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Chester W. Bain

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Memo No. 6 October 24, 1967

To: Members of the Constitutional Revision Committee

From: Robert H. Stoudemire, Staff Consultant

1. Enclosed is Working Paper No. 7 on the Executive Department prepared by Dr. Chester W. Bain, Professor of Political Science at the University.

2. The Committee will meet at 10:00 a.m. in the Wallace Room, 3rd Floor, S. C. State Board of Health, Bull Street Extension, on Friday, October 27.

Lunch will be at the Snack Bar on the second floor. Adjournment is at 6:00 p.m. There will be no meeting on Saturday.

3. Agenda.

A) Reports from officers.

B) Approval of Minutes for September 16, 1967, meeting. Several pages have been revised as suggested.

C) Consideration of delayed sections in Article X, primarily the Property Tax. See Working Paper Number 5. Some letters sent to several experts in this field have not as yet been answered. If replies are not received in time to mail them to the members in advance, because of the importance of the subject it is suggested that the property tax discussion be delayed until November 17-18. Some of the experts are likely doing some detailed study and the consultant hates to apply undue pressure.

D) Consideration of Bonded Indebtedness. See Working Paper No. 6, previously distributed and carried over from the last meeting.

E) Consideration of the Executive Department. See Working Paper No. 7 which is enclosed.

F) The Judicial System originally on the Agenda for this meeting will be considered at the November 17-18 meeting.

G) The Minutes for the October 6-7 meeting which are almost 200 pages will be distributed at the meeting on Friday.

Dr. Chester W. Bain - USC

ARTICLE IV.

Executive Department.

Introduction

Executive leadership of the highest order is imperative in any large-scale organization. While this concept is well recognized in the national government, in large cities, and in business firms, few governors, including the Governor of South Carolina, have constitutional powers or managerial tools commonly associated with the concept of "chief executive," although most have great influence as political leaders. The reasons for this weakness lie partly in tradition and partly in valid differences over fundamental issues of governmental policy. Irrespective of the source, a value judgment must be made, either implicitly or explicitly, about the "proper" role of the Governor in the total picture of the State's government before the details of the Article on the Executive Department can be finally cast. The next few paragraphs attempt to justify this assertion.

An inescapable fact of American political history is that 18th century reactions against governors appointed by the crown or by the colonial proprietors fixed a strong anti-executive sentiment in American political values. Later, the theory of Jacksonian democracy enhanced this view by encouraging the diffusion of administrative powers among many elective officials at state and local levels. As a result, there has developed an atmosphere which has tended to pit the executive and the legislative branches in the role of hostile, competing forces, rather than viable, but separate, parts of a coordinated system for the betterment of the people of the State, and to create a situation

in which the governor's authority is seldom equal to his responsibility.

Despite the strong negativism toward executive authority, the Governor of South Carolina, as well as the governors of the other states, has emerged as a central figure in the State's public affairs. Today, the people look to him for leadership and guidance in the development of broad policy programs in such activities as economic development, education, health, law enforcement, highways and transportation, welfare, mental health, etc. There is nothing in the State's Constitution which explicitly requires that the Governor take the initiative in formulating public opinion and in establishing major goals in these areas. Rather, this new "role" has gradually, but steadily, emerged in recent years as a composite of the strength of his personality, his constitutional responsibilities and position as chief executive, however limited they may be.

Added factor is the necessity of a program on which to be elected

The Governor's role in public policy-making today is three-fold. He leads in formulating public opinion and establishing major goals. He draws upon the knowledge in state agencies and elsewhere in translating broad policy goals into more detailed proposals. Then, in intimate day-to-day dealings with state legislators, as well as through formal messages and the veto power, he shares in the legislative process. Fundamental and basic policy issues must be resolved in determining how far and in what ways the Governor shall participate in guiding the development of the State's programs of service and functions.

The Governor traditionally exercises a second role---the management of the State's activities. With the growing diversity and interdependence of state activities, the Governor's managerial responsibilities are likely to become even more significant in the years ahead.

The South Carolina Constitution, as other state constitutions, provides the basis for the Governor's supervisory role. It provides, among other things, that "supreme executive authority" shall be vested in "The Governor of South Carolina," that he may require officers and boards to "give him information in writing upon any subject relating to the duties of their respective offices or the concerns of their respective institutions," and that he shall suspend any officer under certain conditions.

Despite these fundamental powers, the Constitution and statutory provisions completely or largely remove from the Governor's control several important executive functions. The heads of some executive agencies are popularly elected or are chosen in a manner which weakens the Governor's control, and in many instances the Governor has no constitutional or statutory basis for managing their activities, despite his constitutional responsibility to "take care that the laws be faithfully executed in mercy."

The Governor of South Carolina is by choice and by design, then, a "weak" governor, with respect to his "authority," and in contrast with his "responsibility." Such a position has a long history and is strongly supported by many persons, both in and out of South Carolina. In appraising the appropriateness and effectiveness of the gubernatorial provisions in the present constitution, therefore, consideration must be given to whether this policy should be continued or revised. For this reason, it is imperative that the following questions be considered as the details of Article IV are examined:

Are the required qualifications for the governorship outmoded?

Can gubernatorial succession be delineated more clearly?

Should the Governor's role in policy-making be strengthened?

Are the Governor's functions properly related to the Legislature?

Should executive control be centralized more comprehensively in the Governor?

Should the Governor's managerical powers be constitutionally strengthened?

These are policy questions which must be resolved before detailed sections can be drafted. The discussions that follow seek to highlight specific issues within the framework of these broad policy questions, but it will be abundantly obvious at many points that only alternatives can be advanced until basic decisions have been made.

Section 1. Chief Magistrate.—The supreme executive authority of this State shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of South Carolina."

See Const. 1868, III, 1.

This is a standard provision, found in all state constitutions, which establishes the executive branch as one of the three independent branches of the State government. Most constitutions use the expression "executive power" rather than "executive authority," but this does not appear to constitute a significant difference and there appears to be no need for changing the current phrasing.

The inclusion of the word "supreme" in the present provision is in keeping with the present provisions for a plural executive in South Carolina, and indicates the paramounticy of the Governor's authority over that of other executives whenever a conflict or clash arises. The phrase "supreme executive authority" could be retained irrespective of the decision on the strengthening of the Governor's power relative to that of other executive officials, which is dis-

cussed at the end of this report.

Issues: No issues concerning the contents of this section appear to have arisen.

Section 2. Governor—state officers.—The Governor shall be elected by the electors duly qualified to vote for members of the House of Representatives, and shall hold his office for four years, and until his successor shall be chosen and qualified and shall be re-eligible. He shall be elected at the first general election ~~held under this Constitution for members of the~~ General Assembly, and at each general election thereafter, and shall be installed during the first session of the said General Assembly after his election, on such day as shall be provided by law. The other State officers-elect shall at the same time enter upon the performance of their duties. *Provided,* That he shall not be eligible for re-election.

See Const. 1868, III, 2.
1924 (33) 1492; 1926 (34) 960.

Jump to 1966 or 1968

This section, together with Section 4, contains provisions found in all state constitutions--the procedures for electing the Governor. Several issues need to be considered in connection with this section.

Issue 1: Term.

Keep at 4 yrs

The present term of the governor is four years, which is the length of the governor's term in 36 states. The details are given in Appendix A.

It is assumed that there is no interest in changing the Governor's term of four years.

Issue 2: Electors.

The S. C. Constitution provides that the Governor shall be elected by "the electors duly qualified to vote for members of the House of Representatives." Most State constitutions provide that the Governor shall be elected by the "qualified voters of the state." Either phraseology would be in accordance with the decisions made concerning the qualifications for voters in connection with the examination of Article II.

Alternatives:

1. Retain as now written.

2. Change to read: "the qualified voters of the state."

Issue 3: Time of Election.

Section 2 also contains details providing for the first and subsequent elections of the Governor when the Constitution first went into effect. This provision is cumbersome as much of it is obsolete immediately after the first election. Much of this language could be replaced with more specific language.

A basic issue to be resolved at the very outset, however, is whether it is desired to continue the present practice of electing the Governor at mid-point of the term of the President of the United States. Nearly half the states choose their governor for a four-year term at the off-year national elections and the trend is strongly in this direction. This arrangement removes the gubernatorial election from the influence of a presidential choice, presumably permitting state governmental considerations to weigh more strongly in the voters' minds. Some argue, however, that gubernatorial elections should take place at the same time as the presidential election.

It is assumed that there is no desire to change the time at which the Governor of South Carolina is elected.

Few state constitutions appear to contain a specific provision on this point, merely indicating that the governor shall be elected at a general election. The Model State Constitution, however, states: "The governor shall be elected, at the regular election every other odd-numbered year, ..." Some such language might be used in South Carolina; for example: "the governor shall be elected, at the regular election every other even-numbered year after 1966."

Alternatives:

1. Retain the present wording.

2. Revise the present wording to eliminate references to first election

under the new constitution.

3. Fix the years in which the election for governor is to be held.

Issue 4: Commencement of Term.

Section 2 further provides that the Governor "shall be installed during the first session of the said General Assembly after his election, on such day as shall be provided by law." The last phrase is added to avoid fixing a specific date, which in some years would fall on a Sunday.

This section has a weakness as it assumes that the General Assembly will continue to hold its first session close to the time the Governor's term is to commence, and where this arrangement is fixed by the Article on the Legislature, no problem need arise. It is possible, although hardly probable, that the Legislature might use its power to fix the day so as to prevent a newly elected governor from taking office at what is assumed to be the regular beginning of his term.

Several states have provided against any deviations from the regular term of governor by fixing specific days upon which his term shall commence. Some examples are as follows:

Maryland Draft: "The governor shall be elected to serve for a term of four years beginning on the third Wednesday of January following his election." The present constitution provides that the governor is to take office on the fourth Wednesday in the week. The change is designed to make the terms of the Governor and the members of the General Assembly commence on the same day.

Alaska: "The term of office of the governor is four years, beginning at noon on the first Monday in December following his election and ending at noon on the first Monday in December four years later."

Kentucky: "He shall commence the execution of the duties of his office on the fifth Tuesday succeeding his election, and shall continue in the execution thereof until his successor shall have qualified."

Alternatives:

1. Retain the present wording.

2. Specify a certain day of the week upon which the Governor's term is to commence.

Note: This date should be coordinated with the date upon which the terms of members of the General Assembly shall commence. why?

Issue 5: Commencement of term of other State officers-elect.

Section 2 provides that "The other State officers-elect shall at the same time enter upon the performance of their duties."

To Sec 24

This provision would appear to be more appropriately included in the subject matter now covered by Section 24, and it is recommended that it be deleted from Section 2 and considered for inclusion at another point, if retained at all.

Issue 6: Governor ineligible for reelection.

The last sentence of Section 2 reads: "Provided, That he shall not be eligible for re-election."

This provision is discussed below in connection with Section 3. "Qualifications of Governor."

Note: See the discussion of Section 4 below.

The contents of the present Sections 2 and 4 should probably be combined, or they should be made consecutive.

Section 3. Qualification of Governor.—No person shall be eligible to the office of Governor who denies the existence of the Supreme Being; or who at the time of such election has not attained the age of thirty years; and who shall not have been a citizen of the United States and a citizen and resident of this State for five years next preceding the day of election. No person while governor shall hold any office or other commission (except in the militia) under the authority of this State, or of any other power, at one and the same time.

See Const. 1868, III, 3.

This section sets forth the basic qualifications for the office of Governor. Additionally, Section 2, above, further states: "Provided, That he shall not be eligible for re-election." Several issues must be raised concerning these constitutional requirements.

Issue 1: Belief in the existence of the Supreme Being.

The first of the qualifications listed for the office of Governor is that he must not deny the existence of the Supreme Being. In addition to being extremely difficult to enforce, this requirement is probably unconstitutional under the U. S. Constitution.

The leading case to be considered in connection with this provision is Torcaso v. Watkins, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed. 982 (1961). In this case, Torcaso, a newly appointed notary public, was denied his commission because he failed to declare his belief in God, as required by the Maryland Constitution. In upholding Torcaso's right to obtain the commission, the court declared in part: "The fact ... that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution . . . . This Maryland religious test for public

office unconstitutionally invades the appellant's freedom of belief and religion and therefore cannot be enforced against him." The Court further declared: "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against those religions founded on different beliefs."

If tested, the current provision in the S. C. Constitution would probably be declared to violate the U. S. Constitution.

Alternatives:

1. Retain the present wording.
2. Delete the provision completely.

Issue 2: Age requirement.

Section 3 provides that no person shall be eligible for the office of Governor "who at the time of such election has not attained the age of thirty years." This limitation has stood the test of time, and follows the practice of all but six states. Only Arizona, California, Minnesota, and Nevada have a younger limit (25), and only Oklahoma (31) and Hawaii (35) have an older limit.

In recent years there has been some opinion that the electorate should not be foreclosed from the possibility of choosing a younger man, and that the qualification should be changed to "any qualified voter." This would have the effect of reducing the age requirement to 21 in South Carolina and all except four of the other states. No state currently follows this point; the lowest limit of 25 years is still higher than the minimum voting age in any state.

The other view is that age strengthens experience and judgment, characteristics which are of considerable value. The present age requirement of 30 years, it is argued, keeps the office of Governor open to fairly young men even though it does set higher qualifications than those for voter registration.

Such a restriction, it is avowed, does not place undue restrictions upon the electorate in their choice of the Governor.

Alternatives:

1. Retain the present age of 30.
2. Lower the age qualification to that of "a qualified voter."
3. Raise the minimum age requirement to a higher age.

Issue 3: Citizenship and Residency.

A further qualification for the office of Governor bars anyone "who shall not have been a citizen of the United States and a citizen and resident of this State for five years next preceding the day of election." Five years is the arrangement used by 15 other states. There is, however, considerable variation from this figure toward shorter and longer requirements. The most common shorter specification is two years (8 states), and the longest requirement is seven years (7 states).

Little difficulty is encountered in connection with the requirement of five years "a citizen of the United States," as this is a fact that can be established quite easily. The issue here is whether five years is too long or too short a period of time.

The main problem centers in the requirement of "a citizen and resident of this State for five years." Under the 14th Amendment to the U. S. Constitution, state citizenship is fixed in terms "of the State wherein they reside." As is well known, the concept "resident" poses a difficult question of fact; when, in fact, is a person a "resident of a state"? For this reason, there is a growing tendency to state the state citizenship and residency requirements in terms of a minimum time of registration as a voter. An example is: "and who shall not have been a qualified voter of this state for five years next preceding the day of election."

Such a provision, it should be noted, would raise the residence period

to close to six years, as one year would be required to become a registered voter, after which five years would have to elapse. Moreover, such a provision would disbar any long-time resident of the state who had not bothered to qualify as a voter. This shortcoming could hardly be classified as a major detriment to the democratic process.

Alternatives:

1. Retain the present provisions.
2. Change the requirement to "a qualified voter of this state for _____ years next preceding the day of election."

