

1 Statutes, Art. 1269k, Sec. 8(d), and Art. 12691-3, Sec. 9(g),
2 respectively.) The committee is advised that the local agencies
3 do not handle their contracting through the governor's office.

4 (1)
5 Sec. 11. CONVENING THE LEGISLATURE IN SPECIAL SESSION.

6 The governor [~~may~~], on extraordinary occasions, may convene the
7 legislature in special session stating specifically the purpose
8 of the session. The legislature may consider only those matters
9 that the governor specifies in the call or subsequently presents
10 to the legislature. [~~Special sessions shall not exceed 30 days.~~]

11 EXPLANATION

12 (1) Section 7(e) of the legislative article (as approved
13 on second reading) provides for special sessions called either
14 by the governor or the legislature. It seems appropriate to keep
15 the two separate, leaving the governor's power in this article.
16 A sentence has been added to cover the power to add to the agenda.
17 This power appears in the original Section 7(e) of the legislative
18 article. The sentence concerning length of session has been
19 dropped. That is covered in Section 7 of the legislative article.

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

24 [Sec. 13. ACTION ON BILLS AND RESOLUTIONS.]

The committee has withdrawn this section from the executive



1 article. The section will be added to the legislative article.
2 In the committee's report on the legislative article the normal
3 procedure will be followed, showing the committee's recommended
4 changes accompanied by appropriate explanations.

5 The shift is made principally because the section is of
6 greater significance as a step in the legislative process than
7 as an item of gubernatorial power.

8 Sec. 13 [~~14~~]. CHIEF PLANNING OFFICER. The governor is the
9 chief planning officer of the state and may require written
10 information [~~in writing~~] ⁽¹⁾ or [~~and~~] written reports from all state
11 [~~governmental~~] agencies and executive branch officers upon any
12 subject relating to their duties, conditions, management, and
13 expenditures.

14 EXPLANATION

15 (1) The committee believes that the intent is to require
16 both information and reports to be in writing. The new formulation
17 inserts "written" in front of both information and reports to
18 make that intent clear. The phrase "written information and
19 reports" is open to the construction that "written" modifies only
20 "information." In common parlance "information" is less formal
21 than "reports," so if anything is to be in writing, most people
22 would assume that it should be reports.

23 Sec. 14 [~~15~~]. BUDGET PREPARATION. At the beginning of
24 each session at which appropriations are to be made for the general



1 operation of the government, the governor shall submit to the
2 legislature a budget for all proposed state expenditures for the
3 applicable fiscal period.

4 Sec. 15 [16]. BUDGET EXECUTION. (a) A law authorizing
5 or directing the governor to exercise fiscal control over the
6 expenditure of appropriated money is not to be deemed a violation
7 of separation of powers. ⁽¹⁾ [~~The governor shall exercise those~~
8 ~~powers of fiscal control as provided by law.~~]

9 (b) ⁽²⁾ The governor shall ensure [~~insure~~] that items of
10 appropriation for the executive branch, except items for the
11 elective offices of the executive department, are [~~shall be~~]
12 expended only as directed by the legislature ⁽³⁾ [~~except that the~~
13 ~~legislature shall determine whether this power shall extend to~~
14 ~~elected officers of the executive department~~]. The legislature
15 by law may remove the exception.

16 EXPLANATION

17 (1) Under ordinary circumstances the sentence as originally
18 drafted would be an unnecessary grant of power to the legislature.
19 As the state's policy-making body the legislature ought to be
20 able to authorize or direct the governor, the chief executive,
21 to manage the state's expenditures in a manner that efficiently
22 carries out the state's policy as determined by the legislature.
23 The wording of the separation of powers article of the 1876
24 Constitution has been construed to prevent normal budgetary

1 control. Since the convention retained the 1876 wording of Article
2 II, this Subsection (a) is necessary.

3 (2) This subsection is almost but not quite unnecessary.
4 The section imposes a duty on the governor. Although the words
5 "as directed by the legislature" appear to make the provision no
6 more than an unnecessary grant of power to the legislature to
7 impose the duty—something it could do anyway under a normal
8 separation of powers provision—the reality is that the general
9 appropriation act inevitably contains directions. In short, "as
10 directed by the legislature" is not so much a "grant" of power
11 to the legislature as an instruction telling the governor where
12 he finds the rules for enforcing proper expenditure of appropriated
13 money. Moreover, the subsection recognizes the normal independence
14 of elected executive department officers and makes it clear that
15 the legislature reserves the power to decide whether the governor
16 is to have the power to oversee the appropriations to the agencies
17 headed by those officers.

18 The redraft is designed to clarify the governor's duty.
19 The original wording seemed first to say that the governor's duty
20 covered everything and then second, ambiguously indicated that
21 the legislature could do something about the duty. The redraft
22 makes it clear that the governor's constitutional duty is limited
23 in scope but that the legislature may broaden the scope.

24 (3) Note that the term "by law" has not been substituted

1 for "by the legislature." (See note (3) to Section 1 of Article
2 VII, concerning the significance of "by law.") It is the
3 committee's understanding that the intent is to permit the
4 legislature to use either a bill or a resolution to direct the
5 expenditure of these appropriations.

6 Sec. 16 [47]. ADMINISTRATIVE REORGANIZATION. (1) At the
7 regular session held in odd-numbered years, the (2) [the] governor
8 shall submit to the legislature [~~in sessions held in odd-numbered~~
9 ~~years~~] a report on the organization and efficiency of the executive
10 branch. [7]

11 (3) (b) In recommending plans for reorganization of the
12 executive branch, the governor may [~~and the governor shall, within~~
13 ~~two years after the adoption of this constitution, and at other~~
14 ~~times may~~] submit to the legislature one or more reorganization
15 bills limited to [~~proposed reorganization bills reassigning~~
16 ~~functions among~~] consolidating, [~~or~~] abolishing, or transferring
17 functions among [~~any~~] statutory state [~~governmental~~] agencies in
18 [~~within~~] the executive branch. The legislature must consider
19 those bills but may amend them. (4) A submitted reorganization bill,
20 whether amended or not, must be brought to a vote of each house
21 during the session at which the bill is submitted. (5) [~~*~~
22 ~~reorganization bill shall be considered by the legislature to~~
23 ~~which it is submitted, and as accepted, amended, or substituted,~~ (5)
24 ~~brought to a vote of each house. Nothing in this section shall~~

1 ~~prevent administrative reorganization by the normal legislative~~
2 ~~process.]~~ (6)

3 EXPLANATION

4 (1) The section has been divided into subsections to make
5 it clear that the proposed bills can be submitted at any time and
6 not just on the occasion of the governor's biennial report.

7 (2) The committee believes that the intent is to require
8 the report on organization to be made at the regular session only.
9 "Sessions" was undoubtedly plural in the sense of all the regular
10 sessions in odd-numbered years and not in the sense of all
11 sessions, regular and special, in each odd-numbered year.

12 (3) The extensive redraft of the subsection (less the
13 one-shot duty) is designed to narrow the scope to what is
14 constitutionally significant. A governor can always recommend
15 reorganization plans; a governor can always attach recommended
16 bills--or get bills introduced by a friendly legislator. What
17 is significant here is that the governor can "submit" bills that
18 must be acted upon. Note, however, that the permitted scope of
19 those bills is narrower than the scope of possible reorganization.
20 The governor may not "submit" a bill that creates a new agency
21 to which some functions are transferred.

22 (4) This "one-shot" duty is deleted here and transferred
23 to the transition schedule. Two years after adoption the provision
24 will be obsolete.

1 (5) The only constitutional significance of this power of
2 "submission" is that it limits the power of the legislature in
3 two minor respects: it cannot ignore the bill and cannot refuse
4 to vote on the "idea," which is all that is left if free amendment
5 is allowed.

6 (6) Once this provision about reorganization is reduced
7 to the constitutionally significant bare bones it is clear that
8 the governor has not been granted wholesale power over
9 reorganization. The constitutional significance of the provision
10 is so narrow that no one could reasonably argue that the
11 legislature had lost its power over policy-making in this area.
12 For this reason the last sentence has been deleted. Were the
13 last sentence left in, there would arise the need to put a
14 comparable sentence in other places. For example, if this sentence
15 remained one could argue that the governor's duty to cause the
16 laws to be faithfully executed (Section 10) destroyed the
17 legislature's power to create agencies that see that the laws are
18 faithfully executed. For another example, one might argue that
19 the legislature could not create an agency that would report on
20 the condition of the state on the theory that Section 12 gives
21 that power exclusively to the governor.

22 Sec. 17 ⁽¹⁾ [49]. REPRIEVES, COMMUTATIONS, AND PARDONS;
23 REMISSION OF FINES AND FORFEITURES. (a) The legislature shall
24 prescribe by law the number of members [~~There is hereby created~~

1 ~~a Board of Pardons and Paroles, whose membership] and the~~ terms
2 of office of the Board of Pardons and Paroles. [~~shall be~~
3 ~~prescribed by law. An equal number of members of the board shall~~
4 ~~be appointed by] The [the] governor, the Chief Justice of Texas
5 [~~chief justice of the supreme court~~], and the attorney general⁽²⁾
6 [~~presiding justice of the court of criminal appeals~~] each appoints
7 an equal number of members of the board. [~~respectively~~]
8 Appointments [~~the appointments of all members of the board] are~~
9 [~~shall be~~] made with the advice and consent of the senate. A
10 [Each] vacancy is [~~shall be~~] filled by the [~~respective appointing~~]
11 officer who [~~that~~] made the original appointment [~~to such~~
12 position].~~

13 (b) The governor may [~~shall have the power to~~] grant one
14 reprieve in a [any] capital case for a period not to exceed 30
15 days. The governor, [~~shall also have the power~~] on the written
16 signed recommendation and advice of a majority of the Board of
17 Pardons and Paroles, [~~or a majority thereof~~] may [~~to~~] grant
18 pardons, reprieves, and commutations of punishment; [~~to~~] remit
19 fines and forfeitures; [~~and~~] [~~to~~] revoke paroles and conditional
20 pardons.

21 [~~(c) If the court of criminal appeals is abolished, or~~
22 ~~merged into the Supreme Court of Texas by this constitution or~~
23 ~~amendment thereto, the appointing power vested in the presiding~~
24 ~~justice of the court of criminal appeals shall be vested in the~~

1 ~~Attorney General of Texas.]~~ (2)

2 EXPLANATION

3 (1) Except as noted below, the several changes are either
4 stylistic or conform to the committee's rules of drafting.

5 (2) This change permits elimination of Subsection (c).
6 The court of criminal appeals will be merged with the supreme
7 court as provided by the judiciary article. Therefore, the
8 appointing power is vested in the attorney general instead of the
9 presiding justice of the court of criminal appeals.

10 Sec. 18 [19]. LIEUTENANT GOVERNOR. The lieutenant governor

11 must [shall] be eligible to serve as (1) ~~[possess the same~~
12 ~~qualifications as provided for the]~~ governor. ~~[The qualified~~
13 ~~voters shall cast separate votes for the candidates for governor~~

14 ~~and lieutenant governor.]~~ (2) The lieutenant governor, ~~[shall]~~ by
15 virtue of the office, is [be] president of the senate but may
16 vote only to cast a deciding vote when the senate is equally

17 divided (3) ~~[and when the senate is equally divided may cast a deciding~~
18 ~~vote].~~

19 EXPLANATION

20 (1) This is to conform to the redraft of Section 4(a).

21 (2) This sentence was moved to Section 2(a).

22 (3) The formulation is switched from "and" to "but" to
23 make it clear that the stated power to vote is limited to breaking
24 a tie.

1 which the state could intervene or in which somebody else could
2 implead the state. This is not the intent. If the representation
3 duty is turned into a statement of fact about what the attorney
4 general does, "may be" becomes accurate. When worded this way,
5 the statement of fact remains a "duty" in the sense that this is
6 what the attorney general is to do, but by avoiding the words of
7 command, the "duty" arises only when there is a representation
8 of the state, not whenever there could be a representation.

9 (2) "Actions" may be somewhat broader than "suits," though
10 it is more likely that the terms are interchangeable. From the
11 style viewpoint "actions" is the better word. The word
12 "proceedings" as it appeared in the original wording surrounded
13 by "and" is mystifying. It literally is not possible to parse
14 the sentence. If "proceedings" refers to court proceedings
15 "actions" would seem to cover them; if administrative proceedings
16 are meant, "actions" possibly covers them.

17 (3) "Quo warranto" has been dropped because it is by
18 definition a civil action in which the state is a party. Since
19 this is true, a statement referring to quo warranto would make
20 one suspect that the all-inclusive statement did not mean what
21 it said.

22 (4) In this context "executive officers" means the officers
23 of the executive branch rather than only those of the executive
24 department.

(1)
1 ~~[Sec. 22. COMPTROLLER OF PUBLIC ACCOUNTS. The comptroller~~
2 ~~of public accounts shall perform the duties required by this~~
3 ~~constitution and other duties as provided by law.]~~

4 EXPLANATION

5 (1) This section and Sections 20 and 23 have been combined
6 into one section now numbered Section 21.

(1)
7 ~~[Sec. 23. TREASURER. The treasurer shall perform the~~
8 ~~duties provided by law.]~~

9 EXPLANATION

10 (1) This section and Sections 20 and 22 have been combined
11 into one section now numbered Section 21.

12 Sec. 20 [24]. COMMISSIONER OF THE GENERAL LAND OFFICE (1)
13 ~~[COMMISSIONER]~~. The commissioner of the general land office shall
14 administer a general land office at the seat of government, in
15 which all land titles that emanate from the state must (2) ~~[shall]~~
16 be registered, and shall perform other duties as provided by law.

17 EXPLANATION

18 (1) The section title conforms to the title of the office.

19 (2) "Must" conforms to the committee's standard style rule.

(1)
20 Sec. 21. OTHER OFFICERS OF THE EXECUTIVE DEPARTMENT. The
21 comptroller of public accounts, the treasurer, the commissioner
22 of agriculture, and the secretary of state shall perform the
23 duties required by this constitution and other duties as provided
24 by law.

1 term of an officer appointed ⁽¹⁾ [Appointments] to a vacancy
2 [vacancies] in an elective statewide office [offices] ends at
3 [shall continue only until] the next [first] statewide general
4 election [thereafter]. The legislature may provide by law that
5 if an office becomes vacant within a specified number of days
6 prior to the statewide general election, the person appointed to
7 fill the vacancy serves for the remainder of the term. ⁽²⁾

8 EXPLANATION

9 (1) "Appointments" refers to the act of naming a person
10 to a position. The revision focuses on the term of the officer
11 filling the vacancy.

12 (2) This new sentence is technically a substantive change
13 since it covers an eventuality not covered before. Realistically,
14 it is not substantive because the sentence has no automatic
15 constitutional effect. All that it does is make it possible for
16 the legislature to cope with the problem of a vacancy so close
17 to the midterm election that no election can be held. Without
18 this sentence one of two things must be done. The governor must
19 refrain from filling the vacancy until after the election or
20 everybody must connive to violate the constitution by some
21 practical but incorrect reading of the words. For example,
22 everybody could agree that in the context "the election" means
23 the entire process and that "until" or, as redrafted, "at" means
24 the beginning of the process—that is, the last day for getting

1 of the sentence as approved on second reading was to define "state
2 agencies." It seems appropriate to make two sentences, the first
3 a definition, the second the operative part of the subsection.

4 (2) The definition makes it clear that "state agencies"
5 are governmental.

6 (3) "State" is added so that no one can argue that agencies
7 of political subdivisions are "state agencies." One agency created
8 by the constitution, the judicial qualifications commission, is
9 not in the executive branch. (See note (9) to Section 2 above.)

10 (4) The changes in the first sentence are stylistic only
11 except for substituting "agencies" for "institutions." Since
12 "institutions" are included in the definition of "agencies," the
13 latter term is broader. It is understood that the coordinating
14 board was not to be subject to the ten-year rule. Using
15 "institutions" would have left this ambiguous.

16 It should also be noted that this subsection does not deal
17 with statutes concerning state agencies. If the agency is renewed,
18 the implementing statutes, of course, remain in effect. If the
19 agency is not renewed, the statutes would remain on the books
20 without effect until repealed by the legislature.

21 (5) The original wording appeared to be an unnecessary
22 grant of power. The intent of the sentence was to foreclose an
23 argument that the constitution ended the life of an agency, that
24 "renewal" by law meant "recreate," and that consequently all

1 appointments died. The redrafted sentence destroys that argument
2 but preserves the power of the legislature to decide how to handle
3 holdovers.

4 (6) See note (2) above.

5 (7) The intent of this provision is to ensure that
6 legislative action on a renewal bill progresses at least as far
7 as a vote in each house prior to the rush and confusion of the
8 closing days of a session. The original wording was somewhat
9 ambiguous, and the new language is substituted to clarify the
10 meaning.

11 Sec. 25 [27]. SEAL OF STATE. [~~There shall be a seal of~~
12 ~~the state which shall be kept by the secretary of state and used~~
13 ~~by that officer officially under the direction of the governor]~~

14 The seal of the state is [shall be] a star of five points encircled
15 by olive and live oak branches and the words "The State of Texas."

16 The seal of the state is kept by the secretary of state and used
17 by that officer officially under the direction of the governor. (1)

18 EXPLANATION

19 (1) The reversal of the sentences is logical.



1 RECOMMENDED SUBSTANTIVE AMENDMENT

2 The Committee on Style and Drafting recommends a substantive
3 amendment that is necessary to resolve the conflict between Article
4 X, Section 4 and the last sentence of Section 2(e) of this article.
5 Article X, Section 4 was added to the general provisions article
6 on second reading by a floor amendment after the convention had
7 given second reading approval to Section 2(e) of this article.
8 These two sections conflict in that Section 2(e) provides that
9 officers of state agencies do not serve beyond the expiration of
10 their terms, while Article X, Section 4 says that state officers
11 serve until their successors take office.

12 This committee understands that the convention decided to
13 abandon the policy of Section 2(e) when it subsequently adopted
14 Section 4 of Article X. For that reason it is recommended that
15 the conflict be resolved by deleting the last sentence of Section
16 2(e) of this article.

17 SUBSTANTIVE AMENDMENT TO REMOVE CONFLICT

18 BE IT PROPOSED BY THE COMMITTEE ON STYLE AND DRAFTING,

19 That Section 2(e) of Article IV be amended by removing the
20 last sentence so that Section 2(e) reads as follows:

21 (e) The term of an officer appointed by the governor to
22 a statutory state agency expires on a date prescribed by law, but
23 the date must fall between February 1 and May 1 of an odd-numbered

1 year. The terms of officers of multimember state agencies must
2 be staggered.

1 necessarily follows that terms of appointed members of statutory
2 state agencies must be multiples of two years. When applied to
3 a constitutional agency (e.g., the Board of Pardons and Paroles
4 or the State Board of Education), however, the staggered term
5 requirement is not limited by the odd-year expiration requirement.

6 "Staggered terms" means that not all the terms expire at
7 the same time—it does not mean that the same number of terms
8 must expire on each expiration date. Thus the limitation does
9 not preclude an agency with an odd number of members. For example,
10 a three-member statutory agency with appointed members can have
11 two officers whose terms expire in odd year X and one whose term
12 expires in year X + 2. If the terms are for six years, one can
13 expire in odd year X, another in X + 2, and the third in X + 4.
14 Under the preceding example, if the agency is constitutional, it
15 could have two terms expire in year X and one in year X + 3.

16 (13) The second half of the original compound sentence is
17 unnecessary. The legislature has the inherent power to create
18 agencies, to specify how many members they have, to specify how
19 many of the members are to be appointed by the governor, and to
20 specify who else has the appointing power. The first two sentences
21 of the subsections are limitations on the inherent power. There
22 is no reason to mention what the legislature can do, only what
23 it cannot do.

24 (14) This formulation of "vacancy" is used to parallel the



1 rest of the subsection which speaks to "officers," not to "office."
2 For technical drafting reasons it is not possible to shift all
3 sentences to "office" instead of "officer."

4 This sentence conflicts with Section 4 of Article X, which
5 provides that an appointed state officer serves until a successor
6 takes office or until December 31 of the year the term expires.
7 For that reason the committee recommends the deletion of this
8 sentence. [See the Recommended Substantive Amendment at the end
9 of this report.]

10 (15) The extensive redraft is to make explicit two necessary
11 implications and to cover an eventuality inadvertently overlooked.
12 First, the original words "in the manner prescribed by law" were
13 designed to cover a situation where some appointed members
14 represent particular interests and others represent the public.
15 (An example is the Industrial Accident Board which has a public
16 member, an employer member, and an employee member. The public
17 member is the chairman.) The new second sentence makes explicit
18 the purpose of the quoted words. Second, the reason for giving
19 the governor the power to designate the chairman is to enhance
20 the governor's influence over the agency. The original wording
21 was ambiguous in a case where the governor designates a new
22 appointee chairman and the senate fails to confirm. The ambiguity
23 has been resolved in accordance with the purpose of the subsection.
24 Third, the original subsection inadvertently omitted the power

1 of the governor to designate a new chairman in the event of a
2 vacancy. The power would probably have been held to be implied,
3 but since the omission has been spotted, it is appropriate to
4 cover the matter. It may be noted in passing that this subsection
5 imposes no limitation on the power of the governor to redesignate
6 a chairman or on the number of terms a chairman may serve.

7 (16) In the context of the subsection the designation has
8 to be from among the membership, for "designate" cannot be read
9 to mean "appoint."

10 Sec. 3. RETURNS OF ELECTION. Election returns for executive
11 officers ~~must~~ ⁽¹⁾ ~~shall~~ be canvassed ~~(tabulated)~~ and certified in
12 a public forum ~~(r)~~ in ~~the~~ ⁽²⁾ ~~(a)~~ manner ~~prescribed~~ ~~(provided)~~ by
13 law.

14 EXPLANATION

15 (1) "Canvassed" is the traditional term used.
16 (2) In cases where the legislature's power is limited to
17 carrying out a command the verb "prescribed" is used instead of
18 "provided."

19 Sec. 4. GOVERNOR'S ELIGIBILITY AND INSTALLATION. (a) To
20 ⁽¹⁾ ~~be~~ ~~(A person is)~~ eligible ⁽²⁾ ~~to serve as~~ ~~(for the office of)~~ governor,
21 ~~a person must be a citizen of the United States~~ ~~(if he is)~~ at
22 least 30 years ~~old~~ ~~(of age, a citizen of the United States)~~ and
23 ~~have~~ ~~(has)~~ been a resident of the state ~~for~~ at least five years
24 immediately preceding election. ~~A person serving as governor in~~



1 the second of two consecutive four-year terms is not eligible for
2 a third consecutive term. (3)

3 (b) The legislature shall provide an appropriation (4)
4 [appropriations] for assistance to a governor-elect prior to
5 inauguration. A ~~[The]~~ governor-elect ~~is~~ ~~[shall be]~~ entitled to
6 receive any information and ~~[from the officers and state~~
7 ~~governmental agencies those]~~ reports that the ~~[to which an]~~
8 incumbent governor is entitled to require from officers and state
9 agencies. (6)

10 (c) The governor ~~is~~ ~~[shall be]~~ inaugurated on the second
11 Thursday in January or as soon thereafter as practicable.

12 EXPLANATION

13 (1) The order of the sentence has been changed in order
14 to eliminate the masculine pronoun.

15 (2) Use of this formulation permits the deletion of the
16 second sentence of Subsection (f) of Section 5 and simplifies the
17 qualifications sentence in Section 18.

18 (3) This was removed from Section 2(a). The change in
19 wording is stylistic.

20 (4) There is no apparent reason for use of the plural.
21 Use of the singular does not prevent the legislature from having
22 separate line items in separate parts of an appropriation bill
23 or even items in separate bills.

24 (5) Although money cannot be appropriated for a private

1 purpose, it seems advisable to mention some "official" purpose
2 for providing money to a governor-elect.

3 (6) The redraft ties this privilege of the governor to the
4 information and reports provided for by Section 13.

5 Sec. 5. GUBERNATORIAL SUCCESSION. (a) If the
6 governor-elect is disqualified, ~~[resigns, or]~~ dies, or refuses
7 the office ⁽¹⁾ prior to inauguration, ~~[taking office,]~~ the lieutenant
8 governor-elect becomes governor for the full term. If the
9 governor-elect fails to assume office for any other reason, the
10 lieutenant governor-elect acts ~~[serves]~~ as governor. If the
11 governor-elect does not assume office by the end of ⁽²⁾ ~~[within]~~ the
12 first year of the term, ~~[the office becomes vacant, and]~~ the
13 lieutenant governor becomes governor and serves for the remainder
14 of the term.

15 (b) If after inauguration the office of governor becomes
16 vacant, the lieutenant governor becomes governor and serves for
17 the remainder of the term, except that an appointed lieutenant
18 governor becomes governor until the next statewide general
19 election. ⁽³⁾

20 (c) If the office of lieutenant governor becomes vacant,
21 the governor shall appoint a lieutenant governor, with the advice
22 and consent of the senate, who serves until the next statewide
23 general election. ⁽³⁾

24 (d) ~~[e-]~~ If the offices of both governor and lieutenant

1 governor become vacant, the speaker of the house of
2 representatives, if ⁽⁴⁾eligible ~~[qualified]~~, becomes governor and
3 ~~serves for the remainder of the term~~ ⁽⁵⁾~~[under the same conditions~~
4 ~~and for the same term as provided for the lieutenant governor].~~

5 ⁽⁶⁾~~(e) The office of governor or lieutenant governor becomes~~
6 ~~vacant if the person holding the office dies, resigns, becomes~~
7 ~~permanently disabled, or is removed from office.~~

8 ~~(f) [(d)]~~ If the governor is absent from the state or
9 temporarily disabled, the lieutenant governor acts as governor
10 until the governor returns or is no longer disabled. If ~~[both]~~
11 the ~~[governor and]~~ lieutenant governor ~~is also~~ ~~[are]~~ absent from
12 the state or temporarily disabled, the president pro tempore of
13 the senate acts as governor ~~until either the governor or lieutenant~~
14 ~~governor returns or is no longer disabled~~ ~~[during such time].~~

15 ~~(g) [(e)]~~ While serving or acting as governor ⁽⁷⁾~~[a person~~
16 ~~[the lieutenant governor or president pro tempore of the senate]~~
17 receives only the compensation payable to a governor.

18 ~~(h) [(f)]~~ ~~The legislature shall provide by law for further~~
19 ~~[Further]~~ succession to the office of governor. ~~[shall be provided~~
20 ~~by law. No person may serve as governor unless qualified for~~
21 ~~that office.]~~ ⁽⁸⁾

EXPLANATION

23 (1) One normally "resigns" only after taking office.

24 (2) The operative cutoff is the end of the year.

1 (3) Two provisions are added to this section to clarify
2 an ambiguity: (1) the limitation on the term of an appointed
3 lieutenant governor who succeeds to the office of governor and
4 (2) the provision for appointment to fill a vacancy in the office
5 of lieutenant governor in Subsection (c).

6 The ambiguity concerns the governor's power to appoint a
7 successor to fill a vacancy in the office of lieutenant governor.
8 Whether the governor has that power under the 1876 Constitution
9 is not clear; Article III, Section 9 directs the president pro
10 tempore of the senate to "perform the duties" of the lieutenant
11 governor when a vacancy occurs, while Article IV, Section 12 gives
12 the governor the power to fill "all vacancies in State or district
13 offices." In the two most recent cases of a vacancy in the office
14 of lieutenant governor, both Governors Shivers and Daniel did not
15 appoint a successor because it was felt that Article III, Section
16 9 precluded an appointment.

17 This same ambiguity is carried into the proposed
18 constitution--Article III, Section 8(d) (as adopted on second
19 reading) retains the duty of the president pro tempore to act as
20 lieutenant governor during a vacancy and Article IV, Section 25
21 (as adopted on second reading) authorizes the governor to fill
22 vacancies in state offices. During the second reading debate on
23 Article IV, it was indicated that the governor is supposed to
24 have the power under Section 25 (now Section 23) to appoint a

1 lieutenant governor in case of a vacancy in that office.

2 Accordingly, these additions in Subsections (b) and (c) are made
3 to clarify the intent of the convention by removing the ambiguity
4 concerning the governor's power to fill the vacancy.

5 (4) Section 4 speaks to "eligibility."

6 (5) The redrafted Subsection (d) omits the words "under
7 the same conditions and for the same term as provided for the
8 lieutenant governor" and substitutes "for the remainder of the
9 term." This corresponds with the wording of Subsection (b) and
10 eliminates an unclear phrase that might have been read to imply
11 that there could be circumstances when the speaker would not serve
12 to the end of the term.

13 (6) This subsection is added to clarify the ways in which
14 the office "becomes vacant."

15 (7) The change to "person" covers all eventualities,
16 including whatever the legislature provides under Subsection (h).

17 (8) The omitted sentence is unnecessary in light of the
18 committee's new formulations of Sections 4(a) and 18.

19 Sec. 6. DISABILITY OF ELECTIVE OFFICERS OF EXECUTIVE

20 DEPARTMENT. (1) (a) The [when the] governor may notify [notifies]
21 the Chief Justice of Texas [chief justice of the supreme court]
22 in writing of the governor's temporary disability. If, because
23 of the disability, the governor fails to send notification to the
24 chief justice, a majority of the following officers may jointly

1 send the notification: the lieutenant governor, attorney general,
2 comptroller of public accounts, treasurer, commissioner of the
3 general land office, commissioner of agriculture, ⁽²⁾ speaker of the
4 house of representatives, and president pro tempore of the senate.
5 A temporary disability ends on the delivery to the chief justice
6 of the governor's sworn statement to that effect. The governor's
7 sworn statement may not be denied by another notification to the
8 chief justice. At the end of one year a temporary disability
9 becomes a permanent disability without a determination by the
10 Supreme Court of Texas. The same procedure applies in the case
11 of the temporary disability of the lieutenant governor except
12 that the governor and not the lieutenant governor is one of the
13 eight officers voting on a notification. ~~[that he will be~~
14 ~~temporarily unable to carry out the duties of his office or when~~
15 ~~the governor is unable to communicate such inability to the chief~~
16 ~~justice of the supreme court, the temporary disability of the~~
17 ~~governor shall be determined by a majority vote of the governor,~~
18 ~~lieutenant governor, attorney general, comptroller of public~~
19 ~~accounts, treasurer, commissioner of the general land office,~~
20 ~~speaker of the house of representatives, and president pro tempore~~
21 ~~of the senate. Restoration of ability shall be evidenced by~~
22 ~~delivery of a sworn statement from the governor acknowledging~~
23 ~~recovery filed with the supreme court. After restoration, the~~
24 ~~governor may not be determined temporarily disabled again for the~~

1 ~~same incident. If the governor does not acknowledge recovery~~
2 ~~from a temporary disability within one year from the time the~~
3 ~~lieutenant governor begins serving as governor, the office of~~
4 ~~governor shall be vacant. The same procedure shall apply to the~~
5 ~~temporary disability of the lieutenant governor.]~~

6 (b) Whether an elected officer of the executive department
7 is permanently disabled and unable to discharge the duties of
8 office is to be determined only by the Supreme Court of Texas in
9 a proceeding conducted under rules of procedure prescribed by
10 that court. ⁽³⁾ ~~[The permanent disability of any elected officer of~~

11 ~~the executive department to perform the duties of the office~~
12 ~~during the term for which elected shall be determined in a~~
13 ~~proceeding in the supreme court of the state under such rules of~~
14 ~~procedure as may be prescribed by that court.]~~ The proceeding

15 may be initiated only by a [*] majority vote of the governor,
16 lieutenant governor, attorney general, comptroller of public
17 accounts, treasurer, commissioner of the general land office,
18 commissioner of agriculture, ⁽²⁾ speaker of the house of

19 representatives, and president pro tempore of the senate. ~~[shall~~
20 ~~initiate such proceedings.]~~ If the supreme court determines that
21 the officer ~~[any elected officer of the executive department]~~ is
22 permanently disabled, ~~[is unable to discharge the duties of his~~
23 ~~office by reason of a permanent disability,]~~ it shall declare the
24 office vacant ~~[the office shall be declared vacant].~~

1 send the notification: the lieutenant governor, attorney general,
2 comptroller of public accounts, treasurer, commissioner of the
3 general land office, commissioner of agriculture,⁽²⁾ speaker of the
4 house of representatives, and president pro tempore of the senate.
5 A temporary disability ends on the delivery to the chief justice
6 of the governor's sworn statement to that effect. The governor's
7 sworn statement may not be denied by another notification to the
8 chief justice. At the end of one year a temporary disability
9 becomes a permanent disability without a determination by the
10 Supreme Court of Texas. The same procedure applies in the case
11 of the temporary disability of the lieutenant governor except
12 that the governor and not the lieutenant governor is one of the
13 eight officers voting on a notification. [that he will be
14 temporarily unable to carry out the duties of his office or when
15 the governor is unable to communicate such inability to the chief
16 justice of the supreme court, the temporary disability of the
17 governor shall be determined by a majority vote of the governor,
18 lieutenant governor, attorney general, comptroller of public
19 accounts, treasurer, commissioner of the general land office,
20 speaker of the house of representatives, and president pro tempore
21 of the senate. Restoration of ability shall be evidenced by
22 delivery of a sworn statement from the governor acknowledging
23 recovery filed with the supreme court. After restoration, the
24 governor may not be determined temporarily disabled again for the



1 ~~same incident, if the governor does not acknowledge recovery~~
2 ~~from a temporary disability within one year from the time the~~
3 ~~lieutenant governor begins serving as governor, the office of~~
4 ~~governor shall be vacant. The same procedure shall apply to the~~
5 ~~temporary disability of the lieutenant governor.]~~

6 (b) Whether an elected officer of the executive department
7 is permanently disabled and unable to discharge the duties of
8 office is to be determined only by the Supreme Court of Texas in
9 a proceeding conducted under rules of procedure prescribed by
10 that court. ⁽³⁾ ~~[The permanent disability of any elected officer of~~

11 ~~the executive department to perform the duties of the office~~
12 ~~during the term for which elected shall be determined in a~~
13 ~~proceeding in the supreme court of the state under such rules of~~
14 ~~procedure as may be prescribed by that court.] The proceeding~~
15 may be initiated only by a [*] majority vote of the governor,
16 lieutenant governor, attorney general, comptroller of public
17 accounts, treasurer, commissioner of the general land office,
18 commissioner of agriculture, ⁽²⁾ speaker of the house of
19 representatives, and president pro tempore of the senate. ~~[shall~~
20 ~~initiate such proceedings.]~~ If the supreme court determines that
21 the officer ~~[any elected officer of the executive department]~~ is
22 permanently disabled, ~~[is unable to discharge the duties of his~~
23 ~~office by reason of a permanent disability.]~~ it shall declare the
24 office vacant ~~[the office shall be declared vacant].~~



1 permanent at the end of a year conflicted with Subsection (b).

2 The redraft eliminates the inconsistency.

3 (2) See Section 1, note (2) above.

4 (3) The reformulation of the first sentence is stylistic
5 except for the insertion of "only," which eliminates the need for
6 Subsection (c). The changes in the balance of the subsection are
7 stylistic.

8 (4) See note (3) above.

9 Sec. 7. COMPENSATION OF OFFICERS OF EXECUTIVE DEPARTMENT.

10 ~~[The compensation of the governor, lieutenant governor, attorney~~
11 ~~general, comptroller of public accounts, treasurer, commissioner~~
12 ~~of the general land office, and secretary of state shall be as~~

13 ~~provided by law.]~~ ⁽¹⁾ The compensation of the officers of the
14 executive department may not be diminished during their term of
15 office. ⁽²⁾ The governor has ⁽³⁾ ~~[shall have]~~ the use of the Governor's
16 Mansion.

17 EXPLANATION

18 (1) There is no constitutional need to say that these
19 officers will get paid for their services or that the amount will
20 be set by law. It is of constitutional significance to prohibit
21 a salary cut and to make it clear that the Governor's Mansion is
22 rent free.

23 (2) It is customary to pay officers when absent, ill, or
24 otherwise unable to carry out the duties of the office. This

1 provision indirectly supports the custom.

2 (3) The present tense is used in accordance with the
3 committee's standard rule of style.

4 (1)
5 Sec. 8. DUAL OFFICE HOLDING AND EMPLOYMENT [~~OTHER~~
6 ~~COMPENSATION~~]. An [No] officer of the executive department may
7 not hold any other civil or corporate office [~~nor may the~~
8 ~~officer~~] and may not practice any other profession or hold any
9 other employment for [~~and receive~~] compensation [~~or the~~
10 ~~promise of compensation~~] [~~thereof for the same~~].

11 EXPLANATION

12 (1) The changes are stylistic. The change in title more
13 nearly reflects the subject matter.

14 Sec. 9. COMMANDER-IN-CHIEF; CALLING FORTH MILITIA. The
15 governor ⁽¹⁾ is [~~shall be~~] commander-in-chief of the military forces
16 of the state [~~or~~] except when they are called into actual service
17 of the United States. ⁽²⁾ The governor may [~~and shall have power~~
18 ~~to~~] call forth the militia to execute the laws of the state, [~~to~~
19 suppress insurrections, repel invasions, and [~~for the~~] ⁽³⁾ protect
20 [~~protection of~~] life and property in cases of natural disasters.

21 EXPLANATION

22 (1) The constitution is not imposing a duty on the governor;
23 the provision simply states a fact of power.

24 (2) "May" means "has the power to."

(3) This change is to provide consistency in the compound

1 predicate.

2 Sec. 10. EXECUTION OF LAWS; CONDUCT OF BUSINESS WITH OTHER
3 STATES, THE UNITED STATES, AND FOREIGN NATIONS. The governor
4 shall cause the laws to be faithfully executed and shall conduct,
5 in person or in the [such] manner ⁽¹⁾ prescribed [~~as shall be provided~~]
6 by law, all intercourse and business of the state with other
7 states, the United States, ⁽²⁾ and foreign nations.

8 EXPLANATION

9 (1) See note (2) to the Explanation of Section 3.

10 (2) Section 11 of the local government article provides
11 that political subdivisions may conduct business with the United
12 States. At first blush, this seems inconsistent with the
13 governor's power set forth in this section. However, the purpose
14 of this section is to establish the governor as the spokesman for
15 the state government in the conduct of state business. It follows
16 that this section is not inconsistent with the power of a political
17 subdivision to enter into agreements with the United States
18 concerning local matters. In any event the practice under the
19 1876 Constitution indicates that the comparable section (also
20 Section 10) has not been construed to require the governor to
21 participate in contractual activity between political subdivisions
22 and the United States. For example, local housing authorities
23 and urban renewal agencies enter into contracts with the Department
24 of Housing and Urban Development. (See Vernon's Texas Civil

1 compensation.

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

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

14 Sec. 11. CONVENING THE LEGISLATURE IN SPECIAL SESSION.
15 The governor, on extraordinary occasions, may convene the
16 legislature in special session stating specifically the purpose
17 of the session. The legislature may consider only those matters
18 that the governor specifies in the call or subsequently presents
19 to the legislature.

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

24 Sec. 13. CHIEF PLANNING OFFICER. The governor is the chief



1 planning officer of the state and may require written information
2 or written reports from all state agencies and executive branch
3 officers upon any subject relating to their duties, conditions,
4 management, and expenditures.

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

10 Sec. 15. BUDGET EXECUTION. (a) A law authorizing or
11 directing the governor to exercise fiscal control over the
12 expenditure of appropriated money is not to be deemed a violation
13 of separation of powers.

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

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

22 (b) In recommending plans for reorganization of the
23 executive branch, the governor may submit to the legislature one
24 or more reorganization bills limited to consolidating, abolishing,

1 or transferring functions among statutory state agencies in the
2 executive branch. The legislature must consider those bills but
3 may amend them. A submitted reorganization bill, whether amended
4 or not, must be brought to a vote of each house during the session
5 at which the bill is submitted.

6 Sec. 17. REPRIEVES, COMMUTATIONS, AND PARDONS; REMISSION
7 OF FINES AND FORFEITURES. (a) The legislature shall prescribe
8 by law the number of members and the terms of office of the Board
9 of Pardons and Paroles. The governor, the Chief Justice of Texas,
10 and the attorney general each appoints an equal number of members
11 of the board. Appointments are made with the advice and consent
12 of the senate. A vacancy is filled by the officer who made the
13 original appointment.

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

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

24 Sec. 19. ATTORNEY GENERAL. The attorney general must be

1 qualified to practice before the supreme court of the state,
2 Except as otherwise provided by law, the attorney general
3 represents the state in all civil actions in which the state may
4 be a party, shall especially inquire into the charter rights of
5 all private corporations, shall give legal advice in writing to
6 the governor or other executive officers when requested by them,
7 and has the powers of the office as at common law. The attorney
8 general shall perform other duties as provided by law.

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

14 Sec. 21. OTHER OFFICERS OF THE EXECUTIVE DEPARTMENT. The
15 comptroller of public accounts, the treasurer, the commissioner
16 of agriculture, and the secretary of state shall perform the
17 duties required by this constitution and other duties as provided
18 by law.

19 Sec. 22. RAILROAD COMMISSION. The railroad commission
20 consists of three commissioners, having qualifications as
21 prescribed by law, elected at a statewide general election for
22 six-year terms. One commissioner is elected every two years.
23 The railroad commission has the authority and performs the duties
24 prescribed by law. The legislature by law may abolish the railroad



1 commission.

2 Sec. 23. VACANCIES IN STATEWIDE ELECTIVE OFFICES. Unless
3 otherwise provided by this constitution, vacancies in elective
4 statewide offices are filled by appointment of the governor with
5 the advice and consent of the senate. The term of an officer
6 appointed to a vacancy in an elective statewide office ends at
7 the next statewide general election. The legislature may provide
8 by law that if an office becomes vacant within a specified number
9 of days prior to the statewide general election, the person
10 appointed to fill the vacancy serves for the remainder of the
11 term.

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

17 (b) Statutory state agencies having appointed officers,
18 except agencies related to higher education, have a life of not
19 more than 10 years unless renewed by law for not more than 10
20 years at a time. Appointed officers serving on the effective
21 date of a renewal continue to hold office for the terms for which
22 they were appointed unless otherwise provided by law. A bill for
23 renewal of a state agency must be reported from committee in the
24 house and senate and brought to a vote in each house not less



1 than 20 days before adjournment.

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



1	Section 16, Note 3	page 42
2	Section 16, Note 6	page 43
3	*Section 19, Note 1	page 46
4	Section 23, Note 2	page 50

5 *Notes marked with an asterisk are those which explain drafting
6 rules that the committee will follow in all articles. In
7 subsequent committee reports these notes will be referred to by
8 cross-reference or in many cases, the changes simply treated as
9 self-evident.



