OFFICIAL JOURNAL of the CONSTITUTIONAL CONVENTION of the STATE OF TEXAS

EIGHTY-FOURTH DAY (Tuesday, June 11, 1974)

AFTEP RECESS

The Convention met at 9:30 o'clock a.m. pursuant to recess and was called to order by the President.

The roll was called and the following were recorded present: 151 Present, 12 Absent-excused, 18 Absent. (Record 1, Appendix)

The Reverend Wilbert Leo Daniels, Greater Jerusalem Baptist Church, Houston, Texas, offered the invocation as follows:

Almighty and Everlasting God, Our Heavenly Father, who hast made of one blood and redeemed by one ransom of all nations of men, we thank your for our lives, for this day, and for these our leaders who are assembled here today.

Father, guide these leaders of our great state into the way of justice and truth, mercy and love, giving and forgiving; and establish among them that peace which is the fruit of righteousness, that all may become partakers of the Kingdom of our Lord and Saviour, Jesus Christ.

Give them, O Thou Father of compassions such a tenderness and meltingness of heart that they may be deeply affected with all the miseries and calamities outward and inward of those whom they represent, and diligently keep them in love.

This is our prayer through Jesus Christ, Our Lord. Amen.

LEAVES OF ABSENCE

Delegate McKnight was granted leave of absence for today on account of illness on motion of Delegate Aikin.

Delegate Lombardino was granted leave of absence for today on account of important business on motion of Delegate Bird.

Delegate McKinnon was granted leave of absence for today on account of important business on motion of Delegate Brooks.

Delegate Semos was granted leave of absence for today on account of illness in family on motion of Delegate Cates.

Delegate Powers was granted leave of absence for today on account of important business on motion of Delegate Adams of Hardin.

Delegate Bock was granted leave of absence for today on account of important business on motion of Delegate Newton.

CONSTITUTIONAL CONVENTION

Delegate Howard was granted leave of absence for today on account of important business on motion of Delegate Presnal.

Delegate Craddick was granted leave of absence for today on account of important business on motion of Delegate Presnal.

Delegate Cooke was granted leave of absence for today on account of illness on motion of Delegate Coody.

pelegate Sanchez was granted leave of absence for today on account of illness on motion of Delegate Atwell.

Delegate Vick was granted leave of absence for today on account of important business on motion of Delegate Barnhart.

Delegate Washington was granted leave of absence for today on account of important business on motion of Delegate Leland.

ARTICLE X ON SECOND READING

The President laid before the Convention as unfinished business Article \boldsymbol{x}_{\bullet}

pelegate Nabers offered the following amendment to Article X:

Amend Article \boldsymbol{X} by adding a new section, as follows:

SECTION __: 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 every two years. The Railroad Commission shall perform duties as provided by law. The Legislature shall have the power to abolish the Railroad Commission.

NABERS ADAMS OF JASPER CREIGHTON ADAMS OF HARDIN

The amendment was read.

DELEGATES PRESENT

Delegates Bock and McKnight who had previously been recorded as "Absent-excused" were announced "Present".

Delegates Martin, Rodriguez, Lary, Head, Simmons, Harris of Dallas, Doyle, Maloney, Hernandez and Garcia who had previously been recorded as "Absent" were announced "Present".

Delegate Adams of Jasper offered the following substitute for the amendment:

Amend the Nabers Amendment by substituting the following as a new section to Article X:

SECTION __: 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 every two years. The Railroad Commission shall have such authority and shall perform such duties as provided by law. The Legislature shall have the power to abolish the Railroad Commission.

ADAMS OF JASPER NABERS NEWTON CREIGHTON ADAMS OF HARDIN

The substitute for the amendment was read.

(Delegate Laney in Chair)

Delegate Gammage moved to table the substitute for the amendment.

(President in Chair)

LEAVE OF ABSENCE

Delegate Bowers was granted leave of absence for the remainder of today on account of important business on motion of Delegate Henderson.

The motion to table was lost by the following vote: 60 Yeas, 102 Nays, 1 Present-Not Voting, 18 Not Voting. (Record 2, Appendix)

Question recurring on the adoption of the substitute for the amendment, the substitute for the amendment was adopted by the following vote: 102 Yeas, 55 Nays, 1 Present-Not Voting, 23 Not Voting. (Record 3, Appendix)

Question on the adoption of the amendment as substituted, the amendment as substituted was adopted by the following vote: 103 Yeas, 59 Nays, 1 Present-Not Voting, 18 Not Voting. (Record 4, Appendix)

LEAVES OF ABSENCE

Delegate McKnight was granted leave of absence for the remainder of today on account of illness on motion of Delegate Moore.

Delegate Atwell was granted leave of absence for the remainder of today on account of important business on motion of Delegate Allen of Gregg.

Question on the adoption of the new Section 25 as contained in the amendment as substituted, Section 25 was adopted by the following vote: 101 Yeas, 57 Nays, 2 Present-Not Voting, 21 Not Voting. (Record 5, Appendix)

PAIRED VOTE

Delegate Schwartz (present), who would vote "Nay", with Delegate McKnight (absent), who would vote "Yea".

DELEGATES PRESENT

Delegate Mauzy who had previously been

recorded as "Absent" was announced "Present".

Delegate Howard who had previously been recorded as "Absent-excused" was announced "Present".

LEAVE OF ABSENCE

Delegate Von Dohlen was granted leave of absence for the remainder of today on account of important business on motion of Delegate Newton.

DELEGATE PRESENT

Delegates Hale and Denson who had previously been recorded as "Absent" were announced "Present".

Delegate Preston offered the following amendment to Article X:

Amend Article X by adding a new section as follows:

Section _____. COMMISSIONER OF AGRICULTURE. The commissioner of agriculture shall perform the duties required by this constitution and other duties as provided by law. At general elections beginning in 1978, qualified voters of the state shall elect the commissioner of agriculture for four-year terms.

The amendment was read.

Delegate Gammage moved to table the amendment.

The motion to table was lost by a non-record vote.

Question recurring on the adoption of the amendment, the amendment was adopted by a non-record vote.

Question on the adoption of the new Section 26 as contained in the amendment, Section 26 was adopted by the following vote: 119 Yeas, 34 Nays, 2 Present-Not Voting, 26 Not Voting. (Record 6, Appendix)

REASON FOR VOTE

I voted for the amendment to place the Commissioner of Agriculture in the constitution by mistake. I thought I was voting to table the amendment.

MASSEY

Delegate Nugent offered the following amendment to Article x:

Amend Article X, by creating a new section properly numbered to read as follows:

The legislature may fix maximum rates of interest, not in excess of 18 percent per annum.

Interest as used herein means the sum of all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit.

NUGENT BALES

The amendment was read.

Delegate Reynolds moved to table the as follows: amendment. Sectio

The motion to table prevailed by the following vote: 105 Yeas, 41 Nays, 1 Present-Not Voting, 34 Not Voting. (Record 7, Appendix)

RECESS

On motion of Delegate Lewis the Convention at 11:57 o'clock a.m. took recess until 1:30 o'clock p.m. today.

AFTER RECESS

The President called the Convention to order at 1:30 o'clock p.m., pursuant to recess.

DELEGATES PRESENT

Delegates McKinnon, Atwell, Semos and Vick who had previously been recorded as "Absent-excused" were announced "Present".

Delegates Bales, Hudson and Canales who had previously been recorded as "Absent" were announced "Present".

ARTICLE X ON SECOND READING

The President laid before the Convention as unfinished business Article X.

Delegate Clower offered the following amendment to Article X:

Amend Article X by adding a new section to read as follows:

Section ___. (a) PUBLIC UTILITY COMMISSION. The Public Utility Commission shall consist of three Commissioners, having such qualifications as provided by law, elected statewide for six-year terms. One Commissioner shall be elected every two years. The Public Utility Commission shall perform duties as provided by law. The Legislature shall have the power to abolish the Public Utility Commission.

CLOWER MOORE KUBIAK

The amendment was read.

On motion of Delegate Clower, and by unanimous consent, the amendment was withdrawn.

LEAVES OF ABSENCE

Delegate Sherman of Tarrant was granted leave of absence for the remainder of today on account of important business on motion of Delegate Adams of Hardin.

Delegate Hernandez was granted leave of absence for the remainder of today on account of medical reasons on motion of Delegate Miller.

Delegate Johnson offered the following amendment to Article X:

Amend Article X to provide a new section as follows:

Section ____. HUMAN RELATIONS COMMISSION. The Human Relations Commission shall be the people's advocate and shall perform such duties as may be provided by law. Three Commissioners shall be elected by the people and shall serve six-year terms. One Commissioner shall be elected every two years. The Human Relations Commission shall have such authority and shall perform such duties as provided by law. The Legislature shall have the power to abolish the Human Relations Commission.

