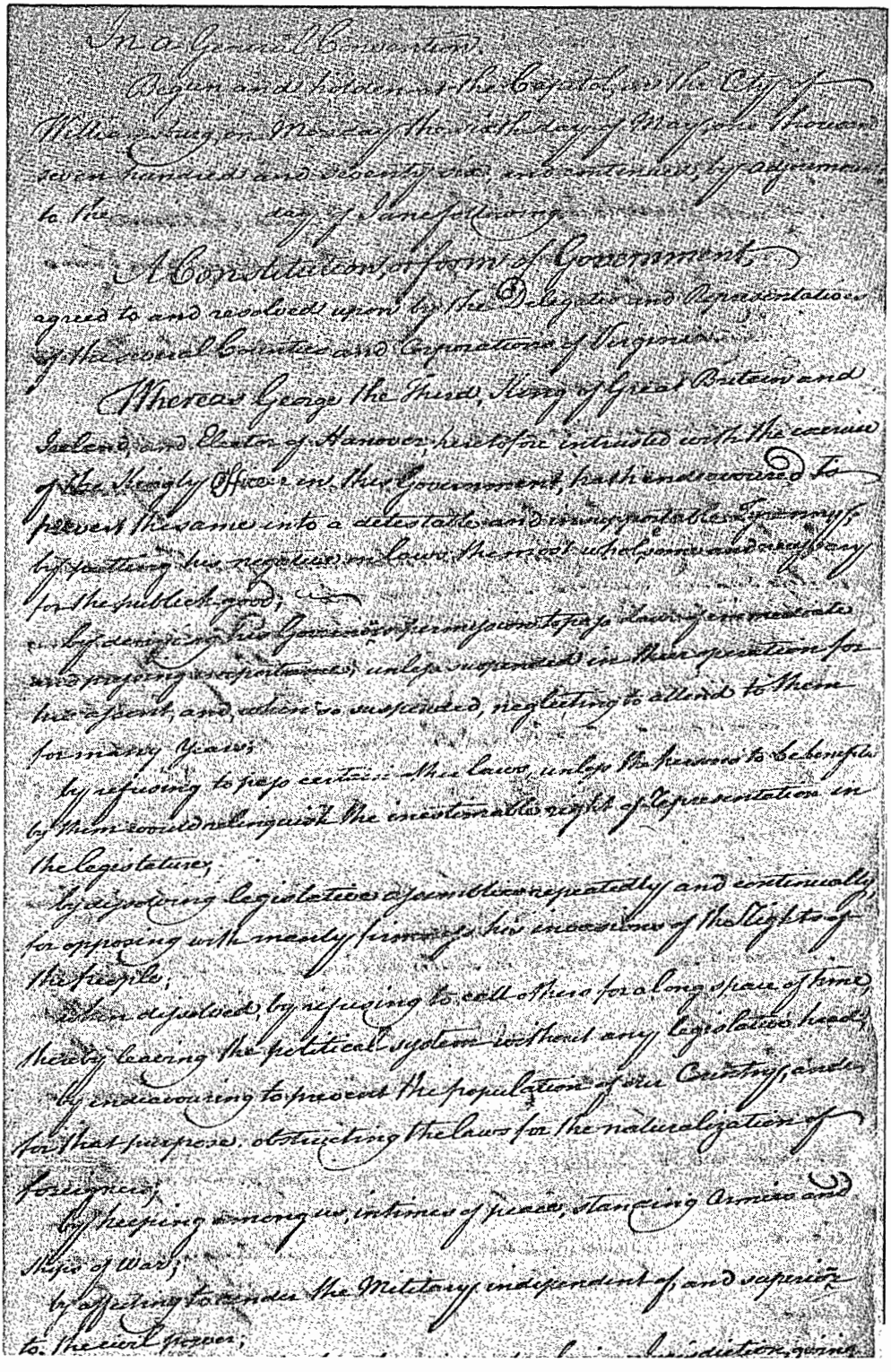
REPORT OF THE
COMMISSION ON CONSTITUTIONAL REVISION
to
HIS EXCELLENCY, MILLS E. GODWIN, JR.
GOVERNOR OF VIRGINIA
THE GENERAL ASSEMBLY OF VIRGINIA
and
THE PEOPLE OF VIRGINIA

HOUSE DOCUMENT NO. 1

January 1, 1969

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1969

THE CONSTITUTION
OF
VIRGINIA



In a General Convention,
Begun and holden at the Capitol, in the City of
Williamsburg, on Monday the seventh day of May, one thousand
seven hundred and seventy six, and continued by adjournments
to the fifth day of June following.

A Constitution, or form of Government,
agreed to and resolved upon by the Delegates and Representatives
of the several Counties and Corporations of Virginia.

Whereas George the Third, King of Great Britain and
Ireland, and Elector of Hanover, heretofore intrusted with the exercise
of the kingly Office in this Government, hath endeavored to
pervert the same into a detestable and insupportable Tyranny,
by putting his negative on Laws the most wholesome and necessary
for the publick good;

by denying his Governors permission to pass Laws of immediate
and pressing importance, unless suspended in their operation for
a term of years, and, when so suspended, neglecting to attend to them
for many years;

by refusing to pass certain other Laws, unless the persons to be benefited
by them would relinquish the inestimable right of representation in
the Legislature;

by dissolving Legislative Assemblies repeatedly and continually
for opposing with manly firmness his invasions on the rights of
the people;

when dissolved, by refusing to call others for a long space of time,
thereby leaving the political system without any Legislative head;

by endeavouring to prevent the population of our Country, and
for that purpose obstructing the Laws for the naturalization of
Foreigners;

by keeping among us, in times of peace, standing Armies and
Ships of War;

by affecting to render the Military independent of, and superior
to the civil power;

by combining with others to subject us to a jurisdiction foreign

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THE CONSTITUTION
OF
VIRGINIA

Report of the
Commission on Constitutional Revision
to
His Excellency, Mills E. Godwin, Jr.
Governor of Virginia
The General Assembly of Virginia
and
the People of Virginia

January 1, 1969

Printed by
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*Deceased, November 12, 1968.

ACKNOWLEDGMENTS

The Commission on Constitutional Revision has been greatly assisted in its work by a number of people in various parts of Virginia. The Commission wishes to thank those who have played their part in the Commission's study of the Virginia Constitution. Although it is not possible to mention every contribution, the Commission would like to thank in particular the following:

Staff support in Charlottesville: Mrs. Eleanor H. Kett, who as Secretary to the Commission was responsible for administrative and secretarial support in Charlottesville, and Mrs. Donna L. Payne and Mrs. Beverley Martin, for secretarial and other assistance.

Staff support in Richmond: G. M. Lapsley, Director, Division of Statutory Research and Drafting, and his staff, who provided advice and support to the Commission.

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January 1, 1969

The Honorable Mills E. Godwin, Jr.
Governor of Virginia
State Capitol
Richmond, Virginia

Dear Governor Godwin:

It is my privilege to transmit herewith the Report of the Commission on Constitutional Revision. Pursuant to appointment by you, and in accordance with a resolution of the General Assembly, the Commission has engaged in a study of the Constitution of Virginia with a view to recommendations for its revision. There has been no general revision since 1928.

The Commission has concluded that, while the Constitution has served Virginia well, a number of revisions are desirable. In framing recommendations, the Commission has sought to preserve the best of Virginia's rich constitutional heritage while at the same time responding to the needs of the present and the probable challenges of the future.

In the course of our study we solicited and received the counsel of many able citizens of the Commonwealth and are grateful for their assistance.

Each recommendation in the report reflects the view of a majority of the Commission's membership. Indeed, in most instances the Commission was unanimous in its conclusions. This does not mean that every member assented to and voted for every recommendation. There were dissents, and each member stated and debated his views fully and forcefully. While no one was asked or expected to compromise his convictions, every reasonable effort was made to reach an agreement. The commentary which accompanies the text is full and comprehensive and, in the main, reflects the arguments advanced at the time each revision was considered.

The Commission submits its recommendations confident that through a process of thoughtful constitutional revision the Commonwealth will continue on a course that is sound and progressive.

Respectfully,

ALBERTIS S. HARRISON, JR
Chairman

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Introduction

A. Creation, organization, and procedures of the Commission on Constitutional Revision.

In his address welcoming the General Assembly of Virginia into session in January 1968, Governor Mills E. Godwin, Jr., called the Assembly's attention to the effects of the "inexorable passage of time" on the Virginia Constitution. Observing that it had been forty years since any thorough study of the Constitution had been undertaken, the Governor called upon the Assembly to authorize him to create a Commission on Constitutional Revision.

Governor Godwin conceived of a small commission able to command "the respect and thoughtful consideration of the General Assembly and the people of Virginia." As to the subjects into which the Commission might inquire, the Governor urged, "Moreover, it should not be restricted in any way as to the scope of its study." Its members, he said, should have free rein in approaching such areas as bond financing, voting requirements, legislative sessions, and local government.[1]

Promptly responding to the Governor's message, the General Assembly passed a joint resolution creating the Commission on Constitutional Revision. The resolution, citing the need for "extensive advance study" as a prerequisite to any "general revision of the organic law" of the Commonwealth, authorized the Governor to create a Commission of eleven members. The Commission was charged to "study the Constitution of Virginia and propose such revision of the same as in its opinion will be for the best interests of the Commonwealth" and to make a final report to the Governor and the General Assembly.[2]

In January 1968 Governor Godwin named the membership of the Commission [3] and designated as its Chairman Albertis S. Harrison, Jr., a Justice of the Supreme Court of Appeals of Virginia and a former Gov-

1. Address of Mills E. Godwin, Jr., Governor, to the General Assembly, Wednesday, January 10, 1968 (S.D. No. 1), pp. 10-11.
2. H. J. Res. 3, Va. Acts of Assembly (1968), p. 1568.
3. The membership of the Commission is given on page i of this Report.

ernor of the Commonwealth. After an organizational meeting, the Commission chose as its Executive Director A. E. Dick Howard, Professor of Law and Associate Dean of the University of Virginia School of Law.

Aware of the depth of study and investigation which must precede any recommendations, the Commission divided itself into five subcommittees. The subcommittees were conceived along functional or topical lines, corresponding roughly, but not strictly, to the organization of the Virginia Constitution. Thus, to take one example, the Local Government subcommittee was responsible for studying, not only Articles VII and VIII (the local government articles), but also any sections in other articles of the Constitution bearing on local government.

The following subcommittees were created:

(1) Bill of Rights, suffrage, apportionment, and education. These parts of the Constitution were assigned to the same subcommittee in view of the fact that these are areas having particular bearing on individual rights. Moreover, it was thought that one subcommittee ought to study these areas in which the impact of federal law, statutory and judicial, is especially evident.

(2) Executive Department and state administration. This subcommittee was to study two main areas: those parts of the Constitution dealing with the office of Governor itself and those relating to state departments and administration generally, including the State Corporation Commission.

(3) Legislative and Judicial Departments. This subcommittee had a twin responsibility: studying the Legislative article, including the question of annual sessions, and the Judicial article.

(4) Local government. This subcommittee was charged with studying the forms, functions, and powers of counties, cities, towns, and other units of government in Virginia, including review of the recommendations of the Metropolitan Areas Study Commission.

(5) Taxation and finance. Here two related areas were studied together: taxation, including assessments and exemptions, and finance, especially the question of allowing the Commonwealth to incur bonded indebtedness.

Each subcommittee was charged to study the articles and sections of the Constitution assigned to that subcommittee, to consider proposals for amendment emanating from all sources (including the General Assembly, members of the public, or the Commission itself), to consult with such people outside the Commission as the subcommittee might deem advisable, to reduce the subcommittee's thinking on constitutional revision to specific proposals (both the text of such revisions and reasons for proposing the revisions), and to report back to the full Commission

To assist each subcommittee, the Commission engaged five Virginia lawyers, one for each subcommittee.[4] Each counsel was attached to a specific subcommittee and served as that subcommittee's "reporter," in the fashion that a reporter serves a study committee of the American Law Institute or other such group. Counsel's job was to undertake or supervise research into problems being studied by his subcommittee and otherwise to assist the subcommittee in its work.

One of the first orders of business was for the Commission to seek the submission by the citizens of Virginia of their views on constitutional revision. To that end, the Commission, in April 1968, issued a letter, signed by the Chairman and distributed widely to individuals and organizations throughout the Commonwealth, inviting the submission of opinions or proposals touching on any aspect of the Constitution. This letter, along with a news release, was also sent to every newspaper, radio station, and television station in Virginia of which the Commission had any record, as well as some news media in adjoining areas, such as the District of Columbia.

As public views were submitted to the Commission, the Executive Director had copies of every statement received sent to each member of the Commission. Between April and November, about two hundred statements, ranging from short informal letters to compendious formal studies, were submitted to the Commission; all were distributed to each Commissioner. Moreover, as public views were received, copies went to legal counsel working with the several subcommittees, counsel's attention being invited to proposals or views especially touching the areas assigned to their respective subcommittees.[5]

In addition to soliciting written statements from the people of Virginia, the Commission scheduled a series of five hearings which it conducted at places about the Commonwealth. Representative speakers appeared at these hearings, which were held as follows:

Norfolk (June 17 in the Student Center at Old Dominion College).

Roanoke (June 21 at the Federal Courthouse).

Abingdon (June 22 at the Federal Courthouse).

Richmond (July 17 in the Auditorium of the Ninth Street Office Building).

Alexandria (July 18 in the Council Chamber of City Hall).

4. The Commission also engaged a general counsel not assigned to any particular subcommittee. Names of the Commission's counsel appear on page ii of this Report.

5. A list of the statements received from members of the public appears on pages 485-08 of this Report.

After each public hearing, the Executive Director compiled a summary of the views expressed at that hearing and sent a copy of the summary to each member of the Commission and to each counsel.

Further to supplement views received from the public at large, the Commission authorized its subcommittees to consult with advisors, either on an informal basis or as formal advisory panels. Where formal lists of advisors were named, this was usually with the purpose of having those advisors meet as a group with a particular subcommittee, either to be sounded for their ideas, to review tentative proposals framed by the subcommittee, or both. How advisors were chosen depended on the nature of the subject matter being studied by a particular subcommittee; some advisors were selected by virtue of the position they held (and thus their experience with given problems), others were selected simply for their own insights and public awareness. Likewise, to what extent advisors were used, and in what manner, depended largely on the areas being studied by a particular subcommittee.[6]

During the spring and summer of 1968 the subcommittees met more frequently than did the full Commission. Each subcommittee, having been given a general area or areas of responsibility, mapped out the specific problems to be explored by drawing on a number of sources—resolutions which had been pending in the General Assembly at the time the Commission was created, proposals made at public hearings or in written statements submitted to the Commission, items mentioned in the Governor's January message to the Assembly, questions raised by members of the Commission or by its staff, suggestions made by advisors, and others. Then, with the assistance of counsel, each subcommittee explored specific problems and reported its recommendations to the full Commission.

To support the work of the Commission and the subcommittees, a number of individuals were engaged to work during the summer doing research and writing memoranda. During the summer a total of about 150 research memoranda, ranging from a few pages to over a hundred pages, were produced.[7]

In studying any given problem a subcommittee, and the counsel and research associates working with that subcommittee, were asked to give thought to the language of the present constitutional provisions being studied, related provisions of the Constitution, historical factors (e.g., social, political, legal, and other factors which gave rise to the provisions in question), relevant judicial decisions, relevant federal law, comparative data (what other states do with like problems), general commentary (what authorities and commentators say about the problem),

6. Lists of advisors are given on pages iii-iv of this Report.
7. A list of the research associates appears on page 525 of this Report. A list of the research memoranda produced for the Commission appears on pages 527-32.

positions taken by interested groups or individuals in the Commonwealth, and statutes which might be affected by a constitutional change. Usually, a subcommittee returned to the full Commission with a specific proposal, supported by reasons; typically the subcommittee would also note alternatives which the Commission might consider if it chose.

By the late summer and early fall, the subcommittees had completed most of their work. As each subcommittee produced its recommendations, these were prepared, reproduced, and mailed to the members of the Commission. The full Commission met frequently to deliberate over the subcommittees' reports, and at each round of meetings the work of every subcommittee was discussed.

By late fall a tentative draft of how the Constitution would look, if revised along the lines proposed by the Commission, emerged. In addition to approving the text of the proposed revisions, the Commission deliberated in detail and approved the highly important commentary explaining to the Governor, the General Assembly, and the people why the Commission is making the proposals and what the effect of those proposals, if adopted, would be.

B. The backdrop to the current study of the Virginia Constitution.

No state is heir to a greater tradition of constitutionalism than is Virginia. The charter granted to the Virginia Company of London in 1606 embodied many of the most ancient and basic principles of the English Constitution—including a guarantee to the colonists of the "liberties, franchises, and immunities" of Englishmen—and served as a model for charters granted to other, later colonies on the American continent.[8] The New World's first legislative assembly met at Jamestown in 1619. When in 1652 the colony, loyal to the Crown, reluctantly submitted to the Cromwellian Commonwealth, the articles of submission expressly guaranteed to Virginians "such freedoms and privileges as belong to the free borne people of England."[9]

Similarly, in the eighteenth century, Virginians became well versed in constitutional arguments. In 1765, on the passage by the British Parliament of the Stamp Act, the Virginia Assembly gave the lead to the other colonies by adopting resolutions proclaiming the colony's right to internal self-government and taxation only by consent.[10] In 1774, after Parliament had passed legislation to enforce the tea duty by coercing the Port of Boston—the colonists called them the "Coercive" or "Intol-

8. For the text of the charter of 1606, see *Three Charters of the Virginia Company of London*, ed. Samuel M. Bemiss (Williamsburg, 1957).

9. *Hening's Statutes at Large*, I, 363.

10. *Journals of the Burgesses of Virginia, 1761-1765*, ed. John Pendleton Kennedy (Richmond, 1907), p. 360.

erable" Acts—Virginia again set the pattern for the other colonies when members of the House of Burgesses, meeting after Governor Dunmore had dissolved the Assembly, proclaimed the constitutional rights of the colonists against the government in Britain.[11] Meetings in the counties resulted in similar resolutions.[12] It is significant that, up to the eve of actual revolution, the resolutions passed in Virginia, as in most of the other colonies, were primarily constitutional arguments, rather than revolutionary tracts.

Thus when Virginians came to draft the first constitution for Virginia as an independent state, they worked against the backdrop of nearly two centuries of constitutional development. The ablest talent of the colony, save for those leaders sitting with the Congress in Philadelphia, made up the Convention in Williamsburg which produced the Constitution of 1776. The Convention had before it several plans for a constitution, including plans drafted respectively by John Adams, Thomas Jefferson, Carter Braxton, and George Mason. The constitution actually adopted owed more to Mason than to any other man. A brief document, the Constitution of 1776 contained a declaration of rights which, with few changes, survives in the present Constitution of Virginia, and a frame of government which has undergone considerable change in the nearly two hundred years since 1776.

The story of the Virginia Constitution since 1776 marks the path in which the Commission on Constitutional Revision has sought to tread. That story is one of evolution. Through the years one can trace an evolutionary process in which many basic outlines—for example, the establishment of the three major branches of government and the listing, in the Bill of Rights, of the fundamental liberties of the people—persist and, at the same time, much of the Constitution evolves in response to changing times and changing problems. To take specific examples, provisions on taxation and finance did not appear in the Constitution until 1851, there was no Education article until 1870, and the Corporations article only appeared in 1902. At the same time, while new problems were giving rise to new provisions, other provisions were deleted as they became unresponsive or unnecessary; for example, the slavery article last appeared in the Constitution of 1851.[13]

From the adoption of the Constitution of 1776 to the latest general revision, that of 1928, there have been five general revisions [14] of the Vir-

11. *American Archives*, 4th ser., ed. Peter Force, I (Washington, D.C., 1837), 350-51.

12. Perhaps the most explicit discussion of constitutional rights contained in a local resolution is that found in the resolution of the freeholders and inhabitants of Fairfax County. See *ibid.*, I, 597.

13. For a bibliography on the history of the Virginia Constitution, see pp. 533-42 of this Report.

14. This does not count the period 1861-65, in which constitutional developments

ginia Constitution, either in the form of a new document produced by a constitutional convention (those of 1829-30, 1850-51, 1867-68, and 1901-02) or a revision proposed by a study commission, passed by the General Assembly, and approved by the people (as was the case in 1928). Thus from 1776 to 1928 there was, on the average, a constitutional revision every thirty years. Since it has been forty years since the revision of 1928, few would argue that Virginia is being precipitate in currently studying the Constitution for possible revisions.

Not only have forty years passed since the previous revision, they have been forty years unlike any such period in the Commonwealth's history. Since 1928 the Commonwealth's population has doubled,[15] and in that same period urbanization in Virginia has proceeded to the point where 56% of Virginia's population now live in the Commonwealth's six "metropolitan" areas; 85% of the State's entire growth between 1950 and 1960 occurred in these six areas.[16] Industrial growth in Virginia has seen a rise of 146% in non-agricultural employment in the last thirty years.[17] Since 1929 the number of those employed in manufacturing has risen from 132,000 [18] to 336,000.[19] This industrialization combined with the population shift has caused the percentage of the labor force in agricultural employment to drop from 32% in 1930 to 5% in 1968.[20]

Technological changes since 1928 have also had an enormous impact on Virginia. Innovations in transportation and communication, for example, have reshaped the face of Virginia, tying the various parts of the

had an uncertain legal effect. The Convention of 1861, known as the "Secession Convention," passed the Ordinance of Secession and proposed amendments to the Constitution, but the proposed amendments were rejected by the voters by a narrow margin. In 1864 a constitutional convention was held in Alexandria to draft a constitution for the "restored government" of Virginia—those parts of the Commonwealth occupied by federal troops. The draft was ratified by five hundred votes for ratification and no recorded votes against. Although the Constitution of 1864 was in force until 1868, it had little impact on Virginia because federal troops had a veto power over all state action. William J. Van Schreeven, *The Conventions and Constitutions of Virginia, 1776-1966* (Richmond, 1967), pp. 8-10.

15. The population of Virginia in 1930 was 2,421,851. *The World Almanac* (New York, 1931), p. 191. In 1967 the population had grown to 4,602,091. Report of Bureau of Population and Economic Research, *Estimates of Population of Virginia Counties and Cities, July 1, 1967* (Charlottesville, Va., 1967), p. 7.

16. *Metropolitan Areas Study Commission Report* (November 1967), p. 9. The six metropolitan areas are Northern Virginia, Richmond, Roanoke, Lynchburg, and the two sides of the Hampton Roads.

17. United States Department of Labor, Bureau of Labor Statistics, Bulletin No. 1370-5, *Employment and Earnings Statistics for States and Areas 1939-67* (Washington, D.C., 1968), p. IX.

18. United States Bureau of the Census, *Census of Manufacturers, Area Statistics* (Washington, D.C., 1963), III, p. 47-5.

19. United States Bureau of the Census, *Annual Survey of Manufacturers*, M66 (A.S.)-7.0 (Washington, D.C., 1966), p. 2.

20. These figures were compiled by the research department of the Division of Industrial Development from Bureau of the Census reports.

Commonwealth together in a manner unimagined by most people in 1928. State highway mileage, which totaled 7,000 miles in 1928,[21] is today 50,000 miles,[22] much of that space-shrinking interstate highways.

The pace of demographic, economic, and technological change has been matched by political and legal developments since 1928. Today's electorate is much enlarged as a result of a number of events, such as the abolition of the poll tax as a prerequisite to voting. Shifts in population have been accompanied by shifts in representation, as the "one man, one vote" principle has been applied. Some changes have come as a result of federal statutes and court decisions, others have come from within the Commonwealth. All have had their effect on the way in which the Commonwealth is governed and therefore on the Constitution of Virginia.

The years since 1928 have also seen considerable developments in the operations of the state government itself. New functions have been undertaken by the Commonwealth, evidenced, for example, by the creation of the Virginia Employment Commission, the Virginia Airports Authority, and the Air Pollution Control Board. Developments in government at other levels have seen the appearance of new forms of local government, such as the county manager form of government (first adopted in Arlington in 1932), and in new kinds of authorities and other devices to handle such problems as encouraging new businesses to settle in Virginia and the financing of turnpikes, bridges, and tunnels.

Since 1928, forty-three states have had either constitutional conventions or revision commissions for the purpose of drafting new constitutions or revising existing ones.[23] The "inexorable passage of time," coupled with events in Virginia and in other states, seems to underscore the wisdom of the Governor's call for, and the Assembly's provision for, a thorough study of the Virginia Constitution to see what revisions would seem to be in the interests of the Commonwealth and her people.

C. General principles and objectives which have guided the Commission in its work.

In 1816 Thomas Jefferson wrote to a friend on the subject of revising the Virginia Constitution: [24]

> I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfec-

21. State Highway Commission, *Mileage Tables, State Highway Systems* (Richmond, 1967), p. 52.
22. *Ibid.*, p. 53.
23. Council of State Governments, *The Book of the States* (Chicago, 1937-68), Vols. I-XVII.
24. *Writings of Thomas Jefferson*, ed. Paul L. Ford (New York, 1892), X, 43.

> tions had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times.

This might well be taken as the text for the Commission's proposals, for it emphasizes the balance—essential in orderly constitutional development—between tradition and change. To preserve the best of Virginia's constitutional heritage while responding to new problems is the twin thrust of Jefferson's letter of 1816, and it is the twin objective of the Commission's recommendations. The British statesman Macaulay once said, "Reform, that you may preserve." [25] It is in this spirit—of proposing constitutional revisions, the better to preserve the best traditions of Virginia's constitutional history—that the Commission has come to the following views.

(1) The Commission has proceeded on the belief that the people of Virginia do not want sweeping, fundamental changes in the basic outline of government as created by the Virginia Constitution. In particular, the Commission believes that Virginians would oppose changes altering checks and balances among the three branches of government or substantially altering the Bill of Rights. But the Commission believes that the people would appreciate and welcome revisions which, while retaining the fundamental values and heritage of the Virginia Constitution, would strengthen that document by taking account of current problems and expectations.

(2) In keeping with the belief above, the Commission has neither created a new constitution unrelated to the old nor has it merely kept the old with a few minor changes. It is proposing a number of significant revisions designed to make the present Constitution more responsive to contemporary pressures and probable future needs.[26]

(3) A constitution embodies fundamental law. It follows that a constitution is not a code of laws and that unnecessary detail, not touching on fundamental matters, ought to be left to the statute books.[27] Above all,

25. *Hansard's Parliamentary Debates*, 3rd ser., II (London, 1831), p. 1203. The statement was made on March 2, 1831, in the debate on the First Reform Bill.

26. See Chapter III, *infra*.

27. A citizen of Richmond, writing the Commission soon after its creation, opened his letter with the following plea: "I am simply writing to urge upon your Commission to please not give us another Code of laws as a constitution." Va. Commission on Constitutional Revision, Public Views Document 3. [Hereinafter in this Report, citations to statements or letters received by the Commission will be in the form: Public Views Document —.]

the Constitution should protect basic individual rights, create the frame of government, allocate powers and duties among the branches of government, and put essential limits on the exercise of such power. Once the fundamentals have been provided for, most other matters, especially those of detail, can safely be left to the political and legislative process.[28]

(4) In saying that a constitution should not be a code of laws, one is also saying that a constitution should be brief and to the point. In 1776 Virginia's Constitution was but 1500 words; today it is almost 35,000 words. Most of the verbiage crept in during the latter part of the nineteenth century, when detail which should have been left to general law became imbedded in the Constitution.[29] The revised Constitution proposed by the Commission numbers about 18,000 words. The Commission believes that Virginia's Constitution would be the better for being more concise. Nothing of substance would be lost in the process; much would be gained by way of clarity and intelligibility.

(5) The Constitution should be written in simple, intelligible language, so that a layman can read the document and have a basic grasp of the character of the government it creates. The fundamental law of Virginia should not be a mystery to those living under it simply because they are not lawyers. At the same time, the Commission is not proposing changes for the sake of style in instances where the present language, by usage or judicial decision, has come to have special meaning. This approach recalls that of Jefferson, who, sending his draft of a bill on criminal law to George Wythe, observed,

> In its style I have aimed at accuracy, brevity and simplicity, preserving however the very words of the established law, whereever their meaning had been sanctioned by the judicial decisions, or rendered technical by usage. The same matter if couched in the modern statutory language, with all its tautologies, redundancies and circumlocutions would have spread itself over many pages, and been unintelligible to those whom it most concerns.[30]

28. There is general agreement among students of state constitutions that constitutions should not become codes of law. See, e.g., John P. Wheeler, Jr., ed., *Salient Issues of Constitutional Revision* (New York, 1961), pp. xi-xiv; Paul G. Kauper, *The State Constitution: Its Nature and Purpose* (Lansing, Mich., 1961), pp. 12-15; W. Brooke Graves, ed., *Major Problems in State Constitutional Revision* (Chicago, 1960), pp 137-46.

29. Many states operate effectively with constitutions less than half the length of Virginia's existing document. Constitutions shorter than 17,500 words are those of Alaska (14,400), Arizona (16,000), Connecticut (7,959), Hawaii (14,260), Indiana (11,120), Iowa (11,200), Kansas (14,500), Maine (15,000), Nevada (17,000), New Hampshire (8,800), New Jersey (16,040), North Carolina (17,000), Tennessee (15,150), Vermont (7,600), Wisconsin (11,000). At the other extreme is the Constitution of Louisiana (253,830). Council of State Governments, *Book of the States, 1968-69* (Chicago, 1968), p. 15. The Federal Constitution contains about 6,000 words.

30. *Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton, N.J., 1950), II, 230.

(6) The Constitution should be characterized by coherence and consistency. Therefore the Commission, in studying one part of the Constitution and recommending revisions, has reflected on the relation of that part of the Constitution to other parts. Patchwork or piecemeal revision could easily, in the Commission's judgment, be worse than no revision at all.

(7) A constitution should be, in the judgment of the Commission, more than simply a statement of law. Our Constitution, from the outset in 1776, has also contained statements of values which, technically speaking, are not legal rules. The Commission disagrees with those observers who would strip a constitution of all language which is not judicially enforceable.[31] Since it believes that the Constitution should reflect, not only the present state of things, but also Virginia's aspirations, the Commission would not tamper with the classic hortatory language of such parts of the Constitution as sections 1-4 of the Bill of Rights, even though some of that language might not be judicially enforceable.[32]

(8) The Commission has proceeded on the assumption that the people of Virginia want to shape their own destiny, that they do not want to abdicate decisions to others, such as to the Federal Government, and that therefore they want a constitution which makes possible a healthy, viable, responsible state government.

(9) In view of the pace of modern technological and other developments, and the impossibility of predicting what changes in society and government may take place in the coming decades, the Constitution should not attempt to envision every such development. Instead, the Commission believes that, to avoid rigidity and early obsolescence, the Constitution should, while protecting the rights of the people, create a government which can deal with unforeseen problems of the future as they arise.

(10) The Commission has kept in mind that it is recommending revisions for a constitution for the particular circumstances of Virginia. As Delegate Thomas R. Joynes said at the Constitutional Convention of 1829-30, "A constitution, to be of any value, must be adapted to the particular circumstances of the country for which it is intended. That Government which would be best for one country might be worst for another." [33] So that the Constitution might reflect the values of Virginia and her people, the Commission has taken care, through public hearings and the solicita-

31. The Commission thus differs with recommendations such as that of the Maryland Constitutional Convention Commission, that "unenforceable statements of principle" be omitted from a state constitution. See *Maryland Constitutional Convention Commission Report* (Baltimore, 1967), p. 98.

32. For the text of sections 1-4, see pp. 29-30 *infra*.

33. *Proceedings and Debates of the Virginia State Convention of 1829-30* (Richmond, 1830), p. 206 [hereinafter cited as *1829-30 Convention Debates*].

tion of written statements, to gather views from the people of Virginia to assist the Commission in its work.

(11) The Commission has not tried, through its proposals, to create an "ideal" new constitution. It has simply tried to propose a good revision of an existing Constitution which has served Virginia well through the years. As Philip Barbour said at the 1829-30 Convention, "If I am right, we must discard mere theory, adopt nothing on the ground of mere speculation, but proceed to men and things as they are. In the language of Solon, we must establish not the best *possible*, but the best *practicable* Government." [34] In this spirit, the Commission, in weighing possible proposals, has sought to consider whether a proposal, whatever its theoretical merits, could not under any circumstances be expected to be adopted by the General Assembly and the people of Virginia. On the other hand, the Commission is not the place where the ultimate political judgments are to be made. The Commission has been charged with the duty of using its best judgment in making recommendations to the Governor and Assembly. Thus the Commission has by no means confined itself only to proposals which it thinks certain of adoption. The final word, after all, on what should be proposed to the electorate rests with the Governor and General Assembly, and the Commission sees its role as laying before the Governor, the Assembly, and the people the Commission's best thinking and advice.