1 of commissioner of agriculture:

2 Sec. 26. COMMISSIONER OF AGRICULTURE. The
3 commissioner of agriculture shall perform the duties
4 required by this constitution and other duties as
5 provided by law. At general elections...qualified
6 voters of the state shall elect the commissioner
7 of agriculture for four-year terms.

8 That section properly belongs in the executive article; the
9 language directing the commissioner to "perform the duties required
10 by this constitution" and the four-year term provision indicate
11 that the commissioner is to be part of the executive department
12 (instead of the executive branch). On that basis the office is
13 inserted in this section as well as in other appropriate sections
14 of this article. [See also Sections 2(a), 6(a) and (b), and 21.]

15 Sec. 2. SELECTION AND TERMS OF OFFICERS. (a) [~~At general~~
16 ~~elections beginning in 1978 qualified voters of the state shall~~
17 ~~elect the~~] ⁽¹⁾ The governor, lieutenant governor, attorney general,
18 comptroller of public accounts, treasurer, [~~the~~] commissioner of
19 the general land office, commissioner of agriculture, ⁽²⁾ and [~~those~~]
20 other elected officers of the executive department ⁽³⁾ provided for
21 by law are elected by the qualified voters of the state for
22 four-year terms. Separate votes are cast for candidates for
23 governor and lieutenant governor. ⁽⁴⁾ Quadrennial elections for
24 officers of the executive department start with the general
25 statewide election in 1978. [~~The governor may not serve more~~
26 ~~than two four-year terms in succession.~~] ⁽⁵⁾
27 (b) The secretary of state and other appointed [~~appointive~~]



1 officers of the executive department are appointed by the governor
2 with the advice and consent of the senate and serve at the pleasure
3 of the governor.

(6)

4 (c) Officers appointed by the governor to state agencies
5 are appointed with the advice and consent of the senate.

(7)

6 (d) ~~(e)~~ Officers appointed by a governor with the advice
7 and consent of the senate and not serving at the pleasure of the
8 governor may be removed by the governor only for stated reasons.

9 ~~[The governor shall have authority to remove for cause all officers~~
10 ~~who were appointed by any governor and who were confirmed by the~~
11 ~~senate.]~~ Prior to removal and not less than 45 days prior to the

12 required adjournment of a regular session or not more than two
13 days after the convening of a special session, the governor shall

14 advise the senate in writing of the reasons for the proposed
15 removal ~~[provide the senate a proposal of removal containing the~~
16 ~~cause for the recommended action].~~ If within 45 days of receipt

17 of the governor's statement of reasons the senate by majority
18 vote of the membership rejects the governor's proposed removal,
19 the governor may not remove the officer for those stated reasons.

20 ~~[The senate may refuse the removal by a majority vote of the~~
21 ~~membership, within 45 days of submission.]~~

(8)

22 (e) ~~(c)~~ Except as otherwise provided in this constitution]

(9)

23 The term of an ~~[each]~~ officer ~~[of the executive branch]~~ appointed
24 by the governor to a statutory ⁽¹⁰⁾ state ⁽¹¹⁾ ~~[governmental]~~ agency



1 ~~[agencies created by statute shall have a term that]~~ expires on
2 a date prescribed by law, but the date must fall between February
3 1 and May 1 of an odd-numbered year ~~[years]~~. The terms of officers
4 ~~[officers]~~ of multimember state agencies must be ~~[shall have]~~
5 staggered. ⁽¹²⁾ ~~[terms and the number of officers to be appointed by~~
6 ~~the governor shall be provided by law, at the expiration of the~~
7 ~~term the office shall become vacant.]~~ An officer does not serve
8 beyond the expiration of the term. ⁽¹⁴⁾

9 ⁽¹⁵⁾ ~~(f) [d]~~ Only an appointed officer of a multimember
10 statutory state agency having appointed members may serve as its
11 chairman. The legislature by law may specify which appointed
12 officers are eligible to serve as chairman. The governor
13 designates the chairman in odd-numbered years to serve for a term
14 of two years and in the event of a vacancy designates a new
15 chairman to serve for the remainder of the term. ~~[The governor~~
16 ~~shall designate in the manner prescribed by law the chairman from~~
17 ~~among the appointive officers of state governmental agencies.]~~
18 If the governor designates a new appointee as chairman and the
19 officer is not confirmed by the senate, the governor designates
20 a new chairman. ⁽¹⁵⁾ If the governor fails to designate the ~~[a]~~ chairman
21 prior to May 1 ~~[of odd-numbered years]~~ the appointed ~~[appointive]~~
22 members ~~[officers]~~ designate the chairman ~~[shall choose the~~
23 ~~chairman from among their membership].~~ ⁽¹⁶⁾

24 ~~[f] Officers appointed by the governor to state~~

1 ~~governmental agencies must be confirmed with the advice and consent~~
2 ~~of the senate.]~~ (6)

3 EXPLANATION

4 (1) The specification of the four-year election cycle has
5 been made a separate sentence at the end of the subsection.

6 (2) See Section 1, note (2) above.

7 (3) The insertion of "executive department" is necessary
8 to preserve the intent of this provision, which is to set forth
9 which executive department officers are to be elected and to
10 establish their terms of office at four years. Other elected
11 officers of the executive branch (for example, Railroad Commission
12 members) are not covered by this four-year term provision.

13 (4) This has been moved from Section 18. The redraft is
14 designed to fit in with the first sentence of the subsection.

15 (5) The two-term limitation has been moved to Section 4(a).

16 (6) This replaces Subsection (f). The redrafted subsection
17 has been moved for purposes of logical progression from elected
18 officers, to appointed officers, to removal of appointed officers,
19 to terms of office of appointed officers, to designation of
20 chairmen.

21 The original subsection was designed to serve two purposes.
22 One was to limit the legislature's power to give the governor a
23 power of appointment to state agencies without the advice and
24 consent of the senate. The other purpose was apparently to be

1 sure that an appointee who failed to be confirmed by the senate
2 would have to vacate the office. (This was a problem under Section
3 12 of Article IV of the 1876 Constitution, but the problem arose
4 from complex drafting, including the term "rejected," which is
5 different from "not confirmed.") The original draft of the
6 subsection does not clarify this problem in any way. Section 14
7 of Article III as approved on second reading does solve the
8 problem.

9 (7) The extensive redraft is principally stylistic. There
10 are three changes designed to eliminate ambiguities. One is to
11 make it clear that officers who serve "at the pleasure of the
12 governor" are not covered. The second change is to use "reasons"
13 instead of "cause" to make it clear that an officeholder has no
14 redress in court, that only the senate can second guess the
15 governor's "cause." The third change makes it clear that the
16 governor must send the reasons for removal in time for the senate
17 to act. The distinction between "a governor" and "the governor"
18 should be noted. This makes it clear that the governor's power
19 of removal extends to officers appointed by the governor's
20 predecessor in office.

21 (8) This phrase is deleted because there is no "otherwise
22 provided."

23 (9) Of the subsections dealing with state agencies, this
24 is the only one that specifies agencies "of the executive branch."

1 The committee understands that there was no intention to make a
2 differentiation here between state agencies and state agencies
3 in the executive branch. (Section 24 provides that state agencies
4 are in the executive branch "unless otherwise provided by law.")
5 Since the words "of the executive branch" appear to be an
6 inadvertent limitation, they have been omitted. Thus, Subsections
7 (c) through (f) are consistent in covering appointments to state
8 agencies whether in or out of the executive branch.

9 (10) The term "statutory" replaces "created by statute."
10 The reason for limiting the coverage of the subsection to agencies
11 created by statute is to exclude gubernatorial appointees to
12 interstate agencies created by interstate compacts. The use of
13 "statutory" also excludes constitutional agencies. There appear
14 to be two constitutional agencies with appointed members: the
15 Board of Pardons and Paroles and a judicial qualifications
16 commission; only the Board of Pardons and Paroles necessarily has
17 members appointed by the governor. (The State Board of Education
18 is a constitutional agency but the members are elected.) The
19 provisions concerning the judicial qualifications commission do
20 not specify whether members are appointed or who appoints any
21 appointed members, but it is unlikely that the legislature would
22 call for elected members. In any event, since these are not
23 statutory agencies, Subsections (e) (in part) and (f) are not
24 applicable. (Subsections (c) and (d) are applicable; the agencies

1 referred to are not limited by the adjective "statutory.") That
2 part of Subsection (e) dealing with staggered terms is applicable
3 since the adjective is omitted. The legislature can specify, of
4 course, that the term of office expires between February 1 and
5 May 1 of odd-numbered years.

6 It should be noted that there are references in the
7 constitution to the Board of Regents of The University of Texas
8 System and to the Board of Directors of The Texas A&M University
9 System. These are statutory agencies. They appear in the
10 constitution only because of a couple of "constitutional statutes."
11 Simple reference to these boards in these "constitutional statutes"
12 in no way subtracts from the legislature's power to change the
13 composition of the boards. The only limitation imposed by the
14 constitution is changing their names. In other words, the
15 legislature must designate some agency the "Board of Regents of
16 The University of Texas System" and another agency the "Board of
17 Directors of The Texas A&M University System."

18 (11) Since Section 24 (formerly Section 26) defines "state
19 agency," the adjective "governmental" is unnecessary.

20 (12) Because the vast majority of state agencies are
21 statutory with appointed members, the operation of the staggered
22 terms requirement is affected by the previous sentence, which
23 prescribes that the terms of appointed officers of statutory
24 agencies expire in odd-numbered years. From that requirement it

Con Office

OFFICIAL STYLE AND DRAFTING COMMITTEE REPORT
THE EXECUTIVE - ARTICLE IV

TEXAS CONSTITUTIONAL CONVENTION

REPORT
OF THE
COMMITTEE ON STYLE AND DRAFTING

Article IV
The Executive


Chairman

®

June 17, 1974

THE HONORABLE PRICE DANIEL, JR., President
Constitutional Convention of 1974

Sir:

We, your Committee on Style and Drafting, to whom was referred Article IV, have had the same under consideration and beg to report back with the recommendation that it do pass in the form attached.

The proposal was reported from
committee by the following
record vote:

Respectfully submitted,

-----7----- yeas
-----0----- nays
-----0----- present,
not voting


Max Sherman, Chairman

(March 19, 1974, referred to Committee on Style and Drafting;
June 17, 1974, reported favorably by a vote of 7 yeas, 0 nays;
June 17, 1974, sent to printer.)

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June 17, 1974

The Honorable Price Daniel, Jr.
President, Texas Constitutional Convention

The Committee on Style and Drafting submits this revision of Article IV, The Executive, for consideration on third reading.

Immediately following this letter is the proposed article on The Executive. Following that is another version of the revised article in which changes from the article as approved on second reading are shown. Words added are indicated by underlining and words deleted are crossed out and enclosed in brackets.

The notes in the second part of the report are included to explain certain revisions, but the committee has not provided an explanation for every change. In some cases the reason is self-evident, and in others the change simply follows the Style and Drafting Manual.

The committee notes that there is a conflict between one of the provisions of Section 2(e) of this article and Section 4 of the article on General Provisions. A substantive amendment that would reconcile the conflict has been prepared by the committee. The proposed amendment is included at the end of this report.


Max Sherman, Chairman

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BE IT PROPOSED BY THE COMMITTEE ON STYLE AND DRAFTING,

That Article IV on The Executive be revised as follows:

ARTICLE IV

THE EXECUTIVE

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

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

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



1 of the governor.

2 (c) Officers appointed by the governor to state agencies
3 are appointed with the advice and consent of the senate.

4 (d) Officers appointed by a governor with the advice and
5 consent of the senate and not serving at the pleasure of the
6 governor may be removed by the governor only for stated reasons.
7 Prior to removal and not less than 45 days prior to the required
8 adjournment of a regular session or not more than two days after
9 the convening of a special session, the governor shall advise the
10 senate in writing of the reasons for the proposed removal. If
11 within 45 days of receipt of the governor's statement of reasons
12 the senate by majority vote of the membership rejects the
13 governor's proposed removal, the governor may not remove the
14 officer for those stated reasons.

15 (e) The term of an officer appointed by the governor to
16 a statutory state agency expires on a date prescribed by law, but
17 the date must fall between February 1 and May 1 of an odd-numbered
18 year. The terms of officers of multimember state agencies must
19 be staggered. An officer does not serve beyond the expiration
20 of the term.

21 (f) Only an appointed officer of a multimember statutory
22 state agency having appointed members may serve as its chairman.
23 The legislature by law may specify which appointed officers are
24 eligible to serve as chairman. The governor designates the

1 chairman in odd-numbered years to serve for a term of two years
2 and in the event of a vacancy designates a new chairman to serve
3 for the remainder of the term. If the governor designates a new
4 appointee as chairman and the officer is not confirmed by the
5 senate, the governor designates a new chairman. If the governor
6 fails to designate the chairman prior to May 1 the appointed
7 members designate the chairman.

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

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

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

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

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

9 (b) If after inauguration the office of governor becomes
10 vacant, the lieutenant governor becomes governor and serves for
11 the remainder of the term, except that an appointed lieutenant
12 governor becomes governor until the next statewide general
13 election.

14 (c) If the office of lieutenant governor becomes vacant,
15 the governor shall appoint a lieutenant governor, with the advice
16 and consent of the senate, who serves until the next statewide
17 general election.

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

22 (e) The office of governor or lieutenant governor becomes
23 vacant if the person holding the office dies, resigns, becomes
24 permanently disabled, or is removed from office.

1 (f) If the governor is absent from the state or temporarily
2 disabled, the lieutenant governor acts as governor until the
3 governor returns or is no longer disabled. If the lieutenant
4 governor is also absent from the state or temporarily disabled,
5 the president pro tempore of the senate acts as governor until
6 either the governor or lieutenant governor returns or is no longer
7 disabled.

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

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

12 Sec. 6. DISABILITY OF ELECTIVE OFFICERS OF EXECUTIVE
13 DEPARTMENT. (a) The governor may notify the Chief Justice of
14 Texas in writing of the governor's temporary disability. If,
15 because of the disability, the governor fails to send notification
16 to the chief justice, a majority of the following officers may
17 jointly send the notification: the lieutenant governor, attorney
18 general, comptroller of public accounts, treasurer, commissioner
19 of the general land office, commissioner of agriculture, speaker
20 of the house of representatives, and president pro tempore of the
21 senate. A temporary disability ends on the delivery to the chief
22 justice of the governor's sworn statement to that effect. The
23 governor's sworn statement may not be denied by another
24 notification to the chief justice. At the end of one year a

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1 temporary disability becomes a permanent disability without a
2 determination by the Supreme Court of Texas. The same procedure
3 applies in the case of the temporary disability of the lieutenant
4 governor except that the governor and not the lieutenant governor
5 is one of the eight officers voting on a notification.

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

17 Sec. 7. COMPENSATION OF OFFICERS OF EXECUTIVE DEPARTMENT.

18 The compensation of the officers of the executive department may
19 not be diminished during their term of office. The governor has
20 the use of the Governor's Mansion.

21 Sec. 8. DUAL OFFICE HOLDING AND EMPLOYMENT. An officer

22 of the executive department may not hold any other civil or
23 corporate office and may not practice any other profession or
24 hold any other employment for compensation or the promise of

Executive Article

Article IV

May 9, 1974

NOTE (1) It is ^{essential} ~~important~~ to keep in mind the distinction this article makes between the "executive branch" and the "executive department." The executive branch, headed by the governor, is one of the three basic divisions of the state government, whereas the executive department consists of those officers of the executive branch ^{provided for} ~~specified~~ in Section 1. Throughout this article certain provisions are applicable to only Section 1 officers. To avoid having to repeat the list each time the need arises, the ^{term} ~~rubric~~ "executive department" is used as a convenient way to identify the group. Thus, ~~unlike the separation of powers into three branches, the distinction between the executive branch and department is not fundamental to the structure of government.~~

Accepted May 10, 1974



ARTICLE IV
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12 state for four-year terms. Separate votes are cast for candidates
13 for governor and lieutenant governor. Quadrennial elections for
14 officers of the executive department start with the general
15 election in 1978.

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

May 9, 1974

Executive article

Article IV, Section 2(d)

Redraft of second sentence of Section 2(d):

Prior to removal and not less than 45 days prior to the required adjournment of a regular session or not more than two days after the convening of a special session, the governor shall advise the senate in writing of the reasons for the proposed removal.

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1 (c) Officers appointed by the governor to state agencies
2 are appointed with the advice and consent of the senate.

3 (d) Officers appointed by a governor with the advice and
4 consent of the senate and not serving at the pleasure of the
5 governor may be removed by the governor only for stated reasons.
6 Prior to removal the governor shall advise the senate in writing
7 of the reasons for removal. If within 45 days of receipt of the
8 governor's statement of reasons the senate by majority vote
9 of the membership rejects the governor's stated reasons, the
10 governor may not remove the officer for those reasons.

11 (e) The term of an officer appointed by the governor to a
12 statutory state agency expires on a date prescribed by law
13 but the date must fall between February 1 and May 1 of odd-
14 numbered years. The terms of officers of multi-member agencies
15 must be staggered. An officer does not serve beyond the
16 expiration of the term.

17 (f) Only an appointed officer of a multi-member statutory
18 state agency having appointed members may serve as its chairman.
19 The legislature by law may specify which appointed officers are
20 eligible to serve as chairman. The governor designates the
21 chairman in odd-numbered years to serve for two years. If the
22 governor fails to designate the chairman prior to May 1 the
23 appointed members designate the chairman. If the governor
24 designates a new appointee as chairman and the officer is not

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1 confirmed by the senate, the governor designates a new chairman.

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10 consecutive four-year terms is not eligible for a thrid consecutive
11 term.

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

17 (c) The governor is inaugurated on the Thursday following
18 the second Tuesday of the January following election or as soon
19 thereafter as practicable.

20 Sec. 5. GUBERNATORIAL SUCCESSION. (a) If the governor-
21 elect is disqualified, dies, or refuses the office prior to
22 inauguration, the lieutenant governor-elect becomes governor for
23 the full term. If the governor-elect fails to assume office
24 for any other reason, the lieutenant governor-elect acts as

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1 governor. If the governor-elect does not assume office by the
2 end of the first year of the term, the lieutenant governor
3 becomes governor and serves for the remainder of the term.

4 (b) If after inauguration the governor dies, resigns, becomes
5 permanently disabled, or is removed from office, the lieutenant
6 governor becomes governor and serves for the remainder of the term.

7 (c) If the lieutenant governor becomes governor and there-
8 after dies, resigns, becomes permanently disabled, or is removed
9 from office, the speaker of the house of representatives, if
10 eligible, becomes governor and serves for the remainder of the term.

11 (d) If the governor is absent from the state or temporarily
12 disabled, the lieutenant governor acts as governor until the
13 governor returns or is no longer disabled. If the lieutenant
14 governor is also absent from the state or temporarily disabled,
15 the president pro tempore of the senate acts as governor until
16 either the governor or lieutenant governor returns or is no
17 longer disabled.

18 (e) While serving or acting as governor a person receives
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21 succession to the office of governor.

22 Sec. 6. DISABILITY OF ELECTIVE OFFICERS OF EXECUTIVE
23 DEPARTMENT. (a) The governor may notify the chief justice
24 of the supreme court in writing of the governor's temporary

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1 disability. If, because of the disability, the governor is unable
2 to send notification to the chief justice, a majority of the
3 following officers may jointly send the notification: the
4 lieutenant governor, attorney general, comptroller of public
5 accounts, treasurer, commissioner of the general land office,
6 speaker of the house of representatives, and president pro tempore
7 of the senate. A temporary disability ends on the delivery to the
8 chief justice of the governor's sworn statement to that effect.
9 The governor's sworn statement may not be denied by another
10 notification to the chief justice. At the end of one year a
11 temporary disability becomes a permanent disability without a
12 determination by the Supreme Court of Texas. The same procedure
13 applies in the case of the temporary disability of the lieutenant
14 governor except that the governor and not the lieutenant governor
15 is one of the seven officers voting on a notification.

16 (b) Whether an elected officer of the executive branch
17 is permanently disabled and unable to discharge the duties of
18 office is to be determined only by the Supreme Court of Texas
19 in a proceeding conducted under rules of procedure prescribed by
20 that court. The proceeding may be initiated only by a majority
21 vote of the governor, lieutenant governor, attorney general,
22 comptroller of public accounts, treasurer, commissioner of the
23 general land office, speaker of the house of representatives,
24 and president pro tempore of the senate. If the supreme court

1 determines that the officer is permanently disabled, it shall
2 declare the office vacant.

3 Sec. 7. COMPENSATION OF OFFICERS OF EXECUTIVE DEPARTMENT.

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7 Sec. 8. DUAL OFFICE HOLDING AND EMPLOYMENT. An officer

8 of the executive department may not hold any other civil or
9 corporate office and may not practice any other profession or hold
10 any other employment for compensation or the promise of compensation.

11 Sec. 9. COMMANDER-IN-CHIEF; CALLING FORTH MILITIA. The

12 governor is commander-in-chief of the military forces of the
13 state except when they are called into actual service of the
14 United States. The governor may call forth the militia to
15 execute the laws of the state, suppress insurrections, repel
16 invasions, and protect life and property in cases of natural
17 disasters.

18 Sec. 10. EXECUTION OF LAWS; CONDUCT OF BUSINESS WITH OTHER

19 STATES, THE UNITED STATES, AND FOREIGN NATIONS. The governor
20 shall cause the laws to be faithfully executed and shall conduct,
21 in person or in the manner prescribed by law, all intercourse
22 and business of the state with other states, the United States,
23 and foreign nations.

24 Sec. 11. CONVENING THE LEGISLATURE IN SPECIAL SESSION.



1 The governor, on extraordinary occasions, may convene the
2 legislature in special session stating specifically the purpose
3 of the session. Special sessions may not exceed 30 days.

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

8 Sec. 13. ACTION ON BILLS AND RESOLUTIONS. (a) Each bill
9 that passes both houses of the legislature must be presented to
10 the governor. The governor may approve the bill by signing it in
11 which event it becomes a law. The governor may veto the bill by
12 returning it with objections to the house in which it originated.
13 That house shall enter the objections in its journal and reconsider
14 the bill for passage over the veto. If the bill passes that house
15 by a record affirmative vote of two-thirds of the members present
16 and voting, it must be sent with the governor's objections to the
17 other house, which shall enter the objections in its journal and
18 reconsider the bill for passage over the veto. If the bill likewise
19 passes that house by a record affirmative vote of two-thirds of the
20 members present and voting, the bill becomes a law. If the governor
21 fails to veto a bill within 10 days (Sundays excepted) after it is
22 presented, the bill becomes a law. If the legislature by its
23 adjournment prevents a veto, the bill becomes a law unless within
24 20 days after adjournment the governor files the bill and objec-

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1 tions with the secretary of state and gives public notice thereof
2 by proclamation. If the same legislature meets again, the secretary
3 of state shall return the bill with the governor's objections to
4 the house in which the bill originated for reconsideration in the
5 manner provided above. Bills that become law are filed with the
6 secretary of state.

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

12 (c) All orders and resolutions requiring the concurrence
13 of both houses of the legislature must be presented to the
14 governor. If the governor disapproves an order or resolution,
15 it does not become effective unless repassed by both houses in
16 the same manner as a vetoed bill. Presentation to the governor
17 is not required if an order or resolution pertains to (1) an
18 amendment to the state or federal constitution, (2) a referendum,
19 (3) adjournment, (4) legislative rules, (5) an investigation or
20 study, (6) internal administration of the legislative department,
21 or (7) removal by address.

22 Sec. 14. CHIEF PLANNING OFFICER. The governor is the chief
23 planning officer of the state and may require written information
24 and written reports from all state agencies and officers upon any

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1 subject relating to their duties, conditions, management, and
2 expenditures.

3 Sec. 15. BUDGET PREPARATION. At the beginning of each
4 session, at which appropriations are to be made for the general
5 operation of the government, the governor shall submit to the
6 legislature a budget for all proposed state expenditures for the
7 applicable fiscal period.

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Adopted

Tentatively Adopted by
Style and Drafting Committee

6-7-74

REPORT
OF THE
COMMITTEE ON STYLE AND DRAFTING

Article IV
The Executive

Chairman



The Honorable Price Daniel, Jr.
President, Texas Constitutional Convention

The Committee on Style and Drafting submits this revision of Article IV, The Executive, for consideration on third reading.

Immediately following this letter is the proposed article on The Executive. Following that is another version of the revised article in which changes from the article as approved on second reading are shown. Words added are indicated by underlining and words deleted are crossed out and enclosed in brackets.

Footnotes in the second part of the report are included to explain certain revisions, but the Committee has not provided an explanation for every change. In some cases the reason is self-evident, and in others the change simply follows the Style and Drafting Manual.

The Committee is not aware at this time of any provisions that will be inconsistent or will conflict with provisions in other articles passed on second reading. If this problem arises later the Committee will file a supplemental report.

Max Sherman, Chairman

BE IT PROPOSED BY THE COMMITTEE ON STYLE AND DRAFTING,

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14 officers of the executive department start with the general statewide
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8 adjournment of a regular session or not more than two days after
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10 senate in writing of the reasons for the proposed removal. If
11 within 45 days of receipt of the governor's statement of reasons
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13 governor's proposed removal, the governor may not remove the
14 officer for those stated reasons.

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16 statutory state agency expires on a date prescribed by law
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20 expiration of the term.

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7 governor. If the governor-elect does not assume office by the
8 end of the first year of the term, the lieutenant governor
9 becomes governor and serves for the remainder of the term.

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11 permanently disabled, or is removed from office, the lieutenant
12 governor becomes governor and serves for the remainder of the term.

13 (c) If both the governor and lieutenant governor die, resign,
14 become permanently disabled, or are removed from office, or if
15 the lieutenant governor becomes governor and thereafter dies,
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19 Sec. 13. CHIEF PLANNING OFFICER. The governor is the chief
20 planning officer of the state and may require written information
21 or written reports from all state agencies and executive branch
22 officers upon any subject relating to their duties, conditions,
23 management, and expenditures.

24 Sec. 14. BUDGET PREPARATION. At the beginning of each
25 session at which appropriations are to be made for the general
26 operation of the government, the governor shall submit to the

1 legislature a budget for all proposed state expenditures for the
2 applicable fiscal period.

3 Sec. 15. BUDGET EXECUTION. (a) A law authorizing or
4 directing the governor to exercise fiscal control over the
5 expenditure of appropriated moneys is not to be deemed a
6 violation of separation of powers.

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

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

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

23 Sec. 17. REPRIEVES, COMMUTATIONS, AND PARDONS; REMISSION
24 OF FINES AND FORFEITURES. (a) The legislature shall prescribe

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

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

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

17 Sec. 19. ATTORNEY GENERAL. The attorney general must
18 be qualified to practice before the supreme court of the state.
19 Except as otherwise provided by law, the attorney general
20 represents the state in all civil actions in which the state may
21 be a party, shall especially inquire into the charter rights of
22 all private corporations, shall give legal advice in writing to the
23 governor or other executive officers when requested by them, and
24 has the powers of the office as at common law. The attorney
25 general shall perform other duties as provided by law.

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

6 Sec. 21. OTHER OFFICERS OF THE EXECUTIVE DEPARTMENT. The
7 comptroller of public accounts, the treasurer, and the secretary
8 of state shall perform the duties required by this constitution
9 and other duties as provided by law.

10 Sec. 22. VACANCIES IN STATEWIDE ELECTIVE OFFICES. Except as
11 otherwise provided by this constitution, vacancies in elective
12 statewide offices are filled by appointment of the governor with
13 the advice and consent of the senate. The term of an officer
14 appointed to a vacancy in an elective statewide office ends at
15 the next statewide general election. The legislature may provide
16 by law that if an office becomes vacant within a specified number
17 of days prior to the statewide general election, the person
18 appointed to fill the vacancy serves for the remainder of the term.

19 Sec. 23. STATE AGENCIES. (a) State agencies include all
20 agencies, boards, commissions, departments, institutions, and
21 other executive or administrative agencies of state government.
22 State agencies are a part of the executive branch unless otherwise
23 provided by law.

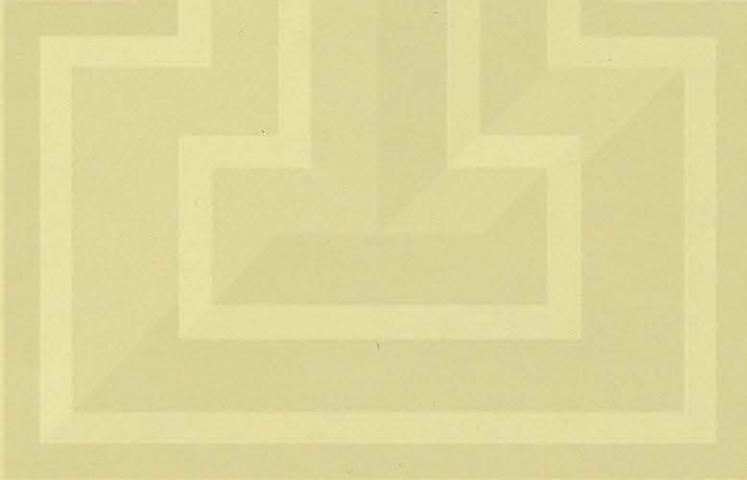
24 (b) Statutory state agencies having appointed officers,

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1 except agencies related to higher education, have a life of not
2 more than 10 years unless renewed by law for not more than 10
3 years at a time. Appointed officers serving on the effective
4 date of a renewal continue to hold office for the terms for which
5 they were appointed unless otherwise provided by law. A bill for
6 renewal of a state agency must be reported from committee in the
7 house and senate and brought to a vote in each house not less than
8 20 days before adjournment.

9 Sec. 24. SEAL OF STATE. The seal of the state is a star
10 of five points encircled by olive and live oak branches and the
11 words "The State of Texas." The seal of the state is kept by the
12 secretary of state and used by that officer officially under the
13 direction of the governor.

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REVISED ARTICLE IV

WITH EXPLANATIONS OF CHANGES

The following part of the committee report illustrates changes in the wording of the article as approved on second reading. In some cases, the Committee on Style and Drafting has included note explanations of certain changes. In most cases no explanation is needed since the reason for change is self-evident or the change simply follows the Style and Drafting Manual.

The committee directs attention to the following notes since they illustrate important drafting rules which the committee is following or explain changes in form or style which are particularly important.

Article IV

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Section 2, note 8	page 18
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Section 16, note 6	page 41
*Section 19, note 1	page 46
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*Notes marked with an asterisk are those which explain drafting rules that the committee will follow in all articles. In subsequent committee reports these notes will be referred to by cross-reference or in many cases, the changes simply treated as self-evident.

BE IT PROPOSED BY THE COMMITTEE ON STYLE AND DRAFTING,

That Article IV on The Executive be revised as follows:

ARTICLE IV

THE EXECUTIVE⁽¹⁾

1 Sec. 1. OFFICERS. The governor is the chief executive
 2 officer of the state. Officers of the executive department of
 3 the executive branch are the governor, lieutenant governor,
 4 attorney general, comptroller of public accounts, treasurer,
 5 commissioner of the general land office, secretary of state, and
 6 [~~these~~] other officers as provided by law.

EXPLANATION

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 9
 10 (1) It is essential to keep in mind the distinction that
 11 this article makes between the "executive branch" and the
 12 "executive department." The executive branch, headed by the
 13 governor, is one of the three basic divisions of the state
 14 government, whereas the executive department consists of those
 15 officers of the executive branch provided for in Section 1.
 16 Throughout this article certain provisions are applicable only
 17 to Section 1 officers. To avoid having to repeat the list each
 18 time the need arises, the term "executive department" is used as



1 a convenient way to identify the group.

2
3
4
5 Sec. 2. SELECTION AND TERMS OF OFFICERS. (a) [~~At general~~
6 ~~elections beginning in 1978 qualified voters of the state shall~~
7 ~~elect the~~] ⁽¹⁾ The governor, lieutenant governor, attorney general,
8 comptroller of public accounts, treasurer, [the] commissioner of
9 the general land office, and [these] other elected officers of
10 the executive department provided for by law are elected by the
11 qualified voters of the state for four-year terms. Separate votes
12 are cast for candidates for governor and lieutenant governor. ⁽³⁾

13 Quadrennial elections for officers of the executive department
14 start with the general statewide election in 1978. [The governor
15 may not serve more than two four-year terms in succession.] ⁽⁴⁾

16 (b) The secretary of state and other appointed [~~appointive~~]
17 officers of the executive department are appointed by the governor
18 with the advice and consent of the senate and serve at the pleasure
19 of the governor.

20 ⁽⁵⁾
21 (c) Officers appointed by the governor to state agencies
22 are appointed with the advice and consent of the senate.

23 ⁽⁶⁾
24 (d) [~~e~~] Officers appointed by a governor with the advice
and consent of the senate and not serving at the pleasure of the
governor may be removed by the governor only for stated reasons.

1 ~~[The governor shall have authority to remove for cause all~~
2 ~~officers who were appointed by any governor and who were confirmed~~
3 ~~by the senate.]~~ Prior to removal and not less than 45 days prior
4 to the required adjournment of a regular session or not more than
5 two days after the convening of a special session, the governor
6 shall advise the senate in writing of the reasons for the proposed
7 removal [~~provide the senate a proposal of removal containing the~~
8 ~~cause for the recommended action]. If within 45 days of receipt
9 of the governor's statement of reasons the senate by majority vote
10 of the membership rejects the governor's proposed removal, the
11 governor may not remove the officer for those stated reasons. [The
12 ~~senate may refuse the removal by a majority vote of the membership,~~
13 ~~within 45 days of submission.]~~~~

14 (e) [~~e~~ ~~--- Except as otherwise provided in this constitution,~~ (7)
15 The term of an [each] officer [of the executive branch] appointed (8)
16 by the governor to a statutory state [governmental] agency (9) (10)
17 [~~agencies created by statute shall have a term that~~] expires on a
18 date prescribed by law but the date must fall between February 1
19 and May 1 of an odd-numbered year [years]. The terms of officers
20 [Officers] of multi-member state agencies must be [shall have]
21 staggered. (11) [~~terms and the number of officers to be appointed~~
22 ~~by the governor shall be provided by law. --- At the expiration of~~
23 ~~the term the office shall become vacant.]~~ An officer does not
24 serve beyond the expiration of the term. (13)

*Delete because
Meier Amend. in Gen. Prov-*

1 to preserve the intent of this provision, which is to set forth
2 which executive department officers are to be elected and to
3 establish their terms of office at four years. Other elected
4 officers of the executive branch (for example, Railroad
5 Commission members) are not covered by this four-year term pro-
6 vision.

7 (3) This has been moved from Section 18. The redraft is
8 designed to fit in with the first sentence of the subsection.

9 (4) The two-term limitation has been moved to Section 4(a).

10 (5) This replaces Subsection (f). The redrafted subsection
11 has been moved for purposes of logical progression from elected
12 officers, to appointed officers, to removal of appointed officers,
13 to terms of office of appointed officers, to designation of
14 chairmen.

15 The original subsection was designed to serve two purposes.
16 One was to limit the legislature's power to give the governor
17 a power of appointment to state agencies without the advice and
18 consent of the senate. The other purpose was apparently to be
19 sure that an appointee who failed to be confirmed by the senate
20 would have to vacate the office. (This was a problem under
21 Section 12 of Article IV of the 1876 constitution, but the
22 problem arose from complex drafting, including the term "reject,"
23 which is different from "not confirmed.") The original draft of
24 the subsection does not clarify this problem in any way.

1 Section 14 of Article III as approved on second reading does
2 solve the problem.

3 (6) The extensive redraft is principally stylistic. There
4 are three changes designed to eliminate ambiguities. One is to
5 make it clear that officers who serve "at the pleasure of the
6 governor" are not covered. The second change is to use "reasons"
7 instead of "cause" to make it clear that an officeholder has no
8 redress in court, that only the senate can second guess the
9 governor's "cause." The third change makes it clear that the
10 governor must send the reasons for removal in time for the
11 senate to act. The distinction between "a governor" and "the
12 governor" should be noted. This makes it clear that the governor's
13 power of removal extends to officers appointed by the governor's
14 predecessor in office.

15 (7) This phrase is deleted because there is no "otherwise
16 provided."

17 (8) Of the subsections dealing with state agencies, this
18 is the only one that specifies agencies "of the executive branch."
19 The committee understands that there was no intention to make
20 a differentiation here between state agencies and state agencies
21 in the executive branch. (Section 23 provides that state
22 agencies are in the executive branch "unless otherwise provided
23 by law.") Since the words "of the executive branch" appear to
24 be an inadvertent limitation, they have been omitted. Thus,

1 Subsections (c) through (f) are consistent in covering appointments
2 to state agencies whether in or out of the executive branch.

3 (9) The term "statutory" replaces "created by statute." The
4 reason for limiting the coverage of the subsection to agencies
5 created by statute is to exclude gubernatorial appointees to
6 interstate agencies created by interstate compacts. The use of
7 "statutory" also excludes constitutional agencies. There appear
8 to be three constitutional agencies with appointed members: the
9 Board of Pardons and Paroles, a judicial council, and a judicial
10 qualifications commission. (The State Board of Education is a
11 constitutional agency but the members are elected.) Of the three
12 constitutional agencies, only the Board of Pardons and Paroles
13 necessarily has members appointed by the governor. The provisions
14 concerning the two judicial agencies do not specify whether
15 members are appointed or who appoints any appointed members, but
16 it is unlikely that the legislature would call for elected members.
17 In any event, since these are not statutory agencies, Subsections
18 (e) (in part) and (f) are not applicable. (Subsections (c) and
19 (d) are applicable; the agencies referred to are not limited by
20 the adjective "statutory.") That part of Subsection (e) dealing
21 with staggered terms is applicable since the adjective is omitted.
22 The legislature can specify, of course, that the term of office
23 expires between February 1 and May 1 of odd-numbered years.

24 It should be noted that there are references in the consti-

1 tution to the Board of Regents of The University of Texas System
2 and to the Board of Directors of The Texas A&M University System.
3 These are statutory agencies. They appear in the constitution
4 only because of a couple of "constitutional statutes." Simple
5 reference to these boards in these "constitutional statutes" in
6 no way subtracts from the legislature's power to change the
7 composition of the boards. The only limitation imposed by the
8 constitution is changing their names. In other words, the legis-
9 lature must designate some agency the "Board of Regents of The
10 University of Texas System" and another agency the "Board of
11 Directors of The Texas A&M University System."

12 (10) Since Section 23 (formerly Section 26) defines "state
13 agency," the adjective "governmental" is unnecessary.

14 (11) Because the vast majority of state agencies is
15 statutory with appointed members, the operation of the staggered
16 terms requirement is affected by the previous sentence, which
17 prescribes that the terms of appointed officers of statutory
18 agencies expire in odd-numbered years. From that requirement
19 it necessarily follows that terms of appointed members of
20 statutory state agencies must be multiples of two years. When
21 applied to a constitutional agency (e.g., the Board of Pardons
22 and Paroles or the State Board of Education), however, the
23 staggered term requirement is not limited by the odd-year expira-
24 tion requirement.

1 "Staggered terms" means that not all the terms expire at the
2 same time--it does not mean that the same number of terms must
3 expire on each expiration date. Thus the limitation does not
4 preclude an agency with an odd number of members. For example,
5 a three-member statutory agency with appointed members can have
6 two officers whose terms expire in odd year X and one whose term
7 expires in year X + 2. If the terms are for six years, one can
8 expire in odd year X, another in X + 2, and the third in X + 4.
9 Under the preceding example, if the agency is constitutional,
10 it could have two terms expire in year X and one in year X + 3.

11 (12) The second half of the original compound sentence is
12 unnecessary. The legislature has the inherent power to create
13 agencies, to specify how many members they have, to specify how
14 many of the members are to be appointed by the governor, and
15 to specify who else has the appointing power. The first two
16 sentences of the subsections are limitations on the inherent
17 power. There is no reason to mention what the legislature can
18 do, only what it cannot do.

19 (13) This formulation of "vacancy" is used to parallel
20 the rest of the subsection which speaks to "officers," not to
21 "office." For technical drafting reasons it is not possible
22 to shift all sentences to "office" instead of "officer."

23 (14) The extensive redraft is to make explicit two necessary
24 implications and to cover an eventuality inadvertently overlooked.

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1 First, the original words "in the manner prescribed by law"
2 were designed to cover a situation where some appointed members
3 represent particular interests and others represent the public.
4 (An example is the Industrial Accident Board which has a public
5 member, an employer member, and an employee member. The public
6 member is the chairman.) The new second sentence makes explicit
7 the purpose of the quoted words. Second, the reason for giving
8 the governor the power to designate the chairman is to enhance
9 the governor's influence over the agency. The original wording
10 was ambiguous in a case where the governor designates a new
11 appointee chairman and the senate fails to confirm. The ambiguity
12 has been resolved in accordance with the purpose of the subsection.
13 Third, the original subsection inadvertently omitted the power
14 of the governor to designate a new chairman in the event of a
15 vacancy. The power would probably have been held to be implied,
16 but since the omission has been spotted, it is appropriate to
17 cover the matter. It may be noted in passing that this subsection
18 imposes no limitation on the power of the governor to redesignate
19 a chairman or on the number of terms a chairman may serve.

20 (15) In the context of the subsection the designation has
21 to be from among the membership, for "designate" cannot be read
22 to mean "appoint."
23
24

1 ~~governmental-agencies-these~~] reports that the [~~to-which-an~~
2 incumbent governor is entitled [~~to~~] to require from officers and
3 state agencies. (6)

4 (c) The governor is [~~shall-be~~] inaugurated on the second
5 day following the convening of the legislature in regular session
6 following election [~~Thursday-in-January~~] or as soon thereafter
7 as practicable. (7)

8
9 EXPLANATION

10
11 (1) The order of the sentence has been changed in order to
12 eliminate the masculine pronoun.

13 (2) Use of this formulation permits the deletion of the
14 second sentence of Subsection (f) of Section 5 and simplifies
15 the qualifications sentence in Section 18.

16 (3) This was removed from Section 2(a). The change in
17 wording is stylistic.

18 (4) There is no apparent reason for use of the plural.
19 Use of the singular does not prevent the legislature from having
20 separate line items in separate parts of an appropriation bill
21 or even items in separate bills.

22 (5) Although money cannot be appropriated for a private
23 purpose, it seems advisable to mention some "official" purpose
24 for providing money to a governor-elect.

1 (6) The redraft ties this privilege of the governor to
2 the information and reports provided for by Section 13.

