of this State for two years immediately preceding his election. No person elected to either of these two offices shall be eligible for election to more than two consecutive terms of the same office."

Sec. 3. The amendment set out in Sections 1 and 2 of this Act shall be submitted to the qualified voters of the State at the next general election. That election shall be conducted under the laws then governing elections in this State.

Sec. 4. At that election, the qualified voters favoring the amendment set out in Sections 1 and 2 of this Act shall vote ballots on which shall be printed or written the words:

"FOR constitutional amendment amending the Constitution to make the Governor and Lieutenant Governor eligible for election to two successive terms of office."

and those voters opposed shall vote ballots on which shall be printed or written the words:

"AGAINST constitutional amendment amending the Constitution to make the Governor and Lieutenant Governor eligible for election to two successive terms of office."

Sec. 5. If a majority of the votes cast thereon are in favor of the amendment set out in Sections 1 and 2 of this Act, and if a majority of the votes cast on the amendment submitted to the people by A Bill To Be Entitled An Act to Revise and Amend the Constitution of North Carolina are in favor of that amendment, then the Governor shall certify the amendment set out in Section 1 of this Act to the Secretary of State, who shall enroll that amendment so certified among the permanent records of his office, and the amendment shall become effective on January 2 next after its ratification by the voters.

Sec. 6. If a majority of the votes cast thereon are in favor of the amendment set out in Sections 1 and 2 of this Act, and if a majority of the votes cast on the amendment submitted to the people by A Bill To Be Entitled An Act to Revise and Amend the Constitution of North Carolina are against that amendment, then the Governor shall certify the amendment set out in Section 2 of this Act to the Secretary of State, who shall enroll that amendment so certified among the permanent records of his office, and the amendment shall become effective on January 2 next after its ratification by the voters.

Sec. 7. All laws and clauses of laws in conflict with this Act are repealed.

Sec. 8. This Act shall become effective upon its ratification.

INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA
AT CHAPEL HILL