In general, the Commission has sought to make its study and shape its recommendations faithful to the injunction first included in Virginia's Bill of Rights in 1776 and still to be found there: "That no free government, or the blessings of liberty can be preserved to any people. but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles." [35]

D. Summary of the Commission's principal proposals.

The proposals set forth in this report fall basically into two categories. Some are general, that is, they apply across the board to all parts of the Constitution. Others are specific, that is, they apply only to specific articles or sections of the Constitution.

General proposals

Proposals applying generally to the entire Constitution fall principally into the categories below. The purpose of the list which appears here is

34. *Ibid.*, p. 94. A onetime Speaker of the U.S. House of Representatives, Barbour succeeded James Monroe as president of the 1829-30 convention. Barbour later was appointed to the U.S. Supreme Court.

35. Va. Const. Art. I, § 15.

simply to sum up several general threads running through the Commission's proposals. Actual applications of these principles to specific articles or sections is noted in the commentary which accompanies the text of those articles or sections in the body of this report.

(1) *Deletion of obsolete sections.* The Commission proposes the deletion of a number of obsolete sections of the present Constitution. Some of these sections are obsolete because the conditions which gave rise to them no longer obtain. This is the case, for example, with those sections concerned with dueling. Other sections are obsolete because of federal law, such as federal court decisions regarding the poll tax or those regarding segregation in public schools.

(2) *Deletion of statutory detail.* The Commission proposes the deletion of detail which presently clutters much of the Constitution and which ought to be left to statute law. Such deletion implies no judgment whatever on the substantive merits of such provisions, rather a judgment that such provisions are a matter for general law, not for the Constitution. An example of such detail is the great welter of statutory matter found in the lengthy and cumbersome Corporations article of the present Constitution.

(3) *Clarifying changes in languages.* Frequently, linguistic changes or changes in punctuation are recommended in the interest of clarity. Typically such changes are proposed to remove ambiguities or otherwise to make clear the original meaning of a provision. In each case, the Commission points out whether or not a linguistic change is intended to effect a substantive change.

(4) *Conforming changes in language.* Several linguistic changes are proposed which conform related language found in different parts of the Constitution. Again, the object is clarity. The same word ought not to be used in different ways in various parts of the Constitution unless different meanings are in fact intended. For example, the Commission has sought consistency of usages in language referring to units of local government, to courts, and to the basis for computing extraordinary majorities in the General Assembly. Again, if no substantive change is meant to be effected by a linguistic change, the commentary so indicates. One such change in language clearly intending no substantive change is the proposal that throughout the Constitution the word "Commonwealth" be used instead of "State," since the present Constitution sometimes uses one word, sometimes the other, even though in Virginia the words are interchangeable.[36]

36. Virginia is, of course, (like Kentucky, Massachusetts, and Pennsylvania) officially a "Commonwealth." Hence it seems appropriate for the Commonwealth's fun-

(5) *Reorganization.* The Commission proposes, apart from substantive or other changes, reorganization of a number of sections and articles. Frequently, in the present Constitution, sections dealing with closely related subjects are widely separated; indeed, closely related sections are sometimes even found in different articles. For example. in the present Constitution free exercise of religion is guaranteed by section 16 of the Bill of Rights, while the prohibition against an establishment of religion is found in section 58, in the Legislative article. In this instance the Commission proposes that the relevant sentences of section 58 be brought together with their natural companions in section 16; so doing would make the document much more meaningful to the reader while effecting no substantive change whatever. In some instances the Commission has proposed, quite apart from substantive proposals, a general reorganization of an article in the interests of coherence and clarity—for example, in the Judicial article. In all proposed reorganizations, where no substantive change is intended, the commentary so indicates.

(6) *Numbering of articles and sections.* Articles in the proposed revised Constitution remain in the same order in which they appear in the present document. Two present articles—VII (Organization and Government of Counties) and VIII (Organization and Government of Cities and Towns) —are combined into a single Local Government article; several articles—X (Agriculture and Commerce), XI (Public Welfare and Penal Institutions), XIV (Miscellaneous Provisions), and XVI (Rules of Construction) are deleted; Article XVII (Voting Qualifications of Armed Forces) is deleted in part and the rest absorbed into the Franchise article; and a new article on Conservation is added. The numbering of the articles in the proposed revision reflects these changes.

Likewise, the sections are renumbered. At present the section numbers run continuously through the Constitution. This system has the disadvantages that the section number in no way indicates in what article the section is found and that when new sections are added by way of amendment awkward numbers, such as 86-a and 115-a, are assigned. In its proposals, therefore, the Commission has numbered sections within each article so that each article has a section 1. References to the revised Constitution would, as is traditional with most constitutions, follow the form, "Article—, section—."

(7) *Section titles.* Each section in the proposed revised Constitution, as is the case with nearly all the sections in the present Constitution, carries a short descriptive heading. Since some of the present section

damental document, its Constitution, to follow this ancient and dignified usage. The use of the word "Commonwealth" has a distinguished history, tracing at least to its use by such seventeenth-century philosophers as John Locke and Thomas Hobbes.

titles are nearly as long as the sections themselves, the Commission has in general sought to supply brief, but sufficient, titles which will be an aid to those who consult the Constitution. It is important to emphasize that the section titles do not have, and are not intended to have, any legal effect. The only operative language is that of the body of the Constitution. The section titles, like a table of contents or an index, are an aid to the reader, nothing more, and can in no way add to, subtract from, or modify the purpose and effect of the operative language in the text of the Constitution.

Specific proposals

The body of the report contains the Commission's proposals for specific revisions in each article of the Constitution. In some articles, notably the Bill of Rights, very few changes are proposed. In other articles, e.g., Local Government, the revisions proposed are more comprehensive. In every case, the commentary introducing each article and the commentary accompanying each section make clear what revision is proposed, why it is being put forth, and what effect it is meant to have. After the text of the revised Constitution and the commentary thereon, there is a table of the sections of the present Constitution and a statement as to how, if at all, each section is affected by the proposed revisions.

BILL OF RIGHTS

(1) The Commission proposes taking the provisions of present section 58, now found in the Legislative article, and moving them, unchanged, to the Bill of Rights. Thus basic guarantees relating to religious freedom, speech, press, and other fundamental rights will be dignified, as they deserve, by becoming a part of the Bill of Rights. No change in substance is effected by the relocation.

(2) Certain rights which by judicial decisions have been held implicit in the present Bill of Rights, e.g., the right to a speedy trial and the right of peaceable assembly, are made explicit.

(3) Provisions are proposed dealing with education as a fundamental value, the duty of respect for law, and governmental discrimination on the basis of political or religious conviction, race, color, or national origin.

FRANCHISE AND OFFICERS

(1) The Commission's proposals reduce the period of residence in the Commonwealth required as a prerequisite to voting from one year to six months, and eliminate the period of six months' residence required for voting in local elections. The thirty-day requirement applying to precincts

is retained. Other existing provisions as to qualifications for voting, including age, are unchanged.

(2) The present requirement of annual registration, never in fact implemented, is replaced in the proposals by a provision for permanent registration, coupled with periodic purges from the voting lists of those who have not voted for four years. A savings clause makes it unnecessary for those already registered to re-register after the effective date of the revisions.

(3) The General Assembly is authorized, but not required, to provide as a prerequisite to registering to vote a fair, reasonable, and nondiscriminatory test of the ability to read and write. Any legislation would, of course, have to be compatible with applicable federal laws on voting.

(4) Standards for apportionment applicable to General Assembly and congressional seats alike are stated in terms drawn from the sections of the present Constitution applying to those respective subjects.

(5) The Commission proposes that the method of selecting electoral boards be left to general law. The present Constitution requires that electoral boards be appointed by circuit or corporation judges.

(6) Obsolete or unnecessary parts of the present Franchise article, for example, those relating to the poll tax, are deleted.

DIVISION OF POWERS

The present statement of the separation of powers is retained but modified by language recognizing the existence of regulatory agencies.

LEGISLATURE

(1) The Commission proposes that regular sessions of the General Assembly continue to be biennial but proposes that, in recognition of the Assembly's increasing workload and responsibilities, the length of regular sessions be extended from sixty to ninety days.

(2) Minor changes are proposed in the sections dealing with legislative procedures.

(3) It is proposed that the Constitution expressly permit the General Assembly to conform Virginia's income, death, and gift taxes (but not their rates) to federal tax laws.

(4) The first day of the fourth month after the month of adjournment is proposed as the effective date of legislation, instead of the present ninety days.

(5) Obsolete sections, such as those relating to dueling, and unnecessary sections, such as that providing for an auditing committee (some-

thing the General Assembly can create without express constitutional sanction), are deleted. Sections dealing with liquor and lotteries are deleted as unnecessary, leaving regulation of these subjects to the General Assembly.

(6) The Commission proposes deletion of the provision banning the incorporation of churches, on the grounds that this ban discriminates against religious bodies and thus is probably unconstitutional under the First Amendment to the Federal Constitution.

(7) Several subjects are relocated. Provisions relating to apportionment are found in the proposed Franchise article. The guarantees of individual rights found in present section 58 are moved, without change, to the Bill of Rights. Matters relating to local government are dealt with in the proposed Local Government article.

EXECUTIVE

(1) To fill a gap in the present Constitution, the Commission proposes a provision for determining who should exercise the powers of the office of Governor, and under what circumstances, in the event of executive disability. The proposal closely parallels the Twenty-fifth Amendment to the United States Constitution, which deals with the like problem of disability of a president. The Commission's proposal also provides for the line of succession to the office of Governor.

(2) In the interests of efficient and responsible administration, the Commission proposes that the Governor be given the authority to initiate reorganization within the executive branch of government, subject to disapproval of a reorganization plan by the General Assembly. Another proposal would clarify the extent of the Governor's authority with respect to the appointment and removal of his top policy-making advisors.

(3) Detailed provisions which are more appropriate to statute law rather than to a constitution are deleted. Thus, sections which create certain executive offices or agencies, for example, the Bureau of Labor and Statistics, are deleted as unnecessary; the General Assembly has ample authority to create such offices and agencies without their being named in the Constitution. By far the majority of existing departments, agencies, and offices are created by statute. The same reasoning underlies the deletion of Articles X (Agriculture and Commerce) and XI (Public Welfare and Penal Institutions). Naming one department in the Constitution makes little sense when others are not named.

(4) Aside from any substantive changes, the provisions setting forth the various powers of the Governor have been reorganized for clarity. No

substantive change is effected by such reorganization unless the commentary so indicates.

(5) The Commission recommends retention of the present limitation prohibiting a Governor from succeeding himself.

JUDICIARY

(1) The Commission proposes a simple Judicial article, one which creates the essential features of the judicial system but which leaves the details of the system to general law. The Commission's proposal provides for the Supreme Court and for trial courts of general jurisdiction—at present these would include, for example, the circuit and corporation courts—and for such other courts as the General Assembly may create by law. Thus the question whether there should be intermediate appellate courts is left to be resolved by the General Assembly, rather than the answer being frozen into the Constitution.

(2) A correlary of having a simple Judicial article is that much of the labored and essentially statutory detail of the present article becomes unnecessary. The matters which are deleted—for example, the form of writs and indictments, management of the state law library, and the creation of such special courts as courts of land registration—can be handled by general law or by rules of court, as appropriate.

(3) Believing the existing procedures for the removal of judges—impeachment under section 54 or impeachment under section 104—to be unsuited for any but the most serious cases, the Commission proposes a new and alternative system for the retirement or removal of disabled or unfit judges. The proposal is designed to protect both the public's interest in the integrity and quality of the judicial system and the judge's right to have safeguards and due process in any system of discipline or removal.

(4) In the area of judicial administration, it is proposed that the Chief Justice be designated as the administrative head of the judicial system, and that the Constitution make explicit the power of the Supreme Court to make rules—a function the Court already exercises—and that this power be subject to the ultimate legislative authority of the General Assembly.

(5) A number of lesser changes are proposed: in the name of the highest court (to be called simply the "Supreme Court"), in the jurisdiction of the Supreme Court (chiefly the elimination of habeas corpus from the Court's original jurisdiction so that such cases will reach the Court by appeal), in the enumeration of the classes of cases in which the Supreme Court is required to write opinions (original cases are added to the mandatory list), in local supplements to judicial salaries and apportionment of judges' salaries between the Commonwealth and the localities (both

matters are left to the General Assembly), and in the enumeration of activities in which a judge may not engage (the additional prohibitions include political activities).

(6) The Commission recommends no change in the size of the Supreme Court. Nor does the Commission recommend any change in the method of selecting judges.

(7) Although the Commission is not proposing a constitutional ban on having judges appoint non-judicial officers, a practice permitted by the present Constitution, the Commission does go on record as believing the exercise of such a function by judges to be incompatible with the station of a judge and as recommending this view to the General Assembly.

LOCAL GOVERNMENT

(1) The Commission believes that, in recognition of the evolution of functions performed by many of Virginia's counties, the Constitution should treat counties and cities more alike than it does at present. Hence the Commission recommends a single, unified Local Government article instead of the present two articles, one for counties, one for cities.

(2) To avoid fragmentation of local government, the Commission recommends that 1,000 people be the minimum population for new towns and 25,000 be the minimum population for new cities. Localities which have already achieved town or city status would not have to satisfy the new population standards.

(3) Provisions are proposed to limit the extent to which the General Assembly should need to enact local acts relating to the government of localities.

(4) Cities would be allowed to adopt and amend their own charters without an act of the General Assembly, so long as an election is held in the locality.

(5) Counties of 25,000 or more population would be allowed to adopt and amend their own charters, just like cities. General laws would govern counties without charters.

(6) The Commission recommends that all cities and charter counties be allowed to exercise any power not denied them by the Constitution, their charters, or laws passed by the General Assembly.

(7) The Commission proposes that the present debt provisions for cities and towns be retained, without change in substance except that certain safeguards would be added, and that the power to borrow now given to cities be extended to counties.

(8) The proposals delineate the powers and functions of regional gov-

ernments and provide that the General Assembly shall create a Commission on Local Government.

(9) Unnecessary detail, more appropriate to the statute books, is removed from the Local Government article, for example, the lengthy and virtually obsolete provisions treating in great detail procedures of the bicameral form of city government.

EDUCATION

(1) The Commission proposes to strengthen the Commonwealth's commitment to public education by providing that there shall be a statewide system of free public schools of quality. This commitment is underscored by the language proposed to be added to the Bill of Rights recognizing the importance of education to the preservation of free government.

(2) School attendance would be mandatory, rather than left to the discretion of the General Assembly.

(3) The Commission recommends that the General Assembly be obliged to see that both the Commonwealth and the localities do their respective shares in supporting the schools. Responsibility would, in the first instance, rest with the localities.

(4) Authority to effect meaningful consolidation of school districts which are too small to support adequate schools is given in the proposed Education article to the State Board of Education.

(5) Otherwise no change is proposed in the basic powers and duties of the Board or in its size. Nor does the Commission make any recommendation for changing the manner of selection of the Superintendent of Public Instruction; if a different method is wanted, the General Assembly already has the authority to make a change.

(6) No change is proposed in the existing constitutional prohibition against state appropriations in aid of education in sectarian schools.

(7) A proposal is made to allow assistance to private higher education in two limited areas: loans to students, and assistance in borrowing for capital improvements.

CORPORATIONS

(1) The proposed Corporations article preserves the essential autonomy of the State Corporation Commission but does propose that its power to make rules be subject to the ultimate authority of the General Assembly, as is the case with rules in the court system, and that its independence in appointing and removing its employees without regard to requirements of law applicable to other agencies be limited to high-level policy-making

members of its staff. No changes are proposed in the basic structure of the SCC, including its membership, method of selection, and terms of office.

(2) The basic constitutional jurisdiction of the SCC—the chartering of corporations and the regulation of utilities—is preserved in the proposed article and, in the latter case, somewhat expanded.

(3) The Commission proposes that the Constitution provide for a right of appeal from all final actions of the SCC. This proposal would put into the Constitution a right which is now given by statute and which the Commission believes is so fundamental that it ought to be assured by the Constitution.

(4) The vast amount of statutory detail presently found in the Corporations article would, under the Commission's proposals, be deleted from the Constitution and left to general law.

(5) The proposed article carefully preserves the full extent of the Commonwealth's power to regulate domestic and foreign corporations.

TAXATION AND FINANCE

(1) The Commission proposes that a certain amount of general obligation debt be permissible. Under the Commission's proposals, such debt would be tied to general fund revenues rather than to the assessed value of realty, there would be a limit on the amount that could be authorized in any one biennium, there would be an overall limit on the cumulative amount which could be issued, a portion of the biennial limit could be authorized by a two-thirds vote of the General Assembly without popular referendum, and there would be strict repayment and sinking fund provisions.

(2) The Commission would allow the full faith and credit of the Commonwealth to be placed behind certain approved self-liquidating revenue projects, such as dormitories at the Commonwealth's colleges and universities.

(3) The Commission proposes that the General Assembly be authorized to establish an authority to guarantee loans to finance industrial development and expansion.

(4) The Commission recommends that the Constitution allow Virginia's income, gift, and death taxes (but not their rates) to conform to federal tax laws.

(5) The Commission proposes that the General Assembly be permitted to allow the assessment of agricultural, horticultural, forest, and open space lands on the basis of use, rather than fair market value, with the

object of preserving such lands in urbanizing areas where otherwise rising taxes would force their development for other purposes.

(6) Some changes are proposed in the provisions governing tax exemptions, the chief changes being to tighten up on the provisions allowing statutory additions to the list of exemptions and to authorize the General Assembly to allow localities to collect service charges from owners of tax-exempt property for such local services as refuse collection and police and fire protection.

(7) A number of sections are deleted, either on the ground that they are obsolete, e.g., the capitation tax provision, or are unnecessary detail more appropriate to statutory treatment, e.g., the several sections dealing with the taxation of railroad and canal companies.

MISCELLANEOUS

(1) The Commission proposes deletion of Article XIV on the grounds that its provisions having to do with homestead exemptions, stay laws, and children of slaves are more suitable for statute law. Terms of incumbents, the subject of present section 195-a, are covered in the Commission's proposals by the Schedule.

(2) Article XVI, Rules of Construction, is deleted as unnecessary. Most state constitutions have no such provisions, and efforts to enumerate rules of construction can create more problems than they solve.

(3) The deletion of Article X (Agriculture and Commerce) and Article XI (Public Welfare and Penal Institutions) is referred to in the commentary on the Executive article, and the absorption of Article XVII (Voting Qualifications of Armed Forces) is discussed in the commentary on the Franchise article.

CONSERVATION

A new article is proposed in which the policy of the Commonwealth regarding conservation and development of its natural resources is stated and which removes possible legal impediments to the Commonwealth's effective cooperation with other states or the Federal Government in pursuance of conservation objectives.

FUTURE CHANGES

(1) The Commission proposes that the procedures for calling a constitutional convention be modified in several respects, the chief change being to add a requirement, lacking in the present Constitution, that proposals for constitutional changes made by a convention must be submitted to a vote of the people.

(2) No change is proposed in the amending process.

SCHEDULE

(1) The existing Schedule, which served its purpose in implementing the transition at the time of the adoption of the 1902 Constitution, is deleted. In its place the Commission proposes a schedule to serve a like function with respect to the presently proposed revisions of the Constitution. In particular, the Schedule specifies the effective date of the revisions; makes it clear that the revisions do not disturb terms of incumbent officers, dates of elections, the laws of the Commonwealth, or any other matter unless a contrary intention plainly appears in the Constitution; and otherwise serves to implement the transition. As its name suggests, the Schedule is a transitional vehicle and does not itself add substantive provisions to the Constitution.

E. Placing the proposed revision on the ballot.

Once the General Assembly has acted on the Commission's proposals, how the revisions agreed upon by the General Assembly go on the ballot is a matter of utmost importance. There are two essential questions. The first is whether the text of proposed amendments must go on the ballot. The second is whether amendments should be listed individually, whether they should be put on the ballot as a single comprehensive question, or whether they should be grouped into packages of related items.

The first question can be answered simply. A survey by the Commission of the practice in Virginia makes it clear that the text of a constitutional amendment is never printed in full on the ballot. Instead a short explanation of the amendment is given.[37] The merit of this approach is obvious. Voters, however sophisticated, would only be confused by having to read, at the polling place, the complete text of constitutional amendments. The intelligent approach, and the one always adopted in Virginia, is to sum up

37. This conclusion is drawn from a survey of the form of the ballot for all constitutional amendments submitted to the voters since 1902. These were as follows:

Year	*Sections affected*
1910	46, 50, 110, 119, 120.
1912	117, 119, 120.
1920	32, 117, 133, 136, 138, 184.
1927	22, 170, 186.
1928	General revision.
1946	183.
1948	18, 19, 20, 21, 22, 23, 25, 28, 31, 31-a, 35, 38, 38-a, 51, 173.
1954	115-a.
1956	69, 155, 161, 169.
1960	Art. XVII, 1, 2; 110, 118, 119, 120.
1962	20, 30, 50-a.
1964	28.
1966	143, 145, 146.

in straight-forward language what the amendment accomplishes. Before the voter arrives at the polling place, he has been exposed to statements of political leaders, to radio, television, and newspaper commentary, and to other information about proposed amendments. The ballot then states, in simple and direct language, what it is the voter is asked to vote on. The Commission recommends that whatever constitutional revisions are placed before the people be summarized in this fashion.

The second question is whether amendments should be listed individually on the ballot, whether they should be lumped into a single ballot question, or whether they should be grouped into related packages. Again, Virginia's experience is relevant, as is the recent experience of other states.

In the first place, there is nothing in law or practice to compel one of these approaches as against another. The General Assembly is free, in the judgment of the Commission, to adopt whichever approach makes most sense. There has never been any requirement or any practice that each amendment must be listed on the ballot separately. Nor have amendments invariably been put into a single comprehensive package and listed on the ballot as a single question. In this century, the common practice has been to follow an intermediate course, that of grouping related amendments as single questions and thus having one or more questions on the ballot, depending on the subject matter of the amendments and their importance.

In 1928, for example, there was a general revision of the Constitution, and it appeared on the ballot as a single question. At the same time there were four separate questions on the ballot, each carrying a proposition which was thought to be important enough and potentially controversial enough to merit a separate vote.[38] All five propositions passed, but the vote on the general revision was more decisive than that on the separate issues.[39] In 1948, there was a revision of the franchise provisions of the Constitution, and a single ballot question affected fourteen sections.[40] In 1960, amendments affecting four sections of the two local government articles were carried as a single question on the ballot.[41]

The precise form of the ballot cannot be decided, of course, until the

38. Proposition No. 1 simply asked the voter to vote for or against the "general revision of the Constitution of Virginia" except for sections 81, 131, 145, 170, and 171, and the repeal of certain enumerated sections. Proposition No. 2 related to prohibition of state taxation for state purposes of real and personal property. Propositions No. 3, 4, and 5 provided for appointment, rather than popular election, of the Commissioner of Agriculture and Immigration, the Superintendent of Public Instruction, and the State Treasurer. The form of the ballot appears at the end of this section.

39. Proposition No. 1 passed by a vote of 74,109 to 60,631. Propositions No. 3, 4, and 5 passed by votes of 69,034 to 65,176; 68,756 to 65,695; and 68,665 to 65,816 respectively.

40. See Acts of Assembly (1948), chap. 525, p. 1071.

41. See Acts of Assembly (1960), chap. 489, p. 761.

shape which any revisions may take has been decided by the General Assembly. The Commission does believe, however, that some general observations are in order.

In the first place, it seems altogether unworkable to suppose that each amendment can be placed on the ballot individually. This is an approach which is never adopted in Virginia, and for obvious reasons. Were each amendment to appear separately, the ballot would be feet or yards long, and voters would only be confused and frustrated at having to undergo such an unnecessary process. The disadvantages of such an approach are especially marked in the case of a general revision. Moreover, only chaos could result were some amendments to be approved and others to be voted down where they have interlocking effect.

At the other extreme, there are problems in putting every question, however important, into a single package. Housekeeping amendments (such as deletion of statutory and obsolete matter) and many substantive changes can indeed be put into a single proposition, as was done in 1928. But some changes may be so important that the people should have a chance to vote on them separately. Moreover, recent experience in other states, notably Maryland and New York, suggests that where highly controversial changes (such as New York's proposal to repeal the ban on state aid to sectarian schools) are incorporated into the package of general revisions, the result can be a defeat of the entire package.

At the Southern Governors' Conference in Charleston, South Carolina, on June 15-19, 1968, Governor Spiro Agnew of Maryland told the assembled governors that the "principal difficulty" which brought about the defeat in May 1968 of the proposed constitution in Maryland was that it had been submitted to the people on a "take or leave it" basis. Governor Agnew strongly advised that when constitutional revisions are submitted to the people, the most controversial items should be separated from the rest.[42] In New York, the *New York Times* reflected what turned out to be the prevailing view when, before the referendum on the new constitution proposed for that State, the *Times* carried an editorial entitled, "Take It or Leave It: We Leave It." The editorial explained:[43]

> As virtually its final act, the Constitutional Convention decided last night to offer New Yorkers the new Constitution on a take-it-or-leave-it basis. The voter must accept or reject it in its entirety. To our regret, the considerable improvements this document does make in the existing Constitution are insufficient in importance to offset a few features so highly objectionable that we can only recommend that the proposed Constitution be rejected at the polls in November.

42. Notes on the speech in the files of the Commission.
43. New York Times, Sept. 27, 1967, p. 42, col. 1.

A middle ground can be staked out. The Commission believes that a number of revisions can, as in 1928, constitute a single question on the ballot. In the judgment of the Commission, the vast majority of its proposals can be handled in this manner. At the same time, some proposals, if agreed to by the General Assembly, are of such major importance that they may be likely candidates for separate listing on the ballot, again drawing on the precedent of 1928. Precisely which questions require separate treatment is a judgment ultimately to be made by the General Assembly, but the Commission recommends that the number of separate questions be few in number, lest a large number of separate questions reintroduce the problems of voter confusion and the possibility of a constitution whose parts are mismatched because some revisions have been approved and related ones disapproved. The Commission is confident that the General Assembly, in laying proposals before the people, can strike a balance which will overcome the technical problems while at the same time retaining the confidence of the people that in no measure is their popular judgment being bypassed.

CONSTITUTIONAL QUESTIONS AS THEY APPEARED ON THE BALLOT IN 1928 [44]

PROPOSAL NO. 1

For the general revision of the Constitution of Virginia, except sections eighty-one, one hundred and thirty-one, one hundred and forty-five, one hundred and seventy and one hundred and seventy-one thereof, and to repeal by omitting therefrom sections one hundred and twenty-eight, one hundred and forty-eight, one hundred and forty-nine, one hundred and fifty, one hundred and fifty-one and one hundred and eighty-two of the present Constitution.

Against the general revision of the Constitution of Virginia, except sections eighty-one, one hundred and thirty-one, one hundred and forty-five, one hundred and seventy and one hundred and seventy-one thereof, and to repeal by omitting therefrom sections one hundred and twenty-eight, one hundred and forty-eight, one hundred and forty-nine, one hundred and fifty, one hundred and fifty-one, and one hundred and eighty-two of the present Constitution.

PROPOSAL NO. 2

For the amendment to section one hundred and seventy-one of the Constitution of Virginia, providing that no State property tax for State pur-

44. Acts of Assembly (1928), chap. 205, pp. 699-701.

poses shall be levied on real estate or tangible personal property, except the rolling stock of public service corporations.

Against the amendment to section one hundred and seventy-one of the Constitution of Virginia, providing that no State property tax for State purposes shall be levied on real estate or tangible personal property, except the rolling stock of public service corporations.

PROPOSAL NO. 3

For the proposed amendment to section one hundred and forty-five of the Constitution of Virginia, providing for the appointment by the governor for one term, subject to approval by the general assembly and authorizing the general assembly, after January first, nineteen hundred and thirty-two, to provide the manner in which and the term for which the commissioner of agriculture and immigration shall be selected.

Against the proposed amendment to section one hundred and forty-five of the Constitution of Virginia, providing for the appointment by the governor for one term, subject to approval by the general assembly and authorizing the general assembly, after January first, nineteen hundred and thirty-two, to provide the manner in which and the term for which the commissioner of agriculture and immigration shall be selected.

PROPOSAL NO. 4

For the amendment to section one hundred and thirty-one of the Constitution of Virginia, providing for the appointment by the governor for one term, subject to approval by the general assembly and authorizing the general assembly, after January first, nineteen hundred and thirty-two, to provide the manner in which and the term for which the superintendent of public instruction shall be selected.

Against the amendment to section one hundred and thirty-one of the Constitution of Virginia, providing for the appointment by the governor for one term, subject to approval by the general assembly and authorizing the general assembly, after January first, nineteen hundred and thirty-two, to provide the manner in which and the term for which the superintendent of public instruction shall be selected.

PROPOSAL NO. 5

For the amendment to section eighty-one of the Constitution of Virginia providing for the appointment by the governor for one term, subject to approval by the general assembly and authorizing the general assembly, after January first, nineteen hundred and thirty-two, to provide the man-

ner in which and the term for which the treasurer of Virginia shall be selected.

Against the amendment to section eighty-one of the Constitution of Virginia providing for the appointment by the governor for one term, subject to approval by the general assembly and authorizing the general assembly, after January first, nineteen hundred and thirty-two, to provide the manner in which and the term for which the treasurer of Virginia shall be selected.

F. Statutory implementation of constitutional revision.

Revision of the Constitution naturally entails some revision of the general law. The Commission, in making proposals for constitutional revision, has kept in mind the extent to which statute law may be affected. However, the time allotted the Commission for its study of the Constitution has not permitted a detailed study of statutes which might have to be enacted or amended as a result of revisions in the Constitution.

Therefore the Commission does not make, as part of its report, any recommendations as to statutory implementation. It is clear that a thorough study will have to be made of the statutes affected or touched in the process of constitutional revision. Presumably, such a study would be made in 1969 and 1970 so that, once revisions have been approved by the people in 1970, the first session of the General Assembly meeting thereafter can adopt such statutory measures as may be necessary.

It should be noted that many of the Constitutional sections proposed for deletion have exact or close counterparts in the Code. The extent of overlap is surprisingly large. In such cases no statutory implementation may be necessary. In other cases, such as the proposal for a new system of removal of disabled or unfit judges, legislation will obviously be necessary.

II

Text of Proposed Revised Constitution

ARTICLE I

BILL OF RIGHTS

A DECLARATION OF RIGHTS made by the good people of Virginia in the exercise of their sovereign powers, which rights do pertain to them and their posterity, as the basis and foundation of government.

Section 1. Equality and rights of men.

That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Section 2. People the source of power.

That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.

Section 3. Government instituted for common benefit.

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

Section 4. No exclusive emoluments or privileges; offices not to be hereditary.

That no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

Section 5. Separation of legislative, executive, and judicial departments; periodical elections.

That the legislative, executive, and judicial departments of the Commonwealth should be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by regular elections, in which all or any part of the former members shall be again eligible, or ineligible, as the laws may direct.

Section 6. Free elections; consent of governed.

That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed, or deprived of, or damaged in, their property for public uses, without their own consent, or that of their representatives duly elected, or bound by any law to which they have not, in like manner, assented for the public good.

Section 7. Laws should not be suspended.

That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Section 8. Criminal prosecutions.

That in criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and, in the interest of the Commonwealth as well as the accused to have a public and speedy trial, by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except

by the law of the land or the judgment of his peers; nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense.

Laws may be enacted providing for the trial of offenses not felonious by a court not of record without a jury, preserving the right of the accused to an appeal to and a trial by jury in some court of record having original criminal jurisdiction. Laws may also provide for juries consisting of less than twelve, but not less than five, for the trial of offenses not felonious, and may classify such cases, and prescribe the number of jurors for each class.

In criminal cases, the accused may plead guilty. If the accused plead not guilty, he may, with his consent and the concurrence of the Commonwealth's attorney and of the court entered of record, be tried by a smaller number of jurors, or waive a jury. In case of such waiver or plea of guilty, the court shall try the case.

The provisions of this section shall be self-executing.

Section 9. Prohibition of excessive bail and fines, cruel and unusual punishment, suspension of habeas corpus, bills of attainder, and ex post facto laws.

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of invasion or rebellion, the public safety may require; and that the General Assembly shall not pass any bill of attainder, or any ex post facto law.

Section 10. General warrants of search or seizure prohibited.

That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

Section 11. Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property

shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious or political conviction, race, color, or national origin shall not be abridged.

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

Section 12. Freedom of speech and of the press; right peaceably to assemble, and to petition.

That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.

Section 13. Militia; standing armies; military subordinate to civil power.