The amendment was read.

Delegate Reynolds moved to table the amendment.

The motion to table prevailed by the following vote: 84 Yeas, 61 Nays, 1 Present-Not Voting, 35 Not Voting. (Record 8, Appendix)

LEAVE OF ABSENCE

Delegate Harrington was granted leave of absence for the remainder of today on account of important business on motion of Delegate Nichols.

Delegate Johnson offered the following amendment to Article X:

Amend Article X to provide a new section as follows:

Section ______ EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. The Equal Employment Opportunity Commission shall ensure equal opportunities for employment in the state and shall perform the duties required by this constitution and such other duties as may be provided by law. Three Commissioners shall be elected by the people and shall serve six-year terms. One Commissioner shall be elected every two years. The Equal Employment Opportunity Commission shall have such authority and shall perform such duties as provided by law. The Legislature shall have the power to abolish the Equal Employment Opportunity Commission.

The amendment was read.

Delegate Jones of Harris moved to table the amendment.

The motion to table prevailed by the following vote: 87 Yeas, 60 Nays, 1 Present-Not Voting, 33 Not Voting. (Record 9, Appendix)

DELEGATE PRESENT

Delegate Washington who had previously been recorded as "Absent-excused" was announced "Present".

(Delegate Doyle in Chair)

Delegate Ragsdale offered the following amendment to Article \mathbf{X} :

as follows:

It shall be the Section responsibility of the state to insure that the principles of equal employment opportunity and merit system personnel policies and practices are implemented in all state agencies. The State Personnel Commission shall perform duties as provided by law.

> RAGSDALE LELAND THOMPSON SUTTON HALL OF HARRIS REYES JOHNSON HERNANDEZ. DENTON TRUAN

The amendment was read.

Delegate Reynolds moved to table the amendment.

(President in Chair)

The motion to table prevailed by the following vote: 91 Yeas, 64 Nays, 1 Present-Not Voting, 25 Not Voting. (Record 10, Appendix)

DELEGATE PRESENT

Delegate Craddick who had previously been recorded as "Absent-excused" was announced "Present".

Delegate Wyatt offered the following amendment to Article X:

Amend Article X by adding a section to read as follows:

Section ___. BOARD OF REGENTS, UNIVERSITY OF TEXAS SYSTEM. The board of regents of The University of Texas System is composed of nine members elected in the general election for terms of six years, with structures for governmental use. the terms of three members expiring every two The board of regents of The University of Texas System shall perform the duties required by this constitution and other duties as provided by law.

> WYATT NICHOLS

The amendment was read.

Delegate Kubiak moved to table the amendment.

The motion to table prevailed by a non-record vote.

offered Delegate Williamson the following amendment to Article X:

Amend Article X by adding a section to read as follows:

Section ECOLOGISTS AND ENVIPONMENTALISTS. The legislature by law shall establish a state agency to license and

regulate ecologists and environmentalists and Shall prohibit the practice of ecology or Amend Article X by adding a new section environmeddling without a license.

The amendment was read.

On motion of Delegate Williamson and by unanimous consent the amendment was withdrawn.

Delegate Williamson offered following amendment to Article X:

Amend. Article X, the General Provisions Committee Report, by adding the following section:

Section ___. SAVING CLAUSE. If any provision in Articles II through XI of this constitution conflicts with any provision in the Bill of Rights, the Bill of Rights prevails.

> WILLIAMSON LONGORIA SAGE HUBENAK SANCHEZ MOORE WILLIAMS KORIOTH DORAN GPEEN OF HARRIS

On motion of Delegate Williamson and by unanimous consent the amendment was withdrawn.

Delegate Bynum offered the following amendment to Article X:

Amend Article X by adding a new section to read:

EXECUTION OF LONG-TERM section ___. CONTRACTS

Notwithstanding Article VIII, Sections 7 and 8(b) of this constitution, the legislature by special law may authorize the execution of long-term contracts, which must be approved by the Attorney General, for the lease and purchase of buildings and other contracts shall not exceed a term of 30 years or the estimated usable life of the structure, whichever is less, and must provide for public ownership upon expiration of the contract.

The amendment was read.

Delegate Reynolds moved to table the amendment.

The motion to table prevailed by the following vote: 120 Yeas, 37 Nays, 1 Present-Not Voting, 23 Not Voting. (Record 11, Appendix)

DELEGATE PRESENT

Delegate Lee who had previously been recorded as "Absent" was announced "Present".

Delegate Wyatt offered the following amendment to Article X:

Amend Article X by adding a new section

to read as follows:

Section ____. BOARD OF REGENTS, THE UNIVERSITY OF TEXAS SYSTEM AND THE BOARD OF DIRECTORS, TEXAS A&M UNIVERSITY.

(a) The Board of Regents of The University of Texas System and The Board of Directors, The Texas A&M University are composed of nine members elected in the general election for terms of six years beginning in 1978, with the terms of three members expiring every two years. The chairperson of the board shall be elected by the respective board for a term of two years during the first meeting in February or as soon thereafter as possible, and shall be an elected member of the board.

(b) The legislature shall provide the members are elected from single-member districts that shall be divided as equally as possible according to population after each decennial census.

WYATT MOORE HARRIS OF DALLAS CREIGHTON

The amendment was read.

Delegate Kubiak moved to table the amendment.

The motion to table prevailed by the following vote: 119 Yeas, 39 Nays, 1 Present-Not Voting, 22 Not Voting. (Record 12, Appendix)

LEAVES OF ABSENCE

Delegate Tupper was granted leave of absence for the remainder of today on account of important business on motion of Delegate Snelson.

Delegate Gaston was granted leave of absence for the remainder of today on account of important business on motion of Delegate Washington.

Delegate Spurlock was granted leave of absence for the remainder of today on account of important business on motion of Delegate Nugent.

Delegate Hutchison (he having voted on the prevailing side) moved to reconsider the vote by which Section 6 of Article X was adopted on May 29.

Delegate Reynolds moved to table the motion to reconsider.

The motion to table was lost by the following vote: 50 Yeas, 112 Nays, 1 Present-Not Voting, 18 Not Voting. (Record 13, Appendix)

Delegate Hutchison called the motion to reconsider from the Journal and the motion to reconsider prevailed by a non-record vote.

Question: Shall Section 6 be adopted?

Delegate Kubiak moved to table Section

The motion to table was lost by the following vote: 75 Yeas, 84 Nays, 1 Present-Not Voting, 21 Not Voting. (Record 14, Appendix)

Delegate Hutchison (he having voted on the prevailing side) moved to reconsider the vote by which his amendment to Section 6 to Article X was adopted on May 29.

The motion prevailed by a non-record vote.

Question: Shall the amendment be adopted?

Delegate Hutchison offered the following amendment to the amendment:

Amend Section 6 of Article X by deleting the same and inserting a new Section 6 as follows:

Section 6. PROTECTION OF THE ENVIRONMENT. The quality of the environment of the State of Texas is to be protected. The legislature by law shall implement and enforce this policy.

The amendment to the amendment was read and was adopted by the following vote: 133 Yeas, 27 Nays, 1 Present-Not Voting, 20 Not Voting. (Record 15, Appendix)

The amendment as amended was then adopted by a non-record vote.

Question on the adoption of Section 6 as amended, Section 6 as amended was again adopted by the following vote: 89 Yeas, 72 Nays, 1 Present-Not Voting, 19 Not Voting. (Record 16, Appendix)

(Delegate Hall of Harris in Chair)

(President in Chair)

Question next on the adoption of the new Section 23 as contained in the amendment by Delegate Pentony as adopted on yesterday.

Delegate Wyatt moved to table the new Section 23.

The motion to table was lost by the following vote: 50 Yeas, 100 Nays, 3 Present-Not Voting, 28 Not Voting. (Record 17, Appendix)

The new Section 23 was then adopted by a non-record vote.

VOTE RECORDED

Delegate Wilson requested to be recorded as voting "Nay" on Pentony Proposal (New Section 23).

LEAVE OF ABSENCE

Delegate Garcia was granted leave of absence for the remainder of today on account of important business on motion of Delegate Truan.

MOTION TO RECESS

Delegate Doran moved that the Convention

take recess until 9:30 o'clock a.m. tomorrow.

The motion was lost by the following vote: 70 Yeas, 79 Nays, 1 Present-Not Voting, 31 Not Voting. (Record 18, Appendix)

ARTICLE X ON SECOND READING

The President laid before the Convention as unfinished business Article X.

