

STATE CONSTITUTIONAL REVISION:

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## STATE CONSTITUTIONAL REVISION: SEVEN AMENDMENTS PENDING 1970 VOTE

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## INTRODUCTION

Seven state constitutional amendments -- five of which originated with a study commission created on the initiative of Governor Dan Moore -- were approved by the 1969 General Assembly and will be on the ballot in November, 1970. They include a general editorial revision of the entire Constitution, an extensive rewriting of the constitutional provisions governing state and local finance, a requirement of major reorganization of the executive branch of state government, removal from the Constitution of the literacy test for voting, redistribution of the benefits of escheats, elimination of the constitutionally fixed minimum state income tax exemptions, and a procedure by which the General Assembly may convene itself in special session. Each amendment that is approved by the voters will take effect on July 1, 1971, except the finance amendment, which will take effect on July 1, 1973.

North Carolina's first Constitution was written in 1776 and extensively amended in 1835. Our second Constitution, adopted in 1868, is basically the constitution now in force and is the only Reconstruction constitution that has not been entirely rewritten at least once in the last century. The Constitution has been the subject of frequent amendment, however, especially in the last 35 years. Since 1868, there have been 97 amendments voted on by the people and 69 of them have been adopted. These amendments have ranged in length and complexity from changes of only a few words to the 1962 revision of the entire Judicial Article, initiated through the efforts of the North Carolina Bar Association.



While a relatively easy and often-used amendment process has relieved many of the pressures that otherwise would have strengthened the case for general constitutional reform, it has not kept the Constitution current in all respects. Constitutional amendments arise in response to particular problems experienced or anticipated and generally are limited in scope so as to achieve the essential goal while arousing minimum unnecessary opposition. Thus amendments sometimes have not been as comprehensive as they should have been to avoid inconsistency in result. Obsolete and invalid provisions have been allowed to remain in the Constitution to mislead the unwary reader. Moreover, in the absence of a comprehensive reappraisal, there has been no recent occasion to reconsider constitutional provisions that may be obsolescent but may not yet have proved so frustrating or unpopular in their effect as to provoke curative amendments.

#### STUDY COMMISSION ESTABLISHED

It was in recognition of these facts that Governor Dan K. Moore urged in an address to the North Carolina State Bar on October 27, 1967, that the Bar sponsor a study "to review the State Constitution in the light of present and future demands upon State Government. . ." and "consider revising or even rewriting it . . . ." The State Bar responded favorably to this invitation, obtained the cooperation of the North Carolina Bar Association, and they formed a joint Steering Committee to plan the study, select the members of the study commission, and obtain financing for the project.

The Steering Committee, under the chairmanship of Colonel William T. Joyner of Raleigh, performed its task in the late winter of 1968. The members of the Steering Committee were Charles B. Aycock of Kinston, Davis C. Herring of Southport, Claude V. Jones of Durham, William D. Sabiston, Jr., of Carthage,



and Robert G. Sanders of Charlotte, appointed by the President of the North Carolina State Bar; and William J. Adams, Jr., of Greensboro, Richard C. Erwin, Sr., of Winston-Salem, Francis J. Heazel of Asheville, William T. Joyner of Raleigh, and Lindsay C. Warren of Goldsboro, appointed by the President of the North Carolina Bar Association. The Committee established the North Carolina State Constitution Study Commission as a joint agency of the North Carolina State Bar and the North Carolina Bar Association, selected its members--fifteen attorneys and ten laymen--and adopted a plan for the study which provided that the

. . . Commission will make a study of the Constitution of North Carolina and give consideration to the question whether there is a need for either rewriting or amending the Constitution. Such study should consider not only the question of editorial improvements, [and] the elimination of archaic provisions, but also any broad and substantial matters concerning the present and future demands upon our State government.

The Commission was directed to report to its parent organizations in time for the report to be transmitted to the Governor and the General Assembly of 1969.

The Steering Committee obtained a grant of \$25,000 from the Z. Smith Reynolds Foundation, Incorporated, to pay Commission expenses.