3 (7) This ties down the date of the inauguration. Since the
4 second Thursday can precede the second Tuesday, it is appropriate
5 to make it clear that inauguration does not precede the tradi-
6 tional date for convening the legislature.

7
8 Sec. 5. GUBERNATORIAL SUCCESSION. (a) If the governor-
9 elect is disqualified, [~~resigns7-or~~] dies, or refuses the office⁽¹⁾
10 prior to inauguration, [~~taking-office7~~] the lieutenant governor-
11 elect becomes governor for the full term. If the governor-elect
12 fails to assume office for any other reason, the lieutenant
13 governor-elect acts [~~serves~~] as governor. If the governor-
14 elect does not assume office by the end of⁽²⁾ [~~within~~] the first
15 year of the term, [~~the-office-becomes-vacant7-and~~] the lieutenant
16 governor becomes governor and serves for the remainder of the
17 term.

18 (b) If after inauguration the [~~office-of~~] governor dies,
19 resigns, becomes permanently disabled, or is removed from office,⁽³⁾
20 [~~becomes-vacant7~~] the lieutenant governor becomes governor and
21 serves for the remainder of the term.

22 (4)
23 (c) If both the governor and lieutenant governor die, resign,
24 become permanently disabled, or are removed from office, or if the
lieutenant governor becomes governor and thereafter dies, resigns,

1 becomes permanently disabled, or is removed from office, the
2 speaker of the house of representatives, if eligible, becomes
3 governor and serves for the remainder of the term. [~~If the of-~~
4 ~~fices of both governor and lieutenant governor become vacant, the~~
5 ~~speaker of the house of representatives, if qualified, becomes~~
6 ~~governor under the same conditions and for the same term as pro-~~
7 ~~vided for the lieutenant governor.~~]

8 (d) If the governor is absent from the state or temporarily
9 disabled, the lieutenant governor acts as governor until the
10 governor returns or is no longer disabled. If [~~both~~] the [~~gov-~~
11 ~~ernor and~~] lieutenant governor is also [~~are~~] absent from the
12 state or temporarily disabled, the president pro tempore of the
13 senate acts as governor until either the governor or lieutenant
14 governor returns or is no longer disabled [~~during such time~~].
15 (6)

16 (e) While serving or acting as governor [~~7~~] a person [~~the~~
17 ~~lieutenant governor or president pro tempore of the senate~~] re-
18 ceives only the compensation payable to a governor.

19 (f) The legislature shall provide by law for further
20 [~~Further~~] succession to the office of governor. [~~shall be pro-~~
21 ~~vided by law. No person may serve as governor unless qualified~~
22 ~~for that office.~~] (7)
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EXPLANATION

(1) One normally "resigns" only after taking office.

(2) The operative cut off is the end of the year.

(3) This spells out the ways in which the office "becomes vacant."

(4) The line of gubernatorial succession from the elected governor is: (1) the lieutenant governor, (2) the speaker of the house of representatives, if eligible, and (3) whatever the legislature provides in accordance with the duty set forth in Subsection (f).

If the office of lieutenant governor becomes vacant, it remains so. See Section 8(c) of Article III, which provides that the president pro tempore of the senate is to "perform the duties of lieutenant governor...when the office is vacant." Thus, the office of lieutenant governor is "otherwise provided for" and excluded from Section 22, "Vacancies in Statewide Elective Offices."

The redrafted Subsection (c) omits the words "under the same conditions and for the same term as provided for the lieutenant governor" and substitutes "for the remainder of the term." This eliminates an unclear phrase that might have been read to imply that there could be circumstances when the speaker would not serve to the end of the term. This implication could only lead to

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1 the conclusion that the speaker's tenure was related to a lieuten-
2 ant governor who would not serve for the remainder of the term
3 and that could only have been an appointed lieutenant governor.

4 (5) Section 4 speaks to "eligibility."

5 (6) This covers all eventualities. The original draft was
6 inconsistent with the original Subsection (c), new Subsection (d),
7 and did not cover whatever the legislature provides under Sub-
8 section (i).

9 (7) This is taken care of by the new formulation of Section
10 4(a). See note (2) of the explanation of that section.

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14 Sec. 6. DISABILITY OF ELECTIVE OFFICERS OF EXECUTIVE
15 (1)
16 DEPARTMENT. (a) The [~~When-the~~] governor may notify [~~notifies~~]
17 the Chief Justice of Texas [~~chief-justice-of-the-supreme-court~~] in
18 writing of the governor's temporary disability. If, because of the
19 disability, the governor fails to send notification to the chief
20 justice, a majority of the following officers may jointly send the
21 notification: the lieutenant governor, attorney general, comp-
22 troller of public accounts, treasurer, commissioner of the general
23 land office, speaker of the house of representatives, and president
24 pro tempore of the senate. A temporary disability ends on the
delivery to the chief justice of the governor's sworn statement to

1 that effect. The governor's sworn statement may not be denied by
2 another notification to the chief justice. At the end of one year
3 a temporary disability becomes a permanent disability without a
4 determination by the Supreme Court of Texas. The same procedure
5 applies in the case of the temporary disability of the lieutenant
6 governor except that the governor and not the lieutenant governor
7 is one of the seven officers voting on a notification. [that he
8 will be temporarily unable to carry out the duties of his office
9 or when the governor is unable to communicate such inability to the
10 chief justice of the supreme court, the temporary disability of the
11 governor shall be determined by a majority vote of the governor,
12 lieutenant governor, attorney general, comptroller of public ac-
13 counts, treasurer, commissioner of the general land office, speaker
14 of the house of representatives, and president pro tempore of the
15 senate. Restoration of ability shall be evidenced by delivery of
16 a sworn statement from the governor acknowledging recovery filed
17 with the supreme court. After restoration, the governor may not
18 be determined temporarily disabled again for the same incident. If
19 the governor does not acknowledge recovery from a temporary dis-
20 ability within one year from the time the lieutenant governor
21 begins serving as governor, the office of governor shall be vacant.
22 The same procedure shall apply to the temporary disability of the
23 lieutenant governor.]

24 (b) Whether an elected officer of the executive department

1 is permanently disabled and unable to discharge the duties of
2 office is to be determined only by the Supreme Court of Texas
3 in a proceeding conducted under rules of procedure prescribed by
4 that court.⁽²⁾ [~~The permanent disability of any elected officer of~~
5 ~~the executive department to perform the duties of the office~~
6 ~~during the term for which elected shall be determined in a pre-~~
7 ~~ceeding in the supreme court of the state under such rules of pro-~~
8 ~~cedure as may be prescribed by that court.] The proceeding may be
9 initiated only by a [A] majority vote of the governor, lieutenant
10 governor, attorney general, comptroller of public accounts, trea-
11 surer, commissioner of the general land office, speaker of the
12 house of representatives, and president pro tempore of the senate.
13 [~~shall initiate such proceedings.] If the supreme court determines~~
14 that the officer [~~any elected officer of the executive department~~
15 is permanently disabled, [~~is unable to discharge the duties of his~~
16 ~~office by reason of a permanent disability,~~] it shall declare the
17 office vacant [~~the office shall be declared vacant].~~~~

18 [~~(e) The supreme court shall have exclusive jurisdiction to~~
19 ~~determine the existence of a vacancy arising under this section.~~⁽³⁾
20]

21 EXPLANATION

22
23 (1) The original draft was confusing in that it implied
24 that the collection of officers voted even if the governor said in

1 writing that he was disabled and in that it seemed to say that he
2 voted upon his own disability. The redraft clears this up. Other
3 changes in the redraft should be noted. The word "incident" to
4 cover an attempted renotification of disability when nothing had
5 changed seemed ill advised because, whatever its technical meaning
6 in the world of medicine, the ordinary reader would be puzzled by
7 the word. The purpose of the limitation on renotification for the
8 same "incident" was to prevent an effort to keep the governor from
9 resuming office and to prevent a governor from feigning disability
10 in order to draw his salary but not work. The reformulation covers
11 both situations. In the one case, if the governor swears that he
12 has recovered, a new notification from the named officers in effect
13 would have to allege a new "incident" in order to avoid being
14 simply a denial of recovery. In the other case, the governor would
15 have to send a notification based on a new "incident," else he
16 would simply be denying that he had recovered.

17 The statement concerning a temporary disability's becoming
18 permanent at the end of a year conflicted with Subsection (b). The
19 redraft eliminates the inconsistency.

20 (2) The reformulation of the first sentence is stylistic ex-
21 cept for the insertion of "only," which eliminates the need for
22 Subsection (c). The changes in the balance of the subsection are
23 stylistic.

24 (3) See note (2) above.



1 and may not practice any other profession or hold any other employ-
2 ment for [~~7-and-receive~~] compensation [7] or the promise of com-
3 ensation [~~thereof-for-the-same~~].

4
5 EXPLANATION

6
7 (1) The changes are stylistic. The change in title more
8 nearly reflects the subject matter.

9
10
11 Sec. 9. COMMANDER-IN-CHIEF; CALLING FORTH MILITIA. The
12 governor is ⁽¹⁾ [~~shall-be~~] commander-in-chief of the military forces
13 of the state [7] except when they are called into actual service
14 of the United States. ⁽²⁾ The governor may [~~7-and-shall-have-power-to~~]
15 call forth the militia to execute the laws of the state, [~~to~~]
16 suppress insurrections, repel invasions, and [~~for-the~~] protect ⁽³⁾
17 [~~protection-of~~] life and property in cases of natural disasters.

18
19 EXPLANATION

20
21 (1) The constitution is not imposing a duty on the governor;
22 the provision simply states a fact of power.

23 (2) "May" means "has the power to."

24 (3) This change is to provide consistency in the compound

1 predicate.

2
3 Sec. 10. EXECUTION OF LAWS; CONDUCT OF BUSINESS WITH OTHER
4 STATES, THE UNITED STATES, AND FOREIGN NATIONS. The governor shall
5 cause the laws to be faithfully executed and shall conduct, in per-
6 son or in the [~~such~~] manner prescribed ⁽¹⁾ [~~as-shall-be-provided~~]
7 by law, all intercourse and business of the state with other
8 states, the United States, ⁽²⁾ and foreign nations.

9
10 EXPLANATION

11
12 (1) See note (2) to the Explanation of Section 3.

13 (2) Section 11 of the local government article provides that
14 political subdivisions may conduct business with the United States.
15 At first blush, this seems inconsistent with the governor's power
16 set forth in this section. However, the purpose of this section
17 is to establish the governor as the spokesman for the state
18 government in the conduct of state business. It follows that this
19 section is not inconsistent with the power of a political sub-
20 division to enter into agreements with the United States concern-
21 ing local matters. In any event the practice under the 1876 con-
22 stitution indicates that the comparable section (also Section 10)
23 has not been construed to require the governor to participate in
24 contractual activity between political subdivisions and the United

1 States. For example, local housing authorities and urban renewal
2 agencies enter into contracts with the Department of Housing and
3 Urban Development. (See R.C.S., Art. 1269k, Sec. 8(d), and Art.
4 12691-3, Sec. 9(g), respectively.) The committee is advised that
5 the local agencies do not handle their contracting through the
6 governor's office.

7
8 (1)

9 Sec. 11. CONVENING THE LEGISLATURE IN SPECIAL SESSION.

10 The governor [may], on extraordinary occasions, may convene the
11 legislature in special session stating specifically the purpose
12 of the session. The legislature may consider only those matters
13 that the governor specifies in the call or subsequently presents
14 to the legislature. [~~Special-sessions-shall-not-exceed-30-days.~~]

15 EXPLANATION

16
17 (1) Section 7(e) of the legislative article provides for
18 special sessions called either by the governor or the legislature.
19 It seems appropriate to keep the two separate, leaving the
20 governor's power in this article. A sentence has been added
21 to cover the power to add to the agenda. This power appears in
22 the original Section 7(e) of the legislative article. The
23 sentence concerning length of session has been dropped. That
24 is covered in Section 7 of the legislative article.

1 Sec. 12. GOVERNOR'S MESSAGE. At the beginning of each leg-
2 islative session the governor shall, and at other times may, give
3 the legislature information on the condition of the state, and may
4 recommend legislative action.

5
6 [Sec. 13. ACTION ON BILLS AND RESOLUTIONS.]

7 The committee has withdrawn this section from the executive
8 article. The section will be added to the legislative article.
9 In the committee's report on the legislative article the normal
10 procedure will be followed, showing the committee's recommended
11 changes accompanied by appropriate explanations.

12 The shift is made principally because the section is of great-
13 er significance as a step in the legislative process than as an
14 item of gubernatorial power. In the course of placing the section
15 in the legislative article the committee will work out an appropri-
16 ate adjustment with Section 7(f) of that article concerning a
17 limited veto session.

18
19
20 Sec. 13 [14]. CHIEF PLANNING OFFICER. The governor is the
21 chief planning officer of the state and may require written infor-
22 mation [~~in-writing~~] ⁽¹⁾ or [~~and~~] written reports from all state [~~gov-~~
23 ~~ernmenta~~] agencies and executive branch officers upon any subject
24 relating to their duties, conditions, management, and expenditures.

EXPLANATION

1 (1) The committee believes that the intent is to require
2 both information and reports to be in writing. The new formula-
3 tion inserts "written" in front of both information and reports to
4 make that intent clear. The phrase "written information and re-
5 ports" is open to the construction that "written" modifies only
6 "information." In common parlance "information" is less formal
7 than "reports," so if anything is to be in writing, most people
8 would assume that it should be reports.

9
10 Sec. 14 [~~15~~]. BUDGET PREPARATION. At the beginning of each
11 session at which appropriations are to be made for the general
12 operation of the government, the governor shall submit to the
13 legislature a budget for all proposed state expenditures for the
14 applicable fiscal period.

15 Sec. 15 [~~16~~]. BUDGET EXECUTION. (a) A law authorizing or
16 directing the governor to exercise fiscal control over the expen-
17 diture of appropriated money is not to be deemed a violation of
18 separation of powers. ⁽¹⁾ [~~The-governor-shall-exercise-these-powers-~~

19 ~~of-fiscal-control-as-provided-by-law.]~~

(2)

20 (b) The governor shall ensure [~~insure~~] that items of
21 appropriation for the executive branch, except items for the
22 elective offices of the executive department, are [~~shall-be~~]
23 expended only as directed by the legislature [~~7-except-that-the~~
24 ~~legislature-shall-determine-whether-this-power-shall-extend-to~~
~~elected-officers-of-the-executive-department)].~~ The legislature
by law may remove the exception.

EXPLANATION

1
2
3 (1) Under ordinary circumstances the sentence as originally
4 drafted would be an unnecessary grant of power to the legislature.
5 As the state's policy-making body the legislature ought to be able
6 to authorize or direct the governor, the chief executive, to
7 manage the state's expenditures in a manner that efficiently car-
8 ries out the state's policy as determined by the legislature. The
9 wording of the separation of powers article of the 1876 constitu-
10 tion has been construed to prevent normal budgetary control. If
11 the convention retains the 1876 wording of Article II, this Sub-
12 section (a) is necessary. If a simple separation of powers article
13 is substituted and if the record shows that the convention intended
14 the substitution to sweep away these restrictive interpretations,
15 the subsection can be omitted.

16 (2) This subsection is almost but not quite unnecessary. The
17 section imposes a duty on the governor. Although the words "as
18 directed by law" appear to make the provision no more than an un-
19 necessary grant of power to the legislature to impose the duty--
20 something it could do anyway under a normal separation of powers
21 provision--the reality is that the general appropriation act in-
22 evitably contains directions. In short, "as directed by law" is
23 not so much a "grant" of power to the legislature as an instruc-
24 tion telling the governor where he finds the rules for enforcing

1 proper expenditure of appropriated money. Moreover, the sub-
2 section recognizes the normal independence of elected executive
3 department officers and makes it clear that the legislature re-
4 serves the power to decide whether the governor is to have the
5 power to oversee the appropriations to the agencies headed by
6 those officers.

7 The redraft is designed to clarify the governor's duty. The
8 original wording seemed first to say that the governor's duty
9 covered everything and then second, ambiguously indicated that the
10 legislature could do something about the duty. The redraft makes
11 it clear that the governor's constitutional duty is limited in
12 scope but that the legislature may broaden the scope.

13 (3) Note that the term "by law" has not been substituted for
14 "by the legislature." (See note (2) to Section 1 of Article VII,
15 concerning the significance of "by law.") It is the committee's
16 understanding that the intent is to permit the legislature to use
17 either a bill or a resolution to direct the expenditure of these
18 appropriations.

19
20
21
22
23 Sec. 16 [17]. ADMINISTRATIVE REORGANIZATION. (a) ⁽¹⁾ At the
24 regular session held in odd-numbered years, the [The] governor
₍₂₎

1 shall submit to the legislature [~~in-sessions-held-in-odd-numbered~~
2 ~~years~~] a report on the organization and efficiency of the execu-
3 tive branch. [7]

4 (b) ⁽³⁾ In recommending plans for reorganization of the execu-
5 tive branch, the governor may [~~and-the-governor-shall,-within-two-~~
6 ~~years-after-the-adoption-of-this-constitution,~~⁽⁴⁾~~-and-at-other-times~~
7 ~~may,~~] submit to the legislature one or more reorganization bills
8 limited to [~~proposed-reorganization-bills-reassigning-functions~~
9 ~~among,~~] consolidating, [or] abolishing, or transferring functions
10 among [~~any~~] statutory state [~~governmental~~] agencies in [~~within~~]
11 the executive branch. The legislature must consider those bills
12 but may amend them.⁽⁵⁾ A submitted reorganization bill, whether
13 amended or not, must be brought to a vote of each house during the
14 session at which the bill is submitted.⁽⁶⁾ [~~A-reorganization-bill~~
15 ~~shall-be-considered-by-the-legislature-to-which-it-is-submitted,~~
16 ~~and-as-accepted,-amended,-or-substituted,~~⁽⁵⁾~~-brought-to-a-vote-of~~
17 ~~each-house.--Nothing-in-this-section-shall-prevent-administrative~~
18 ~~reorganization-by-the-normal-legislative-process.~~⁽⁶⁾]

19
20 EXPLANATION

21
22 (1) The section has been divided into subsections to make
23 it clear that the proposed bills can be submitted at any time
24 and not just on the occasion of the governor's biennial report.

1 (2) The committee believes that the intent is to require
2 the report on organization to be made at the regular session
3 only. "Sessions" was undoubtedly plural in the sense of all
4 the regular sessions in odd-numbered years and not in the sense
5 of all sessions, regular and special, in each odd-numbered year.

6 (3) The extensive redraft of the subsection (less the one-
7 shot duty) is designed to narrow the scope to what is
8 constitutionally significant. A governor can always recommend
9 reorganization plans; a governor can always attach recommended
10 bills--or get bills introduced by a friendly legislator. What
11 is significant here is that the governor can "submit" bills
12 that must be acted upon. Note, however, that the permitted
13 scope of those bills is narrower than the scope of possible
14 reorganization. The governor may not "submit" a bill that creates
15 a new agency to which some functions are transferred.

16 (4) This "one-shot" duty is deleted here and transferred to
17 the transition schedule. Two years after adoption the provision
18 will be obsolete.

19 (5) The only constitutional significance of this power of
20 "submission" is that it limits the power of the legislature
21 in two minor respects: it cannot ignore the bill and cannot
22 refuse to vote on the "idea," which is all that is left if
23 free amendment is allowed.

24 (6) Once this provision about reorganization is reduced to

1 the constitutionally significant barebones it is clear that the
2 governor has not been granted wholesale power over reorganization.
3 The constitutional significance of the provision is so narrow
4 that no one could reasonably argue that the legislature had lost
5 its power over policy-making in this area. For this reason the
6 last sentence has been deleted. Were the last sentence left in,
7 there would arise the need to put a comparable sentence in other
8 places. For example, if this sentence remained one could argue
9 that the governor's duty to cause the laws to be faithfully
10 executed (Section 10) destroyed the legislature's power to create
11 agencies that see that the laws are faithfully executed. For
12 another example, one might argue that the legislature could not
13 create an agency that would report on the condition of the state
14 on the theory that Section 12 gives that power exclusively to the
15 governor.

16
17
18
19 (1)
20 Sec. 17 [~~18~~]. REPRIEVES, COMMUTATIONS, AND PARDONS; REMISSION
21 OF FINES AND FORFEITURES. (a) The legislature shall prescribe by
22 law the number of members [~~There-is-hereby-created-a-Board-of~~
23 ~~Pardons-and-Paroles,-whose-membership]~~ and the terms of office of
24 the Board of Pardons and Paroles. [~~shall-be-prescribed-by-law-~~

1 An-equal-number-of-members-of-the-board-shall-be-appointed-by] The
2 [the] governor, the Chief Justice of Texas [~~chief-justice-of-the~~
3 ⁽²⁾~~supreme-court~~], and the attorney general [~~presiding-justice-of-the~~
4 ~~court-of-criminal-appeals~~]; each appoints an equal number of
5 members of the board. [~~respectively~~]; Appointments [~~the-appoint-~~
6 ~~ments-of-all-members-of-the-board~~] are [~~shall-be~~] made with the
7 advice and consent of the senate. A [~~Each~~] vacancy is [~~shall-be~~]
8 filled by the [~~respective-appointing~~] officer who [~~that~~] made the
9 original appointment [~~to-such-position~~].

10 (b) The governor may [~~shall-have-the-power-to~~] grant one
11 reprieve in a [~~any~~] capital case for a period not to exceed 30
12 days. The governor, [~~shall-also-have-the-power~~]; on the written
13 signed recommendation and advice of a majority of the Board of
14 Pardons and Paroles, [~~or-a-majority-thereof~~]; may [~~to~~] grant
15 pardons, reprieves, and commutations of punishment; [~~to~~] remit
16 fines and forfeitures; [~~to~~] and [~~to~~] revoke paroles and conditional
17 pardons.

18 [~~(c)---If-the-court-of-criminal-appeals-is-abolished, or~~
19 ~~merged-into-the-Supreme-Court-of-Texas-by-this-constitution-or~~
20 ~~amendment-thereto, the-appointing-power-vested-in-the-presiding~~
21 ~~justice-of-the-court-of-criminal-appeals-shall-be-vested-in-the~~
22 ~~Attorney-General-of-Texas.~~]

1 (2) This sentence was moved to Section 2(a).

2 (3) The formulation is switched from "and" to "but" to make
3 it clear that the stated power to vote is limited to breaking a
4 tie.

5
6
7
8 (1)

9 ~~[Sec. 20. -- SECRETARY OF STATE. -- The secretary of state shall~~
10 ~~perform the duties required by this constitution and other duties~~
11 ~~as provided by law.]~~

12
13 EXPLANATION

14
15 (1) This section and Sections 22 and 23 have been combined
16 into one section now numbered Section 21.

17
18
19
20
21 Sec. 19 ~~[21]~~. ATTORNEY GENERAL. The attorney general must
22 be qualified to practice before the supreme court of the state.
23 Except as otherwise provided by law, the attorney general ~~[shall]~~
24 represents ⁽¹⁾ ~~[represent]~~ the state in all civil actions ⁽²⁾ ~~[suits]~~ in

1 which the state may be a party, ⁽¹⁾ [~~in-all-the-courts-of-the-state~~
2 ~~and-proceedings-and-courts-of-the-United-States,~~] shall especially
3 inquire into the charter rights of all private corporations, [~~shall~~
4 ~~represent-the-state-in-quo-warranto-proceedings,~~]⁽³⁾ shall give legal
5 advice in writing to the governor or [~~and~~] other executive officers⁽⁴⁾
6 when requested by them, and has [~~shall-have-all~~] the powers of the
7 office as at common law. The attorney general shall perform [~~have~~]
8 other duties as provided by law.

9
10 EXPLANATION

11
12 (1) The change is designed to solve an inconsistency between
13 "shall" and "may be." "Shall" is used by the committee only in
14 the sense of "has a duty to." If that is the meaning here it
15 imposes a duty on the attorney general to represent the state in
16 any case in which the state may be a party, that is, any case in
17 which the state could intervene or in which somebody else could
18 implead the state. This is not the intent. If the representation
19 duty is turned into a statement of fact about what the attorney
20 general does, "may be" becomes accurate. When worded this way, the
21 statement of fact remains a "duty" in the sense that this is what
22 the attorney general is to do, but by avoiding the words of
23 command, the "duty" arises only when there is a representation of
24 the state, not whenever there could be a representation.

1 (2) "Actions" may be somewhat broader than "suits," though
2 it is more likely that the terms are interchangeable. From the
3 style viewpoint "actions" is the better word. The word
4 "proceedings" as it appeared in the original wording surrounded
5 by "and" is mystifying. It literally is not possible to parse
6 the sentence. If "proceedings" refers to court proceedings
7 "actions" would seem to cover them; if administrative proceedings
8 are meant, "actions" possibly covers them.

9 (3) Quo warranto has been dropped because it is by
10 definition a civil action in which the state is a party. Since
11 this is true, a statement referring to quo warranto would make one
12 suspect that the all-inclusive statement did not mean what it said.

13 (4) In this context "executive officers" means the officers
14 of the executive branch rather than only those of the executive
15 department.

16
17
18
19 (1)
20 [~~Sec.-22.---COMPTROLLER-OF-PUBLIC-ACCOUNTS.---The-comptroller~~
21 ~~of-public-accounts-shall-perform-the-duties-required-by-this~~
22 ~~constitution-and-other-duties-as-provided-by-law.~~]
23
24

EXPLANATION

1
2
3 (1) This section and Sections 20 and 23 have been combined
4 into one section now numbered Section 21.
5

6
7 (1)
8 [~~Sec. 23. --- TREASURER. --- The treasurer shall perform the~~
9 ~~duties provided by law.~~]
10

EXPLANATION

11
12
13 (1) This section and Sections 20 and 22 have been combined
14 into one section now numbered Section 21.
15

16
17
18
19 Sec. 20 [24]. COMMISSIONER OF THE GENERAL LAND OFFICE (1)
20 [~~COMMISSIONER~~]. The commissioner of the general land office shall
21 administer a general land office at the seat of government, in
22 which all land titles that emanate from the state ⁽²⁾ must [~~shall~~] be
23 registered, and shall perform other duties as provided by law.
24

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EXPLANATION

- (1) The section title conforms to the title of the office.
- (2) "Must" conforms to the committee's standard style rule.

(1)
Sec. 21. OTHER OFFICERS OF THE EXECUTIVE DEPARTMENT. The
comptroller of public accounts, the treasurer, and the secretary of
state shall perform the duties required by this constitution and
other duties as provided by law.

EXPLANATION

(1) This combines the three offices since parallel language is used in all cases. The original draft of the section on the treasurer inadvertently omitted the constitutional duty imposed by Section 6.

22. Railroad Commission

Sec. ~~22~~²³ [25]. VACANCIES IN STATEWIDE ELECTIVE OFFICES. ~~(1)~~
Except as [Unless] otherwise provided by this constitution, [all]



1 vacancies in elective statewide offices are [~~shall-be~~] filled by
2 appointment of the governor with the advice and consent of the
3 senate. ⁽²⁾ The term of an officer appointed [~~Appointments~~] to a
4 vacancy [~~vacancies~~] in an elective statewide office [~~offices~~]
5 ends at [~~shall-continue-only-until~~] the next [~~first~~] statewide
6 general election [~~thereafter~~]. The legislature may provide by
7 law that if an office becomes vacant within a specified number
8 of days prior to the statewide general election, the person
9 appointed to fill the vacancy serves for the remainder of the
10 term. ⁽³⁾

11 12 EXPLANATION

13
14 (1) This opening phrase applies primarily to a vacancy
15 in the office of lieutenant governor. Section 5 uniformly
16 refers to "the lieutenant governor," meaning the lieutenant
17 governor who was originally elected. The implication from that
18 wording of Section 5 is that when the office of lieutenant
19 governor becomes vacant, the vacancy remains until the next
20 general election for that office. This implication is re-
21 inforced by Section 8(c) of the legislative article, which pro-
22 vides that the president pro tempore of the senate is to
23 "perform the duties of lieutenant governor . . . when the
24 office is vacant." Accordingly, this section does not permit

1 the governor to appoint an interim lieutenant governor. It
2 should be noted that the judiciary article also contains a
3 provision covering vacancies in elective statewide judicial
4 offices in the same way as this section.

5 (2) "Appointments" refers to the act of naming a person to
6 a position. The revision focuses on the term of the officer
7 filling the vacancy.

8 (3) This new sentence is technically a substantive change
9 since it covers an eventuality not covered before. Realistically,
10 it is not substantive because the sentence has no automatic
11 constitutional effect. All that it does is make it possible for
12 the legislature to cope with the problem of a vacancy so close
13 to the midterm election that no election can be held. Without this
14 sentence one of two things must be done. The governor must refrain
15 from filling the vacancy until after the election or everybody must
16 connive to violate the constitution by some practical but incorrect
17 reading of the words. For example, everybody could agree that in
18 the context "the election" means the entire process and that
19 "until" or, as redrafted, "at" means the beginning of the process--
20 that is, the last day for getting a "special" election underway.
21 It seems "nonsubstantive" to add a sentence that simply permits a
22 straightforward solution.

1 the sentence as approved on second reading was to define "state
2 agencies." It seems appropriate to make two sentences, the first
3 a definition, the second the operative part of the subsection.

4 (2) The definition makes it clear that "state agencies" are
5 governmental.

6 (3) "State" is added so that no one can argue that agencies
7 of political subdivisions are "state agencies." Two agencies
8 created by the constitution, the judicial council and the judicial
9 qualifications commission, are not in the executive branch. (See
10 note (8) to Section 2 above.)

11 (4) The changes in the first sentence are stylistic only
12 except for substituting "agencies" for "institutions." Since
13 "institutions" are included in the definition of "agencies," the
14 latter term is broader. It is understood that the coordinating
15 board was not to be subject to the ten-year rule. Using
16 "institutions" would have left this ambiguous.

17 (5) The original wording appeared to be an unnecessary grant
18 of power. The intent of the sentence was to foreclose an argument
19 that the constitution ended the life of an agency, that "renewal"
20 by law meant "recreate," and that consequently all appointments
21 died. The redrafted sentence destroys that argument but preserves
22 the power of the legislature to decide how to handle holdovers.

23 (6) See note (2) above.

24 (7) The intent of this provision is to ensure that legislative

1 action on a renewal bill progresses at least as far as a vote in
2 each house prior to the rush and confusion of the closing days of
3 a session. The original wording was somewhat ambiguous, and the
4 new language is substituted to clarify the meaning.

5
6
7
8 Sec. ²⁵~~24~~ [27]. SEAL OF STATE. [~~There shall be a seal of~~
9 ~~the state which shall be kept by the secretary of state and used~~
10 ~~by that officer officially under the direction of the governor.~~]

11 The seal of the state is [~~shall be~~] a star of five points encircled
12 by olive and live oak branches and the words "The State of Texas."
13 The seal of the state is kept by the secretary of state and used
14 by that officer officially under the direction of the governor. (1)

15
16 EXPLANATION

17
18 (1) The reversal of the sentences is logical.

19
20 *26. Commissioner of Ag.*



Sec. — Commissioner of Agriculture. The commissioner of agriculture is an officer of the executive branch elected by the qualified voters of the state at the same time and for the same term as officers of the executive dept. The commissioner of agriculture performs the duties prescribed by law.

Sec. 22 Railroad Commission The railroad commission consists of three commissioners having qualifications as prescribed by law, elected at a statewide general election for six year terms. One commissioner is elected every two years. The railroad commission has the authority and performs the duties prescribed by law. The legislature by law may abolish the railroad commission.

ARTICLE IV
THE EXECUTIVE

1 Sec. 1. OFFICERS. The governor is the chief executive
2 officer of the state. Officers of the executive department of
3 the executive branch are the governor, lieutenant governor,
4 attorney general, comptroller of public accounts, treasurer,
5 commissioner of the general land office, secretary of state, and
6 [~~these~~] other officers as provided by law.

7 Sec. 2. SELECTION AND TERMS OF OFFICERS. (a) [~~At general~~
8 ~~elections beginning in 1978 qualified voters of the state shall~~
9 ~~elect the~~] ⁽¹⁾ The governor, lieutenant governor, attorney general,
10 comptroller of public accounts, treasurer, [~~the~~] commissioner of
11 the general land office, and [~~these~~] other elected officers of
12 the executive department provided for by law are elected by the
13 qualified voters of the state for four-year terms. Separate votes
14 are cast for candidates for governor and lieutenant governor. ⁽²⁾

15 Quadrennial elections for officers of the executive department
16 start with the general election in 1978. [~~The governor may not~~
17 serve more than two four-year terms in succession.] ⁽³⁾

18 (b) The secretary of state and other appointed officers

1 of the executive department are appointed by the governor with
2 the advice and consent of the senate and serve at the pleasure
3 of the governor.

(4)

4 (c) Officers appointed by the governor to state agencies
5 are appointed with the advice and consent of the senate.

(5)

6 (d) [~~e~~] Officers appointed by a governor with the advice
7 and consent of the senate and not serving at the pleasure of the
8 governor may be removed by the governor only for stated reasons.

9 ~~[The-governor-shall-have-authority-to-remove-for-cause-all~~
10 ~~officers-who-were-appointed-by-any-governor-and-who-were-confirmed~~
11 ~~by-the-senate.]~~ Prior to removal [7] the governor shall advise
12 the senate in writing of the reasons for removal [~~provide-the~~
13 ~~senate-a-proposal-of-removal-containing-the-cause-for-the~~
14 ~~recommended-action].~~ If within 45 days of receipt of the
15 governor's statement of reasons the senate by majority vote
16 of the membership rejects the governor's stated reasons, the
17 governor may not remove the officer for those reasons. [~~The~~
18 ~~senate-may-refuse-the-removal-by-a-majority-vote-of-the-membership,~~
19 ~~within-45-days-of-submission.]~~

20 (e) [~~e~~]-Except-as-otherwise-provided-in-this

(6)

21 constitution, The term of an [each] officer [of-the-executive
22 branch] appointed by the governor to a statutory state

(7)

(8)

23 [governmental] agency [~~agencies-created-by-statute-shall-have~~
24 a-term-that] expires on a date prescribed by law but the date

1 must fall between February 1 and May 1 of odd-numbered years.

2 The terms of officers [~~Officers~~] of multi-member agencies must be
3 [shall-have] staggered. [~~terms-and-the-number-of-officers-to-be~~
4 appointed-by-the-governor-shall-be-provided-by-law. (10) ~~At-the~~
5 expiration-of-the-term-the-office-shall-become-vacant.] An
6 officer does not serve beyond the expiration of the term. (11)

7 (12) (f) [~~(d)~~] Only an appointed officer of a multi-member
8 statutory state agency having appointed members may serve as
9 its chairman. The legislature by law may specify which appointed
10 officers are eligible to serve as chairman. The governor
11 designates the chairman in odd-numbered years to serve for two
12 years. [~~The-governor-shall-designate-in-the-manner-prescribed~~
13 by-law-the-chairman-from-among-the-appointive-officers-of-state
14 governmental-agencies.] If the governor fails to designate the
15 [a] chairman prior to May 1 [~~of-odd-numbered-years~~] the appointed
16 [appointive] members [~~officers~~] designate the chairman [~~shall~~
17 choose-the-chairman-from-among-their-membership]. (13) If the governor
18 designates a new appointee as chairman and the officer is not
19 confirmed by the senate, (12) the governor designates a new chairman.

20 [~~(f)~~ --Officers-appointed-by-the-governor-to-state
21 governmental-agencies-must-be-confirmed-with-the-advice-and
22 consent-of-the-senate.] (4)

EXPLANATION

1
2
3 (1) The specification of the four-year election cycle has
4 been made a separate sentence at the end of the subsection.

5 (2) This has been moved from Section 19. The redraft
6 is designed to fit in with the first sentence of the subsection.

7 (3) The two-term limitation has been moved to Section 4(a).

8 (4) This replaces Subsection (f). The redrafted subsection
9 has been moved for purposes of logical progression from elected
10 officers, to appointed officers, to removal of appointed officers,
11 to terms of office of appointed officers, to designation of
12 chairmen.

13 The original subsection was designed to serve two purposes.
14 One was to limit the legislature's power to give the governor
15 a power of appointment to state agencies without the advice and
16 consent of the senate. The other purpose was apparently to be
17 sure that an appointee who failed to be confirmed by the senate
18 would have to vacate the office. (This was a problem under
19 Section 12 of Article IV of the 1876 Constitution, but the
20 problem arose from complex drafting, including the term "reject,"
21 which is different from "not confirmed.") The original draft of
22 the subsection does not clarify this problem in any way.
23 Section 14 of Article III as approved on second reading does
24 solve the problem.

1 (5) The extensive redraft is principally stylistic. There
2 are two changes designed to eliminate ambiguities. One is to
3 make it clear that officers who serve "at the pleasure of the
4 governor" are not covered. The other change is to use "reasons"
5 instead of "cause" to make it clear that an officeholder has
6 no redress in court, that only the senate can second guess the
7 governor's "cause." The distinction between "a governor" and
8 "the governor" should be noted. This makes it clear that the
9 governor's power of removal extends to officers appointed by the
10 governor's predecessor in office.

11 (6) This phrase is deleted because there is no "otherwise
12 provided."

13 (7) Of the subsections dealing with state agencies, this
14 is the only one that specifies agencies "of the executive branch."
15 The committee understands that there was no intention to make
16 a differentiation here between state agencies and state agencies
17 in the executive branch. (Section 24 provides that state
18 agencies are in the executive branch "unless otherwise provided
19 by law.") Since the words "of the executive branch" appear
20 to be an inadvertent limitation, they have been omitted. Thus,
21 Subsections (c) through (f) are consistent in covering appointments
22 to state agencies whether in or out of the executive branch.

23 (8) The term "statutory" replaces "created by statute." The
24 reason for limiting the coverage of the subsection to agencies

1 created by statute is to exclude gubernatorial appointees to
2 interstate agencies created by interstate compacts. The use of
3 "statutory" also excludes constitutional agencies. There appear
4 to be three constitutional agencies with appointed members: the
5 Board of Pardons and Paroles, a judicial council, and a judicial
6 qualifications commission. (The State Board of Education is a
7 constitutional agency but the members are elected.) Of the three
8 constitutional agencies, only the Board of Pardons and Paroles
9 necessarily has members appointed by the governor. The provisions
10 concerning the two judicial agencies do not specify whether
11 members are appointed or who appoints any appointed members, but
12 it is unlikely that the legislature would call for elected members.
13 In any event, since these are not statutory agencies, Subsec-
14 tions (e) (in part) and (f) are not applicable. (Subsections (c)
15 and (d) are applicable; the agencies referred to are not limited
16 by the adjective "statutory.") That part of Subsection (e) dealing
17 with staggered terms is applicable since the adjective is omitted.
18 The legislature can specify, of course, that the term of office
19 expires between February 1 and May 1 of odd-numbered years.

20 It should be noted that there are references in the consti-
21 tution to the Board of Regents of The University of Texas System
22 and to the Board of Directors of The Texas A&M University System.
23 These are statutory agencies. They appear in the constitution
24 only because of a couple of "constitutional statutes." Simple

1 reference to these boards in these "constitutional statutes" in
2 no way subtracts from the legislature's power to change the
3 composition of the boards. The only limitation imposed by the
4 constitution is changing their names. In other words, the legis-
5 lature must designate some agency the "Board of Regents of The
6 University of Texas System" and another agency the "Board of
7 Directors of the Texas A&M University System."

8 (9) Since Section 24 (formerly Section 26) defines "state
9 agency," the adjective "governmental" is unnecessary.

10 (10) The second half of the original compound sentence is
11 unnecessary. The legislature has the inherent power to create
12 agencies, to specify how many members they have, to specify how
13 many of the members are to be appointed by the governor, and
14 to specify who else has the appointing power. The first two
15 sentences of the subsections are limitations on the inherent
16 power. There is no reason to mention what the legislature can
17 do, only what it cannot do.

18 (11) This formulation of "vacancy" is used to parallel
19 the rest of the subsection which speaks to "officers," not to
20 "office." For technical drafting reasons it is not possible
21 to shift all sentences to "office" instead of "officer."

22 (12) The extensive redraft is to make explicit two necessary
23 implications. First, the original words "in the manner prescribed
24 by law" were designed to cover a situation where some appointed

1 members represent particular interests and others represent
2 the public. (An example is the Industrial Accident Board which
3 has a public member, an employer member, and an employee member.
4 The public member is the chairman.) The new second sentence
5 makes explicit the purpose of the quoted words. Second, the
6 reason for giving the governor the power to designate the
7 chairman is to enhance the governor's influence over the agency.
8 The original wording was ambiguous in a case where the governor
9 designates a new appointee chairman and the senate fails to
10 confirm. The ambiguity has been resolved in accordance with
11 the purpose of the subsection.

12 (13) In the context of the subsection the designation has
13 to be from among the membership, for "designate" cannot be read
14 to mean "appoint."

15
16 Sec. 3. RETURNS OF ELECTION. Election returns for executive
17 officers must [~~shall~~] be canvassed ⁽¹⁾ [~~tabulated~~] and certified in
18 a public forum [7] in the [a] manner prescribed ⁽²⁾ [~~provided~~] by
19 law.
20
21

22 EXPLANATION

23
24 (1) "Canvassed" is the traditional term used.



1 (2) In cases where the legislature's power is limited
2 to carrying out a command the verb "prescribed" is used instead
3 of "provided."
4

5 Sec. 4. GOVERNOR'S ELIGIBILITY AND INSTALLATION. (a) To
6 (1) be [~~A-person-is~~] eligible to serve as (2) [~~for-the-office-of~~]
7 governor, a person must be a citizen of the United States [~~if~~
8 ~~he-is~~] at least 30 years old [~~of-age,--a-citizen-of-the-United~~
9 ~~States,~~] and have [~~has~~] been a resident of the state for at
10 least five years immediately preceding election. A person serving
11 as governor in the second of two consecutive four-year terms is
12 not eligible for a third consecutive term. (3)

13 (b) The legislature shall provide an appropriation (4)
14 [~~appropriations~~] for assistance to a governor-elect prior to
15 inauguration. A [~~The~~] governor-elect is [~~shall-be~~] entitled to
16 receive any information and [~~from-the-officers-and-state~~
17 ~~governmental-agencies-these~~] reports [~~to~~] that [~~which~~] the [~~an~~]
18 incumbent governor is entitled [~~to~~] to require from officers and
19 state agencies. (6)

20 (c) The governor is [~~shall-be~~] inaugurated on the Thursday
21 following the second Tuesday [~~Thursday~~] of the [~~in~~] January
22 following election or as soon thereafter as practicable. (7)
23
24

EXPLANATION

1
2
3 (1) The order of the sentence has been changed to parallel
4 the wording used in Article III for eligibility to serve in the
5 legislature.