Delegate Sage offered the following amendment to Article X:

Be it proposed that the following be submitted as a separate proposal to the voters of Texas, which, if adopted by a majority of the electors voting on the question, shall amend Article X of the proposed constitution by adding a new section thereto, to be appropriately numbered, or if adopted by a majority of the electors voting on the question and the proposed constitution is not adopted, shall amend the Constitution of 1876, as amended, to be appropriately numbered:

The legislature shall enact laws to provide the right of local option for parimutuel enterprises whereby, the qualified voters of any county, may, by a majority of those voting in a local option election, determine from time to time whether parimutuel enterprises shall be prohibited or legalized within the prescribed limits of such county.

SAGE LOMBARDINO SIMMONS

The amendment was read.

Delegate Gammage moved to table the amendment.

The motion to table prevailed by the following vote: 120 Yeas, 32 Nays, 1 Present-Not Voting, 28 Not Voting. (Record 19, Appendix)

Delegate Vick offered the following amendment to Article \boldsymbol{X} :

Amend the Committee Report on Article X by adding the following: BE IT FURTHER PROPOSED,

That the following be submitted to the voters as a separate issue:

PROPOSAL NO.

(1) That in the event the new constitution is adopted, the following section be added to Article X:

Section ... RIGHT TO ATTEND NEAREST PUBLIC SCHOOL. The right of students to attend the public school nearest their place of residence shall not be denied or abridged for reasons of race, color, national origin, religion or sex.

(2) That in the event the new constitution is not adopted, Article XVI, Constitution of 1876, be amended by adding a section to read as follows:

Section 67. RIGHT TO ATTEND NEAREST

PUBLIC SCHOOL. The right of students to attend the public school nearest their place of residence shall not be denied or abridged for reasons of race, color, national origin, religion, or sex.

VICK HEATLY BLYTHE

The amendment was read.

Delegate Vick offered the following substitute for the amendment to Article X:

Amend the Committee Report on Article X by adding the following: BE IT FURTHER PROPOSED,

That the following be submitted to the voters as a separate issue:

PROPOSAL NO. ____

(1) That in the event the new constitution is adopted, the following section be added to Article X:

Section ____. RIGHT TO ATTEND NEAREST PUBLIC SCHOOL. The right of students within their own school district to attend the public school nearest their place of residency that best meet their basic educational needs shall not be denied or abridged for reasons of race, color, national origin, religion, or sex.

(2) That in the event the new constitution is not adopted, Article XVI, Constitution of 1876, be amended by adding a section to read as follows:

Section 67. RIGHT TO ATTEND NEAREST PUBLIC SCHOOL. The right of students within their own school district to attend the public school nearest their place of residency that best meet their basic educational needs shall not be denied or abridged for reasons of race, color, national origin, religion, or sex.

VICK NOWLIN

The substitute for the amendment was read.

Delegate Williamson moved to table the substitute for the amendment.

The motion to table prevailed by the following vote: 105 Yeas, 50 Nays, 0 Present-Not Voting, 26 Not Voting. (Record 20, Appendix)

Delegate Maloney offered the following substitute for the amendment:

Substitute for the Vick amendment the following: BE IT FURTHER PROPOSED,

That the following be submitted to the voters as a separate issue:

PROPOSAL NO.

(1) That in the event the new constitution is adopted, the following section be added to Article X:

section be added to Article X:
Section STUDENTS' RIGHT TO EQUAL
PROTECTION OF THE LAWS. The right of

students to equal protection of the laws shall not be abridged for reasons of race, color, national origin, religion, or sex.

(2) That in the event the new constitution is not adopted, Article XVI, Constitution of 1876, be amended by adding a section to read as follows:

Section STUDENTS' RIGHT TO EQUAL PROTECTION OF THE LAWS. The right of students to equal protection of the laws shall not be abridged for reasons of race, color, national origin, religion, or sex.

MALONEY HUTCHISON

The substitute for the amendment was read.

Delegate Sullivant moved to table the amendment.

The motion to table was lost by the following vote: 47 Yeas, 104 Nays, 0 Present-Not Voting, 30 Not Voting. (Record 21, Appendix)

Question on the adoption of the substitute for the amendment, the substitute for the amendment was adopted by a non-record vote.

RECORD OF VOTE

pelegate Green of Harris requested to be recorded as voting "Nay" on the adoption of the Maloney substitute to the Vick amendment.

Question next on the adoption of the amendment as substituted, the amendment as substituted was adopted by a non-record vote.

DELEGATE PRESENT

Delegate Tupper who had previously been recorded as "Absent-excused" was announced "Present".

Question next on the adoption of the Separate Submission, the Separate Submission failed of adoption by the following vote: 12 Yeas, 143 Nays, 1 Present-Not Voting, 25 Not Voting. (Record 22, Appendix)

ARTICLE V ON SECOND READING

The President laid before the Convention as unfinished business $\mbox{\sc Article }\mbox{\sc V}_{\bullet}$

Question: Shall Article V be adopted?

UNANIMOUS CONSENT TO RECORD VOTES

The following delegates requested unanimous consent to be recorded as voting on the following record votes. There was no objection:

Delegate Cole requested to be recorded as voting "Yea" on Record Votes 1, 4, 5, 7, 12, 15, 18, 19, 20 and 21 of June 10, 1974.

Delegate Cole requested to be recorded as voting "Nay" on Record Votes 9, 11, 14 and 22 of June 10, 1974.

Had I been present I would have voted "Nay" on Record Vote 2.

CRADDICK

Had I been present I would have voted "Yea" on Record Votes 3, 4 and 5.

CRADDICK

Had I been present I would have voted "Nay" on Record Votes 2 and 7.

LEE

Had I been present I would have voted "Yea" on Record Votes 3, 4, 5, 6, 8, 9 and 10.

LEE

Delegate Allred requested to be recorded as voting "Yea" on Record Vote 11.

Delegate Allred requested to be recorded as voting "Nay" on Record Votes 8 and 9.

Delegate Blanchard requested to be recorded as voting "Yea" on Record Votes 18 and 19.

Delegate Bynum requested to be recorded as voting "Yea" on Record Vote 7.

Delegate Bynum requested to be recorded as voting "Nay" on Record Votes 5 and 8.

Delegate Clayton requested to be recorded as voting "Nay" on Record Votes 8, 9 and 17.

Delegate Cobb requested to be recorded as voting "Yea" on Record Vote 13.

Delegate Cobb requested to be recorded as voting "Nay" on Record Vote 14.

Delegate Cole requested to be recorded as voting "Yea" on Record Votes 5, 6, 7, 8, 9 and 10.

Delegate Evans requested to be recorded as voting "Yea" on Record Votes 11, 12, 18 and 19.

Delegate Evans requested to be recorded as voting "Nay" on Record Vote 17.

Delegate Finney requested to be recorded as voting "Yea" on Record Vote 16.

Delegate Hightower requested to be recorded as voting "Yea" on Record Vote 7.

Delegate Laney requested to be recorded as voting "Yea" on Record Vote 8.

Delegate Martin requested to be recorded as voting "Yea" on Record Votes 11 and 12.

Delegate Montoya requested to be recorded as voting "Nay" on Record Votes 7 and 8.

Delegate Ogg requested to be recorded as voting "Nay" on Record Vote 9.

Delegate Parker of Jefferson requested to be recorded as voting "Yea" on Record Vote 3.

Delegate Rosson requested to be recorded as voting "Yea" on Record Vote 9.

Delegate Slack requested to be recorded as voting "Yea" on Record Votes 8 and 9.

RECESS

On motion of Delegates Gammage, Heatly, Finnell, Hightower and Allred the Convention at 5:59 o'clock p.m. took recess in memory of Tom Craddock of Seymour until 10:00 o'clock a.m. tomorrow.

TEXAS CONSTITUTIONAL CONVENTION

REPORT

OF THE

COMMITTEE ON STYLE AND DRAFTING

Article IX

Local Government

Chairman

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

The Committee on Style and Drafting submits this revision of Article IX, Local Government, for consideration on third reading.

Immediately following this letter is the proposed article on Local Government and an item for separate submission. Following that is a version in which changes as approved on second reading are shown. Words added are indicated by underlining and words deleted are crossed out and enclosed in brackets.

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

A final section of the report sets out the text of a substantive amendment which the committee will offer. This amendment is designed to remove a conflict between two sections of the article proper and the item for separate submission. An explanation of the conflict precedes the text of the amendment.