That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Section 14. Government should be uniform.

That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

Section 15. Qualities necessary to preservation of free government.

That no free government, nor the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue; by frequent recurrence to fundamental principles; and by the recognition by all citizens that they have duties as well as

rights, and that such rights cannot be enjoyed save in a society where law is respected and due process is observed.

That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development through an effective system of public education.

Section 16. Free exercise of religion; no establishment of religion.

That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

Section 17. Construction of the Bill of Rights.

The rights enumerated in this Bill of Rights shall not be construed to limit other rights of the people not therein expressed.

ARTICLE II

FRANCHISE AND OFFICERS

Section 1. Qualifications of voters.

In elections by the people, the qualifications of voters shall be as follows. Each voter shall be a citizen of the United States, shall be twenty-one

years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this Article. No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor, and no person adjudicated to be of unsound mind shall be qualified to vote until his competency has been reestablished in the manner provided by law.

The residence requirements shall be that each voter shall have been a resident of the Commonwealth for six months and of the precinct where he votes for thirty days. A person who is qualified to vote except for having moved his residence from one precinct to another fewer than thirty days prior to an election may in any such election vote in the precinct from which he has moved. Residence, for all purposes of qualification to vote, requires both domicile and a place of abode.

Any person who will be qualified to vote at the next general election shall be permitted to register in advance and also to vote in any intervening primary election. Otherwise, the qualifications to vote in any primary election shall be the same as in general elections.

Section 2. Registration of voters.

The General Assembly shall provide by law for the registration of all persons otherwise qualified to vote, and shall ensure that the opportunity to register is made conveniently available. Registrations accomplished prior to the effective date of this section shall be effective hereunder. The registration books shall not be closed to new or transferred registrations more than thirty days before the election in which they are to be used.

Applications to register shall require the applicant to provide under oath the following information and no other: name; age; date and place of birth; whether the applicant is presently a United States citizen; residence during the six months immediately preceding the effective date of registration; place and time of any previous registrations to vote; and whether the applicant has ever been adjudicated to be of unsound mind or convicted of a felony, and if so, under what circumstances the applicant's right to vote has been restored. All applications to register shall be completed in person before the registrar and by or at the direction of the applicant and signed by the applicant, unless physically disabled. No fee shall be charged to the applicant incident to an application to register.

Nothing in this Article shall preclude the General Assembly from requiring as a prerequisite to registration to vote the ability of the applicant to read and write, such ability to be determined by a fair, reasonable, and nondiscriminatory test to be prescribed by the General Assembly.

Section 3. Method of voting.

In elections by the people, the following safeguards shall be maintained. Voting shall be by ballot or by machines for receiving, recording, and counting votes cast. No ballot or list of candidates upon any voting machine shall bear any distinguishing mark or symbol, other than words identifying political party affiliation; and their form shall be as uniform as is practicable throughout the Commonwealth or smaller governmental unit in which the election is held. Each office to be filled shall be clearly set forth upon all ballots and voting machines together with an alphabetical list of the names of the candidates. In elections other than primary elections, provision shall be made whereby votes may be cast for persons other than the listed candidates. Secrecy in casting votes shall be maintained, except as provision may be made for assistance to handicapped voters, but the ballot box or voting machine shall be kept in public view and shall not be opened, nor the ballots canvassed nor the votes counted, in secret. Votes may be cast only in person, except as otherwise provided in this Constitution.

Section 4. Powers and duties of General Assembly.

The General Assembly shall establish a uniform system for permanent registration of voters pursuant to this Constitution, including provision for appeal by any person denied registration, correction of illegal or fraudulent registrations, proper transfer of all registered voters, and cancellation of registrations in other jurisdictions of persons who apply to register to vote in the Commonwealth. The General Assembly shall provide for maintenance of accurate and current registration lists and shall provide for cancellation of the registration of any voter who has not voted at least once during four consecutive calendar years.

The General Assembly may provide for registration and voting by absentee application and ballot for members of the armed forces of the United States in active service, and their spouses, who are otherwise qualified to vote, and may provide for voting by absentee ballot for other categories of persons who are qualified to vote but are unable, without serious inconvenience, to vote in person.

The General Assembly shall provide for the nomination of candidates, shall regulate the time, place, manner, conduct, and administration of primary, general, and special elections, and shall have power to make any other law regulating elections not inconsistent with this Constitution.

Section 5. Qualifications to hold elective office.

The only qualification to hold any office of the Commonwealth or of its governmental units, elective by the people, shall be that a person must be qualified to vote for that office, except as otherwise provided in this Constitution, and except that:

(a) the General Assembly may impose more restrictive geographical residence requirements for election of its members, and may permit other governing bodies in the Commonwealth to impose more restrictive geographical residence requirements for election to such governing bodies, but no such requirement shall impair equal representation of the persons entitled to vote;

(b) the General Assembly may provide that residence in a local governmental unit is not required for election to designated elective offices in local governments, other than membership in the local governing body; and

(c) nothing in this section shall limit the power of the General Assembly to prevent conflict of interests, dual officeholding, or other incompatible activities by elective or appointive officials of the Commonwealth or of any political subdivision.

Section 6. Apportionment.

Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly. Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. The General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section every ten years.

Section 7. Oath or affirmation.

All officers elected or appointed under or pursuant to this Constitution shall, before they enter on the performance of their public duties, severally take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as ...., according to the best of my ability (so help me God)."

Section 8. Electoral boards; registrars and officers of election.

There shall be in each county and city an electoral board composed of three members, selected as provided by law. In the appointment of the electoral boards, representation, as far as practicable, shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and the next highest number of votes. The present members of such boards shall continue in office until the expiration of their respective terms; thereafter their successors shall be appointed for the term of three years. Any vacancy occurring in any board shall be filled by the same authority for the unexpired term.

Each electoral board shall appoint the judges, clerks, and registrars of election for its county or city. In appointing these and other officers of election, representation, as far as practicable, shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and next highest number of votes.

No person, nor the deputy of any person, who is employed by or holds any office or post of profit or emolument under the United States government, or who holds any elective office of profit or trust in the Commonwealth, or in any county, city, or town, shall be appointed a member of the electoral board or registrar or judge of election.

Section 9. Privileges of voters during election.

No voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger, nor to attend any court as suitor, juror, or witness; nor shall any such voter be subject to arrest under any civil process during his attendance at election or in going to or returning therefrom.

ARTICLE III

DIVISION OF POWERS

Section 1. Departments to be distinct.

The legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time, provided, however, administrative agencies may be created by the General Assembly with such authority and duties as the General

Assembly may prescribe. Provision may be made for judicial review of any final finding, order, or judgment of such administrative agencies.

ARTICLE IV

LEGISLATURE

Section 1. Legislative power.

The legislative power of the Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Delegates.

Section 2. Senate.

The Senate shall consist of not more than forty and not less than thirty-three members, who shall be elected quadrennially by the voters of the several senatorial districts on the Tuesday succeeding the first Monday in November.

Section 3. House of Delegates.

The House of Delegates shall consist of not more than one hundred and not less than ninety members, who shall be elected biennially by the voters of the several house districts on the Tuesday succeeding the first Monday in November.

Section 4. Qualifications of senators and delegates.

Any person may be elected to the Senate who, at the time of the election, is a resident of the senatorial district which he is seeking to represent and is qualified to vote for members of the General Assembly. Any person may be elected to the House of Delegates who, at the time of the election, is a resident of the house district which he is seeking to represent and is qualified to vote for members of the General Assembly. A senator or delegate who moves his residence from the district for which he is elected shall thereby vacate his office.

No person holding a salaried office under the government of the Commonwealth, and no judge of any court, attorney for the Commonwealth, sheriff, sergeant, treasurer, assessor of taxes, commissioner of the revenue, collector of taxes, or clerk of any court shall be a member of either house of the General Assembly during his continuance in office; and his qualification as a member shall vacate any such office held by him. No person holding any office or post of profit or emolument under the United

States government, or who is in the employment of such government, shall be eligible for election to either house.

Section 5. Compensation; election to civil office of profit.

The members of the General Assembly shall receive such salary and allowances as may be prescribed by law, but no increase in salary or allowances shall take effect for a given member until after the end of the term for which he was elected. No member during the term for which he shall have been elected shall be elected by the General Assembly to any civil office of profit in the Commonwealth.

Section 6. Legislative sessions.

The General Assembly shall meet once in two years on the second Wednesday in January next succeeding the election of members of the House of Delegates and may continue in session for a period not longer than ninety days. Neither house shall, without the consent of the other, adjourn to another place, nor for more than three days.

The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and shall convene a special session upon the application of two-thirds of the members elected to each house. Members shall be allowed salary and allowances for not exceeding thirty days at any special session.

Section 7. Organization of General Assembly.

The House of Delegates shall choose its own Speaker; and, in the absence of the Lieutenant Governor, or when he shall exercise the office of Governor, the Senate shall choose from its own body a president pro tempore. Each house shall select its officers, settle its rules of procedure, and direct writs of election for supplying vacancies which may occur during a session of the General Assembly. If vacancies occur while the General Assembly is not in session, such writs may be issued by the Governor under such regulations as may be prescribed by law. Each house shall judge of the election, qualification, and returns of its members, may punish them for disorderly behavior, and, with the concurrence of two-thirds of its elected membership, may expel a member.

Section 8. Quorum.

A majority of the members elected to each house shall constitute a quorum to do business, but a smaller number may adjourn from day

to day and shall have power to compel the attendance of members in such manner and under such penalty as each house may prescribe. A smaller number, not less than two-fifths of the membership of each house, may meet and may, notwithstanding any other provision of this Constitution, enact legislation if the Governor by proclamation declares that a quorum of the General Assembly cannot be convened because of enemy attack upon the soil of Virginia by nuclear or other incapacitative devices. Such legislation shall remain effective only until thirty days after a quorum of the General Assembly can be convened.

Section 9. Immunity of legislators.

Members of the General Assembly shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during the sessions of their respective houses; and for any speech or debate in either house shall not be questioned in any other place. They shall not be subject to arrest under any civil process during the sessions of the General Assembly, or during the fifteen days before the beginning or after the ending of any session.

Section 10. Journal of proceedings.

Each house shall keep a journal of its proceedings, which shall be published from time to time. The vote of each member voting in each house on any question shall, at the desire of one-fifth of those present, be recorded in the journal. On the final vote on any bill, and on the vote in any election or impeachment conducted in the General Assembly or on the expulsion of a member, the name of each member voting in each house and how he voted shall be recorded in the journal.

Section 11. Enactment of laws.

No law shall be enacted except by bill. A bill may originate in either house, may be approved or rejected by the other, or may be amended by either, with the concurrence of the other.

No bill shall become a law unless, prior to its passage:

(a) it has been referred to a committee of each house, considered by such committee in session, and reported;

(b) it has been printed by the house in which it originated prior to its passage therein;

(c) it has been read by its title, or its title has been printed in a daily calendar, on three different calendar days in each house; and

(d) upon its final passage a vote has been taken thereon in each house, the name of each member voting for and against recorded in the journal, and a majority of those voting in each house, which majority shall include at least two-fifths of the members elected to that house, recorded in the affirmative.

Only in the manner required in subparagraph (d) of this section shall an amendment to a bill by one house be concurred in by the other, or a conference report be adopted by either house, or either house discharge a committee from the consideration of a bill and consider the same as if reported. The printing and reading, or either, required in subparagraphs (b) and (c) of this section, may be dispensed with in a bill to codify the laws of the Commonwealth, and in the case of an emergency by a vote of four-fifths of the members voting in each house, the name of each member voting and how he voted to be recorded in the journal.

No bill which creates or establishes a new office, or which creates, continues, or revives a debt or charge, or which makes, continues, or revives any appropriation of public or trust money or property, or which releases, discharges, or commutes any claim or demand of the Commonwealth, or which imposes, continues, or revives a tax, shall be passed except by the affirmative vote of a majority of all the members elected to each house, the name of each member voting and how he voted to be recorded in the journal.

Every law imposing, continuing, or reviving a tax shall specifically state such tax. However, any law by which income, gift, or death taxes are imposed may define or specify the subject and provisions of such tax, exclusive of rates, by reference to any provision of the laws of the United States as those laws may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision.

The presiding officer of each house shall, not later than twenty days after adjournment, sign every bill that has been passed by both houses and duly enrolled. The fact of signing shall be recorded in the journal.

Section 12. Form of laws.

No law shall embrace more than one object, which shall be expressed in its title. Nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length.

Section 13. Effective date of laws.

All laws, except a general appropriation law, shall take effect on the first day of the fourth month following the month of adjournment of the session of the General Assembly at which it has been enacted, unless a subsequent date is specified or unless in the case of an emergency (which emergency shall be expressed in the body of the bill) the General Assembly shall specify an earlier date by a vote of four-fifths of the members voting in each house, the name of each member voting and how he voted to be recorded in the journal.

Section 14. Powers of General Assembly; limitations.

The authority of the General Assembly shall extend to all subjects of legislation not herein forbidden or restricted; and a specific grant of authority in this Constitution upon a subject shall not work a restriction of its authority upon the same or any other subject. The omission in this be construed to deprive the General Assembly of such authority, or to indicate a change of policy in reference thereto, unless such purpose plainly appear.

The General Assembly shall confer on the courts power to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities, and shall not, by special legislation, grant relief in these or other cases of which the courts or other tribunals may have jurisdiction.

The General Assembly may regulate the exercise by courts of the right to punish for contempt.

The General Assembly shall not enact any local, special, or private law in the following cases:

(1) For the punishment of crime.

(2) Providing a change of venue in civil or criminal cases.

(3) Regulating the practice in, or the jurisdiction of, or changing the rules of evidence in any judicial proceedings or inquiry before the courts or other tribunals, or providing or changing the methods of collecting debts or enforcing judgments or prescribing the effect of judicial sales of real estate.

(4) Changing or locating county seats.

(5) For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interests.

(6) Extending the time for the assessment or collection of taxes.

(7) Exempting property from taxation.

(8) Remitting, releasing, postponing, or diminishing any obligation or liability of any person, corporation, or association to the Commonwealth or to any political subdivision thereof.

(9) Refunding money lawfully paid into the treasury of the Commonwealth or the treasury of any political subdivision thereof.

(10) Granting from the treasury of the Commonwealth, or granting or authorizing to be granted from the treasury of any political subdivision thereof, any extra compensation to any public officer, servant, agent, or contractor.

(11) For conducting elections or designating the places of voting.

(12) Regulating labor, trade, mining, or manufacturing, or the rate of interest on money.

(13) Granting any pension.

(14) Creating, increasing, or decreasing, or authorizing to be created, increased, or decreased, the salaries, fees, percentages, or allowances of public officers during the term for which they are elected or appointed.

(15) Declaring streams navigable, or authorizing the construction of booms or dams therein, or the removal of obstructions therefrom.

(16) Affecting or regulating fencing or the boundaries of land, or the running at large of stock.

(17) Creating private corporations, or amending, renewing, or extending the charters thereof.

(18) Granting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity.

(19) Naming or changing the name of any private corporation or association.

(20) Remitting the forfeiture of the charter of any private corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution and the laws passed in pursuance thereof.

Section 15. General laws.

In all cases enumerated in the preceding section, and in every other case which, in its judgment, may be provided for by general laws, the General Assembly shall enact general laws. Any general law shall be subject to amendment or repeal, but the amendment or partial repeal thereof shall not operate directly or indirectly to enact, and shall not have the effect of enactment of, a special, private, or local law.

No general or special law shall surrender or suspend the right and power of the Commonwealth, or any political subdivision thereof, to tax corporations and corporate property, except as authorized by Article X. No private corporation, association, or individual shall be specially exempted from the operation of any general law, nor shall a general law's operation be suspended for the benefit of any private corporation, association, or individual.

Section 16. Appropriations to religious or charitable bodies.

The General Assembly shall not make any appropriation of public funds, personal property, or real estate to any church or sectarian society, or any association or institution of any kind whatever which is entirely or partly, directly or indirectly, controlled by any church or sectarian society. Nor shall the General Assembly make any like appropriation to any charitable institution which is not owned or controlled by the Commonwealth; the General Assembly may, however, make appropriations to nonsectarian institutions for the reform of youthful criminals and may also authorize counties, cities, or towns to make such appropriations to any charitable institution or association.

Section 17. Impeachment.

The Governor, Lieutenant Governor, Attorney General, judges, members of the State Corporation Commission, and all officers appointed by the Governor or elected by the General Assembly, offending against the Commonwealth by malfeasance in office, corruption, neglect of duty, or other high crime or misdemeanor may be impeached by the House of Delegates and prosecuted before the Senate, which shall have the sole power to try impeachments. When sitting for that purpose, the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the senators present. Judgment in case of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit un-

der the Commonwealth; but the person convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. The Senate may sit during the recess of the General Assembly for the trial of impeachments.

Section 18. Auditor of Public Accounts.

An Auditor of Public Accounts shall be elected by the joint vote of the two houses of the General Assembly for the term of four years. His powers and duties shall be prescribed by law.

ARTICLE V

EXECUTIVE

Section 1. Executive power; Governor's term of office.

The chief executive power of the Commonwealth shall be vested in a Governor. He shall hold office for a term commencing upon his inauguration on the Saturday after the second Wednesday in January, next succeeding his election, and ending in the fourth year thereafter immediately after the inauguration of his successor. He shall be ineligible to the same office for the term next succeeding that for which he was elected, and to any other office during his term of service.

Section 2. Election of Governor.

The Governor shall be elected by the qualified voters of the Commonwealth at the time and place of choosing members of the General Assembly. Returns of the election shall be transmitted, under seal, by the proper officers, to the State Board of Elections, or such other officer or agency as may be designated by law, which shall cause the returns to be opened and the votes to be counted in the manner prescribed by law. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number of votes, one of them shall be chosen Governor by the joint vote of the two houses of the General Assembly. Contested elections for Governor shall be decided by a like vote. The mode of proceeding in such cases shall be prescribed by law.

Section 3. Qualifications of Governor.

No person except a citizen of the United States shall be eligible to the office of Governor; nor shall any person be eligible to that office unless he shall have attained the age of thirty years and have been a resident of the Commonwealth and a registered voter in the Commonwealth for five years next preceding his election.

Section 4. Place of residence and compensation of Governor.

The Governor shall reside at the seat of government. He shall receive for his services a compensation to be prescribed by law, which shall neither be increased nor diminished during the period for which he shall have been elected. While in office he shall receive no other emolument from this or any other government.

Section 5. Legislative responsibilities of Governor.

The Governor shall communicate to the General Assembly, at every session, the condition of the Commonwealth, recommend to its consideration such measures as he may deem expedient, and convene the General Assembly on application of two-thirds of the members of both houses thereof, or when, in his opinion, the interest of the Commonwealth may require.

Section 6. Presentation of bills; veto powers of Governor.

Every bill which shall have passed the Senate and House of Delegates shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but, if not, he may 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 the same. If, after such consideration, two-thirds of the members present, which two-thirds shall include a majority of the members elected to that house, shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members present, which two-thirds shall include a majority of the members elected to that house, it shall become a law, notwithstanding the objections.

The Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take

effect except in the manner heretofore provided in this section as to bills returned to the General Assembly without his approval.

If the Governor approve the general purpose of any bill but disapprove any part or parts thereof, he may return it, with recommendations for its amendment, to the house in which it originated, whereupon the same proceedings shall be had in both houses upon the bill and his recommendations in relation to its amendment as is above provided in relation to a bill which he shall have returned without his approval, and with his objections thereto; provided, that if after such reconsideration, both houses, by a vote of a majority of the members present in each, shall agree to amend the bill in accordance with his recommendation in relation thereto, or either house by such vote shall fail or refuse to so amend it, then and in either case the bill shall be again sent to him, and he may act upon it as if it were then before him for the first time. In all cases above set forth, the names of the members voting for and against the bill or item or items of an appropriation bill, shall be entered on the journal of each house.

If any bill shall not be returned by the Governor within seven days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall, by final adjournment, prevent such return; in which case it shall be a law if approved by the Governor, in the manner and to the extent above provided, within thirty days after adjournment, but not otherwise.

Section 7. Executive and administrative powers.

The Governor shall take care that the laws be faithfully executed.

The Governor shall be commander-in-chief of the armed forces of the Commonwealth and shall have power to embody such forces to repel invasion, suppress insurrection, and enforce the execution of the laws.

The Governor shall conduct, either in person or in such manner as shall be prescribed by law, all intercourse with other and foreign states.

The Governor shall have power to fill vacancies in all offices of the Commonwealth for the filling of which the Constitution and laws make no other provision. If such office be one filled by the election of the people, the appointee shall hold office until the next general election, and thereafter until his successor qualifies, according to law. The General Assembly shall, if it is in session, fill vacancies in all offices which are filled by election by that body.

Gubernatorial appointments to fill vacancies in offices which are filled by election by the General Assembly or appointment by the Governor

which is subject to confirmation by the Senate or the General Assembly made during the recess of the General Assembly shall expire at the end of thirty days after the commencement of the next regular session of the General Assembly.

Section 8. Information from administrative officers.

The Governor may require information in writing, under oath, from any officer of any executive or administrative department, office, or agency, or any public institution upon any subject relating to their respective departments, offices, agencies, or public institutions; and he may inspect at any time their official books, accounts, and vouchers, and ascertain the conditions of the public funds in their charge, and in that connection may employ accountants. He may require the opinion in writing of the Attorney General upon any question of law affecting the official duties of the Governor.

Section 9. Administrative reorganization.

Except as may be otherwise prescribed by this Constitution, the functions, powers, and duties of the administrative departments and divisions and of the agencies of the Commonwealth within the legislative and executive branches shall be prescribed by law. The Governor may reallocate the functions, powers, and duties of the departments and divisions and of 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 each member of the General Assembly at least forty-five days prior to the commencement of a regular or special session of the General Assembly. A proposed change shall become effective on a date designated by the Governor following the adjournment of the General Assembly and thereafter have the force of law unless either the Senate or the House of Delegates, prior to the adjournment of the General Assembly, by resolution of a majority of the members elected thereto, shall have disapproved the change.

Section 10. Appointment and removal of administrative officers.

Except as may be otherwise provided in this Constitution, the Governor shall appoint each officer serving as the head of an administrative department or division of the executive branch of the government, subject to such confirmation as the General Assembly may prescribe. Each

officer appointed by the Governor pursuant to this section shall have such professional qualifications as may be prescribed by law and shall serve at the pleasure of the Governor.

Section 11. Effect of refusal of General Assembly to confirm an appointment by the Governor.

No person appointed to any office by the Governor, whose appointment is subject to confirmation by the General Assembly, under the provisions of this Constitution or any statute, shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment, nor shall such person be eligible for reappointment during the recess of the General Assembly to fill the vacancy caused by such refusal to confirm.

Section 12. Executive clemency.

The Governor shall have power to remit fines and penalties under such rules and regulations as may be prescribed by law; to grant reprieves and pardons after conviction except when the prosecution has been carried on by the House of Delegates; to remove political disabilities consequent upon conviction for offenses committed prior or subsequent to the adoption of this Constitution; and to commute capital punishment.

He shall communicate to the General Assembly, at each session, particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting, or commuting the same.

Section 13. Lieutenant Governor: election and qualifications.

A Lieutenant Governor shall be elected at the same time and for the same term as the Governor, and his qualifications and the manner and ascertainment of his election, in all respects, shall be the same.

Section 14. Duties and compensation of Lieutenant Governor.

The Lieutenant Governor shall be President of the Senate but shall have no vote except in case of an equal division. He shall receive for his services a compensation to be prescribed by law, which shall not be increased nor diminished during the period for which he shall have been elected.

Section 15. Succession to the office of Governor.

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.

Whenever the Governor transmits to the President pro tempore of the Senate and the Speaker of the House of Delegates his written declaration that he is unable to discharge the powers and duties of his office and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Lieutenant Governor as Acting Governor.

Whenever the Attorney General, the President pro tempore of the Senate, and the Speaker of the House of Delegates, or a majority of the total membership of the General Assembly, transmit to the Clerk of the Senate and the Clerk of the House of Delegates their written declaration that the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall immediately assume the powers and duties of the office as Acting Governor.

Thereafter, when the Governor transmits to the Clerk of the Senate and the Clerk of the House of Delegates his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Attorney General, the President pro tempore of the Senate, and the Speaker of the House of Delegates, or a majority of the total membership of the General Assembly, transmit within four days to the Clerk of the Senate and the Clerk of the House of Delegates their written declaration that the Governor is unable to discharge the powers and duties of his office. Thereupon the General Assembly shall decide the issue, convening within forty-eight hours for that purpose if not already in session. If within twenty-one days after receipt of the latter declaration or, if the General Assembly is not in session, within twenty-one days after the General Assembly is required to convene, the General Assembly determines by three-fourths vote of the elected membership of each house of the General Assembly that the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall continue to discharge the same as Acting Governor; otherwise, the Governor shall resume the powers and duties of his office.

In the case of the removal of the Governor from office or in the case of his disqualification, death, or resignation, the Lieutenant Governor shall become Governor.

If a vacancy exists in the office of Lieutenant Governor when the Lieutenant Governor is to succeed to the office of Governor or to serve as Acting Governor, the Attorney General, if he is eligible to serve as Governor, shall succeed to the office of Governor for the unexpired term or serve as Acting Governor. If the Attorney General is ineligible to serve as Governor, the Speaker of the House of Delegates, if he is eligible to serve as Governor, shall succeed to the office of Governor for the unexpired term or serve as Acting Governor. If a vacancy exists in the office of the Speaker of the House of Delegates or if the Speaker of the House of Delegates is ineligible to serve as Governor the House of Delegates shall convene and fill the vacancy.

Section 16. Commissions and grants.

Commissions and grants shall run in the name of the Commonwealth of Virginia, and be attested by the Governor, with the seal of the Commonwealth annexed.

ARTICLE VI

JUDICIARY

Section 1. Judicial power; jurisdiction.

The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may from time to time establish. Trial courts of general jurisdiction, appellate courts, and such other courts as shall be so designated by the General Assembly shall be known as courts of record.

The Supreme Court shall, by virtue of this Constitution, have original jurisdiction in cases of mandamus and prohibition and in matters of judicial censure, retirement, and removal under section 10 of this Article. All other jurisdiction of the Supreme Court shall be appellate. Subject to such reasonable rules as may be prescribed as to the course of appeals and other procedural matters, the Supreme Court shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the constitutionality of a law under this Constitution or the Constitution of the United States and in cases involving the life or liberty of any person.

Subject to the foregoing limitations, the General Assembly shall have the power to determine the original and appellate jurisdiction of the courts of the Commonwealth.

Section 2. Supreme Court.

The Supreme Court shall consist of seven justices. The Court may sit in bank or in panels, under such regulations as the Court itself may promulgate. No decision shall become the judgment of the Court, however, except on the concurrence of at least three justices, and no law shall be declared unconstitutional under either this Constitution or the Constitution of the United States except on the concurrence of at least four justices.

Section 3. Selection of Chief Justice.

The Chief Justice of the Supreme Court shall be the justice who has the longest continuous service on the Court, or, if two have served for the same period, the justice who is senior in years. If an eligible justice declines to serve, the Chief Justice shall be the justice who would next succeed to the office.

Section 4. Administration of the judicial system.

The Chief Justice of the Supreme Court shall be the administrative head of the judicial system. He may temporarily assign any judge of a court of record to any other court of record except the Supreme Court and may assign a retired judge of a court of record, with his consent, to any court of record except the Supreme Court. The General Assembly may adopt such additional measures as it deems desirable for the improvement of the administration of justice by the courts and for the expedition of judicial business.

Section 5. Rules of practice and procedure.

The Supreme Court shall have general rule-making authority over the practice and procedures to be used in the courts of the Commonwealth. The General Assembly shall have the power to adopt such rules in cases where the Court has not acted and, in cases where the Court has acted, shall have the power to amend, modify, or set aside the Court's rules or to substitute rules of its own.

Section 6. Opinions and judgments of the Supreme Court.

When a judgment or decree is reversed, modified, or affirmed by the Supreme Court, or when original cases are resolved on their merits, the reasons for the Court's action shall be stated in writing and preserved

with the record of the case. The Court may, but need not, remand a case for a new trial. In any civil case, it may enter final judgment, except that the award in a suit or action for unliquidated damages shall not be increased or diminished.

Section 7. Selection and qualification of judges.

The justices of the Supreme Court shall be chosen by the vote of a majority of the members elected to each house of the General Assembly for terms of twelve years. The judges of all other courts of record shall be chosen by the vote of a majority of the members elected to each house of the General Assembly for terms of eight years. During any vacancy which may exist while the General Assembly is not in session, the Governor may appoint a successor to serve until thirty days after the commencement of the next regular session of the General Assembly. Upon election by the General Assembly, a new justice or judge shall begin service of a full term.

All justices of the Supreme Court and all judges of other courts of record shall be residents of the Commonwealth and shall, at least five years prior to their appointment or election, have been admitted to the bar of the Commonwealth. Each judge of a trial court of record shall during his term of office reside within the jurisdiction of the court to which he was appointed or elected or in an immediately adjoining political subdivision of the Commonwealth.

Section 8. Additional judicial personnel.

The General Assembly may provide for additional judicial personnel, such as judges of courts not of record and magistrates or justices of the peace, and may prescribe their jurisdiction and provide the manner in which they shall be selected and the terms for which they shall serve.

The General Assembly may confer upon the clerks of the several courts having probate jurisdiction, jurisdiction of the probate of wills and of the appointment and qualification of guardians, personal representatives, curators, appraisers, and committees of persons adjudged insane or convicted of felony, and in the matter of the substitution of trustees.

Section 9. Commission; compensation; retirement.

All justices of the Supreme Court and all judges of other courts of record shall be commissioned by the Governor. They shall receive such salaries and allowances as shall be prescribed by the General Assembly, which shall be apportioned between the Commonwealth and its cities and

counties in the manner provided by law. Unless expressly prohibited or limited by the General Assembly, cities and counties shall be permitted to supplement from local funds the salaries of any judges serving within their geographical boundaries. The salary of any justice or judge shall not be diminished during his term of office.

The General Assembly may enact such laws as it deems necessary for the retirement of justices and judges, with such conditions, compensation, and duties as it may prescribe. The General Assembly may also provide for the mandatory retirement of justices and judges after they reach a prescribed age.

Section 10. Disabled and unfit judges.

The General Assembly shall create a Judicial Inquiry and Review Commission consisting of members of the judiciary, the bar, and the public and vested with the power to investigate, either on complaint by any citizen or on its own motion, charges which would be the basis for retirement, censure, or removal of a judge. The Commission shall be authorized to conduct hearings and to subpoena witnesses and documents. Proceedings before the Commission shall be confidential.

If the Commission finds the charges to be well-founded, it may file a formal complaint before the Supreme Court.

Upon the filing of a complaint, the Supreme Court shall conduct a hearing in open court and, upon a finding of disability which is or is likely to be permanent and which seriously interferes with the performance by the judge of his duties, or upon a finding of unfitness for further judicial service, may retire the judge from office. A judge retired under this authority shall be considered for the purpose of retirement benefits to have retired voluntarily.

If the Supreme Court after the hearing on the complaint finds that the judge has engaged in misconduct while in office, or that he has persistently failed to perform the duties of his office, or that he has engaged in conduct prejudicial to the proper administration of justice, it may censure him or may remove him from office.

This section shall apply to justices of the Supreme Court, to judges of courts of record, and to members of the State Corporation Commission. The General Assembly may provide by general law for a procedure for the retirement, censure, or removal of judges of any court not of record, or other personnel exercising judicial functions.

Section 11. Incompatible activities.

No justice or judge of a court of record shall, during his continuance in office, engage in the practice of law within or without the Commonwealth, or seek or accept any non-judicial elective office, or hold any other office of public trust, or make any contribution to or hold any office in a political party or organization, or engage in partisan political activities, or receive any remuneration for his judicial service except the salaries and allowances authorized under section 9 of this Article.

Section 12. Attorney General.

An Attorney General shall be elected by the qualified voters of the Commonwealth at the same time and for the same term as the Governor; and the fact of his election shall be ascertained in the same manner. No person shall be eligible for election or appointment to the office of Attorney General unless he is a citizen of the United States, has attained the age of thirty years, and has the qualifications required for a judge of a court of record. He shall perform such duties and receive such compensation as may be prescribed by law, which compensation shall neither be increased nor diminished during the period for which he shall have been elected.

ARTICLE VII

LOCAL GOVERNMENT

Section 1. Definitions.