6 (2) Using this formulation permits the deletion of the
7 second sentence of Subsection (f) of Section 5 and simplifies
8 the qualifications sentence in Section 19.

9 (3) This was removed from Section 2(a). The change in
10 wording is stylistic.

11 (4) There is no apparent reason for use of the plural.
12 Use of the singular does not prevent the legislature from having
13 separate line items in separate parts of an appropriation bill
14 or even items in separate bills.

15 (5) Although money cannot be appropriated for a private
16 purpose, it seems advisable to mention some "official" purpose
17 for providing money to a governor-elect.

18 (6) The redraft ties this privilege of the governor to
19 the information and reports provided for by Section 14.

20 (7) This ties down the date of the inauguration. Since the
21 second Thursday can precede the second Tuesday, it is appropriate
22 to make it clear that inauguration does not precede the tradi-
23 tional date for convening the legislature.

1 Sec. 5. GUBERNATORIAL SUCCESSION. (a) If the governor-
2 elect is disqualified, [~~resigns7-or~~] dies, or refuses the office (1)
3 prior to inauguration, [~~taking-office7~~] the lieutenant governor-
4 elect becomes governor for the full term. If the governor-elect
5 fails to assume office for any other reason, the lieutenant
6 governor-elect acts [~~serves~~] as governor. If the governor-
7 elect does not assume office by the end of (2) [~~within~~] the first
8 year of the term, [~~the-office-becomes-vacant7-and~~] the lieutenant
9 governor becomes governor and serves for the remainder of the term.

10 (b) If after inauguration the [~~office-of~~] governor dies,
11 resigns, becomes permanently disabled, or is removed from office, (3)
12 [~~becomes-vacant7~~] the lieutenant governor becomes governor and
13 serves for the remainder of the term.

14 (c) If the [~~offices-of-both-governor-and~~] lieutenant
15 governor becomes [~~become~~] governor and thereafter dies, resigns,
16 becomes permanently disabled, or is removed from office, [~~vacant7~~] (5)
17 the speaker of the house of representatives, if eligible
18 [~~qualified~~], becomes governor and serves for the remainder of the
19 term [~~under-the-same-conditions-and-for-the-same-term-as-provided~~
20 ~~for-the-lieutenant-governor~~].

21 (d) If the governor is absent from the state or temporarily
22 disabled, the lieutenant governor acts as governor until the
23 governor returns or is no longer disabled. If [~~both~~] the
24 [~~governor-and~~] lieutenant governor is also [~~are~~] absent from

1 the state or temporarily disabled, the president pro tempore of
2 the senate acts as governor until either the governor or
3 lieutenant governor returns or is no longer disabled [during
4 ~~such-time~~].

5 (e) While serving or acting as governor [7] a person (6)
6 [~~the-lieutenant-governor-or-president-pro-tempore-of-the-senate~~]
7 receives only the compensation payable to a governor.

8 (f) The legislature shall provide by law for further
9 [~~Further~~] succession to the office of governor. [~~shall-be~~
10 ~~provided-by-law:--No-person-may-serve-as-governor-unless-qualified~~
11 ~~for-that-office.~~] (7)

12 EXPLANATION

13 (1) One normally "resigns" only after taking office.

14 (2) The operative cut-off is the end of the year.

15 (3) This spells out the ways in which the office becomes
16 "vacant."

17 (4) It is the understanding of the committee that the line
18 of gubernatorial succession from the elected governor is:

19 (1) the originally elected lieutenant governor, (2) the speaker
20 of the house of representatives, if eligible, and (3) whatever
21 the legislature provides in accordance with the duty set forth
22 in Subsection (f). It is also the understanding of the commit-
23
24

1 tee that, under Section 23 (formerly Section 25), the governor
2 by appointment fills a vacancy in the office of lieutenant gover-
3 nor but that the appointed lieutenant governor is not constitu-
4 tionally in the line of succession. Likewise, a lieutenant
5 governor elected at mid-term as provided in Section 23 is not
6 constitutionally in the line of succession. Of course, the
7 legislature in its line of further succession could provide that
8 both the appointed and the elected-at-mid-term lieutenant gover-
9 nor or only the latter are in the line of succession. But,
10 again, this would be the case only after the speaker of the
11 house, if eligible, had become governor and the office sub-
12 sequently became vacant.

13 The redrafted Subsection (c) omits the words "under the
14 same conditions and for the same term as provided for the lieu-
15 tenant governor" and substitutes "for the remainder of the term."
16 This eliminates an unclear phrase that might have been read to
17 imply that there could be circumstances when the speaker would
18 not serve to the end of the term. This implication could only
19 lead to the conclusion that the speaker's tenure was related to
20 a lieutenant governor who would not serve for the remainder of
21 the term. This could only be an appointed lieutenant governor.

22 In the context of Section 5 as a whole it is clear that "the
23 lieutenant governor" is the person who started out as "the lieu-
24 tenant governor-elect." This offsets the implication just dis-
 cussed.

1 (5) Section 4 speaks to "eligibility."

2 (6) This covers all eventualities. The original draft was
3 inconsistent with the original Subsection (c) (new Subsection (d)
4 and did not cover whatever the legislature provides under Sub-
5 section (i).

6 (7) This is taken care of by the new formulation of
7 Section 4(a). See note (2) of the explanation of that section.
8

9 Sec. 6. DISABILITY OF ELECTIVE OFFICERS OF EXECUTIVE

10 DEPARTMENT. (a) ⁽¹⁾ The [When-the] governor may notify [notifies]
11 the chief justice of the supreme court in writing of the
12 governor's temporary disability. If, because of the disability,
13 the governor is unable to send notification to the chief justice,
14 a majority of the following officers may jointly send the
15 notification: the lieutenant governor, attorney general,
16 comptroller of public accounts, treasurer, commissioner of the
17 general land office, speaker of the house of representatives,
18 and president pro tempore of the senate. A temporary disability
19 ends on the delivery to the chief justice of the governor's
20 sworn statement to that effect. The governor's sworn statement
21 may not be denied by another notification to the chief justice.
22 At the end of one year a temporary disability becomes a permanent
23 disability without a determination by the Supreme Court of Texas.
24 The same procedure applies in the case of the temporary disability

1 of the lieutenant governor except that the governor and not the
2 lieutenant governor is one of the seven officers voting on a
3 notification. [~~that he will be temporarily unable to carry out~~
4 ~~the duties of his office or when the governor is unable to com-~~
5 ~~municate such inability to the chief justice of the supreme court,~~
6 ~~the temporary disability of the governor shall be determined by~~
7 ~~a majority vote of the governor, lieutenant governor, attorney~~
8 ~~general, comptroller of public accounts, treasurer, commissioner~~
9 ~~of the general land office, speaker of the house of representa-~~
10 ~~tives, and president pro tempore of the senate.--Restoration of~~
11 ~~ability shall be evidenced by delivery of a sworn statement from~~
12 ~~the governor acknowledging recovery filed with the supreme court.~~
13 ~~After restoration, the governor may not be determined temporarily~~
14 ~~disabled again for the same incident.--If the governor does not~~
15 ~~acknowledge recovery from a temporary disability within one year~~
16 ~~from the time the lieutenant governor begins serving as governor,~~
17 ~~the office of governor shall be vacant.--The same procedure shall~~
18 ~~apply to the temporary disability of the lieutenant governor.]~~

19 (b) Whether an elected officer of the executive branch
20 is permanently disabled and unable to discharge the duties of
21 office is to be determined only by the Supreme Court of Texas
22 in a proceeding conducted under rules of procedure prescribed
23 by that court. ⁽²⁾ [~~The permanent disability of any elected~~
24 ~~officer of the executive department to perform the duties of~~

1 the-office-during-the-term-for-which-elected-shall-be-determined
2 in-a-proceeding-in-the-supreme-court-of-the-state-under-such
3 rules-of-procedure-as-may-be-prescribed-by-that-court.] The
4 proceeding may be initiated only by a [A] majority vote of the
5 governor, lieutenant governor, attorney general, comptroller of
6 public accounts, treasurer, commissioner of the general land
7 office, speaker of the house of representatives, and president
8 pro tempore of the senate. [~~shall-initiate-such-proceedings.~~]
9 If the supreme court determines that the officer [~~any-elected~~
10 ~~officer-of-the-executive-department~~] is permanently disabled,
11 [~~is-unable-to-discharge-the-duties-of-his-office-by-reason-of-a~~
12 ~~permanent-disability,~~] it shall declare the office vacant [~~the~~
13 ~~office-shall-be-declared-vacant~~].

14 [~~(c)--The-supreme-court-shall-have-exclusive-jurisdiction~~
15 ~~to-determine-the-existence-of-a-vacancy-arising-under-this~~
16 ~~section.~~]
17 (3)

18 EXPLANATION

19
20 (1) The original draft was confusing in that it implied
21 that the collection of officers voted even if the governor said
22 in writing that he was disabled and in that it seemed to say that
23 he voted upon his own disability. The redraft clears this up.
24 Other changes in the redraft should be noted. The word "incident"

1 to cover an attempted re-notification of disability when nothing
2 had changed seemed ill-advised because, whatever its technical
3 meaning in the world of medicine, the ordinary reader would be
4 puzzled by the word. The purpose of the limitation on re-notifi-
5 cation for the same "incident" was to prevent an effort to keep
6 the governor from resuming office and to prevent a governor from
7 feigning disability in order to draw his salary but not work.
8 The reformulation covers both situations. In the one case, if
9 the governor swears that he has recovered, a new notification
10 from the named officers in effect would have to allege a new
11 "incident" in order to avoid being simply a denial of recovery.
12 In the other case, the governor would have to send a notifica-
13 tion based on a new "incident," else he would simply be denying
14 that he had recovered.

15 The statement concerning a temporary disability's becoming
16 permanent at the end of a year conflicted with Subsection (b).
17 The redraft eliminates the inconsistency.

18 (2) The reformulation of the first sentence is stylistic
19 except for the insertion of "only," which eliminates the need
20 for Subsection (c). The changes in the balance of the subsec-
21 tion are stylistic.

22 (3) See note (2) above.
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EXPLANATION

(1) The changes are stylistic. The change in title more nearly reflects the subject matter.

Sec. 9. COMMANDER-IN-CHIEF; CALLING FORTH MILITIA. The governor ⁽¹⁾ is [~~shall-be~~] commander-in-chief of the military forces of the state [7] except when they are called into actual service of the United States. ⁽²⁾ The governor may [~~7-and-shall-have-power-to~~] call forth the militia to execute the laws of the state, [~~to~~] ⁽³⁾ suppress insurrections, repel invasions, and [~~for-the~~] protect [~~protection-of~~] life and property in cases of natural disasters.

EXPLANATION

(1) The constitution is not imposing a duty on the governor; the provision simply states a fact of power.

(2) "May" means "has the power to."

(3) This change is to provide consistency in the compound predicate.

Sec. 10. EXECUTION OF LAWS; CONDUCT OF BUSINESS WITH OTHER STATES, THE UNITED STATES, AND FOREIGN NATIONS. The governor

1 shall cause the laws to be faithfully executed and shall conduct,
2 in person or in the [~~such~~] manner prescribed ⁽¹⁾ [~~as-shall-be-pre-~~
3 ~~vided~~] by law, all intercourse and business of the state with
4 other states, the United States, and foreign nations.

5
6 EXPLANATION

7
8 (1) See note (2) to the Explanation of Section 3.

9
10 Sec. 11. (1) CONVENING THE LEGISLATURE IN SPECIAL SESSION.
11 The governor [~~may~~], on extraordinary occasions, may convene the
12 legislature in special session stating specifically the purpose
13 of the session. Special sessions may [~~shall~~] not exceed 30 days.

14
15 EXPLANATION

16
17 (1) If Section 7(e) of Article III provides for special
18 sessions, it will be necessary either to delete this section
19 or revise Section 7(e) to delete the duplication.

Con Office

COMPARISON OF THE EXECUTIVE ARTICLE
PASSED BY THE CONVENTION ON SECOND READING
WITH THE EXECUTIVE ARTICLE OF THE
1876 CONSTITUTION, AS AMENDED

Convention Staff Document
March 19, 1974

SUMMARY: The Convention-passed Executive Article is shorter and more readable than the 1876 Constitution. It improves the authority of the governor to bring policy direction, managerial guidance, and budget control to the executive branch of state government. It provides new authority for the governor to remove appointees for cause and establishes new procedures for mandatory reviews of the necessity for each state agency and for the regular consideration of efficiency and effectiveness of the organization of the executive branch. The new Article contains approximately 2,770 words versus the 3,357 words of the present Constitution.

®

COMPARISON OF EXECUTIVE ARTICLES

CONVENTION ARTICLE
PASSED ON SECOND READING

1876 CONSTITUTION

1. Provides for an executive department consisting of the Governor, Lt. Governor, Attorney General, Secretary of State, Comptroller of Public Accounts, Treasurer and Commissioner of the General Land Office. All of these officers are to be elected except the Secretary of State. *Same*
2. Provides for four-year terms for state-wide elected officials and limits the governor to two four-year terms. *Provides for four-year terms. No limit on the number of terms a governor can serve.*
3. Provides that the terms of officials appointed to state boards and commissions will expire between February 1 and May 1 of odd-numbered years, thus eliminating "midnight" appointments by lame duck governors and insuring that a new governor will have an opportunity in his first four months in office to appoint at least one-third of the members of each board or commission. *Governor has no similar authority.*
4. Provides that the governor shall designate the chairman of each state board or commission. *Governor has no similar authority.*
5. Authorizes the governor to remove appointed officers of state governmental agencies for cause, with the proviso that the senate can refuse the removal by a majority vote. *Governor has no removal authority.*
6. Mandates the Legislature to provide appropriations for the governor-elect prior to inauguration in order to allow him to organize his office and prepare for the duties of his new office. *No provision is made for appropriations for the governor-elect and attempts to provide such funds have been held unconstitutional.*

7. Provides that the governor may call the Legislature into special session for a period of time not to exceed 30 days. *Similar provision.*
8. Authorizes the governor to veto line items in appropriation bills. *Similar provision.*
9. Designates the governor as chief planning officer of the state in order that the governor can be responsible for the orderly planning of future state governmental activities. *No similar provision.*
10. Provides a clear authority for the governor to prepare and submit a budget to the Legislature. *Similar provision but vaguely worded.*
11. Provides new authority for the Legislature to provide by statute for the governor to exercise specific fiscal controls on the administration of the state budget. *No similar provisions. Previous attempts by the Legislature to give this authority to the governor have been held in conflict with the 1876 Constitution.*
12. Mandates a regular review of the organization and efficiency of the executive branch and provides that the governor may submit reorganization plans to the Legislature which must bring the plans as they may be amended to a vote of each house. *No similar provision for administrative reorganization.*
13. Provides for a Board of Pardons and Paroles and gives the governor power, on the written recommendation and advice of the Board, to grant various types of clemency. *Similar but more lengthy and complex provisions.*
14. Provides that all governmental agencies, except institutions of higher education, shall have a life of not more than ten years unless the statutes creating them are renewed for another period of ten years or less. *No similar provision for reviewing the necessity of each state agency on a regular basis.*

Con off
2nd Reading

EXECUTIVE COMMITTEE
OFFICIAL SECOND READING ADOPTION - ARTICLE IV

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF TEXAS,

That there be a new article on the executive to
read as follows:

ARTICLE IV

THE EXECUTIVE

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

Sec. 2. SELECTION AND TERMS OF OFFICERS. (a) At general elections beginning in 1978 qualified voters of the state shall elect the governor, lieutenant governor, attorney general, comptroller of public accounts, treasurer, the commissioner of the general land office, and those other elected officers provided by law for four-year terms. The governor may not serve more than two four-year terms in succession.

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

(c) Except as otherwise provided in this constitution, each officer of the executive branch appointed by the governor to state governmental agencies created by statute shall have a term that expires between February 1 and May 1 of odd-numbered years. Officers of multi-member agencies shall have staggered terms and the number of officers to be appointed by the governor shall be provided by law. At the expiration of the term the office shall become vacant.

(d) The governor shall designate in the manner prescribed by law the chairman from among the appointive officers of state governmental agencies. If the governor fails to designate a chairman prior to May 1 of odd-numbered years the appointive officers shall choose the chairman from among their membership.

(e) The governor shall have authority to remove for cause all officers who were appointed by any governor and who were confirmed by the senate. Prior to removal, the governor shall provide the senate a proposal of removal containing the cause for the recommended action. The senate may refuse the removal by a majority vote of the membership, within 45 days of submission.



1 (f) Officers appointed by the governor to state governmental
2 agencies must be confirmed with the advice and consent of the
3 senate.

4 Sec. 3. RETURNS OF ELECTION. Election returns for executive
5 officers shall be tabulated and certified in a public forum, in
6 a manner provided by law.

7 Sec. 4. GOVERNOR'S ELIGIBILITY AND INSTALLATION. (a) A
8 person is eligible for the office of governor if he is at least
9 30 years of age, a citizen of the United States, and has been a
10 resident of the state at least five years immediately preceding
11 election.

12 (b) The legislature shall provide appropriations for a
13 governor-elect prior to inauguration. The governor-elect shall
14 be entitled to receive from the officers and state governmental
15 agencies those reports to which an incumbent governor is entitled.

16 (c) The governor shall be inaugurated on the second Thursday
17 in January or as soon thereafter as practicable.

18 Sec. 5. GUBERNATORIAL SUCCESSION. (a) If the
19 governor-elect is disqualified, resigns, or dies prior to taking
20 office, the lieutenant governor-elect becomes governor for the
21 full term. If the governor-elect fails to assume office for any
22 other reason, the lieutenant governor-elect serves as governor.
23 If the governor-elect does not assume office within the first
24 year of the term the office becomes vacant, and the lieutenant
25 governor becomes governor and serves for the remainder of the
26 term.

27 (b) If after inauguration the office of governor becomes
28 vacant, the lieutenant governor becomes governor and serves for
29 the remainder of the term.

30 (c) If the offices of both governor and lieutenant governor
31 become vacant, the speaker of the house of representatives, if
32 qualified, becomes governor under the same conditions and for the
33 same term as provided for the lieutenant governor.

34 (d) If the governor is absent from the state or temporarily
35 disabled, the lieutenant governor acts as governor until the
36 governor returns or is no longer disabled. If both the governor
37 and lieutenant governor are absent from the state or temporarily
38 disabled, the president pro tempore of the senate acts as governor
39 during such time.

40 (e) While serving or acting as governor, the lieutenant
41 governor or president pro tempore of the senate receives only the
42 compensation payable to a governor.

43 (f) Further succession to the office of governor shall be
44 provided by law. No person may serve as governor unless qualified
45 for that office.

46 Sec. 6. DISABILITY OF ELECTIVE OFFICERS OF EXECUTIVE
47 DEPARTMENT. (a) When the governor notifies the chief justice
48 of the supreme court in writing that he will be temporarily unable



1 to carry out the duties of his office or when the governor is
2 unable to communicate such inability to the chief justice of the
3 supreme court, the temporary disability of the governor shall be
4 determined by a majority vote of the governor, lieutenant governor,
5 attorney general, comptroller of public accounts, treasurer,
6 commissioner of the general land office, speaker of the house of
7 representatives, and president pro tempore of the senate.
8 Restoration of ability shall be evidenced by delivery of a sworn
9 statement from the governor acknowledging recovery filed with the
10 supreme court. After restoration, the governor may not be
11 determined temporarily disabled again for the same incident. If
12 the governor does not acknowledge recovery from a temporary
13 disability within one year from the time the lieutenant governor
14 begins serving as governor, the office of governor shall be vacant.
15 The same procedure shall apply to the temporary disability of the
16 lieutenant governor.

17 (b) The permanent disability of any elected officer of the
18 executive department to perform the duties of the office during
19 the term for which elected shall be determined in a proceeding
20 in the supreme court of the state under such rules of procedure
21 as may be prescribed by that court. A majority vote of the
22 governor, lieutenant governor, attorney general, comptroller of
23 public accounts, treasurer, commissioner of the general land
24 office, speaker of the house of representatives, and president
25 pro tempore of the senate shall initiate such proceedings. If
26 the supreme court determines that any elected officer of the
27 executive department is unable to discharge the duties of his
28 office by reason of a permanent disability, the office shall be
29 declared vacant.

30 (c) The supreme court shall have exclusive jurisdiction
31 to determine the existence of a vacancy arising under this section.

32 Sec. 7. COMPENSATION OF OFFICERS OF EXECUTIVE DEPARTMENT.
33 The compensation of the governor, lieutenant governor, attorney
34 general, comptroller of public accounts, treasurer, commissioner
35 of the general land office, and secretary of state shall be as
36 provided by law. The compensation of officers of the executive
37 department may not be diminished during their term of office.
38 The governor shall have the use of the Governor's Mansion.

39 Sec. 8. DUAL OFFICE HOLDING; OTHER COMPENSATION. No officer
40 of the executive department may hold any other civil or corporate
41 office; nor may the officer practice any other profession or hold
42 other employment, and receive compensation, or the promise thereof
43 for the same.

44 Sec. 9. COMMANDER-IN-CHIEF; CALLING FORTH MILITIA. The
45 governor shall be commander-in-chief of the military forces of
46 the state, except when they are called into actual service of the
47 United States, and shall have power to call forth the militia to
48 execute the laws of the state, to suppress insurrections, repel



1 invasions, and for the protection of life and property in natural
2 disasters.

3 Sec. 10. EXECUTION OF LAWS; CONDUCT OF BUSINESS WITH OTHER
4 STATES, THE UNITED STATES, AND FOREIGN NATIONS. The governor
5 shall cause the laws to be faithfully executed and shall conduct,
6 in person or in such manner as shall be provided by law, all
7 intercourse and business of the state with other states, the
8 United States, and foreign nations.

9 Sec. 11. CONVENING THE LEGISLATURE IN SPECIAL SESSION.
10 The governor may, on extraordinary occasions, convene the
11 legislature in special session stating specifically the purpose
12 of the session. Special sessions shall not exceed 30 days.

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

17 Sec. 13. ACTION ON BILLS AND RESOLUTIONS. (a) Every bill
18 that passes both houses of the legislature shall be presented to
19 the governor. The governor may approve the bill by signing it
20 in which event it shall become law and shall be filed with the
21 secretary of state. The governor may veto the bill by returning
22 it with objections to the house in which it originated. That
23 house shall enter the objections in its journal and reconsider
24 the bill for passage over the veto. If the bill passes that house
25 by a record vote of two-thirds of the members present and voting,
26 a quorum being present, it shall be sent with the governor's
27 objections to the other house which shall enter the objections
28 in its journal and reconsider the bill for passage over the veto.
29 If the bill likewise passes that house by a record vote of
30 two-thirds of the members present and voting, a quorum being
31 present, the bill shall become a law and shall be filed with the
32 secretary of state. If the governor fails to veto a bill within
33 10 days (Sundays excepted) after it is presented, the bill shall
34 become a law and shall be filed with the secretary of state. If
35 the legislature by its adjournment prevents a veto, the bill shall
36 become a law and shall be filed with the secretary of state unless
37 within 20 days after adjournment the governor files the bill and
38 objections with the secretary of state and gives public notice
39 thereof by proclamation. If the same legislature meets again,
40 the secretary of state shall return the bill with the governor's
41 objections to the house in which the bill originated for
42 reconsideration in the manner provided above.

43 (b) The governor may veto any item of appropriation in a
44 bill. Portions of a bill not vetoed shall become law. Items
45 vetoed together with the governor's objections shall be returned
46 to the house in which the bill originated for reconsideration in
47 the manner provided in Subsection (a).

48 (c) All orders and resolutions requiring the concurrence

1 of both houses of the legislature shall be presented to the
2 governor. If the governor disapproves an order or resolution,
3 it shall not be effective unless repassed by both houses in the
4 manner prescribed in Subsection (a) hereof. Presentation to the
5 governor shall not be required on orders or resolutions pertaining
6 to (1) amendments to the state and federal constitutions, (2)
7 referendums, (3) adjournments, (4) legislative rules, (5)
8 investigations and studies, (6) internal administration, and (7)
9 removal by address.

10 Sec. 14. CHIEF PLANNING OFFICER. The governor is the chief
11 planning officer of the state and may require information in
12 writing and reports from all state governmental agencies and
13 officers upon any subject relating to their duties, conditions,
14 management, and expenditures.

15 Sec. 15. BUDGET PREPARATION. At the beginning of each
16 session at which appropriations are to be made for the general
17 operation of the government, the governor shall submit to the
18 legislature a budget for all proposed state expenditures for the
19 applicable fiscal period.

20 Sec. 16. BUDGET EXECUTION. The governor shall exercise
21 those powers of fiscal control as provided by law. The governor
22 shall insure that items of appropriation for the executive branch
23 shall be expended only as directed by the legislature, except
24 that the legislature shall determine whether this power shall
25 extend to elected officers of the executive department.

26 Sec. 17. ADMINISTRATIVE REORGANIZATION. The governor shall
27 submit to the legislature in sessions held in odd-numbered years
28 a report on the organization and efficiency of the executive
29 branch, and the governor shall, within two years after the adoption
30 of this constitution, and at other times may, submit to the
31 legislature proposed reorganization bills reassigning functions
32 among, consolidating, or abolishing any statutory state
33 governmental agencies within the executive branch. A
34 reorganization bill shall be considered by the legislature to
35 which it is submitted, and as accepted, amended, or substituted,
36 brought to a vote of each house. Nothing in this section shall
37 prevent administrative reorganization by the normal legislative
38 process.

39 Sec. 18. REPRIEVES, COMMUTATIONS, AND PARDONS; REMISSION
40 OF FINES AND FORFEITURES. (a) There is hereby created a Board
41 of Pardons and Paroles, whose membership and terms of office shall
42 be prescribed by law. An equal number of members of the board
43 shall be appointed by the governor, the chief justice of the
44 supreme court, and the presiding justice of the court of criminal
45 appeals, respectively; the appointments of all members of the
46 board shall be made with the advice and consent of the senate.
47 Each vacancy shall be filled by the respective appointing officer
48 that made the appointment to such position.

1 (b) The governor shall have the power to grant one reprieve
2 in any capital case for a period not to exceed 30 days. The
3 governor shall also have the power, on the written signed
4 recommendation and advice of the Board of Pardons and Paroles,
5 or a majority thereof, to grant pardons, reprieves, and
6 commutations of punishment, to remit fines and forfeitures, and
7 to revoke paroles and conditional pardons.

8 (c) If the court of criminal appeals is abolished, or
9 merged into the Supreme Court of Texas by this constitution or
10 amendment thereto, the appointing power vested in the presiding
11 justice of the court of criminal appeals shall be vested in the
12 Attorney General of Texas.

13 Sec. 19. LIEUTENANT GOVERNOR. The lieutenant governor
14 shall possess the same qualifications as provided for the governor.
15 The qualified voters shall cast separate votes for the candidates
16 for governor and lieutenant governor. The lieutenant governor
17 shall, by virtue of the office, be president of the senate and
18 when the senate is equally divided may cast a deciding vote.

19 Sec. 20. SECRETARY OF STATE. The secretary of state shall
20 perform the duties required by this constitution and other duties
21 as provided by law.

22 Sec. 21. ATTORNEY GENERAL. The attorney general must be
23 qualified to practice before the supreme court of the state.
24 Except as provided by law, the attorney general shall represent
25 the state in all civil suits in which the state may be a party
26 in all the courts of the state and proceedings and courts of the
27 United States, shall especially inquire into the charter rights
28 of all private corporations, shall represent the state in quo
29 warranto proceedings, shall give legal advice in writing to the
30 governor and other executive officers when requested by them, and
31 shall have all the powers of the office as at common law. The
32 attorney general shall have other duties as provided by law.

33 Sec. 22. COMPTROLLER OF PUBLIC ACCOUNTS. The comptroller
34 of public accounts shall perform the duties required by this
35 constitution and other duties as provided by law.

36 Sec. 23. TREASURER. The treasurer shall perform the duties
37 provided by law.

38 Sec. 24. GENERAL LAND COMMISSIONER. The commissioner of
39 the general land office shall administer a general land office
40 at the seat of government, in which all land titles that emanate
41 from the state shall be registered, and shall perform other duties
42 as provided by law.

43 Sec. 25. VACANCIES IN STATEWIDE OFFICES. Unless otherwise
44 provided by this constitution, all vacancies in elective statewide
45 offices shall be filled by appointment of the governor with the
46 advice and consent of the senate. Appointments to vacancies in
47 elective statewide offices shall continue only until the first
48 general election thereafter.

Constitution Office

A NEW CONSTITUTION FOR TEXAS?

Research on Revision

prepared by the

TEXAS RESEARCH LEAGUE, P. O. BOX 12456, AUSTIN, TEXAS 78711



BULLETIN NO. 3 - 1974

March 5, 1974

COMMITTEE ON THE EXECUTIVE BRANCH PROPOSES MODIFIED STRENGTHENING OF GOVERNOR'S OFFICE

In transmitting its proposals to the full Constitutional Convention, the Committee on the Executive Branch reports that it ". . . has attempted to provide the governor with additional authority and to provide a cohesive and manageable executive branch." The Committee's recommendations would strengthen the Governor's fiscal powers and enhance his position with respect to other executive and administrative agencies - subject to legislative authorization and/or restriction. Like the Constitutional Revision Commission, the Committee rejected the concept of a mandatory "cabinet system," but left broad latitude for statutory changes in structure and authority. Convention President Price Daniel announced that the Executive Article would be taken up by the full Convention following completion of the Education Article.

PROPOSED FISCAL POWERS

Under the proposed Art. IV, the Governor would be given constitutional status as Chief Planning Officer and Chief Budget Officer for the State (designations which are now statutory). He would be authorized to require reports from other agencies "relating to their duties, conditions, management, and expenditures" for planning purposes, and he would be required to submit a budget to each session of the Legislature when general appropriations are to be considered. However, the Constitutional Revision Commission recommendation that the Governor be required to submit an appropriations bill, which the chairmen of legislative appropriations committees in turn would have been required to introduce, was deleted in recognition ". . . that the governor's budget will most likely be taken as a general guide rather than a working bill. . ."

Presumably, the Committee's recommended language would permit (1) continuation of the present dual executive-legislative budget-making system which is unique to Texas; (2) establishment of some form of executive-legislative budget commission approach as recommended by the Texas Research League in its 1971 budget study (depending, perhaps, on the wording of the Separation of Powers Clause which is yet to be reported); or (3) development of an executive budget system subject to legislative review. However, the final meaning of the proposed clause might require some future legal interpretation.



1974 OFFICERS

GROGAN LORD, *Chairman* WALTER F. JOHNSON, *Vice Chairman* LEWIS H. BOND, *Treasurer* JAMES W. MCGREW, *Executive Director*

EXECUTIVE BRANCH

GOVERNOR

EXECUTIVE DEPARTMENT

ELECTIVE OFFICERS

- A. Those listed in Sec. 1: B. Other Officers as may
 1. Governor be provided by law.
 2. Lieutenant Governor
 3. Attorney General
 4. Comptroller of Public Accounts
 5. Commissioner of the General Land Office

APPOINTIVE OFFICERS

- A. Those listed in Sec. 1: B. Other Officers as may
 1. Secretary of State be provided by law.

 Appointive officers are appointed by the Governor with the advice and consent of the Senate and serve at the pleasure of the Governor.

Elective Officers serve four-year terms and are subject to removal for disability.

STATE GOVERNMENTAL AGENCIES

AGENCIES ESTABLISHED IN THE CONSTITUTION:

- A. Railroad Commission (elective)
 B. Board of Education (elective)
 C. Coordinating Board (appointive)
 D. Other Possible Agencies

STATUTORY OFFICES AND AGENCIES

- A. Officers elected statewide.

 B. Definition. Includes all agencies, boards, commissions, departments, institutions unless otherwise provided by law.

CONDITIONS AFFECTING APPOINTIVE AGENCIES

- A. Selection. Members of governing bodies may be selected by:
 1. Appointment by the Governor with the advice and consent of the Senate;
 2. Appointment by other state officers;
 3. Ex officio status.
- B. Removal. The Governor may remove for cause those officers appointed by the Governor with the advice and consent of the Senate.
- C. Terms of Office.
 1. Officers of multi-member agencies have staggered terms.
 2. Terms of officers appointed by the Governor expire between February 1 and April 1 of odd-numbered years.
 3. Offices become vacant upon expiration.
- D. Chairmen of Agencies. Unless otherwise provided by law, the Governor may designate the chairman from the appointive officers of state governmental agencies.

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EXECUTIVE BRANCH

GOVERNOR

EXECUTIVE DEPARTMENT

ELECTIVE OFFICERS

- A. Those listed in Sec. 1: B. Other Officers as may be provided by law.
1. Governor
 2. Lieutenant Governor
 3. Attorney General
 4. Comptroller of Public Accounts
 5. Commissioner of the General Land Office

Elective Officers serve four-year terms and are subject to removal for disability.

APPOINTIVE OFFICERS

- A. Those listed in Sec. 1: B. Other Officers as may be provided by law.
1. Secretary of State

Appointive officers are appointed by the Governor with the advice and consent of the Senate and serve at the pleasure of the Governor.

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CONDITIONS AFFECTING APPOINTIVE AGENCIES

- A. Selection. Members of governing bodies may be selected by:
 1. Appointment by the Governor with the advice and consent of the Senate;
 2. Appointment by other state officers;
 3. Ex officio status.
- B. Removal. The Governor may remove for cause those officers appointed by the Governor with the advice and consent of the Senate.
- C. Terms of Office.
 1. Officers of multi-member agencies have staggered terms.
 2. Terms of officers appointed by the Governor expire between February 1 and April 1 of odd-numbered years.
 3. Offices become vacant upon expiration.
- D. Chairmen of Agencies. Unless otherwise provided by law, the Governor may designate the chairman from the appointive officers of state governmental agencies.

The Committee recommends that the Governor be given constitutional responsibility for budget execution - subject to legislative authorization. The Legislature also could determine whether or not agencies headed by elective officers of the executive department would be included under the Governor's budget execution authority, and which other agencies would be exempt by their removal from the executive "branch." (See diagram of the proposed Executive structure reproduced from the Committee's report on the opposite page.) By the specific constitutional authorization, the proposal would overcome the barrier found by the Attorney General in the Separation of Powers clause in the 1876 Constitution. However, unless the Governor's role in budget *making* was strengthened by legislative action, he would find himself charged with executing a budget drafted and approved by legislative officials. The Committee proposal deletes the CRC recommendation that the Governor be given authority to *reduce* appropriation items, but retains the item veto power from the 1876 Constitution.

The CRC proposal that the Governor-elect be given funds to begin preparations for his new administration before the next legislative session was retained by the Committee, but it would make no provision for postponing the legislative session to provide additional preparatory time for the Governor-elect.

ORGANIZATION AND ADMINISTRATION POWERS

The Committee's proposed Art. IV retains several CRC recommended principles for strengthening the Governor's responsibilities vis-a-vis the administrative agencies. (1) Staggered terms of plural boards or commissions would be set to expire between February 1 and April 1 of odd years so that a new Governor could make at least one-third of the appointments immediately after taking office, and another third at midterm - thus gaining a majority after two years; (2) The Governor could appoint the chairman of plural boards or committees, unless the Legislature provided for statutory designation (as in the case of the public member of the Texas Employment Commission); and (3) The Governor could remove any of his appointees for cause, although he would be required to submit the names of officers to be removed to the Senate, which could override his decision by a two-thirds vote within 30 days of submission. On the other hand, the Committee proposed two steps aimed at preventing inaction on appointments by the Governor: (1) offices subject to his appointment would become vacant at the expiration of a term; and (2) failure by the Governor to designate a chairman prior to April 1 of odd-numbered years would delegate that responsibility to other members of the board or commission.

The Committee also retained the CRC proposal that the Governor be authorized to recommend reorganization of agencies in the executive branch, but changes would require confirmation by resolution of both houses - rather than taking effect in the absence of specific rejection by one or both houses. The alternative approach puts the burden of securing approval on the advocates of change, rather than making the opponents of change take the initiative. In addition, the Legislature's authorizing resolution could change the Governor's proposed reorganization plan, rather than simply accepting or rejecting his proposals.

The prospects for administrative reorganization - and even program modification - probably would be enhanced by a new concept introduced in Art. IV by the Committee: "State governmental agencies, excluding those institutions related to higher education, created by statute with appointive officers shall have a life of not more than 10 years unless renewed for another 10 years or less, by the legislature."

OTHER CHANGES PROPOSED

The Committee's proposed Executive Article would restore the Railroad Commission to constitutional status, with three members elected state-wide. The CRC version would have left both decisions to statute. The Committee retained the other constitutional officers as proposed by the CRC, except that the Land Commissioner would continue to be elected by constitutional requirement. The State Treasurer's office would be omitted from the Constitution and left to statutory decision as recommended by the Commission. Duties and functions of the Comptroller and Land Commissioner largely would be left to statute.

IN SUM

The proposed Executive Article retains the flexibility for changes in organization which characterizes the 1876 Constitution. It would remove the existing barrier to a statutory grant of authority to the Governor for budget execution, and it might encourage improvements in both the fiscal and administrative processes of state government.



Com Office

A large, faint watermark of a stylized letter 'T' is centered on the page. The 'T' is composed of multiple concentric, slightly offset rectangular outlines, creating a 3D effect. The top bar of the 'T' is wider than the stem, and the stem tapers slightly towards the bottom.

EXECUTIVE BRANCH
OFFICIAL COMMITTEE REPORT - ARTICLE IV

®

EXECUTIVE BRANCH

OFFICIAL COMMITTEE REPORT - ARTICLE IV

February 27, 1974

THE HONORABLE PRICE DANIEL, JR., President
Constitutional Convention of 1974

Sir:

We, your Committee on the Executive Branch, to whom was referred Article IV of Constitutional Convention Proposal 1, have had the same under consideration and beg to report back with the recommendation that it do pass in the form attached.

The proposal was reported from
committee by the following
record vote:

Respectfully submitted,

_____ 20 _____ yeas
_____ 0 _____ nays
_____ present,
not voting

Bill Meier
Bill Meier, Chairman

(January 11, 1974, filed; January 14, 1974, referred to Committee on the Executive Branch; February 27, 1974, reported favorably by a vote of 20 yeas, 0 nays; February 27, 1974, sent to printer.)



TEXAS CONSTITUTIONAL CONVENTION

REPORT
OF THE
COMMITTEE ON THE EXECUTIVE BRANCH

Article IV
The Executive Branch

Bill Meier

Chairman



February 27, 1974

The Honorable Price Daniel, Jr.
President, Texas Constitutional Convention

The Committee on the Executive Branch submits herewith its report containing recommended provisions for a new executive branch article in the Texas Constitution. The proposal is intended to replace in its entirety Article IV of the present constitution.

The committee has attempted to provide the governor with additional authority and to provide for a cohesive and manageable executive branch. Every attempt has been made to put the provisions of Article IV into language which could be understood by the average citizen.

The committee members voted 20 to 0 to report the article as presented to the convention, although members may differ in regard to various sections.

The report was adopted after consideration of the Constitutional Revision Commission proposal, suggestions of over 50 persons who testified before the committee, proposals made by delegates to the convention, and open debate by the committee members.



The committee believes that this proposed article provides for an improved constitutional executive branch and urges its adoption by the Constitutional Convention.

Bill Meier
Bill Meier, Chairman



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BE IT PROPOSED BY THE COMMITTEE ON THE EXECUTIVE,

That there be a new article on the executive to read as follows:

ARTICLE IV

THE EXECUTIVE

1 Sec. 1. OFFICERS. The governor is the chief executive
 2 officer of the state. Officers of the executive department of
 3 the executive branch are the governor, lieutenant governor,
 4 attorney general, comptroller of public accounts, ^{Treasurer} commissioner
 5 of the general land office, secretary of state, and those other
 6 officers as provided by law.

7 Sec. 2. SELECTION AND TERMS OF OFFICERS. (a) At general
 8 elections beginning in 1978 qualified voters of the state shall
 9 elect the governor, lieutenant governor, attorney general,
 10 comptroller of public accounts, ^{Treasurer} the commissioner of the general
 11 land office, and those other elected officers provided by law for
 12 four-year terms. *He Governor not serve more than 24 yr terms in succession*

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

17 (c) Except as otherwise provided in this constitution,
 18 each officer of the executive branch appointed by the governor

*04/8
action
3/8
misc note*

*Hale and
102-39
3/8*

*Ogg
new
action
added
misc 3/8*

Selecting term of Treasurer ... Shall perform other duties provided by law



1 to state governmental agencies created by statute shall have a
2 term that expires between February 1 and April 1 of odd-numbered
3 years. Officers of multi-member agencies shall have staggered
4 terms and the number of officers to be appointed by the governor
5 shall be provided by law. At the expiration of the term the
6 office shall become vacant.

7 (d) Unless otherwise provided by law, the governor may
8 designate the chairman from the appointive officers of state
9 governmental agencies. If the governor fails to designate a
10 chairman prior to April 1 of odd-numbered years the appointive
11 officers shall choose the chairman from among their membership.

12 (e) The governor shall have ^{authority} power to remove for cause all
13 officers who ^{who were appointed by any governor and who were confirmed} serve by appointment of the governor with the advice
14 and consent of the senate. ^{by the senate} Prior to removal, the governor
15 shall provide the senate a proposal of removal containing the cause for
16 submit names of officers to the senate. [The senate may refuse
17 the removal by vote of two-thirds of the membership, within 30
18 days of submission.]

18 (f) Officers appointed by the governor to state governmental
19 agencies ^{must} shall be confirmed with the advice and consent of the
20 senate.

21 Sec. 3. RETURNS OF ELECTION. Election returns for executive
22 officers shall be tabulated and certified in a public forum, in
23 a manner provided by law.

24 Sec. 4. GOVERNOR'S ELIGIBILITY AND INSTALLATION. (a) A

Craddock amendment as amended by Rousen 126-17 3/12
The Senate may refuse the removal by a majority vote
of the membership within 45 days of submission.

Van Dahlen
amendment
passed
3/12

Garcia
amendment
approved
voice vote
3/12

Hammer
amendment
voice approval
3/12

no
amendment

Van Dahlen
amendment
passed
113-47
voice vote



1 person is eligible for the office of governor if he is at least
2 30 years of age, a citizen of the United States, and has been a
3 resident of the state at least five years immediately preceding
4 election.

5 (b) The legislature shall provide appropriations for a
6 governor-elect prior to inauguration. The governor-elect shall
7 be entitled to receive from the officers and state governmental
8 agencies those reports to which an incumbent governor is entitled.