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

June 10, 1974

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

Sir:

We, your Committee on Style & Drafting, to whom was referred Article IX, 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,

9 yeas

0 nays

0 present,
not voting

Max Sherman, Chairman

(April 1, 1974, referred to Committee on Style and Drafting; June 10, 1974, reported favorably by a vote of 8 yeas, 0 nays; June 10, 1974, sent to printer.) BE IT PROPOSED BY THE COMMITTEE ON STYLE AND DRAFTING,

That Article IX on Local Government be revised as follows:

ARTICLE IX

LOCAL GOVERNMENT

- Sec. 1. COUNTIES. (a) The counties of the state are those that exist on the date of adoption of this constitution.
- (b) Under procedures prescribed by general law (1) county boundaries may be changed if approved by a majority of the qualified voters in each affected county who vote on the question, and (2) counties may be merged or county seats relocated if approved by two-thirds of the qualified voters in each affected county who vote on the question.
- Sec. 2. POWERS OF COUNTY GOVERNMENT. Counties have only the powers of government granted by the constitution and general laws of the state.
- Sec. 3. COUNTY AND DISTRICT OFFICERS. (a) The governing body of each county is the county commission, consisting of a county judge elected by the qualified voters of the county and four county commissioners, each elected by the qualified voters of separate and compact precincts containing as nearly as practicable an equal number of inhabitants. The county judge is the presiding officer of the county commission.

(b) The qualified voters of each county elect a sheriff, treasurer, tax assessor-collector, county clerk, and county attorney.

- $(_{\mathrm{C}})$ The county commission shall provide for the election of one or more constables.
- (d) The qualifications, duties, and functions of county officers and the grounds and procedure for disqualification, suspension, and removal are as provided by general law except that the county attorney must be licensed to practice law in this state.
- (e) Under methods and procedures established by general law, the qualified voters of a county by a majority vote of those voting on the question may create additional offices, eliminate offices, or combine the duties and functions of offices. In the case of a county commission this power is limited to reducing or increasing the number of county commissioners. If the duties and functions of an office named in Subsections (b) and (c) of this section are combined with another office, the holder of the combined offices must be elected. The county commission shall designate the officer to perform the duties required by law to be performed by an officer whose office is eliminated.
- (f) Vacancies in county offices are filled as provided by general law.
 - Sec. 4. COUNTY ORDINANCES. (a) Under procedures prescribed

by general law, the qualified voters of a county, by a majority of those voting on the question, may grant to or withdraw from the county commission the power to enact ordinances. If this general power is granted, the county commission may enact any ordinances that are not inconsistent with the constitution or laws of the state. The legislature by general law may provide procedures by which the qualified voters of a county may repeal ordinances. If a county ordinance conflicts with an ordinance

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- of an incorporated city or town, the municipal ordinance prevails within its jurisdiction as defined by law.
- Sec. 5. GENERAL LAW CITIES. Cities and towns having a population of 1,500 or less may be chartered only by general law.
- Sec. 6. CITY CHARTERS. Cities and towns having more than 1,500 inhabitants, by a majority vote of the qualified voters voting on the question, may adopt, amend, or repeal their charters in the manner prescribed by law. No charter or ordinance may be inconsistent with the constitution or laws of the state. No tax may be levied unless authorized by law or charter. No city loses the power to amend or repeal its charter because its population drops below 1,500.
- Sec. 7. SPECIAL DISTRICTS AND AUTHORITIES. legislature may provide by general or local law for special districts or authorities.

- (b) Counties, cities, and towns may provide for special districts or authorities within their boundaries but only if authorized by general law. No local law may create a special district or authority wholly within a county, city, or town if a general law authorizes the county, city, or town to create a special district or authority for the same purpose.
- (c) Special districts or authorities may be created only for public purposes.
- (d) The provisions of this section are not applicable to school districts or community junior college districts.
- Sec. 8. TERMS OF OFFICE. Constitutional county officers are elected for four-year terms. Other elected county officers and elected officers of other political subdivisions are elected for terms as provided by law or charter.
- Sec. 9. COMPENSATION OF OFFICERS. Elected officers of political subdivisions are not to be compensated on a fee basis.
- Sec. 10. TAX RATES AND DEBT LIMITATIONS. (a) The maximum annual ad valorem tax rate which may be established by law or charter for purposes other than debt service may not exceed \$2.00 on the \$100 of assessed valuation of taxable property in cities and towns or \$1.25 on the \$100 in counties.
- (b) No school district, community junior college district, or special district or authority may levy an annual ad valorem tax for purposes other than debt service unless a maximum annual tax

rate, not exceeding the maximum rate permitted by law, has been approved by a majority of the qualified voters of the district or authority voting on the question at an election held for that purpose.

- (c) A political subdivision may levy an additional annual ad valorem tax at a rate not greater than necessary to provide an annual amount sufficient to service debt payable from ad valorem taxes.
- (d) The legislature shall establish by general law the maximum amount of interest-bearing obligations payable from ad valorem taxes that may be issued by cities, towns, counties, school districts, and community junior college districts.
- (e) No interest-bearing obligations payable from ad valorem taxes, other than refunding obligations, may be issued by school districts, community junior college districts, or special districts or authorities, unless authorized by a majority of the qualified voters of the district or authority voting on the question at an election held for that purpose.
- (f) No interest-bearing obligations for mass transportation purposes and payable from ad valorem taxes may be issued by a political subdivision unless authorized by a majority of the qualified voters of the political subdivision who vote on the question.
 - (g) The power of a political subdivision to levy taxes or

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

- (h) No interest-bearing debt may be created by a political subdivision unless at the same time provision is made for paying the interest and principal when due.
- (i) Ad valorem taxes levied by school districts, community junior college districts, or special districts or authorities are not to be counted as part of the ad valorem tax limits imposed on counties, cities, and towns.
- Sec. 11. INTERGOVERNMENTAL COOPERATION. The legislature shall prescribe by law the manner in which a political subdivision, by act of its governing body, may cooperate or contract with other political subdivisions, the state, or the United States for the performance of functions required or authorized by this constitution or the laws of this state.

Sec. 12. CONSOLIDATION OF OFFICES AND TRANSFER OF FUNCTIONS.

Political subdivisions may be authorized only by general law
to consolidate offices, transfer functions of government, or cancel
a consolidation or transfer. A law may not authorize a consolidation or transfer among political subdivisions of more than one
geographical county. No consolidation or transfer may take
effect unless it is approved by a majority of the qualified
voters in each affected political subdivision who vote on the
question.

Item for Separate Submission to the Voters

Sec. __. COUNTY HOME-RULE AUTHORITY. (a) Counties, by a majority vote of the qualified voters voting on the question, may adopt, amend, or repeal home-rule charters in the manner prescribed by law. No charter or ordinance may be inconsistent with the constitution or laws of the state.

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

REVISED ARTICLE IX

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 IX

Section	2, note 1	page	10
	4, note 1 4, note 2	page page	
*Section	6, note 1	page	17
Section	10, note 4	page	24
	12, note 1 12, note 2	page page	

*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 IX on Local Government be revised as follows:

ARTICLE IX

LOCAL GOVERNMENT

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

boundaries may be changed [Changes-in-county-boundaries] if

approved by [are-subject-to-the-approval-of] a majority of the

qualified voters in each affected county who vote on the question,

[voting-on-the-question-in-each-county-affected.] and (2) counties

may be merged or county seats relocated if approved by two-thirds

[(e)--The-merger-of-counties-or-the-relocation-of-county-seats-is

subject-to-the-approval-of-a-two-thirds-majority] of the qualified

voters in each affected county who vote on the question [voting

on-the-question-in-each-county-affected]. [(d)--The-legislature

shall-provide-by-general-law-the-procedures-necessary-to-effect

Gubsections-(b)-and-(c)-of-this-section-]

EXPLANATION

(1) The change simply combines three subsections and

eliminates a cross-reference. The committee uses "prescribe" when the legislature's duty is to fill in details and "provide" when the duty is broader.

(1)

Sec. 2. POWERS OF COUNTY GOVERNMENT. [The-powers-of counties-are-those-granted-by-this-constitution-and-by-general law-] Counties have only the powers of government granted by the constitution and general laws of the state.

EXPLANATION

(1) The redraft makes one stylistic change and one clarifying change. The stylistic change makes "counties" instead of "powers" the subject of the sentence. The clarifying change is the addition of the word "only." The section would be wholly unnecessary except for the word "general" modifying laws. The purpose of the section is to prohibit the legislature from granting county powers by local law. The word "only" has been inserted to make the purpose clear—that is, the sentence is a limitation on the legislature, not an unnecessary grant of power to the legislature.