   Note: This period could be shortened and the requirement of five years as a citizen of the United States be retained.

Issue 4: Ineligible for other Offices.

Section 3 provides that "No person while governor shall hold any office or other commission (except in the militia) under the authority of this State, or of any other power, at one and the same time."

This is a standard provision, designed to prevent dual office holding, especially of incompatible offices.

Issues: No particular issues appear to have arisen under this provision. It is assumed that there is no desire to change this provision.

Issue 5: Eligibility for reelection.

Section 2, above, directs: "Provided, That he shall not be eligible for re-election." Only 13 states, including South Carolina, now prevent the governor from serving a second term. Details are given in Appendix A.

Opposition to reelecting a governor is based upon the position that a political machine can be perfected to perpetuate the individual in office and, more specifically, that it would be next to impossible to defeat an incumbent in his party primary.

Those who argue the opposite point of view believe that there is great

advantage in being able to capitalize, if the electorate so desires, upon the experience of four years by extending an administration that has proved satisfactory for four years.

Some states now permit the governor to be elected a second time, but require that he may not succeed himself and that at least one term must expire before he is reeligible for office. The S. C. Constitution probably could be interpreted in this manner.

Other states are now beginning to move in the direction of permitting the governor to serve for two consecutive terms. Sample language is as follows:

Maryland: "No person elected governor for two full consecutive terms shall be eligible to hold that office again until one full term has intervened."

Kentucky: "He shall be ineligible to the office of Governor for the next succeeding four years after the expiration of any two consecutive terms for which he shall have been elected."

New Jersey: "No person who has been elected Governor for two successive terms, including an unexpired term, shall again be eligible for that office until the third Tuesday in January of the fourth year following the expiration of his second successive term."

Alaska: "No person who has been elected governor for two full successive terms shall be again eligible to hold that office until one full term has intervened.

Alternatives:

1. Retain the present prohibition.
2. Delete the prohibition completely, leaving no limitations.
3. Amend to provide that no person shall be elected to more than two consecutive terms, with or without further restrictions.

Section 4. Boards of canvassers transmit returns of election for Governor—returns delivered to Speaker of House of Representatives—contested elections.—The returns of every election for Governor shall be sealed up by the Board of Canvassers in the respective Counties, and transmitted, by mail, to the seat of Government, directed to the Secretary of State, who shall deliver them to the Speaker of the House of Representatives at the next ensuing session of the General Assembly; and duplicates of said returns shall be filed with the Clerks of the Court of said Counties. It shall be the duty of any Clerk of Court to forward to the Secretary of State a certified copy of said returns upon being notified that the returns previously forwarded by mail have not been received at his office. It shall be the duty of the Secretary of State, after the expiration of seven days from the day upon which the votes have been canvassed by the County Board, if the returns thereof from any County have not been received, to notify the Clerk of the Court of said County, and order a copy of the returns filed in his office to be forwarded forthwith. The Secretary of State shall deliver the returns to the Speaker of the House of Representatives, at the next ensuing session of the Genral Assembly; and during the first week of the session, or as soon as the General Assembly shall have organized by the election of the presiding officers of the two Houses, the Speaker shall open and publish them in the presence of both Houses. The person having the highest number of votes shall be Governor; but if two or more shall be equal, the highest in votes, the General Assembly shall during the same session, in the House of Representatives, choose one of them Governor *viva voce*.

Contested elections for Governor shall be determined by the General Assembly in such manner as shall be prescribed by law.

See Const. 1868, III, 4.

adopt Maryland

put with election section

This section is directed to three main points: the handling and counting of the votes cast, provisions for a tie vote, and the handling of contested elections for the office of Governor. The main issues to be considered are the retention of some of the provisions in the Constitution and a review of the method of handling tie votes, none of which are serious constitutional problems.

Issue 1: Handling of Votes.

The major portion of this section is devoted to outlining the steps to be followed in handling the votes for the office of Governor and the opening and publishing of the returns by officers of the two houses of the General Assembly.

No particular issues appear to have arisen in connection with these provisions. Moreover, such details are not found in the more recent constitutions, but are covered by statutory provisions. Consideration should be given to following this course of action for South Carolina.

Alternatives:

1. Retain the present provision.

   Note: If retained, the language probably should be reworked.

2. Delete these details. ✓

Issue 2: Tie Vote.

The last sentence in the first paragraph of Section 4 reads: "The person having the highest number of votes shall be Governor; but if two or more shall be equal, and highest in votes, the General Assembly shall during the same session, in the House of Representatives, choose one of them Governor viva voce." This provision is ambiguous. Does it mean that the House of Representatives alone decides, or that the decision is made by both houses while assembled in the chambers of the House of Representatives?

Two points should be considered in connection with this provision: (1) a review of who makes the decision in the case of a tie vote and (2) the need of a constitutional requirement that the matter must be resolved before other business can be conducted.

Many different provisions are to be found concerning which agency shall make the choice in the highly unlikely event of a tie vote. Some examples are as follows:

Kentucky: "but if two or more shall be equal and highest in votes, the election shall be determined by lot in such manner as the General Assembly may direct." (Italics added.)

New Jersey: "but if two or more shall be equal and greatest in votes, one of them shall be elected Governor by the vote of the majority

of all the members of both houses in joint meeting at the regular legislative session next following the election for Governor by the people."

Maryland: "In the event of a tie vote, the governor shall be elected from the candidates having received the tie vote by the affirmative vote in joint session of a majority of the combined membership of both houses as the first order of business after their organization."

The major question for consideration here would be whether both houses of the General Assembly should participate in such a decision or whether it should be left to the House of Representatives alone.

The second issue -- a constitutional provision to prohibit the General Assembly from delaying the choosing of a Governor -- is covered in only a very few instances. Georgia's recent experience with the inability of the legislature to choose the governor has brought this issue to the fore, and consideration might be given to covering this highly unlikely eventuality. Language similar to that included in the Maryland Constitution, as quoted immediately above, would appear to be sufficient. This provision is that such decision shall be "the first order of business after their organization."

Alternatives:

1. Retain the present provisions.
2. Vest the decision in the members of both houses of the General Assembly.
3. With either of these alternatives, include a time limit on the action of the agency which shall make the decision.

Issue 3: Contested Elections.

The last paragraph of Section 4 provides: "Contested elections for Governor shall be determined by the General Assembly in such manner as shall be prescribed by law." This is a provision contained in most constitutions, either as a separate provision on the governor or as part of a general provision on all

contested elections. Such detail probably could be left to statute, but its inclusion in the constitution presents no serious difficulties.

Alternatives:

1. Retain the present provision.
2. Delete the provision entirely, and leave to statute.
3. Incorporate with another provision elsewhere in the Constitution.

Section 5. Lieutenant Governor.—A Lieutenant Governor shall be chosen at the same time, in the same manner, continue in office for the same period and be possessed of the same qualifications as the Governor, and shall *ex officio*, be President of the Senate.

See Const. 1868, III, 5.

Note: Any changes in the time or manner of electing or qualifications for the office of Governor made in connection with the preceding sections would affect this section as it is presently worded.

Few basic issues appear to have arisen in connection with the contents of this section. Consideration should be given, however, to whether the Governor and Lieutenant Governor should run on the same ticket as a team and whether the Lieutenant Governor should be constitutionally given additional duties.

Issue 1: Governor and Lieutenant Governor on Same Ticket.

Six states (New York, Alaska, Connecticut, New Mexico, Mighigan, and Hawaii) now provide that the governor and the lieutenant governor shall run as a team in the general election and that each voter shall cast a single vote for any ticket of candidates for the two offices. The main argument for this arrangement is that it would assure that the governor and the lieutenant governor

will be members of the same political party.

Some examples of how this objective is provided for are as follows:

Maryland Draft Constitution: "Each candidate for lieutenant governor shall run jointly in the general election with a candidate for governor and the votes cast for one shall be considered as cast also for the other. The candidate for lieutenant governor whose name appears on the ballot jointly with that of the successful candidate for governor shall be elected lieutenant governor."

Alaska: (Note: Alaska does not elect a lieutenant governor, but the Secretary of State fulfills many of the same functions.): "The secretary of state shall be nominated in the manner provided by law for nominating candidates for other elective offices. In the general election the votes cast for a candidate for governor shall be considered as cast also for the candidate for secretary of state running jointly with him. The candidate whose name appears on the ballot jointly with that of the successful candidate for governor shall be elected secretary of state."

Alternatives:

1. Retain the present provision.
2. Provide that the Governor and the Lieutenant Governor shall run on the same ticket.

Issue 2: Should the constitutional duties of the Lieutenant Governor be expanded?

The Lieutenant Governor is constitutionally assigned only the function of serving, ex officio, as President of the Senate. The Governor and the General Assembly are not prohibited from assigning him other functions, and some governors have in fact turned to the lieutenant governor for help of various kinds, ceremonial and otherwise. A growing consideration is to be given to the question,

however, whether the constitutional duties of the lieutenant governor should be expanded.

One proposal that has been advanced is that the governor be constitutionally authorized to assign duties to the lieutenant governor. A provision of this sort would give official sanction to what most governors now do unofficially and would make it obligatory that the lieutenant governor accept the assignment. Some half-dozen states now provide that the lieutenant governor and other constitutional officers may be assigned duties as prescribed by law.

A different approach would be to specify additional duties for the lieutenant governor in the constitution itself. A few states have taken this tack. For example, the Lieutenant Governor in Louisiana is assigned to the registration board, in Nebraska to the board of pardons, in North Carolina to the board of education, and in Texas to the redistricting board. Several other states have given the lieutenant governor the duties of the secretary of state. Generally, however, these additional duties constitutionally assigned are not operational tasks of central importance to the state.

The somewhat peripheral quality of the constitutional assignments to the lieutenant governor is related to the basic difficulties of this approach. Responsibilities constitutionally placed are inflexible, beyond the reach of the governor and the legislature. A lieutenant governor with executive constitutional powers might further fragment executive control by the governor. The question of who would succeed to the lieutenant governor's duties should the office become vacant might also be a problem. These difficulties might be partially avoided by providing that the lieutenant governor be assigned duties as provided by law. This approach, however, would bring the legislature into determination of what duties are to be assigned. While this need not be an insurmountable problem, it might cause basic conflicts between the legislative and executive branches in the event a particular legislature desired to curb or frustrate a

particular incumbent in the office of the governor.

Alternatives:

1. Retain the present provisions.

   Note: Should this decision be made, the provision that the Lieutenant Governor shall be President of the Senate should be made a separate subsection of the section dealing with the office of Lieutenant Governor.

2. Provide the Lieutenant Governor with a wider range of duties and authority.

Section 6. Vote of Lieutenant Governor.—The Lieutenant Governor while presiding in the Senate, shall have no vote, unless the Senate be equally divided.

See Const. 1868, III, 6.

This section would more appropriately be treated in the Article on the Legislature, as an aspect of the organization of the General Assembly, or should be combinedin a single section dealing with the duties of the Lieutenant Governor.

Section 7. President pro tempore of Senate.—The Senate shall, as soon as practicable after the convening of the General Assembly, choose a President *pro tempore* to act in the absence of the Lieutenant Governor, or when he shall fill the office of Governor.

See Const. 1868, III, 7.

This section would more appropriately be treated in the Article on the Legislature, as an aspect of the organization of the General Assembly.

Section 8. Members of Senate acting as Governor.—A member of the Senate acting as Governor or Lieutenant Governor shall thereupon vacate his seat and another person shall be elected in his stead.

See Const. 1868, III, 8.

Not done in Jefferies' case

What of acceptance of resignations etc? Re EAB

Treated under Sec. 9, below.

Section 9. Vacancy in office of Governor—how filled.—In case of the removal of the Governor from office by impeachment, death, resignation, disqualifications, disability, or removal from the State, the Lieutenant Governor shall then be Governor; and in case of the removal of the last named officer from his office by impeachment, death, resignation, disqualification, disability, or removal from the State, the President *pro tempore* of the Senate shall be Governor; and the last named officer shall then forthwith, by proclamation, convene the Senate in order that a President *pro tempore* may be chosen. In case the Governor be impeached, the Lieutenant-Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In case of the temporary disability of the Governor the Lieutenant Governor shall perform the duties of the Governor.

See Const. Const. 1868, III, 9.

Sup. Ct. determine

Every constitution should provide for the possibility of a vacancy in the office of Governor before the expiration of the term for which the incumbent has been chosen. Two basic problems are involved: (1) the line of succession, i.e., what officers succeed to the governorship and in what order, and (2) the definition of inability, i.e., what inability is and how it is to be determined.

Issue 1: First-in-line for succession.

Sec. 9 provides that the line of succession to the governorship shall be the Lieutenant Governor, followed by the President pro tempore of the Senate. Succession by the lieutenant governor is the practice in all but 12 states. The chief virtues of succession by the Lieutenant Governor are his close relationships to the Governor, in being elected at the same time and his direct dependence on popular election. The argument for having the Lieutenant Governor first in line to succeed the governor would be enhanced if it should be decided to have the Governor and the Lieutenant Governor run on the same ticket. (See

Sec. 5, above.)

Although is it assumed that there is no desire to change the present provision by which the Lieutenant Governor is first in line, mention should be made of other arrangements.

The most frequently proposed alternative to succession by the Lieutenant Governor is to make a leader chosen by the legislature from its own ranks first-in-line to succeed the governor. In the seven states in which this approach is followed, the leader designated for succession has been the presiding officer of the upper legislative body. One state, Maryland, provides for the legislature to elect a successor when the governorship is vacant or the governor is incapacitated.

Another alternative that has been proposed is for the governor to designate his successor --- perhaps the head of a particular department --- with second-in-line and third-in-line nominees. A modification of this approach is to permit the governor to designate a successor by name, subject to confirmation by one or both houses of the legislature. There is no precedent in state experience for the appointment of a prime potential successor by the governor.

Alternatives:

1. Retain the Lieutenant Governor as the first-in-line successor.
2. Provide that the first-in-line for succession shall be either the President pro tempore of the Senate or the Speaker of the House of Representatives.
3. Provide for succession by a gubernatorial appointee.

Issue 2: Second-in-line succession.

As noted above, Sec. 9, provides that the President pro tempore of the Senate shall be next in line after the Lieutenant Governor as potential successor to the office of Governor. Few other states make constitutional provision for

the second-in-line successor to the governorship, and there appears to be no major reason for South Carolina to change the present arrangement. The major alternatives to the present provision would be to provide for the Speaker of the House of Representatives or an executive officer (e.g., another popularly elected officer) to be next in line after the Lieutenant Governor.

Alternatives:

1. Retain the present provision.
2. Provide that the Speaker of the House of Representatives shall be next in line after the Lieutenant Governor.
3. Provide that a member of the executive department shall be next in line after the Lieutenant Governor.

Note: If the present provisions are retained, Sec. 8, above, should be transferred to the Article on the Legislature or incorporated as part of the section on gubernatorial succession.

Issue 3: Gubernatorial Inability.