#### COMMISSION ORGANIZATION AND PROCEDURE

##### Membership

On March 24, Governor Moore announced the names of the twenty-five members of the North Carolina State Constitution Study Commission. They were Charles B. Aycock, attorney and secretary of the 1931-33 Constitution Commission, Kinston; James M. Baley, Jr., attorney, Asheville; Millard Barbee, President of the State AFL-CIO, Raleigh; William Britt, attorney and State Representative, Smithfield, Mrs. Harry B. Caldwell, Master of the State Grante, Greensboro; Irving E. Carlyle, attorney and former State



Senator, Winston-Salem; Julius L. Chambers, attorney, Charlotte; Archie K. Davis, banker and former State Senator, Winston-Salem; Emery B. Denny, former Chief Justice of the Supreme Court of North Carolina, Raleigh; the late Albert J. Ellis, attorney and State Senator, Jacksonville; Robert Gavin, attorney and twice (1960 and 1964) Republican candidate for Governor, Sanford; Robin L. Hinson, attorney and law teacher, Rockingham; Luther H. Hodges, former Governor of North Carolina (1954-61); Roberts H. Jernigan, Jr., businessman and State Representative, Ahsokie; William A. Johnson, attorney, former State Commissioner of Revenue and former Superior Court Judge, Lillington; Claude V. Jones, city attorney of the City of Durham, E. L. Loftin, attorney, Asheville; Hector McLean, banker and State Senator, Lumberton; L. P. McLendon, Jr., attorney and State Senator, Greensboro; the late Rudolph I. Mintz, Superior Court Judge, Wilmington; Bert M. Montague, attorney and Director of the State Administrative Office of the Courts; John T. Morrissey, Sr., General Counsel of the North Carolina Association of County Commissioners, Raleigh; Charles W. Phillips, State Representative and retired educator, Greensboro; William D. Snider, editor of the Greensboro Daily News, Greensboro; and Asa T. Spaulding, retired insurance executive, Durham.

The membership included (the categories are not mutually exclusive) seventeen lawyers, twelve of whom are currently in private practice; two bankers, one of whom is a nonpracticing lawyer; three other businessmen; the heads of statewide farm and labor organizations; an educator; a journalist; a former Governor; a former Chief Justice; one current and one former Superior Court Judge; three current State Senators and three current State Representatives, plus several who had served in the legislature in earlier years; one woman; two Negroes; and two Republicans.



### Officers and Staff

At its first meeting on April 5, the Commission chose former Chief Justice Denny as its Chairman, Judge Mintz and Mr. Davis as its Vice Chairmen, and Mr. Montague as its Secretary. The Commission engaged the Institute of Government as its professional staff.

### Commission Actions

The Commission held nine meetings and its five committees met 26 times. Out of the hearings, studies, and deliberations of the Commission and its committees came recommendations for (1) the Proposed Constitution, incorporating in a redrafted document the many editorial and minor substantive changes found necessary; (2) nine separate amendments, each embodying a constitutional change of sufficient importance to justify setting it forth as a separate proposition for legislative and voter approval or disapproval on its own merits; and (3) an endorsement of an extensive amendment of the constitutional provisions on governmental finances, originated by the Local Government Study Commission. These recommendations were embodied in the Report of the State Constitution Study Commission, which was filed with the Presidents of the North Carolina Bar Association and the North Carolina State Bar in December, 1968, and was transmitted by them to Governor Moore.

In its report, the Commission stated its objective in these terms:

Our ultimate objective throughout our study has been to help obtain for North Carolina a constitution that deals in a realistic, direct, and understandable way with the current and foreseeable problems of the State that are appropriate to be dealt with in the constitution . . . . In order to achieve this general objective of an up-to-date constitution, we consider it necessary to eliminate from the constitution obsolete and unconstitutional provisions, to simplify and make more consistent and uniform the language of the document, to reorganize



its content in some instances for the sake of greater clarity, and especially to make several changes in the structure of the executive branch of state government and in the allocation of powers among the branches and levels of government that will enable our state and local governments to meet effectively the needs of the people for efficient and responsive governmental service and protection.

### Legislative Actions

Bills setting forth the Study Commission's proposed amendments, together with bills proposing 16 additional constitutional amendments originated by individual legislators, were introduced in the 1969 General Assembly. Governor Scott gave the Commission's work his commendation. Final legislative approval was given to seven amendment propositions, five of which bore the stamp of the State Constitution Study Commission.