It should be noted that constitutional "powers" as used in this sentence covers both general and specific constitutional powers. Thus, the grant of home-rule ordinance-making power in Section 4 is one of the constitutional powers that Section 2 grants to counties. Likewise, if the separate section on home rule is approved, the general home-rule power in that section would be a constitutional power granted by Section 2. It is important to emphasize this, for "home-rule powers" in Texas as developed by the courts in interpreting the home-rule-city section (Section 6 of this article, Section 5 of Article XI of the 1876 constitution), means that a city may enact an ordinance on any subject that the legislature can legislate on. In other words, the exercise of home-rule powers does not depend on a statutory grant of power. This is the opposite of the traditional rule that local governments have only the specific powers granted by the constitution and laws.

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body of each county is the county commission, consisting of a county judge elected by the qualified voters of the county and four county commissioners, each elected by the qualified voters

(a) The governing

Sec. 3. COUNTY AND DISTRICT OFFICERS.

of separate and compact precincts containing as nearly as practicable an equal number of inhabitants. The county judge is the presiding officer of the county commission. [The-county judge-shall-perform-such-judicial-duties-and-functions-as-may (2) be-new-or-hereafter-provided-by-law-]

- (b) The qualified voters of each county elect a sheriff, treasurer, tax assessor-collector, county clerk, and county attorney [district-elerk,-but-the-legislature-may-provide-by-law for-the-election-of-a-single-elerk-to-perform-the-duties-of-both (3) a-county-elerk-and-a-district-elerk].
- [(e)--County-attorneys,-district-attorneys,-and-criminal district-attorneys-are-elected-in-such-numbers-and-for-such counties-as-now-or-hereafter-provided-by-law---They-shall represent-the-state-in-criminal-cases-in-the-county-and-district (4) courts-and-perform-other-duties-as-provided-by-law-]
- (c) [(d)] The county commission shall provide for the election of one or more constables.
- (d) [(e)] The qualifications, duties, and functions of (5) county [and-district] officers and the grounds and procedure for disqualification, suspension, and removal are [shall-be] as (6) provided by general law except that the county attorney must be (7) licensed to practice law in this state.
- (e) [(f)] Under [Pursuant-to] methods and procedures established by general law, the qualified voters of a county by

a majority vote of those voting on the question may create additional offices, eliminate offices, or combine the duties and functions of offices. In the case of a county commission this power is limited to reducing or increasing the number of county commissioners. If the duties and functions of an office named in Subsections (b) and [7] (c) [-and-(d)] of this section are combined with another office, the holder of the combined offices must be elected. The county commission shall designate the officer to perform the duties required by law to be performed by an officer whose office is eliminated.

(f) [(g)] Vacancies in county offices are filled as provided by general law. [Vacancies-in-district-offices-are-filled-as (10)
provided-by-general-or-local-law:]

EXPLANATION

- (1) The committee notes that there is a conflict between this section and the separate submission item on home-rule charters. A substantive amendment will be offered by the committee. The nature of the conflict and the text of the amendment appear below. (See pp. 30-32.)
- (2) This sentence has been deleted because the judiciary article will cover the judicial duties of the county judge.

- (3) The deleted words are covered in the judiciary article. The county attorney is included here because Subsection (c) has been deleted. See note (4) below.
- (4) The subsection has been deleted because (1) district attorneys will be covered in the judiciary article; (2) the judiciary article will provide that the district attorney represents the state; (3) the judiciary article will provide that district attorneys have duties and functions as provided by law; and (4) the county attorney is now covered in Subsection (b).
- (5) It is understood that "district" in this context refers only to judicial districts, not to special districts created under Section 7. Since these district officers are covered in the judiciary article, the reference is omitted here.
- (6) In this article on local government it is particularly important to clarify "by law." Even if district officers were included, it seems likely that the laws should be "general." Without the inclusion of the word "district," "general law" is clearly appropriate.
- (7) This requirement will appear in the judiciary article. Since the county attorney has been provided for in Subsection (b) above and will not be included in the judiciary article, the requirement has been picked up here.
 - (8) This change is in accordance with the committee's

manual on style.

- (9) This addition makes explicit what was implicit.
- (10) This sentence is deleted because vacancies in district offices will be covered in the judiciary article. (For the meaning of "district" see note (5) above.)

- Sec. 4. COUNTY ORDINANCES. (a) Under procedures <u>prescribed</u>
 [established] by general law, the qualified voters of a county,
 by a majority of those voting on the question, may grant to or
 withdraw from the county <u>commission</u> [governing-body] the power
 to enact ordinances. If this <u>general</u> power is granted, the county
 commission may enact any ordinances that are not inconsistent with
 the constitution or laws of the state. [This-subsection-does-not
 limit-the-power-of-the-legislature-to-grant-directly-to-counties
 authority-to-enact-ordinances:---(b)] The legislature by general
 law may provide procedures by which the qualified voters of a

 (2)
 county may repeal ordinances.
- (b) [(e)] If a county ordinance conflicts with an ordinance of an incorporated city or town, the municipal ordinance prevails within its jurisdiction as defined by law.

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(1) This sentence has been deleted as unnecessary. The legislature has always had the power to authorize the commissioners court to enact "ordinances." That the new constitution gives the voters direct home-rule authority +o grant ordinance power to the governing body does not take away any legislative power. Home-rule ordinance power cannot be inconsistent with the laws of the state. The legislature can deny county ordinance power in certain areas just as it can deny ordinance power in certain areas to home-rule cities. If the legislature can control home-rule ordinance power in this manner, it can certainly grant limited ordinance power to county governing bodies.

Moreover, to emphasize the nature of this grant of power, the word "general" has been inserted in the second sentence.

This implies that the county commission may also have limited ordinance-making power. The limited power can only come from the legislature since counties have only the powers granted by the constitution and general law.

(2) It seems unnecessary to make this a separate subsection. It should be noted that this is not an unnecessary grant of power to the legislature. The first sentence provides that the voters have to give the county commission general ordinance power or none at all. The last sentence gives the legislature authority to

return to the voters a part of what they give up when they exercise their constitutional power. That is, the legislature may give the voters a "veto" power over the ordinances adopted.

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

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

EXPLANATION

(1) It has long been recognized that the home-rule section of the 1876 constitution (Section 5 of Article XI), does not require legislative action to grant home-rule power.

The words in the old section--"subject to such limitations as

may be prescribed by the legislature"--meant only that the 7 8 9 10 11 12 13 Sec. 7. SPECIAL DISTRICTS AND AUTHORITIES. (a) 15

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legislature should prescribe the procedure by which cities obtained a charter for themselves. The committee uses "in the manner prescribed by law" to express a limited legislative power--here, the manner of taking charter action. The use of "as provided by law" could raise an argument that home rule depended on a legislative grant. The committee understands that there was no intent to change the home-rule section in this respect.

- legislature may provide by general or local law for special districts or [and] authorities.
- (b) Counties, cities, and towns may provide for special districts or [and] authorities within their boundaries but only if authorized by general law. No local law may create a special district or authority wholly within a county, city, or town if a general law authorizes the county, city, or town to create a special district or authority for the same purpose.
- Special districts or [and] authorities may be created only for public purposes.
 - [(d)--No-bill-relating-to-a-special-district-or-authority

by-local-law-may-be-passed-unless-notice-of-the-intention-to
introduce-the-bill-has-been-given-in-the-manner-prescribed-by
law---No-bill-which-would-require-the-notice-provided-for-herein
may-by-its-terms-eliminate-the-necessity-of-such-notice-or-in
any-way-alter-the-general-law-notice-requirements-in-existence
(1)
at-the-time-of-the-introduction-of-such-bill-]

EXPLANATION

- (1) This subsection has been deleted because Section 13(b) (12(b) on second reading) of the legislative article covers the same subject. The wording there is a stronger prohibition against any attempted by-passing of the requirement than the prohibition in the deleted subsection.
- (2) The change is to conform to the terminology used in the education article (Article VII, Section 5).

(1)
Sec. 8. TERMS OF OFFICE. [The-terms-of-office-for-elected]

Constitutional county officers [officials] are elected [provided for-in-Article-IX-shall-be] for four-year terms [years].

Other elected county officers and elected officers of other political subdivisions are elected for terms as provided by law or charter. [All-other-elected-officials-shall-be-as-provided by-law-or-charter.]

EXPLANATION

(1) The redraft is almost wholly stylistic. All county officers "provided for in Article IX" are, by definition, "constitutional" county officers. They are all elected.

"Officials" is changed to "officers" to conform to the committee's policy. (See note (7) to Section 2 of Article VI.)

Sec. 9. COMPENSATION OF OFFICERS. Elected officers of political subdivisions are [shall] not to be compensated on a fee basis.