Sec. 9 refers to possible vacancies in the office of Governor resulting from removal by impeachment, death, resignation, disqualification, disability, or removal from the state. Little difficulty could be anticipated with any of these conditions except that of gubernatorial "disability" and "temporary disability." Although the Constitution indicates what should be done, no definition is given of these conditions and no way is provided for determining that one or the other exists in fact. The basic issues (1) as who is to decide whether the Governor is able to discharge the duties of his office and (2) if the Lieutenant Governor assumes the gubernatorial role, how is it to be determined, and by whom, as to whether and when the disability has ceased?

One approach to these questions is to reason that the issue cannot be acceptably resolved in advance. The basic argument for this approach is that

many cases of inability will be clear-cut and there will be no need for clarification. At the same time, according to this view, marginal cases of inability are too diverse to anticipate and must be met as the circumstances arise, without specific constitutional directive.

A number of proposals have, however, been advanced to cope with the problem. The major proposals include the following:

1. Constitutionally direct that the power and duty of determining inability shall be vested in the General Assembly.

2. Constitutionally direct that succession for inability be determined wholly within the executive branch. For example, temporary succession might take place if supported in writing by some extraordinary majority of the principal state executive officials.

3. Constitutionally direct that the legislative and the executive branches shall share in inability decisions. This could be done by vesting the initiation of inability action with the executive branch, but providing for legislative determination should a Governor challenge the declaration of his disability.

4. Constitutionally direct that "original, exclusive, and final jurisdiction" over this matter, and all questions of succession, shall be lodged with the Supreme Court. This is the approach recommended in the current Model State Constitution, which provides as follows:

> "The Supreme Court shall have original, exclusive, and final jurisdiction to determine absence and disability of the governor or governor-elect and to determine the existence of a vacancy in the office of governor and all qudstions concerning succession to the office or to its powers and duties."

The proposed Kentucky Constitution contains the following provision:

> "(2) The inability of the Governor, or person acting as Governor, to discharge the duties of his office "for any other

reason" as set out in Subsection One herein, and in Section Eleven of this Article, shall, upon reasonable notice and hearing, be determined expeditiously by a majority of the Supreme Court of this Commonwealth upon a request and written certification under oath by the Auditor of Public Accounts, the Attorney-General, and a doctor of medicine designated pursuant to law, or by any two of these. The Supreme Court shall upon its own initiative determine if and when the inability ceases. The determination of inability and cessation thereof by the Supreme Court be final."

Council of State incl State Health Officer & Adj Gen

Further information on this problem as reported in the Interim Report of the Constitutional Convention Commission, Maryland, 1967, is reproduced as Appendix B, below.

Alternatives:

1. Retain the present provisions.
2. Provide constitutionally for the determination of gubernatorial inability.

Section 10. Commander-in-Chief.—The Governor shall be Commander-in-Chief of the militia of the State, except when they shall be called into the active service of the United States.

See Const. 1868, III, 10.

The Governor, traditionally, has been the commander-in-chief of the armed forces of the state, and this section corresponds to similar provisions in other state constitutions.

Note: The contents of this provision have been previously agreed upon in connection with the article on the militia.

Consideration should be given to restating their power in this Article in order to spell out in one place the power of the Governor.

Section 11. Pardons—Probation, Parole and Pardon board.—The Governor shall have power to grant reprieves and to commute a sentence of death to that of life imprisonment. The granting of all other clemency to convicted persons shall be vested absolutely in a Probation, Parole and Pardon Board, composed of one member from each Congressional District to be appointed by the Governor by and with the advice and consent of the Senate for terms of twelve (12) years each. The members of the present Probation, Parole and Pardon Board shall constitute the first Probation, Parole and Pardon Board and the Governor shall designate one of said members to serve two (2) years, one four (4) years, one six (6) years, one eight (8) years, one ten (10) years and one twelve (12) years. The terms of office shall always remain staggered so that the term of office of one member shall expire every two (2) years, with appointments to fill vacancies caused by death, resignation or disability to be for the unexpired term. The Probation, Parole and Pardon Board shall grant pardons, issue parols and admit to a probation under such terms and conditions as it may determine, and a two-thirds (2/3) vote of all of its members shall be sufficient for action in any case. The Board shall submit to the Governor and the General Assembly annual reports giving in detail all action taken by it. The General Assembly shall enact appropriate legislation providing for a staff for the Board, defining the duties and powers of the Board not in conflict herewith and appropriating funds for its proper operation.

See Const. 1868, III, 11.
1948 (45) 2231; 1949 (46) 49.

The power to exempt individuals from the punishment ordained for the offenses of which they have been convicted is one which has been associated with the chief executive in Anglo-American law for many centuries. All state constitutions vest such a power in the governor, although the scope and the details vary considerably from one state to another.

Some states vest an almost unrestricted power in the governor. An example is the proposed draft of the Maryland Constitution, which provides: "The governor shall have power to grant reprieves and pardons, except in cases of conviction upon impeachment, and to remit fines and forfeitures for offenses against the State. He shall report to the General Assembly in writing, at least annually, of the instances of the exercise of this power."

Other states vest the power in the governor, but constitutionally authorize the establishment of agencies to assist the governor in the exercise of this power. The New Jersey constitution is an example: "The Governor may grant pardons and reprieves in all cases other than

impeachment and treason, and may suspend and remit fines and forfeitures. A commission or other body may be established by law to aid and advise the Governor in the exercise of executive clemency."

Still other state constitutions vest the power in the governor but make its exercise subject to laws enacted by the legislature. An example of this approach is found in the Alaska constitution: "Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law." (Italics added.) This approach follows very closely the recommendation in the Model State Constitution, which provides: "Executive Clemency. The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses and may delegate such powers, subject to such procedures as may be prescribed by law."

Issue 1: Governor's Powers.

The South Carolina Constitution vests in the Governor the "power to grant reprieves and to commute a sentence of death to that of life imprisonment" and vests the granting of "all other clemency" absolutely in a Probation, Parole and Pardon Board," subject to certain legislative provisions to be enacted by the General Assembly. This division of powers between the Governor and a constitutionally established agency provides for the basic theory of the exercise of executive clemency, and the consideration of this section is based upon as assumption that such an arrangement should be continued. Consequently, no consideration is given to changing the Governor's power to "grant reprieves and to commute a sentence of death to that of life imprisonment."

Issue 2: Probation, Parole and Pardons Board.

The major portion of Section 11 is given over to details of the Probation, Parole and Pardons Board. These details are listed below and certain queries raised concerning them, as no major constitutional issues are involved in this provision.

1. Structure: The Board consists of one member from each Congressional District appointed by the Governor with the advice and consent of the Senate.

Query: Is it desired to retain the Congressional districts as the basis of representation on the Board?

2. Term: The members of the Board are chosen for 12-year terms, which are staggered so that one term shall expire every two years. Vacancies are filled for unexpired terms.

Query: Is it desired to retain these arrangements?

3. Powers: The Board is authorized to grant pardons, issue paroles, and admit to probation, under such terms and conditions as it may determine. A two-thirds vote of all of its members is required for action.

Query: Is it desired to alter either the duties or the requisite vote of the Board?

4. Action by General Assembly: The General Assembly is required under Section 11 to provide a staff for the Board; define the duties and powers of the Board, not in conflict with Section 11; and to appropriate funds for the Board's proper operation.

Query: Is it desired to alter any of these provisions?

Alternatives:

1. Retain the present provisions.

   Note: If this is the decision, the lengthy sentence providing for the first Board could be deleted and the wording of the section revised.

2. Amend the provision in some one or more details.

3. Delete the constitutional provision for the Board and establish by statute.

Section 12. Laws executed.—He shall take care that the laws be faithfully executed in mercy.

See Const. 1868, III, 12.

This provision reemphasizes the nature of the office of Governor as the chief executive of the State. In some constitutions, including the Model State Constitution, a similar wording is included with a provision similar to Section 1, "Chief Magistrate," of the S. C. Constitution.

Issue: No issues concerning the contents of this provision appear to have arisen. (No Italics)

Note: 1. Consideration could be given to adding the contents of this section to Section 1, above, but this is not recommended.

2. Consideration should begiven to listing this as the first of the enumerated powers of the Governor, in order to emphasize its importance.

Section 13. Compensation of Governor and Lieutenant Governor.—The Governor and Lieutenant Governor shall, at stated times, receive for their services compensation, which shall be neither increased nor diminished during the period for which they shall have been elected.

See Const. 1868, III, 13.

This provision assures that the Governor and the Lieutenant Governor shall receive compensation for their services and prevents the General Assembly from

either increasing or decreasing this compensation during the period "for which they shall have been elected." They are restrictions designed to prevent the General Assembly from "punishing" these two officers by reducing their salaries or from "rewarding" the occupant of either, or both, offices who happens to prove "popular" with the members of the General Assembly.

Issue: Compensation of Governor and Lieutenant Governor.

Little objection is raised to the restriction preventing the legislature from reducing the compensation of the Governor and the Lieutenant Governor. Many take the position, however, that a Constitutional prohibition against increasing the compensation of these two officers during their term of office is too restrictive and prevents the legislature from providing for cost-of-living and other adjustments that may appear to be needed during the four-year term of these officers. This argument is countered with the position that the General Assembly can make any necessary adjustments before the beginning of a new term and that the restriction should be retained. Without question, the restriction has worked to the detriment of some incumbents and consideration should be given to eliminating this particular limitation.

Alternatives:

1. Retain the contents of the present section.
2. Delete the limitation on "increasing" salaries.

state offices, agencies & institutions

Section 14. Officers and boards report to Governor.—All officers in the Executive Department, and all Boards of public institutions, shall, when required by the Governor, give him information in writing upon any subject relating to the duties of their respective offices or the concerns of their respective institutions, including itemized accounts of receipts and disbursements.

See Const. 1868, III, 14.

This is a fairly standard provision found in many state constitutions, and is part of the constitutional powers giving the Governor a limited degree of managerial control over executive officers and boards.

Issue: No particular issues appear to have arisen under this provision.

Note: This section should be considered in connection with the questions raised at the end of this report concerning the managerial powers of the Governor. In the light of the decisions made there, it may be in order to reconsider the contents of this section.

Section 15. Information to Legislature.—The Governor shall, from time to time, give to the General Assembly information of the condition of the State, and recommend for its consideration such measures as he shall deem necessary or expedient.

See Const. 1868, III, 15.

This section, together with sections 16 and 23, regulates gubernatorial relations with the legislature. Serious consideration should be given to grouping these provisions consecutively or grouping them into a single section on the governor's legislative powers.

This section recognizes the governor's responsibility for annually reporting to the people of the State, through their elected representatives, on the condition of the State. It also recognizes the governor's leadership in designing and promoting a legislative program -- because of his statewide constituency, which affords him a perspective of the entire scope of the State's problems, and because he has sources of information not readily available to the General Assembly, which may make him aware of the need for revision of existing laws.

Issue: No particular problems appear to have arisen under this section, and there appears to be no need to revise the wording thereof.

Section 16. Extra sessions—Governor may adjourn General Assembly. He may on extraordinary occasions convene the General Assembly in extra Session. Should either House remain without a quorum for five days, or in case of disagreement between the two Houses during any session with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the time of the annual Session then next ensuing.

See Const. 1868, III, 16.

This section is a standard provision which empowers the Governor, on extraordinary occasions, to convene the General Assembly in Extra Session, and to adjourn the General Assembly in the absence of a quorum or in the case of disagreement between the two Houses.

The first of these two powers is especially necessary for those instances in which the General Assembly has adjourned and there is no other means by which it can be convened. The power of the Governor to adjourn the legislature is relatively unimportant today, but there is little objection to the retention of such a provision in the unlikely event that such a condition should arise.

Issue 1: Should the Governor's power to convene special sessions be shared with the legislature?

Under Section 16 the Governor has the sole power to convene the General Assembly in special session. In 36 states, this power is possessed unilaterally by the Governor. Details are given in Appendix C.

In the states where the convening power is shared, the prevailing arrangements provide for a special-session called on petition of two-thirds of the members of the legislature.

Alternatives:

1. Retain the present provisions.
2. Amend the provision to give the Legislature a share of this power.

Issue 2: Should the agenda of special sessions be limited?

Section 16 merely provides for the calling of a special session, and does not require a statement of the purpose of the session nor provide a method by which the agenda of the special session may be limited.

Some states require the Governor to state the purposes for which he has convened the special session, but the members of the legislature have complete control over the agenda once convened and may consider matters other than those proposed by the Governor. The provision in the Maryland draft, for example, provides: "The governor may, on extraordinary occasions, convene the General Assembly or the Senate alone by proclamation, stating the purpose for which he has convened it." Although this section requires that the governor issue a proclamation stating the purpose for which he has convened the special session, the General Assembly is not restricted to the consideration of those matters contained in the proclamation.

Other states permit the governor alone to fix the agenda of the special session, and prohibit the consideration of any other issues. An example of this arrangement is found in the Kentucky draft in these words: "When the Governor shall convene the General Assembly it shall be by proclamation stating the subjects to be considered, and no others shall be considered." The main arguments for permitting the Governor to control the agenda are: (1) the use of annual sessions should make special sessions unnecessary except for extraordinary occasions and special sessions should be restricted to these extraordinary matters, and (2) on occasion a governor who is confronted by a hostile legislature or is nearing the ned of his term in office may hesitate to call a special session even though a real emergency exists. If he could reasonably limit the agenda, he might be less likely to hesitate to call a special session when the need arises.

Details on procedures in other states are given in Appendix C.

Alternatives:

1. Retain the present provisions.
2. Amend the provision to require the governor to announce the purpose of the special session, but permit the legislature to determine the agenda.
3. Amend the provision to require the governor to announce the purpose of the special session, and restrict the special session to the Governor's previously announced agenda.

Issue 3: Should the length of special sessions be restricted by the Constitution?

Section 16 places no restrictions on the length of special sessions of the legislature. A total of 24 states include some restrictions, while 26 states do not limit the duration of these sessions. The details are given in Appendix C.

Alternatives:

1. Retain the present provisions, with no limitation on the length of special sessions.
2. Amend the provision to limit the special sessions to a maximum of _____ days.

   Note: The provisions in this section must be coordinated with the provisions in the article on the state legislature.

Section 17. Commissions.—He shall commission all officers of the State.
See Const. 1868, III, 17.

This is a standard statement of one of the powers of the Governor and is to be found in all state constitutions.

Issue: No issues appear to have arisen in connection with the contents of this section.

Consideration should be given to combining this section and Section 19, below, into a single provision and including the revised provision in the section dealing with the powers of the Governor.

Query: Combine with Section 19?

Section 18. Seal of State.—The seal of the State now in use shall be used by the Governor officially, and shall be called "The Great Seal of the State of South Carolina."

See Const. 1868, III, 18.

No issues are presented concerning this provision, although the matter could easily be handled by statute. If retained, consideration should be given to combining its provisions with those now set forth in Sections 17 and 19.

Queries: 1. Delete?