9 (c) The governor shall be inaugurated on the second Thursday
10 in January or as soon thereafter as practicable.

11 Sec. 5. GUBERNATORIAL SUCCESSION. (a) If the
12 governor-elect is disqualified, resigns, or dies prior to taking
13 office, the lieutenant governor-elect becomes governor for the
14 full term. If the governor-elect fails to assume office for any
15 other reason, the lieutenant governor-elect serves as governor.
16 If the governor-elect does not assume office within the first
17 year of the term the office becomes vacant, and the lieutenant
18 governor becomes governor and serves for the remainder of the
19 term.

20 (b) If after inauguration the office of governor becomes
21 vacant, the lieutenant governor becomes governor and serves for
22 the remainder of the term.

23 (c) If the offices of both governor and lieutenant governor
24 become vacant, the president pro tempore of the senate, if

1 qualified, becomes governor under the same conditions and for the
2 same term as provided for the lieutenant governor.

3 (d) If the governor is absent from the state or temporarily
4 disabled, the lieutenant governor acts as governor until the
5 governor returns or is no longer disabled. If both the governor
6 and lieutenant governor are absent from the state or temporarily
7 disabled, the president pro tempore of the senate acts as governor
8 during such time.

9 (e) While serving or acting as governor, the lieutenant
10 governor or president pro tempore of the senate receives only the
11 compensation payable to a governor.

12 (f) Further succession to the office of governor shall be
13 provided by law. No person may serve as governor unless qualified
14 for that office.

15 Sec. 6. DISABILITY OF ELECTIVE OFFICERS OF EXECUTIVE

16 DEPARTMENT. (a) When the governor notifies the chief justice
17 of the supreme court in writing that he will be temporarily unable
18 to carry out the duties of his office or when the governor is
19 unable to communicate such inability to the chief justice of the
20 supreme court, the temporary disability of the governor shall be
21 determined by a majority vote of the governor, lieutenant governor,
22 attorney general, comptroller of public accounts, ^{Treasurer} commissioner
23 of the general land office, speaker of the house of
24 representatives, and president pro tempore of the senate.

*09/12
amended
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1 Restoration of ability shall be evidenced by delivery of a sworn
2 statement from the governor acknowledging recovery filed with the
3 supreme court. After restoration, the governor may not be
4 determined temporarily disabled again for the same incident. If
5 the governor does not acknowledge recovery from a temporary
6 disability within one year from the time the lieutenant governor
7 begins serving as governor, the office of governor shall be vacant.
8 The same procedure shall apply to the temporary disability of the
9 lieutenant governor.

10 (b) The permanent disability of any elected officer of the
11 executive department to perform the duties of the office during
12 the term for which elected shall be determined in a proceeding
13 in the supreme court of the state under such rules of procedure
14 as may be prescribed by that court. A majority vote of the
15 governor, lieutenant governor, attorney general, comptroller of
16 public accounts, ^{Treasurer} commissioner of the general land office, speaker
17 of the house of representatives, and president pro tempore of the
18 senate shall initiate such proceedings. If the supreme court
19 determines that any elected officer of the executive department
20 is unable to discharge the duties of his office by reason of a
21 permanent disability, the office shall be declared vacant.

22 (c) The supreme court shall have exclusive jurisdiction
23 to determine the existence of a vacancy arising under this section.

24 Sec. 7. COMPENSATION OF OFFICERS OF EXECUTIVE DEPARTMENT.

1 The compensation of the governor, lieutenant governor, attorney
2 general, comptroller of public accounts, ^{Treasurer} commissioner of the
3 general land office, and secretary of state shall be as provided
4 by law. The compensation of officers of the executive department
5 may not be diminished during their term of office. The governor
6 shall have the use of the Governor's Mansion.

7 Sec. 8. DUAL OFFICE HOLDING; OTHER COMPENSATION. No officer
8 of the executive department may hold any other civil or corporate
9 office; nor may the officer practice any other profession or hold
10 other employment, and receive compensation, or the promise thereof
11 for the same.

12 Sec. 9. COMMANDER-IN-CHIEF; CALLING FORTH MILITIA. The
13 governor shall be commander-in-chief of the military forces of
14 the state, except when they are called into actual service of the
15 United States, and shall have power to call forth the militia to
16 execute the laws of the state, to suppress insurrections, and
17 repel invasions, *and for the protection of life & property in natural disasters*

18 Sec. 10. EXECUTION OF LAWS; CONDUCT OF BUSINESS WITH OTHER
19 STATES, THE UNITED STATES, AND FOREIGN NATIONS. The governor
20 shall cause the laws to be faithfully executed and shall conduct,
21 in person or in such manner as shall be provided by law, all
22 intercourse and business of the state with other states, the
23 United States, and foreign nations.

24 Sec. 11. CONVENING THE LEGISLATURE IN SPECIAL SESSION.

egg
←
3/2

*Hammond
amend
3/2 notice note*

1 The governor may, on extraordinary occasions, convene the
2 legislature in special session stating specifically the purpose
3 of the session. Special sessions shall not exceed 30 days.

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

8 Sec. 13. ACTION ON BILLS AND RESOLUTIONS. (a) Every bill
9 that passes both houses of the legislature shall be presented to
10 the governor. The governor may approve the bill by signing it
11 in which event it shall become law and shall be filed with the
12 secretary of state. The governor may veto the bill by returning
13 it with objections to the house in which it originated. That
14 house shall enter the objections in its journal and reconsider
15 the bill for passage over the veto. If the bill passes that house
16 by a ~~two-thirds record vote of the membership~~, it shall be sent
17 with the governor's objections to the other house which shall
18 enter the objections in its journal and reconsider the bill for
19 passage over the veto. If the bill likewise passes that house
20 by a ~~two-thirds record vote of the membership~~, the bill shall
21 become a law and shall be filed with the secretary of state. If
22 the governor fails to veto a bill within 10 days (Sundays excepted)
23 after it is presented, the bill shall become a law and shall be
24 filed with the secretary of state. If the legislature by its

Handwritten note:
Hale
annual record
3/22 min. note

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record vote of 2/3rds of the members present and voting, or quorum being present

Handwritten note:
same as above



1 adjournment prevents a veto, the bill shall become a law and shall
2 be filed with the secretary of state unless within 20 days after
3 adjournment the governor files the bill and objections with the
4 secretary of state and gives public notice thereof by proclamation.
5 If the same legislature meets again, the secretary of state shall
6 return the bill with the governor's objections to the house in
7 which the bill originated for reconsideration in the manner
8 provided above.

9 (b) The governor may veto any item of appropriation in a
10 bill. Portions of a bill not vetoed shall become law. Items
11 vetoed together with the governor's objections shall be returned
12 to the house in which the bill originated for reconsideration in
13 the manner provided in Subsection (a).

14 (c) All orders and resolutions requiring the concurrence
15 of both houses of the legislature, except those concerning
16 adjournment and legislative rules and those proposing amendments
17 to the constitution or a referendum on incurring state debt, shall
18 be presented to the governor. If the governor disapproves an
19 order or resolution, it shall not become effective unless repassed
20 in the manner provided for in Subsection (a).

21 Sec. 14. CHIEF PLANNING OFFICER. The governor is the
22 chief planning officer of the state and may require information
23 in writing and reports from all state governmental agencies and
24 officers upon any subject relating to their duties, conditions,

1 management, and expenditures.

2 Sec. 15. BUDGET PREPARATION. At the beginning of each
3 session at which appropriations are to be made for the general
4 operation of the government, the governor shall submit to the
5 legislature a budget for all proposed state expenditures for the
6 applicable fiscal period.

7 Sec. 16. BUDGET EXECUTION. The governor shall exercise
8 those powers of fiscal control as provided by law and shall insure
9 that items of appropriation for the executive branch shall be
10 expended only as directed by the legislature. However, the
11 legislature shall determine whether this power shall extend to
12 elected officers of the executive department.

13 Sec. 17. ADMINISTRATIVE REORGANIZATION. The governor may
14 from time to time submit to the legislature, for approval, written
15 reorganization plans reassigning functions among or consolidating
16 or abolishing any statutory state offices or state governmental
17 agencies. Approval shall be by concurrent resolution, and only
18 if approved by both houses of the legislature shall the plans
19 take effect. Nothing in this article shall prevent the legislature
20 from amending the governor's plan of reorganization nor prevent
21 administrative reorganization by the normal legislative process.

22 Sec. 18. REPRIEVES, COMMUTATIONS, AND PARDONS; REMISSION
23 OF FINES AND FORFEITURES. The governor shall have power as
24 provided by law to grant reprieves relating to the execution of

1 death sentences, and to grant commutations, pardons, and the
2 remission of fines and forfeitures.

3 Sec. 19. LIEUTENANT GOVERNOR. The lieutenant governor
4 shall possess the same qualifications as provided for the governor.
5 The qualified voters shall cast separate votes for the candidates
6 for governor and lieutenant governor. The lieutenant governor
7 shall, by virtue of the office, be president of the senate and
8 when the senate is equally divided may cast a deciding vote.

9 Sec. 20. SECRETARY OF STATE. The secretary of state shall
10 perform the duties required by this constitution and other duties
11 as provided by law.

12 Sec. 21. ATTORNEY GENERAL. The attorney general must be
13 qualified to practice before the supreme court of the state.
14 Except as provided by law, the attorney general shall represent
15 the state in all civil suits in which the state may be a party
16 in all the courts of the state and proceedings and courts of the
17 United States, shall especially inquire into the charter rights
18 of all private corporations, shall represent the state in quo
19 warranto proceedings, shall give legal advice in writing to the
20 governor and other executive officers when requested by them, and
21 shall have all the powers of the office as at common law. The
22 attorney general shall have other duties as provided by law.

23 Sec. 22. COMPTROLLER OF PUBLIC ACCOUNTS. The comptroller
24 of public accounts shall perform the duties required by this

1 constitution and other duties as provided by law.

2 Sec. 23. GENERAL LAND COMMISSIONER. The commissioner of
3 the general land office shall administer a general land office
4 at the seat of government, in which all land titles that emanate
5 from the state shall be registered, and shall perform other duties
6 as provided by law.

7 Sec. 24. VACANCIES IN STATEWIDE OFFICES. Unless otherwise
8 provided by this constitution, all vacancies in elective statewide
9 offices shall be filled by appointment of the governor with the
10 advice and consent of the senate. Appointments to vacancies in
11 elective statewide offices shall continue only until the first
12 general election thereafter.

13 Sec. 25. STATE AGENCIES. (a) State governmental agencies,
14 including all agencies, boards, commissions, departments,
15 institutions, and any other executive or administrative agency
16 of government, shall be a part of the executive branch unless
17 otherwise provided by law.

18 (b) State governmental agencies, excluding those
19 institutions related to higher education, created by statute with
20 appointive officers shall have a life of not more than 10 years
21 unless renewed for another 10 years or less, by the legislature.
22 If the life of an agency is renewed, the legislature may provide
23 that appointed officers serving on the effective date of the
24 renewal continue to hold office for the terms for which they were

1 appointed. Bills for renewal of state governmental agencies shall
2 be reported from committee for consideration by the house and
3 senate no later than 20 days prior to adjournment.

4 Sec. 26. RAILROAD COMMISSION. The railroad commission
5 shall consist of three commissioners, having such qualifications
6 as provided by law, elected statewide for six-year terms. One
7 commissioner shall be elected at a general election every two
8 years. The railroad commission shall perform duties as provided
9 by law.

10 Sec. 27. SEAL OF STATE. There shall be a seal of the state
11 which shall be kept by the secretary of state and used by that
12 officer officially under the direction of the governor. The seal
13 of the state shall be a star of five points encircled by olive
14 and live oak branches and the words "The State of Texas."

SECTION-BY-SECTION ANALYSIS
OF COMMITTEE REPORT

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

COMMENTS

The committee retained those officers of the executive department who are currently included in the Texas Constitution with the exception of the state treasurer. Both Constitutional Convention Proposal 1 and committee language provide additional flexibility within the executive department by allowing the legislature to include other officers within the executive department.

The committee made minor changes in the language to define more clearly the position of the executive department within the executive branch. The governor is the chief executive officer and thereby the head of the executive branch. Article IV contains several provisions specifically relating to officers of the executive department; however, the executive department officers are a part of the more general category of executive branch.

Sec. 2. SELECTION AND TERMS OF OFFICERS. (a) At general elections beginning in 1978 qualified voters of the state shall elect the governor, lieutenant governor, attorney general, comptroller of public accounts, the commissioner of the general land office, and those other elected officers provided by law for four-year terms.

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

(c) Except as otherwise provided in this constitution, each officer of the executive branch appointed by the governor to state governmental agencies created by statute shall have a term that expires between February 1 and April 1 of odd-numbered years. Officers of multi-member agencies shall have staggered terms and the number of officers to be appointed by the governor shall be provided by law. At the expiration of the term the office shall become vacant.

(d) Unless otherwise provided by law, the governor may designate the chairman from the appointive officers of state governmental agencies. If the governor fails to designate a chairman prior to April 1 of odd-numbered years the appointive officers shall choose the chairman from among their membership.

(e) The governor shall have power to remove for cause all

officers who serve by appointment of the governor with the advice and consent of the senate. Prior to removal, the governor must submit names of officers to the senate. The senate may refuse the removal by vote of two-thirds of the membership, within 30 days of submission.

(f) Officers appointed by the governor to state governmental agencies shall be confirmed with the advice and consent of the senate.

COMMENTS

The committee language provides for the election of the governor, lieutenant governor, attorney general, comptroller of public accounts, and the commissioner of the general land office. Constitutional Convention Proposal 1 had allowed the legislature to decide whether the commissioner of the general land office should be elected or appointed. The committee decision to mandate the election of that officer was based on the importance of the office, unique in the amount of land under its surveillance. As in Constitutional Convention Proposal 1 the elected officers of the executive department serve four-year terms. The office of secretary of state was retained, and, as in Constitutional Convention Proposal 1, that officer shall be appointed by the governor with the advice and consent of the senate, serving at the pleasure of the governor.

Any officers placed within the executive department by

legislative action shall, if elected, serve four-year terms; if appointed, and confirmed by the senate, they serve at the governor's pleasure.

Subsections (c), (d), (e), and (f) originated from discussion of Section 25 of Constitutional Convention Proposal 1 concerning terms of officers of state governmental agencies. The reassignment of these provisions into Section 2 of Article IV consolidates the method of selection and terms of all executive branch officers. While Section 2 does not provide for elected state governmental agency officers, except for the officers of the executive department, it is the intent of the committee to apply the rule of constitutional construction that where silent the power to act is reserved to the legislature and thereby an office (e.g., that of state treasurer) may be provided for by statute. This decision is an effort to clarify the definitional relationship between the executive department and the executive branch within the body of the constitution.

The committee language in Subsection (c) retained the new concept of Constitutional Convention Proposal 1 that the terms for officers appointed by the governor to state governmental agencies should expire between February 1 and April 1 of odd-numbered years. This allows the governor to have a spokesman within these agencies a short time after inauguration and also prevents "midnight appointments" by an outgoing governor. This

subsection further provides for staggered terms of multi-member agencies, thereby allowing the continuity provided by experienced officers of these agencies to be retained for the benefit of the state. Nothing in this subsection was intended to preclude appointment by persons other than the governor as provided by law. Unlike either the Constitutional Convention Proposal 1 or 1976 Constitution, the section further provides that the office becomes vacant upon the expiration of the term, necessitating a gubernatorial appointment.

Subsection (d) allows the governor to designate chairmen of state governmental agencies unless otherwise provided by law and further mandates that the designation shall be from the appointive officers. Constitutional Convention Proposal 1 had required that the governor designate the chairmen with no legislative discretion. The committee felt that there were several types of agencies which might benefit from a chairman designated by statute; for example, the method used for the Texas Employment Commission of requiring the public member of the board to be the chairman.

In an effort to make state governmental agencies more responsive to both the people and the governor, the committee decided to add a provision which would allow the governor to remove any gubernatorial appointee for cause. The proposed removal must first be submitted to the senate, and within 30 days after

submission the senate may refuse to allow the removal by a two-thirds vote of the membership. The possibility of an override of the removal in the senate is considered by the committee as a safeguard against gubernatorial abuse of the removal authority.

Subsection (f) requiring advice and consent of the senate on gubernatorial appointments was added to conform with other sections of this constitution.

The term "executive branch" is used as an all-inclusive designation of all state governmental agencies, including all agencies, boards, commissions, departments, and institutions not specifically placed within another branch by law.

Note: See attached diagram.

EXECUTIVE BRANCH

GOVERNOR

EXECUTIVE DEPARTMENT

ELECTIVE OFFICERS

- A. Those listed in Sec. 1: B. Other Officers as may
1. Governor be provided by law.
2. Lieutenant Governor
3. Attorney General
4. Comptroller of Public Accounts
5. Commissioner of the General Land Office

Elective Officers serve four-year terms and are subject to removal for disability.

APPOINTIVE OFFICERS

- A. Those listed in Sec. 1: B. Other Officers as may
1. Secretary of State be provided by law.

Appointive officers are appointed by the Governor with the advice and consent of the Senate and serve at the pleasure of the Governor.

STATE GOVERNMENTAL AGENCIES

AGENCIES ESTABLISHED IN THE CONSTITUTION:

- A. Railroad Commission (elective)
- B. Board of Education (elective)
- C. Coordinating Board (appointive)
- D. Other Possible Agencies

STATUTORY OFFICES AND AGENCIES

- A. Officers elected statewide.
- B. Definition. Includes all agencies, boards, commissions, departments, institutions unless otherwise provided by law.

CONDITIONS AFFECTING APPOINTIVE AGENCIES

- A. Selection. Members of governing bodies may be selected by:
 - 1. Appointment by the Governor with the advice and consent of the Senate;
 - 2. Appointment by other state officers;
 - 3. Ex officio status.
- B. Removal. The Governor may remove for cause those officers appointed by the Governor with the advice and consent of the Senate.
- C. Terms of Office.
 - 1. Officers of multi-member agencies have staggered terms.
 - 2. Terms of officers appointed by the Governor expire between February 1 and April 1 of odd-numbered years.
 - 3. Offices become vacant upon expiration.
- D. Chairmen of Agencies. Unless otherwise provided by law, the Governor may designate the chairman from the appointive officers of state governmental agencies.



Sec. 3. RETURNS OF ELECTION. Election returns for executive officers shall be tabulated and certified in a public forum, in a manner provided by law.

COMMENTS

Both the Constitution of 1876 and Constitutional Convention Proposal 1 contain a detailed procedure for the tabulating and certification of election returns. The committee decided much of this language is statutory in nature. The only reason for retaining the section at all was to insure that all election returns for executive officers would be tabulated and certified in a public forum, thereby enabling the public to oversee this most important operation.

Sec. 4. GOVERNOR'S ELIGIBILITY AND INSTALLATION. (a) A person is eligible for the office of governor if he is at least 30 years of age, a citizen of the United States, and has been a resident of the state at least five years immediately preceding election.

(b) The legislature shall provide appropriations for a governor-elect prior to inauguration. The governor-elect shall be entitled to receive from the officers and state governmental agencies those reports to which an incumbent governor is entitled.

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

COMMENTS

As in the Constitution of 1876 and Constitutional Convention Proposal 1, qualifications for governor are that the holder of the office shall be at least 30 years of age, a citizen of the United States, and a resident of this state for at least five years immediately preceding election. The committee accepted the new concept of Constitutional Convention Proposal 1 of preinaugural lead-time for a governor-elect. The committee language would require the legislature to appropriate funds for a governor-elect but would not limit the appropriation to funds for staff and office space. Constitutional Convention Proposal 1 also required the appropriation of funds for a new governor-elect but limited the appropriation of staff and office space. The committee attempted through this change to create greater flexibility for both the legislature and the governor-elect.

Committee language in this section sets a definite date for the inauguration of the governor, but does not include the concept of an inactive period in the legislature for 45 days after inauguration.

Sec. 5. GUBERNATORIAL SUCCESSION. (a) If the governor-elect is disqualified, resigns, or dies prior to taking office, the lieutenant governor-elect becomes governor for the full term. If the governor-elect fails to assume office for any

other reason, the lieutenant governor-elect serves as governor. If the governor-elect does not assume office within the first year of the term the office becomes vacant, and the lieutenant governor becomes governor and serves for the remainder of the term.

(b) If after inauguration the office of governor becomes vacant, the lieutenant governor becomes governor and serves for the remainder of the term.

(c) If the offices of both governor and lieutenant governor become vacant, the president pro tempore of the senate, if qualified, becomes governor under the same conditions and for the same term as provided for the lieutenant governor.

(d) If the governor is absent from the state or temporarily disabled, the lieutenant governor acts as governor until the governor returns or is no longer disabled. If both the governor and lieutenant governor are absent from the state or temporarily disabled, the president pro tempore of the senate acts as governor during such time.

(e) While serving or acting as governor, the lieutenant governor or president pro tempore of the senate receives only the compensation payable to a governor.

(f) Further succession to the office of governor shall be provided by law. No person may serve as governor unless qualified for that office.

COMMENTS

As in the current constitution, the committee language retains the succession to the governorship as lieutenant governor and president pro tempore of the senate. Because of the method of filling vacancies the third in line to the governorship remains largely a ceremonial office and no valid reason was accordingly shown to depart from the traditional approach.

Because the line of succession to the governorship is constitutionally established, the committee decided succession to the office, except in the case of absence or temporary disability, would be for the remainder of the full term rather than until the next general election.

The committee retained the provision, in both the 1876 Constitution and Constitutional Convention Proposal 1, that the officer acting as governor should receive only the compensation to which the governor is entitled during the time the office is served as governor. Further, committee language allowed the legislature to provide for additional succession to the office and required that any succeeding officer must have the same qualifications as the governor.

Sec. 6. DISABILITY OF ELECTIVE OFFICERS OF EXECUTIVE DEPARTMENT. (a) When the governor notifies the chief justice of the supreme court in writing that he will be temporarily unable

to carry out the duties of his office or when the governor is unable to communicate such inability to the chief justice of the supreme court, the temporary disability of the governor shall be determined by a majority vote of the governor, lieutenant governor, attorney general, comptroller of public accounts, commissioner of the general land office, speaker of the house of representatives, and president pro tempore of the senate.

Restoration of ability shall be evidenced by delivery of a sworn statement from the governor acknowledging recovery filed with the supreme court. After restoration, the governor may not be determined temporarily disabled again for the same incident. If the governor does not acknowledge recovery from a temporary disability within one year from the time the lieutenant governor begins serving as governor, the office of governor shall be vacant. The same procedure shall apply to the temporary disability of the lieutenant governor.

(b) The permanent disability of any elected officer of the executive department to perform the duties of the office during the term for which elected shall be determined in a proceeding in the supreme court of the state under such rules of procedure as may be prescribed by that court. A majority vote of the governor, lieutenant governor, attorney general, comptroller of public accounts, commissioner of the general land office, speaker of the house of representatives, and president pro tempore of the

senate shall initiate such proceedings. If the supreme court determines that any elected officer of the executive department is unable to discharge the duties of his office by reason of a permanent disability, the office shall be declared vacant.

(c) The supreme court shall have exclusive jurisdiction to determine the existence of a vacancy arising under this section.

COMMENTS

Although the 1876 Constitution speaks of the disability of the governor and lieutenant governor, it provides no method to determine this disability. Both the committee and Constitutional Convention Proposal 1 provide a constitutional method for this determination. Unlike the Constitutional Convention Proposal 1, the committee language provides for the temporary disability of the governor and lieutenant governor through either notification by the disabled officer, or by a majority vote of those officers who may initiate a permanent disability proceeding, without involving the supreme court of the state. Restoration of office would be through delivery of a sworn statement from the disabled officer to the supreme court acknowledging recovery. Neither officer could be declared temporarily disabled twice for the same incident. The word "incident" was specifically used to allow separate temporary disabilities for two or more occurrences from the same cause, for example, two or more heart attacks or two or more pregnancies. Temporary disability was viewed by the committee

as an emergency measure requiring rapid action and an easy method of restoration of the office.

Permanent disability, on the other hand, was viewed by the committee as a serious step to be taken only under the most extreme situation. The committee language, as in Constitutional Convention Proposal 1, would require a majority vote of the governor, lieutenant governor, attorney general, land commissioner, comptroller of public accounts, speaker of the house of representatives, and president pro tempore of the senate to initiate such proceedings. The supreme court would determine if the elected officer was unable to discharge the duties of his office and would further declare that the office be vacant. Permanent disability proceedings could be initiated against any elected officer of the executive department, unlike temporary disability which pertains to only the governor and lieutenant governor. The committee further decided to add an additional section stating that the supreme court had exclusive jurisdiction to determine the existence of a vacancy under this constitution in any elected office of the executive department.

Sec. 7. COMPENSATION OF OFFICERS OF EXECUTIVE DEPARTMENT.

The compensation of the governor, lieutenant governor, attorney general, comptroller of public accounts, commissioner of the general land office, and secretary of state shall be as provided

by law. The compensation of officers of the executive department may not be diminished during their term of office. The governor shall have the use of the Governor's Mansion.

COMMENTS

This section provides that compensation for all named officers of the executive department, including the lieutenant governor, be as provided by law. It deletes mention of a salary commission, as this commission had been removed from the general provisions article. The committee recognized that a salary commission could be established later by legislative action. The language retained provisions of the Constitutional Convention Proposal 1 that salaries could not be diminished during the term of office and that the governor had use of the Governor's Mansion.

Sec. 8. DUAL OFFICE HOLDING; OTHER COMPENSATION. No officer of the executive department may hold any other civil or corporate office; nor may the officer practice any other profession or hold other employment, and receive compensation, or the promise thereof for the same.

COMMENTS

The committee language revises the Constitution of 1876 by placing restrictions on all officers of the executive department. Also, the prohibition in the 1876 Constitution against holding military office was deleted.

The committee rejected the more stringent prohibitions of Constitutional Convention Proposal 1. Constitutional Convention Proposal 1 would have prohibited an officer from receiving even passive income. Constitutional Convention Proposal 1 would also have prevented an officer from doing even free outside work.

The committee language prohibits officers of the executive department from holding other offices. It also limits an officer's sources of income, but it does not prevent him from receiving income from investments or compensation for services rendered prior to taking office.

Sec. 9. COMMANDER-IN-CHIEF; CALLING FORTH MILITIA. The governor shall be commander-in-chief of the military forces of the state, except when they are called into actual service of the United States, and shall have power to call forth the militia to execute the laws of the state, to suppress insurrections, and repel invasions.

COMMENTS

The committee retained the current constitutional provision except for the deletion of the phrase "protect the frontier from hostile incursions by Indians or other predatory bands." This is the same as Constitutional Convention Proposal 1.

Sec. 10. EXECUTION OF LAWS; CONDUCT OF BUSINESS WITH OTHER

STATES, THE UNITED STATES, AND FOREIGN NATIONS. The governor shall cause the laws to be faithfully executed and shall conduct, in person or in such manner as shall be provided by law, all intercourse and business of the state with other states, the United States, and foreign nations.

COMMENTS

The committee accepted the language of the current constitution, adding, as did Constitutional Convention Proposal 1, the authority of the governor to conduct all intercourse and business of the state with foreign nations.

Sec. 11. CONVENING THE LEGISLATURE IN SPECIAL SESSION.

The governor may, on extraordinary occasions, convene the legislature in special session stating specifically the purpose of the session. Special sessions shall not exceed 30 days.

COMMENTS

The executive committee decided to allow the governor the authority to convene the legislature in special session and to state specifically the purpose thereof. The language of the committee further states that special sessions should not exceed 30 days. This follows the current procedure.

Sec. 12. GOVERNOR'S MESSAGE. At the beginning of each legislative session the governor shall, and at other times may,

give the legislature information on the condition of the state, and may recommend legislative action.

COMMENTS

The committee decided to require the governor to give a state of the state address to the legislature at the beginning of each legislative session. It provided further that he may recommend legislative action and may deliver further messages to the legislature as he deems necessary. This is in conformity with the current practice and Constitutional Convention Proposal 1.

Sec. 13. ACTION ON BILLS AND RESOLUTIONS. (a) Every bill that passes both houses of the legislature shall be presented to the governor. The governor may approve the bill by signing it in which event it shall become law and shall be filed with the secretary of state. The governor may veto the bill by returning it with objections to the house in which it originated. That house shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill passes that house by a two-thirds record vote of the membership, it shall be sent with the governor's objections to the other house which shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill likewise passes that house by a two-thirds record vote of the membership, the bill shall

become a law and shall be filed with the secretary of state. If the governor fails to veto a bill within 10 days (Sundays excepted) after it is presented, the bill shall become a law and shall be filed with the secretary of state. If the legislature by its adjournment prevents a veto, the bill shall become a law and shall be filed with the secretary of state unless within 20 days after adjournment the governor files the bill and objections with the secretary of state and gives public notice thereof by proclamation. If the same legislature meets again, the secretary of state shall return the bill with the governor's objections to the house in which the bill originated for reconsideration in the manner provided above.

(b) The governor may veto any item of appropriation in a bill. Portions of a bill not vetoed shall become law. Items vetoed together with the governor's objections shall be returned to the house in which the bill originated for reconsideration in the manner provided in Subsection (a).

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

COMMENTS

There are only two major changes from the current veto provision of the constitution. The first is the requirement the veto be overridden by a vote of two-thirds of the membership of each house. This was done in order to standardize the procedure for both houses from the current constitution, which requires a two-thirds vote of the membership of only the originating house. Secondly, committee language provides that if the same legislature meets again it may review the veto. Both these changes were in Constitutional Convention Proposal 1.

Constitutional Convention Proposal 1 further contained a reduction veto authority for the governor except for individual line-item salaries. The committee decided instead to strengthen the governor's power in other ways.

Sec. 14. CHIEF PLANNING OFFICER. The governor is the chief planning officer of the state and may require information in writing and reports from all state governmental agencies and officers upon any subject relating to their duties, conditions, management, and expenditures.

COMMENTS

The committee retained this provision in full as in Constitutional Convention Proposal 1. The committee felt that the governor needed constitutional authority to require information

in writing from all state governmental agencies and officers.

Sec. 15. BUDGET PREPARATION. At the beginning of each session at which appropriations are to be made for the general operation of the government, the governor shall submit to the legislature a budget for all proposed state expenditures for the applicable fiscal period.

COMMENTS

The committee language requires that the governor submit a state budget to the legislature. It is recognized that the governor's budget will most likely be taken as a general guide rather than a working bill and the language in Constitutional Convention Proposal 1 to the contrary was omitted.

Sec. 16. BUDGET EXECUTION. The governor shall exercise those powers of fiscal control as provided by law and shall insure that items of appropriation for the executive branch shall be expended only as directed by the legislature. However, the legislature shall determine whether this power shall extend to elected officers of the executive department.

COMMENTS

While retaining the intent of Constitutional Convention Proposal 1 with regard to the authority of the governor in fiscal management as provided by law, the committee language further

authorized the governor to insure that items of appropriation for the executive branch shall be expended only as directed by the legislature. This authority would allow the governor to execute or to compel the execution of the legislative will. Whether this authority of the governor extends to the elected officers of the executive department is to be determined by the legislature. The flexibility of this provision allows the legislature to provide the governor with such budget execution authority as it determined necessary with relation to number and length of its sessions.

Sec. 17. ADMINISTRATIVE REORGANIZATION. The governor may from time to time submit to the legislature, for approval, written reorganization plans reassigning functions among or consolidating or abolishing any statutory state offices or state governmental agencies. Approval shall be by concurrent resolution, and only if approved by both houses of the legislature shall the plans take effect. Nothing in this article shall prevent the legislature from amending the governor's plan of reorganization nor prevent administrative reorganization by the normal legislative process.

COMMENTS

This provision creates constitutional impetus for the governor to submit reorganization plans to the legislature. The committee language would require affirmative action by the legislature prior to the implementation of these plans. Further

the committee language specifically states that the legislature can amend the governor's plan and that the legislature also retains its right to undertake administrative reorganization.

As state governmental agencies are created by the legislature, the committee felt that any change in their disposition should be subject to affirmative legislative action.

Sec. 18. REPRIEVES, COMMUTATIONS, AND PARDONS; REMISSION OF FINES AND FORFEITURES. The governor shall have power as provided by law to grant reprieves relating to the execution of death sentences, and to grant commutations, pardons, and the remission of fines and forfeitures.

COMMENTS

The committee retained the language of Constitutional Convention Proposal 1. The Board of Pardons and Paroles could be maintained statutorily and by removing it from the constitution, the legislature could adapt the pardons and paroles system to the changing needs of the time.

Sec. 19. LIEUTENANT GOVERNOR. The lieutenant governor shall possess the same qualifications as provided for the governor. The qualified voters shall cast separate votes for the candidates for governor and lieutenant governor. The lieutenant governor shall, by virtue of the office, be president of the senate and

when the senate is equally divided may cast a deciding vote.

COMMENTS

The committee accepted the language of Constitutional Convention Proposal 1, which deletes only the constitutional powers of the lieutenant governor in the committee of the whole under the 1876 Constitution.

Sec. 20. SECRETARY OF STATE. The secretary of state shall perform the duties required by this constitution and other duties as provided by law.

COMMENTS

The committee accepted the language of Constitutional Convention Proposal 1.

Sec. 21. ATTORNEY GENERAL. The attorney general must be qualified to practice before the supreme court of the state. Except as provided by law, the attorney general shall represent the state in all civil suits in which the state may be a party in all the courts of the state and proceedings and courts of the United States, shall especially inquire into the charter rights of all private corporations, shall represent the state in quo warranto proceedings, shall give legal advice in writing to the governor and other executive officers when requested by them, and shall have all the powers of the office as at common law. The

attorney general shall have other duties as provided by law.

COMMENTS

Constitutional Convention Proposal 1 mandates that the attorney general, except as provided by law, shall represent the state in all suits in which the state may be a party in all courts of the state and of the United States. After hearing testimony from both the attorney general and from spokesmen for the County and District Attorneys Association of the State of Texas, the committee decided to limit this mandate to civil suits in which the state may be a party.

Further the committee expressly mentions the attorney general's authority with regard to inquiring into charter rights for private corporations, representing the state in quo warranto proceedings, and delivering legal opinions to executive officers. None of these was authorized in Constitutional Convention Proposal 1.

The committee language retains common law powers, except as provided by law, from Constitutional Convention Proposal 1. In addition, both the committee language and Constitutional Convention Proposal 1 add the qualification of office that the attorney general be a licensed attorney in the State of Texas. This qualification is not provided for in the 1876 Constitution.

Sec. 22. COMPTROLLER OF PUBLIC ACCOUNTS. The comptroller

of public accounts shall perform the duties required by this constitution and other duties as provided by law.

COMMENTS

This provision was retained in full from Constitutional Convention Proposal 1 and makes no substantive change in current constitutional provisions other than the requirement that the comptroller reside at the capital.

Sec. 23. GENERAL LAND COMMISSIONER. The commissioner of the general land office shall administer a general land office at the seat of government, in which all land titles that emanate from the state shall be registered, and shall perform other duties as provided by law.

COMMENTS

The committee language clearly states the commissioner of the general land office shall administer the general land office. This responsibility of the commissioner of the general land office was not expressly stated under the language of Constitutional Convention Proposal 1. Otherwise there is no change from Constitutional Convention Proposal 1.

Sec. 24. VACANCIES IN STATEWIDE OFFICES. Unless otherwise provided by this constitution, all vacancies in elective statewide offices shall be filled by appointment of the governor with the

advice and consent of the senate. Appointments to vacancies in elective statewide offices shall continue only until the first general election thereafter.

COMMENTS

Conforming to the Constitution of 1876, this section provides that unless provided for under this constitution all vacancies in statewide elected offices shall be filled by gubernatorial appointment subject to the advice and consent of the senate until the first general election after the vacancy occurs. The provision in Constitutional Convention Proposal 1 which provides that the appointee shall serve for the remainder of the term unless the vacancy occurs within 16 months after the officer assumes office has been deleted because the committee felt that it was unnecessary under the current election process.

Sec. 25. STATE AGENCIES. (a) State governmental agencies, including all agencies, boards, commissions, departments, institutions, and any other executive or administrative agency of government, shall be a part of the executive branch unless otherwise provided by law.

(b) State governmental agencies, excluding those institutions related to higher education, created by statute with appointive officers shall have a life of not more than 10 years unless renewed for another 10 years or less, by the legislature.

If the life of an agency is renewed, the legislature may provide that appointed officers serving on the effective date of the renewal continue to hold office for the terms for which they were appointed. Bills for renewal of state governmental agencies shall be reported from committee for consideration by the house and senate no later than 20 days prior to adjournment.

COMMENTS

Section 25 is a new section, having a precedent in neither Constitutional Convention Proposal 1 nor the 1876 Constitution. Subsection (a) defines the term "state governmental agencies" as including all agencies, boards, commissions, departments, institutions, and any other executive or administrative agency of government. Further, the subsection places these state governmental agencies within the executive branch, unless otherwise provided by law. These state governmental agencies were placed in the executive branch only by implication in Constitutional Convention Proposal 1 and had been scattered throughout the Constitution of 1876, thereby placing them outside the jurisdiction of any one branch of government.

Subsection (b) provides that statutory state governmental agencies with appointive officers, excluding those institutions relating to higher education, shall have a life of not more than 10 years unless renewed for another 10 years or less by the legislature. The subsection further provides that if the life

of the agency is renewed, the legislature may continue the same appointed officers for the remainder of their respective terms. In an effort to insure that each agency will receive a full hearing, the subsection additionally mandates that bills for renewal shall be reported from the committee for consideration by the house and senate no later than 20 days prior to adjournment of the legislature. Subsection (b) was included in Article IV as a companion to Section 17 of the same article. This provision requires periodic review and renewal of all statutory state governmental agencies with appointive officers, excluding those institutions relating to higher education. This requirement would give impetus to the reorganization authority of the governor and of the legislature, as specified in Section 17 of this article.

Sec. 26. RAILROAD COMMISSION. The railroad commission shall consist of three commissioners, having such qualifications as provided by law, elected statewide for six-year terms. One commissioner shall be elected at a general election every two years. The railroad commission shall perform duties as provided by law.

COMMENTS

The Executive Committee decided to maintain the railroad commission as a constitutional commission composed of three members elected on a statewide basis with staggered six-year terms. With

Macei - N

87

Bock - N

Barton - Y

Vecchio - Y

Ogg N



the increased attention which energy is receiving from the public due to the increased demand and the worldwide shortage of oil and gas, the committee decided the public would be sufficiently interested in this office to justify its constitutional status and the continued election of its members. In addition, the committee received testimony that the constitutional status of this commission enables it to deal more effectively with agencies of the federal government.

Sec. 27. SEAL OF STATE. There shall be a seal of the state which shall be kept by the secretary of state and used by that officer officially under the direction of the governor. The seal of the state shall be a star of five points encircled by olive and live oak branches and the words "The State of Texas."

COMMENTS

The committee decided to retain the constitutional mention of the seal of state. However, it deleted any constitutional mandate concerning commissions of office as found both in Constitutional Convention Proposal 1 and the Constitution of 1876. This was felt to be of a statutory nature and a formality which could be an unnecessary burden on the office of governor.

Executive



THE ATTORNEY GENERAL
OF TEXAS

CRAWFORD C. MARTIN
ATTORNEY GENERAL

AUSTIN, TEXAS 78711

August 13, 1968

Honorable John Connally
Governor of Texas
Capitol Station
Austin, Texas

Opinion No. M- 267

Re: Whether Honorable J. C. Looney is a member of the Public Safety Commission where the Senate failed to confirm or reject his nomination, as required by Article 4413(2), V.C.S.

Dear Governor Connally:

In your request for an opinion you state the following:

"On November 27, 1967, I appointed Mr. J. C. Looney of Edinburg, Hidalgo County, to the Public Safety Commission to fill the unexpired term of Mr. John Peace, who resigned. The term will expire December 31, 1969. By message to the Senate of the 60th Legislature, First Called Session, dated June 5, 1968, I asked the advice, consent, and confirmation of the Senate with respect to this appointment. At the time of its adjournment sine die on July 3, 1968, the Senate had not acted to either confirm or reject his appointment. I have not requested Mr. Looney's resignation, nor have I appointed anyone else to fill the unexpired term.

"Mr. Looney was appointed pursuant to the following provision of Article 4413(2), Vernon's Civil Statutes:

'In the event of a vacancy occurring on said Commission, the Governor shall appoint a new member of the Commission to fill the said vacancy for such unexpired term, such appointment to be subject to the advice and consent of the Senate of the State of Texas, at the next session thereof.'

"Under the facts which I have set out, please give me your opinion as to the following questions:



1. Is Mr. J. C. Looney a member of the Public Safety Commission until his successor is named and has qualified?

2. Does Mr. J. C. Looney's nomination still pend before the Senate during the Legislature's next session?"

Texas Constitution, Article IV, Section 12, provides as follows:

"All vacancies in State or district offices, except members of the Legislature, shall be filled unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the Senate present. If made during the recess of the Senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the Senate during the first ten days of its session. If rejected, said office shall immediately become vacant, and the Governor shall, without delay, make further nominations, until a confirmation takes place. (But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the Senate; but may appoint some other person to fill the vacancy until the next session of the Senate or until the regular election to said office, should it sooner occur.) Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter."

Texas Constitution, Article XVI, Section 17, provides that all officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

In Attorney General's Opinion Number V-868 (1949), this office held that a recess appointee requiring Senate confirmation, who was appointed to succeed himself and whose name was withdrawn with the consent of the Senate, continued to hold over in office until his successor was duly appointed and qualified. In passing upon a question very similar to the one under consideration, said Attorney General's Opinion Number V-898 held, in part, at page 9 as follows:

" . . .

"Clearly, then, unless there is an express rejection, Art. IV, Sec. 12, must be construed together with Art. XVI, Sec. 17, as indicated by Conference Opinion 1809. Where, as here, the Senate takes no action on the appointment, the appointee holds over pursuant to Art. XVI, Sec. 17, until he resigns, dies, abandons the office, or until his successor is appointed."

The adjournment of the Senate without confirming the appointment of a successor to an office holding over after the expiration of his term does not create a vacancy which can be filled by the Governor alone. Where the appointment is a recess appointment or one made to fill a vacancy in the office occurring while the Senate is not in session, the appointee is entitled to the office until the Senate acts adversely upon his nomination, 38 Am.Jur.2d 937, Governor, Sec. 7; 42 Am.Jur. 983, Public Officers, Sec. 142; or until the Governor makes a new appointment. Tex. Const., Art. IV, Sec. 12.