Sec. 10. TAX RATES AND DEBT LIMITATIONS. (a) The maximum annual ad valorem tax rate which may be established by law or charter for purposes other than debt service may not exceed \$2.00 on the \$100 of assessed valuation of taxable property in cities and towns [7] or \$1.25 on the \$100 in counties.

- (b) No school district, community junior college district, or special district or authority may levy an annual ad valorem (1)

 tax for purposes other than debt service [No-annual-ad-valorem tax-may-be-levied-for-purposes-other-than-debt-service-by-school districts, junior-or-community-college-districts, or-special districts-or-authorities, unless a maximum annual tax rate, not exceeding the maximum rate permitted by law, has been approved by a majority of the qualified voters of the district or authority voting on the question at an election held for that purpose.
- (c) A political subdivision [Political-subdivisions] may levy an additional annual ad valorem tax at a rate not greater than necessary to provide an annual amount sufficient to service debt [pay-the-interest-on; and-principal-when-due-of; interest-bearing-obligations] payable from ad valorem taxes.
- (d) The legislature shall establish by general law the maximum amount of interest-bearing obligations payable from ad valorem taxes that may be issued by cities, towns, counties, school districts, and [junior-or] community junior college districts.

(e) No interest-bearing obligations payable from ad valorem taxes, other than refunding obligations, may be issued by school districts, [junior-or] community junior college districts, or special districts or authorities, unless authorized by a majority of the qualified voter of the district or authority voting on the question at an election held for that purpose.

purposes and payable from ad valorem taxes may be issued by a political subdivision unless authorized by a majority of the qualified voters of the political subdivision who vote on the question. [becal-general-obligation-bond-issues-for-mass transportation-purposes-shall-be-subject-to-approval-by-veters (2) in-the-affected-jurisdiction.]

or issue interest-bearing obligations previously voted is [shall]

not lost [be-abrogated, cancelled, or invalidated] by any change in

its [the] boundaries [of-such-political-subdivision]. If

[Where-such] boundaries are changed by annexation [7] or by

merger [7] or consolidation of two or more political subdivisions

of the same type, the surviving political subdivision may levy

taxes at the highest rate previously [theretofore] voted [in] by the

affected political subdivisions [subdivision-having-the-greater

rate] and may issue interest-bearing obligations to the extent

previously approved by the affected [voted-in-such] political sub-

divisions [prior-to-such-change-in-boundaries]. The legislature shall provide by general or local law for the [The] assumption of outstanding obligations of political subdivisions whose boundaries are changed [shall-be-us-provided-by-law].

- (h) [+g+] No interest-bearing debt may [shall] be created by a political subdivision unless at the same time provision is made for paying the interest and principal when due.
- (i) [(h)] Ad valorem taxes levied by [special-districts-and authorities] school districts, [and-junior-and] community junior college districts, or special districts or authorities are [shall] not to be counted as part of the ad valorem tax limits imposed on coun ies, cities, and towns [by-this-section].

EXPLANATION

- (1) This redraft is designed to make the sentence easier to read.
- (2) This subsection is taken from the finance article.

 (It was the second sentence of Section 6(b) of Article VIII on second reading.) The changes in wording are in part stylistic, in part for clarification, and in part to parallel the wording in other subsections of Section 10. For example, "general obligation bonds" is not a term used in connection with political subdivision bonds.

2.2.

(3) All changes but two are stylistic. "Lost" has been substituted for "abrogated, cancelled, or invalidated" in order to have an all-inclusive term that covers all possibilities. The reference to "law" in the third sentence has been made "general or local law" in order to avoid any ambiguity. It is possible that a general law concerning assumption of outstanding obligations would not be adequate if the boundary changes involved subdivisions created by local law.

(4) Under Section 7 of Inticle VI of the constitution of

- (4) Under Section 7 of Article XI of the constitution of 1876, as amended, the word "debt" in a comparable context was construed by the courts to cover any contractual obligation not payable out of current revenue or an existing fund. Although the wording of Subsection (i) is different from the old provision and probably would not be construed in the same manner, the words "interest-bearing" are added to make it clear that only normal debt is covered. The additional words do not imply that a political subdivision can issue noninterest-bearing debt at a "discount." It is generally accepted that an original issue discount is in fact interest.
- (5) "By this section" is both unnecessary and subject to an ambiguity. If left in, an argument could be made that the excepted taxes are excepted from the constitutional limits but not from statutory limits. The other changes conform to the committee's drafting rules.

Sec. 11. INTERGOVERNMENTAL COOPERATION. The legislature shall prescribe by law the manner in which a [A] political subdivision, [may,] by act of its governing body, may cooperate or contract with other political subdivisions, the state, or the United States for the performance of functions required or authorized by this constitution or the laws of this state [with one-or-more-other-political-subdivisions, the state, or the United States, as-may-be-provided-by-law].

EXPLANATION

(1) The committee's understanding is that the intent of this section is to give political subdivisions the power to engage in intergovernmental cooperation subject to regulation by the legislature. The reformulation imposes a duty on the legislature to make the section effective but leaves the legislature with considerable constitutional control over intergovernmental cooperation.

(1)
Sec. 12. CONSOLIDATION OF OFFICES AND TRANSFER OF FUNCTIONS.

[(a)--The-legislature-by-general-law-may-provide-for-the

of-government-of-any-one-or-more-political subdivisions comprising (2)
or-located-within-any-county:

Delitical subdivisions may be authorized only by general law to consolidate offices, transfer (3)
functions of government, or cancel a consolidation or transfer.

A law may not authorize a consolidation or transfer among political subdivisions of more than one geographical county. No consolidation or transfer may take effect unless it is approved by a majority of the qualified voters in each affected political subdivision who vote on the question [voting-on-the-question-in each-political-subdivision-affected].

[(b)--The-legislature-by-general-law-also-may-provide-a
method-by-which-a-political-subdivision-involved-in-a
consolidation-authorized-under-this-section-may-later-revoke
the-decision-to-consolidate-one-or-more-governmental-offices
(1)
or-functions-of-government:]

EXPLANATION

(1) In accordance with the committee's policy of avoiding constitutionally unnecessary grants of power, this section has been turned into a limitation on the legislature's power. In other words, if the constitution were silent the legislature could provide for consolidations and transfers. The

constitutional significance of the section is in the restriction to general law, the limitation to subdivisions of a single county, and the requirement for referendums. Once the section has been turned into a limitation, Subsection (b) becomes unnecessary. If what was Subsection (a) grants no "power" to consolidate offices or transfer functions, there is no need to grant a "power" to "unconsolidate" or "untransfer."

- (2) It should be noted that, as to counties, there is no conflict between this section and Section 3(e). Consolidation in this section covers only consolidations involving two or more political subdivisions; consolidation under Section 3(e) covers consolidation of offices within a single county government. Thus, a general law enacted under Section 12 could not interfere with the power granted in Section 3(e).
- (3) "Functions" of government cannot be consolidated.

 A function exists or it does not. If it exists, it is lodged somewhere. (If it is lodged in two places something is wrong.)

 It follows that functions can be moved around but not "consolidated." Two functions can be lodged in one office, but this is not a consolidation of "functions."
- (4) "Geographical" is inserted to avoid any ambiguity stemming from the word "county." The county government is one of the political subdivisions of a "county," and the addition of the adjective "geographical" makes it clear that the county

government itself is one of the political subdivisions that can be involved in a consolidation or transfer.

Item for Separate Submission to the Voters

Sec. __. COUNTY HOME-RULE AUTHORITY. (a) Counties, [may7]
by a majority vote of the qualified voters voting on the question,
may adopt, amend, or repeal home-rule charters in the manner
(1)
prescribed [as-previded] by law. No charter or ordinance may
(2)
[shall] be inconsistent with the constitution or [general] laws
of the state.

(b) If a charter provision or ordinance conflicts with an ordinance of an incorporated city or town, the municipal ordinance (3) prevails within its jurisdiction as defined by law.

EXPLANATION

- (1) See note (1) to Section 6.
- (2) "General" should not be used in this context because the prohibition against inconsistency would not apply to local laws. If a river authority is created by a local law, a home-

rule county ought not to be able to enact an ordinance inconsistent with that local law.

(3) This subsection has been added to avoid any ambiguity. Section 4(b) should be read to cover all county ordinances but might be read to cover only ordinances enacted by counties exercising power under direct constitutional or statutory grant. Moreover, the intent that municipal ordinances prevail logically extends to a county charter.

RECOMMENDED SUBSTANTIVE AMENDMENT

The Committee on Style and Drafting recommends a substantive amendment necessary to reconcile a conflict between Sections 3 and 8 and the separately submitted home-rule section. (The text of the substantive amendment appears on page 33.) The conflict, if not resolved, would make the home-rule section substantially meaningless and would mislead the voter.