2. Combine with Sections 17 and 19?

Section 19. Grants and commissions.—All grants and commissions shall be issued in the name and by the authority of the State of South Carolina, Sealed with the Great Seal, Signed by the Governor, and countersigned by the Secretary of State.

See Const. 1868, III, 19.
See section 17, supra, and notes thereto.

Previously discussed in connection with Sections 17 and 18 above.

Section 20. Oath of Governor and Lieutenant Governor.—The Governor and Lieutenant Governor, before entering upon the duties of their respective offices, shall take and subscribe the oath of office as prescribed in Article III, Section 26 of the Constitution.

See Const. 1868, III, 20.

No basic issues are involved with this provision.

Consideration should be given to transferring this section to a "Miscellaneous" article of the Constitution and rewording the requirement to apply to other officers as well as to the Governor and the Lieutenant Governor.

Query: Transfer and reword?

Section 21. Residence of Governor.—The Governor shall reside at the Capital of the State except in cases of contagion or the emergencies of war; but during the sittings of the General Assembly he shall reside where its sessions are held.

See Const. 1868, III, 21.

Few state constitutions contain a provision similar to this, but no issues are presented by its inclusion in the constitution.

Query: Retain or delete?

> **Section 22. Suspension of officers.**—Whenever it shall be brought to the notice of the Governor by affidavit that any officer who has the custody of public or trust funds, is probably guilty of embezzlement or the appropriation of public or trust funds to private use, then the Governor shall direct his immediate prosecution by the proper officer, and upon true bill found the Governor shall suspend such officer and appoint one in his stead, until he shall have been acquitted by the verdict of a jury. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

This is a very limited grant of power to the Governor, confining his power of suspension only to instances in which an officer "who has the custody of public or trust funds is probably guilty of embezzlement or the appropriation of public or trust funds to private use."

Issue: The major issue involved in this section is not with what is provided, but whether the Governor's power to suspend or remove public officials should be extended. This issue is discussed in a section at the end of this report.

Section 23. Bill or joint resolution must be signed or vetoed by the Governor.—Every Bill or Joint Resolution which shall have passed the General Assembly, except on a question of adjournment, shall, before it becomes a law, be presented to the Governor, and if he approve he shall sign it; if not, he shall return it, with his objections, to the House in which it originated, which shall enter the objections at large on its Journal and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass it, it shall be sent, together with the objections, to the other House, by which it shall be reconsidered, and if approved by two-thirds of that House it shall have the same effect as if it had been signed by the Governor; but in all such cases the vote of both Houses shall be taken by yeas and nays, and the names of the persons voting for and against the Bill or Joint Resolution shall be entered on the Journals of both Houses respectively.

Bills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and Sections. If the Governor shall not approve any one or more of the items or Sections contained in any Bill, but shall approve the residue thereof, it shall become a law as to the residue in like manner as if he had signed it. The Governor shall then return the Bill with his objections to the items or Sections of the same not approved by him to the House in which the Bill originated, which House shall enter the objections at large upon its Journal and proceed to reconsider so much of said Bill as is not approved by the Governor. The same proceedings shall be had in both Houses in reconsidering the same as is provided in case of an entire Bill returned by the Governor with his objections; and if any item or Section of Said Bill not approved by the Governor shall be passed by two-thirds of each House of the General Assembly, it shall become a part of said law notwithstanding the objections of the Governor. If a Bill or Joint Resolution shall not be returned by the Governor within three days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by adjournment, prevents return, in which case it shall have such force and effect unless returned within two days after the next meeting.

See Const. 1868, III, 22.

A standard practice in American government is to link the legislative and executive branch in the enactment of laws, by vesting in the Governor the power to veto bills and joint resolutions passed by the General Assembly. Several issues are involved in connection with the provisions made in Section 23, even though it is assumed that the regular veto and the item veto on appropriation acts are to be retained.

Details of the procedures in other states are given in Appendix D.

Issue 1: Should the Governor be given more time to review bills passed by the legislature while the General Assembly is still in session?

The Constitution presently allows the Governor only three days to consider a bill after "it shall have been presented to him, Sundays excepted," while the General Assembly is still in session. Less of a problem is presented if the legislature adjourns before the three days have expired, in which case the bill shall not have "such force and effect unless it returned within two days after the next meeting."

Much criticism arises where only short periods of time are allowed for review, especially in those instances in which the legislature passes many bills near the end of the session, thereby imposing a massive, if not impossible, job on the Governor and his staff. It is reported that Governor George Bell Timmerman was forced to permit a large number of bills to become law without consideration because of the lack of time for any consideration at all.

There is a growing movement to extend the time given to the governor to consider bills. Some states allow 10 or 15 days for consideration while the legislature is in session and 30 or 45 days for consideration after adjournment. The Model State Constitution provides for 10 and 30 days, which appear to be a more reasonable time limit than 3 days.

The major objection raised to extending the review time is that it prolongs the period of uncertainty as to whether a bill is to become law. Those who support a longer review period assert that it allows more time for research by the Governor's staff, an opportunity for more public criticism, and lessens the possibility that undesirable propositions will be passed.

Alternatives:

1. Retain the present time limit of 3 days.

2. Extend the time limit to 10 (or 15) days.

Issue 2: Should the Constitution fix a period of time within which a bill becomes a law after the General Assembly adjourns?

The Constitution presently provides that a bill not signed by the Governor within three days shall become law, "unless the General Assembly, by adjournment, prevents return, in which case it shall have such force and effect unless returned within two days after the next meeting." Under this provision it is possible for considerable time to elapse between the adjournment of the General Assembly and its next meeting, during which time the fate of any number of bills might not be finally known until after the General Assembly holds its next meeting. The General Assembly can, of course, control this matter by not presenting any bills to the Governor which could be considered after adjournment. This may be difficult to accomplish in practice, however, and some consideration might be given to placing in the Constitution a time limit on the period which a Governor may consider a bill after the legislature adjourns before it becomes law.

Should it be decided to impose some time limitation, consideration should also be given to a procedure for legislative review of the veto. Some states, and the Model State Constitution, ignore the matter of legislative review of post-adjournment vetoes, preferring to have the matter reenacted in its entirety at the next session of the legislature. The draft of the new Kentucky constitution covers this situation with the following provision: "Any bill which is vetoed by the Governor following the adjournment of the General Assembly shall be returned to the House in which it originated, immediately after said House shall have organized at the next regular or extended regular session of the General Assembly. Said bill may then be reconsidered according to the procedure specified hereinabove."

Alternatives:

1. Retain the present provision.
2. Revise the section to place a 30 (or 45) day limit on the Governor's post-adjournment time for considering bills, and

(a). make no provision for legislative review of the Governor's veto

or (b). provide for legislative review of the Governor's post-adjournment veto at the next session of the General Assembly.

Issue 3: Should the Governor be given a conditional veto?

Four states, Alabama, Massachusetts, New Jersey, and Virginia, permit the governor to take a special approach to bills he favors only partially. This process is called a conditional veto, or executive amendment. The governor returns a bill unsigned to the house of origin with suggestions for changes which would make the measure acceptable to him. The legislature may concur with the governor's proposals and return the bill thus amended to him for signature, or the original bill may be forced into law intact by some extraordinary majority, such as that required for overriding a veto.

Experience with this device in the few states which utilize it has been generally favorable. In states with the executive amendment, governors tend to use it considerably more often than the regular veto. By returning a bill as acceptable, subject to certain specific changes, the Governor in effect formalizes negotiations between himself and the legislature about the contents of the measure. Unlike partial and appropriation reducing vetoes, this device does not encourage buck-passing, since the final bill would either be mutually acceptable to the governor and the legislature, or be a clear legislative responsibility through overriding.

Alternatives:

1. Make no provision for a conditional veto.
2. Add a provision for a conditional veto.

Note: Irrespective of the decisions made on the issues raised concerning Section 23, this section should be reworded in part and rearranged. As a minimum, the last sentence in the second paragraph should be made a separate paragraph. As now written, it would be possible to argue that the constitutional time limit on the Governor's consideration of bills applies only to bills appropriating money out of the Treasury. It would appear, and it is assumed, that the intent was that this time limit apply to all bills or joint resolutions presented to the Governor. Such drafting can be more feasibly handled once decisions are reached on the points to be included in the section.

Consideration should also be given to grouping this function of the Governor with his other duties and powers.

Section 24. Other state officers.—There shall be elected by the qualified voters of the State a Secretary of State, a Comptroller-General, an Attorney General, a Treasurer, an Adjutant and Inspector-General, and a Superintendent of Education, who shall hold their respective offices for the term of four years, and until their several successors have been chosen and qualified; and whose duties and compensation shall be prescribed by law. The compensation of such officers shall be neither increased nor diminished during the period for which they shall have been elected.

See Const. 1868, III, 23.
1924 (33) 1487; 1926 (34) 959.

Section 24 lists the executive officers who, in addition to the Governor and the Lieutenant Governor, are to be popularly elected. Decisions made at earlier sessions have already provided for the office of Adjutant and Inspector General and for the Superintendent of Education, and these changes should be reflected in any revision of this section. This leaves for consideration here only the offices of Secretary of State, Comptroller-General, Attorney General, and Treasurer. Details on the practice in other states concerning these and other offices are given in Appendix E.

In view of the decision made at the October 7 session of the committee concerning the office of post-auditor, consideration should be given to the nature and functions of the offices of State Treasurer and Comptroller-General, irrespective of the decisions made on any or all of the other officers listed in this section for popular election.

Issue: A basic issue of governmental policy, and philosophy, must be settled before Section 24 can be given realistic consideration. This is the issue raised in the introductory section of this report -- namely, what is to be the role of the Governor in the total governmental structure of the State of South Carolina? As pointed out above, the Governor of South Carolina is by intention and by design a "weak governor" and his authority is hardly commensurate with his constitutional responsibility to "take care that the laws be faithfully executed in mercy." Whenever, by constitutional or statutory provision, an executive official is placed outside the control of the Governor or is made directly responsible to the same constituents as the Governor, the inescapable effect is a weakening of the position of the Governor, even if he is constitutionally vested with "the supreme executive authority of this State."

The reasons for the popular election of certain state executive officials is largely historical and rooted in the nature of the duties of the office, and there are certainly valid reasons why some or all of the officers listed in Section 24 should continue to be popularly elected. Basically, however, the arguments for an against such a practice are based on differences of judgments about particular activities, the need for comprehensive central executive control, and a popular fear of vesting too much political power in the hands of one individual. Valid arguments may be advanced on both sides of these issues, and such arguments should be treated with respect, for there is no single, clear-cut answer to the issues, however much some people might insist that theirs is the only logical or valid position.

In reviewing the provisions of Section 24 it is important to recognize clearly that these provisions weaken the effectiveness of the Governor. The desire for central executive leadership, however, must be weighed against the particular advantages each instance of fractionated authority has for the governmental function involved. This judgment involves issues and philosophies as old as the state, as well as difficult political and policy factors. For this reason, it is recommended that consideration of Section 24 be delayed until the issues raised in the following section have been considered. Once basic policy issues have been resolved, the alternatives concerning Section 24 will include:

1. Retain the present provisions.
2. Delete specific officers from those listed in Section 24.

   Note: As noted in connection with Section 2, above, the provision that "The other State officers-elect shall at the same time enter upon the performance of their duties" should be transferred to the section dealing with the choice of these officials.

Other Considerations - Managerial Control by the Governor

The Governor of South Carolina is constitutionally responsible for the faithful execution of the laws and is informally considered responsible for the over-all direction of the State's executive and administrative structure. To this end the Governor is given in the constitution and by statute certain powers over the executive and administrative agencies. The nature of these constitutional powers have been discussed in the preceding sections of this report.

As formidable as the Governor's constitutional and statutory managerial powers may appear, they nevertheless fall short of providing the Governor with the full range of administrative tools that could be provided for a chief executive. Not only are executive functions and activities exercised by officers who are popularly elected or appointed by the legislature, but direct supervision of their activities are largely removed from the scope of the Governor's managerial powers. As already noted on several occasions, these practices and conditions result in a "weak" governor for South Carolina. Such a condition should be by choice and not by accident.

The commission has already given consideration to and made certain decisions concerning the role of the Governor in the budgetary process, but these need not be reviewed here. Attention should be given, however, to other aspects of managerial power, and these are the subjects of the sections which follow.

Issue 1: Should the Governor be given explicit directive power over state agencies and programs?

Today, the Governor's powers with respect to the administration of state activities are derived more from the general nature of his office than from authority specifically granted him either by the Constitution or by statute. In fact, prime responsibility for most of the State's activities is lodged statutorily or constitutionally in particular departments and agencies, with only the merest implication that they should be conducted in liaison with the Governor.

The underlying issue in this respect is whether the Governor really needs any additional, specific authority to effect his policy control of state activities. For some, the paucity of explicit executive power makes it imperative that the Governor's coordinative and directive responsibility be specifically set forth by stated authority. The Model State Constitution proposes this in part by the following language: (The Governor) may, by appropriate action or preceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate or restrain violation of any constitutional or legislative power, duty, or right by an officer, department, or agency of the state or any of its civil divisions." The explanatory material in the Model indicates that this language would "enable the governor to initiate (court) proceedings or intervene in proceedings" to carry out the law in the interest of the people of the state; that it would, in essence, give him "standing to sue." In application to state services, this would enhance the executive power of the Governor and also extend to general law enforcement.

The Alaska constitution provides for a very similar arrangement in these words:

"The governor shall be responsible for the faithful execution of the law. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This authority shall not be construed to authorize any action or proceeding against the legislature."

Another provision states: "Each principal department shall be under the supervision of the Governor.

The constitution of New Jersey has almost identical provisions. The first reads:

"The Governor shall take care that the laws be faithfully executed. To this end he shall have power, by appropriate action or proceeding in the courts brought in the name of the State, to enforce compliance with any constitutional or legislative mandate, or to restrain violation of any constitutional or legislative power or duty by any officer, department or agency of the State; but his power shall not be construed to authorize any action or proceeding against the Legislature."

A subsequent section provides, in part: "Each principal department shall be under the supervision of the Governor." Another section also provides in part: "The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member, officer or employee of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer."

Those who oppose the extension of the Governor's power insist that his

influence is probably limited more as a result of having to share the executive powers with other state officials, directly elected or otherwise, outside his full purview, than by insufficient constitutional devices to help him enforce executive policy. They feel that the Governor's present powers provide an ample basis for leadership and doubt the necessity or wisdom of granting him additional powers.

Alternatives:

1. Make no changes in the present provisions.
2. Add a section to the constitution providing explicit executive authority for the Governor.

Issue 2: Should the Governor be given the power to appoint the heads of all principal executive departments.

The power to appoint and the power to remove, discussed in the next section, are considered to be two of the most important aspects of a chief executive's managerial power. The power of appointment was raised in connection with the discussion of Sec. 24, above, and goes to the heart of the issue over the total power of the Governor in the affairs of the state. Several states have recently moved in the direction of extending the power of the Governor to appoint important executive agencies, thereby abandoning tenets long supported in American state government and moving in the direction of making the governor truly a chief executive. Example of the provisions in some states include the following:

Alaska:

"SECTION 25. The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall

serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of all principal departments shall be citizens of the United States.