As used in this Article (1) "county" includes any one of the 96 existing unincorporated territorial subdivisions of the Commonwealth, any such unit hereafter created, or any such unit which becomes a "charter county" as provided by law, (2) "charter county" means a county which has a population of 25,000 or more and which has adopted a charter as provided by law, (3) "city" means an incorporated community which has within defined boundaries a population of 25,000 or more and which has become a city as provided by law, (4) "town" means an incorporated community which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law, (5) "regional government" means a unit of general government organized as provided by law within defined boundaries encompassing at least two counties, or at least two cities, or at least one county and one city, provided that if any part of a county, city, or town be included within such boundaries, the entire county, city, or town shall be included therein, and (6) "general law" means a

law which on its effective date applies alike to all charter counties, noncharter counties, cities, towns, or regional governments or to a class thereof provided that, first, such class shall be based on a reasonable classification and, second, in no event shall a class contain, nor shall a law containing a class exclude fewer than two charter counties, or two noncharter counties, or two cities, or two towns not in the same county, or two regional governments. The General Assembly may increase by general law the population minima provided in this Article for charter counties, cities, and towns. Any incorporated community which on January 1, 1969, held a valid city or town charter may continue as a city or town, respectively, without regard to the population minima in this section.

Section 2. Organization and government.

The General Assembly shall provide by general law for the organization, government, powers, change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments, including optional plans of government for counties, cities, or towns to be effective if approved by a majority vote of the qualified voters voting on the plan in any such county, city, or town.

The General Assembly shall provide by general law for the adoption or amendment of a charter by any county having a population of 25,000 or more, or by a city, to be effective if approved by a majority vote of the qualified voters voting thereon in such county or city. The General Assembly may provide by general law or special act for the adoption or amendment of a charter of a county having a population of 25,000 or more, a city, or a town upon the request, made in the manner provided by general law, of any such county, city, or town. No charter or amendment thereto shall be adopted which conflicts with other sections of this Article specifying that general laws be enacted or which provides for the extension or contraction of boundaries of any charter county, city, or town.

The General Assembly may also provide by special act for the powers of regional governments, including such powers of legislation, taxation, and assessment as the General Assembly may determine.

No new county shall be formed with an area of less than six hundred square miles; nor shall any county from which it is formed be reduced below that area nor reduced in population below 25,000.

Section 3. Powers.

A charter county or a city may exercise any power or perform any function which is not denied to it by this Constitution, by its charter, or by laws enacted by the General Assembly pursuant to section 2.

The General Assembly may provide by general law that any county, city, town, or other unit of government may exercise any of its powers or perform any of its functions and may participate in the financing thereof jointly or in cooperation with the Commonwealth or any other unit of government within or without the Commonwealth. The General Assembly may provide by general law or special act for transfer to or sharing with a regional government of any services, functions, and related facilities of any county, city, town, or other unit of government within the boundaries of such regional government.

Section 4. County and city officers.

There shall be elected by the qualified voters of each county and city a treasurer, a sheriff or sergeant, an attorney for the Commonwealth, a clerk, who shall be clerk of the court in the office of which deeds are recorded, and a commissioner of revenue. The duties and compensation of such officers shall be prescribed by general law.

Regular elections for such officers shall be held on Tuesday after the first Monday in November. Such officers shall take office on the first day of the following January and shall hold their respective offices for the term of four years, except that the clerk shall hold office for eight years.

Notwithstanding the provisions of this section, the General Assembly may provide for county or city officers or methods of their selection without regard to the provisions of this section either (1) by general law to become effective in any county or city when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon, or (2) by special act upon the request, made after such an election, of any county or city. No such law shall reduce the term of any person holding an office at the time the election is held. A county or city not required to have or to elect such officers prior to the effective date of this Constitution shall not be so required by this section.

Section 5. County, city, and town governing bodies.

The governing body of each county, city, or town shall be elected by the qualified voters of such county, city, or town in the manner provided by law.

If the members are elected by district, the district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. When members are so elected by district, the governing body of any county, city, or town may, in a manner provided by law, in-

crease or diminish the number, and change the boundaries, of districts, and shall in 1971 and every ten years thereafter, and also whenever the boundaries of such districts are changed, reapportion the representation in the governing body among the districts in a manner provided by law. Whenever the governing body of any such unit shall fail to perform the duties so prescribed in the manner herein directed, a suit shall lie on behalf of any citizen thereof to compel performance by the governing body.

Unless otherwise provided by law, the governing body of each city or town shall be elected on the second Tuesday in June and take office on the first day of the following September. Unless otherwise provided by law, the governing body of each county shall be elected on the Tuesday after the first Monday in November and take office on the first day of the following January.

Section 6. Multiple offices.

Unless two or more units exercise functions jointly as authorized in section 3, no person shall at the same time hold more than one office mentioned in this Article. No member of a governing body shall be eligible, during his tenure of office or for one year thereafter, to hold any office filled by the governing body by election or appointment, except that a member of a governing body may be named a member of such other boards, commissions, and bodies as may be permitted by general law.

Section 7. Procedures.

No ordinance or resolution appropriating money exceeding the sum of $500, imposing taxes, or authorizing the borrowing of money shall be passed except by a recorded affirmative vote of a majority of all members elected to the governing body. In case of the veto of such an ordinance or resolution, where the power of veto exists, it shall require for passage thereafter a recorded affirmative vote of two-thirds of all members elected to the governing body.

On the final vote on any ordinance or resolution, the name of each member voting and how he voted shall be recorded.

Section 8. Consent to use public property.

No street railway, gas, water, steam or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone, or bridge company, nor any corporation, association, person, or partnership engaged in these or like enterprises shall be permitted to use the streets,

alleys, or public grounds of a city or town without the previous consent of the corporate authorities of such city or town.

Section 9. Sale of property and granting of franchises by cities and towns.

No rights of a city or town in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works shall be sold except by an ordinance or resolution passed by a recorded affirmative vote of three-fourths of all members elected to the governing body.

No franchise, lease, or right of any kind to use any such public property or any other public property or easement of any description in a manner not permitted to the general public shall be granted for a longer period than thirty years except for air rights together with easements for columns of support, which may be granted for a period not exceeding sixty years. Before granting any such franchise or privilege for a term of years, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor. Such grant, and any contract in pursuance thereof, may provide that upon the termination of the grant, the plant as well as the property, if any, of the grantee in the streets, avenues, and other public places shall thereupon, without compensation to the grantee, or upon the payment of a fair valuation therefor, become the property of the said city or town; but the grantee shall be entitled to no payment by reason of the value of the franchise. Any such plant or property acquired by a city or town may be sold or leased or, unless prohibited by general law, maintained, controlled, and operated by such city or town. Every such grant shall specify the mode of determining any valuation therein provided for and shall make adequate provisions by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant.

Section 10. Debt.

No county, city, or town shall issue any bonds or other interest-bearing obligations which, including existing indebtedness, shall at any time exceed eighteen per centum of the assessed valuation of real estate in the county, city, or town subject to taxation, as shown by the last preceding assessment for taxes. In determining the limitation for a county there shall be included, unless hereafter excluded, indebtedness of any town or district therein empowered to levy taxes on real estate. In determining the

limitation for a county, city, or town, there shall not be included the following classes of indebtedness.

(a) Certificates of indebtedness, revenue bonds, or other obligations issued in anticipation of the collection of the revenues of such county, city, town, or district for the then current year, provided that such certificates, bonds, or other obligations mature within one year from the date of their issue, be not past due, and do not exceed the revenue for such year.

(b) Bonds pledging the full faith and credit of such county, city, town, or district authorized by an ordinance enacted in accordance with section 7 and approved by the affirmative vote of the qualified voters of the county, city, town, or district voting upon the question of their issuance, for a supply of water or other specific undertaking from which the county, city, town, or district may derive a revenue; but from and after a period to be determined by the governing body, not exceeding five years from the date of such election, whenever and for so long as such undertaking fails to produce sufficient revenue to pay for costs of operation and administration (including interest on bonds issued therefor), and the cost of insurance against loss by injury to persons or property, and an amount to be covered into a sinking fund sufficient to pay the bonds at or before maturity, all outstanding bonds issued on account of such undertaking shall be included in determining such limitation.

(c) Bonds of a county, city, town, or district if the principal and interest thereon are payable exclusively from the revenues and receipts of a water system or other specific undertaking from which the county, city, town, or district may derive a revenue.

No debt shall be contracted by or on behalf of any district of any county or by or on behalf of any regional government or district thereof except by authority conferred by the General Assembly by general law. The General Assembly shall not authorize any such debt, except the classes described in subsections (a) and (c), unless in the general law authorizing the same, provision be made for submission to the qualified voters of the district or region for approval or rejection, by a majority vote of the qualified voters voting in an election, on the question of contracting such debt. Such approval shall be a prerequisite to contracting such debt.

Except for the class of obligations described in subsection (a), no county, city, town, regional government, or district therein shall issue any bonds or other interest-bearing obligations unless (1) the bonds are issued for capital projects or incident to transfers of jurisdiction or functions between units of general government, (2) a public hearing or election is held on the question of the issuance of the bonds, and (3) the pro-

ceedings authorizing the issuance of the bonds provide for payments into a sinking fund sufficient to pay the bonds at or before maturity.

Section 11. Commission on Local Government.

The General Assembly shall create a Commission on Local Government with appropriate powers and duties to encourage and promote the development of governmental subdivisions of the Commonwealth.

ARTICLE VIII

EDUCATION

Section 1. Public schools of high quality to be maintained.

The General Assembly shall provide by law for a statewide system of free public elementary and secondary schools open to all children of school age, and shall ensure that an educational program of high quality is established and maintained.

Section 2. State and local support of public schools; standards of quality.

The General Assembly shall ensure that funds necessary to establish and maintain an educational program of high quality are provided each school division, and it shall take care that the cost of maintaining such programs is divided equitably between the localities, wherein rests the primary responsibility for the public schools, and the Commonwealth. The standards of quality shall be determined and prescribed from time to time by the State Board of Education, subject to revision only by the General Assembly.

Section 3. Compulsory education; free textbooks.

The General Assembly shall provide by law for the compulsory education of every child of appropriate age and of sufficient mental and physical ability. It shall ensure that textbooks are provided at no cost to each child attending public school whose parent or guardian is financially unable to furnish them.

Section 4. State Board of Education.

The general supervision of the public school system shall be vested in a State Board of Education of seven members, to be appointed by the

Governor, subject to confirmation by the General Assembly. Each appointment shall be for four years, except that those to fill vacancies shall be for the unexpired terms. Terms shall be staggered, so that no more than two regular appointments shall be made in the same year.

Section 5. Powers and duties of State Board of Education.

The powers and duties of the State Board of Education shall be as follows:

(a) It shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the prescribed standards of quality, and shall periodically review the adequacy of existing school divisions for this purpose. No county or city shall be divided in the formation of such divisions.

(b) It shall make annual reports to the Governor concerning the condition and needs of public education in the Commonwealth, and shall in such report identify any school divisions which have failed to establish and maintain schools meeting the prescribed standards of quality.

(c) It shall certify to the school board of each division a list of persons having reasonable business and academic qualifications for the office of division superintendent of schools, one of whom shall be selected to fill the post by the division school board. In the event a division school board fails to select a division superintendent within the time prescribed by law, the State Board of Education shall appoint him.

(d) It shall manage and invest the Literary Fund under regulations prescribed by law.

(e) It shall have authority to approve textbooks and instructional aids and materials for use in courses in the public schools of the Commonwealth.

(f) Subject to the ultimate authority of the General Assembly, the Board shall have primary responsibility and authority for effectuating the educational policy set forth in this Article, and, pursuant thereto, it shall have such other powers and duties as may be prescribed by law.

Section 6. Superintendent of Public Instruction.

A Superintendent of Public Instruction, who shall be an experienced educator, shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of the Governor making the appointment, but the General Assembly may alter by statute this method of selection and term of office. The powers and duties of the Superintendent shall be prescribed by law.

Section 7. School boards.

The supervision of schools in each school division shall be vested in a school board, to be composed of trustees selected in the manner, for the term, and to the number provided by law.

Section 8. The Literary Fund.

The General Assembly shall set apart as a permanent and perpetual school fund the present Literary Fund; the proceeds of all public lands donated by Congress for free public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the Commonwealth by forfeiture, of all fines collected for offenses committed against the Commonwealth, and of the annual interest on the Literary Fund; and such other sums as the General Assembly may appropriate. But so long as the principal of the Fund totals as much as ten million dollars, the General Assembly may set aside all or any part of additional moneys received into its principal for public school purposes, including the teachers retirement fund, to be held and administered as prescribed by law.

Section 9. Other educational institutions.

The General Assembly may provide for the establishment, maintenance, and operation of any educational institutions which are desirable for the intellectual, cultural, and occupational development of the people of this Commonwealth. Members of the boards of visitors, trustees, or governing bodies of such institutions shall be appointed as provided by law.

Section 10. Appropriations for educational purposes.

No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the Commonwealth or some political subdivision thereof; provided, first, that the General Assembly may, and local governing bodies, subject to such limitations as may be imposed by the General Assembly, may appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate, or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the Commonwealth or any such local governmental unit; second, that the General Assembly may appropriate funds to an agency, or to a school or institution of learning owned or controlled by an agency, created and established by two or more

states under a joint agreement to which this Commonwealth is a party for the purpose of providing educational facilities for the citizens of the several states joining in such agreement; third, that local governments may make appropriations to nonsectarian schools of manual, industrial, or technical training, and also to any school or institution of learning owned or exclusively controlled by such local governmental unit.

Section 11. Aid to nonpublic higher education.

The General Assembly may provide for loans to students attending nonprofit institutions of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education. The General Assembly may also provide for a state agency or authority to assist in borrowing money for construction of educational facilities at such institutions.

ARTICLE IX

CORPORATIONS

Section 1. State Corporation Commission.

There shall be a permanent commission which shall be known as the State Corporation Commission and which shall consist of three members. Members of the Commission shall be elected by the General Assembly and shall serve for regular terms of six years. The members of the Commission shall have the qualifications prescribed for judges of courts of record, and any Commissioner may be impeached or removed in the manner provided for the impeachment or removal of judges of courts of record. Whenever a vacancy in the Commission shall occur or exist when the General Assembly is in session, the General Assembly shall elect a successor for such unexpired term. If the General Assembly is not in session, the Governor shall forthwith appoint pro tempore a qualified person to fill the vacancy for a term ending thirty days after the commencement of the next regular session of the General Assembly, and the General Assembly shall elect a successor for such unexpired term.

The Commission shall annually elect one of its members chairman and shall have such subordinates and employees as may be provided by law, all of whom shall be appointed and subject to removal in accordance with the statutory provisions for state employees generally, except that its heads of divisions and assistant heads of divisions shall be appointed and subject to removal by the Commission.

Section 2. Powers and duties of the Commission.

Subject to the provisions of this Constitution and to such requirements as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters, and amendments or extensions thereof, of domestic corporations and all licenses of foreign corporations to do business in this Commonwealth.

Except as may be otherwise prescribed by this Constitution or by law, the State Corporation Commission shall be charged with the duty of administering the laws made in pursuance of this Constitution for the regulation and control of corporations doing business in this Commonwealth.

The State Corporation Commission shall have the power and be charged with the duty of regulating the rates, charges, and services and, except as may be otherwise authorized by this Constitution or by general law, the facilities of railroad, telephone, gas, and electric companies.

Municipal corporations or other political subdivisions of the Commonwealth shall not be subject to the jurisdiction of the State Corporation Commission except as may be prescribed by law.

The State Corporation Commission shall have such other powers and duties not inconsistent with this Constitution as may be prescribed by law.

Section 3. Procedures of the Commission.

Before promulgating any general order, rule, or regulation, the Commission shall give reasonable notice of its contents.

In all matters within the jurisdiction of the Commission, it shall have the powers of a court of record to administer oaths, to compel the attendance of witnesses and the production of documents, to punish for contempt, and to enforce compliance with its lawful orders or requirements by adjudging and enforcing by its own appropriate process such fines or other penalties as may be prescribed or authorized by law. Before the Commission shall enter any finding, order, or judgment against a party it shall afford such party reasonable notice of the time and place at which he shall be afforded an opportunity to introduce evidence and be heard.

The Commission shall prescribe its own rules of practice and procedure. The General Assembly shall have the power to adopt such rules in cases where the Commission has not acted, to amend, modify, or set aside the Commission's rules, or to substitute rules of its own.

Section 4. Appeals from actions of the Commission.

The Commonwealth, any party in interest, or any party aggrieved by any final finding, order, or judgment of the Commission shall have, of

right, an appeal to the Supreme Court. The method of taking and prosecuting an appeal from any action of the Commission shall be prescribed by law or by the rules of the Supreme Court. All appeals from the Commission shall be to the Supreme Court only.

No other court of the Commonwealth shall have jurisdiction to review, reverse, correct, or annul any action of the Commission or to enjoin or restrain it in the performance of its official duties, provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court to the Commission.

Section 5. Foreign corporations.

No foreign corporation shall be authorized to carry on in this Commonwealth the business of, or to exercise any of the powers or functions of, a public service enterprise, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the Constitution and laws of this Commonwealth. However, nothing in this section shall restrict the power of the General Assembly to enact such laws specially applying to foreign corporations as the General Assembly may deem appropriate.

Section 6. Corporations subject to general laws.

The creation of corporations, and the extension and amendment of charters whether heretofore or hereafter granted, shall be provided for by general law, and no charter shall be granted, amended, or extended by special act, nor shall authority in such matters be conferred upon any tribunal or officer, except to ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter, amendment, or extension applied for and to issue or refuse the same accordingly. Such general laws may be amended, repealed, or modified by the General Assembly. Every corporation chartered in this Commonwealth shall be deemed to hold its charter and all amendments thereof under the provisions of, and subject to all the requirements, terms, and conditions of, this Constitution and any laws passed in pursuance thereof. The police power of the Commonwealth to regulate the affairs of corporations, the same as individuals, shall never be abridged.

ARTICLE X

TAXATION AND FINANCE

Section 1. Taxable property; uniformity; classification and segregation.

All property, except as hereinafter provided, shall be taxed. All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, except that the General Assembly may provide for differences in the rate of taxation to be imposed upon real estate by a city or town within all or parts of areas added to its territorial limits, or by a new unit of general government, within its area, created by or encompassing two or more, or parts of two or more, existing units of general government. Such differences in the rate of taxation shall bear a reasonable relationship to differences between nonrevenue producing governmental services giving land urban character which are furnished in one or several areas in contrast to the services furnished in other areas of such unit of government.

The General Assembly may define and classify taxable subjects. Except as to classes of property herein expressly segregated for either state or local taxation, the General Assembly may segregate the several classes of property so as to specify and determine upon what subjects state taxes, and upon what subjects local taxes, may be levied.

Section 2. Assessments.

Except as hereinafter provided, all assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses and provide for the assessment thereof for taxation on the basis of such use, may establish appropriate procedures for the determination of ranges of values applicable to such classifications of real estate, may allow relief from or deferral of portions of taxes otherwise payable on such real estate if it were not so classified, and may prescribe the limits and extent of such relief from or deferral of taxes otherwise payable on such real estate.

So long as the Commonwealth shall levy upon any public service corporation a state franchise, license, or other similar tax based upon or measured by its gross receipts or gross earnings, or any part thereof, its

real estate and tangible personal property shall be assessed by the State Corporation Commission or other central state agency, in the manner prescribed by law.

Section 3. Taxes or assessments upon abutting property owners.

The General Assembly by general law may authorize any county, city, town, or regional government to impose taxes or assessments upon abutting property owners for such local public improvements as may be designated by the General Assembly; however, such taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners.

Section 4. Property segregated for local taxation; exceptions.

Real estate, coal and other mineral lands, and tangible personal property, except the rolling stock of public service corporations, are hereby segregated for, and made subject to, local taxation only, and shall be assessed for local taxation in such manner and at such times as the General Assembly may prescribe by general law.

Section 5. Franchise taxes; taxation of corporate stock.

The General Assembly, in imposing a franchise tax upon corporations, may in its discretion make the same in lieu of taxes upon other property, in whole or in part, of such corporations. Whenever a franchise tax shall be imposed upon a corporation doing business in this Commonwealth, or whenever all the capital, however invested, of a corporation chartered under the laws of this Commonwealth shall be taxed, the shares of stock issued by any such corporation shall not be further taxed.

Section 6. Exempt property.

(a) Unless otherwise provided in this Constitution, the following property, and no other, shall be exempt from taxation, state and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth exempt by law.

(2) Buildings with land they actually occupy, the furniture and furnishings therein, and endowment funds, lawfully owned and held

by churches or religious bodies, and wholly and exclusively used for religious worship or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

(3) Private or public burying grounds or cemeteries and endowment funds, lawfully held, for their care, provided the same are not operated for profit.

(4) Property owned by public libraries, incorporated colleges, or other incorporated institutions of learning, not conducted for profit, together with the endowment funds thereof not invested in real estate. But this provision shall apply only to property primarily used for literary, scientific, or educational purpose or purposes incidental thereto. It shall not apply to industrial schools which sell their product to other than their own employees or students.

(5) Real estate belonging to, and actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals, nunneries, and homes for the afflicted, aged, or infirm, conducted not for profit, but exclusively as charities; and parks or playgrounds held by trustees for the perpetual use of the general public.

(6) Buildings with the land they actually occupy, and the furniture and furnishings therein, belonging to any benevolent or charitable association and used exclusively for lodge purposes or meeting rooms by such association, together with such additional adjacent land as may be necessary for the convenient use of the buildings for such purposes.

(7) Property of the Association for the Preservation of Virginia Antiquities, the Confederate Memorial Literary Society, the Mount Vernon Ladies' Association of the Union, the Virginia Historical Society, the Thomas Jefferson Memorial Foundation, the posts of the American Legion, and such other similar patriotic or historical organizations or societies as may be prescribed by a three-fourths vote of the members elected to each house of the General Assembly.

(b) The General Assembly may define as a separate subject of taxation household goods and personal effects and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(c) Except as to class (a) (1) above, the General Assembly by general law may restrict, in whole or in part, but not extend, any or all of the above exemptions.

(d) Nothing contained in this section shall be construed to exempt from taxation the property of any person, firm, association, or corporation who shall, expressly or impliedly, directly or indirectly, contract or promise to pay a sum of money or other benefit on account of death, sickness, or accident to any of its members or other persons.

(e) Whenever any building or land, or part thereof, mentioned in this section, and not belonging to the Commonwealth, shall be leased or shall otherwise be a source of revenue or profit, all of such building and land shall be liable to taxation as other land and buildings in the same county, city, town, or regional government. But the General Assembly may provide for the partial taxation of property not exclusively used for the purposes herein named.

(f) Nothing herein contained shall be construed as authorizing or requiring any county, city, town, or regional government to tax for its purposes, in violation of the rights of the lessees thereof, existing under any lawful contract heretofore made, any real estate owned by such county, city, town, or regional government, as heretofore leased by it.

(g) Obligations issued by county, city, town, or regional government may be exempted by the authorities of such governments from local taxation.

(h) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(i) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of exempt property for police and fire protection, refuse collection, and public utility services provided by such governments.

Section 7. Collection and disposition of state revenues.

All taxes, licenses, and other revenues of the Commonwealth shall be collected by its proper officers and paid into the state treasury. No money shall be paid out of the state treasury except in pursuance of appropriations made by law; and no such appropriation shall be made which is payable more than two years and six months after the end of the session of the General Assembly at which the law is enacted authorizing the same.

Section 8. Limit of tax or revenue.

No other or greater amount of tax or revenues shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the Commonwealth.

Section 9. State debt.

No debt shall be contracted by or in behalf of the Commonwealth except as provided herein.

(a) Debts to meet emergencies and redeem previous debt obligations.

The General Assembly may (1) contract debts to suppress insurrection, repel invasion, or defend the Commonwealth in time of war; (2) contract debts, or may authorize the Governor to contract debts, to meet casual deficits in the revenue or in anticipation of the collection of revenues of the Commonwealth for the then current fiscal year within the amount of authorized appropriations, provided that the total of such indebtedness shall not exceed thirty per centum of the general fund revenues for the preceding fiscal year and that each such debt shall mature within twelve months from the date such debt is incurred; and (3) contract debts to redeem a previous debt obligation of the Commonwealth.

The full faith and credit of the Commonwealth shall be pledged to any debt created under this subsection. The amount of such debt shall not be included in the limitations on debt hereinafter established, except that the amount of debt incurred pursuant to clause (3) above shall be included in determining the limitation on the aggregate amount of debt contained in subsection (b) hereof unless the debt so incurred pursuant to clause (3) above is secured by a pledge of net revenues from capital projects of institutions or agencies described in subsection (c) hereof, which net revenues the Governor shall certify are anticipated to be sufficient to pay the principal of and interest on such debt and to provide such reserves as the law authorizing the same may require, in which event the amount thereof shall be included in determining the limitation on the aggregate amount of debt contained in subsection (c) hereof.

(b) General obligation debt for capital projects and sinking fund.

The General Assembly may, in any one biennium, upon the affirmative vote of a majority of the members elected to each house, authorize the creation of debt to which the full faith and credit of the Commonwealth is pledged, not to exceed one-tenth of the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the authorization by the General Assembly of such debt, for new capital projects to be distinctly specified in the law authorizing the same;

provided that any such law shall specify capital projects constituting a single purpose and shall not take effect until it shall have been submitted to the people at an election and a majority of those voting on the question shall have approved such debt. The General Assembly may, in any one biennium, upon the affirmative vote of two-thirds of the members elected to each house and without approval by the people, authorize the creation of debt to which the full faith and credit of the Commonwealth is pledged, not to exceed one-twentieth of the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding such authorization, for new capital projects to be distinctly specified in the law authorizing the same. The aggregate amount of debt authorized by the General Assembly in any one biennium under this subsection (b) shall not exceed one-tenth of the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the date when any such debt is authorized by the General Assembly.

No debt shall be incurred under this subsection (b) if the amount thereof when added to the aggregate amount of all outstanding debt to which the full faith and credit of the Commonwealth is pledged other than that excluded from this limitation by subsections (a) and (c) hereof, less any amounts set aside in sinking funds for the repayment of such outstanding debt, shall exceed an amount equal to the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the incurring of such debt.

All debt incurred under this subsection (b) shall mature within a period not to exceed the estimated useful life of the projects as stated in the authorizing law, which statement shall be conclusive, or a period of thirty years, whichever is shorter; and all debt incurred under clause (3) of subsection (a) hereof, except that which is secured by net revenues anticipated to be sufficient to pay the same and provide reserves therefor, shall mature within a period not to exceed thirty years. Such debt shall be amortized, by payment into a sinking fund or otherwise, in annual installments of principal to begin not later than one-tenth of the term of the bonds, and any such sinking fund shall not be appropriated for any other purpose. No such installment shall exceed the smallest previous installment by more than one hundred per centum. If sufficient funds are not appropriated in the budget for any fiscal year for the timely payment of the interest upon and installments of principal of such debt, there shall be set apart from the first general fund revenues received during such fiscal year and thereafter a sum sufficient to pay such interest and installments of principal.

(c) Debt for certain revenue producing capital projects.

The General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth, and such debt shall not be included in determining the limitation on debt contained in subsection (b) hereof, provided that

(1) the creation of such debt is authorized by the affirmative vote of two-thirds of the members elected to each house of the General Assembly; and

(2) such debt is created for specific revenue producing capital projects (including the enlargement or improvement thereof), which shall be distinctly specified in the law authorizing the same, of institutions and agencies administered solely by the executive department of the Commonwealth or of institutions of higher learning of the Commonwealth.

Before any such debt shall be authorized by the General Assembly, and again before it shall be incurred, the Governor shall certify in writing, filed with the State Treasurer, his opinion, based upon responsible engineering and economic estimates, that the anticipated net revenues to be pledged to the payment of principal of and interest on such debt will be sufficient to meet such payments as the same become due and to provide such reserves as the law authorizing such debt may require, and that the projects otherwise comply with the requirements of this subsection (c), which certifications shall be conclusive.

No debt shall be incurred under this subsection (c) if the amount thereof when added to the aggregate amount of all outstanding debt authorized by this subsection (c) and the amount of all outstanding debt incurred under clause (3) of subsection (a) which is to be included in the limitation of this subsection (c), less any amounts set aside in sinking funds for the payment of such debt, shall exceed an amount equal to the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the incurring of such debt.

(d) Obligations to which section not applicable.

The restrictions of this section shall not apply to any obligation incurred by the Commonwealth or any institution, agency, or authority thereof if the full faith and credit of the Commonwealth is not pledged or committed to the payment of such obligation.

Section 10. Lending of credit, stock subscriptions, and works of internal improvement.

Neither the credit of the Commonwealth nor of any county, city, town, or regional government shall be directly or indirectly, under any device or pretense whatsoever, granted to or in aid of any person, association, or corporation; nor shall the Commonwealth or any such unit of government subscribe to or become interested in the stock or obligations of any company, association, or corporation for the purpose of aiding in the construction or maintenance of its work; nor shall the Commonwealth become a party to or become interested in any work of internal improvement, except public roads and public parks, or engage in carrying on any such work; nor shall the Commonwealth assume any indebtedness of any county, city, town, or regional government, nor lend its credit to the same. This section shall not be construed to prohibit the General Assembly from establishing an authority with power to insure and guarantee loans to finance industrial development and industrial expansion and from making appropriations to such authority.

ARTICLE XI

CONSERVATION

Section 1. Lands and resources of the Commonwealth.

The General Assembly shall make provision for the conservation, development, and utilization of the natural resources of the Commonwealth.

Section 2. Development of natural resources.

The General Assembly may undertake the development or utilization of lands or natural resources of the Commonwealth, either by the creation of public authorities or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations. Subject to the debt limitations of Article X, section 9, nothing in this Constitution shall be construed to limit the Commonwealth in participaing for any period of years in the cost of projects which shall be the subject of a joint undertaking between the Commonwealth and any agency of the United States or of other states.

Section 3. Natural oyster beds.

The natural oyster beds, rocks, and shoals in the waters of the Commonwealth shall not be leased, rented, or sold but shall be held in trust

for the benefit of the people of the Commonwealth, subject to such regulations and restrictions as the General Assembly may prescribe, but the General Assembly may, from time to time, define and determine such natural beds, rocks, or shoals by surveys or otherwise.

ARTICLE XII

FUTURE CHANGES

Section 1. Amendments.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates, and shall be published for three months previous to the time of such election. If, at such regular session or any subsequent extra session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as it shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the voters, qualified to vote in elections by the people, voting thereon, such amendment or amendments shall become part of the Constitution.

Section 2. Constitutional convention.

The General Assembly may, by a vote of two-thirds of the members elected to each house, call a convention to propose a general revision of, or specific amendments to, this Constitution, as the General Assembly in its call may stipulate.

The General Assembly shall provide by law for the election of delegates to such a convention, and shall also provide for the submission at the next succeeding general election, of the proposals of the convention to the voters qualified to vote in elections by the people. If a majority of those voting vote in favor of any proposal, it shall become effective on the date prescribed by the General Assembly in submitting the convention proposals to the voters.

SCHEDULE

Section 1. Effective date of revised Constitution.

This revised Constitution shall, except as is otherwise provided herein, go into effect at noon on the first day of July, nineteen hundred and seventy-one.

Section 2. Officers and elections.

Unless otherwise provided herein or by law, nothing in this revised Constitution shall affect the oath, tenure, term, status, or compensation of any person holding any public office, position, or employment in the Commonwealth, nor affect the date for filling any state or local office, elective or appointive, which shall be filled on the date on which it would otherwise have been filled.

Section 3. Laws, proceedings, and obligations unaffected.

The common and statute law in force at the time this revised Constitution goes into effect, so far as not in conflict therewith, shall remain in force until they expire by their own limitation or are altered or repealed by the General Assembly. Unless otherwise provided herein or by law, the adoption of this revised Constitution shall have no effect on pending judicial proceedings or judgments, on any obligations owing to or by the Commonwealth or any of its officers, agencies, or political subdivisions, or on any private obligations or rights.

Section 4. Pending petitions for original writs of habeas corpus.

The original habeas corpus jurisdiction of the Supreme Court which existed prior to the adoption of this revised Constitution shall continue only with regard to those petitions for writs filed prior to the effective date of this revised Constitution.

Section 5. Qualifications of judges.

All justices of the Supreme Court and judges of courts of record who were appointed or elected prior to the effective date of this revised Constitution shall be allowed to complete the term for which they were appointed or elected and may be reelected for one term without regard to the requirements of Article VI, section 7, that they shall be residents of Virginia and shall, at least five years prior to their election or appointment, have been members of the bar of the Commonwealth.

Section 6. Qualifications of members of State Corporation Commission.

Members of the State Corporation Commission elected or appointed prior to the effective date of this revised Constitution shall be deemed qualified to complete the term for which they were appointed or elected without regard to the requirement of Article IX, section 1, that all members shall have the qualifications prescribed for judges of courts of record.