### PROPOSED CONSTITUTION

The first amendment [The Commission stated in its report] effects a general editorial revision of the constitution. . . . The deletions, reorganizations, and improvements in the clarity and consistency of language will be found in the proposed constitution. Some of the changes are substantive, but none is calculated to impair any present right of the individual citizen or to bring about any fundamental change in the power of state and local government or the distribution of that power.

In preparing the Proposed Constitution, the existing fourteen-article organization of the Constitution was retained, but the contents of several articles--notably Articles I, II, III, V, IX, and X -- were rearranged in more logical sequence. Sections were shifted from one article to another to make a more logical subject-matter arrangement. Clearly obsolete and constitutionally invalid matter was omitted, as were provisions essentially legislative in character. Uniformity of expression was sought where uniformity of meaning



was important. Directness and currency of language were also sought, together with standardization in spelling, punctuation, capitalization, and other essentially editorial matters. Greater brevity of the Constitution as a whole was a welcome by-product of the revision, though not itself a primary objective.

The General Assembly reviewed the Commission's draft carefully but made few changes in it. In seven roll call votes in the Senate and House, only one vote was recorded against the bill. (Session Laws 1969, ch. 1258.)

The Declaration of Rights, which dates from 1776 with some 1868 additions, was retained with a few additions. The organization of the article was improved and the frequently used subjunctive mood was replaced by the imperative in order to make clear that the provisions of that article are commands and not mere admonitions. (For example, "All elections ought to be free" became "All elections shall be free.") To the article were added a guarantee of freedom of speech, a guarantee of equal protection of the laws, and a prohibition against exclusion from jury service or other discrimination by the state on the basis of race or religion. Since all of the rights newly expressed in the Proposed Constitution are already guaranteed by the United States Constitution, their inclusion simply constitutes an explicit recognition by the State of their importance.

In the course of reorganizing and abbreviating Article III, the Commission brought into clear focus the Governor's role as chief executive. The scattered statements of the Governor's duties were collected in one section, to which was added a brief statement of his budget powers, now merely statutory in origin. No change was made in the Governor's eligibility or term, or in the list of state executives now elected by the people. To the Council of State (now seven elected executives with the Governor as presiding officer) were added the Governor, Lieutenant Governor, and Attorney General as ex officio members.



Having been entirely rewritten in 1962, the judicial article was the subject of little editorial alteration and of no substantive change of current importance.

The editorial amendments to Article V, dealing with finance and taxation, were extensive. Provisions concerning finance were transferred to it from four other articles. The present finance provisions were expanded in some instances to make clearer the meaning of excessively condensed provisions. The only substantive change of note gave a wife who is the primary wage-earner in her family the same constitutionally guaranteed income tax exemption now granted a husband who is the chief wage-earner; she already has that benefit under statute.

The revision of Article VI adds out-of-state and federal felonies to felonies committed against the State of North Carolina as grounds for denial of voting and office-holding rights in this state. The General Assembly is directed to enact laws uniform throughout the state governing voter registration.

The provision that is interpreted to mean that only voters can hold office was modified to limit its application to popularly elective offices only; thus it is left to the legislature to determine whether one must be a voter in order to hold an appointive office.

The Proposed Constitution prohibits the concurrent holding of two more elective state offices or of a federal office and an elective state office. It expressly prohibits the concurrent holding of any two or more appointive offices or places of trust or profit, or of any combination of elective and appointive places of trust or profit, except as the General Assembly may allow by general law.



The Commission left the power to provide for local government in the legislature, confining the constitutional provisions on the subject to a general description of the General Assembly's plenary authority over local government, a declaration that any unit formed by the merger of a city and a county should be deemed both a city and a county for constitutional purposes, and a section retaining the sheriff as an elective county officer.

The education article was rearranged to improve upon the present hodge-podge treatment of public schools and higher education, obsolete provisions (especially those pertaining to racial matters) were eliminated, and other changes were made to reflect current practice in the administration and financing of schools.

The constitutionally mandated school term was extended from six months (set in 1918) to a minimum of nine months (where it was fixed by statute many years ago). The possibly restrictive age limits on tuition-free public schooling were removed. Units of local government to which the General Assembly assigns a share of the responsibility for financing public education are authorized to finance from local revenues education programs, including both public schools and technical institutes and community colleges, without a popular vote of approval. It was made mandatory (it is now permissive) that the General Assembly require school attendance.