"SECTION 26. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

"SECTION 27. The governor may make appointments to fill vacancies occurring during a recess of the legislature, in offices requiring confirmation by the legislature. The duration of such appointments shall be prescribed by law."

New Jersey:

"2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law. Such single executives shall be nominated and appointed by the Governor, with the advice and consent of the Senate, to serve at the pleasure of the Governor during his term of office and until the appointment and qualification of their successors, except as herein otherwise provided with respect to the Secretary of State and the Attorney General.

"3. The Secretary of State and the Attorney General shall be nominated and appointed by the Governor with the advice and consent

of the Senate to serve during the term of office of the Governor.

"4. Whenever a board, commission or other body shall be the head of a principal department, the members thereof shall be nominated and appointed by the Governor with the advice and consent of the Senate, and may be removed in the manner provided by law. Such a board, commission or other body may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard."

Maryland Draft:

"Section 4.20. Appointment and Removal of Administrative Officers.

The governor shall appoint each executive serving as the head of a principal department and each chief administrative officer serving under a board or commission which is the head of a principal department, except the head or chief administrative officer of an institution of higher education, of the state public school system, or of a principal department within the legislative or judicial branches. Each gubernatorial appointee shall have the professional qualifications which may be prescribed by law and shall serve at the pleasure of the governor.

"Section 4.21. Appointment and Removal of Administrative Boards and Commissions.

The members of each board or commission which serves as the head of a principal department, except the governing board of an institution of higher education, shall be appointed by the governor and their

terms of office shall be prescribed by law in such manner that the governor, upon taking office following his election, shall be able forthwith to appoint at least one-half of them. Such members may be removed as prescribed by law."

The Maryland draft, it should be noted, is not nearly so sweeping as the Alaska and the New Jersey constitutional provisions.

Alternatives:

1. Make no revisions.
2. Expand the Governor's power to appoint the heads of other executive departments, agencies, boards, and commissions.

Note: If a change is made, provisions should be made for recess appointments in officers requiring legislative confirmation.

Issue 3: Should the Governor's power to suspend be expanded to include the power to remove?

As noted above, the power to remove has long been considered a fundamental aspect of the chief executive's managerial power. Despite this theory, the Governor of South Carolina has only the limited power of suspension discussed above in connection with Sec. 22.

Several states have made definite constitutional provisions strengthening the power of the governor in those states to remove executive and administrative officials. Examples of these provisions are as follows:

Alaska: As noted in the sections quoted above, under Issue 2, the heads of principal departments, "shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state."

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members "may be removed as provided by law."

New Jersey: As shown in the sections quoted above, under Issue 2, several of the New Jersey provisions are almost identical to those in the Alaska constitution. The New Jersey constitution, however, further provides as follows:

"5. The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member, officer, or employee of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require such officers or employees to submit to him a written statement or statements, under oath, of such information as he may call for relating to the conduct of their respective offices or employments. After notice, the service of charges and an opportunity to be heard at public hearing the Governor may remove any such officer or employee for cause. Such officer or employee shall have the right of judicial review, on both the law and the facts, in such manner as shall be provided by law."

Maryland Draft:

"The members of the governing board of an institution of higher education, the head or chief administrative officer of an institution of higher education of the state public school system, or of a principal department within the legislative or judicial branches, and the members of a regulatory or quasi-judicial agency which does not serve as the head of a principal department, shall be appointed and may be removed as prescribed by law."

This provision, rather than vesting in the governor a constitutional power of removal makes such power subject to the procedure to be prescribed by law.

Alternatives:

1. Make no revisions.

2. Grant the Governor the power to remove certain officials of the State.

Issue 4: Should the Governor be constitutionally empowered to reorganize state agencies by executive order?

The determination of a state's governmental structure traditionally has rested largely with the Legislature. In recent years, however, some have argued that the Governor should be given power to redistribute organizational units and functions among the state's major agencies. This authority, it is suggested, could be limited to subdepartmental organization or extended to include the establishment or disestablishment of major agencies. Such power could be givenunilaterally to the Governor, made subject to positive legislative action, or the legislature given a fixed time period within which to act, subsequent to which the changes would take effect as proposed unless rejected or modified.

A few states have already moved in this direction constitutionally. Examples are as follows:

Alaska:

"The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the membersin joint session, these orders become effective at a date thereafter to be designated by the governor."

Maryland Draft:

"The functions, powers and duties of the principal departments and of the agencies of the State within the legislative and executive branches shall be prescribed by law. The governor may reallocate the functions, powers and duties of the principal departments and of the agencies within the executive branch for efficient administration. Proposed changes in the allocations prescribed by law shall be set forth in executive orders which shall be submitted to the General Assembly within the first ten days of a regular session. A proposed change which is approved, or which is not specifically disapproved or modified by the General Assembly within fifty days after submission, shall become effective on a date designated by the governor and thereafter have the force of law."

Alternatives:

1. Make no provisions.
2. Amend to give the Governor constitutional power over reorganization.

Issue 5: Should the maximum number of executive departments be constitutionally fixed?

The Model State Constitution and many persons urge that the state constitution fix the maximum number of executive departments agencies, with the most frequent number mentioned being 20. The major argument in favor of such a course of action is that it prevents an unrestricted growth and proliferation of executive and administrative agencies from completely weakening the control of the Governor. Provisions of this type are as follows:

Alaska:

"All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department."

New Jersey:

"All executive and administrative offices, departments, and instrumentalities of the State government, including the offices of Secretary of State and Attorney General, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department."

The Maryland Draft contains no provision on this matter.

Although this is an issue that is frequently raised, it would seem that such a matter should best be omitted from the constitution and left to the best judgment of the legislature and/or the governor.

Alternatives:

1. Make no provisions.
2. Fix a maximum number of executive departments and agencies.

Issue 6: Should a constitutional provision require a civil service system and fix responsibility for its direction and supervision?

A central concept in the movement to strengthen managerial control by the chief executive has been an adequate system of personnel management. Although the basic idea had been stressed earlier in connection with state and city governmental reform movements, the need for an adequate personnel system as an adjunct of managerial control by the chief executive received its greatest emphasis in 1937 in the Report of the President's Committee on Administrative Management. In this report, as well as in countless other reports on private and governmental administration, the need for the personnel system to be under the general supervision of the chief executive, as a fundamental tool of management, was urged without qualification.

No instance was discovered in which the state constitution made the Governor explicitly responsible for supervision of the state merit system, although provisions requiring merit systems are to be found. Examples include:

Alaska: "The legislature shall establish a system under which the merit principle will govern the employment of persons by the State."

New Jersey: "Appointments and promotions in the civil service of the State, and of such political subdivisions as may be

provided by law, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law."

Although such arrangements could be just as easily provided by statute, the general absence of a merit system in South Carolina suggests the need to consider the possibility of its inclusion in the constitution.

Alternatives:

1. Make no provision.
2. Include a requirement that a merit system be established.

Other Considerations -- Rearrangement of Article IV.

On several occasions throughout this report it was suggested that various sections be rearranged or regrouped with related matters. Once the details of the various issues have been resolved, it is recommended that the entire article be reviewed for possible rearrangement and regrouping of the various sections contained therein.

Appendix X A

THE GOVERNORS, January, 1966

State or other jurisdiction	Governor	Political party	Present term began	Length of regular term in years	Number of previous terms	Maximum consecutive terms allowed by constitution
Alabama	George C. Wallace	(D)	Jan. 14, 1963	4	..	(a)
Alaska	William A. Egan	(D)	Dec. 3, 1962	4	1	2(b)
American Samoa	H. Rex Lee	(D)	May, 1961	(c)	..	..
Arizona	Samuel P. Goddard, Jr.	(D)	Jan. 7, 1965	2	..	..
Arkansas	Orval E. Faubus	(D)	Jan. 12, 1965	2	5	..
California	Edmund G. Brown	(D)	Jan. 7, 1963	4	1	..
Colorado	John A. Love	(R)	Jan. 8, 1963	4	..	..
Connecticut	John Dempsey	(D)	Jan. 9, 1963	4	(d)	..
Delaware	Charles L. Terry, Jr.	(D)	Jan. 16, 1965	4	..	2
Florida	Haydon Burns	(D)	Jan. 3, 1965	4 (e)	..	(e)
Georgia	Carl E. Sanders	(D)	Jan. 15, 1963	4	..	(a)
Guam	Manuel Flores Leon Guerrero	(D)	Mar. 9, 1963 (f)	4	..	..
Hawaii	John A. Burns	(D)	Dec. 3, 1962	4	..	..
Idaho	Robert E. Smylie	(R)	Jan. 7, 1963	4	2	..
Illinois	Otto Kerner	(D)	Jan. 11, 1965	4	1	..
Indiana	Roger D. Branigin	(D)	Jan. 11, 1965	4	..	(a)
Iowa	Harold E. Hughes	(D)	Jan. 14, 1965	2	1	..
Kansas	William H. Avery	(R)	Jan. 14, 1965	2	..	..
Kentucky	Edward T. Breathitt	(D)	Dec. 10, 1963	4	..	(a)
Louisiana	John J. McKeithen	(D)	May 10, 1964	4	..	(a)
Maine	John H. Reed	(R)	Jan. 3, 1963	4	(g)	2
Maryland	J. Millard Tawes	(D)	Jan. 9, 1963	4	1	2
Massachusetts	John A. Volpe	(R)	Jan. 3, 1965	2 (h)	1 (i)	..
Michigan	George Romney	(R)	Jan. 1, 1965	2 (j)	1	..
Minnesota	Karl F. Rolvaag	(D)	Mar. 25, 1963	4	..	..
Mississippi	Paul B. Johnson	(D)	Jan. 21, 1964	4	..	(a)
Missouri	Warren E. Hearnes	(D)	Jan. 9, 1965	4	..	2
Montana	Tim Babcock	(R)	Jan. 4, 1965	4	(k)	..
Nebraska	Frank B. Morrison	(D)	Jan. 9, 1965	2 (h)	2	..
Nevada	Grant Sawyer	(D)	Jan. 7, 1963	4	1	..
New Hampshire	John W. King	(D)	Jan. 7, 1965	2	1	..
New Jersey	Richard J. Hughes	(D)	Jan. 18, 1966	4		2
New Mexico	Jack M. Campbell	(D)	Jan. 1, 1965	2	1	2
New York	Nelson A. Rockefeller	(R)	Jan. 1, 1963	4	1	..
North Carolina	Dan K. Moore	(D)	Jan. 5, 1965	4	..	(a)
North Dakota	William L. Guy	(D)	Jan. 3, 1965	4 (l)	2	..
Ohio	James A. Rhodes	(R)	Jan. 14, 1963	4	..	2
Oklahoma	Henry Bellmon	(R)	Jan. 14, 1963	4	..	(a)
Oregon	Mark O. Hatfield	(R)	Jan. 14, 1963	4	1	2
Pennsylvania	William W. Scranton	(R)	Jan. 15, 1963	4	..	(a)
Puerto Rico	Roberto Sanchez-Vilella	(m)	Jan. 2, 1965	4	..	..
Rhode Island	John H. Chafee	(R)	Jan. 1, 1965	2	1	..
South Carolina	Robert E. McNair	(D)	Jan. 15, 1963 (n)	4	..	(a)
South Dakota	Nils A. Boe	(R)	Jan. 5, 1965	2	..	2 (o)
Tennessee	Frank G. Clement	(D)	Jan. 15, 1963	4	2 (p)	(a)
Texas	John B. Connally	(D)	Jan. 15, 1965	2	1	..
Utah	Calvin L. Rampton	(D)	Jan. 2, 1965	4	..	..
Vermont	Philip H. Hoff	(D)	Jan. 9, 1965	2	1	..
Virginia	Mills E. Godwin, Jr.	(D)	Jan. 19, 1966	4	..	(a)
Virgin Islands	Ralph M. Paiewonsky	(D)	Apr., 1961	(c)	..	..
Washington	Daniel J. Evans	(R)	Jan. 11, 1965	4	..	..
West Virginia	Hulett C. Smith	(D)	Jan. 16, 1965	4	..	(a)
Wisconsin	Warren P. Knowles	(R)	Jan. 4, 1965	2	..	..
Wyoming	Clifford P. Hansen	(R)	Jan. 7, 1963	4	..	..

(a) Governor cannot succeed himself.
(b) Since the first Governor was precluded from serving a full four-year term, the two-term constitutional limitation did not apply to his first term.
(c) Indefinite term. Serves at the pleasure of the President.
(d) Governor Dempsey, formerly Lieutenant Governor, succeeded to office in January, 1961, to fill unexpired four-year term of former Governor Abraham A. Ribicoff (resigned), which began in January, 1959. Elected to full four-year term in November, 1962.
(e) Recent constitutional amendment specifies that the Governor shall be elected at midpoint between Presidential elections. Hence, Governor Burns was elected in November, 1964, for a two-year term. Another election will be held in November, 1966, for the regular four-year term. At this one election the incumbent Governor may succeed himself.
(f) Became Acting Governor on January 20, 1963, upon resignation of Governor Bill Daniel. Inaugurated on March 9, 1963.
(g) Governor Reed, formerly Senate President, succeeded to office in December, 1959, upon the death of former Governor Clinton A. Clauson and was elected in November, 1960, to fill unexpired four-year term which began January 1959. Reelected November, 1962.
(h) Beginning with the election of 1966, term of office of Governor will be four years.
(i) Previous term 1961–1963.
(j) New Michigan constitution provides that term of office for Governor will be four years effective with term that begins January, 1967.
(k) Governor Babcock, formerly Lieutenant Governor, succeeded to office in January, 1962, upon the death of former Governor Donald G. Nutter, and filled unexpired four-year term which began January, 1961. Elected to full four-year term in November, 1964.
(l) Previous term was two years, now four years.
(m) Popular Democratic Party.
(n) Governor McNair, formerly Lieutenant Governor, succeeded to office in April, 1965, to fill unexpired four-year term of Governor Donald S. Russell (resigned), which began in January, 1963.
(o) Nomination for third successive term prohibited by law.
(p) Two previous terms: 1953–55; four-year term, 1955–59.

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Source: The Book of the States 1966-67, vol. XVI (Chicago: The Countil of State Governments, 1966), p. 137.

Appendix B - Maryland

GUBERNATIONAL SUCCESSION

Section 4.06. Failure of Governor to Take Office.

When the governor-elect is disqualified, resigns or dies following his election, but prior to taking office, the lieutenant governor-elect shall succeed to the office of governor for the full term. When the governor-elect fails to assume office for any other reason, the lieutenant governor-elect shall serve as acting governor, but if the governor-elect does not assume office within the first six months of the term, the office shall be vacant.