Section 7. First session of General Assembly following adoption of revised Constitution.

The General Assembly shall convene at the Capitol at noon on the first Wednesday in January, nineteen hundred and seventy-one. It shall enact such laws as may be deemed proper, including those necessary to implement this revised Constitution. The General Assembly shall be vested with all the powers, charged with all the duties, and subject to all the limitations prescribed by this Constitution except that this session shall continue as long as may be necessary; that the salary and allowances of members shall not be limited by Article IV, section 6; and that the effective date limitation of Article IV, section 13, shall not be operative.

III

Commentary

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ARTICLE I

BILL OF RIGHTS

It is symbolic that, of all the parts of the Virginia Constitution, the Bill of Rights has changed least since the Virginia Convention of 1776 undertook to draft a "declaration of rights" and a "plan of government." The drafting of the Bill of Rights gave Virginians, then on the verge of an open break with the Crown, an opportunity to declare in their new fundamental law the inalienable rights of men. Chief architect of the Bill of Rights was George Mason, who also took the lead in drawing up the frame of government. For inspiration in drafting the Bill of Rights, Mason and his fellow delegates looked to such sources as the documents and conventions which made up the British Constitution and to the teachings of such natural law philosophers as John Locke. The resulting document was a compendium of the fundamental rights thought by the men of 1776 to lie at the base of a free society.

From time to time, some of the sections of the Bill of Rights have been amended, especially the sections dealing with procedures in the courts. But many of the sections have not changed since 1776—a testimonial to the insight which the original framers had into the basic and recurring questions of political philosophy. Hence the Commission, in studying the Constitution for possible revisions, has approached the Bill of Rights with special care. The Commission's recommendations would make few changes in the Bill of Rights as it now appears.

The language of the Bill of Rights. In the first place, the Commission believes that the Bill of Rights is not only a statement of legal principles and rules, but also a repository of some of the cardinal ideals and goals toward which the Commonwealth and its citizens aspire. This is especially true of the first four sections of the Bill of Rights. The Commission therefore has resisted any suggestion that it should eliminate all language which is not judicially enforceable. Moreover, the Commission has made no effort to "modernize" the language of the Bill of Rights, believing it would be unlikely to improve on the well-turned phrases of the original framers.

Organization. The Commission proposes to leave the present arrangement of the Bill of Rights undisturbed, but it does propose to bring into the Bill of Rights the provisions of present section 58, now found in the Legislative article. Under the present arrangement, provisions bearing on the same subject matter, e.g., speech, press, and religious liberties, are widely separated. For example, in the present Constitution, section 16 of the Bill of Rights guarantees free exercise of religion, while section 58, in the Legislative article, prohibits an establishment of religion. Therefore the Commission proposes taking the several provisions of section 58 and putting each provision, intact, into the relevant section of the Bill of Rights.

By this process, the habeas corpus, bill of attainder, and ex post facto provisions of section 58 become part of section 9 of the Bill of Rights; the obligation of contracts and taking of property provisions become part of section 11; the speech and press provisions become part of section 12; and the religious provisions become part of section 16. This reorganization, in the judgment of the Commission, serves to bring related guarantees together and to make the statement of basic liberties more coherent. Moreover, since section 58 (a good part of which is drawn directly from Thomas Jefferson's Bill for Establishing Religious Liberties) states rights as basic as any in the Constitution, putting its provisions in the Bill of Rights dignifies those rights. To repeat, the reorganization effects no substantive change whatever.

Procedural rights and governmental discrimination. That most of the provisions of the Virginia Bill of Rights have their parallel in the Federal Bill of Rights is, in the judgment of the Commission, no good reason not to look first to Virginia's Constitution for the safeguards of the fundamental rights of Virginians. The Commission believes that the Virginia Bill of Rights should be a living and operating instrument of government and should, by stating the basic safeguards of the people's liberties, minimize the occasion for Virginians to resort to the Federal Constitution and the federal courts. For this reason, some modifications of section 8, dealing with the rights of the accused in criminal prosecutions, are proposed. Also language has been added to section 11 prohibiting discrimination on the basis of religious or political conviction, race, color, or national origin.

After study of section 8, the Commission concluded that it should offer only the relatively modest changes enumerated in the commentary accompanying that section, *infra*. Case law interpreting and applying rights of an accused under the Federal Constitution is currently in a quite fluid state. Therefore the Commission thought it unwise at present, in revising section 8, to undertake an extensive or detailed restatement of the con-

tents of due process in criminal cases. Likewise, because of the unsettled state of federal constitutional cases, as well as the rapidly developing state of electronic eavesdropping, wiretapping, and other surveillance devices, the Commission has made no recommendations for revisions in section 10, dealing with searches and seizures.

Duties of the citizen. An addition of substance is found in section 16. This section enumerates qualities necessary to the preservation of free government, and the Commission proposes adding language recognizing the duties of citizenship, specifically, the duty of respect for law. The Commission believes that inclusion of such a statement is appropriate in light of today's restive social conditions.

Education. Another addition to section 16 would recognize the importance of education to the preservation of free government. This declaration also reinforces the revisions proposed in the Education article.

A DECLARATION OF RIGHTS made by the good people of Virginia in the exercise of their sovereign powers, which rights do pertain to them and their posterity, as the basis and foundation of government.

Source: The preamble to the Bill of Rights as it presently appears in the Constitution.

Comment: No change.

Section 1. Equality and rights of men.

That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Source: Present section 1.

Comment: No change.

The first four sections of the Bill of Rights state in ringing terms the political philosophy which animated the original drafters of Virginia's Bill of Rights.[1] Section 1, for example, states a natural rights philosophy that men have certain rights anterior to the social compact and that they retain those rights in society. Because of the generality of the language of such sections of the Bill of Rights, they are not susceptible of judicial enforcement as readily as are other sections of the Bill of Rights. Section 1

1. George Mason was the author of these four sections, as well as most of the other sections of the Bill of Rights as adopted in 1776. See Irving Brant, *James Madison, The Virginia Revolutionist* (Indianapolis, 1941), p. 237 and note 3.

has often been discussed in decisions of the Virginia Supreme Court of Appeals, but its language, strictly speaking, is more exhortatory than enforceable. Nevertheless, the Commission is strongly of the view that such declarations as those of section 1 are an important part of the Bill of Rights, and contrary to suggestions made in some other States the Commission does *not* recommend restricting the Bill of Rights to language which is judicially enforceable.[2]

Section 2. People the source of power.

That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.

Source: Present section 2.

Comment: No change. See comment on section 1.

Section 3. Government instituted for common benefit.

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

Source: Present section 3.

Comment: No change. See comment on section 1.

Section 4. No exclusive emoluments or privileges; offices not to be hereditary.

That no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public

2. The Commission thus disagrees with the approach of the Model State Constitution and with that of the report of the Maryland Constitutional Convention Commission, both of which would strip a state constitution of all language which is not judicially enforceable. See National Municipal League, *Model State Constitution* (6th ed.; New York, 1963), p. 27; *Maryland Constitutional Convention Commission Report* (Baltimore, 1967), p. 98.

services; which not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

Source: Present section 4.

Comment: No change. See comment on section 1.

Section 5. Separation of legislative, executive, and judicial departments; periodical elections.

That the legislative, executive, and judicial departments of the Commonwealth should be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by regular elections, in which all or any part of the former members shall be again eligible, or ineligible, as the laws may direct.

Source: Present section 5.

Comment: The only change is stylistic, substituting the word "Commonwealth" for the word "State."

Separation of powers among the legislative, executive, and judicial departments of government is stated at two places in the Constitution: in section 5 of the Bill of Rights, and also in proposed Article III, section 1 (section 39 of the present Constitution). For the Commission's proposals regarding Article III, section 1, see pages 121-22, *infra*.

On periodical elections, it should be noted here that the Commission has *not* adopted proposals made to it for longer terms for various elective offices, e.g., members of the House of Delegates (which in section 3 of the Legislative article remains at two years), or local treasurers and commissioners of the revenue (which in section 4 of the Local Government article remains at four years).

Section 6. Free elections; consent of governed.

That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed, or deprived of, or damaged in, their property for public uses, without their own consent, or that of their representatives duly elected, or bound by any law to which they have not, in like manner, assented for the public good.

Source: Present section 6.

Comment: No change.

From 1776 to the present day, the trend in Virginia has been towards a more inclusive and representative electorate, especially as better and more general education has made possible a more intelligent exercise of the franchise. Thomas Jefferson, for example, in his *Notes on the State of Virginia,* urged the justice of giving the vote to men who, though not freeholders, had just as much interest in public affairs in the Commonwealth.[3] Section 6 of the Bill of Rights, with its historical overtones of the American colonists' eighteenth-century struggle for representative self-government, has figured prominently in the evolution of the franchise in Virginia. The section was, for example, often quoted during the debates in the Constitutional Convention of 1829-30.[4] It is appropriate, therefore, to note at this point that the Commission's proposals in the Franchise article emphasize access to the ballot by placing fewer hurdles in the path of those who would vote, e.g., the Commission proposes to lower the period of residence required as a prerequisite to voting in Virginia or in the localities.[5]

The references in section 6 to taxing, depriving of, or taking property are a statement of the consent theory of government, that is, that laws in general, including tax laws, are binding only when enacted by a representative form of government. The requirement that there be compensation for the taking of property for public uses appears, not in section 6, but rather in section 58 of the present Constitution. The Commission proposes that section 58's eminent domain provisions be relocated, with no change in substance, in section 11 of the Bill of Rights.[6]

Section 7. Laws should not be suspended.

That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Source: Present section 7.

Comment: No change.

Section 8. Criminal prosecutions.

That in criminal prosecutions a man hath a right to demand the cause

3. *Writings of Thomas Jefferson,* ed. Paul L. Ford (New York, 1892), III, 222.
4. See, e.g., Memorial of the Non-Freeholders of the City of Richmond, in *1829-30 Convention Debates,* p. 26.
5. See commentary on section 1 of the Franchise article, *infra,* pp. 104-08.
6. See section 11 of the Bill of Rights, *infra,* p. 95.

and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and, in the interest of the Commonwealth as well as the accused, to have a public and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers; nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense.

Laws may be enacted providing for the trial of offenses not felonious by a court not of record without a jury, preserving the right of the accused to an appeal to and a trial by jury in some court of record having original criminal jurisdiction. Laws may also provide for juries consisting of less than twelve, but not less than five, for the trial of offenses not felonious, and may classify such cases, and prescribe the number of jurors for each class.

In criminal cases, the accused may plead guilty. If the accused plead not guilty, he may, with his consent and the concurrence of the Commonwealth's attorney and of the court entered of record, be tried by a smaller number of jurors, or waive a jury. In case of such waiver or plea of guilty, the court shall try the case.

The provisions of this section shall be self-executing.

Source: Present section 8.

Comment: Section 8 remains as it appears in the present Constitution, except for the following proposed changes:

(1) *Public trial.* The proposed section makes the right to a public trial explicit in the Virginia Constitution.[7]

(2) *Speedy trial.* The right to a speedy trial is emphasized by language recognizing that the Commonwealth as well as the accused is injured by long delays in criminal proceedings, and by a new concluding sentence making the provisions of section 8 self-executing.[8] (See comments under paragraph (4), *infra.*)

(3) *Trials of non-felonious offenses.* The provision of present section 8 for trial without jury (but subject to trial de novo with a jury) by a "justice of the peace or other inferior tribunal" has been conformed to

7. See In re Oliver, 333 U.S. 257 (1948), holding that the due process clause of the Fourteenth Amendment bars secret proceedings in criminal cases, and Jones v. Peyton, 208 Va. 378, 158 S.E.2d 179 (1967), holding that because of *Oliver* it was unnecessary to reach the question presented under section 8 of the Virginia Constitution.

8. Cf. Klopfer v. North Carolina, 386 U.S. 213 (1967), applying to the states, via the Fourteenth Amendment, the Sixth Amendment's guarantee of a speedy trial.

present jurisdictional legislation [9] by replacing the quoted language with "court not of record."

(4) *Section 8 to be self-executing.* The last sentence of the section is new and makes the provisions of section 8 self-executing. Under the case law, some parts of section 8 are self-executing, e.g., the third paragraph,[10] yet others, specifically the provision for speedy trial, are not.[11] Under the proposed version of section 8, all provisions are self-executing, and the procedural rights of the accused are not dependent upon legislative definition or action. It should not be inferred that making section 8 self-executing in any way affects the self-executing nature of other sections of the Constitution. Section 8 needs the explicit statement only because of decisions holding some of section 8's provisions not to be self-executing. Other sections do not pose this problem, and no additional language is needed to make them self-executing.

In understanding the operation of section 8, the following points might be noted:

(1) The provisions of section 8, with some exceptions (e.g., indictment by grand jury) closely parallel the procedural provisions of the Fifth and Sixth Amendments to the Federal Constitution. (The Virginia Bill of Rights was, of course, a forerunner of both the Federal Bill of Rights and the bills of rights of the other state constitutions.) The language of section 8 giving an accused the right to "call for evidence in his favor" is in fact broader than the language of the Sixth Amendment, "witnesses in his favor." In short, the scope and inclusiveness of present section 8 make it, with few exceptions, quite viable even in a time of rapidly changing procedural requirements in criminal cases.

(2) The guarantee of proceedings according to the "law of the land" (the language of chapter 39 of Magna Carta) is the same thing as assuring proceedings according to "due process of law." [12] Therefore two sections

9. Va. Code Ann. §§ 16.1-123 through 16.1-128 (repl. vol. 1960).

10. See Thornhill v. Smyth, 185 Va. 986, 41 S.E.2d 11 (1947) (dictum); Dixon v. Commonwealth, 161 Va. 1098, 172 S.E. 277 (1934).

11. Butts v. Commonwealth, 145 Va. 800, 133 S.E. 764 (1926); Commonwealth v. Embrey, 12 Va. L. Reg. (n.s.) 28 (1926).

12. Although section 8 does not explicitly assure a right to assistance of counsel, it has been held that an accused's right to counsel is implicit in the guarantee of proceedings according to the "law of the land." E.g., Stonebreaker v. Smyth, 187 Va. 250, 46 S.E.2d 406 (1948); Watkins v. Commonwealth, 174 Va. 518, 6 S.E.2d 670 (1940). See also Whitley v. Cunningham, 205 Va. 251, 135 S.E.2d 823 (1964). Because case law involving the right to counsel is in a stage of change and development, the Commission has made no effort to write into the Constitution any more specific statement of the right to counsel than that implied from the existing language. On developments in this area, see Yale Kamisar, "The Right to Counsel and the Fourteenth Amendment: A Dialogue on 'The Most Pervasive Right' of an Accused," 30 *U. Chi. L. Rev.* 1 (1962); Yale Kamisar, "Equal Justice in the Gatehouses and Mansions of

of the Bill of Rights guarantee due process of law: section 8 (in criminal proceedings) and section 11, to the due process clause of which the Commission proposes adding "life" and "liberty." [13]

(3) On the prohibition against putting a person twice in jeopardy, see the commentary on present section 88, *infra,* p. 188, where the Commission proposes deleting the provision regarding appeals by the Commonwealth and leaving that question to legislation, subject always to the constitutional ban against double jeopardy contained in section 8 of the Bill of Rights.[14]

Section 9. Prohibition of excessive bail and fines, cruel and unusual punishment, suspension of habeas corpus, bills of attainder, and ex post facto laws.

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of invasion or rebellion, the public safety may require; and that the General Assembly shall not pass any bill of attainder, or any ex post facto law.

Source: Present section 9 and the first five lines [15] of present section 58.

Comment: No change of substance. The only change is one of organization. The Commission proposes to take the provisions of present section 58 regarding habeas corpus, bills of attainder, and ex post facto laws and to move them, intact, into section 9. For the reasons explaining the relocation of provisions of present section 58 into the Bill of Rights, see page 86 *supra.*

Here, as elsewhere in the Bill of Rights, the word "ought" from prior versions has been retained, even though in some instances it is clearly

American Criminal Procedure," in *Criminal Justice in Our Time* (Charlottesville, Va., 1965), p. 1; Note, "Effective Assistance of Counsel," 49 *Va. L. Rev.* 1531 (1963); John M. Junker, "The Right to Counsel in Misdemeanor Cases," 43 *Wash. L. Rev.* 685 (1968).

13. See commentary on section 11 of the Bill of Rights, *infra,* pp. 95-97.

14. Although most of the procedural guarantees of the Federal Bill of Rights have been applied to the states via the Fourteenth Amendment, the Fifth Amendment's ban on double jeopardy has never explicitly been applied to the states. See Palko v. Connecticut, 302 U.S. 319 (1937). It is hard to imagine that the Supreme Court of the United States would not apply the ban to the states given a case squarely presenting the issue.

15. The reference in these commentaries to "lines" of the present Constitution means lines as they appear in the small green pamphlet edition printed by the Commonwealth's Department of Purchases and Supply. The most recent printing was in 1968.

intended (and has been treated in the cases)[16] to be mandatory rather than exhortatory.

Several statements submitted to the Commission by members of the public asked the Commission to consider a constitutional ban on capital punishment.[17] The Commission has concluded that the General Assembly has the power to abolish capital punishment by general law and that this problem should be left to legislation.[18] Therefore, no constitutional provision is recommended.

Section 10. General warrants of search or seizure prohibited.

That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

Source: Present section 10.

Comment: No change.

In view of the increasing use of electronic and other sophisticated forms of eavesdropping (governmental and private), the Commission considered whether it should attempt any revision of section 10. New techniques in this area present both an opportunity and a danger: the opportunity to put science and technology to work in the battle against a rising crime rate, and the danger of undue invasions of the privacy and rights of the individual. The Commission also considered whether it should attempt to write into the Constitution a "right of privacy." The Commission concluded, however, that any revision of section 10 ought to be preceded by a thorough study of the techniques and implications of modern surveillance devices, information-gathering systems (such as computerized data in government memory banks), and other developments.[19] Any

16. Hart v. Commonwealth, 131 Va. 726, 741, 109 S.E. 582, 586 (1921) (dictum).

17. Public Views Documents 97, 108, 161, 170, 177, 188.

18. Only one state, Michigan, has abolished capital punishment in its Constitution; twelve have eliminated it by statute. Mich. Const. Art. IV, §46; President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, 1967), p. 143. Judicial decisions so far have rejected arguments, made in various contexts, that capital punishment constitutes cruel and unusual punishment. See, e.g., Fogg v. Commonwealth, 208 Va. 541, 159 S.E.2d 616 (1968); In re Anderson, 4 Criminal Law Rept. 2161 (Calif. 1968) (4-3 decision). See also the dissent of Justices Goldberg, Douglas, and Brennan from the denial of certiorari in Rudolph v. Alabama, 375 U.S. 889 (1963).

19. See Alan F. Westin, *Privacy and Freedom* (New York, 1967); Donald Michael, "Speculations on the Relation of the Computer to Individual Freedom and the Right to Privacy," 33 *Geo. Wash. L. Rev.* 270 (1964); Donald King, "Electronic

such study must take into account the importance to society of up-to-date techniques for law enforcement and of individual security against governmental intrusions.[20]

Moreover, such revision perhaps ought to await a time of more settled case law in the interpretations of the search and seizure provisions of the Fourth Amendment to the Federal Constitution.[21] Decisions under that Amendment have upheld searches or seizures conducted under appropriate court supervision or other proper circumstances but have invoked the Amendment against searches or seizures carried out by improper procedures.[22]

Section 11. Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious or political conviction, race, color, or national origin shall not be abridged.

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

Source: Present section 11 and lines 6 and 8 through 11 of present section 58.

Comment: (1) *Due process of law.* The clause guaranteeing due process of law is drawn from the first two lines of present section 11. The Commission proposes adding "life" and "liberty" to the present language

Surveillance and Constitutional Rights: Some Recent Developments and Observations," 33 *Geo. Wash. L. Rev.* 240 (1964).

20. President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, 1967), p. 187 *et seq.*

21. Recent Terms of the U.S. Supreme Court have seen a disproportionate number of argued cases involving the Fourth Amendment. *U.S. Law Week* noted this in its review of Supreme Court opinions of the October, 1967, Term by devoting the major part of its criminal law section to Fourth Amendment cases. "Review of the Supreme Court's Work," 37 U.S.L.W. (Sup. Ct.) 3025-28 (1968).

22. Katz v. U.S., 389 U.S. 347 (1967); Berger v. New York, 388 U.S. 41 (1967); Osborn v. U.S., 385 U.S. 323 (1966).

(which speaks only of "property") to eliminate a possible loophole. Section 8 of the Bill of Rights provides that in criminal prosecutions a person "shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers"; this provision has been construed to be the same as a guarantee of "due process of law." [23] Section 8, however, would not expressly apply to administrative proceedings, in which there might be detention of the person. Hence the Commission proposes the addition of "life" and "liberty" to the due process provision of section 11.

The proposed change also brings the due process clause of section 11 into line with the typical, and well understood, due process clauses of other state constitutions which apply due process of law to "life, liberty, or property," [24] as well as the language of the Fifth and Fourteenth Amendments to the Federal Constitution. Sections 8 and 11 of the Virginia Bill of Rights would, with the proposed revision of section 11, strongly complement each other, a twin reminder of the enduring protections afforded by guarantees of "law of the land" or "due process of law."

(2) *Anti-discrimination clause.* The anti-discrimination clause which the Commission proposes adding at the end of section 11 would perform functions analogous to those of the federal equal protection clause, except that the language proposed for section 11 is more tightly drafted than the federal provision and therefore is less open-ended in its possibilities of application than is the federal language.[25] Another difference between the proposal and the operation of the equal protection clause is that the problem of special legislation, for which the Federal Constitution makes no express provisions, is explicitly dealt with in sections 13 and 14 of the Legislative article (the counterparts of sections 63 and 64 of the present Constitution).[26] Inclusion of an anti-discrimination clause in the section guaranteeing due process of law has strong historical support, as due process of law has often been understood to prohibit invidious governmental discrimination.[27]

23. Stonebreaker v. Smyth, 187 Va. 250, 46 S.E.2d 406 (1948).

24. See the table of due process provisions in state constitutions in A. E. Dick Howard, *The Road from Runnymede: Magna Carta and Constitutionalism in America* (Charlottesville, Va., 1968), pp. 479-82.

25. For public statements asking the inclusion of an anti-discrimination clause in the Constitution, see Public Views Documents 126, 140, 158, and 177.

26. See pp. 150-55 *infra.*

27. See, for example, the argument of Daniel Webster in the *Dartmouth College* case, 4 Wheat. (17 U.S.) 518, 581 (1819). The U.S. Supreme Court has often observed on the interrelation between the operation of due process of law and equal protection of the laws. See, e.g., Truax v. Corrigan, 257 U.S. 312, 332 (1921) (Taft, C.J.); Malinski v. New York, 324 U.S. 401, 413-19 (1945) (Frankfurter, J.); Griffin v. Illinois, 351 U.S. 12, 16-17 (1956) (Black, J.).

(3) *Jury trial in civil cases.* The provision for legislation reducing the size of juries is simplified by permitting reduction to no fewer than five jurors in all civil cases.

Section 12. Freedom of speech and of the press; right peaceably to assemble, and to petition.

That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.

Source: Present section 12 and line 7 of present section 58.

Comment: (1) *Declaratory clause.* Insertion of reference to speech in the declaratory first clause is intended to reflect the emphasis on speech in present section 58.

(2) *Speech and press.* The language "the General Assembly shall not pass any law abridging the freedom of speech or of the press" is taken without change from present section 58. No change in substance is effected. The purpose of the reorganization is to bring together in one place the constitutional guarantees of speech and press, which, in the present Constitution, are widely separated, to the confusion of lawyers and laymen alike. On the relocation of provisions of present section 58 into the Bill of Rights, see page 86 *supra.*

(3) *Assembly and petition.* The added language, at the end of the section, prohibiting legislative abridgement of the right peaceably to assemble and to petition for redress of grievances is adapted from the First Amendment to the Federal Constitution. Present section 12 has been construed by the Supreme Court of Appeals to imply the right peaceably to assemble,[28] and probably implies the right to petition. The added language is intended to make these implications explicit.

(4) *Right of association.* The Commission received a proposal that the Bill of Rights include a section reading, "That all men shall have freedom to assemble and to associate, one with another, as each might do so willingly." [29] Of the two rights stated in this language—assembly and association—the right of peaceable assembly has been spelled out in the Commission's proposed language in section 12. The Commission does not,

28. York v. City of Danville, 207 Va. 665, 669, 152 S.E.2d 259, 263 (1967).
29. Public Views Document 71.

however, recommend that language relating to a "right of association" should be put in the Bill of Rights. The right of association as a constitutional right was first enunciated in a Supreme Court case in 1958,[30] and since that time it has been applied in a number of cases.[31] The phrase "right of association" does not appear in the Federal Constitution, and decisions applying the doctrine treat it as being derived from explicit First Amendment rights, such as assembly or speech, or simply as part of the "liberty" protected by the due process clause of the Fourteenth Amendment.

Just what the "right of association" is, and how it is applied, has given both courts and commentators considerable difficulties.[32] The Commission has concluded that, while the Virginia Bill of Rights ought to be explicit on such rights as speech and peaceable assembly, any effort to include a right of association would give rise to more problems than it would solve. The Commission believes it wiser to leave it to the courts to decide, in the context of concrete cases, to what extent a right of association is implicit in other constitutional rights and how that right is to be applied to specific factual situations.

Section 13. Militia; standing armies; military subordinate to civil power.

That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Source: Present section 13.

Comment: No change.

Section 14. Government should be uniform.

That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

30. NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449 (1958).
31. *E.g.*, Gibson v. Florida Legislative Investigation Comm., 372 U.S. 539 (1963); Bates v. City of Little Rock, 361 U.S. 516 (1960); Shelton v. Tucker, 364 U.S. 479 (1960).
32. See Thomas I. Emerson, "Freedom of Association and Freedom of Express 74 *Yale L.J.* 1 (1964); David Fellman, *The Constitutional Right of Association* (Chicago, 1963).

Source: Present section 14.

Comment: No change.

Section 15. Qualities necessary to preservation of free government.

That no free government, nor the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue; by frequent recurrence to fundamental principles; and by the recognition by all citizens that they have duties as well as rights, and that such rights cannot be enjoyed save in a society where law is respected and due process is observed.

That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development through an effective system of public education.

Source: Present section 15.

Comment: The existing language of section 15 is retained without change. Two additions are proposed.

(1) *Rights and duties of the citizen.* The first proposed addition is the concluding language of the first paragraph, "and by the recognition by all citizens that they have duties as well as rights, and that such rights cannot be enjoyed save in a society where law is respected and due process is observed." The Commission recognizes that citizenship implies duties as well as rights and believes that in a time of increasing tempo of social change language regarding respect for orderly processes of change is merited.

(2) *Education.* The second addition is the second paragraph of the proposed section, giving recognition to the importance of education in a democratic society. Placing such language in the Bill of Rights signalizes the relation of an educated citizenry to other fundamental values and underscores the thrust of the revised Education article, especially sections 1 and 2. The language proposed for the second paragraph of section 15 is adapted from Thomas Jefferson's *Notes on the State of Virginia.*[33]

33. *Writings of Thomas Jefferson*, ed. Paul L. Ford (New York, 1892), III, 251, 254. In 1786, Jefferson, in Paris, wrote George Wythe: "I think by far the most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom, and happiness." *Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton, N.J., 1950), X, 245.

Section 16. Free exercise of religion; no establishment of religion.

That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

Source: Present section 16 and the last twenty-one lines of present section 58.

Comment: The proposal, by joining the religious provisions of present sections 16 and 58, brings together two of the most classic statements of religious liberty in American history, one drafted by James Madison, the other by Thomas Jefferson.

The first sentence of proposed section 16 is the entire text of present section 16, preserved without change.[34] This provision was inserted in the Bill of Rights of 1776 at the urging of James Madison during the debates in the convention which drafted Virginia's first Constitution. The provision guarantees the free exercise of religion and was offered in place of a weaker provision drafted by George Mason.[35]

34. The Commission considered whether the reference to "Christian" forbearance sounds a denominational note out of keeping with the separation of church and state effected by the rest of the section. It concluded that this phrase can and should be construed to urge a standard of conduct which would be implicit in the teachings of many religions and philosophies. So construed, the phrase carries no narrow sectarian connotation, just as Sunday closing laws, though religious in origin, are upheld as constitutional because today they serve a broader purpose. See McGowan v. Maryland, 366 U.S. 420 (1961), and its companion cases decided the same day.

35. For an account of Madison's proposals (originally including disestablishment),

The remainder of the proposed section is taken, again with no change whatever, from present section 58. This language derives in turn from Jefferson's Bill for Establishing Religious Freedom, first adopted by the General Assembly as a statute in January 1786,[36] and inserted into the Constitution in 1830.[37] It was for this Bill, along with his authorship of the Declaration of Independence and his founding of the University of Virginia, that Jefferson wanted to be remembered on his tombstone.

Bringing these related guarantees together serves to emphasize that in American constitutional law, state and federal, religious freedom has two interdependent aspects: free exercise of religion, and no establishment of religion. The free exercise guarantee of present section 16 and the anti-establishment language of present section 58 belong together, in the judgment of the Commission. Joining these provisions dignifies Jefferson's Bill for Religious Liberties by making it an integral part of the Bill of Rights and effects a more comprehensive statement of the constitutional separation of church and state in Virginia.[38]

Section 17. Construction of the Bill of Rights.

The rights enumerated in this Bill of Rights shall not be construed to limit other rights of the people not therein expressed.

Source: Present section 17.

Comment: No change, other than capitalization of "Bill of Rights."

ARTICLE II

FRANCHISE AND OFFICERS

Few questions are more fundamental in a political society than who shall have the vote. The suffrage was a central concern with those who sought a convention to revise the Constitution of 1776,[1] and at the Convention of 1829-30 the suffrage question evoked extended and learned de-

see Irving Brant, *James Madison, The Virginia Revolutionist* (New York, 1941), pp. 243-50. See also *Papers of James Madison,* ed. William Hutchinson and William Rachal (Chicago, 1962), I, 172-75.

36. See *Papers of Thomas Jefferson,* ed. Julian P. Boyd (Princeton, N.J., 1950), II, 545-53. The statute, reaffirmed by the General Assembly, appears in Va. Code Ann. §§ 57-1, 57-2 (repl. vol. 1959).

37. Constitution of 1830, Art. III, § 11.

38. The separation of church and state is further reinforced by the ban on appropriations to religious bodies in section 16 of the Legislative article (present section 67) and by the exclusion of sectarian schools from the private schools for which public funds may be appropriated pursuant to section 10 of the Education article (present section 141). See pp. 269-72 *infra.*

1. See, e.g., Jefferson's views, *Writings of Thomas Jefferson,* ed. Paul L. Ford (New York, 1892), III, 222; X, 38, 41.

bates over the nature of the vote.[2] The franchise was the hottest issue at the Convention of 1867-68 and in the ratification contest which followed.[3] Similarly, no question more concerned the delegates at the 1901-02 Convention than that of suffrage.[4]

The Commission's proposals regarding the Franchise article have several premises. In the first place, the Commission regards the vote as a basic and precious right in a democratic society, a right underlying and bolstering many other individual rights. Hence it follows that needless obstacles ought not to be placed in the path of Virginians seeking to have a voice in the government of their Commonwealth. For example, the Commission does not believe that large numbers of people, otherwise qualified, should be effectively disfranchised by requiring unnecessarily long periods of residence in the Commonwealth or its political subdivisions.

Secondly, precisely because the franchise is so basic in the fabric of society, the Commission believes that the Franchise article ought to ensure, in so far as it can, an enlightened, aware electorate capable of making intelligent judgments on issues and candidates. In pursuance of this goal, the Commission believes that its proposals for the Education article will play their part in creating just such an educated electorate.

Thirdly, the Commission believes that the democratic process, to be healthy, requires fairness and integrity in the system of registration, in the use of ballots and voting machines, and in the mechanism set up for absentee voting.

Fourthly, the Commission believes that the Constitution should, in addition to defining the suffrage, lay down clear guidelines for the closely related matter of representation. Apportionment of legislative and congressional seats should be spelled out, as should provision for periodic reapportionment.

Therefore the Commission makes the recommendations summarized below. Fuller commentary accompanies the sections themselves.

Qualifications to vote. Proposed section 1 states the qualifications to vote. The Commission recommends no change in the present constitutional provisions as to citizenship, age (21 years), and being currently registered. The chief change which the Commission proposes is a reduction in

2. The debate was between those wanting to preserve the freehold franchise and those wanting an enlarged electorate. Compare, e.g., *1829-30 Convention Debates*, p. 399 (Benjamin Watkins Leigh) with *ibid.*, pp. 356-57 (Richard Henderson).