The conflict arises because of the sentence in the home-rule section that states that a charter may not be inconsistent with the constitution. Sections 3 and 8 control the structure of county government. Thus, a home-rule charter could not provide for a structure of government inconsistent with either Section 3 or Section 8. Since 1913 when home rule became effective for cities, a "home-rule charter" has meant a document in the nature of a constitution--that is, an instrument that creates a government, establishes its structure, and limits its powers. If Section 3 controls the structure of government and Section 4 permits home-rule ordinance-making power, there is little purpose served in having a charter.

In the case of home-rule cities, "not inconsistent with the constitution" had little effect upon the structure of government. The only limitation in 1913 was Section 30 of Article XVI which limited terms of office to two years. This limitation created

problems subsequently. Section 30(b), added in 1940, permitted civil service tenure. Section 11 of Article XI, added in 1958, extended the maximum term of office from two years to four years. Section 8 of the proposed article removes all constitutional limitations on terms of office except for constitutional county officers.

In the case of home-rule cities, the "not inconsistent with the constitution or laws" provision also served the purpose of permitting cities to enact ordinances without the necessity of obtaining a grant of power from the legislature. In the case of home-rule counties, this provision would be important except for Section 4, which permits a county to obtain the same broad ordinance power that a home-rule city has. Again, it is the "not inconsistent" sentence in Section 4 that serves this purpose.

If, therefore, a county can obtain home-rule powers of government under Section 4 but cannot choose its own form of government because of the limitations in Sections 3 and 8, the home-rule section means so little that it would be misleading to offer the section as an alternative for the voters.

The proposed sentence to be added to the home-rule provision would simply "remove" Sections 3 and 8 from the constitution for purposes of determining whether a charter was inconsistent with the constitution. In other words, a home-rule charter could not be inconsistent with any provisions of the constitution other than

Sections 3 and 8. The "except" clause of the proposed amendment preserves the county judge as an elected constitutional county officer so long as the judge has judicial duties. The clause would also require the continued election of the county clerk if the legislature provided for a single officer to serve as county and district clerk.

SUBSTANTIVE AMENDMENT TO REMOVE CONFLICT

BE IT PROPOSED BY THE COMMITTEE ON STYLE AND DRAFTING

That Item for Separate Submission to the Voters Titled "COUNTY HOME-RULE AUTHORITY" be amended by adding the following sentence at the end of Subsection (a):

A charter is not to be considered inconsistent with the constitution by virtue of the assignment of duties and functions of county government, the choice of titles of county officers, their method of selection, or their terms of office, except that the qualified voters of a county continue to elect constitutional county officers who have duties in the judicial branch.

TEXAS CONSTITUTIONAL CONVENTION

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. M. D I	D 1		Russell	
Mr. President	_Doyle	Lee	• Sage	
Adams, D.	● Dramberger	• Leland	• Salom	
Adams, H.	• Earle	Lewis X	• Salem Sanchez	X
• Agnich	Edwards	Lombardino	• Santiesteban	
• Aikin	# Evans	LongoriaMcAlister	• Schieffer	
Allen, Joe	• Finnell	• McDonald, F.	• Schwartz	
• Allen, John	• Finney	McDonald, T.		
Allred	♠ Foreman		ScogginsSemos	×
• Andujar	• Fox	McKinnon X	• Sherman, M.	
• Atwell	• Gammage	McKnight X	Sherman, W.	
Bailey	Garcia	• Madla		
• Baker	• Gaston	Maloney	Short Simmons	
Bales	• Geiger	Martin	• Slack	
Barnhart	• Grant	• Massey	• Snelson	
Bigham	• Green, F.	• Mattox	• Spurlock	
Bird	• Green, R.	Mauzy	• Sullivant	
• Blake	Hale	Meier		
Blanchard	• Hall, A.	LAUHOFF	a Sutton	
• Blythe	• Hall, W.	• Mengden	• Tarbox	
	• Hanna	• Miller	• Temple	
• Boone	• Harrington	• Montoya	•Thompson	
Bowers	• Harris, E.	• Moore	• Traeger	
Braecklein	Harris, O.	Munson	• Truan	
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• Bynum	• Heatly	Nabers	• Uher	
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• Clower	• Hollowell	Parker, C.		
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• Coleman	Hudson	• Pentony	• Whitehead	
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RECORD #1 - ROLL CALL

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RECORD 2 MOTION TO THELE THE NEWTON SUBSTITUTE

FOR THE NABERS AMENDMENT TO ART. X

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Phone (1-703) 355-0872 International ROLL-CALL ® Corporation, Richmond, Va. 23:

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YEA N-V NAY

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4 Adoption of the Nabers Amendment
as Substituted to Art I

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RECORD 5 ADDITION OF THE NEW SECTION OFFERED BY NABERS AND ADAMS OF JASPER TO ART. X

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RECORD T . MOTION TO TABLE THE NUGENT AMENDMENT TO ART. X

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TEXAS CONSTITUTIONAL CONVENTION

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Nabe	ers			Uher		
New	ton	•		Vale		
_Nich	ols			_Vecc	chio	
Now	lin			Vick		
	ent			_Von	Dohlen	
Ogg				Wal	lace	
Olso	n			_Was	hington	
Park	er, C			_Wat	ers	
	er, W.			_VV at	son	
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Pent	ony			VV ni	teheud tmire	
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Russell
Sage
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Schieffer
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Sherman, M.
Sherman, W.
Short
_Simmons
Slack
_Snelson
Spurlock
Spurlock Sullivant
Sutton
Tarbox
_Tarbox
Thompson
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- Tunnor
Tupper Uher Vale
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Whitehead
Whitehead
Whitmire
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Williams
_Williamson
Willis
Wilson Wolff Wyatt
_Wolff
_Wyatt
Bryant

YEA N-V NAY

RECORD 12 MOTION TO TABLE THE WYATT AMENDMENT TO ART. X

YEA-	119	ТОТ	ALS NA	y-39		PNV-1
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AUG	6
SEP	7
OCT	8
NOV	9
DEC	0

1974	IEXAS CONSIIIUI	IONAL CONVENTION	1601
YEA N-V NAY	YEA N-V NAY	YEA N-V NAY	YEA N-V N
_Mr. President	_Doyle	• Lee	• Russell
Adams, D.	Dramberger	Leland	• Sage
Adams, H.	_Earle	Lewis	_Salem
Agnich Aikin	Edwards -	Lombard10	Sanchez
Aikin	Evans	Longoria	Santiesteban
Allen, Joe	_Finnell	McAlister	Schieffer
• Allen, John	Finney	McDonald, F.	Schwartz
Allred	Foreman	McDonald, T.	Scoggins
• Andujar	● Fox	McKinnon	Semos
• Atwell	Gammage	McKnigh:	Sherman, M.
Bailey	Garcia	Madla	Sherman, M. Sherman, W.
Baker	Garcia	Maloney	• Short
Bales	• Geiger	• Martin	_Simmons
Barnhart	Grant	Massey	Slack
Bigham	• Green, F.	Mattoy	Snelson
Bird	Green, R.	Mauzy Maior	Spurlock
Blake	Hale	Meier	Sullivant
Blanchard	_Hall, A	Meier Lauhoff	Sutton
Blythe	Hall, W.	_Mengden	Tarbox
_Bock	• Hanna	Miller	_Tarbox Temple
• Boone	Harrington X	Montoya	_Thompson
_Bowers	Harris, E.	Moore	Traeger
Braecklein	• Harris, O.	Munson	Truan Tupper
Brooks	_Head	Murray	Tupper
_Bynum	• Heatly	Nabers	Uher
Caldwell	Henderson	Newton	Vale
Calhoun	Hendricks	Nichols	Vecchio
• Canales	Hernandez X	Nowlin	Vick
Cates	Hightower	Nugent	_Von Dohlen
Clark	_Hilliard	Ogg	Wallace
	• Hoestenbach	Olson	14/ 1.
Clayton Clower	Hollowell	Olson Parker, C.	Waters
Cobb	Howard	Parker, W.	
Colo	_Hubenak	Patman	_Weddington
_Cole	Hudson	Pentony	Whitehead
Coleman	Hutchison.	• Peveto	Whitmire
Coody		Poerner	Wieting
_Cooke	Johnson	Poemer	Wieting Williams
• Craddick	Jones, Gene	Poff	- Williamson
Creighton	Jones, Grant	Presnal	VVIIIIamson
_Daniel	Jones, L.		_Willis
• Davis	Kaster	_Preston	Wilson
_Denson	• Korioth	Ragsdale	_Wolff
Denton	Kothmann		_Wyatt
_Doggett	_Kubiak	● Reynolds	Bryant
Donaldson	• Laney	_Rodriguez	

PECORD 13 MOTION TO TABLE THE MOTION TO RECONSIDER

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Daniel
Davis
Denson
Denton
Doggett
Donaldson
Doran

THE VOTE BY WHICH SECTION 6 WAS ADOPTED

Ragsdale Reyes Reynolds Rodriguez Rosson

X-EXCUSED ADSEACE

YEA -	50	ТО	TALS NA	14-112	PNU-1	NV-18	ART	TCLE		DATE: 1_
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5	5	5	5	5	5	Mino.	6	60	6_	AUG .6
6	6	6	6	6	6	Mot.	7	70	7	SEP 7
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Preston

Reyes

Ragsdale

Reynolds

Rodriguez

_Rosson _

RECORD 14 MOTION TO TABLE SECTION 6, ART. X

Kaster ... Korioth

Nothmann ...