The Superintendent of Public Instruction was eliminated as a voting member of the State Board of Education but retained as the Board's secretary. He was replaced with an additional at-large appointee. A potential conflict of authority between the Superintendent and the Board (both of which are now given constitutional authority to administer the public schools) was eliminated by making the Superintendent the chief administrative officer of the Board, which is to supervise and administer the schools.



The provisions with respect to the state and county school funds were retained with only minor editorial modifications. Fines, penalties, and forfeitures continue to be earmarked for the county school fund.

The present provisions dealing with The University of North Carolina were broadened into a statement of the General Assembly's duty to maintain a system of higher education.

The General Assembly is authorized by the changes made in this article to set the amounts of the personal property exemption and the homestead exemption (constitutionally fixed at \$500 and \$1,000 respectively since 1868) at what it considers to be reasonable levels, with the present constitutional figures being treated as minimums. The provision protecting the rights of married women to deal with their own property was left untouched. The protection given life insurance taken out for the benefit of the wife and children of the insured was broadened.

The provisions prescribing the permissible punishments for crime and limiting the crimes punishable by death were left essentially intact.

The Proposed Constitution, if approved by the voters, will take effect on July 1, 1971.

#### SEPARATE AMENDMENTS

It has been noted earlier that the Commission omitted from its Proposed Constitution changes that it thought likely to arouse substantial opposition in the General Assembly or among the voters. The changes of that type that it deemed essential were set out in nine separate amendments (the finance amendment made a tenth), each so drafted that it could be voted upon on its own merits in the General Assembly and at the polls and become a part either of the present Constitution or of the Proposed Constitution, depending on the



fate of the latter. These amendments also were so drafted that no matter what number or combination of them might be approved, the resulting document would be internally consistent. The amendments not originated by the Commission that were enacted by the General Assembly were drafted in the same manner. The six successful separate amendments were as follows.

#### Administrative Reorganization

North Carolina has over 200 state administrative agencies. The Commission concluded on the advice of witnesses who had tried it that no Governor can effectively oversee an administrative apparatus of such size and complexity. Their solution is an amendment, patterned after the Model State Constitution and the constitutions of a few states, that will require the General Assembly to reduce the number of administrative departments to not more than 25 by 1975, and give the Governor authority to effect agency reorganizations and consolidations, subject to disapproval by action of either house of the legislature if the changes affect existing statutes.

(Session Laws 1969, ch. 932.)

#### Income Tax Exemptions

The income tax provision of the present Constitution specifies certain minimum exemptions from the tax. This has the effect of preventing the filing of joint returns by husband and wife and barring the adoption of a "piggy-back" state income tax that would be computed as a percentage of the federal income tax, thus relieving the taxpayer of two sets of computations. The amendment offered by the Commission strikes out the specified exemptions, leaving them to be fixed by the General Assembly. It retains the maximum tax rate at 10 percent. (Session Laws 1969, ch. 872.)



### Escheats

Since 1789, property escheating to the State for want of lawful claimants has been earmarked for The University of North Carolina, where it goes into the principal of a scholarship fund. The Commission's amendment makes the benefits of escheats occurring after June 30, 1971 available to North Carolina students attending any public institution of higher education in the state. The principal of the existing escheats fund is left with The University. (Session Laws 1969, ch. 827.)

### Finance

The Local Government Commission's constitutional amendment revising the finance article of the Constitution, which the State Constitution Study Commission endorsed, makes several significant changes with respect to taxing and borrowing, especially at the local level. All will become effective July 1, 1973, if approved by the voters.

All forms of capitation or poll tax are prohibited.

The General Assembly is authorized to enact laws empowering counties, cities, and towns to establish special taxing districts less extensive in area than the entire unit in order to finance the provision within those districts of a higher level of governmental service than is available in the unit at large, either by supplementing existing services or providing services not otherwise available. It would be possible, for example, for a county governing body to establish a fire protection district less extensive than the entire county and levy taxes on the property within that district in order to finance the provision of fire protection, eliminating the present necessity of creating a new, independent governmental unit to accomplish the same result.