3. While the proposed Constitution of 1868 was approved at the polls, a clause, voted on separately, which would have disfranchised large numbers of people who had supported the Confederacy was defeated. See J. A. C. Chandler, *Representation in Virginia* (Baltimore, 1896), p. 79, n.7.

4. See Ralph C. McDanel, *The Virginia Constitutional Convention of 1901-02* (Baltimore, Md., 1928), pp. 25-28.

the period of residence required for one to vote in Virginia, from the present one year to six months, and elimination of the requirement that one must have lived in a county, city, or town six months in order to vote there. The requirement of having lived thirty days in the precinct is retained. In the proposed Franchise article, all references to the poll tax as a prerequisite to voting are deleted.

Disqualifications. The essence of the present constitutional disqualifications are retained, the principal categories being those convicted of certain crimes and those of unsound mind. Some change is proposed in the language describing those disqualifications and in the mechanics for restoring the vote to one formerly declared to be of unsound mind.

Registration. Proposed section 2 deals with registration. The chief substantive change proposed by the Commission is to substitute a system of permanent registration, coupled with periodic purges of those who have not voted for four years, in place of the present provision (which has never been implemented) of annual registration. A savings clause provides that those registered before the effective date of the revised Constitution need not re-register. Proposed section 2 also deals with what information may be required of an applicant to register. Finally, the General Assembly is authorized, but not required, to impose a fair, reasonable, and nondiscriminatory test of the ability to read and write as a prerequisite to registering to vote.

Methods of voting. The proposed Franchise article, like the present one, provides for voting by ballots or voting machines, for secrecy in casting one's vote, and for public scrutiny of the count. The Commission proposes that candidates' names be listed alphabetically, a change from the present constitutional provision. The General Assembly would be authorized to provide for absentee ballots.

Qualifications to hold elective office. The proposed Franchise article, like the existing article, deals with qualifications for elective office. Proposed section 5, unlike present section 32, omits detail dealing with qualifications for certain non-elective positions.

Apportionment. Proposed section 6 brings together the provisions of present sections 43 (apportionment of General Assembly seats) and 55 (congressional apportionment) so as to apply a common set of principles to representation (districts to be compact, contiguous, and proportionate to population) and in reapportionment (every ten years). Multi-member districts in the General Assembly would, as at present, be allowed, so long as representation remains substantially proportionate to a district's population.

Electoral boards. Elsewhere in this report,[5] the Commission expresses its belief that judges ought not to be responsible for making appointments to offices which are not essentially judicial in character. Most of the existing provisions requiring judges to make such appointments are statutory, but one such provision is found in the present Constitution itself: the requirement of present section 31 that circuit or corporation judges shall appoint members of local electoral boards. Although the Commission does not propose that the Constitution prohibit judges from exercising the power of appointing non-judicial officers, it does recommend that the method of selecting members of electoral boards be left to general law, so that the General Assembly, should it concur in the judgment that judges should be relieved of this non-judicial function, can create some other system of selection.

Deletions. Adoption of the Commission's proposals would entail deletion of certain sections of the existing Franchise article as being obsolete or unnecessary. The Commission proposes that all provisions dealing with the poll tax as a prerequisite to voting—present sections 22 and 38 and parts of present sections 18, 20, and 21—be deleted. Moreover, Article XVII is unnecessary; the parts relating to the poll tax can be deleted; the remainder, relating to voting by members of the armed forces, has been absorbed into proposed section 4. Present sections 19 and 21 are unnecessary because of proposed section 2's savings clause for voters already registered. Section 24, dealing with presumptions as to residence is deleted as unnecessary; the General Assembly has power to provide for such a presumption, should it choose to do so, without an express constitutional provision. Section 30, which allows the General Assembly to prescribe property qualifications for voting in local elections, is deleted because of the Commission's judgment that such a prerequisite to voting ought not to be possible under the Constitution. Section 33 is deleted as unnecessary, leaving the matters of when terms of officers begin and end to general law. The remaining sections of the existing Franchise article are absorbed into proposed sections, with such changes as are described in the commentary accompanying the proposed sections themselves.

Section 1. Qualifications of voters.

In elections by the people, the qualifications of voters shall be as follows. Each voter shall be a citizen of the United States, shall be twenty-one years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this Article. No person

5. See p. 209, *infra*.

who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor, and no person adjudicated to be of unsound mind shall be qualified to vote until his competency has been reestablished in the manner provided by law.

The residence requirements shall be that each voter shall have been a resident of the Commonwealth for six months and of the precinct where he votes for thirty days. A person who is qualified to vote except for having moved his residence from one precinct to another fewer than thirty days prior to an election may in any such election vote in the precinct from which he has moved. Residence, for all purposes of qualification to vote, requires both domicile and a place of abode.

Any person who will be qualified to vote at the next general election shall be permitted to register in advance and also to vote in any intervening primary election. Otherwise, the qualifications to vote in any primary election shall be the same as in general elections.

Source: Present sections 18, 23, and 26.

Comment: Section 1 states the qualifications to vote in popular elections generally. The qualifications set forth in section 1 are both a floor and a ceiling, in that they can neither be added to nor subtracted from, save as expressly allowed by some other section of the Constitution.

(1) *In general.* The requirement as to United States citizenship, voting age of twenty-one years, and current registration to vote are retained without change. Payment of the poll tax has been eliminated as a requirement.[6] All other qualifications required by the present Constitution have been retained, but modified, as discussed below.

(2) *Voting age.* The Commission considered proposals that it recommend lowering the voting age to some age such as eighteen years.[7] The voting age in Virginia from the time of the first Constitution to the present time has been twenty-one. Only four states—Georgia, Kentucky, Alaska, and Hawaii—set the voting age at less than twenty-one years. Indeed, twenty-one is the standard age throughout Europe and the rest of the world.[8] Nevertheless, there has been continued interest throughout the country in the question. Since 1942, over sixty joint resolutions to

6. See Harper v. Virginia Board of Elections, 383 U.S. 663 (1966).

7. For statements proposing reduction of the voting age to 18, see Public Views Documents 72, 95, 97, 126, 140, 154, 194. For lowering the voting age to 20, see Documents 108, 184. For keeping the voting age at 21, see Documents 74, 174. Many statements asking changes in the Franchise article made no mention one way or the other of the voting age.

8. Henry J. Abraham, "Reduce the Voting Age to 18?" 43 *Nat'l Mun. Rev.* 11, 15 (1954).

amend the Federal Constitution to lower the voting age have been introduced in Congress.[9]

Among the arguments for lowering the voting age are: that today's 18-year-old is better educated than formerly was the case, that 18-year-olds can incur a variety of legal obligations under state laws, that an 18-year-old can be drafted into military service ("old enough to fight, old enough to vote"), that today's students are more aware of and more active in politics and public affairs than ever before, and that persons under twenty-one would have a heightened sense of responsibility by being allowed to vote. Among the arguments against lowering the voting age are: that 46 of the 50 states, as well as most of the rest of the world, accept twenty-one as the age for voting, that the idealism of youth too often has not been tempered with responsibility (such as marriage and holding a job), that younger voters would vote on impulse or under the influence of extraneous factors, in the manner that they adopt fads in clothes and popular music.[10] There are, of course, rebuttals for most of the arguments on both sides. The Commission deliberated at length over the question of the voting age and concluded, as the National Municipal League has put it, "No data are available to prove that one age is better than another." [11] This being the case, the Commission proposes no change in the voting age.

The changes which the Commission does propose in the qualifications for voting (in addition to the elimination of the poll tax) are discussed in the paragraphs which follow.

(3) *Persons convicted of a felony.* In proposed section 1, disfranchisement of persons convicted of a felony remains automatic. The generic term "felony" has been substituted for the list of crimes contained in present section 23. Express reference is made to restoration of civil rights by the Governor as re-enfranchising persons convicted of a felony, which works no change in the present law.

(4) *Persons of unsound mind and other disqualifications.* Disfranchisement of persons of unsound mind is retained, but "unsound mind" has replaced the phrase "idiots, insane persons and paupers" in present section 23.[12] Disfranchisement of paupers is eliminated as being in violation

9. *Maryland Constitutional Convention Commission Report* (Baltimore, 1967), p. 114.

10. For more detailed arguments for and against lowering the voting age, see *ibid.*, p. 115.

11. National Municipal League, *Model State Constitution* (6th ed.; New York, 1963), p. 39.

12. At the Commission's public hearings, representatives of the Virginia Association for Retarded Children suggested that more current language be substituted for the archaic and imprecise word "idiots." Public Views Documents 87, 115.

of the Federal Constitution.[13] Disqualification of duelers is eliminated as obsolete. The function of determining unsoundness of mind is placed in the courts rather than in the registrar. In addition to adjudications committing custody of a person or his property to another on the basis of mental incompetency, this clause contemplates the possibility of a declaratory judgment proceeding authorized by statute. Restoration of the right to vote could be accomplished by either judicial or nonjudicial proceedings, as the General Assembly sees fit.

(5) *Residence requirements.* Residence requirements—presently (section 18) one year in the Commonwealth, six months in the county, city, or town, and thirty days in the precinct—have been reduced in the proposed section to six months in the Commonwealth and thirty days in the precinct. There is widespread interest in Virginia in having the residence periods reduced, as the Commission proposes.[14] The Commission believes that its proposal recognizes the increasing mobility of today's populace. The proposal reduces the hardship of temporary disfranchisement which falls on many of the Commonwealth's most informed citizens who, when they move to take a better job or for other reasons, must thereby forego their vote for unnecessarily long periods. Likewise, the proposal eases the handicap placed on new citizens attracted to Virginia who, once here, find for a whole year they have no voice in the affairs of the Commonwealth. In the judgment of the Commission, its proposal is in line with the historic trend in Virginia, reaching back to the earliest days, towards a more broadly based electorate unhampered by needless restraints on their exercise of the franchise.

The present requirement of six months' residence in the county, city, or town is eliminated in the proposal as superfluous. The thirty-day precinct requirement is retained, together with the present exception permitting a voter to return to vote in his old precinct if he has moved elsewhere in the Commonwealth within the preceding thirty days.

The Commission considered adding a proviso to section 1 giving the General Assembly the power, if it chose, further to reduce the residence requirements in presidential elections only. Although the idea has obvious theoretical appeal (in that moving from one state to another does not of itself have any direct bearing on one's knowledge of presidential politics), the Commission decided against including such a proviso. Its reason was that having a different period of residence in presidential elections from

13. Cf. Harper v. Virginia Board of Elections, 383 U.S. 663 (1966).

14. For statements asking a reduction in the period of residence (generally to six months in the Commonwealth) required to vote, see Public Views Documents 36, 50, 72. 74, 97, 108, 140, 177, 184. One statement asked that the periods of residence be increased. Document 143.

those in elections for state or local offices would require two sets of registration books. The problems inherent in a dual set of books will be apparent to anyone who recalls the confused days when there was a poll tax in state elections, but not in federal elections, and two sets of books had to be kept.

(6) *Definition of residence.* Decisions of the Supreme Court of Appeals define "residence" as domicile.[15] There is considerable flexibility in the concept, since under American law one retains his domicile until he acquires a new one, which need never happen so long as he retains the intention of ultimately returning to his old one. Language stating that residence for voting purposes requires both residence and domicile presents difficulties for two reasons. First, since residence has already been defined judicially to mean precisely the same thing as domicile, the phrase might be construed to be tautological. Second, if residence is construed to mean anything different from domicile, it might be so rigorously construed as to exclude persons temporarily "residing" elsewhere, as, for example, those absent while upon active service with the armed forces or in college. The language that has been chosen should avoid both difficulties. It requires that in order to be "resident" in a place for voting purposes, one must be domiciled there and have a place of abode there. Under this provision, one need not have his only or even regular place of abode where he votes, so long as he has *a* place of abode there and the intent which gives rise to domicile.

(7) *Date for determining qualifications.* The principle of present sections 26 and 35, which taken together enable a person to register and to vote in intervening primary elections if he will be qualified to vote at the next general election, is retained in the proposed section. In all other respects, qualifications to vote in primary elections shall be the same as to vote in general elections.

Section 2. Registration of voters.

The General Assembly shall provide by law for the registration of all persons otherwise qualified to vote, and shall ensure that the opportunity to register is made conveniently available. Registrations accomplished prior to the effective date of this section shall be effective hereunder. The registration books shall not be closed to new or transferred registrations more than thirty days before the election in which they are to be used.

Applications to register shall require the applicant to provide under oath the following information and no other: name; age; date and place of

15. Kegley v. Johnson, 207 Va. 54, 147 S.E.2d 735 (1966); Bruner v. Bunting, 15 Va. L. Reg. 514 (1909).

birth; whether the applicant is presently a United States citizen; residence during the six months immediately preceding the effective date of registration; place and time of any previous registrations to vote; and whether the applicant has ever been adjudicated to be of unsound mind or convicted of a felony, and if so, under what circumstances the applicant's right to vote has been restored. All applications to register shall be completed in person before the registrar and by or at the direction of the applicant and signed by the applicant, unless physically disabled. No fee shall be charged to the applicant incident to an application to register.

Nothing in this Article shall preclude the General Assembly from requiring as a prerequisite to registration to vote the ability of the applicant to read and write, such ability to be determined by a fair, reasonable, and nondiscriminatory test to be prescribed by the General Assembly.

Source: Present section 20.

Comment: (1) *Registration in general.* Qualifications being established by section 1, section 2 obliges the General Assembly to provide for the registration of those qualified to vote. The provision in present section 25 for annual registration has been eliminated as undesirable and not in fact implemented; it has been replaced in section 2 by provision for a system of permanent registration, subject to periodic purges of those who have not voted for four consecutive years. Those already registered before the effective date of the proposed section need not reregister; this savings clause makes present sections 19 and 21 (grandfather provision) unnecessary.

(2) *Poll Tax.* Those sections or parts of sections relating to the poll tax (present sections 22 and 38 and parts of present sections 18, 20, 21 and Article XVII) have been eliminated.[16]

(3) *Registration books.* The requirement that registration books not be closed more than thirty days before any election would incorporate present practice into the Constitution, thereby preventing use of an early closing date as a device to frustrate registration.

(4) *Applications to register.* Under the second paragraph of section 2, an applicant is required to provide the specified information pertaining to his qualifications. The required information may be entered by the registrar, by the applicant, or by anyone assisting the applicant. The application must be completed in person in the presence of the registrar, and the information provided by the applicant is to be under oath. The applicant, unless physically disabled, must sign the application; for this

16. See Harper v. Virginia Board of Elections, 383 U.S. 663 (1966).

purpose an "x" or other mark is not a signature. No fee may be charged incident to the application.

(5) *Ability to read and write.* Decision as to whether literacy or ability to comprehend should be a prerequisite to voting requires the consideration and accommodation of several factors. Democratic government contemplates that decisions by the people be decisions rationally taken, that voters have the ability to distinguish the name of one candidate from another or to tell the difference between voting for and voting against a proposition. The integrity of the secret ballot precludes resort to assistance to interpret the ballot to the voter in the voting booth. But this is not all. The ideal of rational voting also suggests that the voter should comprehend something more than the names of candidates and the words of propositions on the ballot; he should be aware of the significance of his vote and of the role it plays in the formulation and choice of government policy.[17]

At the same time, one of the great virtues of democratic government is that it involves as many people as possible in the process of government, giving every voter the opportunity to press for his own preferences by participating in governmental decisions. Given fair representation, the voter has, within the system of existing government, a means of asserting and defending what he perceives to be his own interests. This is not only a requirement of basic fairness; it is a cornerstone of stable government. If access to the polls is shut off to a substantial and cohesive segment of the community, other ways of asserting interests and pressing for change in governmental policy may be chosen—ways outside of, and possibly inimical to, the existing system of government. It is thus clearly desirable that the franchise be as broad as is possible without seriously damaging its capacity to reflect rational decisions.[18]

Other states have resolved these considerations in different ways. Of the fifty states, twenty have adopted a constitutional requirement of literacy, usually in the form of ability to read, to write, or both. Thirty states have no such requirement.[19]

Virginia does not write on a blank slate as to literacy requirements. Section 20 of the present Virginia Constitution requires applications to

17. In proposing legislation "to diffuse knowledge more generally through the mass of the people," Thomas Jefferson said that of all the law's objects "none is more important, none more legitimate, than that of rendering the people the safe, as they are the ultimate, guardians of their own liberty." *Writings of Thomas Jefferson*, ed. Paul L. Ford (New York, 1892), III, 254.

18. The successive extensions of the suffrage in Great Britain, from the time of the Reform Bill of 1832 down to recent times, and the stability and peaceful evolution of English institutions during that period compared to those of many countries of comparable development, are testimonials to this proposition.

19. Data compiled by the Commission.

register to be made (unless the applicant is physically disabled) in the applicant's handwriting, "without aid, suggestion, or other memorandum, in the presence of the registration officer." Under a 1962 amendment, the application is to be "on a form which may be provided by the registration officer." While not phrased as a literacy qualification for voting, this registration requirement has clearly acted as a test to determine whether the prospective voter can read and write.

The Virginia literacy test was suspended for five years in 1965 under the provisions of the Federal Voting Rights Act of 1965,[20] because the number of persons who actually voted in Virginia in the 1964 presidential election was less than fifty percent of the number of persons of voting age in the Commonwealth.

Virginia will be eligible in 1970 to bring an action in the United States District Court for the District of Columbia to terminate the suspension. The suspension will be terminated only if that court determines that no literacy test or device has been used during the five preceding years for the purpose *or with the effect* of denying or abridging the right to vote on account of race or color. Upon rendition of a declaratory judgment terminating the suspension, the court will retain jurisdiction for five more years, during which it may reopen the action upon motion of the Attorney General of the United States alleging that a literacy test or device has been used "for the purpose or with the effect of denying or abridging the right to vote on account of race or color." [21]

The federal statute reflects a congressional conviction that in many states literacy tests have in fact been used to exclude racial minorities from the franchise. Literacy tests might be held by a federal court to be discriminatory on a number of grounds: that registrars or other officials use such tests with the intent of discriminating, that lack of standards governing the administration of a literacy test makes the test lacking in objectivity, or that where a racial group has been afforded significantly inferior public education even a fairly administered, objective test may have the effect of denying or abridging the right to vote.

Whether or not a literacy test might be desirable or permissible at present, the Commission is of the view that the imposition of such a test should not be foreclosed by the Constitution. For this reason, the concluding paragraph of proposed section 2 authorizes the General Assembly to require ability to read and write as a prerequisite to registration.

20. 42 U.S.C. § 1973 (supp. 1967). On federal action in the voting field, see Note, "Federal Protection of Negro Voting Rights," 51 *Va. L. Rev.* 1051 (1965); Warren M. Christopher, "The Constitutionality of the Voting Rights Act of 1965," 18 *Stan. L. Rev.* 1 (1965).

21. 42 U.S.C. § 1973b.

Because qualifications to vote are constitutionally established in proposed section 1, express language is necessary to authorize imposition of any additional restriction. The Commission feels that persons presently registered and voting in the Commonwealth should not be disenfranchised by any new literacy requirement the General Assembly might impose. Therefore the authority to impose a literacy requirement is stated not as a qualification to vote but rather as a prerequisite to registration. Since registration is to be upon a permanent system, no person already registered would be required to meet any subsequently imposed literacy requirement unless he permitted his registration to lapse.

In setting the outer limits of any literacy or comprehension requirement the General Assembly might impose, the Commission considered various possibilities, among them, a test for comprehension of the democratic system of government, completion of an eighth grade education or the equivalent, the ability to read and write, and simply the ability to sign one's name. The Commission felt that some approaches might produce standards too flexible to assure fair and nondiscriminatory administration, while others might limit possible standards to a level too low to be helpful. In the end, the Commission chose ability to read and write, the standard most frequently encountered in other constitutions, subject to a restriction that such ability is to be determined by a fair, reasonable, and nondiscriminatory test to be prescribed by the General Assembly.

Section 3. Method of voting.

In elections by the people, the following safeguards shall be maintained. Voting shall be by ballot or by machines for receiving, recording, and counting votes cast. No ballot or list of candidates upon any voting machine shall bear any distinguishing mark or symbol, other than words identifying political party affiliation; and their form shall be as uniform as is practicable throughout the Commonwealth or smaller governmental unit in which the election is held. Each office to be filled shall be clearly set forth upon all ballots and voting machines together with an alphabetical list of the names of the candidates. In elections other than primary elections, provision shall be made whereby votes may be cast for persons other than the listed candidates. Secrecy in casting votes shall be maintained, except as provision may be made for assistance to handicapped voters, but the ballot box or voting machine shall be kept in public view and shall not be opened, nor the ballots canvassed nor the votes counted, in secret. Votes may be cast only in person, except as otherwise provided in this Constitution.

Source: Present sections 27, 28, and 37.

Comment: (1) *Voting by ballots or machines.* Voting is required to be by ballot or voting machines, the latter term encompassing both mechanical and electronic devices. It is intended that ballots or machines, or both, in any combination (including future kinds of voting machines), may be used in elections. Provision is made for secrecy in casting votes [22] and for public observance in the tallying of votes. These provisions are essentially the same as in the present Constitution, but in section 3 they are consolidated and reworded.

(2) *Form of ballot or list.* The names of candidates for an office are required by the proposed section to be listed alphabetically on the ballot and machines. (Section 28 of the present Constitution requires only that the names appear "in due and orderly succession.") So that "write-in" votes (or their equivalent on a machine) may be cast, provision is made for voting for persons not listed, except in primary elections. Ballots or lists on machines must not bear distinguishing marks or symbols, although party designation in words will be permissible. The form of the ballot is to be "as uniform as is practicable" throughout the Commonwealth or subdivision in which the election is held. Ballot uniformity is important to ensure that voters are not misled. The phrase "as uniform as is practicable" is intended to recognize that the form of the ballot in a given election varies, as a mechanical matter, with different kinds of voting machines. The language means that the form of the ballot may vary as much as, but no more than, is required by the mechanics of a particular machine.

(3) *Voting in person.* The last sentence of the proposed section requires voting to be in person except as otherwise provided in the Constitution. Section 4, *infra,* authorizes the General Assembly to provide for the use of absentee ballots.

(4) *Viva voce voting.* The provision in present section 27 for viva voce voting in representative bodies is now unnecessary, as it has been superseded by the broader requirement of a recorded vote on all final actions in the General Assembly (section 10 of the Legislative article) and a like requirement as to local governing bodies (section 7 of the Local Government article).

Section 4. Powers and duties of General Assembly.

The General Assembly shall establish a uniform system for permanent registration of voters pursuant to this Constitution, including provision

22. The requirement that a voting machine be kept "in public view" is satisfied if the exterior of the machine is in public view; it is not violated by the closing of the curtain when a voter is inside.

for appeal by any person denied registration, correction of illegal or fraudulent registrations, proper transfer of all registered voters, and cancellation of registrations in other jurisdictions of persons who apply to register to vote in the Commonwealth. The General Assembly shall provide for maintenance of accurate and current registration lists and shall provide for cancellation of the registration of any voter who has not voted at least once during four consecutive calendar years.

The General Assembly may provide for registration and voting by absentee application and ballot for members of the armed forces of the United States in active service, and their spouses, who are otherwise qualified to vote, and may provide for voting by absentee ballot for other categories of persons who are qualified to vote but are unable, without serious inconvenience, to vote in person.

The General Assembly shall provide for the nomination of candidates, shall regulate the time, place, manner, conduct, and administration of primary, general, and special elections, and shall have power to make any other law regulating elections not inconsistent with this Constitution.

Source: Sections 25, 36, and Article XVII (voting qualifications of armed forces) of the present Constitution.

Comment: (1) *Registration system.* Section 4 requires that the General Assembly establish a uniform and permanent registration system by appropriate implementing legislation. The provisions of section 4 are substantially the same as those of section 25 of the present Constitution, except that permanent rather than annual registration is directed. Two new items are added. First, the General Assembly is to provide for notification of registrars in other jurisdictions when an applicant seeks to register in Virginia. Many other states have such provisions, and they seem desirable to preclude multiple registration and voting. It is not meant to be implied that cancellation of registration in another jurisdiction would be a prerequisite to registration in Virginia. Second, proposed section 4 specifically requires the General Assembly to provide for maintenance of current and accurate registration lists and requires that it provide for the purging of voting records to eliminate registrants who have not voted during four consecutive calendar years. The authorization is necessary in light of the proposed requirement of a permanent, rather than a temporary, registration system. The four-year period was chosen because a voter who votes only in presidential elections would thus be able to preserve his registration, and because four years represents a complete voting cycle for purposes of many state and local elections.

(2) *Absentee registration and voting.* Proposed section 4 contains provisions authorizing the General Assembly to permit absentee registra-

tion and use of the absentee ballot. The present Constitution allows absentee ballots explicitly for members of the armed forces only. However, in practice absentee voting is permitted by anyone who is unable to vote in person. In some parts of the Commonwealth, this liberality has led to serious abuse and corruption. The Commission is concerned about the abuses sometimes connected with the use of absentee ballots but concluded that the remedy lies, not in a constitutional prohibition on absentee ballots, but in legislation and vigorous enforcement. Proposed section 4 would require that, if absentee ballots are to be allowed, the General Assembly must act affirmatively to permit their use.

Article XVII of the present Constitution exempts servicemen from registering altogether and permits them to vote in person without having previously registered. This, in practice, has proven to be undesirable. The primary reason it was done in the first place was to exempt them from the payment of poll taxes, which is no longer a prerequisite to voting. The proposal exempts no one from registration but does make it possible to allow servicemen and their spouses to register by absentee application.[23]

(3) *Other powers of the General Assembly.* Proposed section 4 includes the substance of section 36 of the present Constitution, with the addition of a concluding clause making it clear that the General Assembly's powers are not limited by the proposed Franchise article except to the extent specifically set forth in the article.

Section 5. Qualifications to hold elective office.

The only qualification to hold any office of the Commonwealth or of its governmental units, elective by the people, shall be that a person must be qualified to vote for that office, except as otherwise provided in this Constitution, and except that:

(a) the General Assembly may impose more restrictive geographical residence requirements for election of its members, and may permit other governing bodies in the Commonwealth to impose more restrictive geographical residence requirements for election to such governing bodies, but no such requirement shall impair equal representation of the persons entitled to vote;

(b) the General Assembly may provide that residence in a local gov-

23. The proposed provision is compatible with federal law. Between 1942 and 1946 there were federal statutes requiring states to issue absentee ballots for servicemen, otherwise qualified to vote, who were away from home and wished to vote in federal elections. Between 1942 and 1955 there were federal laws requiring states to exempt absent servicemen from normal registration procedures. The present federal statutes, however, only "recommend" that the states establish special registration and balloting procedures for servicemen. Federal Voting Assistance Act of 1955, 50 U.S.C. §§ 1451-52 (1967). For the 1942 act, see 56 Stat. 753.

ernmental unit is not required for election to designated elective offices in local governments, other than membership in the local governing body; and

(c) nothing in this section shall limit the power of the General Assembly to prevent conflict of interest, dual officeholding, or other incompatible activities by elective or appointive officials of the Commonwealth or of any political subdivision.

Source: Present section 32.

Comment: *Comparison with present section 32.* Except for paragraph (c), proposed section 5 is limited to elective office, leaving qualifications for appointive office to the Legislative and Executive articles or to the General Assembly. Because section 5 is thus limited, some of the detailed exceptions to present section 32 are rendered unnecessary. Particularly, it is no longer necessary to have a special constitutional provision permitting a person less than twenty-one years of age to act as notary public, and unnecessary to have a special provision exempting appointive "positions or posts requiring special technical or professional training and experience." Additionally, the broad authority given the General Assembly to vary the normal residence requirement has been replaced by two more narrowly drawn authorizations.

The basic principle of section 5 is that those persons, and only those persons, entitled to vote for an office elective by the people are entitled to hold that office.

Four exceptions are necessary.

(1) *Other constitutional requirements.* Additional qualifications may be appropriate for membership in the General Assembly and for the three statewide elective offices. These variations are reflected by the exception that section 5 applies "except as otherwise provided in this Constitution."

(2) *More restrictive residence requirements.* Under subsection (a), the General Assembly may by law require that, in a large, multi-member district for example, a member, though elected by all the people living in that district must live in some particular part of it. Similarly, the Legislature may allow such special residence requirements to be imposed by local governing bodies. This permits such plans as that in effect in Virginia Beach, where seven councilmen run from districts in which they must reside while four run at large, and voting for all eleven is at large. Use of such plans, either in the General Assembly or in local governing bodies, may not result in impairment of the principle of "one man, one vote" which applies to both legislative and local representation.[24]

24. The Virginia Beach plan was upheld by the Supreme Court in Dusch v. Davis, 387 U.S. 112 (1967).

(3) *Nonresident local officers.* It may be desirable to permit nonresidents to hold some elective local offices, other than membership on local governing body itself. This may be true, for example, if a small rural county is unable to find a resident lawyer interested in the post of Commonwealth's attorney. The General Assembly is given authority by subsection (b) to relax residence requirements in such a case if it should wish to do so.

Since qualification to vote for an office is made the qualification to hold that office, removal of an incumbent's residence from the governmental unit or electoral district will automatically vacate the office, unless the General Assembly has acted pursuant to subsection (a) to eliminate the residence requirement.

(4) *Conflicts of interest.* Another exception, subsection (c), deals with conflict-of-interest problems. Subsection (c) makes clear that section 5 does not limit the General Assembly's power to prohibit dual officeholding or otherwise prevent conflict of interests.

Section 6. Apportionment.

Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly. Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. The General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section every ten years.

Source: Present sections 43 (apportionment of General Assembly) and 55 (congressional apportionment).

Comment: There is no reason to make any distinction between General Assembly and congressional apportionment. For this reason, the proposed section combines the provisions of sections 43 and 55 so that a common set of principles applies to apportionment of legislative seats and congressional seats.

Section 55 requires congressional districts be apportioned into compact, contiguous, and substantially equal districts. Proposed section 6 would extend the requirement to apportionment of districts for election of the General Assembly, modified to permit multi-member districts so long as representation of each district is numerically proportionate to its population. Section 43 requires decennial reapportionment into senatorial and house districts for the General Assembly. Proposed section 6 extends the

requirement of decennial reapportionment to congressional districts. The language of proposed section 6 conforms, as far as is appropriate, to the apportionment language of section 5 of the proposed Local Government article, so that there will be a symmetry between the two sections.

Apportionment has not presented great problems in Virginia, which has not in recent times known the distinct departures from a population basis of representation evident in reapportionment litigation in many states.[25] Proposed section 6 is intended to formalize existing practice, which is believed to conform to federal constitutional requirements.[26]

Reapportionment. The Commission is of the opinion that reapportionment once every ten years is often enough and considered having section 6 provide, not only that there must be reapportionment decennially, but that reapportionment should not take place any more often. The Commission concluded, however, that such a requirement might prove unduly rigid or unworkable and that section 6 ought to be silent on this point.[27]

Multi-member districts. Whether the Constitution ought to prohibit multi-member legislative districts has been a subject of some interest in Virginia.[28] Although up-to-date figures are difficult to obtain, multi-member electoral districts appear to be part of the legislative districting system in a large majority of the states. As of 1960 at least some of the state senators in eighteen states and some of the state representatives in 38 states were elected from multi-member districts.[29] As of March 1962, 2704 out of 5883 seats in the nation's lower houses were filled from multi-

25. Virginia has consistently reapportioned itself after each federal census, and at the time of Baker v. Carr, 369 U.S. 186 (1962), Virginia was, by the measure of population, the eighth best apportioned state in the nation. Robert G. Dixon, Jr., *Democratic Representation: Reapportionment in Law and Politics* (New York, 1968), p. 227. See Ralph Eisenberg, "Legislative Reapportionment and Congressional Redistricting in Virginia," 23 *Wash. & Lee L. Rev.* 295 (1966). This was not always the pattern in Virginia, of course. Representation after 1776 was heavily weighted in favor of the older, eastern counties and against the growing western counties. Jefferson often attacked the existing apportionment of the General Assembly, see, e.g., his passage on representation in *Notes on the State of Virginia*, in *Writings of Thomas Jefferson*, ed. Paul L. Ford (New York, 1892), III, 222-23, and reform of representation was one of the chief reasons for the calling of the Constitutional Convention of 1829-30. See statement of Philip Doddridge in *1829-30 Convention Debates*, p. 476. The issue continued to divide the Commonwealth until the Convention of 1850-51. See Constitution of 1851, Art. IV, §§ 2-5.

26. The chief case on federal standards is Reynolds v. Sims, 377 U.S. 533 (1964). The literature on the subject is voluminous. See generally Robert G. Dixon, Jr., *Democratic Representation: Reapportionment in Law and Politics* (New York, 1968), and sources cited therein.