Comment:

This draft section provides for the order of succession in cases where the governor-elect fails to assume office for any reason. If the governor-elect dies, resigns, or is disqualified, the lieutenant governor-elect succeeds to the office for the full term. When the governor-elect is temporarily unable to take office, the lieutenant governor-elect serves as acting governor from the beginning of the governor's term until the governor is able to assume his office, or until the expiration of six months, whichever occurs first. This draft section also provides that should the governor fail to take office during the first six months of his term, the office becomes vacant.

Section 4.07. Lieutenant Governor as Acting Governor.

When the governor notifies the lieutenant governor in writing that he will be temporarily unable to carry out the duties of his office or when the governor is disabled and thereby unable to communicate such inability to the lieutenant governor, the lieutenant governor shall serve as acting governor until the governor notifies the lieutenant governor in writing that he is able to carry out the duties of his office. If the governor does not notify the lieutenant governor in writing that he is able to carry out the duties of his office within six months from the time the lieutenant governor begins serving as acting governor, the office of governor shall be vacant.

Comment:

Although Maryland has apparently never had a governor who, because of disability, was unable to serve the entire term to which he was elected,[106] the experience of other states and of the federal government would suggest that provision should be made for cases where the chief executive may become disabled. The present Constitution provides for the election of a successor to the governor only in the event of the governor's death. There is no provision for instances where the governor may become disabled. The Commission recommends that the constitution contain provisions for the succession to the office of governor in the event of either death or disability.

Provision is made in this draft section for the lieutenant governor to succeed to the powers of the governor, either on a temporary basis as acting governor or, in the case where the office of governor becomes vacant, as governor.

This draft section permits the lieutenant governor to act as governor whenever the governor is temporarily disabled. This may occur at a time when the governor is to undergo surgery,

[106] Three governors, however, have resigned for other reasons: in 1809, Governor Wright, to run unsuccessfully for election as a judge; in 1874, Governor Whyte, upon being elected United States Senator; and in 1885, Governor McLane, to become United States Minister to France.

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should he choose voluntarily to turn over his powers to the lieutenant governor by written notice. On the other hand, should the governor be unable to communicate his disability to the lieutenant governor because of the nature of his disability, the lieutenant governor would automatically succeed to the powers of the office of governor. In either situation, the governor can reclaim the powers of his office within six months merely by notifying the lieutenant governor in writing that he again is able to assume those powers. Should the governor not reclaim the powers of his office within six months, his tenure would be terminated and the office would become vacant.

Section 4.08. Legislative Determination of Disability.

The General Assembly may, by the affirmative vote in joint session of three-fifths of the combined membership of both houses, pass a resolution stating that the governor is unable to carry out the duties of his office by reason of a physical or mental disability. Upon the written request of a majority of the members of each house the General Assembly shall be convened by the presiding officers of both houses to determine whether such a resolution should be passed. If the General Assembly passes such a resolution, it shall be delivered to the Supreme Court which shall then have exclusive jurisdiction to determine whether the governor is unable to discharge the duties of his office by reason of a disability. If the Supreme Court determines that the governor is unable to dischdrge the duties of his office by reason of a disability, the office shall be vacant.

Comment:

This draft section sets forth a procedure by which a disabled governor may be officially declared disabled by the successive actions of the General Assembly and the Supreme Court. The General Assembly may adopt a resolution upon the affirmative vote of three-fifths of the combined membership of both houses declaring the governor to be unable to discharge the duties of his office due to physical or mental disability. Should the General Assembly not be in session at the time of the need for such a resolution, the presiding officers of the two houses may convene the General Assembly upon the written notice of a majority of the members of each house.

Upon the adoption of a resolution declaring the governor to be disabled, the question of the governor's disability must be reviewed by the Supreme Court, which is given exclusive jurisdiction to declare the office of governor vacant because of the incumbent's disability. The participation of the Supreme Court in this procedure is considered by the Commission to be very important since it may serve to protect the governor from irresponsible action by a hostile legislature.

This draft section does not attempt to define the term "disability." It is hoped that "disability" will be broadly defined, recognizing any condition which renders the governor unable to discharge the duties of his office. The determination of "disability" should be primarily a question of fact rather than a question of law.

The problem of a government's chief executive becoming disabled has recently been reexamined on the federal level. The Twenty-Fifth Amendment to the United States Constitution, recently ratified by the required thirty-eight states, provides that when the President

voluntarily wishes to vacate his office temporarily, he may send a written declaration of inability to the president of the Senate and the speaker of the House of Representatives. Thereupon, the Vice-President, acting as President, may then discharge the duties of the office of President until the President reclaims his office by sending another written declaration to Congress.

If the President is unable to make or communicate his decision to relinquish the powers of the office of President because of his physical ailment, or if he is unable or unwilling to make such a decision because of his mental debility, the Twenty-Fifth Amendment empowers jointly the Vice-President and a majority of the President's Cabinet or "such other body as Congress may by law provide" to initiate action to authorize the Vice-President to "assume the powers and duties of the office as acting President."

Upon the transmission of the decision to Congress by the Vice-President and a majority of the President's Cabinet that the President has become disabled, the Vice-President will become acting President. The President may again assume the powers of his office upon sending his written declaration to Congress that he is again able to fulfill his responsibilities, unless such declaration is challenged by the Vice-President.

The Congress, if not in session at the time of any challenge by the Vice-President, must assemble within four days. Thereupon, Congress is required to act within twenty-one days. It may choose between the following alternatives: it may act and by the affirmative vote of two-thirds of both houses uphold the Vice-President's challenge; it may act and by a one-third plus one affirmative vote in either house reject the Vice-President's challenge; or it may fail to act within twenty-one days, whereupon the President will automatically be restored to his office.

Section 4.09. Judicial Determination of Vacancy.

The Supreme Court shall have exclusive jurisdiction to determine the existence of a vacancy under this Constitution in the offices of governor and lieutenant governor and all questions arising under this Article concerning the right to office or the exercise of the powers thereof.

Comment:

This draft section places exclusive jurisdiction in the Supreme Court to determine all questions arising as to the existence of a vacancy in the offices of governor or lieutenant governor, all questions with respect to the right of persons to hold these offices, and all questions concerning the right to exercise the powers of these offices. It is thought desirable that all questions concerning persons authorized to exercise the power of governor should be resolved expeditiously and that unnecessary litigation in the lower courts and consequent appeals should be avoided.

It should be noted that this draft section does not prescribe the procedures to be followed by the Supreme Court in cases of gubernatorial succession. All required procedures will be determined by the rules of the court.

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LEGISLATIVE SESSIONS

State or other jurisdiction	Years in which sessions are held	Sessions convene: Month	Sessions convene: Day	Limitations on length of sessions: Regular	Limitations on length of sessions: Special	Special sessions: Legislature may call	Special sessions: Legislature may determine subject
Alabama	Odd	May	1st Tues.(a)	36 L	36 L	No	2/3 vote those present
Alaska	Annual	Jan.	4th Mon.	None	30 C	Yes	Yes(b)
Arizona	Annual	Jan.	2nd Mon.	63 C(c)	20 C(c)	Petition 2/3 members	Yes(d)
Arkansas	Odd	Jan.	2nd Mon.	60 C	15 C(e)	No	(e)
California	Annual(f)	Jan.	Odd-Mon. after Jan. 1	120 C(g)	None	No	No
		Feb.	Even-1st Mon.	30 C			
Colorado	Annual(f)	Jan.	Wed. after 1st Tues.	160 C(c)	None	No	No
Connecticut	Odd	Jan.	Wed. after 1st Mon.	150 C(h)	None	Yes	Yes
Delaware	Annual(f)	Jan.	Odd-1st Tues.	90 L	30(c)	No	Yes
		Feb.	Even-1st Tues.	30 L			
Florida	Odd	Apr.	Tues. after 1st Mon.	60 C(i)	20 C(j)	(j)	Yes(j)
Georgia	Annual	Jan.	Odd-2nd Mon.	45 C(k)	(l)	Petition 3/5 members(m)	Yes(d)
		Jan.	Even-2nd Mon.	40 C			
Hawaii	Annual(f)	Feb.	Odd-3rd Wed.	60 C(n)	30 C(n)	(o)	(o)
		Feb.	Even-3rd Wed.	30 C(n)			
Idaho	Odd	Jan.	Mon. after Jan. 1	60 C(c)	20 C	No	No
Illinois	Odd	Jan.	Wed. after 1st Mon.	None(p)	None	No	No
Indiana	Odd	Jan.	Thurs. after 1st Mon.	61 C	40 C	No	Yes
Iowa	Odd	Jan.	2nd Mon.	None	None	No	Yes(q)
Kansas	Annual(f)	Jan.	Odd-2nd Tues.	90 L(c)	30 L(c)	No	Yes
		Jan.	Even-2nd Tues.	30 C			
Kentucky	Even	Jan.	Tues. after 1st Mon.	60 L	None	No	No
Louisiana	Annual(f)	May	Even-2nd Mon.	60 C	30 C	Petition 2/3 elected members each house	No(r)
		May	Odd-2nd Mon.	30 C			
Maine	Odd	Jan.	1st Wed.	None	None	No	Yes
Maryland	Annual	Jan.	3rd Wed.	70 C	30 C	No	Yes
Massachusetts	Annual	Jan.	1st Wed.	None	None	Yes	Yes
Michigan	Annual	Jan.	2nd Wed.	None	None	No	No
Minnesota	Odd	Jan.	Tues. after 1st Mon.	120 L	None	No	Yes
Mississippi	Even	Jan.	Tues. after 1st Mon.	None	None	No	No
Missouri	Odd	Jan.	Wed. after Jan. 1	195 C(h)	60 C	No	No
Montana	Odd	Jan.	1st Mon.	60 C	60 C	No	No
Nebraska	Odd	Jan.	1st Tues.	None	None	Petition 2/3 members	No
Nevada	Odd	Jan.	3rd Mon.	60 C(c)	20 C(c)	No	No
New Hampshire	Odd	Jan.	1st Wed.	July 1(c)	15 L(c)	Yes	Yes
New Jersey	Annual	Jan.	2nd Tues.	None	None	(s)	Yes
New Mexico	Annual(f)	Jan.	Odd-3rd Tues.	60 C	30 C(t)	Yes(t)	Yes(t)
		Jan.	Even-3rd Tues.	30 C			
New York	Annual	Jan.	Wed. after 1st Mon.	None	None	No	No
North Carolina	Odd	Feb.	Wed. after 1st Mon.	120 C(c)	25 C(c)	No	Yes
North Dakota	Odd	Jan.	Tues. after 1st Mon.	60 L	None	No	Yes
Ohio	Odd	Jan.	1st Mon.	None	None	No	No
Oklahoma	Odd	Jan.	Tues. after 1st Mon.	None	None	No(u)	No
Oregon	Odd	Jan.	2nd Mon.	None	None	No	Yes
Pennsylvania	Annual(f)	Jan.	1st Tues.	None	None	No	No
Rhode Island	Annual	Jan.	1st Tues.	60 L(c)	None	No	No
South Carolina	Annual	Jan.	2nd Tues.	None	40 L(c)	No	Yes
South Dakota	Annual(f)	Jan.	Odd-Tues. after 3rd Mon.	45 L	None	No	Yes
		Jan.	Even-Tues. after 1st Mon.	30 L			
Tennessee	Odd	Jan.	1st Mon.	75 C(c)	20 C(c)	No	No
Texas	Odd	Jan.	2nd Tues.	140 C	30 C	No	No
Utah	Odd	Jan.	2nd Mon.	60 C	30 C	No	No
Vermont	Odd	Jan.	Wed. after 1st Mon.	None	None	No	Yes
Virginia	Even	Jan.	2nd Wed.	60 C(c,v)	30 C(c,v)	Petition 2/3 members	Yes
Washington	Odd	Jan.	2nd Mon.	60 C	None	No	Yes
West Virginia	Annual(f)	Jan.	Odd-2nd Wed.	60 C(w)	None	Petition 2/3 members	No
		Jan.	Even-2nd Wed.	30 C(w)			
Wisconsin	Odd	Jan.	2nd Wed.	None	None	No	No
Wyoming	Odd	Jan.	2nd Tues.	40 C	None	No	Yes
Puerto Rico	Annual	Jan.	2nd Mon.	111 C(h,x)	20	No —	No

Abbreviations: L—Legislative days; C—Calendar days

(a) Legislature meets quadrennially on second Tuesday in January after election for purpose of organizing.

(b) Unless Governor calls and limits.

(c) Indirect restriction on session length. Legislators' pay, per diem, or daily allowance ceases but session may continue. In Colorado the 160-day limitation applies to the legislative biennium. In New Hampshire travel allowance ceases after July 1 or 90 legislative days, whichever occurs first.

(d) If legislature convenes itself.

(e) Governor may convene General Assembly for specified purpose. After specific business is transacted, a ⅗ vote of members of both houses may extend sessions up to 15 days.

(f) Budget sessions held in even-numbered years, except in Louisiana.

(g) Exclusive of Saturdays and Sundays.

(h) Approximate length of session. Connecticut session must adjourn by first Wednesday after first Monday in June, Missouri's by July 15, and Puerto Rico's by April 30.

(i) Length of session may be extended by 30 days, but not beyond Sept. 1, by ⅗ vote of both houses.

(j) Twenty per cent of the membership may petition the Secretary of State to poll the legislature; upon affirmative vote of ⅗ of both houses an extra session, no more than 30 days in length, may be called. Extra sessions called by the Governor are limited to 20 days.

(k) Convenes for no longer than 12 days to organize. Recesses and then reconvenes 2nd Monday in February for not more than 33 calendar days. Budget presently considered in odd-year session only.

(l) Seventy-day session limit except for impeachment proceedings if Governor calls session; 30-day limit except for impeachment proceedings if Governor calls session at petition of legislature.

(m) Thirty-day limit except for impeachment proceedings.

(n) Governor may extend any session for not more than 30 days. Sundays and holidays shall be excluded in computing the number of days of any session.

(o) Legislature may convene in special session on 45th day after adjournment to act on bills submitted to the Governor less than ten days before adjournment if Governor notifies the legislature he plans to return them with objections.

(p) By custom legislature adjourns by July 1, since all bills passed after that day are not effective until July 1 of following year.

(q) Iowa constitution requires the Governor to inform both houses of the General Assembly the purpose for which a special session has been convened.

(r) Unless legislature petitions for special session. However, no special session may be called during the 30 days before or the 30 days after the regular fiscal sessions in the odd years without the consent of ¾ of the elected members of each house of the legislature.

(s) Petition by majority of members of each house to Governor, who then "shall" call special session.

(t) Limitation does not apply if impeachment trial is pending or in process. Legislature may call 30-day "extraordinary" session if Governor refuses to call session when requested by ⅗ of legislature.

(u) Governor may convene Senate alone in special session.

(v) May be extended up to 30 days by ⅗ vote of each house, but without pay.

(w) Must be extended by Governor until general appropriation passed; may be extended by ⅗ vote of legislature.

(x) Session may be extended by adoption of joint resolution.