For a century, the Constitution has required that the levying of taxes and the borrowing of money by local governments be approved by vote of the people of the unit, unless the money is to be used for a "necessary expense." The court, not the General Assembly, is the final arbiter of what is a "necessary expense," and the State Supreme Court has taken a rather restrictive view of the embrace of that concept. The determination of what types of public expenditure should require voter approval and what types should be made by the governing board on its own authority is essentially a legislative and not a judicial matter. In this conviction, the amendment provides that the General Assembly, acting on a uniform, statewide basis, will make the final determination of whether voter approval must be had for the levy of property taxes or the borrowing of money to finance particular activities of local government.

To facilitate governmental and private cooperative endeavors, the state and local governmental units are authorized by the amendment to enter into contracts with and appropriate money to private entities "for the accomplishment of public purposes only."

The various forms of public financial obligations are more precisely defined than in the present Constitution, with the general effect of requiring voter approval only for the issuance of general obligation bonds and notes or for governmental guarantees of the debts of private persons or organizations. The General Assembly is directed to regulate by general law (permitting classified but not local acts) the contracting of debt by local governments.

The amendment retains the present limitation that the state and local governments may not, without voter approval, borrow more than the equivalent of two-thirds of the amount by which the unit's indebtedness was reduced during



the last fiscal period, except for purposes listed in the Constitution. This list was lengthened to include "emergencies immediately threatening public health or safety."

No change was made in the present provisions with respect to the classification and exemption of property for purposes of the property tax. The limitation of 20 cents on the \$100 valuation now imposed on the general county property tax was omitted. (Session Laws 1969, ch. 1200.)

#### Literacy Test Repeal

Representative Henry Frye of Guilford County sponsored the bill for an amendment repealing the state's 70-year-old literacy test for voters. The federal Voting Rights Act Amendments of 1970 prohibit the use of literacy tests by all States. The amendment would conform the Constitution to controlling federal law. (Session Laws 1969, ch. 1004.)

#### Legislative Convening

Senator Herman A. Moore of Mecklenburg County was the introducer of the bill to allow the convening of extra legislative sessions on the initiative of legislators. This procedure supplements the present authority of the Governor to call extra sessions with the advice of the Council of State. It provides that on written request of three-fifths of all the members of each house, the President of the Senate and the Speaker of the House of Representatives shall convene an extra session of the General Assembly. Thus the legislative branch would be able to convene, notwithstanding the contrary wishes of the Governor. (Session Laws 1969, ch. 1270.)



Unsuccessful Amendment Proposals

While the ballot this fall will contain an unusually large number of constitutional amendments, it should not be inferred that the General Assembly casually approved all amendments offered. In fact, it approved only one-quarter (seven out of twenty-eight) of the amendment proposals introduced in 1969. Those approved were in all cases carefully screened and in most cases amended before adoption.

Among the amendment proposals rejected by the General Assembly were amendments to give the Governor authority to veto legislation, to allow the people to elect the Governor and Lieutenant-Governor to two successive terms (now forbidden), and to shorten the list of elected state executives from ten to five. A defeated amendment affecting the courts would have required that all judges and solicitors be licensed lawyers and directed the General Assembly to provide for the mandatory retirement of judges for age and for the disciplining and removal of judicial officers who are unfit or dishonest. Another proposal would have allowed trial upon information in noncapital cases where the accused has counsel, and also would have allowed written waivers of jury trial in noncapital cases with the consent of counsel and the trial judge.

The remaining unsuccessful proposals would have reduced the residence time for voting in state and local elections to six months, given various property tax benefits to the elderly, extended voting rights to persons under 21, and made numerous other changes in the Constitution.



CONCLUSION

If all seven of the pending amendments are approved by the voters this fall, North Carolina will have a thoroughly renovated Constitution and as modern a Constitution as is currently obtainable. The Proposed Constitution will provide an orderly and relatively uncluttered basic charter that can be read and understood. Future amendments will be simpler to draw and explain, although the processes for their adoption will be the same as at present.

The progress of these amendments to this stage is creditable to many people: to Governor Moore, who initiated the revision effort; to the North Carolina Bar Association and the North Carolina State Bar, which responded to Governor Moore's challenge and sponsored the revision study; to the ten members of the Steering Committee and the twenty-five people who served on the State Constitution Study Commission; and to the legislators who guided the seven successful amendments through the legislative channels. Their task is done. Now the people of North Carolina have the final responsibility for determining the success or failure of this notable effort at constitutional revision.



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