27. There is, in any event, no federal constitutional requirement that reapportionment be more often than decennial. See Reynolds v. Sims, 377 U.S. 533, 583-84 (1964).

28. See Public Views Documents 67, 72, 84, 108, 126, 185, 191.

29. Ruth Silva, "Compared Values of the Single- and the Multi-Member Legislative District," 17 *Western Pol. Q.* 504, 506 (1964).

member districts.[30] The Supreme Court, in the leading decision applying the one man, one vote principle, has expressly legitimized multi-member districts, so long as population is the basis of measurement.[31]

The Commission sees no need to recommend that the Constitution prohibit multi-member districts. Since the reapportionment decisions of the Supreme Court have foreclosed many of the traditional ways to represent varying interests in a state's population, multi-member districts remain one of the variables by which a legislative body can reflect the pluralistic character of the people who elected it. Giving adequate voice to all groups and interests in a state is a difficult task, and the Commission does not believe that it should foreclose at the constitutional level one device, the multi-member district, which may be useful in achieving a meaningful system of representation. If experience reveals that such districts ought not to be used, the General Assembly would, of course, have the power to prescribe by general law that all elections should be from single-member districts.[32]

Section 7. Oath or affirmation.

All officers elected or appointed under or pursuant to this Constitution shall, before they enter on the performance of their public duties, severally take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as ...., according to the best of my ability (so help me God)."

Source: Present section 34.

Comment: In the first line, the phrase "or pursuant to" has been added. The added language operates to require that those holding offices created by statute, as well as those holding offices named in the Constitution, are obliged to take the oath prescribed by proposed section 7.

Section 8. Electoral boards; registrars and officers of election.

There shall be in each county and city an electoral board composed of three members, selected as provided by law. In the appointment of the

30. Paul T. David and Ralph Eisenberg, *State Legislative Redistricting* (Chicago, 1962), p. 20.

31. Reynolds v. Sims, 377 U.S. 533, 577 (1964).

32. For an article critical of multi-member districts, see John F. Banzhaf, III, "Multi-Member Electoral Districts—Do They Violate the 'One Man, One Vote' Principle," 75 *Yale L.J.* 1309 (1966).

electoral boards, representation, as far as practicable, shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and the next highest number of votes. The present members of such boards shall continue in office until the expiration of their respective terms; thereafter their successors shall be appointed for the term of three years. Any vacancy occurring in any board shall be filled by the same authority for the unexpired term.

Each electoral board shall appoint the judges, clerks, and registrars of election for its county or city. In appointing these and other officers of election, representation, as far as practicable, shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and next highest number of votes.

No person, nor the deputy of any person, who is employed by or holds any office or post of profit or emolument under the United States government, or who holds any elective office of profit or trust in the Commonwealth, or in any county, city, or town, shall be appointed a member of the electoral board or registrar or judge of election.

Source: Present section 31.

Comment: No change in substance, except that, while in present section 31 electoral boards are to be appointed by circuit or corporation courts, proposed section 8 provides that the method whereby such appointments may be made shall be determined by general law. Further (though this effects no change in substance), the phrase "the trial court of general jurisdiction for the county or city" is used in place of section 31's reference to circuit and corporation courts; this change reflects the more generalized language used in the proposed Judicial article.

Elsewhere in this report, the Commission states its belief that judges ought not to be asked to exercise the non-judicial function of appointing officers other than those having duties connected with the functioning of the court.[33] The Commission holds this view because of its respect for the principle of the separation of powers. Most of the existing provisions requiring judges to appoint non-judicial officers are statutory, subject to change by general law. Present section 31 represents the only instance in which the Constitution itself places such a function on judges. Although the Commission does not propose that the Constitution prohibit judges from exercising the power of appointing non-judicial officers, it does recommend that the appointment of members of electoral boards, like other appointments now made by judges, be left to general law. This would al-

33. See the commentary accompanying section 11 of the proposed Judicial article, *infra*, pp. 210-12.

low the General Assembly, if it chose, to relieve judges of making such appointments.

Section 9. Privileges of voters during election.

No voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger, nor to attend any court as suitor, juror, or witness; nor shall any such voter be subject to arrest under any civil process during his attendance at election or in going to or returning therefrom.

Source: Present section 29.

Comment: No change except stylistic changes.

ARTICLE III

DIVISION OF POWERS

That legislative, executive, and judicial powers should not be concentrated in the same hands was one of the fundamental postulates of those who drafted Virginia's first Constitution.[1] The Constitution of 1776 provided for the separation of powers in the following language:

> The legislative, executive, and judicial departments, shall be separate and distinct, so that neither exercise the Powers properly belonging to the others; nor shall any person exercise the powers of more than one of them at the same time, except that the Justices of the County Courts shall be eligible to either House of Assembly.

Since 1776 the language of the section has changed in two regards: the elimination of the special exception regarding county courts, and the addition of the qualifying clause, found in present section 39, "Except as hereinafter provided."

The principle of the separation of powers is an ideal which has never been perfectly achieved in practice. This is especially true of regulatory agencies, like Virginia's State Corporation Commission or similar federal bodies, which have functions overlapping the traditional lines between legislative, executive, and judicial activities.[2] The Commission on Consti-

1. All the plans for a constitution laid before the Convention of 1776, including those of George Mason, Thomas Jefferson, John Adams, and Carter Braxton, included a statement of the principle of the separation of powers.

2. On the historical development of regulatory agencies, see Kenneth Culp Davis, *Administrative Law* (St. Paul, 1958), § 1.04. On separation of powers generally, see Louis L. Jaffe, *Judicial Control of Administrative Action* (Boston, 1965), pp. 28-86.

tutional Revision proposes, in addition to some modification of the existing language, that a second sentence be added to the section acknowledging the existence of regulatory agencies which are not solely legislative, or executive, or judicial. The added language would therefore simply recognize an accomplished fact, and the section as a whole would effect a more valid statement of the principle of the separation of powers as it operates today. The section also points to the need for safeguards in the operation of regulatory agencies by adverting to judicial review in the courts of the Commonwealth of an agency's final findings, orders, or judgments.

Section 1. Departments to be distinct.

The legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time, provided, however, administrative agencies may be created by the General Assembly with such authority and duties as the General Assembly may prescribe. Provision may be made for judicial review of any final finding, order, or judgment of such administrative agencies.

Source: Present section 39.

Comment: The present language is retained, with slight modification, save that the clause "Except as hereinafter provided" is deleted. A new addition is proposed recognizing the existence of regulatory agencies having functions which do not correspond perfectly to the traditional demarcations between legislative, executive, and judicial powers. The final sentence allows the General Assembly to provide for judicial review of the final findings, orders, or judgments of administrative agencies.[3]

ARTICLE IV

LEGISLATURE

The Commission proposes some changes of note in the Legislative article. Several sections containing detail inappropriate to a Constitution are proposed to be omitted. Some organizational or linguistic changes are proposed in the interests of clarity. Several substantive changes are recommended, chiefly touching on the length of legislative sessions, the effective date of legislation, and the power to conform certain of Virginia's

3. Cf. the right of appeal from final findings, orders, or judgments of the State Corporation Commission given by section 4 of the proposed Corporations article, *infra*, p. 288.

tax laws to those of the Federal Government. Otherwise the Legislative article would remain largely as it now is. The questions considered by the Commission are summarized briefly here; a full discussion of the issues is to be found in the section-by-section commentary.

Structure. No change is proposed in the structure of the General Assembly: the size of the two houses, the term of members, and their qualifications would remain as they are at present. These matters are covered by proposed sections 1 through 4. Minor changes are suggested in proposed section 5 (salaries and allowances). The provisions as to impeachment (proposed section 17) are unchanged.

Sessions. Of the questions involving the Legislature, the one arousing greatest public interest has been whether the Constitution should provide for regular annual sessions, rather than the present biennial sessions. The Commission has considered the relevant factors—among them the Assembly's workload, the budgetary process, effect of a change on the calibre of membership, improvements requiring no constitutional amendment which might be made in legislative procedures, and experience of other states—and has concluded not to recommend annual sessions. Aware, however, of the problems which the General Assembly encounters in attempting to do its work in the present biennial sixty-day sessions, the Commission proposes that the length of regular sessions be extended to ninety days (proposed section 6).

Procedures. In the sections (proposed sections 7 through 12) relating to procedures, few significant changes are proposed. Provisions for the organization of the two houses (proposed section 7) are unchanged. The quorum requirements (proposed section 8) are unaltered, although the provisions of present section 50-a, relating to special quorums and procedures in the event of nuclear attack, have been simplified. The immunity of legislators (proposed section 9) is unchanged. Proposed section 10 deals with the journal and reflects some changes expanding the categories of votes (such as those on defeated bills and on elections) which must be recorded in the journal. The Commission considered, but is not proposing, a suggestion that debates in the Legislature be recorded and published. Minor changes are proposed in the provision (proposed section 11) governing the enactment of laws, the one major change (summarized below) being that relating to conforming tax laws. There is no change in the requirements (proposed section 12) as to the form of laws.

Conforming tax laws. There has been widespread interest in amending present section 50 to allow the General Assembly to have Virginia's income and certain other tax laws conform to those of the Federal Government. The object is to save the taxpayer from having to make out two differing sets of income tax returns. Under proposed section 11, Virginia

law can, if the General Assembly wishes, provide for uniformity in such things as determination of gross income and deductions, making things much simpler for the taxpayer. Rates of tax may not, however, be computed by reference to federal rates.

Effective date of laws. Present section 53 provides that laws shall not be effective until at least 90 days after the adjournment of a legislative session (unless certain emergency procedures are taken, allowing an earlier effective date). Lawyers, state and local officials, and citizens generally are often puzzled as to when this date falls in a given year. In proposed section 13, the Commission suggests that the effective date of laws be the first day of the fourth month following the month of adjournment. Thus, no matter when the Assembly adjourns, the effective date will always be the first of a month (July 1 if the Assembly adjourns any time in March, August 1 if the Assembly adjourns any time in April).

Powers of the General Assembly and limitations thereon. Under the Constitution of 1776 the powers of the General Assembly were virtually unlimited. Beginning with the Convention of 1829-30, and gathering momentum with the Convention of 1850-51, limits of various kinds began to be placed on the powers of the General Assembly with respect to special legislation and a number of other matters. The most obvious limitations are those of present sections 63 and 64, which together seek to provide for general laws and to inhibit the passage of special, private, or local laws. There are reasons to debate the merits of a list of prohibitions of the kind found in present section 63, but the Commission has concluded to leave this and the succeeding section unchanged (proposed sections 14 and 15).

Among the other sections limiting the powers of the Legislature in specific respects, present section 67, prohibiting appropriations to charities or to religious bodies, is retained as proposed section 16.

Deletions. The Commission proposes the deletion of several sections found in the present Legislative article, most of the deletions being recommended because the sections contain statutory detail better left to general law. In particular it should be remembered that the Virginia Constitution, unlike the Federal Constitution, is a limitation on power, not a grant of power. The General Assembly has all legislative powers not denied it by the Virginia or Federal Constitutions. Therefore, sections allowing the Assembly to do what it can do even without those sections are surplusage.[1]

1. Strawberry Hill Land Co. v. Starbuck, 124 Va. 76, 77, 80, 97 S.E. 362, 364, 365 (1918).

Section 56 allows the General Assembly to legislate concerning elections and election returns, contested elections, and filling vacancies in office in cases not covered by the Constitution. Since the General Assembly has all legislative powers not denied it by the Constitution, it could do the things mentioned in section 56 even without that section. This is doubly true of elections, which are covered by the Franchise article.

Section 57 gives the General Assembly the power to remove disabilities incurred as a result of duels. This is obviously obsolete, as is its companion section (23 in the present Franchise article), also proposed to be deleted.

Section 59 prohibits the General Assembly from allowing churches to be incorporated. The section singles out religious bodies for exclusion from the benefits of a general law to which all other bodies are entitled. By so discriminating against churches, the section is probably unconstitutional under the First Amendment to the Federal Constitution, as an infringement of the free exercise of religion.[2]

Section 60, relating to lotteries, is deleted as being unnecessary in the Constitution. Deletion would leave the question of lotteries to the General Assembly.

Section 62 provides that the General Assembly may enact laws regulating or prohibiting the manufacture or sale of liquor. The provision is quite unnecessary. The General Assembly has plenary power to legislate regarding any subject (including liquor) not prohibited to it by the Virginia or Federal Constitution. Moreover, state power to regulate liquor is underscored by the Twenty-first Amendment to the Federal Constitution.[3]

Section 66, providing that the Clerk of the House of Delegates shall be Keeper of the Rolls, is omitted as unnecessary detail.

Section 68, regarding the creation and duties of an auditing committee, is omitted as unnecessary detail. No constitutional provision is necessary to authorize the General Assembly to do any of the things specified in the section.

Provisions relocated. Several sections found in the present Legislative article are unnecessary because their subject matter is covered by sections in other articles of the proposed revised Constitution. The relocation of

2. Cf. Sherbert v. Verner, 374 U.S. 398 (1963).

3. Section 2 of the Twenty-first Amendment states: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." The effect, among other things, is that states may place restrictions on liquor traffic which, if applied to other goods in interstate commerce, would be held invalid under the Commerce Clause. See Carter v. Virginia, 321 U.S. 131 (1944); Duckworth v. Arkansas, 314 U.S. 390 (1941).

such provisions implies no change in substance, unless the commentary so indicates.

Section 43, relating to apportionment of the General Assembly, is superseded by section 6 of the proposed Franchise article, which deals with apportionment generally.

Section 55, dealing with apportionment of congressional districts, is similarly superseded. Section 6 of the Franchise article covers apportionment of congressional seats as well as of seats in the Legislature.

Section 58 guarantees a number of individual rights, including the writ of habeas corpus, freedom of speech and of press, the right to be compensated for the taking of private property for public uses, a ban on ex post facto laws and bills of attainder, a prohibition against laws impairing the obligation of contracts, and an injunction against the establishment of any religion. The latter provision incorporates the classic language of Thomas Jefferson's Bill for Religious Liberties. The Commission proposes to dignify all of these fundamental guarantees by moving them, unchanged, to sections 9, 11, 12, and 16 of the Bill of Rights. No change whatever in the substance of these provisions would be effected by the relocation.

Section 61, dealing with the formation, division, and consolidation of counties is superseded by section 2 of the proposed Local Government article.

Section 65, relating to powers of local governing bodies, is superseded by the provisions of sections 2 and 3 of the proposed Local Government article.

Section 1. Legislative power.

The legislative power of the Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Delegates.

Source: Present section 40.

Comment: No change, except to substitute "Commonwealth" for "State."

The legislative power of the Commonwealth has, from the first Constitution in 1776 to the present time, been vested in a bicameral legislature. Throughout this period, the two houses have carried the names "House of Delegates" and "Senate," and the two houses together have always been called the "General Assembly."

Bicameralism is, except for one state (Nebraska), the universal rule in American state legislatures.[4] Proposals for a unicameral legislature have

4. Pennsylvania, Georgia, and Vermont originally had unicameral legislatures, but all soon switched to bicameralism, the first two states before 1790, Vermont in 1836.

been raised from time to time in other states but have not been adopted.[5] While significant theoretical arguments could be raised on behalf of a change to unicameralism in Virginia, the Commission sees little practical gain in such a move and therefore proposes no change in Virginia's present bicameral structure.[6]

Section 2. Senate.

The Senate shall consist of not more than forty and not less than thirty-three members, who shall be elected quadrennially by the voters of the several senatorial districts on the Tuesday succeeding the first Monday in November.

Source: Present section 41.

Comment: No change.

The section provides simply that elections of senators shall be held on "the Tuesday succeeding the first Monday in November." It does not say in what years the elections are to be held. Since the schedule to the revised Constitution preserves the terms of all incumbent officeholders, including members of the Senate, regular senatorial elections under the revised Constitution would occur just as they would under the present Constitution, that is, in November of 1971 and every fourth year thereafter.

Section 3. House of Delegates.

The House of Delegates shall consist of not more than one hundred and not less than ninety members, who shall be elected biennially by the voters of the several house districts on the Tuesday succeeding the first Monday in November.

Source: Present section 42.

Comment: No change, except in punctuation.

Present section 42, like present section 41, does not say in what years elections are to be held. In both cases the Commission thinks it unnecessary to amend the sections, since the schedule to the revised Constitution preserves the terms of office of all incumbents, including members of the House of Delegates. Elections for the House would therefore, under the revised Constitution, take place in the same years as under the present Constitution, that is, in odd years.

5. See, e.g., the minority report on unicameralism in *Pennsylvania Commission on Constitutional Revision Report* (Harrisburg, Pa., 1959), p. 219.

6. The arguments for and against bicameralism are succinctly stated in *Maryland Constitutional Convention Commission Report* (Baltimore, 1967), pp. 125-26.

The Commission considered the advisability of expanding the term of House members from two years to four. No such recommendation is made, however. The House is the larger of the two legislative bodies and by and large is closer to smaller groups of people. Elongation of the term would have the undesirable effect of making House members less responsive to the electorate.

Section 4. Qualifications of senators and delegates.

Any person may be elected to the Senate who, at the time of the election, is a resident of the senatorial district which he is seeking to represent and is qualified to vote for members of the General Assembly. Any person may be elected to the House of Delegates who, at the time of the election, is a resident of the house district which he is seeking to represent and is qualified to vote for members of the General Assembly. A senator or delegate who moves his residence from the district for which he is elected shall thereby vacate his office.

No person holding a salaried office under the government of the Commonwealth, and no judge of any court, attorney for the Commonwealth, sheriff, sergeant, treasurer, assessor of taxes, commissioner of the revenue, collector of taxes, or clerk of any court shall be a member of either house of the General Assembly during his continuance in office; and his qualification as a member shall vacate any such office held by him. No person holding any office or post of profit or emolument under the United States government, or who is in the employment of such government, shall be eligible for election to either house.

Source: Present section 44.

Comment: Slight linguistic changes, effecting no change in substance, have been made. Further, the section has been reorganized so that the first paragraph of the proposed section corresponds to the first and third sentences of present section 44, and the second paragraph of the proposed section corresponds to the second sentence of present section 44. This reorganization, made in the interests of clarity, does not change the meaning of the section.

Ineligibility by virtue of holding other offices. The constitutions of nearly all the states, as well as the Federal Constitution, have limits on the capacity of a person to be a member of the legislature while also holding other offices.[7] The Virginia Constitution has always had such

7. All but two states have some provision on the subject. Idaho's Constitution is silent; Louisiana repealed its provision in 1936. Article I, section 6, of the Federal Constitution provides that "no Person holding any Office under the United States"

limitations, though the substance and extent of the limits have varied from time to time. The Constitution of 1776 prohibited, among others, all who held "lucrative Offices" under the state government from being members of the General Assembly. The provision continued, with changes in substance and language, in the succeeding constitutions;[8] an amendment in 1876 substituted the present language of "salaried office" for the old language of "lucrative office."[9] In the convention of 1901-02, the prohibition was enlarged to include any person "holding any office or post of profit or emolument under the United States government or who is in the employment of such government."[10]

The Commission has proposed no changes in the disqualification language of present section 44. It is aware that the language is vague[11] and illogical.[12] Judicial interpretation in the Virginia courts is almost non-existent,[13] and the language in many instances is hardly self-revealing. Yet cases interpreting the range of somewhat comparable phrases in other constitutions are hopelessly confused and suggest the difficulty of improving on the present language.[14] Moreover, since present section 44 seems so rarely to have produced litigation, the Commission cannot be sure that there are in fact evils to be cured by changing admittedly unsatisfactory language. That being so, the Commission has left the language as it now is. It has done so, however, in the belief that the provision would not exclude from the General Assembly, for example, a citizen of Virginia who was called upon to serve on an ad hoc study group

shall be a member of either House of the Congress. Among the more interesting arguments on the merits of such disqualifications are found in James Madison's notes on the Philadelphia convention of 1787. See, e.g., *The Records of the Federal Convention of 1787*, ed. Max Farrand (rev. ed.; New Haven, 1966), II, 489-92.

8. See Constitution of 1830, Art. III, §7; Constitution of 1851, Art. IV, §7.

9. Constitution of 1870, Art. V, §5, as amended in 1876.

10. In the convention of 1901-02, the report of the Committee on the Legislative Department proposed that what is now section 44 read that "no person holding a salaried office under the United States government or under the State government" (along with other named officers) be ineligible to be a member of the General Assembly. But floor amendments and revisions in the Committee on Final Revision produced the present, more involved, and more elusive language applying to those holding "any office or post of profit or emolument under the United States government" or in its employment. *1901-02 Convention Debates*, I, 189-90.

11. What is an "office"? A "post"? What makes an office or post one of "profit"? Of "emolument"?

12. Why exclude a sheriff from General Assembly membership, but not a deputy sheriff? Why not exclude a member of a board of supervisors or a mayor?

13. There are apparently no decisions of the Supreme Court of Appeals interpreting section 44. Two lower court decisions are reported in Galt v. Hobbs, 7 Va. L. Reg. (n.s.) 255 (1921), and Commonwealth v. Barrett, 14 Va. L. Reg. 271 (1908).

14. See, e.g., In re Hess, 128 N.J. Law 387, 26 A.2d 277 (1942); In re Opinion of the Justices, 307 Mass. 613, 29 N.E.2d 738 (1940); Moore v. Nation, 80 Kan. 672, 103 Pac. 107 (1909); Abbott v. McNutt, 218 Cal. 225, 22 P.2d 510 (1933); Smith v. Lester, 132 Ga. 517, 64 S.E. 478 (1909).

or advisory commission of the Federal Government. Similarly, the Commission intends that a retired civil servant or retired member of the armed forces would not, because he was drawing a federal pension, be ineligible to serve in the General Assembly.[15]

Vacation of seat by one who "moves" his residence. The third sentence of the proposed section states that a senator or delegate "who moves his residence from the district for which he is elected shall thereby vacate his office." This retains the rule laid down in the last sentence of present section 44: " The removal of a senator or delegate from the district for which he is elected shall vacate his office." The Commission believes the principle is a salutary one and therefore ought to be retained. But the Commission intends that the provision not operate to cut short the term of an incumbent senator or delegate who, having been elected to represent a county in which he lives, involuntarily becomes a resident of an adjoining city into which his home is annexed.[16] Once his term had run, however, such senator or delegate would not be eligible to reelection from the county unless by that time he had once again taken up residence in the county where he used to live.

Section 5. Compensation; election to civil office of profit.

The members of the General Assembly shall receive such salary and allowances as may be prescribed by law, but no increase in salary or allowances shall take effect for a given member until after the end of the term for which he was elected. No member during the term for which he shall have been elected shall be elected by the General Assembly to any civil office of profit in the Commonwealth.

Source: Present section 45.

Comment: The proposed section is essentially the same as present section Two changes should be noted.

(1) *Allowances.* Present section 45 provides that legislators' salaries shall be set by law but that members of the General Assembly may not increase their salaries during their term of office (in other words, they may increase salaries to take effect with a new term of office). In the proposed section, the words "and allowances" have been added to the

15. See Galt v. Hobbs, 7 Va. L. Reg. (n.s.) 255 (1921), holding a retired naval officer not ineligible to hold a seat in the General Assembly.

16. Construing this not to be a "move" within the intention of the section has antecedents in existing statutes similarly operating to allow certain county officers and county and municipal judges to continue in office when the areas in which they live become part of an adjoining city. See Va. Code Ann. §§ 15.1-995, 15.1-995.1 (Supp. 1968).

salary provision; this would simply give explicit sanction to present practice. Further, in the proposal, the ban on raising members' salaries during their terms has been extended to a like ban on increasing allowances. This would change present practice. Without such a parallel restriction on raising allowances, the ban on increasing salaries would seem to be far less meaningful.

(2) *When increases effective.* The other change is meant to clarify the present provision. As section 45 is now worded, salary raises voted by the General Assembly cannot become effective "until after the end of the term for which the members voting thereon were elected." This creates an ambiguity as to whether raises voted by the Assembly may be effective for House members after their reelection but before Senate terms have expired. The proposed section would remove this ambiguity so that once a House member has been reelected, the raise can become effective as to him even though the senators have not yet stood for reelection.

(3) *Election to civil office of profit.* The Commission proposes no change in the provision now in section 45 regarding election of legislators to civil offices of profit. The phrase "civil office of profit in the Commonwealth" is somewhat uncertain in meaning. Research into the judicial construction of this and like phrases has confirmed the suspicion that no precise meaning can be assigned to it.[17] Virginia cases construing the language of section 45 are virtually non-existent,[18] and here, as with section 44,[19] it is doubtful that there is enough of a problem to justify the Commission in attempting to devise a better formula. Hence the Commission has left the "civil office of profit" language as it presently exists in section 45. Here, as elsewhere, "Commonwealth" is substituted for "State."

Section 6. Legislative sessions.

The General Assembly shall meet once in two years on the second Wednesday in January next succeeding the election of members of the House of Delegates and may continue in session for a period not longer than ninety days. Neither house shall, without the consent of the other, adjourn to another place, nor for more than three days.

The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and

17. For various interpretations of this and like phrases see, e.g., State *ex rel.* Herbert v. Ferguson, 142 Ohio St. 496, 52 N.E.2d 980 (1944); State v. Spaulding, 102 Iowa 639, 72 N.W. 288 (1897); State *ex rel.* Landis v. Futch, 122 Fla. 837, 165 So. 907 (1936); State *ex rel.* McIntosh v. Hutchinson, 187 Wash. 61, 59 P.2d 1117 (1936); Hudson v. Annear, 101 Colo. 550, 75 P.2d 587 (1938).

18. Apparently the only case construing section 45 is Norris v. Gilmer, 183 Va. 367, 32 S.E.2d 88 (1944).

19. See commentary on proposed Legislative section 4, *supra*, p. 129.

shall convene a special session upon the application of two-thirds of the members elected to each house. Members shall be allowed salary and allowances for not exceeding thirty days at any special session.

Source: Present section 46.

Comment: The proposed section, like present section 46, preserves the existing system of biennial sessions of the General Assembly. In other respects there are significant changes in the section. Firstly, the length of regular sessions has been increased from 60 to 90 days, without, however, the possibility of a further extension of that session. Secondly, the present restriction against paying the legislators for more than 60 days of a regular session has been removed, but the limit on paying them for no more than 30 days of a special session has been retained. Thirdly, the proposed section, unlike present section 46, deals with the convening of a special session; this effects no change in substance, merely one of organization. Each of these changes is discussed in greater detail below.

(1) *Annual versus biennial sessions.* As recently as World War II, the overwhelming majority of American state legislatures met every other year; in 1941 only four states had annual sessions of their legislatures.[20] The years since World War II have seen a pronounced trend to annual sessions, so that today legislatures in at least twenty-one states meet annually.[21]

Currently there is considerable interest in Virginia in the question of whether the General Assembly, which under present section 46 has biennial regular sessions, should meet in regular session every year. The question of annual legislative sessions was one of the few subjects which Governor Godwin mentioned specifically in his message asking the Legislature to create the Commission on Constitutional Revision.[22] During its study of the Constitution, the Commission has received many expressions of opinion about the merits of annual sessions, both from members of the General Assembly [23] and from individuals and organizations in the Commonwealth at large.[24]

Frequent meetings of state legislatures were the rule in the constitutions adopted after the American Revolution. The Virginia Constitution

20. Council of State Governments, *American State Legislatures: Their Structures and Procedures* (Chicago, 1959), p. 4.
21. *State Constitutional Provisions Affecting Legislatures*, p. 24.
22. Address of Mills E. Godwin, Jr., Governor, to the General Assembly, Wednesday, January 10, 1968 (S.D. 1; Richmond, 1968), p. 11.
23. Public Views Documents 7, 18, 40, 43, 50, 61, 106, 107, 108, 110, 111, 114, 139, 140.
24. Public Views Documents 24, 29, 30, 36, 41, 58, 72, 76, 85, 86, 116, 126, 143, 150, 177, 184, 185, 193, 194.

of 1776, like the first constitutions of other states, contained virtually no limitations on the legislative branch of government [25] It was executives, not legislatures, which the former colonists feared; fresh in their minds was the memory of abuses they had suffered at the hands of royal governors. It was natural that the framers of Virginia's first Constitution should have wanted regular and frequent meetings of the most popular branch of government. Hence the Constitution of 1776 provided that the General Assembly should meet "once or oftener every year."

The Constitution of 1830 continued annual sessions,[26] but in 1851 a provision was adopted calling for biennial sessions.[27] By the mid-nineteenth century, the confidence of the men of '76 in legislatures had given way to a rising mistrust. Men of property were concerned about state taxing and spending; citizens in the declining eastern counties were worried about the rising political power of the western regions. These and other motives caused the convention of 1850-51 to start "in earnest the practice of circumscribing the powers of the general assembly which reached its climax in the Convention of 1901 . . . ." [28] Some of the restrictions took the form of limits on the Legislature's substantive powers; another hobble was less frequent legislative sessions.

The Constitution of 1870 restored annual sessions,[29] but an amendment in 1876 returned to biennial meetings. During the 1901-02 Convention, the frequency of legislative sessions was discussed, and an effort was made by some delegates to have the Legislature meet only quadrennially.[30] This move was defeated, and the Constitution adopted in 1902 provided, as it still does, for biennial sessions.

Much has happened, of course, since 1902, and the Commission has approached the question of annual sessions, like other constitutional matters, as one which deserves an independent judgment based on present data. The Commission has concluded not to recommend departure from the present system of biennial sessions. In view of the widespread interest within and without the Legislature in the subject, the Commission feels it appropriate to develop the principal arguments involved.

25. This was a special cause of complaint with some. Jefferson observed in his *Notes on the State of Virginia* that "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government." *Writings of Thomas Jefferson*, ed. Paul L. Ford (New York, 1892), III, 223. This complaint, of course, was directed more at the 1776 Constitution's failure to implement the separation of powers than at the legislative powers of the Legislature as such.

26. Constitution of 1830, Art. III, § 9.

27. Constitution of 1851, Art. IV, § 8.

28. James E. Pate, *Constitutional Revision in Virginia Affecting the General Assembly* (Williamsburg, Va., 1930), p. 144.

29. Constitution of 1870, Art. V, § 6.

30. See *1901-02 Convention Debates*, I, 461-62.

(a) *Virginia's tradition.* Those who would have annual sessions can invoke the name of Jefferson, for in his own draft for a constitution for Virginia in 1776 that statesman provided for the General Assembly to meet annually.[31] However, as already noted, there has been no uniform practice through the years in Virginia, annual sessions having been the rule until 1850, biennial until 1870, annual again until 1876, biennial from that time to the present day. The argument is not one which can be settled by looking to precedent.

(b) *The experience of other states.* Comparative data cut two ways. Counting heads reveals that a majority of state constitutions adhere to the practice of biennial sessions.[32] Yet the trend is clearly in the direction of annual sessions: from four states in 1941 to at least twenty-one states today.[33] Moreover, no state in the past twenty years has amended its constitution to drop annual sessions in favor of biennial sessions.

(c) *Workload of the General Assembly.* The chief argument for annual sessions is that the members of the General Assembly have to consider and act on an increasing number of bills and other legislative matters. The number of bills introduced in the General Assembly increased from 1,154 in 1956 to 1,724 in 1968; the number of bills enacted into law rose less dramatically, from 721 to 824.[34] Critics of biennial sessions place special emphasis on the pressures which result from infrequent sessions, especially the way in which bills pile up near the end of a session and the lack of opportunity for legislators, however well intentioned, to give proper study and thought to measures they are asked to approve or reject.[35]

A report of the Committee for Economic Development (a committee of businessmen and educators) puts this argument for annual sessions succinctly: [36]

> Unrestricted annual sessions allow time for detailed study of major problems and more careful review of bills proposed to solve them. They afford more days and weeks for deliberations and they eliminate the long, twenty-month period in which no legislative determinations are possible without the governor's initiative. They reduce the flood of hasty and ill-considered legislation in the waning hours of a session without the need for clock-stopping tactics to permit adjournment by a fixed deadline. They also allow continuity and more effective use of research and secretarial staffs.

31. *Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton, N.J., 1950), I, 358.
32. *State Constitutional Provisions Affecting Legislatures*, p. 24.
33. *Ibid.*
34. See Acts of Assembly (1968), p. 1644.
35. See Kansas Legislative Council, *Annual Legislative Sessions* (1953), pp. 30-31; *Report of the Massachusetts Special Commission on Legislative System and Procedure* (S.D. 50; Boston, 1943), p. 103.
36. *Modernizing State Government* (New York, 1967), p. 37.