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LEGISLATIVE PROCEDURE: EXECUTIVE VETO

State or other jurisdiction	Days after which bill becomes law (before adjournment) unless vetoed*	Fate of bill after adjournment: Days after which bill is law unless vetoed*	Fate of bill after adjournment: Days after which bill dies unless signed*	Item veto on appropriation bills	Votes required in House and Senate to pass bills or items over veto(a)	Constitution prohibits Governor from vetoing: Initiated measures	Constitution prohibits Governor from vetoing: Referred measures
Alabama	6	..	10	★	Majority elected	(b)	(b)
Alaska	15	20	..	★	Three-fourths elected	★	..
Arizona	5	10	..	★	Two-thirds elected	★	★
Arkansas	5	20(d)	..	★	Majority elected	★	★
California	10	..	30	★	Two-thirds elected	★	★
Colorado	10(d)	30(d)	..	★	Two-thirds elected	★	★
Connecticut	5(e,f)	15(d,f)	..	★	Majority present	(b)	(b)
Delaware	10	..	30(d)	★	Three-fifths elected	(b)	(b)
Florida	5	20(d)	..	★	Two-thirds present	(b)	(b)
Georgia(g)	5	30	..	★	Two-thirds elected	(b)	(b)
Hawaii	10(e)	45(e,i)	(e,i)	★	Two-thirds elected	(b)	(b)
Idaho	5	10	..	★	Two-thirds present	..	..
Illinois	10	10	..	★	Two-thirds elected	(b)	(b)
Indiana	3	5(d,j)	..	..	Majority elected	(b)	(b)
Iowa	3	(k)	(k)	..	Two-thirds elected	..	..
Kansas	3	..	(l,m)	★	Two-thirds elected	(b)	(b)
Kentucky	10	10	..	★	Majority elected	..	..
Louisiana	10(d,n)	20(o)	..	★	Two-thirds elected	(b)	(b)
Maine	5	(p)	..	..	Two-thirds present	(q)	★
Maryland	6	..	6(r)	★	Three-fifths elected	(h)	..
Massachusetts	5(e)	..	(s)	★	Two-thirds present	★	★
Michigan	14(d)	..	14	★	Two-thirds elected and serving	★	★
Minnesota	3	..	3	★	Two-thirds elected	(b)	(b)
Mississippi	5	(p)	..	★	Two-thirds elected	(b)	(b)
Missouri	(t)	..	45	★	Two-thirds elected	★	★
Montana	5	..	15(d,u)	★	Two-thirds present	★	★
Nebraska	5	5	..	★(v)	Three-fifths elected	★	★
Nevada	5	10	..	..	Two-thirds elected	★	★
New Hampshire	5	..	(s)	..	Two-thirds present	(b)	(b)
New Jersey	10(w)	45	..	★	Two-thirds elected	(b)	(b)
New Mexico	3	..	20(u)	★	Two-thirds present	(h)	..
New York	10	..	30(d)	★	Two-thirds elected	(b)	(b)
North Carolina	(x)	(x)	(x)	(x)	.....	(b)	(b)
North Dakota	3	15(d)	..	★	Two-thirds elected	★	★
Ohio	10	10	..	★	Three-fifths elected	★	..
Oklahoma	5	..	15	★	Two-thirds elected(c)	★	★
Oregon	5	20	..	★(y)	Two-thirds present	..	★
Pennsylvania	10(d)	30(d)	..	★	Two-thirds elected	(b)	(b)
Rhode Island	6	10(d)	..	..	Three-fifths present	(b)	(b)
South Carolina	3	(p)	..	★	Two-thirds present	(b)	(b)
South Dakota	3	10(d)	..	★	Two-thirds present	★	★
Tennessee	5	10	..	★(z)	Majority elected	(b)	(b)
Texas	10	20	..	★	Two-thirds present	(b)	(b)
Utah	5	10	..	★	Two-thirds elected	★	★
Vermont	5	..	(l)	..	Two-thirds present	(b)	(b)
Virginia	5	..	10(d)	★	Two-thirds present(aa)	(b)	(b)
Washington	5	10	..	★	Two-thirds elected	★	★
West Virginia	5	5(d)	..	..	Majority elected	(b)	(b)
Wisconsin	6(n)	..	6(n)	★	Two-thirds present	(b)	(b)
Wyoming	3	15(d,j)	..	★	Two-thirds elected	(b)	(b)
Puerto Rico	10	..	30(d)	★	Two-thirds elected	..	..

LEGISLATIVE PROCEDURE: EXECUTIVE VETO—Continued

(Footnotes)

•Sundays excepted.

(a) Bill returned to house of origin with objections, except in Georgia, where Governor need not state objections, and in Kansas, where all bills are returned to House.

(b) No provision for initiative or for referendum by petition of the people in state.

(c) Three-fourths in case of an emergency measure.

(d) Sundays not excepted.

(e) Sundays and legal holidays excepted.

(f) After receipt by Governor.

(g) Constitution withholds right to veto constitutional amendments.

(h) No provision for initiative in state.

(i) If bill is presented to Governor less than 10 days before adjournment and he indicates he will return it with objections, legislature can convene on 45th day after adjournment to consider the objections. If, however, legislature fails to convene, bill does not become law.

(j) Bill becomes law if not filed with objections with Secretary of State within 5 days after adjournment in Indiana, and 15 days after adjournment in Wyoming.

(k) Bills forwarded to the Governor during the last 3 days of the General Assembly session must be deposited by the Governor with the Secretary of State within 30 days after the adjournment of the General Assembly. The Governor must give his approval if approved or his objections if disapproved.

(l) Bills unsigned at the time of adjournment do not become laws.

(m) In practice, the legislature closes consideration of bills 3 days before adjournment sine die. However, some bills may be "presented" to Governor during last 3 days of session. In 1953, the interpretation was followed that the Governor had 3 days to sign or veto bills after they were presented irrespective of whether the legislature had adjourned sine die or not.

(n) Governor has 10 days in Louisiana and 6 days in Wisconsin from time bill was presented to him in which to approve or disapprove.

(o) Becomes effective in 20 days, if not vetoed, Sundays not excepted, unless a later date is set in the act.

(p) Bill passed in one session becomes law if not returned within 3 days after reconvening in Maine and Mississippi and within 2 days after reconvening in South Carolina.

(q) Constitution provides that Governor may veto initiated measures, and if legislature sustains veto, measure is referred to vote of people at next general election.

(r) Within 6 days after presentation to the Governor, regardless of how long after adjournment.

(s) Within 5 days of receipt by Governor. In Massachusetts, in practice, General Court not prorogued until Governor has acted on all bills.

(t) If Governor does not return bill in 15 days, a joint resolution is necessary for bill to become law.

(u) Governor must file bills with Secretary of State.

(v) Governor may not veto items in budget submitted by himself after it has passed legislature with three-fifths vote.

(w) If house of origin is in temporary adjournment on tenth day, Sundays excepted, after presentation to Governor, bill becomes law on day house of origin reconvenes unless returned by Governor on that day. Governor may return bills vetoed, suggesting amendments, and bills may be passed in amended form, but must be approved by Governor in amended form within 10 days after presentation to him.

(x) No veto; bill becomes law 30 days after adjournment of session unless otherwise expressly directed.

(y) Also may veto items in new bills declaring an emergency.

(z) Governor may reduce or eliminate items but must give written notice of item veto either 3 days before adjournment or 1 day after bill is presented for signature.

(aa) Including majority elected.

STATE ADMINISTRATIVE OFFICIALS: METHODS OF SELECTION*

State or other jurisdiction	Secretary of State	Attorney General	Adjutant General	Treasurer	Auditor	Controller	Overall Revenue and/or Taxation	Finance and Administration	Budget	Personnel	Public Works and Buildings	Central Purchasing	Public Instruction	Health	Mental Health
Alabama	CE	CE	GS	CE	CE	DG	G	G	DG	DB	CO	DG	CE	DB	†
Alaska	CE	GB	GB	—	LA	—	GB	GB	†	†	GB	†	GB	GB	†
Arizona	CE	CE	G	CE	CE	—	SE	†	—	—	CO	—	CE	DB	†
Arkansas	CE	CE	G	CE	CE	G	GS	†	DG	—	—	G	DB	BG	†
California	CE	CE	GS	CE	—	CE	—	G	†	GS	G	GS	CE	G	G
Colorado	CE	CE	GS	CE	CE	CS	GS	†	CS	GS	CS	GS	DB	CS	G
Connecticut	CE	CE	G	CE	SL	CE	GE	GE	DG	G	GE	DG	DB	GE	G
Delaware	GS	CE	GS	CE	CE	None	†	†	GS	None	None	None	DB	DB	†
Florida	CE	CE	GS	CE	GS	CE	CO	None	GO	DB	DB	CO	CE	G	†
Georgia	CE	CE	G	CE	SL	CE	GS	†	G	DB	†	GS	CE	DB	†
Hawaii	None	GS	GS	—	CL	GS	GS	GS	†	GS	†	†	DB	GS	†
Idaho	CE	CE	G	CE	CE	None	G	†	G	CO	G	G	CE	DB	DB
Illinois	CE	CE	G	CE	CE	GS	GS	GS	GS	GS	GS	DD	CE	GS	G
Indiana	CE	SE	—	CE	CE	None	G	G	G	DB	G	—	CE	G	G
Iowa	CE	CE	G	CE	CE	GS	GS	†	†	DG	EC	EC	GS	GS	†
Kansas	CE	CE	GS	CE	CE	DG	G	G	—	—	—	—	—	—	—
Kentucky	CE	CE	G	CE	CE	None	G	G	DD	G	DD	DD	CE	DB	G
Louisiana	CE	CE	GS	CE	SL	CE	G	G	—	CO	GS	†	CE	GS	—
Maine	CL	CL	G	CL	SL	BG	BG	GC	BG	DB	BG	BG	DB	GC	†
Maryland	GS	CE	GS	L	G	CE	†	None	G	G	G	DD	DB	G	G
Massachusetts	CE	CE	G	CE	CE	GC	GC	G	DG	DG	GC	GC	DB	GC	G
Michigan	CE	CE	G	GS	LA	G	CS	†	G	CS	CS	CS	DB	GS	G
Minnesota	CE	CE	G	CE	CE	None	—	GS	DD	BS	DD	DD	DB	DB	†
Mississippi	CE	CE	GS	CE	CE	—	GS	—	CO	—	SO	—	CE	DB	—
Missouri	CE	CE	GS	CE	CE	GS	GS	†	†	G	GS	GS	DB	GS	G
Montana	CE	CE	G	CE	CE	G	GS	†	G	DB	DD	DD	CE	DB	†
Nebraska	CE	CE	G	CE	CE	—	GB	†	†	(c)	—	GB	DB	DB	G
Nevada	CE	CE	G	CE	LA	CE	CO	G	†	DG	DB	DG	DB	DG	†
New Hampshire	CL	GC	GC	CL	None	GC	SC	†	†	CGC	GC	DGC	DB	GC	G
New Jersey	GS	GS	GS	GS	CL	†	GS	—	GS	GS	—	GS	GS	GS	†
New Mexico	CE	CE	G	CE	CE	None	GS	G	DD	DB	—	GS	DB	DB	†
New York	GS	CE	—	—	†	CE	†	—	G	GS	GS	GS	SL	GS	G
North Carolina	CE	CE	G	CE	CE	—	G	G	DD	DB	DD	DD	CE	DB	†
North Dakota	CE	CE	G	CE	CE	None	CE	G	†	—	†	CE	G	—	—
Ohio	CE	CE	G	CE	CE	—	—	GS	DD	GS	GS	DD	DB	GS	†
Oklahoma	CE	CE	GS	CE	CE	—	GS	—	G	DB	GS	DB	CE	DB	†
Oregon	CE	SE	G	CE	—	None	G	G	†	CO	—	†	CE	DB	†
Pennsylvania	GS	GS	GS	CE	CE	—	GS	G	G	G	GS	GS	GS	GS	—
Rhode Island	CE	CE	G	CE	†	†	DD	GS	DD	DD	GS	DD	DB	GS	—
South Carolina	CE	CE	CE	CE	DB	CE	GS	†	†	DB	DB	DB	CE	GO	†
South Dakota	CE	CE	GS	CE	CE	SL	GS	GS	GS	G	GS	G	CE	GO	†
Tennessee	CL	SC	G	CL	None	CL	G	G	CO	G	CO	G	G	G	†
Texas	GS	CE	GS	CE	L	CE	CE	—	G	—	—	—	DB	DB	†
Utah	CE	CE	G	CE	CE	†	GS	GS	DG	DG	G	DG	DB	BG	†
Vermont	CE	CE	SL	CE	CE	—	GS	GS	GS	GS	GS	GS	GS	CG	†
Virginia	GB	CE	GB	GB	CL	GB	GB	None	G	G	†	GB	GB	G	†
Washington	CE	CE	G	CE	CE	†	G	G	G	G	†	DD	CE	G	†
West Virginia	CE	CE	G	CE	CE	†	†	GS	†	G	None	†	DB	DB	G
Wisconsin	CE	CE	G	CE	GS	—	GS	GS	CS	CS	CS	CS	CE	DB	†
Wyoming	CE	GS	G	CE	CE	None	DB	—	G	G	G	G	CE	DB	†
Puerto Rico	GB	GS	GS	GS	None	GB	†	†	G	GS	GS	None	GS	GS	†

Legend: S —Statutory
CE—Constitutional, Elected
CL—Constitutional, Elected by Legislature
SE—Statutory, Elected
SL—Statutory, Elected by Legislature
LA—Legislative Auditor performs function

Appointed by	Approved by
G —Governor	Senate
GS—Governor	Either House
GE—Governor	Both Houses
GB—Governor	Departmental Board
GO—Governor	Council
GC—Governor	
L —Legislature	
CS—Civil Service	
SC—Judges of Supreme Court	

Appointed by	Approved by
DD —Director of Department	Governor
DG —Director	Senate
DS —Director	
DB —Departmental Board	
BG —Board	Governor
CGC—Commission	Governor and Council
DGC—Controller	Governor and Council
BS —Board	Senate
CO —Commission	
CG —Commission	Governor
CC —Commission	Senate
TR —Trustees	
TG —Trustees	Governor
SO —Secretary of State	Commission
EC —Executive Council	