In a Missouri case, State ex rel Sikes v. Williams, 222 Mo. 268, 121 S.W. 64, 68 (1909), the Court disposed of this question as follows:

"In the meantime, such appointee, after having otherwise qualified under the act, is entitled to the office until such time as the Senate may pass adversely upon his appointment."

Since the Constitution specifies the circumstances under which the Senate may defeat the Governor's recess appointments, there is an implied prohibition against the Senate's power to add to these circumstances. Walker v. Baker, 145 Tex. 121, 196 S.W.2d 324 (1946). Constitutional or statutory provisions restricting the right to hold public office should be strictly construed against ineligibility. Kothmann v. Daniels, 397 S.W.2d 940 (Tex.Civ.App. 1965, no writ). Your first question is answered in the affirmative.

We answer your second question in the negative for the reason that the matter must be resubmitted by the Governor to the next Senate for action. He may submit the same or some other name within the first ten days of the next legislative session.

S U M M A R Y

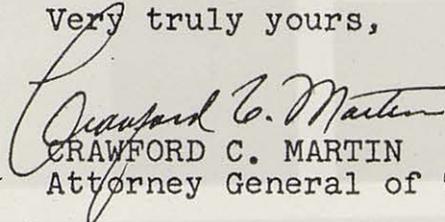
Honorable J. C. Looney is a member of the Public Safety Commission, the Senate failing to confirm or reject his appointment by the Governor

Honorable John Connally, page 4 (M-267)

to fill the vacancy as required by Article 4413(2),
Vernon's Civil Statutes.

The nomination no longer pends before the Senate
and it is incumbent upon the Governor to submit the
same or some other name within the first ten days
of the next legislative session.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Jack Sparks
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Hawthorne Phillips, Chairman
Kerns Taylor, Co-Chairman
John Fainter
Tom Thurmond
Mark White
John Banks

A. J. CARUBBI, JR.
Executive Assistant

Con office

March 11, 1974

Price Daniel, Jr., President
Constitutional Convention
Capitol Station
Austin, Texas 78711

Dear Price:

I am happy to respond to your request for my personal comments and suggestions on the report of the Convention Committee on the Executive Article. Although the proposed article does strengthen the governorship in many respects, I believe that it falls short of giving the governor all the needed power to make him more responsive to the needs of the state.

Giving the governor the power to submit reorganization plans of the executive branch; allowing him to appoint 1/3 of the members of state agencies and select their chairman within the first three months of his term; giving him the power to remove board and commission members "with cause"; and budget execution authority will give the governor greater leverage over agencies and commissions and make him responsible for their management.

The ten year limit on the life of state agencies will require periodic review and should eliminate waste and inefficiency. This provision will give the governor needed information for reorganization plans.

I am pleased that the article carries a provision dealing with the disability of elective officers.

The League of Women Voters has followed the work of the Executive Committee and compliments them on their dedication and efforts in providing the Executive Article. However, we are disappointed that the article does not provide primary budget power for the governor.

The League believes that the Convention should provide a cabinet-type executive department, whereby only the governor, lieutenant governor, and attorney general are elected. This system would give the governor the power to carry out his program, pinpoint responsibility and make the government more visible to the people. Plurality in top management, the long ballot, lack of a single line of responsibility, and the absence of coordination provides a weak executive.

(over, please)



To: Price Daniel
March 11, 1974

Page 2

Thank you for the opportunity to express my views. I think it is imperative that a new constitution produces the desired effect of establishing clear lines of authority and responsibility.

Cordially,

Mrs. Darwin H. Winick, President
League of Women Voters of Texas

cc: Sen. Bill Meier, Chairman
Executive Committee
Constitutional Convention

bc: Conner, Anderson, Hunter, Leabo, Convention Office





The State of Texas
House of Representatives
Austin, Texas

January 30, 1974

James E. "Pete" Laney

P. O. BOX 2910
AUSTIN, TEXAS 78767

302 SKAGGS BUILDING
PLAINVIEW, TEXAS 79072

Ms. Louise T. Cummins
President
League of Women Voters of Lubbock
6511 Peoria
Lubbock, Texas

Dear Ms. Cummins:

Thank you very much for your kind letter. I greatly appreciate your taking the time to give me the benefit of the League's views.

Although two former Governors have testified that the Governor has had more power available than has been used during their tenures, your comments certainly have considerable merit. There may not be a complete reorganization when this matter comes out of Committee, but I feel that the Governor's power will be strengthened through the new Constitution.

Again, thank you for making me aware of your position. When in Austin in February, I hope to have an opportunity to visit with you.

Sincerely,

A handwritten signature in cursive script that reads "Pete Laney".

Pete Laney

PL:ad



Executive

February 7, 1974

ARTICLE IV, Section 3. RETURNS OF ELECTION.

Election returns for executive officers shall be tabulated and certified in a public forum, in a manner provided by law.

passed 10-3 reconsidered and spread on
the ~~table~~ (2/7/74)
minutes

®

February 8, 1974

ARTICLE IV, Section 4. GOVERNOR'S ELIGIBILITY AND INSTALLATION.

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

(b) The Legislature may provide appropriations for a Governor-elect prior to inauguration. The Governor-elect shall be entitled to receive from the officers and governmental agencies those reports to which an incumbent Governor is entitled.

(c) The Governor shall be inaugurated on the second Tuesday in January or as soon thereafter as practicable.

passed 13-0

reconsidered and spread
on the ~~table~~ (2/8/74)
minutes



February 8, 1974

ARTICLE IV, Section 5. GUBERNATORIAL SUCCESSION.

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

(b) If after inauguration the Governor dies, resigns, becomes disabled, or is removed from office, the Lieutenant Governor shall become Governor and shall serve for the remainder of the term.

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

(d) If the Governor is absent from the State, the Lieutenant Governor shall act as Governor until the Governor returns. If both the Governor and Lieutenant Governor are absent from the State, the President pro tempore of the Senate shall act as Governor during such absences.

(e) While serving or acting as Governor, the Lieutenant Governor or President pro tempore of the Senate shall receive only the compensation payable to a Governor.

2/8/74

ARTICLE IV, Section 5 (continued).

(f) Further succession to the office of Governor shall be provided by law. No person shall serve as Governor unless qualified for that office.

passed 12-0 reconsidered and spread
on the minutes (2/8/74)



Section 1

Joyce Moore
(Bob Armstrong's office)

CRC - Preston Shirley

1
Jan 14

Q - Should the Commissioner of the General Land Office be retained as a Constitutional Executive Officer?

A - There was much disagreement in the CRC over both the position of the L.C. and his means of coming to office (elected or appointed). It was a close vote to keep the office as a Const. protected one - and no agreement could be reached as to whether to have him appointed by the Gov. or elected. (However it was noted that the L.C. has control over great amounts of land & the revenue from that land - that he makes Policy decisions as

CRC - Preston Shirley

1
Jan 14

Q What about the status of the Rail Road Comm.?

A - It was felt that this Commission should remain statutory & that the method of selection (i.e. appointed or elected) should be left up to the Legislature

(There was also some discussion of limiting the Const. executive branch to the six listed for reasons of keeping the ballot relatively short - for this reason many Commissions, including the R.R. Comm. & the Agriculture Comm. were placed in the general 'statutory agency' category)

Testimony of CRC -

Sec 1

JAN 14

Preston Shirley, Chairman of CRC committee on the Executive

Mary Beth Brient, Vice-Chairman

Mr. Shirley noted that ^{at} the public hearings it was generally felt that Texas had a "weak" governor - most people wanted the office to be strengthened, altho there was some disagreement as to what extent this should be carried, & how it could best be accomplished - He felt that the public did have a "vague" general idea of the exec. dept. and that there was also a pretty good understanding of how the various agencies, boards & commissions were

CRC - Preston Shirley

Jan 14

Q - Why wasn't a Treasurer included in the list of Const. executive officers? (in addition to the Comptroller of Public Accts.?)

A - The CRC felt that the Comptroller should be elected because of his responsibility over the certification of accounts. In view of his fiscal responsibilities it was decided that he should not be under the control of the Governor (ie. appointed rather than elected)

- If a treasurer was needed, it could be created by statute (as it is now) - a value judgment here that certifying accts. was somewhat more important than investing accts. (as is the treasurer's function)

CRC - Preston Shirley

Jan 14

Q - Would it be more reasonable to have a cabinet structure for the Executive branch - and in this way fix the responsibility of governing more directly on the Governor? (note - several questions were asked to this effect -)

A - The CRC's general feeling was that the present system of having elected executive officers has worked quite well, historically, and for that reason it retained most of the 1876 structure in the new proposal. (also felt it cut out most public interaction in state govt)

Ralph Yarborough -

Sec 1
Jan 16

I endorse the CRC minority position -

Keep the Land Comm. elected by the people (giving the historical background of the office of L.C. he noted that several times the L.C. had gone against the wishes of the Governor to "save the land for the people")

®

Preston Smith -

Jan 25

Q - Status of Land Commissioner

A - "I would be in favor of leaving the L.C. as an elective office - I've never really favored a cabinet form of govt. - we should keep as many offices as possible elective (I have faith in the people to vote wisely)

Bill Abbington

Sec 1
Jan 30

Retain those officials now elective as elective - we feel this system has always worked well

"I feel our state Govt. has been more responsive than our Federal Govt - the people feel closer to our state govt. because they have elected them - they know who is sitting in each office."

Alan Shewers

Sec 1
Jan 23

Q who should run for election?

A - I have no objection to the Land Comm., Comm. of Agr., & the Atty. Gen. being elected officials, but I think their offices should be statutory -

Keep the Gov & Lt. Gov. as Constitutionally elected offices

Small Blodgett -

Sec 1
Jan 17

The Governor, Lt Gov & the Attorney General should be the only elective officers
"Elect only the policy makers" - Short Ballot Position

Several questions by the Committee here as to how he had determined that these 3 were the only "policy makers" (Doesn't the Land Comm. & Comptroller also make policy?)

Section 2

CRC - Preston Shirley

2
Jan 14

Q - To whom specifically do the words "shall serve at the pleasure of the Governor" apply, & what do you mean by this wording?

A - It applies only to appointed officers - the wording does not ~~implied~~ imply unrestricted power of removal

CRC - Preston Shirley -

2
Jan 14

Q - Why have these officers elected in non-presidential election years? Won't there be less voters in an "off year"?

A - the CRC felt that by having the Ex Officers elected in "off years" the electorate would have a better opportunity to focus their attentions on state matters

CRC - Preston Shirley - Length of Terms -

2
Jan 14

- Number of Terms -

The CRC reported that public testimony was in favor of retaining 4 year terms (in view of the recent amendment)

Q - Should there be a limitation on the number terms?

A - It was felt that the electorate would take care of deciding the no. of terms any one individual could serve & for this reason there would be no Const. limitation

CRC Preston Shirley

2
Jan 14

The ^{selection} status of the Gen. Land Office Commissioner was to be left up to the Legislature (note: the words "as provided by law") in an attempt to keep up with the changing needs of the future - (Several questions were raised as to the wisdom of this proposal:

1. Won't this be rather confusing - not knowing from year to year if the L.C. is to be elected or appointed?
2. Did the CRC leave it this way to get out from under the political "heat" involved in their reshifting of powers & responsibility?

Alan Shivers

2
Jan 23

"I'd like to see a system where the Gov. & Lt. Gov. run as a team (if the Lt. Gov. was removed from his Senate position so there wouldn't be any conflict over separation of powers)

("However, I think the present system is working fairly well - altho there might be problems if Texas ever becomes a two-party state")

Alan Shivers - Limitation of Terms

2
Jan 23

"I'm not in favor of limiting terms - even with a 4-year term. I think the people ought to be allowed to take care of that - and I think they will..."

®

Lavira S. Arizaga - LUV - limiting of ² Terms JAN 24

Wants Gov. limited to two terms (see no. 2 on her statement)

Power tends to corrupt, we should "spread the wealth" among all Texans - "there is more than one great man (woman) in Texas would make a good Governor..."

Jerry Sadler

Sec 2
Jan 31

Keep the Attorney General elected - the "people's lawyer ought to remain close to the people"

Jerry Sadler

²
Jan 31

The Land Commissioner should be retained as an elected officer

The mineral rights are the biggest asset this state has & I would hate to see this office appointive where the people wouldn't have any say or control over this asset - One sure way to kill this proposed constitution would be to take away the elective officers we have now

Section 3

CRC - Preston Shirley

3

Jan 14

- The only change in Sec. 3 is having the Secretary of State certify the ballots -
It was felt that this procedure would give the Governor a "firmer base of operations" - A contest of an election would still have to be decided in the Legislature (The certification of other state-wide elective officers is to be determined by statute)
Also the procedure as to how one would file for 'contest' is to be determined by statute.

CRC - Preston Shirley

3

Jan 14

Q. Does this certification procedure apply to primary elections?

A - No - not as it is now set up

Q - Would the House & Senate be able to override the Sec. of State's certification?

A - yes - If an election is contested, certification would be withheld

Alan Shivers

3

Jan 23

Q - re: the Sec of State certifying election returns

A - Some safeguard should be placed on his certification (especially if he is an appointee of a Gov. running for re-election)

Section 4

CRC Preston Shirley

4a
Jan 14

There is no change in Section 4(a) (no discussion by the Committee on this either)

CRC - Preston Shirley

4-b
Jan 14

There was quite a bit of public testimony given on this section - it was generally concluded that a transition schedule for an incoming governor (i.e. the availability of staff, office space and access to records) was ~~needed~~ necessary to provide a smooth exchange of leadership from one man to the next.

CRC - Preston Shirley -

4-c
Jan 14

Discussion on the 45-day prohibition on legislation when a new Gov. is inaugurated. The CRC wants to give the new Gov. a chance to get organized - (to prepare a budget, etc)

Q - what about the already provided for transition schedule (see 4-b) - Isn't this enough time?

Jerrill Blodgett -

4-c
Jan 17

I am in favor of the 45-day prohibition on legislative action so that a new Gov. would have time to get organized, to get his staff together, to prepare a budget

State Junior Bar of Texas

4c
Jan 29

Harold Hammet
Wayne Mesner

JR Bar is against the 45-day prohibition on legislation when a new Gov. takes office

®

Section II

CRC - Preston Shulby - Special Sessions Jan¹⁴

The primary discussion centered around the definition of the the word "duration" -

Q - By allowing him to set the duration of the session, does this mean the Gov. could have a session that lasted more than 30 days - or more importantly, could he give the legislature a session as short as 24 hours + thus force a quick + probably unwise ~~result~~ decision on a problem -

A - The CRC did not foresee a problem of this type

CRC - Preston Shulby Jan¹⁴

Q. Do you think it would be possible to allow the legislature to call its own special sessions?

A - No

Alan Shivers - Special Sessions Jan²³
(re: duration limitations)

I liked the 30 day limitation - I don't think the legis. should be allowed to call itself into special session (except for impeachment)

It has to work in a spirit of cooperation
If an emergency arises, the Governor is usually forced into calling a special session

®

Section 13

CRC - Preston Shirley

13-a
Jan 15

Increases the number of votes needed to over-ride a veto to $2/3$ of the memberships of both Houses.

(most discussion on this was in connection with the addition of a reduction veto see sec. 13-b)

CRC - Preston Shirley - Reduction Veto Jan 15

13-b

Q - Isn't this reduction veto in effect giving the Gov. the power of "impoundment" while at the same time (see sec. 13-a) making it more difficult for the legis. to over-ride any veto? - Could there not be some provision for an automatic recall by the legis. ^{to act} on the veto? Could they re-convene to over-ride such a veto?

A - (By Ms. Brint) the minority report of CRC had recommended a recall provision for the legis. (No position on the poss. of reconvening)

CRC - Preston Shirley

13-b
Jan 15

Q - Wouldn't the reduction veto create somewhat of an economic czar of the Gov? How could legislators explain to agencies & their constituents that even tho the appropriation wasn't completely vetoed it was cut to such an extent as to make it inoperative?

A - the CRC felt the advantages outweighed the disadvantages

®

Alan Shivers

136
Jan 23

Not in favor of reduction veto

Ralph Yarbrough

136
Jan 16

Opposes the reduction veto for approp.
bills

CRC - Preston Shirley - Reduction Veto 136
Jan 15

Q - Who urged this provision on the CRC?
Was it the Governor's office?

A - No, it was a compromise between the
pro-cabinet & pro-elective executive
system factions

CRC - Preston Shirley - Reduction Veto - 136
Jan 15

Q - Isn't this really an attempt to increase the
power of the Governor at the expense of the Legis?
Here you vastly increase his "political clout"
& we fail to see where you have really
strengthened his administrative powers - I
feel the "cancerous growth of the bureaucracy
and its unaccountability to anyone as the
major problem in our state govt today"
The Gov still has no authority in your proposal
to control the actions & meetings of the Agencies
- (Note - this is compilation of several questions)
The Com. on the Ex. was obviously interested in the
possibilities of a reduction veto -

Alan Shivers

13
Jan 23

Q - What about automatic recall of the
Legis to consider veto action?

A - I think the present system works
well w/o this recall

Joe Christie

136
Jan 31

Insurance Commission

Q reduction veto?

A - I feel the present powers are sufficient

Q.

JR Bar of Texas - Reduction Veto

136
Jan 29

would favor this provision if there was added an offsetting provision making it easier for the legislature to over-ride a veto (at only 2/3 of those present + voting)

Joe Carter

138
Jan 23

In favor of the reduction veto for the Gov - feels he could use this to keep public expenditures lower / and strengthen the Governor

®

Autumn 15+16

Alan Shivers - Budget Powers + Respons. ¹⁵⁺¹⁶ Jan 23

The Governor needs to be the Chief Budget Officer of the State - The Legis. could select the State Auditor (both houses) & they could retain a staff to review the Governor's Budget - Do away with dual budgets - but let the Legis. review

CRC - Preston Shirley - Budget Prep. ¹⁵ Jan 15

We at the CRC would hope that the Legis. would use the Gov's budget as a starting Point - altho we retain the Legis. Budget Board -

"Hopefully the Legis. will pay more attention to the Governor's budget"

®

CRC - Preston Shirley - Admin. Reorg. ¹⁷ Jan 15

Any reorganization plan can be rejected by either house of the Legis.

Q - Why don't you go one step further & give the Gov. the power of removal & replacement - ? (Thus, there would be continuous responsibility of the Agencies - they would have to be answerable at all times rather than just during budget negotiations?)

A - The removal power was defeated for lack of true "legal safeguards" - "no one could come up with a good list -

Ralph Yarborough ¹⁷ Jan 16

Opposes Administrative Reorganization as proposed by the CRC -

'This is too much power for the Executive'

Hugh Yantis - re: Admin Reorg. ^{Sec 17} Jan 17

I felt this might help the Gov. get his views across sooner - I don't feel it will be abused, but I'm in favor of keeping a check on it by the Legis - "

'A Board member should be made subject to removal with the Gov. - but not w/o legal safeguards - for example, no one would approve of letting the Gov. fire a man for purely political reasons or philosophical differences -'

Bill Abington ¹⁷ Jan 30

Would favor having legislative approval (rather than rejection) required to pass administrative reorganization plans

Joe Carter - Admin Reorg. ¹⁷ JAN 23

I felt it is a very good suggestion - but add that there should be a provision for legislative amendment to any Reorganization Plan.

Joe Christie -

Section 25

25
Jan 31

Q Right of the Gov. to designate chairman of Commissions

A - Yes, he ought to be able to designate the man he wants to carry his policies out - to serve as his spokesman

Q What happens when the state agencies become more powerful than the Legis in running this state?

A - I don't believe that could happen - if it does - it would be the fault of the Legis?

Joe Carter - State Agencies

25

Jan 23

Agrees with giving the Gov. the power to designate the Chairman - Also feels the Gov. should have the power to change the Chairman at anytime

Feels agencies could be consolidated w/o interfering @ their efficiency (you would have better co-operation & coordination of activities)

Alan Shivers

25

Jan 23

Q - Do you feel the various agencies created by statute should be directly respons. to the Legis?

A - yes, for appropriations - but not for policy-making decisions (This should be under the Gov.)

Hugh Yantis

Sec 25

JAN 17

Executive Director of Texas Water Quality Board (since 1967)

was in favor of Sec. 25 (Adm. ^{State Agencies} Regs) - felt it would be wise to follow a system where the Gov. gets to appoint 1/3 of the board & designate the Chairman - it would be more responsive to the Gov. (if it was always kept in mind that some sort of stability needed to be maintained -)

Alan Shivers - Agency Reorganization 25a
Jan 23

Divide the agencies into related areas
(say 25 or 30) - make them responsible
to the Governor

Harold Dudley 25a
Jan 22

Q - are the 6-year term / multiple of 3 members
provisions necessary?

A - "Well, it takes about two years to 'get on
your feet' - there is a need for expert,
qualified, personnel - their selection +
removal should not be left up to political
whims (ie: the complete discretion of the
Governor)

Gov. Alan Shivers

25b
Jan 23

I feel the Boards + Commissioners should
select their own Executive Directors -
(If the Gov. appoints the board members,
he ought to be able to trust their
judgment)

Harold Dudley

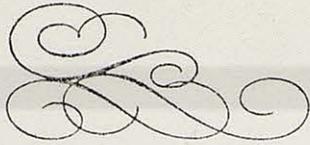
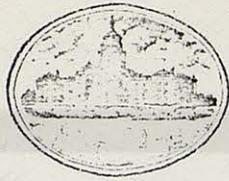
25-b
Jan 22

(re: the Governor designating the chairman
on the various boards + agencies)

The Texas Emp Commission would like to have
these words added:

"unless otherwise designated by legislative
action..."

(This was those agencies created by statute
could be controlled by the legis if they
chose to do so -)



CONSTITUTIONAL CONVENTION

P. O. Box 13286

Capitol Station

Austin, Texas 78711

February 1, 1974

COMMITTEE ON THE EXECUTIVE

Bill Meier, Chairman
Jim Vecchio, Vice Chairman

PUBLIC NOTICE

of

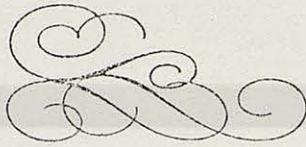
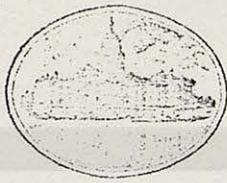
FORMAL MEETING

At 2:00 P.M., Monday, February 4, 1974, the Committee on the Executive will consider all proposals of delegates dealing with Article IV, Sections 1 and 2.

We will be happy to give all delegates time to explain their proposals which deal with Sections 1 and 2 of Article IV.

Please contact the Chairman's Office, 475-3496, for scheduling.





John

CONSTITUTIONAL CONVENTION

P. O. Box 13286

Capitol Station

Austin, Texas 78711

MEMORANDUM

TO: Members of the Executive Committee
FROM: Bill Meier, Chairman
DATE: February 1, 1974
RE: Formal Hearing, February 4, 1974

The Committee on the Executive will hold its first formal hearing to consider all proposals of delegates dealing with Article IV, Sections 1 and 2.

Attached please find a work copy of Sections 1 and 2 of Article IV. Please bring this copy with you to the 2:00 P.M. Committee Hearing Monday.

®

A R T I C L E I V

T H E E X E C U T I V E

P R O P O S A L S

Using Proposal No. 1 as
the base, all proposals
are in numerical order
divided by section and/or
subject.



ARTICLE IV
THE EXECUTIVE

Proposal No. 1, Daniel & Aikin

Section 1

3 Sec. 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT.
4 The Governor shall be the Chief Executive Officer of the State.
5 The Executive Department shall consist of a Governor, Lieutenant
6 Governor, Attorney General, Comptroller of Public Accounts,
7 Secretary of State, Commissioner of the General Land Office, and
8 such other officers as may be provided by law.

Proposal No. 23, Clayton

Section 1

10 Section 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT.
11 The Executive Department of the State shall consist of a Governor,
12 who shall be the Chief Executive Officer of the State, a Lieutenant
13 Governor, and such other officials as may be prescribed by law.

Proposal No. 23, Clayton

Section 1

14 Section 16. OFFICERS OF THE EXECUTIVE DEPARTMENT. There
15 shall be as many other members of the Executive Department as
16 shall be authorized by law. The manner of their election or
17 appointment, terms of office, compensation, and qualifications
18 shall be as prescribed by law.

Proposal No. 39, Ben Z. Grant

Section 1

5 Section 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT.
6 The Governor shall be the Chief Executive Officer of the State.
7 The Executive Department shall consist of a Governor, Lieutenant
8 Governor, Attorney General, Comptroller of Public Accounts,
9 Secretary of State, Commissioner of the General Land Office,
10 Commissioner of Agriculture, and such other officers as may be
11 provided by law.

Section 1 continued on next page.

5 Section 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT.
 6 The Governor shall be the Chief Executive Officer of the State.
 7 The Executive Department shall consist of a Governor, Lieutenant
 8 Governor, Attorney General, Comptroller of Public Accounts,
 9 Secretary of State, Commissioner of the General Land Office,
 10 Commissioner of Agriculture, and such other officers as may be
 11 provided by law.

1 ARTICLE III. THE EXECUTIVE
 2 PART A. COMPOSITION AND MEMBERSHIP
 3 Sec. 3.01. EXECUTIVE POWER. The executive power of the
 4 state is vested in a Governor, a Lieutenant Governor, a Secretary
 5 of State, a Comptroller of Public Accounts, a Treasurer, a
 6 Commissioner of the General Land Office, and an Attorney General;
 7 in a Board of Pardons and Paroles, a Veterans' Land Board, a Water
 8 Development Board, a State Building Commission, a State Board of
 9 Education, the Employees Retirement System of Texas, and the
 10 Teachers Retirement System of Texas; in a Railroad Commission,
 11 if provided by law; and in such other officers and agencies as
 12 may be provided by law. [IV Sec. 1 part, Sec. 11 part; III Subsec.
 13 48-b sen. 1 part, 49-b Para. 1, Sec. 49-c Para. 1, Sec. 51-b(a);
 14 VII Sec. 8; XVI Subsec. 30 part, 62(a) Para. 2 part]

6 PART B. ADMINISTRATION
 7 Sec. 3.21. POWERS AND DUTIES OF GOVERNOR. (a) The Governor
 8 is the chief executive officer of the state. [IV Sec. 1 part]

6 Section 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT.
 7 The Governor shall be the Chief Executive Officer of the State.
 8 The Executive Department shall consist of a Governor, Lieutenant
 9 Governor, Attorney General, Comptroller of Public Accounts,
 10 Secretary of State, Commissioner of the General Land Office, and
 11 such other officers and agencies as may be provided by law.

Executive

6 Section 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT.
 7 The Governor shall be the Chief Executive Officer of the State.
 8 The Executive Department shall consist of a Governor, Lieutenant
 9 Governor, Attorney General, Comptroller of Public Accounts,
 10 Secretary of State, and Commissioner of the General Land Office.

Section 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT

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

7 Section 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT.
 8 The Governor shall be the Chief Executive Officer of the State.
 9 The Executive Department shall consist of a Governor, Lieutenant
 10 Governor, Attorney General, Comptroller of Public Accounts,
 11 Commissioner of the General Land Office, Treasurer, Commissioner
 12 of Agriculture, Secretary of State, and such other officers as
 13 may be provided by law.

5 Section 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT.
 6 The Governor shall be the Chief Executive Officer of the State.
 7 The Executive Department shall consist of a Governor, Lieutenant
 8 Governor, Attorney General, Comptroller of Public Accounts,
 9 Secretary of State, Commissioner of the General Land Office,
 10 Commissioner of Education, and such other officers as may be
 11 provided by law.

Feb. 4

Section 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT.

7
8
9
10
11

The Governor shall be the Chief Executive Officer of the State. The Executive Department shall consist of a Governor, Lieutenant Governor, Attorney General, and such other officers as may be provided by law. *OK.*

12
13
14
15
16
17

Section 1. OFFICERS CONSTITUTING THE EXECUTIVE DEPARTMENT.

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

9 Sec. 2. SELECTION, TERMS, AND RESIDENCE OF OFFICERS OF
 10 EXECUTIVE DEPARTMENT. The Governor, Lieutenant Governor, Attorney
 11 General, and Comptroller of Public Accounts shall be elected by
 12 the qualified voters of the State at general elections beginning
 13 with 1978. The Secretary of State shall be appointed by the
 14 Governor. The Commissioner of the General Land Office shall be
 15 elected or appointed as provided by law. Appointive officers of
 16 the Executive Department shall be appointed by the Governor with
 17 the advice and consent of the Senate and shall serve at the
 18 pleasure of the Governor. Elective officers of the Executive
 19 Department shall serve four-year terms. All officers of the
 20 Executive Department shall reside at the seat of government.

14 Section 2. ELECTION OF OFFICERS OF THE EXECUTIVE DEPARTMENT;
 15 RETURNS. (a) The Governor, Lieutenant Governor, and other
 16 officials of the Executive Department shall be elected or appointed
 17 in the manner as prescribed by law.

14 Section 16. OFFICERS OF THE EXECUTIVE DEPARTMENT. There
 15 shall be as many other members of the Executive Department as
 16 shall be authorized by law. The manner of their election or
 17 appointment, terms of office, compensation, and qualifications
 18 shall be as prescribed by law.

14 Section 10. WHERE GOVERNOR SHALL RESIDE. During the session
 15 of the Legislature, the Governor shall reside where its sessions
 16 are held and at all other times at the seat of government, except
 17 when, by act of the Legislature he may be authorized to reside
 18 elsewhere.

6 Section 2. SELECTION, TERMS, AND RESIDENCE OF OFFICERS OF
 7 EXECUTIVE DEPARTMENT. The Governor, Lieutenant Governor, Attorney
 8 General, and Comptroller of Public Accounts shall be elected by
 9 the qualified voters of the State at general elections beginning
 10 with 1978. The Secretary of State shall be appointed by the
 11 Governor. The Commissioner of the General Land Office shall be
 12 elected or appointed as provided by law. Appointive officers of
 13 the Executive Department shall be appointed by the Governor with
 14 the advice and consent of the Senate and shall serve at the
 15 pleasure of the Governor. Elective officers of the Executive
 16 Department shall serve four-year terms and may not serve more
 17 than two terms in succession. All officers of the Executive
 18 Department shall reside at the seat of government.

12 Section 2. SELECTION, TERMS, AND RESIDENCE OF OFFICERS OF
 13 EXECUTIVE DEPARTMENT. The Governor, Lieutenant Governor, Attorney
 14 General, Commissioner of Agriculture, and Comptroller of Public
 15 Accounts shall be elected by the qualified voters of the State
 16 at general elections beginning with 1978. The Secretary of State
 17 shall be appointed by the Governor. The Commissioner of the
 18 General Land Office shall be elected or appointed as provided by
 19 law. Appointive officers of the Executive Department shall be
 20 appointed by the Governor with the advice and consent of the
 21 Senate and shall serve at the pleasure of the Governor. Elective
 22 officers of the Executive Department shall serve four-year terms.
 23 All officers of the Executive Department shall reside at the seat
 24 of government.

27 Sec. 3.03. SELECTION OF OFFICERS. (a) The Governor,
 1 Lieutenant Governor, Comptroller of Public Accounts, Treasurer,
 2 Commissioner of the General Land Office, and Attorney General are
 3 elected statewide at a general election in every other
 4 even-numbered year. [IV Sec. 2]

5 (b) The Secretary of State is appointed by the Governor
6 with the advice and consent of two-thirds of the senators present.
7 [IV Sec. 21 part]

8 (c) The Railroad Commission created by law consists of
9 three commissioners who are elected statewide at a general
10 election. [XVI Sec. 30 part]

11 (d) The three members of the Board of Pardons and Paroles
12 are appointed, one by the Governor, one by the Chief Justice of
13 the Supreme Court, and one by the Presiding Judge of the Court
14 of Criminal Appeals, with the advice and consent of two-thirds
15 of the senators present. [IV Sec. 11 Para. 1 part]

16 (e) Other executive offices filled by statewide election
17 are filled at the general election for Governor. [IV Sec. 22
18 sen. 1 part, Sec. 23 sen. 1 part]

19 (f) The Veterans' Land Board consists of the Commissioner
20 of the General Land Office or, if he is absent or otherwise
21 disabled, the Chief Clerk of the General Land Office; and two
22 individuals, one with knowledge of veterans' affairs and one with
23 knowledge of finance, appointed by the Governor with the advice
24 and consent of two-thirds of the senators present. The
25 Commissioner of the General Land Office, or his substitute, serves
26 as chairman of the Board. [III Sec. 49-b Paras. 1 & 2]

27 (g) The Water Development Board consists of the number of
1 members prescribed by law appointed by the Governor with the
2 advice and consent of two-thirds of the senators present. [III
3 Sec. 49-c Para. 1 part]

4 (h) The State Building Commission consists of the Governor,
5 the Attorney General, and a state executive officer designated
6 by law whose appointment is confirmed by two-thirds of the senators
7 present if he was not confirmed for his present office. [III
8 Sec. 51-b(a)]

9 Sec. 3.04. TERMS OF OFFICE. (a) The Governor and
10 Lieutenant Governor serve four years following their election,
11 beginning on the first Tuesday after the Legislature convenes in
12 regular session. [IV Sec. 4 part, Sec. 16 part]

12 (b) All other executive officers who are elected statewide
14 and whose terms are not prescribed by this constitution serve
15 four years following their election. [IV Sec. 22 sen. 1 part,
16 Sec. 23 sen. 1 part]

17 (c) The Secretary of State serves during the term of service
18 of the Governor. [IV Sec. 21 part]

19 (d) The Railroad Commissioners and the members of the Board
20 of Pardons and Paroles serve six-year staggered terms. [IV Sec.
21 11 1 part; XVI Sec. 30 part]

22 (e) The appointed members of the Veterans' Land Board serve
23 four-year staggered terms. [III Sec. 49-b Para. 1 part]

24 (f) Officers of the public school system and of public
25 institutions of higher education, if not elected statewide, and
26 members of the State Board of Education serve terms prescribed
27 by law not to exceed six years. [VII Sec. 8, Sec. 16 (1928)]

1 (g) The terms of members of an executive board may be fixed
2 at six years if the terms of one-third of the members of the board
3 expire every other year. [XVI Sec. 30a part]

19 Sec. 3.29. RESIDENCE OF OFFICERS. (a) Except as authorized
20 or required by law, the Governor shall reside in Austin during
21 his term of office unless the Legislature meets at a different
22 place. In that event, he shall reside where the Legislature
23 meets. [IV Sec. 13]

24 (b) Except for the Lieutenant Governor, all other executive
25 officers elected statewide for four-year terms shall reside in
26 Austin during their terms of office. [IV Sec. 22 part, Sec. 23
27 part]

11 Section 2. SELECTION, TERMS, AND RESIDENCE OF OFFICERS OF
12 EXECUTIVE DEPARTMENT. The Governor, Lieutenant Governor, and
13 Attorney General shall be elected by the qualified voters of the
14 State at general elections beginning with 1978. The Comptroller
15 of Public Accounts, Secretary of State, and Commissioner of the
16 General Land Office shall be elected or appointed as provided by

Feb. 4

Continued on next page.....

forward to

Referred to
JAN 22 1974

17 law. Appointive officers of the Executive Department shall be
18 appointed by the Governor with the advice and consent of the
19 Senate and shall serve at the pleasure of the Governor. Elective
20 officers of the Executive Department shall serve four-year terms.
21 All officers of the Executive Department shall reside at the seat
22 of government.

Referred to

7 SECTION ____ . JOINT ELECTION. In the general election for
8 Governor and Lieutenant Governor, one vote shall be cast jointly
9 for the candidates nominated by the same political party. The
10 Legislature may provide by law for the joint nomination of
11 candidates for Governor and Lieutenant Governor.
First printing

Referred to

6 Section ____ . GOVERNOR'S TERM. The Governor may serve no
7 more than two four-year terms in succession.

Section 2. SELECTION, TERMS, AND RESIDENCE OF OFFICERS OF
EXECUTIVE DEPARTMENT. The Governor, Lieutenant Governor, Attorney
General, Commissioner of the General Land Office, and Comptroller
of Public Accounts shall be elected by the qualified voters of the
State at alternate general elections beginning with 1978. The
Secretary of State shall be appointed by the Governor. Appointive
officers of the Executive Department shall be appointed by the
Governor with the advice and consent of the Senate and shall serve
at the pleasure of the Governor. Elected officers of the Executive
Department shall serve four-year terms. All officers of the
Executive Department shall reside at the seat of government.

Referred to Ex. 10
JAN 29 1974

Section 2. SELECTION, TERMS, AND RESIDENCE OF OFFICERS OF EXECUTIVE DEPARTMENT.

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

14 Section 2. SELECTION, TERMS, AND RESIDENCE OF OFFICERS OF
 15 EXECUTIVE DEPARTMENT. The Governor, Lieutenant Governor, Attorney
 16 General, Comptroller of Public Accounts, Commissioner of the
 17 General Land Office, Treasurer, and Commissioner of Agriculture
 18 shall be elected by the qualified voters of the State at general
 19 elections beginning with 1978. The Secretary of State and other
 20 appointive officers of the Executive Department shall be appointed
 21 by the Governor with the advice and consent of the Senate and
 22 shall continue in office during the term of service of the
 23 Governor. Elective officers of the Executive Department shall
 24 serve four-year terms. All officers of the Executive Department
 25 shall reside at the seat of government.

Feb. 4

Don't agree with

withdrew

12 Section 2. SELECTION, TERMS, AND RESIDENCE OF OFFICERS OF
 13 EXECUTIVE DEPARTMENT. The Governor, Lieutenant Governor, Attorney
 14 General, Comptroller of Public Accounts, and Commissioner of
 15 Education shall be elected by the qualified voters of the State
 16 at general elections beginning with 1978. The Secretary of State
 17 shall be appointed by the Governor. The Commissioner of the
 18 General Land Office shall be elected or appointed as provided by
 19 law. Appointive officers of the Executive Department shall be
 20 appointed by the Governor with the advice and consent of the
 21 Senate and shall serve at the pleasure of the Governor. Elective
 22 officers of the Executive Department shall serve four-year terms.
 23 All officers of the Executive Department shall reside at the seat
 24 of government.

Section ____ . The Governor, Lieutenant Governor, Attorney General, and Comptroller of Public Accounts shall be elected by the qualified voters of the State at general elections beginning with 1978. The Secretary of State shall be appointed by the Governor. The Commissioner of the General Land Office shall be elected or appointed as provided by law. Appointive officers of the Executive Department shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor. Elective officers of the Executive Department shall serve four-year terms but may serve in any one office no more than two terms. All officers of the Executive Department shall reside at the seat of government.

8 Section 2. SELECTION, TERMS, AND RESIDENCE OF OFFICERS OF
 9 THE EXECUTIVE DEPARTMENT. (a) The Governor, Lieutenant Governor,
 10 and Attorney General shall be elected by the qualified voters of the State
 11 at general elections beginning in 1978.

12 (b) In the general election for Governor and Lieutenant Governor, one
 13 vote shall be cast jointly for the candidates nominated by the same
 14 political party.

15 (c) Appointive officers in the Executive Department shall be appointed
 16 by the Governor with the advice and consent of the Senate and shall serve
 17 at the pleasure of the Governor.

18 (d) Elective officers of the Executive Department shall serve four
 19 year terms.

20 (e) All officers of the Executive Department shall reside at the seat
 21 of government.
 22

9 Section ____ SELECTION OF THE COMPTROLLER OF PUBLIC
 10 ACCOUNTS AND THE COMMISSIONER OF THE GENERAL LAND OFFICE.

11 The qualified voters of the State shall determine whether the Comptroller
 12 of Public Accounts and the Commissioner of the General Land Office shall be
 13 elected to office or appointed by the Governor with the advice and consent
 14 of the Senate.

18 Section 2. SELECTION, TERMS, AND RESIDENCE OF OFFICERS OF
19 EXECUTIVE DEPARTMENT. The Governor, Lieutenant Governor, and
20 Attorney General shall be elected by the qualified voters of the
21 State at general elections beginning with 1978. The Secretary
22 of State shall be appointed by the Governor. The Commissioner
23 of the General Land Office shall be elected or appointed as
24 provided by law. Appointive officers of the Executive Department
25 shall be appointed by the Governor with the advice and consent
1 of the Senate and shall serve at the pleasure of the Governor.
2 Elective officers of the Executive Department shall serve four-year
3 terms. All officers of the Executive Department shall reside at
4 the seat of government. *Remove Compt.*

21 Sec. 3. RETURNS OF ELECTION; DECLARATION OF ELECTION; TIE
22 VOTES; CONTESTS. Election returns for executive officers shall,
23 until otherwise provided by law, be sealed and transmitted to the
24 Secretary of State, who shall open the returns and promptly certify
25 the winner but shall do so no later than the first Monday in
26 January. The person receiving the highest number of votes for
27 an office shall be declared elected. If two or more persons shall
1 have the highest and an equal number of votes for an office, one
2 of them shall be chosen immediately by joint vote of both houses
3 of the legislature. Contested elections for executive offices
4 specifically named in Section 1 of this Article shall be determined
5 by both houses of the legislature in joint session.

Prop. 1
Daniel
+ Akin

Proposal No. 23, Clayton

Section 3

18 (b) The returns of every election for said executive
19 officers, until otherwise provided by law, shall be made out,
20 sealed up, and transmitted by the returning officers prescribed
21 by law, to the seat of government, directed to the Secretary of
22 State, who shall deliver them to the Speaker of the House of
23 Representatives as soon as the Speaker shall be chosen, and the
24 Speaker shall, during the first week of the session of the
25 Legislature, open and publish them in the presence of both houses
26 of the Legislature. The person voted for at said election having
27 the highest number of votes for each of said offices, respectively,
1 and being constitutionally eligible, shall be declared by the
2 Speaker, under sanction of the Legislature, to be elected to said
3 office. But if two or more persons shall have the highest and
4 an equal number of votes for either of said offices, one of them
5 shall be immediately chosen to such office by a joint vote of
6 both houses of the Legislature. Contested elections for either
7 of said offices shall be determined by both houses of the
8 Legislature in joint session.

Section 3

4 Sec. 3.05. CANVASS OF ELECTION RETURNS AND CONTESTS. (a)

5 During the first week of the regular session, the Legislature
6 shall meet in joint session with the Speaker of the House presiding
7 and canvass the returns of the election for the offices of Governor
8 and Lieutenant Governor. If the candidate who receives the most
9 votes for the office is qualified under this constitution, the
10 Speaker, with the approval of the Legislature, shall certify his
11 election.

12 (b) If there is a tie for the most votes for any executive
13 office, the Legislature shall resolve the tie immediately by a
14 joint vote of both houses.