· Kubiak __

Laney _

· Lary

Davis

Denson

Denton

Doggett

_Doran

Donaldson _

YEA- T	15	ТОТ	ALS NA	Y-84		PNV-	,	NV-21	ART	TICLE		DATE: 1_
YEA		N	I-V		N	AY		Comm.				JAN 2
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Wilson

Wolff

Wyatt

Bryant .

* X-EXCUSED ABSENCE

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YEA N-V NAY	YEA N-V NAY
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Lewis	Salem X
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• Longoria	• Schieffer
McAlister	• Schwartz
McDonald, F. McDonald, T.	• Scoggins
McDonala, I.	Semos
McKinnon X	
McKnigh.	Sherman, M. Sherman, W. X
Madla	• Short
Maloney	Simmons
Martin	Slack
Massey	Snelson
Mattox	Spurlock
Mauzy	• Sullivant
• Meier	Sulton
• Lauhoff	• Tarbox
• Mengden	Temple
• Miller	The results
Montoya	• Thompson
_Moore	• Traeger
Munson .	• Truan
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Parker, W.	
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Pentony	• Whitmire
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RECORD 15 ADOPTION OF THE HUTCHISON PHENDMENT TO SEC. 6, ART. X

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Rod	riquez	•
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Russell	
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Whitehead	
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Wilson	
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X-EXCUSED ABSEAKE	

YEA

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NAY

RECORD 16 ADDPTION OF SEC. 6, ART. I, AS AMENDED

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YEA-89	TOTALS NAY-72	PNV-1	100 11	ARTIC	LE	DATE: 1_0
YEA	N-V	NAY	Comm.	10		JAN 2
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Phone (1-703) 355-0872 International ROLL-CALL ® Corporation, Richmond, Va. 23230

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	M B :1 1
-	Mr. President
	Adams, D.
	Adams, H.
5-	Agnich
	Aikin
	Allen, Joe
	Allen, John
	Allred
	Andujar
	Atwell
	Bailey
	Baker
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_Doyle	
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Edwards	
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Finney	
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Fox	
Gammage	
Garcia	X
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Grant	
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Wilson	
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X-EXCUSED ABSENCE

RECORD 17 MOTION TO TABLE THE NEW SECTION BY PENTONY

YEA-	YEA-50 TOTALS NAY-		100	PNU-3		
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TEXAS CONSTITUTIONAL CONVENTION

YEA N-V

NAY

1974 1606 YEA N-V NAY Mr. President Adams, D. Adams, H. Agnich Aikin Allen, Jo • Allen, John Allred Andujar Atwell _ Bailey Baker Bales Barnhart Bigham Bird Blake Blanchard Blythe · Bock Boone Bowers Braecklein . Brooks Bynum Caldwell · Calhoun Canales Cates_ Clark Clayton Clower Cobb Cole _ Coleman Coody Cooke · Craddick Creighton Daniel Davis _ • Denson Denton Doggett

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YEA N-V NAY Doyle Dramberger Earle Edwards Evans Finnell Finney Foreman • Fox Gammage Garcia Gaston . Geiger Grant Green, F Green, R. Hale _ Hall, A Hall, W. Hanna Harrington • Harris, E. • Harris, O. • Head _ Heatly ____ Hendricks Hernandez Hightower Hilliard Hoestenbach • Hollowell Howard Hubenak _ Hudson _ Hutchison _ _Johnson _ Jones, Gene Jones, Grant Jones, L. Kaster • Korioth _Kothmann _ Kubiak Laney _ _Lary _

Lewis Lombard' 10 Longoria McAlister McDonald, F McDonald, T McKinnon McKnigh Madla _ Maloney Martin _ Massey Mattox Mauzy _ Meier Lauhoff Mengden Miller Montoya Moore Munson Murray Nabers Newton . Nichols Nowlin Nugent Ogg _ Olson Parker, C Parker, W. Patman Pentony · Peveto Poerner Poff_ Powers Presnal Preston Ragsdale Reyes _ Reynolds Rodriguez _Rosson

Russell . Sage_ Salem Sanchez Santiesteban Schieffer Schwartz Scoggins _ Semos Sherman, M. Sherman, W. Short Simmons Slack Snelson Spurlock Sullivant Sutton _ Tarbox . • Temple _Thompson _ Traeger __ Truan Tupper _ • Uher _ Vale · Vecchio · Vick Von Dohlen Wallace Washington Waters Watson Weddington Whitehead Whitmire _ Wieting _ Williams Williamson • Willis _ Wilson Wolff Wyatt Bryant X-Excused A6 sence

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18 MOTION TO RECESS UNTIL 9:30 a.m. tomorrow

VEA -	- 70		TOT	TALS N	94-79		PNU-1	A	11-31	AR7	TICLE			DATE: 1_
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Phone (1-703) 355-0872 International ROLL-CALL ® Corporation, Richmond, Va. 23230

YEA N-V

> Mr. President Adams, D. Adams, H. Agnich Aikin Allen, Joe Allen, John • Allred Andujar

• Atwell Bailey Baker Bales

· Bigham Bird • Blake Blanchard

• Barnhart

Blythe Bock Boone Bowers · Braecklein

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Canales • Cates · Clark Clayton

Clower · Cobb · Cole

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• Denton Doggett Donaldson

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NAY

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Finney Foreman • Fox Gammac > Garcia

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· Hanna Harrington Harris, E. Harris, O.

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Jones, L. Kaster _ • Korioth

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Lee Leland Lewis _ Lombardino Longoria McAlister McDonald, F

 McDonald, T. McKinnon McKnigh' Madla

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Mattox · Mauzy

Meier _______Lauhoff Mengden • Miller

Montoya Moore _ Munson

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 Russell Sage • Salem Sanchez Santiesteban Schieffer Schwartz

Scoggins Semos • Sherman, M. Sherman, W. • Short

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Tarbox • Temple ... Thompson ... Traeger Truan _

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X-Excused Absence

9 Motion to Table the Sage Amendment to ALX

Yea-120	TOTALS Nay-	32 PNU-1	NU-28		DATE: 1_
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TEXAS CONSTITUTIONAL CONVENTION

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RECORD 20 MOTION TO TABLE THE VICK SUBSTITUTE MUDICHENT

TO THE VICK AMENDMENT TO ART. X

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_Jones, L.
_Kaster
· Korioth

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_Kubiak	
• Laney	

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YEA N-V NAY

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	Leland		9
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	Longoria		
	McAlister		
	McDonald, F.		
0	McDonald, T.		
	McKinnon		9
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_Wyatt	
Bryant	

X-EXCUSED ABSENCE

RECORD 21 MOTION TO TABLE THE MALONEY SUBSTITUTE

FOR THE VICK AMENDMENT TO ART. X

YEA-	47	_ тот	ALS NA	14- 104	1	PNU-	0	NV-30	ART	CICLE		DATE: 1	•
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0.4		_4	4		4	4		Subm.	5	50	5	JUL 5_	
5			5		5	5		Mino.	6	60	6_	AUG 6	_
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ADOPTION OF THE MALONEY SEPARATE SUBMISSION

Jones, L.

Kothmann ...

Kaster

Korioth

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Laney __

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Creighton

Daniel

Davis

Denton

_Doran

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Reyes

Ragsdale

Reynolds

Rodriguez

Rosson

Williamson _

Willis _

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Wolff

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Bryant

* X-EXCUSED ABSENCE

YEA-12	TOTALS MAY - 1	43 PNU-1	NV-25	ARTICLE	DATE: 1_
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5 5	5 5	5 5	Mino.	660 6_	AUG 6
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