STATE ADMINISTRATIVE OFFICIALS: METHODS OF SELECTION*

Governor	Highways	Corrections	Conservation—Natural Resources	Agriculture	Civil Defense	Police-Public Safety	Labor	Commerce	Banking	Public Utility Regulation	Insurance	Mines and Minerals	Land	State or other jurisdiction
G	DB	G	CE	G	G	G	—	GS	S	SG	DD	CS		Alabama
GB	—	GB	—	†	GB	GB	GB	†	GB	†	†	†		Alaska
CO	GS	†	CO	GS	—	CO	—	GS	CO	CC	CE	GS		Arizona
CO	BG	(a)	—	GS	G	GS	G	GS	GS	GS	G	CE		Arkansas
†	GS	G	—	†	†	GS	GS	G	G	GS	DD	(b)		California
GS	GS	GS	CS	CS	CS	GS	CS	CS	GS	CS	GS	GS		Colorado
GE	DB	†	GE	G	—	GE	BG	GE	GE	GE	—	—		Connecticut
—	DB	CO	DB	GS	—	GO	None	DB	GS	SE	—	—		Delaware
GS	DB	DB	CE	CO	DB	G	G	†	—	†	DB	TR		Florida
G	DB	(a)	CE	†	—	CE	DB	GS	—	†	GS	—		Georgia
GS	—	†	GS	†	G	GS	GS	GS	DD	—	—	GS		Hawaii
DB	G	†	G	G	G	G	G	G	GS	G	SE	DB		Idaho
GS	GS	GS	GS	GS	—	GS	—	GS	GS	GS	GS	—		Illinois
G	G	G	†	G	G	G	†	G	G	G	†	†		Indiana
CO	DB	DB	SE	DB	GS	(a)	GS	GS	CO	GS	G	—		Iowa
—	DD	—	DB	G	—	GS	—	—	G	SE	—	—		Kansas
G	G	G	CE	†	G	G	G	G	GS	—	G	None		Kentucky
DB	DB	GS	CE	†	GS	G	G	GS	CE	CE	DB	CE		Louisiana
—	GC	—	G	GC	GC	GC	GC	GC	CC	GC	(b)	GC		Maine
G	GS	DB	DB	G	GS	G	None	G	G	G	G	GS		Maryland
†	GC	DB	GC	GC	GC	GC	GC	GC	GC	GC	None	None		Massachusetts
CO	CO	CO	CO	†	GS	GS	GS	GS	DD	GS	None	CS		Michigan
GS	GS	GS	G	GS	DS	GS	(a)	GS	SE	GS	†	DD		Minnesota
SE	—	—	SE	G	GS	—	†	G	SE	SE	—	CE		Mississippi
CO	GS	CO	GS	GS	GS	GS	CG	GS	GS	GS	GS	—		Missouri
CO	DB	None	GS	DD	DB	GS	None	GS	SE	†	DD	GS		Montana
GB	GB	DB	GB	G	G	GB	†	GB	CE	GB	—	GB		Nebraska
DB	G	G	DB	G	DD	G	G	DG	G	DG	SE	(b)		Nevada
†	TG	GC	GC	GC	GC	GC	GC	GC	GC	GC	None	†		New Hampshire
GS	†	GS	BG	G	GC	GS	—	GS	G	DD	—	—		New Jersey
GS	DB	None	DB	G	DB	CO	G	GS	GS	CE	G	CE		New Mexico
†	GS	GS	GS	GS	GS	GS	GS	GS	GS	GS	†	†		New York
G	DB	G	CE	G	DG	CE	BG	G	GS	CE	DD	DG		North Carolina
G	G	—	CE	(d)	G	CE	—	GS	CO	CE	DB	—		North Dakota
GS	—	GS	GS	†	GS	—	GS	GS	GS	GS	G	†		Ohio
CO	CE	DB	DB	GS	GS	CE	CO	GS	CO	CE	CE	G		Oklahoma
CO	—	(a)	G	G	G	SE	—	DB	G	G	DB	DB		Oregon
GS	†	GS	GS	G	GS	GS	GS	GS	GS	GS	GS	—		Pennsylvania
†	DB	—	GS	G	G	GS	(a)	DD	—	†	None	(a)		Rhode Island
CO	DB	CO	SE	GS	—	GS	None	DB	CL	CO	None	None		South Carolina
CO	—	—	GS	—	—	G	—	GS	SE	GS	GS	CE		South Dakota
G	G	G	G	DD	G	G	—	G	SE	—	CO	CO		Tennessee
CO	DB	CO	SE	†	CO	G	—	CG	CE	BS	†	CE		Texas
CG	BG	None	GS	BG	GS	GS	—	GS	GS	GS	†	DB		Utah
BG	BG	BG	GS	†	GS	GS	—	GS	GS	†	—	—		Vermont
GB	†	GB	GB	G	GB	GS	None	(e)	L	—	G	None		Virginia
CO	DD	G	G	G	G	G	G	DD	G	CE	DD	CE		Washington
GS	†	GS	CE	G	GS	GS	GS	GS	GS	GS	GS	†		West Virginia
GS	CS	CO	DB	G	(a)	GS	GS	GS	GS	GS	CS	CO		Wisconsin
CO	CB	BG	DB	—	—	G	None	GS	GS	DB	GS	GS		Wyoming
—	—	—	GS	GS	GS	GS	GS	DD	GS	DG	—	BG		Puerto Rico

* In forty states the Governor is an elective official. In thirty-nine states the thirty-nine states providing for a Lieutenant Governor, he is elected by the people. In Tennessee, the Lieutenant Governor is elected by the state Senate from its membership.
The six headings for categories of officials refer to specific functions. In subsequent columns the information is for the administrative officers in charge of the functions named.
Management II, July 1965, to the previous edition of *The States* for titles of administrative officers classified by

"None" signifies no official of that category.
— Signifies no information available.
† Signifies that the responsibility for function belongs to another administrative official.
(a) No single agency or official.
(b) Ex officio.
(c) Approved by heads of four agencies receiving federal funds, in consultation with Governor.
(d) Appointed by the Governor and the Adjutant General.
(e) Appointed by State Corporation Commission.

South Carolina
Department of Corrections
P. O. BOX 766
Columbia, S. C. 29202

LIS C. MacDOUGALL, Director
Department of Corrections

Mr. Robert Stoudemire
Bureau of Government Research
University of South Carolina
Columbia, South Carolina

Dear Bob:

I am most grateful for the opportunity to get to express my opinion regarding possible changes in the South Carolina Constitution.

There are two areas of which I am concerned. One is the area regarding paroles for South Carolina prisoners. I have very strong feelings that this should not be a part of the Constitution. Corrections has moved forward probably further in the past five years than has ever happened in the history of civilization. I feel strongly that the section of the Constitution, as related to Parole, if allowed to remain will not allow the parole system of South Carolina to develop in keeping in the field of corrections over the next year. I question the advisability of an appointment to a board of such a length of twelve years. Thank goodness we have not had any bad members appointed in my knowledge, but if one were appointed, it would take an awfully long time to end his term. In recognizing that it is almost impossible to remove a person from office. I also have strong feeling, personal and professional, that the Parole Board should not be lay people but should be full-time professional people operating, if necessary, under a policy making board such as the Department of Corrections operates with the Board of Corrections, but that the actual parole decision be made by full-time people who have adequate time to observe and give attention to the parole decision. I highly recommend that the parole section of the Constitution be changed in powering the Legislature to dictate the parole statutes for the state of South Carolina.

On the other item, I am concerned with the voting rights of criminals. I have strong feelings that a man who commits a crime in South Carolina or in any state of the United States should have the right eventually to earn back his voting privileges. I do not necessarily believe that he should automatically receive them upon release from prison, but I do believe that after a period of time, say five years, that a man who has come back to society and demonstrated a new attempt to obey the laws of our society and become a part of that society should have the right to earn back those voting and citizenship privileges without necessarily

having to go through serious lengthy hearings before a Pardon Board.

I appreciate the opportunity of being allowed to present these views to you. I would appreciate that they be kept confidential.

Warmest personal regards.

Cordially,

Ellis C. MacDougall

ECM/lk

COMMITTEE TO MAKE A STUDY
OF THE
CONSTITUTION OF SOUTH CAROLINA, 1895

P. O. Box 142
COLUMBIA, S. C. 29202

October 25, 1967

Memorandum: (FOR COMMITTEE USE ONLY)

To: Members, Constitutional Revision Committee

From: W.D. Workman Jr.

Subject: Term of Office, Governor of South Carolina

The following comments from former governors are extracted from letters addressed to Workman in response to inquiries as to their attitude on changing the term of office so as to permit the serving of two terms:

JAMES F. BYRNES, (Gov. 1951-55) Memo to WDW - 2/4/63

I do not think the Constitution of South Carolina should prohibit a person from serving more than one term as Governor. That decision should be left to the good judgment of the people.

When the State Constitution was amended to restrict the services of a Governor to one term there was strong sentiment against a President serving more than two terms, which sentiment increased as President Roosevelt broke the traditional limitations of a President's service to two terms, and went on to win a fourth term.

The election of President Roosevelt to a third and fourth term was due to the fact that we were then in World War II. President Roosevelt was his own Secretary of State and actively participated in all important military decisions of the Joint Chiefs of Staff. He was also constantly engaged with Churchill and Stalin in making strategic decisions on war policies. The people did not want to change Presidents in the midst of war. After the war the United States Constitution was amended limiting a President to two terms.

There is a vast difference in the election of a President and a Governor of South Carolina. With the concentration of powers in the federal government, the President has great power. With thousands of appointments and the expenditure of billions of dollars a year, the people feared the building of a political machine that would make it impossible to defeat a President.

In South Carolina the legislative branch of the government has assumed many powers ordinarily and properly belonging to the

executive branch of the government. A Governor does not have thousands of appointments to make or billions to spend. Moreover, the people so much dislike political machines that in any campaign for Governor, if a man is charged with having a political machine of any kind, he has to disprove the charge in order to be successful. The voters of South Carolina have proved themselves very intelligent, and I believe they can be trusted to properly decide whether a Governor should be allowed to serve a second term.

ERNEST F. HOLLINGS (Gov. 1959-63) Letter of 1/24/63

The prohibition against a second consecutive term is to prevent entrenched control. It is expected normally that a Chief Executive with vast appointive powers could so manipulate appointments as to block out a free expression of the electorate. The political machine that he would develop would stultify opposition, but the case is different in South Carolina.

We have the weakest of powers for a Chief Executive. There is no highway patronage to dispense as there is in the even one-party state of Georgia. The Governor's so-called cabinet all run on their own. The probation and parole influence that at one time helped Olin no longer exists. The Adjutant General of our state is the only Adjutant General elected in the country. The Legislature picks the Public Service Commission, so there is no way for the Governor to get the big utilities in behind him. The judiciary is similarly selected, where the lawyers, judges, clients, etc. cannot be corralled into a Governor's corner. In fact, the Governor does well to finish out his term of four years. So the one-term restriction is not necessary at all in this state; and, of course, the people must remember that the chance to offer for a second term by no means guarantees his re-election.

On the positive side then, the second term would allow the Governor to complete programs that were instituted. It took me a long time to get something moving on our State Department of Education. We've only made a beginning, and we just have instituted the Advisory Commission on Higher Education. Purely on muscle, I created an Advisory Committee on Agriculture, without the chance of resolving this into a commission. The ups and downs of the penal program are now fully understood and appreciated, and I am ready to move forward on these and other fronts; but the law says for a reason that doesn't exist, that you can't. This is a waste of time, of money, of effort and of training or experience vested. I am for two terms.

RICHARD M. JEFFERIES, (Gov. 1942-43) Letter of 6/27/58

I do not consider the matter of amending our Constitution so as to permit governors to run for a second term and serve for eight years to constitute any important issue.

Of course, the background of one four year term was that it was thought that thereby governors would not have to play politics during their first term to get re-elected for a second. Under the old two year provision and practically an unwritten law that governors could not serve more than two 2-year terms many of the governors had to use their first two years in a political way to insure election for the last two years.

Of course, in a four year term new issues may develop toward the end of that four year term which might justify a governor being re-elected to complete a program, but normally four years would be a sufficient length of time for any governor to finish such programs as he might institute during the early part of the four year term.....

It is my belief that a period of four years is sufficient in the absence of emergencies toward the end of it for any governor to formulate, promote, and complete such governmental programs as he may have in mind.

However, as stated above, I do not consider the issue of any great importance. Little, if any, harm can come to the State by letting a governor serve for eight years. If I were called upon to vote on the issue, however, I would vote to retain the one four year term.

I might observe further that in practice it has not always worked out that a governor was free from politics during that one four year term because it is a rather lamentable fact that several governors were actually running for the U. S. Senate during the one four year term which each had. This all adds up to the fact that in any democracy there must be politics, but I am glad to say that in South Carolina in most cases such politics are not of the bad type and do no harm. Continual playing, however, on the term "politics" does constitute good lung and throat exercise of a demagogic nature.

OLIN D. JOHNSTON, (Gov. 1935-39, 1943-45) Letter of 6/27/58

In response to your letter of June 25 concerning the feasibility of two consecutive terms for the Governorship of South Carolina, please be advised that I feel that this question has many pros and cons.

It might be advisable for you to make an investigation of the various governorships of other states where a governor can succeed himself and examine the records there; then make a comparison with the records of Governors of South Carolina where a man cannot succeed himself in office. The results of such an

investigation would, I believe, be quite interesting.

Since the changing of the Law would be a matter for the South Carolina Legislature and the people of the State, you might also poll the members of the General Assembly for their opinions on this question,

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STROM THURMOND, (Gov. 1947-51) Letter of 7/8/58

It is my opinion that our State Government is being penalized by the provision which prohibits a Governor from succeeding himself. Under the present provision of the Constitution, the value of the experience which is gained by a Governor during his first term is, in most instances, lost to the people of the state. Also, many programs commenced by a particular Governor cannot be completed during the four-year term due to the fact that the Governor must pursue his program almost solely by his qualities for leadership, since the Governor's powers in the State are so limited. These programs would have a better chance for success if the Governor could take his programs to the people at the end of four years in a request for re-election.

In addition, I feel that a provision for a Governor to succeed himself one time would, over the years, attract better candidates for Governor. If, the Governor could succeed himself and thereby serve eight years, the office would be more attractive to competent persons.

I do not believe, however, that a Governor should be allowed to succeed himself more than once, for I think we are all well aware of the dangerous possibilities which would arise from the ability of a Chief Executive to perpetuate himself in office indefinitely.

GEORGE BELL TIMMERMAN JR. (Gov. 1955-59) Letter of 7/9/58

From my own experience, I have found that the present one term system allows a Governor to devote his attention to the public interest without the interference of personal political activities so often deemed necessary to enhance one's chances of reelection. From the standpoint of the public, that offers some advantage, although it does work to the disadvantage of one who might like to continue an uninterrupted political career; and it could at times deprive the public of the services of a good public administrator. However, I think that there is little merit in the argument that a Governor needs eight years in which to put over his program. Should he fail for four years, I doubt that he could succeed in four additional years. Moreover, I doubt it to be in the public interest that each administration must come up with a new program. Maintaining a sound

program already established is a mark of good government. Advocating a change merely for the sake of a program is a mark of the politics which too often characterizes National administrations.

While I have no fixed opinions on the question which you ask, I am presently inclined to believe that the system we now have here in South Carolina will more often best serve the public interest.

RANSOME J. WILLIAMS (Gov. 1945-47) Letter of 6/26/58

In answer to your inquiry, if we had a good Governor, it would be wonderful, but if we had a bad Governor, it would be disastrous.