15 (c) If an election for an executive office is contested,
16 the Legislature shall determine the contest in a joint session
17 of both houses. [IV Sec. 3]

23 Section 3. RETURNS OF ELECTION; DECLARATION OF ELECTION;
24 TIE VOTES; CONTESTS. Election returns for executive officers
25 shall, until otherwise provided by law, be sealed and transmitted
1 to the Secretary of State, who shall open the returns and promptly
2 certify the winner but shall do so no later than the first Monday
3 in January. The person receiving the highest number of votes for
4 an office shall be declared elected. If two or more persons have
5 the highest and an equal number of votes for an office, one of
6 them shall be chosen immediately by joint vote of both houses of
7 the Legislature. Contested elections for executive offices
8 specifically named in Section 1 of this Article shall be determined
9 by both houses of the Legislature in joint session. ®

JAN 31 1974 Referred:

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session.

For L. ...



MEMO from . . . ADELYN DUKE

oo

Here is a copy of a letter I have sent to our adopted representative - Tim Von Dohlen. Since we have members who live in his district, we try to keep him informed of LWV positions, too. I had a long talk last evening with Joe Wyatt and he was extremely upset about the way things are going in the Executive Committee. He and all other members are sick of hearing testimony from so many state agency heads that James Ray has sent to testify and seemed surprised that we had set a priority on the cabinet system. Can you find someone in Austin who is not afraid of the powerful agency heads to give testimony in support of our position. Dean John Gromouski came across very strong in support of the cabinet form at the panel at the NML meeting in Dallas. Joe wondered why no one had asked him to present a statement. Also, if there are members on the executive committee who are League delegates, maybe they should be apprised of our priorities. Waiting till these proposals come to the convention floor may be too late.

Oh, yes, Joe supports our position on voting rights for ex-felons, but he says attention must be given to those things that are crucial to the structure of government or we will have something worse than our present document.

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1/22/74

Balance Stressed By Wyatt

One of the biggest problems of the executive committee of the 1974 Constitutional Convention is determining a way to balance the power between the executive branch of state government and state agencies, according to State Rep. Joe Wyatt of Bloomington.

Wyatt is a member of the committee.

"Personally, I believe the Constitution Revision Committee left a big gap in executive power — in the Governor's ability to administer on a day to day basis," Wyatt said Monday in Victoria. "I don't think the Governor has been given sufficient authority."

Wyatt said the revision committee "did some good things" in regard to the Governor's ability to administer, but did not provide sufficient authority in this respect.

"They may have gone too far with his fiscal authority," he added.

The big problem, Wyatt said, is that the Governor has "very little day to day control" over state agencies once he has signed their appropriations.

"We now have a system of autonomous agencies," the state representative remarked. "What we have, in effect, is a fourth branch of government in Texas. Sometimes they are responsive to no one."

He said there is reason for state agencies to have continuity, but there should "be some accountability of state agencies to the Governor."

"The question is do we want to balance power between the Legislature and the Governor or between state agencies and the Governor."

Wyatt said the present autonomy of some state agencies makes it difficult for a Governor to implement programs he has promised the people before being elected.

"This convention is the one opportunity we're going to have to once again assert the people's influence over state agencies," Wyatt commented.

As far as the convention itself, Wyatt said "things are going better than I had originally expected. It is more harmonious. Members of the House and Senate are working together with the overall attitude of writing a better document than we now have."

®

February 5, 1974

Delegate Tim Von Dohlen
Constitutional Convention
P.O. Box 2910
Austin, Texas 78767

Dear Tim,

Since I was unable to have time to chat with you during the first few days of the convention, I would like to pass on to you some of our information which might be helpful in the next few days as decisions are being made about what should be included in the proposed Executive Article. The League of Women Voters of Texas has set two priorities of our position on the executive department which we are most concerned about. These are provision for the cabinet system and the reorganization of boards and commissions along functional lines. We would appreciate your help in including these in the committee's proposal. Following is an excerpt from a recent League publication which elaborates on our position:

"The state constitution does not provide for a single head of state but for an executive department of seven officials--governor, lieutenant governor, secretary of state, comptroller of public accounts, treasurer, commissioner of the General Land Office and attorney general. Although the governor is designated the chief executive officer, the other executive officials are entirely independent of him and administer their respective offices without executive supervision. The state's executive structure therefor, is characterized by plurality in top management, a long ballot, lack of a single line of responsibility, absence of coordination, and a weak executive.

The League believes that a change to a cabinet-type executive department would be a helpful modernizing change for the Texas executive department. A "cabinet" system, whereby only the governor, lieutenant governor, and attorney general are elected, giving the governor firm control over the departments in his administration. These department heads and the governor would form a unit for coordination and planning of state policy. The cabinet system would give the governor real power to carry out his program. It would also make the government more visible to the people and pinpoint responsibility for its successful functioning.

The innumerable agencies, boards, commissions, and departments comprising the administrative branch of our state government have arisen from rather haphazard growth in the state's functions and services with little long-range or comprehensive planning. Therefore, they present an amazing picture of administrative fragmentation and inefficiency. The League of Women Voters believes that state boards and commissions should be reorganized along functional lines by grouping them in areas of responsibility. In nearly all studies of state government, the major weakness emphasized has been fragmentation of authority through allocation of activities among many separate agencies, which are not responsible to the chief executive. Nowhere is the problem more pronounced than in Texas."

Maybe the above will support you in your efforts to bring modern government to Texas. We wish you well throughout the committee deliberations and subsequent action in the convention.

Sincerely,

Edith Duke

2/3/74 Cor Office

Executive Panel Plans First Working Session

By **TOMBARRY**
Staff Writer

Members of the Committee on the Executive who have grown tired of hearing the "change nothing" testimony of state agency heads have been chafing at the bit to get down to re-wording Article IV.

Monday, they get their chance.

Chairman Sen. Bill Meier of Eules Friday set 2 p.m. Monday as the first working session.

At the Monday session, he said, the committee will go over Sections I and II of Article IV, including the numerous alternatives which got in under the deadline (37 the last day alone).

Section I deals with who constitutes the Executive Department and Section II deals with whether they shall be elected or appointed.

There have been a bunch of suggestions about these two brief sections, ranging from those who think that only the Governor and Lieutenant Governor should even be in the Constitution and the others appointed (pure cabinet advocates) to those who think all statewide officers ought to be in the Constitution and be elected, to those who advocate something in between.

Best guess is that the committee will heed those who have pointed to the importunity of messing with statewide elective officers; those who say the voters will deep-six the

entire document if, say, the Land Commissioner were made appointive.

To make things easier for the committee, the research staff has been busy with scissors and paste cutting up all the proposals and collating them ("collating" may be staffer Louise Winecup's favorite word by now) in green folders section-by-section.

Sen. Meier intends that the committee takes up each section and deal with it before moving along to the next. He said it may take two days to get through with Sections I and II.

Given the probability that the committee is not going to go along with only a few of the sections as envisioned by the Constitutional Revision Commission, the process of coming up with a revised article may not take as long as skeptics have said.

Tom Craddick of Midland, for example, has only rarely graced the committee with his presence during the public hearings — he's heard it all before and he knows what he wants. You can bet he'll be present during the work sessions, however.

There will be a continuously-posted public hearing notice, because there are some people whose testimony the group has yet to hear, like Governor Dolph Briscoe, Lt. Gov. Bill Hobby and some others. Work sessions will be interrupted to hear such testimony, Meier said.



BY Ben [Signature]

PROPOSAL NO. 39

1 A PROPOSAL FOR INCORPORATION IN THE CONSTITUTION OF TEXAS
2 Relating to the organization of the executive branch.

3 BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF TEXAS:

4 (1) That the following sections be included in Article IV:

5 Section ____ . ADMINISTRATIVE DEPARTMENTS. Except for the
6 office of Governor and the office of Lieutenant Governor, all
7 executive and administrative offices, agencies, and
8 instrumentalities of the State government, and their respective
9 functions, powers, and duties, shall be allocated by law among
10 and within not more than twenty principal departments, including
11 the departments headed by the Attorney General, Comptroller of
12 Public Accounts, Secretary of State, Commissioner of the General
13 Land Office, Commissioner of Agriculture, and State Board of
14 Education, so as to group them as far as practicable according
15 to major purposes. Regulatory, quasi-judicial, and temporary
16 agencies established by law may, but need not, be allocated within
17 a principal department. The Legislature shall by law prescribe
18 the functions, powers, and duties of the principal departments
19 and of all other agencies of the State and may from time to time
20 reallocate offices, agencies, and instrumentalities among the
21 principal departments, may increase, modify, diminish, or change
22 their functions, powers, and duties and may assign new functions,
23 powers, and duties to them; but the Governor may make such changes
24 in the allocation of offices, agencies, and instrumentalities,
25 and in the allocation of such functions, powers, and duties, as



1 he considers necessary for efficient administration. If such
2 changes affect existing law, they shall be set forth in executive
3 orders, which shall be submitted to the Legislature while it is
4 in session, and shall become effective and have the force of law,
5 sixty days after submission, or at the close of the session,
6 whichever is sooner, unless specifically modified or disapproved
7 by a resolution concurred in by a majority of the members of each
8 house.

9 Section _____. EXECUTIVE OFFICERS; APPOINTMENT. The Governor
10 shall appoint, with the advice and consent of the Senate, and may
11 remove the heads of all administrative departments, except those
12 required or authorized by this Constitution ^{or by law} to be elected. All
13 other officers in the administrative service of the State shall
14 be appointed and may be removed as provided by law.

15 Section _____. MERIT SYSTEM. (a) In the civil service of
16 the State, all offices and positions shall be classified according
17 to duties and responsibilities, salary ranges shall be established
18 for the various classes, and all appointments and promotions shall
19 be made according to merit and fitness to be ascertained, so far
20 as practicable, by examinations which, so far as practicable,
21 shall be competitive.

22 (b) There shall be a department of civil service which
23 shall, in accordance with the provisions of this article and the
24 laws enacted pursuant thereto, administer the personnel functions
25 of the State. No payment for any employment hereunder shall be
26 made without the affirmative certification by the department, as
27 to the legality of such employment. The Legislature shall enact



1 laws necessary to carry out the provisions of this section and
2 the department shall make such rules as may be necessary to carry
3 out the provisions and intent of such laws.

4 (2) That the following language be excluded from Article
5 IV:

6 Section 17. ADMINISTRATIVE REORGANIZATION. The Governor
7 may from time to time submit to the Legislature written
8 reorganization plans reassigning functions among or consolidating
9 or abolishing any State governmental agencies. Within sixty days
10 after submission or within sixty days after the Legislature can
11 act as a deliberative body, whichever comes later, either house
12 may reject a plan by resolution. Unless rejected the plan shall
13 become effective by its terms.

14 Section 25. STATE AGENCIES. (a) The length of the term
15 of members appointed by the Governor to State governmental agencies
16 created by statute and with a life of not less than six years
17 shall be two years, unless the number of appointed members is
18 three or a whole multiple thereof in which case the length of the
19 term shall be six years. Two-year terms shall expire between
20 February 1 and April 1 of odd-numbered years. In the case of
21 agencies with members who serve six-year terms, the terms of the
22 members appointed by the Governor shall be staggered. The terms
23 of one-third of such members shall expire between February 1 and
24 April 1 of odd-numbered years.

25 (b) At the time of appointing members of multi-member
26 agencies with six-year terms, the Governor may designate the
27 chairman. If the Governor fails to designate a chairman prior

1 for which elected shall be determined in a proceeding in the
2 Supreme Court of the State under such rules of procedure as may
3 be prescribed by that court. A majority vote of the Governor,
4 Lieutenant Governor, Attorney General, Comptroller of Public
5 Accounts, Commissioner of the General Land Office, Commissioner
6 of Agriculture, Speaker of the House of Representatives, and
7 President pro tempore of the Senate shall initiate such
8 proceedings.

9 Section 7. COMPENSATION OF OFFICERS OF EXECUTIVE DEPARTMENT.

10 The compensation of the Governor, Lieutenant Governor, Attorney
11 General, Comptroller of Public Accounts, Secretary of State,
12 Commissioner of the General Land Office, and Commissioner of
13 Agriculture shall be as provided by law, not to exceed the amount
14 recommended by the salary commission. The compensation of officers
15 of the Executive Department shall not be diminished during their
16 term of office. The Governor shall have the use of the Governor's
17 Mansion.

Con Office

STATEMENT TO THE EXECUTIVE COMMITTEE OF THE TEXAS CONSTITUTIONAL
CONVENTION

Lavora Spradlin Arizaga

January 24, 1974

I am Lavora Spradlin Arizaga, vice-president of the League of Women Voters of Houston, speaking for nearly 4500 members of the League of Women Voters of Texas.

The purpose of the League of Women Voters is to encourage political responsibility (or, in other words, good government) through informed and active participation of citizens in government.

The framework for our government in the United States is the U. S. constitution. The framework for Texas government is the Texas Constitution. The League of Women Voters of Texas started studying the Texas Constitution in 1948 when we undertook a "Know Your State" study. By 1954, our members had reached agreement that the Texas Constitution of 1876 needed a complete revision. By 1957 we had adopted eleven principles of a good constitution. Throughout the years following we have studied and reached consensus on many different aspects of the constitution. Some of these are concerned with the executive department and those are what I'm here to talk to you about.

One of the principles of a good constitution is "a clear separation of powers with responsibility definitely assigned." The purpose of such separation of powers is so that there will be a balance of power among the three branches of government. The League of Women Voters of Texas believes that the executive branch of Texas government must be strengthened to achieve a proper balance of power so that the needs of modern state government may be met.

Strengthening the executive involves achieving these specific goals:

- 1) election of the governor, lieutenant governor, and attorney general to four year terms. (Article IV, Sec. 2 of the proposed constitution makes this provision.)
- 2) limitation of the governor to two terms, which may or may not be successive.
- 3) the governor and lieutenant governor to run as a team.
- 4) gubernatorial elections in non-presidential election years. (This will be the case, as things now stand, with no new revision, with four-year terms starting in 1974. In this revision process, please be sure that this timing stays the same.)
- 5) constitutional provision for the succession to the office of the governor should the governor become unable to perform the duties of his office. (Sec. 6 of the proposed constitution makes such provision.)
- 6) a cabinet-type executive department -- the Secretary of State, Comptroller, and Commissioner of the General Land Office appointed by the Governor with Senate approval.
- 7) the governor's budget to be the only budget submitted to the legislature. (Section 15 of the proposed constitution provides for such budget preparation. It does not exclude a separate legislative budget but it makes it clear that budget preparation and presentation to the Legislature is a function of the Governor's office.

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- 8) the governor to have, within reasonable safeguards prescribed by law, power to remove appointive officers of the executive department and appointees to boards and commissions.
- 9) reorganization of state boards and commissions along functional lines by grouping them in areas of responsibility. This should not be locked into the constitution but the ability to do it should be provided for in the constitution. (Article IV, Sec. 17 of the proposed constitution makes such provision.)

These are our recommendations concerning the executive branch of our state government. We cannot ask that you study them as long and as carefully as we have. We don't want the convention to go on for years!! We do hope that you will consider them carefully and will be able to concur with our evaluation of their merits. Thank you very much for this opportunity to present the recommendations of the League of Women Voters of Texas.

Executive-Explanations of positions-CRC proposals *B. Vachon*

Support of measures to increase the effectiveness of the executive department of the state government.

Four year terms for the governor, lieutenant governor, and attorney general; the governor limited to two terms, which may or may not be successive.

4 year terms provided with no limit.

Gubernatorial elections held in non-presidential election years.

This we now have.

A party's candidates for the offices of governor and lieutenant governor required to run as a team.

Not mentioned. There were some proposals to eliminate Lt. governor or make him strictly an officer of the executive department by eliminating his duty to preside over the senate. Also suggested that he be forbidden to make senate committee appointments but decided that those powers to organize the senate were given to him by the senate themselves in their rules and could be taken away the same way.

Constitutional provision for the succession to the office of governor if the governor becomes unable to perform the duties of his office.

Disability to be determined by proceedings in supreme court with proceedings initiated by a majority vote of the governor, Lt. governor, attorney general, comptroller of public accounts, commissioner of general land office, speaker of the house and pres. pro tem of senate.

The governor's budget the only budget submitted to the legislature.

Now--Governor proposes budget every 2 years and legislature ignores it. But even after the governor signs the legislative budget bill he nor the legislature has "budget execution power"----- the power to see that state agencies spend their budget money efficiently & receive desired results. Legislatures proper function should be to scrutinize, weigh and challenge the governor's budget.

Proposed Const. The governor to be the chief budget officer of the state. Also the legislature would be authorized to give the governor the powers ~~xx~~ of budget execution--to supervise state spending. It would make the governor responsible for "the proper execution and administration of the total state budget" and authorize the legislature to give him the power it considers necessary to do so. Also requires all government agencies to furnish such spending plans, reports and accounts as he considers necessary to supervise spending. Also retains the current line item veto and gives a reduction veto power for certain appropriation items.

In the past the legislature would put things he might veto into lump sums with other things he couldn't afford to veto in order to get their pet appropriations passed. The proposed constitution gives "reduction veto power except of a single office or position--so he couldn't use it to punish someone he didn't like. Opponents claim that this could be used for political "blackmail".

Proponents point out that the legislators still have the power to override the governor's partial veto.

A cabinet-type executive department, with only the governor, lt. governor, and attorney general elected, the governor having the power to appoint and remove the nonelective officials.

Proposed constitution recommends retaining the comptroller of public accounts as well as attorney general as elective officer because they serve as checks on other governmental officials and branches and thus should remain independent.

Sec. of state still appointive.

Commissioner of general land office remains constitutional office but method of selection provided by law.

Commission felt that state treasurer should be eliminated as constitutional officer and in future legislature could either abolish his office or make appointive.

The legislature has the power to provide other executive offices if necessary.

Appointive officers of executive department to serve "at the pleasure of the governor".

Reorganization of the state boards and commissions along functional lines by grouping them in areas of responsibility.

The proposed constitution gives the governor the authority to submit reorganization plans to the legislature reassigning functions among or consolidating or abolishing any state governmental agencies. The plan to take effect unless disapproved within 60 days. Also the governor strengthened by power to appoint 1/3 of members soon after taking office; staggered terms ~~xxxx~~ expire between Feb. 1 and April 1 so governor would have appointed a majority after 2 years of his 4 year term. The governor may also designate chairman of each board if he so desires.

Other proposals to increase the effectiveness of the governor's office include the provision that the Secretary of State will certify the election of the governor as soon as possible after the general election and the legislature to appropriate money for staff and office prior to his inauguration, entitle him to all government reports so he can put people in charge of preparing his budget and work on his appointments to be ready to start when he is inaugurated.

In the year when the governor takes over, the legislature would meet one day before inauguration, select its leaders and organize, but may not deliberate as a body for 45 days; just hold committee hearings and deliberations. This would give the governor 45 days to prepare his program.

The present constitution provides that the legislature certify the election of the governor during the first week of the legislative session; the governor to be installed on the first Tuesday after the organization of the legislature and that the governor present his budget at the commencement of each regular session.

Executive-Explanation of positions 3.

Opponents of the CRC proposal believe that it would give the governor too much power. "Your legislative powers are going to be taken away." "Watergate resulted in concentrating power in the executive." Reorganization plan for state agencies would give the governor "virtually dictatorial power over every state agency that you have."

These opponents are talking to the legislature; warning them of losing their power; and they don't need to be encouraged to keep all they can.

However, we may remind them that the governor may submit reorganization plans and the legislature has the power to disapprove of those plans.

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Panel Puts Agency Head on Defensive

By **TOMBARRY**
Staff Writer

Committee Members Speak Out

If Texas Water Quality Board Executive Director Hugh Yantis' experience before the Committee on the Executive is any example, heads of state agencies are going to spend most of their time on the defensive if they testify before the 21-member committee.

A phalanx of young to not-so-young committee members spent Thursday afternoon taking pot shots at the present Texas system of near-autonomous agencies, featuring expert executive directors and part-time citizen boards.

Freshman Sen. Bill Meier of Eules, chairman of the committee, and most of the committee members did not express themselves directly on the issue, but the most

outspoken members, five in number, let fly.

All conservative-leaning, the five are Rep. Frank Gaston, Republican of Dallas (and a former newsman); Sen. Mike McKinnon of Corpus Christi (television station president); Rep. Tom Schieffer of Fort Worth (investments management); Rep. John Whitmire of Houston (listed as a University of Houston student); and Rep. Joe

Wyatt of Bloomington (auditor).

Things got pretty rough at points. An example was when Schieffer told Yantis that the legislature is unable to control agency heads. "We are at your whim, your caprice," said the young delegate.

"I haven't had a caprice since I was in high school," Yantis replied saltily.

The five all more or less stated that they believe the

governor ought to have some more control over agency heads, and Gaston flatly stated that he is "not afraid of a strong executive" branch.

Gaston "blew up" at one point, saying he was "tired" of witnesses "sugar-coating the agencies."

"The fact of the matter," Gaston declared, "is that nobody knows what goes on in state government. We've had paraded before us the

examples of Wilson Speir and Homer Garrison because they're the ideal; but what about the scandals...why do we keep covering this up?"

He agreed with Whitmire that the "citizen boards" do not represent the people. He said the boards mostly are "political cronies, political hacks, money men with damn little qualifications."

The former newsman said he wants the committee to

"come out with the model (constitution), not a shadow of some other state, but we can't if we get a parade of witnesses sugar coating — let's find the weaknesses."

Wyatt said "Vested interests are in every state agency...we should try to determine who vests the interests. I think it ought to be the people. In Texas, once we elect the governor, we stop there. He has precious little power and we let someone else do his policy-making."



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**PEPSODENT
TOOTHPASTE**

Nancy Holmes personal
notes from Task Force on Govt and Politics Meet Dec. 10th 1973
where Common Cause Spokesperson Katy Davis Spoke:

FYI
Common Cause is looking for Citizen Lobbyists They feel that their paid lobbyist Randall Wood is excellent, but feel the need for citizen lobbyists to work on delegates in a way that a professional can not do.

They polled their membership to determine Constitutional Revision priorities. About 15% responded which they were told was "good."

They will be working in 2 main areas

A to eliminate 1. dedicated funds from the Constitution (will feel successful if they can just get the Highway fund out)

2. salary ceiling and biennial sessions

B To strengthen the executive branch of the government by:

1. increasing the appointive powers of gov.
to appt. majority, chm. and vice chm of bds.
and Agencies. and increase his degree of removal power.

2. Gov. to originate the state budget, but not have power to impound funds.

3. support single member districts within Senatorial Dist.

4. for "right to know" added to Bill of Rights or General Provisions.

5 To include a "limited initiative" proposal related to a certain % of those who voted at the last ? election/

This was sketchy but will give you some insight into their thinking.



Ex file

January, 1973

Background for Legislative Action--Executive Department

In 1968 the League adopted the study of the Executive department as a logical continuation of our study of state government. In the first year the study concentrated on the office of the governor. In the second year the League examined the total administrative organization, discussing the other officers in the executive branch.

8 The function of the executive department (according to the constitution) is to administer the laws passed by the legislature. The governor is theoretical chief of the department and responsible for the execution of the laws, however, the lines of his authority are not clearly drawn. The constitution deliberately limits his authority in many ways. He cannot appoint or remove key administrative officers. The executive branch has six other elected officials--the lieutenant governor, attorney general, treasurer, comptroller of public accounts, commissioner of agriculture, and commissioner of the general land office: these are entirely independent of the governor and administer their respective offices without executive supervision.

As a result of the study, League members became convinced that if the need of modern state government are to be met the executive branch must be strengthened.

Specifically, the League believes that:

- The governor, lieutenant governor, and attorney general should serve four year terms
- the governor should be limited to two terms, which may or may not be successive

The length of the governor's term was fixed at two years in both the constitution of 1845 and the constitution of 1861 with the provision that no governor should serve more than two terms in succession. The term was expanded to four years, with a two-term limit, by the constitution of 1866.

The four year term was again included in the constitution of 1869, but without a two term limit.

Because of the abuse of executive, legislative and judicial powers during reconstruction, the appropriate term was a subject of considerable debate in the constitutional convention of 1875.

The constitution of 1876 shortened the term to two years, but without a limit on succession.

Four year terms of office would encourage long-range policy planning and permit the development of administrative policies which lead to a more efficient state government. Less time and money would be spent in campaigning. A limit of two terms would avoid a concentration of power in one party.

In November, 1972 the electorate approved an amendment to the constitution providing for a four year term for governor; however, the amendment does not limit the number of terms. (The League will keep this position so that we can work for its retention in the revised constitution, and work for a limited number of terms.)

-a party's candidate for the offices of governor and lieutenant governor should be required to run as a team

In Texas a party's candidate for the lieutenant governorship runs independently of its gubernatorial candidate: although their names appear together on the ballot in the general election, they may have widely differing political views.

No analogy can be made between the Vice President of the United States and the lieutenant governor of a state, for the former is a member of the Cabinet, does serve on important executive committees, and is kept informed of policies and procedures by the President. Although state constitutions, statutes, and judicial decisions consider the lieutenant governor an executive officer, he is unquestionably a legislative officer first and only potentially an executive one. As presiding officer of the Senate he has power of life or death over pending bills with the power to assign bills to friendly or hostile committees.

The power of the lieutenant governor is probably little related to the fact he is the constitutional successor to the governor if the governor is unable to retain the office through death, permanent disability, or removal. But the lieutenant governor does gain stature by being elected statewide and by being representative of varying interests throughout the state. Additionally, his own personality plays an important role in determining his influence; his friendship with many key senators can mold or sidetrack an entire legislative program.

The League feels that candidates for the two top positions in the state government should run as a team: the lieutenant governor would then become a spokesman in the legislature for the governor's legislative program, and in the case of the governor's inability to serve through absence, disability, impeachment, or death, his successor, the lieutenant governor would hold similar political views.

Article LV, Sec. 21, provides that the lieutenant governor be elected at the same time as the governor and continue in office at the ~~same~~ same time as the governor. Therefore, changing the term of office for the governor would have automatically changed the term for the lieutenant governor, however, Amendment 8 specifically provides 4 year terms for the lieutenant governor.

-gubernatorial elections should be held in nonpresidential election years

This would focus more attention and publicity on our state government and its problems. If gubernatorial elections are held in non-presidential election years, state affairs need not vie with national election for the attention of the voters.

Amendment 8 provides that the four-year terms begin with the officials elected at the general election in 1974. This provision means that the election of state officials will fall in non-presidential election years.

-provision should be made in the constitution for the succession to the office of governor if the governor becomes unable to perform the duties of his office

The constitution at present is silent on the question of what happens if a governor becomes incapable of performing his duties.

-the executive department should be organized as a cabinet, with the secretary of state, comptroller of public accounts, treasurer, commissioner of the general land office appointed by the governor with Senate approval for four year terms

The provisions in the Model State Constitution which apply to the Executive department are predicated on the "...time-honored American principle of concentration of administrative power and responsibility in a single popularly-elected chief executive". The provisions in the Texas Constitution which apply to the executive department are based on the principle of fear of concentration of power.

A change to a cabinet type executive department would be a helpful modernizing change for the Texas Executive department. A "Cabinet System" whereby only the governor, lieutenant governor, and attorney general are elected, giving the governor power to appoint and remove the non-elected officials, gives the governor firm control over the departments in his administration. These department heads and the governor form a cabinet for coordination and planning of state policy. The cabinet system gives the governor much more real power to carry out his own program. He has control over his department heads and the work of the departments.

With the extensive ballot Texas now has the political ambitions of individually elected officials can put them at odds with the governor's policy even though they are technically a part of his administration. Naturally, elected officials feel their greatest responsibility is to their electorate rather than to the governor.

The cabinet system provides a clear line of responsibility and makes it much harder for a department head to evade responsibility.

The cabinet system should provide a much better chance for coordination and planning.

The cabinet system should provide more visibility to the people, making responsibility definite.

Amendment 8 provides for 4 year terms for the attorney general, treasurer, comptroller of public accounts, commissioner of the general land office and the secretary of state. The constitution states that the Secretary of State shall continue in office during the term of the governor. Therefore, when the governor's term is increased the Secretary of State's term would be automatically increased. (I believe that this was included because of the many attempts to get the Secretary of State changed to an elective office. If this happens then his terms would be already set at 4 years.

- state boards & commissions should be reorganized along functional lines by grouping them in areas of responsibility

- the governeo should have the power, within reasonable safeguards prescribed by law, to remove appointive officers of the executive department and appointees/bd to boards & commissions.

The responsibility for administering most of the laws in Texas rests with hundreds of elected and appointed executive boards, agencies, and commissions.

Most of these boards and commissions are part-time bodies whose members are paid only their expenses; in others, the board members may receive a substantial salary for the time involved.

The State Board of Education and the Railroad Commission are filled by direct election, and the remainder through appointment. The appointive boards vary in size from 3 members to as many as 18.

The governor has the power to appoint all the members of some boards and commissions, only a portion of the members of others; some boards have ex officio members, who serve by virtue of another office they hold.

There is uniformity in the fact that most of the appointments are for a six-year term, that these boards select a paid director to carry out the administrative work. Also the appointments are staggered, usually one third of the members being appointed every two years.

The governor's appointive power, while quantitatively large has severe limitations. All appointees must be approved by a two-thirds vote of the Senate, a large number compared to the simple majority required for Federal appointees. Some appointments are limited by technical professional, or geographical requirements. For example, members of the Boards of River Authorities must reside in the area of the river basin. On the State Board of Health, 6 members must be practicing medical doctors, one must be licensed dentist, one must be a licensed pharmacist and one must be a civil engineer, and all must have been practicing their profession in the 5 years precedent their appointment. In some instances the governor must select the appointee from a list provided by a governmental agency or a private organization.

Members of the Credit Union Advisory Commission are selected from a list given to the governor by the Credit Union.

Senatorial courtesy is an important factor. The wise governor considers wishes of the senator from whose district the appointee comes. The senate is rather sticky about confirming a nominee whom one of their members does not approve.

Despite its limitations, this appointive power is the most important that a governor of Texas possesses. Through it he can repay his supporters and try to establish some control over the administrative agencies.

The boards and agencies select a paid director to carry out the administrative work. These executive directors are often the real focus of power.

Most importantly, all the se boards and their executive directors are aware of the fact that the governor has no actual control over them. He cannot remove board appointees, much less hired personnel; he can request reports from agencies, but has no way of insisting that these reports be forthcoming.

In nearly all studies of state government, the major weakness emphasized has been fragmentation of authority through allocation of activities among the many separate agencies, and agencies not responsible to the chief executive.

-the governor's budget should be the only budget presented to the legislature.

The governor is required by the state constitution to submit a budget to the legislature five days after its regular session begins. To assist him there is a budget division in the governor's office consisting of a director and several examiners. The governor's budgetary power, however, is limited. (1) Since he takes office only a few days before the s/ legislature starts its regular sessions, it is difficult for him to present a budget that translates his program for the state into dollars and cents. (2) Since 1949, the legislature has had its won budget board, which prepares a

(R)

separate budget for the state; the legislature tends to prefer its product to that offered by the governor. (3) For any budget maker in Texas, the big problem is the tremendous number of special funds. So much of Texas' revenues go into these ear-marked funds that the General Revenue Fund ends up with only about 15 to 20 percent of the moneys in the Treasury.

Texas is the only state in the Union that has both an executive and a legislative budget. The legislature tends to prefer its own budget to that of the governor. The governor may veto specific items, but may not adjust the ~~///~~ amounts, either at time of passage or during the duration of the budget. At present he has no direct financial control over state government agencies.

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THE TEXAS EXECUTIVE DEPARTMENT

A Study By

THE LEAGUE OF WOMEN VOTERS OF TEXAS

I. THE GOVERNOR

When a newly elected Texas governor assumes office, he finds himself in the middle of a going enterprise with an annual budget of \$2.5 billion. His immediate impressions are a realization of the large number of responsibilities thrust upon him and a sense of urgency.¹ Within a month, he must deliver an inaugural address; participate in inaugural activities; select a personal staff; prepare and deliver a message to the legislature outlining his program for the next two years; check, approve, amend, or completely rewrite the budget of his predecessor; select a secretary of state, an adjutant general, and a commissioner of labor statistics; and make dozens of appointments to boards and commissions. Many of these obligations he may have thought out in the interim between election and inauguration, but often he will have postponed the final decisions in order to tie up the loose ends left from campaigning, such as closing campaign offices, acknowledging the many acts of assistance, and maybe enjoying a much needed vacation.

After more or less settling down into the routine of being governor, an incumbent still feels the pressure of time. There are so many roles to play - chief executive, head of state, political party chief, military leader, grantor of pardons - seemingly ad infinitum - that the job of being governor is a test of physical energy as well as mental ability. He must greet important public visitors from other states and countries, proclaim special days and weeks, cut ribbons, give speeches to various groups, meet with the press, pose for pictures, and still give intelligent leadership in the affairs of state. The governor is allowed to have a personal office staff, appointed without Senate approval, to help him with his tasks. In 1968 this office employed 110 individuals and had a budget of \$1.5 million.

Despite the multiplicity of demands upon him, the governor of Texas is "something of a paper tiger."² Although the Texas Constitution states that the governor shall be the "chief executive officer of the State" (Article IV, Sec. 1), almost immediately it adds that there shall be five other elected officials in the executive department - a lieutenant governor, attorney general, comptroller of public accounts, treasurer, and commissioner of the General Land Office - and one appointed official, the secretary of state. These five elected officials quite naturally feel responsible to the electorate rather than to the governor. The governor, therefore, is a chief in name only, or a chief among equals. The state constitution, which was

written in 1876, deliberately limits the governor's authority and discretionary powers in many other ways. Consequently, his success as a leader depends to a large extent upon the informal powers he can command-through his personal persuasiveness and political leverage-rather than the Constitutional and statutory powers delegated to him.

INFORMAL POWERS

Historically in Texas the gubernatorial candidate of the Democratic Party (who as the nominee of the dominant party could bank on election) has been able to influence state government four months before taking office by guiding the writing of the party platform at his state party convention held in September of election years. Using his position of party leadership, he can develop a platform that embodies his program for the state. After election, he can use this position to exert pressure on party members in the legislature; such leverage would be greater if Texas were a two - party state. His political power is greatly enhanced if he can influence appointments at the national level.

Once elected, a governor can use the prestige of his office as a resource for strength. The office is a symbol for the state- while it demands many time-consuming, often petty jobs from its incumbent, it carries with it sizable assets to enhance his power. When the governor speaks, his words are carried by the news media and are listened to with more attention than comments of lesser state officials. Because he is the governor, he has increased opportunities to appear before groups of citizens to enlist their support of plans and projects. And because many citizens look upon him as the head of state who is speaking for them and looking out for their own best interests, he stands a good chance of gaining popular support.

For example, in 1965 at the beginning of his second term, Governor Connally presented a traffic safety plan to the 59th Legislature in a package of four bills, none of which passed. During the next year, he managed to be invited to several large conventions and accepted his usual number of speaking engagements at all of which he spoke out for his traffic safety program and began to build popular support. Further grass roots support was developed by urging the establishment of local "Texans For Traffic Safety" groups. He called upon the Department of Public Safety for ideas. Finally at the party convention in 1966, he had his ideas concerning traffic safety written into the party platform. In 1967, the 60th Legislature approved Governor Connally's traffic safety package, with some changes; to be sure.

Generally speaking, the other elected officers of the executive branch respect the governor and the office and

1. Shivers, Allen, "The Governor's Office in Retrospect," *Governing Texas: Documents and Readings*, Gantt, Dawson, Haggard, New York, Thomas Crowell and Co., 1966.

2. Ibid.

are willing to cooperate; appointive officials, including those appointed by predecessors, have a tendency to follow the lead of the incumbent governor in setting policy. Where persuasive power is needed, the governor who can point to an impressive election victory and firm party control, is in a position of relative strength. In short, if a governor has personality, determination, and courage tempered with flexibility and patience, he can avoid being "a paper tiger."

FORMAL POWERS

It would be wrong, however, to give the impression that the Texas governor has no formal, i.e. constitutional and statutory, powers. He is delegated a large number of responsibilities and some measure of authority to carry out these duties.

Military Power: The governor is commander-in-chief of the state military forces, which are subject to his orders at all times, except when they are called into the service of the United States government. These forces consist of the Texas National Guard, which includes both the Army and Air Guard, and the Texas State Guard, a voluntary, unpaid, reserve unit that serves as an internal security adjunct to the National Guard and takes over as state militia when the latter is called to active duty. The State Guard is not subject to federal mobilization.

An adjutant general who is appointed by the governor (with federal as well as Texas Senate approval) is directly responsible to the governor for the organization, training, and work of the state troops. The governor has the constitutional power to call forth the National Guard to enforce the law of the state as well as to handle invasion, insurrection, riot, and disaster; he can declare martial law to accomplish these ends.

Generally speaking the governors of Texas have resorted to martial law sparingly. Although used with some frequency during the days of the Republic and early statehood, the power lapsed into disuse for many years. Between 1917 and 1931, however, it became a popular device for coping with emergencies and was used to handle racial troubles (three times), labor disputes (twice), lawlessness (twice), and storm disaster (once). In August of 1931, martial law was declared by the incumbent Governor Sterling in the East Texas oil fields to prevent the waste of that resource until the Railroad Commission could effectively enforce oil proration. In March of 1937, Governor Allred invoked martial law to handle the emergency caused by the explosion that destroyed the New London school. Most recently in 1943 martial law was declared in Beaumont to quell a race riot.

In times of emergency, in addition to the mobilization of the Guard and the militia, the governor may assume command of the Department of Public Safety, including its Texas Rangers. Under ordinary circumstances, the Department of Public Safety is under the administrative control of its director, who is appointed by the Public Safety Commission and responsible to it.

Power to Execute the Laws Article IV, Sec. 10 of the Texas Constitution blandly asserts that the governor "shall cause the laws to be faithfully executed. . ." This duty has two distinct aspects: one involves the obvious problem of law enforcement at the state level through the Department of Public Safety and its Texas Rangers and/or the National Guard. Here authority is clear-cut. The other involves seeing that the laws passed by the legislature

are carried out by the many administrative agencies established for specific purposes. In this area the authority of the governor is limited. He may not remove or discipline a department head who is not carrying out the law; he may even be unaware that the laws are not being executed, because while the governor may request reports from agencies and boards, he has no way of enforcing his requests. Most elected and appointed officials prefer to cooperate with the governor; but their cooperation is strictly voluntary and depends to a considerable extent on the persuasiveness and public popularity of the governor.

Appointive Power The governor appoints the secretary of state the commissioner of labor statistics, the director of the Texas Tourist Development Agency and the adjutant general. (These four officials are the only heads of departments or agencies that he appoints.) When a vacancy occurs in one of Texas' seats in the United States Senate, the governor makes an interim appointment to serve until a special election can be held. He fills vacancies in some local and district offices, the appointees to serve until the next general election. In addition, there are over 100 boards and commissions to which the governor makes appointments.

This appointive power, while quantitatively large, has severe limitations. Most state appointees must be approved by a two-thirds vote of the Senate, a large number compared to the simple majority required for confirmation at the federal level.

The tradition of "senatorial courtesy" is also a potent limiting factor. The wise governor considers the wishes of the senator from whose district the prospective appointee comes before making any announcements of his intentions concerning a particular appointment. The Senate is rather reluctant to confirm the appointment of any nominee of whom one of its members disapproves.

Some appointments by the governor are limited by technical, professional, or geographical requirements. For example, members of the boards of river authorities must reside in the area of the river basin. On the State Board of Health, six members must be practicing medical doctors, one must be a licensed dentist, one must be a licensed pharmacist, and one must be a civil engineer, and all must have been practicing their profession during the five years preceding their appointment. In some instances the governor must select his appointee from a list provided by a governmental agency or a private organization. Members of the Credit Union Advisory Commission, for instance, are selected from a list given to the governor by the Credit Unions.

Despite its limitations, this appointive power is important. Through it a governor can repay his supporters and try to establish some control over the administrative agencies. However because most board members serve six-year staggered terms, it is not until a governor's second term that his appointees can constitute a majority on any board. He can gain the support of legislators for his legislative program by being open-minded when they make a suggestion of a friend who would like an appointment.

Removal Power Basic texts on the subject of Texas government are agreed that the governor has no real power of removal even over his own appointees, except for members of his personal staff. This lack of authority makes it more important for the governor to make wise appointments when filling vacancies.

Budgetary Power The governor is required by the state constitution to submit a budget to the legislature five

days after its regular session begins. To assist him there is a budget division in the governor's office consisting of a director and several examiners. The governor's budgetary power, however, is limited. (1.) Since he takes office only a few days before the legislature starts its regular sessions, it is difficult for him to present a budget that translates his program for the state into dollars and cents. (2.) Since 1949, the legislature has had its own budget board, which prepares a separate budget for the State; the legislature tends to prefer its product to that offered by the governor. (3.) For any budget maker in Texas, the big problem is the tremendous number of special funds. So much of Texas' revenues go into these ear-marked funds that the General Revenue Fund ends up with only about 15 to 20 percent of the moneys in the Treasury.

One method of exercising executive leadership is through the control of funds. Aside from a scanty emergency fund of \$200,000 annually, which agencies may request of the governor if they run out of funds, he has no direct financial control. The governor may ask for financial statements from state agencies and departments, but he cannot make anyone turn over such reports to him. Nonetheless, the process of budget-making is useful in obtaining information about what many of the state agencies are doing.

Planning Power In 1967, the 60th Legislature passed the State Planning Act, which designated the governor as the chief planning officer, established a Division of Planning Coordination in the governor's office, and authorized the appointment of interagency planning councils within the executive department. The primary purpose of the Division of Planning is to ensure coordination within the principal agencies of state government, and also between state and local governments and among various levels of local governments. Since it serves as a liason between local and Federal governmental levels, helping to guide the management of federal grants-in-aid programs, the Planning Division can be expected to play an increasingly important role in Texas government-adding considerable power to the office of the governor. Of the \$1.5 million budget of the Governor's Office in the fiscal year ending August 31, 1969, \$250,000 was appropriated for planning functions.

Clemency Powers The pardoning power of the governor of Texas was almost absolute for sixty years. During that time, the clemency powers vested in him by the state constitution often became a political football; many governors granted thousands of pardons during their term of office.

In 1893 a board of pardon advisors was created to help handle the load of requests for clemency. A movement to reform abuses of the pardoning power resulted in 1936 in a constitutional amendment creating the present Board of Pardons and Paroles. The governor now has two types of power: (1.) Only upon Board recommendation, he may grant pardons, reprieves, commutations of sentence, paroles and remission of fees, or he may reject the recommendations of the Board. (2.) Without consent of the Board, at his own discretion, he may revoke paroles or conditional pardons and may grant one 30 day stay of execution.

Legislative Power The governor of Texas has significant formal legislative powers which may be enhanced by the persuasiveness and popularity of an incumbent. He is empowered by the constitution to send messages to the legislature, describing the condition of the state, presenting a budget, and making suggestions concerning legislation to carry out his program. He has strong veto power, which allows him to item-veto an appropriation bill as well

as to reject a whole bill. In addition, the governor has the power to call special sessions of the legislature as he sees fit. For a detailed discussion of the legislative powers see **The Texas Legislature: The Influence of the Governor**, (League of Women Voters of Texas, 1967).

THE EXECUTIVE OFFICE

Besides assigning the governor various powers and duties, the constitution and statutes specify other features about the office.

Tenure The governor is elected for a two year term with no limitation as to the number of terms he may serve. Since 1935 the voters of Texas have returned all their governors to office for at least one additional term, with the exception of Beauford Jester, who died in office, and W. Lee O'Daniel who resigned to run for the Senate.

Ten other states have two-year terms for their governors. Of these, New Mexico and South Dakota limit their governors to two terms; the other eight put no limit on the number of times a governor may be reelected.

Thirty-nine states have four year terms for their governors. Of these, sixteen allow an unlimited number of terms; eleven allow the governor to be reelected for an unlimited number of times but do not permit him to succeed himself; in twelve the governor is limited to two terms.

Qualifications The governor must be 30 years of age, a citizen of the United States, and a resident of Texas for five years immediately preceding his election. While in office he may not practice any profession, hold any other office- civil, military, or corporate- or receive any other salary. (When Governor Connally was named Commissioner-General of Hemis-Fair, there were some who questioned if he were not holding another office.)

Compensation The constitution as amended in 1954 allows the legislature to set the governor's salary. At present the governor receives \$40,000 annually plus the use of the governor's mansion (the constitution requires the governor to reside in the capital while in office unless the legislature provides otherwise), a limousine, and a state-owned two-engined plane. Mansion expenses for the year ending August 31, 1969 were budgeted at \$55, 598.

In 1968, the salaries of governors in other states ranged from a high of \$50,000 in New York to a low of \$10,000 in Arkansas and North Dakota. Eight governors received a salary of \$40,000 or more.³

Succession The lieutenant governor succeeds the governor when for any reason- death, resignation, removal from office, inability to serve, or absence from the state - he is unable to serve. The line of succession if the lieutenant governor is unable to succeed is: the president pro tem of the Senate, the speaker of the House of Representatives, the attorney general, and the chief justices of each of the 14 civil appeals courts in the numerical order of their districts.

Until 1948 there was no provision for succession in the event that the governor-elect became unable to assume office. In that year an amendment to the constitution was ratified that allows the lieutenant governor-elect to assume office if the governor-elect dies. If the governor-elect becomes disabled or cannot qualify, the lieutenant governor-elect serves until a person qualifies, or until the next general election. Should both the governor-elect and the lieutenant governor-elect be unable to assume office, then the president pro tem of the Senate and the speaker of the

3. Michigan, Ohio, Texas, \$40,000. Georgia, \$42,500. California, \$44,100. Illinois and Pennsylvania, \$45,000. New York, \$50,000.

House of Representatives call a joint session of the legislature to elect a governor and lieutenant governor to serve for the regular term.

Election Governors of Texas are elected by winning a plurality of the popular votes cast in the general election held on the Tuesday following the first Monday in November of even-numbered years. If two candidates receive the same and the highest number of votes, the two houses of the legislature are called upon to elect a governor by choosing between these two candidates. The governor takes office on the third Tuesday of January following his election, which is one week after the legislature convenes to canvass the votes.

Texas is among twenty-three states that hold their gubernatorial elections in a presidential election year. Two states, Virginia and New Jersey hold their elections in odd numbered years. The other twenty-five have gubernatorial elections in even but non-presidential election years.

Removal Texans may remove their governor by the process of impeachment and conviction. Charges are brought by a majority vote of the House of Representatives; trial takes place in the Senate, where a two-thirds vote is necessary to convict. Conviction automatically brings removal from office and disqualification from holding any further state office. Texas has impeached only one of its governors – Jim Ferguson, during his second term in 1917. However, the electorate must not have been too disenchanted with him, for they elected his wife to two terms as governor some years later.

THE FUTURE TEXAS GOVERNOR

The Committee on Economic Development in a pamphlet entitled **Modernizing State Government** labels its chapter on governors, "Making Chief Executives of Weak Governors."⁴ The title emphasizes the fact that nationally our heads of state must govern from positions of weakness rather than strength. Compared to private corporation presidents who have all the tools of management necessary for efficient operation – direct authority and control over personnel, budgetary power, research and planning staff and equipment, to mention a few – and the President of the United States who also has substantial powers – authority to appoint and remove his cabinet, the choice of who presides over the Senate, the presentation of the only budget given to Congress – governors of the fifty states are indeed working under difficult circumstances.

How does Texas rank so far as the strength of its chief executive is concerned? An interesting quantitative analysis of the comparative formal powers of the fifty governors was made in 1965,⁵ based on tenure, appointive power, budgetary power and veto power. A maximum power index of 19 was possible; the New York governor was the only executive to achieve that goal. Our Texas governor, boasting a power index of 7, ranked last along with the chiefs of

Mississippi, South Carolina, and North Dakota. Recognizing that the analysis does not take into account the considerable informal power that our governor enjoys, Texas citizens might still want to give consideration to strengthening the formal powers of their executive.

A more powerful governor does not necessarily mean a more efficient and effective state government, but private industry appears to recognize the need to give authority and control to its corporate presidents. Alexander Hamilton in the *Federalist* wrote "A feeble executive implies a feeble execution of government. A feeble execution is but another phrase for bad execution; and a government ill executed whatever it may be in theory, must be, in practice, a bad government."

Fearing Federal encroachment on the states' power, former Governor Allan Shivers appearing before the Constitutional Revisions Commission in March of 1968 urged more power for the governor to enhance the strength of state government so that the Federal government would not bypass the state governmental level and deal directly with local units of government. He recommended unlimited four year terms for the governor and that the chief executive be given the authority to appoint and remove his attorney general and all policy making boards and commissions.

It is not difficult to find numerous studies by competent individuals and groups giving suggestions, such as those made by Governor Shivers, for strengthening the office of the governor. The adoption of such recommendations presents another challenge which for the most part has not been accepted by the majority of states. This modern period of attempts to reorganize all or parts of our states' governments began as early as 1910 and is still in process. In 1933 Texas established the Joint Legislative Committee on Organization and Economy to study ways to have a more efficient state government.⁶ The report contained some revolutionary recommendations such as establishing 19 departments to replace the 131 agencies then in existence, each department to have a single head appointed on the basis of qualifications, and four year terms for the governor and lieutenant governor. Needless to say here, the recommendations were not accepted. While in recent years the Texas governor has received salary increases, no other significant changes have been made in his status as defined by the 1876 Constitution and the statutes.

It is possible that Texans are still afraid (as were the framers of the 1876 Constitution) to give too much power to their governor. Indeed there is a school of thought that Southern governors in one party states do not need, nor should they be entrusted with the strength that governors in two party states require.⁷ For whatever the reason, Texas governors in the foreseeable future will still have to rely on their own resources – intelligence, physical stamina, personality, persuasiveness, political acumen – to guide this modern urban Texas with authority.

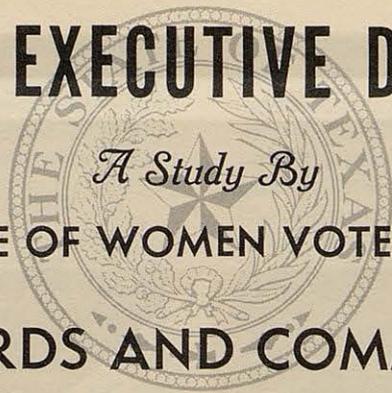
6. THE JOINT LEGISLATIVE COMMITTEE ON ORGANIZATION AND ECONOMY. Griggenhagen and Associates, 1933.

7. Highsaw, Robert B., THE SOUTHERN GOVERNOR-CHALLENGE TO THE STRONG EXECUTIVE THEME. *Public Administration Review* XIX. Winter, 1959. pp. 7-11.

4. MODERNIZING STATE GOVERNMENT. Committee for Economic Development. New York. 1967. pp. 45.

5. Jacob and Vines, eds. POLITICS IN THE AMERICAN STATES. Boston. Little Brown and Co., 1965. pp. 207-237.

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A Study By

THE LEAGUE OF WOMEN VOTERS OF TEXAS

IV: BOARDS AND COMMISSIONS

Perhaps the most striking feature of the executive branch of state government in Texas is the heavy reliance on boards and commissions (rather than individual executive officers) to head governmental operations. Most of these boards and commissions are part-time bodies whose members are paid only their expenses. As heads of agencies, they are responsible for policy and for administration. However, the executive director, chosen by the relevant board to direct the work of each agency, is often the real focus of power.

How many such administrative agencies are there? According to Clifton McCleskey, "If we count officials as well as agencies but exclude all advisory committees, agencies of the legislative and judicial branches, and officials who are subordinated to some higher authority in their agencies, we can say with a degree of confidence that there are between 130 and 140 executive officials and agencies in Texas government."¹

Since there are so many executive officers and agencies—and since the quality of our environment is of increasing public concern—this paper will explore the general functioning of boards and commissions in Texas state government by examining closely only one group of state agencies—those concerned with natural resources.

WHO IS IN CHARGE OF NATURAL RESOURCES IN TEXAS?

Government plays an important role in the protection and development of natural resources. Although this role was originally regulatory in nature, it now has a promotional aspect as well. Governmental institutions have become participants in developing natural resources for the public at large, as well as overseeing private development and guarding against waste. The development, regulation, and protection of natural resources in Texas is the total or partial concern of at least ten state agencies.

The **Texas Water Rights Commission** is composed of three members, all appointed by the governor, with the consent of the Senate, for six-year overlapping terms, with one term expiring every two years. An executive director is the chief administrative officer of the agency and is directly responsible to the commission.

The Texas Water Rights Commission exercises continual supervision over the public waters of the state. Its regulatory functions include investigations and studies made to ensure compliance with state water statutes and commission rules.

The commission is required by statute to investigate and approve or disapprove petitions for the creation of multi-county water improvement districts, water control and improvement districts, and underground water conservation districts. It is also responsible for the adjudication and administration of water rights on streams.

Other programs of the commission include: (1) water management—providing guidelines for use in the administration of adjudicated water rights; (2) review of federal water development projects in Texas; and (3) supervision of all water districts and most river authorities in the state.

The **Texas Water Development Board** is composed of six members, appointed by the governor, with the consent of the Senate, for overlapping terms of six years. Each member must have had at least ten years of successful business or professional experience. One member must be appointed from each of the fields of engineering, law, farming, and public finance, and two members may be appointed "at-large" without reference to occupation.

The board was created in 1957 by an amendment to the constitution, for the purpose of making loans to local governmental agencies sponsoring the construction of projects for the conservation and development of water resources. Constitutional amendments in 1962 and 1966 authorized the board to purchase water conservation storage facilities and to finance any work necessary for the filtration, treatment, or transportation of water by federal or local governmental agencies.

The most significant achievement of the Water Development Board has been the completion of the Texas Water Plan, a comprehensive statewide water plan that was released in November 1968. After public hearings held by the Water Rights Commission, the plan was formally adopted by the board in April 1969, but has not yet been approved by the voters of the state for implementation.

The **Texas Water Quality Board** is composed of the state commissioner of health, the executive director of the State Parks and Wildlife Department, the executive director of the Water Development Board, the chairman of the Railroad Commission of Texas, and three members appointed by the governor for six-year terms.

The Water Quality Board was created in 1967, superseding the Water Pollution Control Board, which had been set up by the legislature in 1961 to protect the surface waters of the state from pollution. The latter board was given only limited operating funds, however, so major pollution control functions continued to be handled by the State Department of Health.

By 1967, the rapid development of the quality control concept, coupled with the urgent demand for immediate cor-

1. Clifton McCleskey, *The Government and Politics of Texas*, 3rd edition (Boston, 1969), p. 189.

rective control measures, focused attention on the need for legislative action to define more sharply the fields of responsibility of the several state agencies and departments concerned with the state's water problems. The 61st Legislature acted in 1969 by: (1) defining the offense of water pollution and providing for criminal prosecution of violators; (2) spelling out the fields of responsibility and enforcement jurisdiction of both the Department of Health and the Water Quality Board in control of collection, handling, storage, and disposal of municipal and industrial solid waste; (3) transferring from the Water Development Board to the Water Quality Board the regulation of wells injecting industrial and municipal waste into the ground; and (4) revising and rearranging the Texas Water Quality Act, giving the state more effective control of water quality. The 61st Legislature also appropriated \$4.4 million to the Water Quality Board for the 1970-71 biennium.

The Water Quality Board is authorized to establish water quality criteria for all streams and to issue permits for the discharge of treated waste into or adjacent to the waters of the state. The board is instructed to cooperate with other agencies, affected groups, and industries in its program of prevention, abatement, and control of pollution, and to conduct studies and disseminate information relating to water pollution and its control and prevention. The board is studying present and future needs in area-wide sewage treatment facilities for every major populated region in the state, and is in the process of preparing a comprehensive plan for the control of water quality.

The **Texas Water Well Drillers Board** is composed of nine members: chairman of the Water Development Board, executive secretary of the Water Quality Board, chairman of the State Board of Health—or a representative from their staff designated by them—and six water well drillers. The well drillers are appointed by the governor, with concurrence of the Senate, and serve six-year terms. The three ex officio members serve only in an advisory capacity and do not have a vote.

The chief functions of this board are the licensing and regulation of water well drillers in the state to help prevent pollution of underground water. Administrative services for this program are provided by the Water Development Board.

The **Texas State Soil and Water Conservation Board** is composed of five members, each elected for a five-year term by a convention of landowners in the subdivision of the state that he represents. The board employs an executive director to supervise the agency's work, which consists primarily of coordinating the program and activities of the 184 soil and water conservation districts throughout the state. Because of the physical unity between soil and water, many of the conservation activities undertaken by the Soil and Water Conservation Board vitally affect the water resources of the state.

The **Texas Air Control Board** was originally created by the Clean Air Act of 1965 as a six-member board appointed by the governor. In 1967 the act was amended to add three ex officio members: the state commissioner of health, the executive director of the Texas Industrial Commission and the executive director of the Texas Animal Health Commission. In 1969 the Air Control Board became a nine-member board, appointed by the governor and confirmed by the Senate. Members must include a professional engineer, a physician, an agricultural engineer, a manufacturing or industrial manager, an experienced municipal employee, and four persons from the general public. They serve six-year staggered terms.

The board elects a chairman and a vice-chairman from its members, to serve for a term of two years.

The Air Control Board is the state's air pollution control agency. The board is the principal authority in the state on matters relating to the quality of the air resources in the state and is responsible for setting standards, criteria, levels, and emission limits for air content and pollution control.

The **Parks and Wildlife Commission**, which governs the Parks and Wildlife Department, consists of three members who are appointed by the governor, with the consent of the Senate, for overlapping terms of six years. The commission appoints an executive director of the department, who is subject to their general supervision and may be removed by them.

The Parks and Wildlife Commission is responsible for protecting, perpetuating, and improving the state's public outdoor recreational areas and for preserving its wildlife resources. The commission is concerned with acquisition, development, maintenance, and operation of state parks. It develops and maintains recreational facilities on lands adjoining several lakes and streams of the state and enforces all water safety programs within the state. In developing the state's recreational potentials, the department cooperates with various state and federal water agencies.

In undertaking their responsibilities for wildlife management and game law enforcement, game management officers regularly patrol the entire state. In the course of these routine patrols, the officers often find evidence of pollution. Technicians of other divisions, engaged in making surveys of streams, lakes, and bays, also report any evidence of pollution that they discover.

The **Railroad Commission of Texas**, the state's most powerful regulatory agency, is composed of three members, elected by the voters of the state for six-year overlapping terms. They must be resident citizens of the state, qualified voters, not less than 25 years of age; and they must have no financial interest in railroads. Theirs is a full-time position, for which they receive an annual salary of \$22,500. The governor may make appointments to fill any vacancies which occur in mid-term.

Members of the commission constitute an administrative directorate for the work performed through five operating divisions.

Through the *rate division*, the commission prescribes railroad passenger fares and freight rates, motor carrier freight rates, and motor bus passenger fares. It formulates rules and regulations governing the transportation of passengers and freight, such as transit rules, under which commodities are stopped in transit for storage; processing and reshipment; demurrage and storage; and baggage.

Through its *motor transportation division*, the commission supervises and regulates the transportation of property for compensation or hire by motor vehicles on any public highway.

The *liquefied petroleum gas division* is responsible for enforcing the laws that regulate the various activities of the liquefied petroleum gas industry. Its duties include inspection of installations and investigation of irregularities and accidents.

The *oil and gas division* is charged with supervising the enforcement of laws and the Railroad Commission's rules that govern the conservation and prevention of physical waste in the production of oil and gas. The division has the responsibility for inspecting each well for equipment, safety, protection against water intrusion, and similar matters. The commission issues drilling permits and regulates production to conform to market demand.

Since 1955, the Railroad Commission has had legislative authorization to make and enforce regulations to protect surface and underground waters from escaping oilfield waste and brine. It also may require a bond to ensure that all wells drilled will be adequately plugged when they are abandoned. The chairman of the Railroad Commission is a member of the Texas Water Quality Board.

The *gas utilities division* is responsible for enforcing laws relating to reasonable prices for gas; for establishing fair rate charges and regulations for producing, transporting, distributing, buying, selling, and delivering natural gas by pipeline; and for ensuring reasonable regulation and apportionment of the supply of gas among towns, cities, and corporations.

Although the Railroad Commission has regulatory authority over some public utilities (natural gas distributing companies and common carriers — railroads, buses, motor carriers, and crude-oil pipelines), its jurisdiction does not extend to electric power companies or telephone companies. The regulation of these two public-utility industries is left to the various municipal governing bodies.

The **Texas Industrial Commission** is composed of nine members appointed by the governor with the concurrence of the Senate. Each must be from a different geographical area of the state. Two are to be employers of labor, two employees or laborers, and five from the general public.

The original purpose of the Industrial Commission was to assist the governor in solving labor-management disputes. In 1959, the commission was given a new function as its primary concern, that of attracting and locating industry in Texas through promotion of the state's natural resources as an economic development base. It no longer acts as a party to arbitration, and this function will probably be transferred in time to some other agency.

The commission concentrates on two program areas: (1) complementing and coordinating existing industrial development programs of private business and local communities; and (2) providing an information center, through which a state advertising program can be carried on and from which factual data on all phases of industrial development can be obtained.

The **Texas Highway Commission**, which heads the state's Highway Department, consists of three members who are appointed by the governor, with the Senate's approval, for six-year overlapping terms. The commissioners are part-time officials charged with supervisory and policy-making responsibilities for the department. The actual administrative power is vested in the State Highway Engineer, an appointed executive director. His headquarters in Austin contain 15 divisions, which generally function in staff and housekeeping capacities. Actual responsibility for construction and maintenance of highways is vested in the district engineers who head the 25 highway districts into which the state is divided.

In constructing new roads, the Highway Department's activities obviously have a direct bearing on the state's natural resources in terms of sound land use planning. In some instances highways have had to be relocated because of the creation of new water reservoirs.

Other policy-makers also concerned with land and water use include the **commissioner of the General Land Office**, whose office is specified in the state constitution, and who is directly elected for a two-year term; and the **State Board of Health**, which consists of nine members appointed by the governor, with Senate approval. The General

Land Office administers the sale and leasing of public land and mineral rights. The State Board of Health exercises general supervisory authority over the State Department of Health (which includes among its concerns air and water contamination as it affects public health, and solid-waste disposal), but the board appoints a commissioner of health to serve as executive director of the department.²

The boards and commissions discussed above were chosen because they are involved in the development and protection of the state's natural resources, but they are characteristic of Texas' administrative system in general. In only one instance is there an executive official rather than a multi-member board or commission, and he is directly elected. One board is elected by the people of the state, one by a convention of landowners, and the rest are appointed by the governor, usually with the consent of the Senate. Two of the boards have ex officio members, who serve by virtue of another office they hold. Most of the appointments are for six-year overlapping terms; it is not until a governor's second term, therefore, that his appointees form a majority. Even in the case of those board members which he appoints, the governor is given no dismissal power, and he does not have the legal authority to control the boards' activities. And, as was noted earlier, the real power in state agencies tends to be wielded by the executive directors chosen by the boards, rather than by the boards themselves.³ In short, state administrative agencies are designed to be independent of the governor's authority.

ADMINISTRATIVE REORGANIZATION IN TEXAS

For several years there has been support for administrative reorganization of the state government. Although very little in the way of comprehensive reorganization has been accomplished, there have been almost constant changes in particular agencies involving transfer of functions between agencies, creation of new agencies, mergers and streamlining of old ones.

One instance of administrative reorganization by the legislature — perhaps the major one — is the restructuring of the state's three major water agencies over a five-year period. In 1965 the Water Commission was renamed the Water Rights Commission; it retained the function of administering water rights, but all planning and development functions were transferred to the Water Development Board. The Water Development Board was also given authority to evaluate applications for disposal of municipal and industrial wastes by subsurface injections. In 1967 the Water Pollution Control Board was superseded by the Water Quality Board, which was given the responsibility for developing a statewide program of water quality control. In 1969 the legislature defined more specifically the responsibilities and jurisdiction of the three agencies, dividing the power to regulate solid-waste disposal among the Water Quality Board, the State Department of Health, and local governing bodies, and transferring from the Water Development Board to the Water

2. The descriptions of these boards and commissions and their related agencies are based upon the following sources: *Guide to Texas State Agencies* (Institute of Public Affairs); Texas Water Development Board, Report 89; *Fiscal Size-up, Texas State Services, 1970-71* (Legislative Budget Office); McCleskey, *Government and Politics of Texas*; *Texas Almanac, 1970-71* (Dallas Morning News).

3. In September 1970, the chairman of the Parks and Wildlife Commission publicly complained that the staff of the Parks and Wildlife Department was usurping the commission's authority by forwarding the department's budget to the legislature, and by changing the plans for a proposed water exchange pass at Mustang Island, without prior approval from the commission (Houston Post, September 30, 1970).

Quality Board the regulation of wells injecting waste into the ground. Even with the reorganization, however, there are still overlapping areas of authority and responsibility.

The merging in 1963 of the Parks Board and the Game and Fish Commission into the Parks and Wildlife Commission is another recent example of reorganization.

There have also been efforts of late to coordinate the activities of some administrative agencies on the state level. In 1965 the Planning Agency Council of Texas (PACT) was organized to review and coordinate the planning activities of eight major state agencies in the field of water resources. Staffing was provided by the governor's office. Later the Department of Mental Health and Mental Retardation, the Department of Public Welfare, and the Texas Education Agency were added.

In 1967 PACT was superseded when the legislature created a Division of Planning Coordination in the office of the governor, provided for the creation of interagency planning councils, and designated the governor as chief planning officer of the state. PACT is now used primarily as an informal term for interagency coordination.

The Division of Planning Coordination provides staff for the interagency councils, reviews statewide plans, assists regional planning commissions and councils of government, serves as a clearing house of ideas and information, and assists the governor and other state decision-makers by analyzing the future effect of alternative policy decisions.

The interagency planning councils are subcouncils of PACT, composed of agencies, departments, commissions, and educational institutions with common interests in three fields: health, natural resources, and criminal justice. The councils are chaired by the governor; each agency is represented by its administrative head.

The agencies under the Interagency Natural Resources Council are: Texas Air Control Board, Texas Industrial Commission, Texas Railroad Commission, Texas Highway Department, Texas Parks and Wildlife Department, Texas Soil and Water Conservation Board, Texas Water Rights Commission, Texas Water Quality Board, and Texas Water Development Board.⁴

The State of Texas is now assessing our coastal and marine resources and developing a program to provide for

4. Although the Well Drillers Board is concerned with one aspect of the state's natural resources, it is not included as such in the Interagency Natural Resources Council. Two of the board's ex officio members, however, head agencies that are included, thereby providing a degree of coordination.

the economic development and conservation of the Texas Gulf Coast.

Although these changes and innovations have been helpful, do they eliminate the need for a major overhaul? Has the creation of the interagency planning councils helped to eliminate overlapping of duties and confusion in the 25 participating state agencies? What about the other boards and commissions not included in an interagency planning council?

Undoubtedly, the interagency planning councils have been of value just in getting together executive directors with common responsibilities. "The creation of PACT," says James T. Goodwin, Coordinator of Natural Resources, Division of Planning Coordination, "was a beginning toward alleviating the overlapping of State programs and activities. The Texas water agencies have been brought closer together and the Council has accomplished its primary purpose. The Council could also be a very logical mechanism for the development of common guidelines for water pollution control laws." There is a dearth of evaluative studies on the relative strengths and weaknesses of the highly decentralized structure of administration in Texas.

Recommendations on executive reorganization across the nation have all advocated grouping state agencies by function into a relatively small number of major agencies, with the heads to be appointed by the governor and to serve at his pleasure. It is believed by many that this plan would provide clear-cut definitions of duties and responsibilities, eliminate duplication of services, and give those needing services or those with unusual problems a direct approach to the appropriate agencies.

Advocates of this method of reorganization believe that it would lead to a much-needed strengthening of the office of governor. Others say that it would make the chief executive too powerful, at the expense of the legislature.⁵

Obstacles to major administrative reforms in Texas include restrictions in the state constitution, legislative jealousy of the governor, the preference of lobby groups for independent agencies that are perhaps more susceptible to pressure, public distrust of a strong governor, and the natural wish of agencies to remain autonomous. In view of these impediments, it is likely that the Texas legislature will undertake no major reform in the state's executive structure, unless there is demand from the general public.

5. For a more detailed discussion of administrative reorganization, see *The Texas Executive Department, III: Alternatives for Texas* (League of Women Voters of Texas, 1969).

THE TEXAS EXECUTIVE DEPARTMENT

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III. ALTERNATIVES FOR TEXAS

For over half a century reforms have been advocated in American state government aimed basically at achieving integrated administration under the governor, in place of the sprawling, multiheaded administrative structure typical of most state governments. Framers of the original state constitutions, mindful of the autocratic rule of crown-appointed colonial governors, wanted legislative domination of the government. Early state governors, therefore, had little power and were largely figureheads, limited to presiding at ceremonies and making speeches. During the nineteenth century the public began to lose faith in the legislature and tended to allow the executive department greater independence, although the power of the governor himself was not actually strengthened. It was, in fact, diffused as the Jacksonian democratic movement toward popular control of the government brought about the adoption of the long ballot, by which voters elected a number of executive officers in addition to the governor.

The twentieth century has seen a rapid change in America's industrial and social structure, producing tremendous growth in the diversity and depth of public services performed by state governments, accompanied by staggering increases in the cost of this level of government. Numerous boards, commissions, and agencies have been set up to administer new services, some of which are joint enterprises of federal and state governments. Each of these developments has added to the complexity of state executive departments.

Texas exemplifies this national pattern. Its Constitution of 1876 provided for many elected officials in the executive department. As the twentieth century has progressed, more and more single-function boards and commissions have been created, until they now number over 130. In fiscal 1930, the state of Texas spent \$104 million; in 1950, \$527 million; in 1968, \$2.3 billion!

ORGANIZATION OF EXECUTIVE DEPARTMENTS¹

The **completely integrated** type of executive department gives control over administration to the governor through his power to appoint and remove all heads of administrative departments. A short ballot is the characteristic of this system, which is similar to the structure of the executive department in the federal government and which often makes use of the department heads as a

cabinet. It produces a strong executive who is controlled by popular periodic elections and by the power of the legislature in fiscal affairs, such as levying taxes, making appropriations, and supervising the audit at the end of the fiscal year. New York State has a system similar to this.

The **partially integrated** type gives the governor some centralized powers and functions, but other executive officers are elected, and the governor's power of appointment and removal is not total. Michigan's governor operates within such a framework.

The **fiscal-control** form gives the governor direction of his administration through financial control and supervision. It requires that all fiscal affairs — budgeting, accounting, expenditure control, centralized purchasing — and personnel supervision be directly controllable by the chief executive. These are the tools of authority that private business places directly under top management.

The **commission or plural executive** form places the governor as one elected official among many on a long ballot, leading to fragmentation of executive authority. Texas falls into this category.

PRINCIPLES OF ADMINISTRATIVE REORGANIZATION

The Committee for Economic Development (CED), after a recent survey of state governments,² advocated a number of modernizing changes. Commenting that the states averaged eighty-five separate agencies and five independently elected executive officers, the Committee urged that this number of elected officials be reduced, preferably to one — the governor; if the office of lieutenant governor remains, the candidates for the two top offices should run as a team, as is now done in seven states. The CED report called for departmental consolidations along broad functional lines and internal reorganization of each department. As a transition measure, the Committee suggested that several related agencies might be grouped within a single "super-department," as Michigan has done. It further advocated that the governor be able to appoint, control, and remove all department heads, and that most boards and commissions be used only in an advisory capacity. Moreover, the governor

1. Wilbourn B. Benton, *Texas, Its Government and Politics* (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1966), p. 259.

2. Committee for Economic Development, *Modernizing State Government* (New York, 1967), pp. 49-61.

should have the power to initiate administrative reorganization, subject only to legislative veto, and should be provided with adequate staff, particularly in the important fields of preparing the budget and planning. According to the CED, a personnel agency directly cooperating with the governor is preferable to a separate civil service commission, which might be too rigid for effectiveness. The CED report welcomed the increasing awareness of a governor's need for control over such administrative areas as purchasing, property management, computer operation, motor pools, and records management, in addition to the more obvious ones of budgeting, planning, accounting, and personnel control. This awareness is evidenced by the fact that some thirty-five states now give their governor control over a Department of Administration that carries out these functions. Finally, the CED recommended the use of a state manager, similar to a city manager.

The Model State Constitution, published by the National Municipal League,³ gives the governor the power to appoint and remove *all* officers of the state, and to require information in writing from any of them. It makes no provision for a lieutenant governor (eleven states do not have this office). The Model restricts the number of departments of state government that the legislature may establish to twenty, but allows the creation of temporary commissions and regulatory agencies as needed. "Students of administration speak of 'span of control,' the number of subordinates over whom an officer may effectively exercise supervision. Twenty is no magic number, and, indeed, may be too large, but a lesser number might inject an element of inflexibility into administrative arrangements."⁴ The governor under the Model Constitution may make changes in the administrative organization; if such changes, however, require a change in law, the legislature has the opportunity to vote on the proposed modification. The governor is to submit not only a budget, but also bills providing for the necessary appropriations and revenues to implement it. The legislature is empowered to appoint an auditor to conduct post audits. The Model calls for a merit system for appointments and promotions, based on examinations or other evidence of competence.

The Committee for Economic Development is composed of leading businessmen and educators; the National Municipal League is an educational association of individuals and organizations interested in promoting good government. It is possible that both of these organizations are recommending guidelines that are too idealistic or politically unrealistic to achieve. Nonetheless, most students of public administration concur in the following basic principles of reorganization to promote greater efficiency of operation within executive departments of state governments:

1. Consolidation of administrative agencies into a small number of departments (usually ten to twenty) organized by function.

2. Concentration of authority and responsibility, by shortening the ballot and giving the governor the power of appointment and removal over all department heads.

3. Elimination of the use of boards and commissions for administrative work.

4. Establishment of necessary staff agencies responsible to the governor, including a central budget office with authority to prepare an executive budget, a central accounting and purchasing office, a planning agency, and an adequate personal staff.

5. Selection and retention of personnel using a sound merit system coordinated through the governor's office.

6. An independent auditor with authority to post-audit, who is not responsible to the governor.

ADMINISTRATIVE REORGANIZATION IN OTHER STATES

The Wisconsin Legislature recently enacted legislation, based upon earlier studies, that reduced the number of executive agencies from eighty-four to twenty-eight. Five new departments were established to consolidate related functions: Transportation, Natural Resources, Health and Social Services, Regulation and Licensing, and Local Affairs and Development. Only five of the major departments, including three of the new ones, have heads directly reporting to the governor. Massachusetts and Missouri have recently joined six other states which allow their governor to submit reorganization plans to the legislature, which become effective within sixty days unless the legislature disapproves. A 1966 amendment to the Colorado state constitution requiring that the executive branch be consolidated into twenty or fewer departments is being implemented by a reorganization study; some states already limit the number of departments.⁵ Other states in the process of reorganization studies are Arizona, Arkansas, Indiana, Louisiana, Nevada, and Vermont.

On the contemporary scene states are making changes in their organizational structure; the trend is toward consolidation of departments to promote greater efficiency, but not necessarily to enhance the direct power of the governor. In Iowa all tax and social welfare functions have been organized into two new departments—a Department of Revenue and a Department of Social Services. Utah in 1967 consolidated numerous services: a Department of Development Services encompasses industrial promotion, aeronautics, travel, expositions, and history and fine arts; the Department of Natural Resources combines fish and game, water and power, oil and gas, and state lands; the Department of Health and Welfare unites health, welfare, corrections, pardons, and Indian affairs. Each of these divisions within a department is headed by a policy board to direct a divisional executive, and each department has a coordinating council for policy-making and appointment of the department head.

Studies do not necessarily produce change, and there actually is no dramatic trend toward modernization of state executive departments. Literature abounds which advocates state administrative reform; little mater-

3. National Municipal League, *Model State Constitution* (6th ed. revised, New York, 1963).

4. *Ibid.*, p. 71.

5. Alaska, Hawaii, Massachusetts, New Jersey, New York, and Michigan limit the number of departments to twenty; Missouri, to fourteen.

ial opposing it is available. However, the comparatively slow pace at which states are reorganizing their administrative departments and adopting recommendations of reformers would of itself indicate that there is opposition.

ADMINISTRATIVE REORGANIZATION IN TEXAS

Historically, Texas has been interested in administrative reorganization since 1931, when the legislature hired a firm of experts, Griffenhagen and Associates, to analyze the existing state government and make recommendations to improve it. In a 13-volume analysis, the Griffenhagen Report⁶ made these suggestions for improvement: a short ballot with only the governor, lieutenant governor, and attorney general elected; increased power for the governor, specifically through giving him the power to appoint and remove the non-elected officials in the executive department; an executive cabinet with a permanent cabinet secretary, who would provide continuity to state government; 19 departments instead of the 131 agencies then existing; an independent auditor; elimination of all appointed boards except those having important quasi-judicial or quasi-legislative functions (i.e., rate-setting boards). Bills to implement some of these recommendations were introduced into the 1933 and 1935 legislative sessions, but were never passed.

No further effort has been made to revive the Griffenhagen Report, and although through the years Governors Shivers, Daniel, and Connally have called for modernization, no comprehensive work has been done. From time to time various agencies have been added, merged, or reconstructed; for example, the Parks Board and the Game and Fish Commission were abolished in 1963 and a new agency, the Parks and Wildlife Commission, was created to handle their work. Six years later a new governor wanted to divide this agency back into its original two.

Although Texas has an independent auditor, and the governor's office includes a personal staff, a planning division, and a budget division that prepares the executive budget, applying the basic principles of administrative reorganization to the Texas executive department would result in considerable change. There would be fewer elected officials. The dozens of state agencies would be consolidated into a limited number of departments whose heads would be appointed by the governor with the consent of the legislature. Boards and commissions would no longer be used administratively, although it is only realistic to expect that the Railroad Commission and the Board of Education would probably continue to be elective and relatively autonomous. The governor might use his appointed heads of departments

management of the large body of civil servants required in state administration be left to chance, political spoils, as a cabinet to confer regularly on expediting and coordinating program. He would prepare the only budget for the state,⁷ this function being carried out within a newly created Department of Administration. A merit system would be added. "No longer can the selection and or individual whim. In a democratic society every qualified individual should have equal opportunity to make a career in public service."⁸

ARGUMENTS FOR ADMINISTRATIVE REORGANIZATION IN TEXAS

Advocates of state administrative reform declare that a state government as described above will be more efficient and economical than the one Texas now has. The system confers clear-cut executive authority on one person, the governor, upon whom the attention of the electorate can focus, thus producing administrative effectiveness and political responsibility, the cornerstones of good government. Additional arguments in favor of this system, which is often called the "cabinet system," are that it makes government more visible to the people by making responsibility definite. Instead of various elected officials and members of boards trying to influence legislation and currying favor with special interest groups to help them lobby, the governor would be able to present a unified program to the legislature without conflicting activity from within the executive department. Contrary to the fears of many, the governor would not be too strong under a cabinet system, but would be given finally the power commensurate with his responsibilities. The American system of government works best when all three branches of government are strong and responsible.

ARGUMENTS AGAINST ADMINISTRATIVE REORGANIZATION IN TEXAS

There are many in Texas who do not want the current system of state administration changed. These include the traditionalists who are opposed to change of any kind and the incumbents who have much to lose if their positions are made appointive or their board is abolished. In addition, there are thoughtful citizens who are genuinely concerned about giving the governor too much power and abandoning the present use of public-spirited citizens on boards and commissions. Their arguments merit consideration.

Many well-qualified men and women serve conscientiously at this level of state government and contribute their talents for little or no salary. They provide a continuity within the state government that would be lacking if they were replaced by a system of appointed department heads who changed with each new administration. They can often afford to take political risks and work with legislators when elected officials or their appointees could not do so. Proponents of the status quo argue that a board is harder for a pressure group to influence than a single individual. These boards, they say, are for the most part made up of dedicated members who are seriously committed to their appointed board and genuinely concerned about state government; such citizens

6. Joint Committee on Organization and Economy and Griffenhagen and Associates, *The Government of Texas* (Austin: A. C. Baldwin & Sons, 1932-1933).

7. Texas is the only state with both an executive and a legislative budget, requiring duplication of staff, hearings, printing, and research.

8. J. Alton Burdine and Tom Reavley, "Toward a More Effective Administration," *Texas Law Review* (October, 1957), p. 952.

might not be willing to serve only in an advisory capacity.

There are also arguments against the addition of a merit system for Texas. Texas has been fortunate in the caliber of its civil servants, and there is concern that a civil service and merit system, which insures continuing job status, might lead to mediocrity and lack of initiative. Opponents point out that a new state administration usually involves the turnover of very few workers, primarily those on the governor's personal office staff.

Opponents of administrative reorganization say that electing fewer members of the executive department restricts the power of the electorate over their officials. Citizens should be able to elect the major members of the executive department and exert direct control over them through the ballot. If one assumes a willingness to reduce the number of elected officials, the question arises who should be elected, and who appointed. Four states—Alaska, Hawaii, New Jersey, and Pennsylvania—elect only their governor; New York elects its governor, lieutenant governor, comptroller, and attorney general; Michigan elects its governor, lieutenant governor, secretary of state, and attorney general. Apparently there is no uniformity of thought on this matter. The major concern is that an official, such as the comptroller, who is appointed might not be as diligent as the comptroller who is elected (and is relatively independent of the governor's authority). The same might be said of the treasurer or attorney general.

WHAT ARE THE ALTERNATIVES?

Maintaining the status quo with some piecemeal efforts at combining agencies from time to time is one alternative for Texas.

The possibility of a dramatic constitutional change to a short ballot and cabinet system seems a highly unlikely alternative for Texas. The recent Constitutional

Revision Commission did not propose changing the number of elected officials in the state's executive department.

Another alternative is streamlining Texas government by reducing the number of agencies through the process of combining those involved in similar activities, i.e., functional consolidation. This would not be an easily accomplished feat, since agencies like their autonomy, are jealous of their independence, and are fearful of the effects of combination on job status and security. Special interest groups tend to prefer single-function agencies.

Within the governor's office there is now a certain amount of cooperation and coordination within inter-agency councils under the Planning Agency Council of the Division of Planning Coordination. These inter-agency councils, which are in the fields of health, natural resources, and criminal justice, were initiated in 1968 to coordinate functional statewide planning and to provide means for distribution of federal grants among agencies in related fields. These councils may lead to the formation of super-departments within the executive branch, if for no other reason than to ensure continued receipt of federal moneys.

The picture of administrative reorganization in Texas is not bright.⁹ Nonetheless, concerned citizens need to examine the state's present administrative structure and make decisions about possible changes which in time could produce a more efficient executive department. Until there is a sizable number of voters cognizant of the problems and answers in the area of administrative organization, Texans cannot expect modernization of their executive department.

9. In the regular 1969 session of the Legislature six bills aimed at studying or actually changing the executive branch were introduced; none passed.

(from Barbara)

RE: Salary Commission

Article IV: the Executive Committee

February 25, 1974

Joyce W. Moore



The Committee on the Executive met twice this past week to consider any final amendments or suggestions on styling and drafting before the final committee report is sent to the floor of the Convention for consideration. Most of the suggestions made were in the form of clarification of "clean-up" amendments, but some of the Committee delegates did try to offer amendments containing substantive change as a platform for later submitting a minority report.

On section 7 the Committee was faced with the question of the "Salary Commission." On February 11, 1974, the Committee had accepted language similar to that found in the CRC proposal in which the Salary Commission would set the maximum amounts of pay raises for the Executive Officers. The next day the Executive Committee received a memo from Bob Gammage, the chairman of the General Provisions Committee, advising them that the General Provisions Committee had struck any reference to a Salary Commission from their article report by a vote of 11 to 7. (the same memo was also sent the the Judiciary Committee and the Legislative Committee.) The last sentence in the Gammage memo seemed to challenge the other committee's to do what the General Provisions Committee was politically afraid to do themselves--- provide for some means of setting salaries other than the current referendum method.

It would have been easy for the Executive Committee to provide for a Salary Commission in Article IV. Unfortunately, many of the Committee members are facing strong opposition in the upcoming elections^{and} did not want to go on record as favoring any method of salary control as "radical" as that proposed by the

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CRC which would take the control of the salary purse-strings away from the people (who have been historically conservative -- Or-- stingy on this issue) and place them in the hands of a Salary Commission (who might turn out to be a bunch of radical you-know-what's and who might even go so far as to actually raise the salaries of the Legislature so those wild men -and women- who everyone knows never do anything anyway, could have more of the taxpayer's hard earned money to fritter away on such silly things as more and better staff, research reports to replace those now given by the dedicated gentlemen of the Lobby, better communications with home and constituents, and numerous other temptations found here in beautiful "Sin City.") And so, once again the delegates remove their statesman hats in favor of the old standby political fedora.

I feel it is indeed unfortunate that political pressures are getting in the way of what could be a very good constitution. Unfortunate, but true. Salaries will be set "as provided by law."