That members of the General Assembly have too many bills to consider in too short a time, and that they cannot give proposed legislation the mature consideration they would wish is, in the judgment of the Commission, clear. Annual sessions are, however, but one way in which to deal with this problem. Elsewhere in this report, the Commission is making recommendations which it believes can materially reduce the number of bills of purely local application which the General Assembly presently is called upon to consider.[37] A substantial amount of the Assembly's time is spent on noncontroversial items. The Commission's proposals as to the powers of local government and as to limits on special legislation should eliminate a good deal of the legislative burden.

Moreover, much can be done short of constitutional amendment to streamline the work of the General Assembly. The Commission understands that the body created by the 1968 General Assembly to study the entire legislative process is considering a number of ideas for improving legislative procedures, to the end that members can have more time to concentrate on the more important aspects of their work. The rapidly advancing techniques of automated data processing will shortly make possible great improvements in the legislative process. Pre-filing of bills, already adopted by the Senate in 1968, and other changes to ensure that the Legislature will be able to begin its work immediately without the customary delays will in effect add days to the available legislative time. Much can and should be done to alleviate the inadequacies in office space and secretarial staff for the members.

In terms of dealing effectively and carefully with bills under consideration, the length of legislative sessions can be as important as their frequency. Therefore, the Commission's response to the need for more time to handle the Assembly's workload is to recommend a longer session —90 days rather than 60—instead of proposing annual sessions.[38] This increase in the length of the session is, in reality, much more than a mathematical fifty percent. It is several weeks before the General Assembly begins to function at peak efficiency, and thus the present sixty day session is cut to about thirty-five or forty productive legislative days. The days added by lengthening the session should all be productive days, and thus, in effect, the length of the effective session could be increased by materially more than fifty percent. This fact, coupled with a promise of a more efficient method of handling legislation, led the Commission to believe that biennial ninety day sessions could serve the Commonwealth for many years to come.

37. See pp. 218, 223-24, 228 *infra*.
38. See p. 139 *infra*.

(d) *The budget.* Another frequently voiced argument for having annual sessions is that under the present system budgetary officials and members of the Legislature are forced to forecast as far ahead as two and a half years what the condition of the economy and of the state government's fiscal operations will be. This, it is argued. they cannot do. Indeed, the Council of State Governments suggests, in a recent study, that "the shift to annual sessions has been occasioned largely by the need to budget and appropriate more frequently than every two years." [39]

On the other hand, it is becoming more, not less, common for governments, like individuals and corporations, to make long range financial plans which turn upon a reasonably accurate look into the future. Population growth and shifts, demands on state institutions and services, economic trends—these and other trends are predicted with sufficient reliability by economists and other experts. Indeed, it can be argued that projecting budgetary needs over longer periods encourages sounder planning and that, in many respects, two years is too short a planning period. The General Assembly has implicitly recognized this by creating, four times in the last twenty years, study groups charged with the formulation of long range plans for the determination of expected revenues and expenditures for the agencies and institutions of the Commonwealth.

In addition, annual budget planning would substantially disrupt the function of the various state agencies. At present, under biennial budget planning, the work of the state's agencies and institutions is seriously inhibited for three months while everyone concentrates on the budget. During the weeks prior to the session of the General Assembly and during that session until the appropriation bill is passed, the head of every agency and institution can do little but work on and try to sell his budget. Many administrative heads who are not in Richmond come to the capital and stay until their budgets are approved. Annual budget planning would create this difficult situation every year and in many cases would mean the hiring of additional personnel to do nothing but help plan the budget.

(e) *The work of study groups.* Increasingly, questions which are to become the subject of legislation are first entrusted to interim study groups of one kind or another for their investigation and recommendations. In some cases, a standing committee of the General Assembly performs this function; such was true in the most recent apportionment of Virginia's legislative districts. In most cases, the talents of citizens who

39. Council of State Governments, *American State Legislatures: Their Structures and Procedures* (Chicago, 1947), pp. 7-8. The Committee for Economic Development maintains that "more careful attention can be given to budget matters with annual budgets replacing biennial appropriation patterns . . . ." *Modernizing State Government* (New York, 1967), p. 37.

are not members of the Legislature are drawn upon, as by the appointment of interim study groups or by referral to subcommittees of the Virginia Advisory Legislative Council. It is arguable that more frequent sessions of the General Assembly would reduce reliance on interim studies and, moreover, would tend to reduce the time available to such groups to make thorough studies of problems referred to them.

(f) *Frequent changes in laws.* An increasing problem for public officials, lawyers, and the public generally is the difficulty of staying abreast of new laws and changes in existing laws. The sheer volume of legislation at all levels of government makes it hard for even specialists to keep up with new developments. Frequent changes in the laws create a situation of flux affecting administrative rules and practices which must be tailored to the current state of the laws and create complications for businessmen and other citizens whose affairs are touched in so many ways by the laws of the Commonwealth. Moreover, if laws are changed frequently, it becomes more likely that there will have been insufficient time in which to study the merits and defects of existing laws before they have been superseded. In general, it would seem that annual sessions would tend to more frequent changes and hence to more instability in the law, whereas biennial sessions would have a tendency to less frequent changes and therefore to more stability.

(g) *Calibre of legislators.* A serious implication of the argument over annual sessions is the question whether more frequent sessions would tend to discourage service by many of Virginia's ablest citizens. The prevailing view in Virginia is that serving as a legislator is not a "profession"; that is, it is assumed that a citizen who serves in the Assembly makes his living elsewhere, not from his legislative salary. To serve in the General Assembly is, of course, an honor, but it also often entails a measure of financial sacrifice.

That being so, the Commission is reluctant to recommend a change which might cause many of the Commonwealth's ablest citizens to draw back from running for the Legislature because the frequency of sessions would cut too deeply into their professional, business, or other livelihoods. The Commission has done considerable research into the experience of other states which have gone from biennial to annual sessions and has found that it is exceedingly difficult to document the effect of that change upon the calibre of those states' legislators. Nevertheless, the Commission can conceive either of two consequences of adopting annual sessions: a reluctance to run for legislative office on the part of able citizens who are not independently wealthy, or a rise in legislators' salaries to the point where people can become full-time legislators—a class of "professional" legislators, as exists in a few states. The Commission can by no means

be sure that either of these results would in fact follow, but either would be serious enough that the Commission feels obliged to weigh them as part of the case against annual sessions.

(h) *Off-year sessions with limited subject matter.* A device sometimes proposed as an alternative to full-scale annual sessions is to have, in off-years, a briefer session limited to the consideration of specific subject matter, usually budgetary or fiscal matters. Having the budget considered annually involves the problems already discussed above. But a more particularized objection exists to having budget or other limited sessions: experience in other states reveals that such sessions prove an unworkable and unstable half-way station and eventually give way to full fledged annual sessions.

The device of having off-year sessions with limited subject matter was pioneered in California, Colorado, and Maryland—three of the six states which adopted annual sessions in the period 1947-51. Since that time California and Maryland have abandoned any limitations on subject matter. Of the twenty-one states presently having annual sessions, seven provide for off-year budget sessions, a drop of three states in three years from the ten states which in 1965 had off-year budget sessions.[40]

The experience from other states thus reveals the problems which inhere in attempts to limit what can be considered in off-year sessions. Any distinctions drawn between what is budgetary and what is not tend to be artificial and unreal. Few areas of legislation do not have some fiscal aspects. Limits placed on subject matter would be as difficult to define and enforce as such traditionally elusive concepts as the distinctions between "governmental" and "proprietary" functions of government, between what is "local" or "special" legislation and what is not, or between what affects interstate commerce and what does not. As one commentator has observed, the idea of limiting one of the two sessions in each biennium to financial, budgetary, or emergency measures has some appeal, "but it is doubtful whether this substantive division could be sustained over the years." [41]

In short, the Commission believes that the proposal for off-year sessions limited to budget or other specified matters distracts from the real choice: annual versus biennial sessions, both unlimited as to subject matter.

(i) *Summary.* These are some of the factors which, in the judgment of the Commission, cut for and against annual sessions. There are yet other arguments, such as the need to have the Legislature more frequently in

40. See Colorado Legislative Council, *Legislative Procedures in Colorado* (Denver, 1966), pp. 31-33; Kansas Legislative Council, *Annual Legislative Sessions* (1953); Note, "Limitations on Even-Year Legislative Sessions," 12 *Md. L. Rev.* 124 (1951).

41. Charles W. Shull, "The Legislative Article," in W. Brooke Graves, ed., *Major Problems in State Constitutional Revision* (Chicago, 1960), p. 209.

session as a check on what the executive branch does (an argument for annual sessions) or the additional cost of annual sessions (an argument against them). But the ones discussed above strike the Commission as especially relevant. In coming to its conclusion—that it should not recommend annual sessions—the Commission is by no means saying there is not a problem of legislative workload. The problem unquestionably exists. Rather, the Commission has concluded that there are many ways to attack this problem—annual sessions being but one attack [42]—and that some of the other avenues, such as longer sessions, more adequate office space and staff, and improved internal procedures, ought to be tried, before a decision is taken that, as a last resort, annual sessions are a better solution.

(2) *Length of sessions.* As noted at the outset of the commentary on proposed section 6, while the Commission proposed retaining biennial sessions of the General Assembly, it does propose several changes in present section 46. One of these changes is to increase the length of the regular session from 60 to 90 days. This, in the judgment of the Commission, should be a significant step in helping the General Assembly to deal efficiently and smoothly with its legislative business.

(3) *Legislators' salaries.* The proposed section removes the restriction presently found in section 46 on salaries being paid to members of the General Assembly after 60 days of a legislative session. The Commission thinks it only fair that, to the extent that the Constitution allows the Legislature to be in session, to that extent the legislators ought to be paid for their services. Therefore, under the proposal, members can be paid for the full 90-day session. However, the salary limit of 30 days for a special session has been retained, on the theory that the business of any special sessions should fairly be concluded within that time.

(4) *Convening of special sessions.* The second paragraph of the proposed section is not found in present section 46, but it represents no change in substance, since it simply duplicates a provision already found in the Executive article (present section 73). The provision has been repeated both in the Executive article (proposed section 5) and here in the Legislative article for completeness. The provision belongs in the Executive article, as that article is, among other things, a catalogue of the Governor's

42. As has been noted, annual sessions might bring with them serious unwanted side effects. From others' experience, it seems that if annual sessions were adopted it would be virtually impossible to return to biennial sessions. See p. 134 *supra*. The Commission's proposal best avoids this inflexible position by suggesting lengthening the present legislative sessions rather than introducing annual ones. If, after a few years, the ninety day session does not permit sufficient consideration of legislation, then, as a last resort, annual sessions could be authorized.

powers; it belongs as well in proposed section 6 of the Legislative article, since this section deals with the convening of legislative sessions and ought to list all of the ways in which the General Assembly can be convened.

(5) *Quorum.* Finally, it should be noted that the last sentence of present section 46, dealing with the quorum and with compelling attendance of members, has been omitted in proposed section 6 because of its inclusion in proposed section 8.

Section 7. Organization of General Assembly.

The House of Delegates shall choose its own Speaker; and, in the absence of the Lieutenant Governor, or when he shall exercise the office of Governor, the Senate shall choose from its own body a president pro tempore. Each house shall select its officers, settle its rules of procedure, and direct writs of election for supplying vacancies which may occur during a session of the General Assembly. If vacancies occur while the General Assembly is not in session, such writs may be issued by the Governor under such regulations as may be prescribed by law. Each house shall judge of the election, qualification, and returns of its members, may punish them for disorderly behavior, and, with the concurrence of two-thirds of its elected membership, may expel a member.

Source: Present section 47.

Comment: No change in substance. The first two sentences of the proposal are identical to the present language. The third sentence ("If vacancies") represents no substantive change from the present provision but has been slightly rephrased for stylistic reasons. The final sentence also represents no change in substance, although the words "of its elected membership" have been added after "two-thirds" to clarify what is believed to be the intended meaning of the original.

Assembly's power to punish or expel members. Virginia's Constitution, like the constitutions of 48 states [43] and the Federal Constitution,[44] provides that each house of the Legislature shall judge of the qualifications of its members. Further, the Virginia Constitution, like 42 state constitutions [45] and the Federal Constitution,[46] allows each house, upon a two-thirds vote, to expel a member. At the present time, there is increasing

43. Citizens Conference on State Legislatures, *State Constitutional Provisions Affecting Legislatures* (Kansas City, Mo., 1967), p. 18.
44. Art. I, § 5.
45. *State Constitutional Provisions Affecting Legislatures*, p. 20.
46. Art. I, § 5.

interest in the power of a legislative body to censure, punish, or expel one of its own members.

Pending in the federal courts is the question whether, under the Federal Constitution, refusal by a House of the Federal Congress to seat one of its members is a "political question" and therefore not subject to review in the courts.[47] Whether the Virginia courts would apply a similar rule in a case arising under present section 47 is unknown, as there appear to be no Virginia cases involving that section. However, federal courts are held to have jurisdiction to review assertions that a state legislature's exclusion or expulsion of a member deprived that member of some constitutional right.[48] The Commission has seen no reason to attempt to spell out, in proposed section 7, any limits on the power of a house of the General Assembly to expel a member. Should an expulsion give rise to claim of denial of a constitutional right (such as freedom of expression), such claim would constitute a judicial question which could be dealt with in the courts.

Section 8. Quorum.

A majority of the members elected to each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and shall have power to compel the attendance of members in such manner and under such penalty as each house may prescribe. A smaller number, not less than two-fifths of the membership of each house, may meet and may, notwithstanding any other provision of this Constitution, enact legislation if the Governor by proclamation declares that a quorum of the General Assembly cannot be convened because of enemy attack upon the soil of Virginia by nuclear or other incapacitative devices. Such legislation shall remain effective only until thirty days after a quorum of the General Assembly can be convened.

Source: Present sections 46 (last sentence), 50-a.

Comment: Proposed section 8 brings together in one section the constitutional provisions relating to quorums. The first sentence is identical to the last sentence of present section 46. The remainder of the proposed section condenses present section 50-a and makes several changes of substance.

(1) *Quorum.* The Commission proposes no change whatever in that part (the last sentence) of present section 46 relating to quorums. Vir-

47. See Powell v. McCormack, 266 F.Supp. 354 (D.C.D.C. 1967), *cert. denied*, 387 U.S. 933 (1967); 36 U.S.L.W. (General) 2539 (D.C. Cir. Feb. 2, 1968), *affirming* 266 F. Supp. 354 (1967), *cert. granted*, 37 U.S.L.W. (Sup. Ct.) 3181 (Nov. 19, 1968).

48. Bond v. Floyd, 385 U.S. 116 (1966).

ginia's provision that a majority of the members elected to each house shall constitute a quorum is overwhelmingly the prevailing rule in state constitutions in this country.[49]

(2) *Quorum in event of nuclear or other such attack.* Present section 50-a states that laws enacted by the legislators who can be gathered on such an occasion can only be passed by a vote of four-fifths of those present and voting, that no law shall remain effective for more than a year, that no law can be reenacted after the expiration of the year except by a regularly constituted legislature, and that each bill passed by this method must state in its body the Governor's proclamation calling the Legislature into special session. It is provided finally that bills passed by this method and the Governor's included proclamation "shall be subject to judicial inquiry as to the matters set forth therein."

Proposed section 8 deals with the problem in much simpler fashion. The proposed section eliminates the several provisions just noted and substitutes for the one-year time limit the provision that legislation passed in the manner permitted by the section shall be effective only until thirty days after a quorum can be convened.

Section 9. Immunity of legislators.

Members of the General Assembly shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during the sessions of their respective houses; and for any speech or debate in either house shall not be questioned in any other place. They shall not be subject to arrest under any civil process during the sessions of the General Assembly, or during the fifteen days before the beginning or after the ending of any session.

Source: Present section 48.

Comment: The first sentence is unchanged in any respect. Two stylistic changes—neither affecting substance—are made in the second sentence: removal of the commas around the words "under any civil process" and elimination of the word "next" after the words "fifteen days."

Like all but six states,[50] Virginia gives constitutional immunity from arrest to legislators during legislative sessions. The exceptions—treason, felony, and breach of the peace—are identical to the exceptions found in

49. Forty-three states require a majority of each house, three states have variants on this theme, and four states require a two-thirds majority to be present. *State Constitutional Provisions Affecting Legislatures*, p. 27.

50. *State Constitutional Provisions Affecting Legislatures*, p. 22.

the Federal Constitution's granting of immunity to Senators and Representatives attending congressional sessions.[51]

The guarantee that members of the General Assembly shall not be questioned "in any other place" for any speech or debate in either house restates an ancient right which, after long struggles in England, was spelled out in the English Bill of Rights[52] and which is stated, in language like that of the Virginia Constitution, in the Federal Constitution.[53]

Section 10. Journal of proceedings.

Each house shall keep a journal of its proceedings, which shall be published from time to time. The vote of each member voting in each house on any question shall, at the desire of one-fifth of those present, be recorded in the journal. On the final vote on any bill, and on the vote in any election or impeachment conducted in the General Assembly or on the expulsion of a member, the name of each member voting in each house and how he voted shall be recorded in the journal.

Source: Present section 49.

Comment: The first two sentences of proposed section 10 represent the substance of present section 49. The changes in language effect no change in substance.

(1) *What votes are to be entered on the journal.* The last sentence of proposed section 10 is new. To some extent it duplicates subdivision (d) of proposed section 11 (subdivision (d) of present section 50), but the provision in section 10 is much broader in its effect. Proposed section 11, like present section 50, requires that upon final passage of a bill the votes of members voting for or against the bill be recorded in the journal. The final sentence of proposed section 10 does more. In the first place, it requires that the vote on defeated bills be recorded. In the second place, it adds several other matters on which votes must be recorded: elections (for example, of judges) conducted by the General Assembly, impeachments, and votes on the expulsion of members of the General Assembly.

Throughout the proposed Legislative article, the phrase "recorded in" the journal is used rather than the phrase "entered on" the journal. The meaning of the two phrases is identical.

In nearly every state, the Constitution requires the legislature to keep a journal.[54] The value of a journal, especially one in which are entered the

51. Art. I, §6. These same three exceptions are common in state constitutions. *State Constitutional Provisions Affecting Legislatures*, p. 22.

52. 1 Wm. & Mary, sess. 2, c. 2.

53. Art. I, § 6. See United States v. Johnson, 383 U.S. 169 (1966).

54. See *State Constitutional Provisions Affecting Legislatures*, p. 29.

names of legislators and how they voted on matters acted upon by the legislative body, is obvious. A journal provides a specific record of what was done, informs the public of the progress of measures pending before the legislature, and gives voters a means of scrutinizing the performance of their representatives. Hence the Commission believes there is merit in extending the requirements of entry on the journal in the manner outlined above.

(2) *Publishing debates.* The Commission considered whether the Constitution ought to require, not only the publication of a journal, but also the publication of actual debates, such as is done with the debates in Congress. The Commission has concluded not to make such a recommendation. On the one hand, it can be argued that publication of debates would aid courts in construing legislative intent and would make it easier for citizens to be well informed about what happens in the General Assembly. On the other hand, it can be argued that publishing debates would impel legislators to speak on every subject, aggravating the Assembly's problem with its mounting workload. Since the General Assembly clearly has the power, quite apart from the Constitution, to publish its debates if it wishes to do so, the Commission believes that the merits, pro and con, of published debates can best be resolved by the Assembly itself and that an immutable requirement ought not to be written into the Constitution.

Similarly, arguments can be made for the publication of committee hearings and reports. Access to published committee hearings and reports would be valuable to lawyers and judges to whom the legislative history of bills is important. However, with committee hearings and reports, as with floor debates, the Commission believes that no requirement should be written into the Constitution but rather that the question ought to be left to the General Assembly for resolution.

Section 11. Enactment of laws.

No law shall be enacted except by bill. A bill may originate in either house, may be approved or rejected by the other, or may be amended by either, with the concurrence of the other.

No bill shall become a law unless, prior to its passage:

(a) it has been referred to a committee of each house, considered by such committee in session, and reported;

(b) it has been printed by the house in which it originated prior to its passage therein;

(c) it has been read by its title, or its title has been printed in a daily calendar, on three different calendar days in each house; and

(d) upon its final passage a vote has been taken thereon in each house, the name of each member voting for and against recorded in the journal,

and a majority of those voting in each house, which majority shall include at least two-fifths of the members elected to that house, recorded in the affirmative.

Only in the manner required in subparagraph (d) of this section shall an amendment to a bill by one house be concurred in by the other, or a conference report be adopted by either house, or either house discharge a committee from the consideration of a bill and consider the same as if reported. The printing and reading, or either, required in subparagraphs (b) and (c) of this section, may be dispensed with in a bill to codify the laws of the Commonwealth, and in the case of an emergency by a vote of four-fifths of the members voting in each house, the name of each member voting and how he voted to be recorded in the journal.

No bill which creates or establishes a new office, or which creates, continues, or revives a debt or charge, or which makes, continues, or revives any appropriation of public or trust money or property, or which releases, discharges, or commutes any claim or demand of the Commonwealth, or which imposes, continues, or revives a tax, shall be passed except by the affirmative vote of a majority of all the members elected to each house, the name of each member voting and how he voted to be recorded in the journal.

Every law imposing, continuing, or reviving a tax shall specifically state such tax. However, any law by which income, gift, or death taxes are imposed may define or specify the subject and provisions of such tax, exclusive of rates, by reference to any provision of the laws of the United States as those laws may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision.

The presiding officer of each house shall, not later than twenty days after adjournment, sign every bill that has been passed by both houses and duly enrolled. The fact of signing shall be recorded in the journal.

Source: Present section 50.

Comment: Proposed section 11 closely parallels present section 50. Some changes of substance have been made, however.

(1) *Printing of bills.* The proposed section retains the requirement of present section 50 that bills be "printed" in the house of origin. The Commission does not recommend any change in this language but would observe that it understands "printing" to include any mechanical, chemical, or other method of making duplicate copies, and not just copies produced by setting type.

(2) *Reading of bills by title.* The several steps, (a) through (d), required by present section 50 include the requirement that a bill, before

passage, have been read by its title on three different calendar days in each house. It is widely conceded that this is a ritualistic formality, with little real meaning. Therefore the Commission proposes adding in (d) the alternative that it is enough if a bill's title has been printed on three different calendar days in each house. Under the proposed section, a house may adopt either of the alternative procedures.

(3) *Emergencies.* Linguistic changes have been made in the last sentence of the third paragraph. These changes effect no change in substance.

(4) *Conforming Virginia tax laws to federal tax laws.* The next to last paragraph of proposed section 11 supersedes the second sentence of the next to last paragraph of present section 50. The purpose of the proposed language is to make clear the power of the General Assembly to conform Virgina income, gift, and death tax laws to those of the United States.

To accomplish this result, the proposed language retains so much of the second sentence of the next to last paragraph of present section 50 as states, "Every law imposing, continuing, or reviving a tax shall specifically state such tax," and deletes the rest of that sentence ("and no law shall be construed as so stating such tax, which requires a reference to any other law or any other tax"). The proposal then adds a new sentence ("However . . . provision") making clear the power of the Assembly to enact income, gift, or death tax laws whose provisions relate to comparable federal laws. Rates of taxes, however, may not be fixed by reference to federal rates.

The proposal would permit conformity of income tax laws in accordance with the recommendations contained in the report of the Virginia Income Tax Study Commission (1967),[55] the request contained in SJR 72 adopted by the 1968 General Assembly, and the views expressed to this Commission by many persons and organizations.[56]

By permitting conformity of not only income, but also gift and death, tax laws, the proposal does not go quite as far as but is in substantial accord with the recommendations of the Board of Governors, Tax Section, Virginia State Bar, and the Committee on Taxation of the Virginia State Bar Association.[57]

(5) *Signing of bills.* The last paragraph of present section 50 requires that the presiding officer sign each bill in the presence of the house over which he presides and that the title of each bill be publicly read. This is time consuming and serves no useful purpose. Once a bill has been passed

55. *Report of the Virginia Income Tax Study Commission* (Richmond, 1967).

56. See Public Views Documents 16, 39, 43, 50, 51, 56, 58, 107, 140, 174, 194.

57. Joint Statement of Board of Governors, Tax Section, Virginia State Bar, and Committee on Taxation, Virginia State Bar Association. (This is in the files of the Commission on Constitutional Revision.)

by both houses, there is no further constitutional action which the Legislature can take on it prior to its submission to the Governor. The purpose of the signing is merely to authenticate the document; this can be done as well in the presiding officer's office as in the presence of the membership.

The present requirements of section 50 have resulted in the adoption by the General Assembly of a fiction to provide technical compliance with the Constitution. Since the adoption of the Constitution of 1902, the volume of legislation has been such that it has been a physical impossibility to have all the bills enrolled within the period fixed by the Constitution for the duration of a session. The records seem to indicate that initially the Legislature remained in session, extending the session from day to day until all the bills could be signed. Of recent years, however, a practice has developed of recessing the General Assembly to a day fixed by resolution in order to permit the completion of the enrollment of measures adopted during the regular constitutional period. This is done under the constitutional authority for a thirty-day extension without compensation.

This "constructive session" serves no legislative purpose. While it might be possible for a quorum to assemble and to take action on additional legislation or on measures vetoed by the Governor, it is probable that a quorum was present on only one occasion in the past half century, that being in the year 1918, when it was known that the Governor intended to veto certain important legislation and the General Assembly remained in session for the purpose of overriding his veto.

In addition, the physical presentation of bills to the Governor in such large numbers and with only ten calendar days in which to act imposes an unnecessary burden both on him and on his staff. In 1968 the Governor approved 247 measures prior to the seventh calendar day following the recess of the General Assembly. He approved 460 bills in the ten days following final adjournment on March 29. Had it not been for the fact that the present enrolling process permits unofficial prior consideration of measures by the Governor's Office and others who assist him in this connection, it would have been extremely doubtful whether he would have had adequate time to give this mass of legislation mature consideration.

The Commission proposes to accomplish the same results as are attained under present section 50 while eliminating the drawbacks which exist under the present system. Firstly, the period in present section 76 (section 6 of the proposed Executive article) during which the Governor may consider a bill while the General Assembly is in session would be extended from five days (Sundays excluded) to seven calendar days. This would make the period uniform for all bills rather than five days in some cases and six days in other cases. Secondly, elimination of present section 50's requirement that the bills be signed in the presence of the houses would

permit the presiding officers to authenticate the bills at any time following adjournment. To prevent the unlikely situation of a bill being held up because one or both of the presiding officers did not want to affix his signature thereto, proposed section 11 of the Legislative article fixes a period of twenty days after adjournment during which the bills must be signed by the presiding officers. Thirdly, section 6 of the proposed Executive article gives the Governor thirty days after adjournment to consider bills passed by the Assembly; since proposed section 11 of the Legislative article requires bills be presented to the Governor within twenty days after adjournment, the Governor would have, in every case, at least ten days to consider a bill.

Section 12. Form of laws.

No law shall embrace more than one object, which shall be expressed in its title. Nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length.

Source: Present section 52.

Comment: No change in substance. The only change, one of style, is to break the section into two sentences, rather than one long sentence, in the interest of clarity.

Historically, provisions like that set out in this section were designed to prevent several abuses in the legislative process: (1) log-rolling, whereby two or more blocs (which might separately be minorities in the legislative body) combine forces on a bill containing several unrelated features, no one of which by itself could command a majority; (2) lack of notice to legislators who, but for the one object requirement, might be unaware of the real contents of a bill; (3) lack of notice to the public of what measures are being considered by the Legislature; (4) lack of notice to those likely to be affected by enacted bills; (5) careless amending and reenacting, and therefore problems of construction, meant to be cured by requiring publication at length of a law revived or amended.[58] Most state constitutions agree with Virginia's section 52 in requiring that bills be confined to one subject or object.[59]

The Commission proposes no change in the substantive requirements of present section 52. Commentators have sometimes charged that provisions

58. See Thomas M. Cooley, *Constitutional Limitations* (8th ed.; Boston, 1927), I, 296; Millard H. Ruud, "'No Law shall Embrace More than One Subject'", 42 *Minn. L. Rev.* 389 (1958).

59. *State Constitutional Provisions Affecting Legislatures*, p. 28.

like section 52 breed litigation because they invite a challenge to any law.[60] However, an examination of Virginia cases does not bear out this charge.[61] Among other things, in most cases in which section 52 was invoked, there was also a non-constitutional ground which alone might have prompted the suit. In brief, the Commission believes the rules enunciated by present section 52 are salutary and that there appears no cogent reason for changing its requirements.

Section 13. Effective date of laws.

All laws, except a general appropriation law, shall take effect on the first day of the fourth month following the month of adjournment of the session of the General Assembly at which it has been enacted, unless a subsequent date is specified or unless in the case of an emergency (which emergency shall be expressed in the body of the bill) the General Assembly shall specify an earlier date by a vote of four-fifths of the members voting in each house, the name of each member voting and how he voted to be recorded in the journal.

Source: Present section 53.

Comment: The proposed section closely follows present section 53. The chief change is that the present requirement of "at least ninety days" following adjournment before laws may take effect is replaced by "the first day of the fourth month" following the month of adjournment.

Present section 53 provides that acts, other than general appropriation laws and emergency legislation, take effect ninety days after adjournment of the session unless a later date is specified by the General Assembly. The date of final adjournment is fixed by the General Assembly by a fictitious extension of the session and may be at any period within thirty days of its recess. Thus, until the Acts of Assembly are printed and the Keeper of the Rolls certifies the effective date, there is no source which can be cited to indicate when a law which is not an appropriation or an emergency statute will become effective unless the General Assembly specifies a delayed effective date in the act.

The Commission proposes that in every case, unless one of the section's exceptions apply, laws become effective on the first day of the fourth

60. E.g., Ernst Freund, *Standards of American Legislation* (1917), quoted in Byron Robert Abernethy, *Constitutional Limitations on the Legislature* (Lawrence, Kansas, 1959), p. 69. The Model State Constitution includes the one-subject requirement but expressly makes it not judicially reviewable. *Model State Constitution* (6th ed.; New York, 1963) § 4.14.

61. The leading case is Commonwealth v. Brown, 91 Va. 762, 771, 21 S.E. 357, 360 (1895). The last case in which section 52 was successfully invoked was Wooding v. Leigh, 163 Va. 785, 177 S.E. 310 (1934).

month following the month of adjournment of the session of the General Assembly. This would allow enforcement officials, attorneys, and the public generally to know with certainty when a given act takes effect. It would provide a small increase in the time required for general bills to become operative. This would help to ease the increasing mechanical problem of putting statute law after a session into printed form, either in the Acts of Assembly or in the Code of Virginia, by the time the laws actually become effective.

Examples of computing the "first day of the fourth month following the month of adjournment" are as follows: If the General Assembly adjourns on March 29, the date on which laws, other than general appropriation laws and emergency measures, would take effect would be July 1. If the Assembly adjourns on April 1, the date for laws to go into effect would be August 1.

Exceptions to the general rule are: (1) general appropriation laws are excepted; (2) the General Assembly may by a simple majority set a later, but not an earlier, effective date; and (3) the General Assembly may by four-fifths vote specify an earlier date in emergency situations. All three exceptions are parallel to exceptions set out in present section 53.

Section 14. Powers of General Assembly; limitations.

The authority of the General Assembly shall extend to all subjects of legislation not herein forbidden or restricted; and a specific grant of authority in this Constitution upon a subject shall not work a restriction of its authority upon the same or any other subject. The omission in this Constitution of specific grants of authority heretofore conferred shall not be construed to deprive the General Assembly of such authority, or to indicate a change of policy in reference thereto, unless such purpose plainly appear.

The General Assembly shall confer on the courts power to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities, and shall not, by special legislation, grant relief in these or other cases of which the courts or other tribunals may have jurisdiction.

The General Assembly may regulate the exercise by courts of the right to punish for contempt.

The General Assembly shall not enact any local, special, or private law in the following cases:

(1) For the punishment of crime.

(2) Providing a change of venue in civil or criminal cases.

(3) Regulating the practice in, or the jurisdiction of, or changing the rules of evidence in any judicial proceedings or inquiry before the courts or other tribunals, or providing or changing the methods of collecting debts or enforcing judgments or prescribing the effect of judicial sales of real estate.

(4) Changing or locating county seats.

(5) For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interests.

(6) Extending the time for the assessment or collection of taxes.

(7) Exempting property from taxation.

(8) Remitting, releasing, postponing, or diminishing any obligation or liability of any person, corporation, or association to the Commonwealth or to any political subdivision thereof.

(9) Refunding money lawfully paid into the treasury of the Commonwealth or the treasury of any political subdivision thereof.

(10) Granting from the treasury of the Commonwealth, or granting or authorizing to be granted from the treasury of any political subdivision thereof, any extra compensation to any public officer, servant, agent, or contractor.

(11) For conducting elections or designating the places of voting.

(12) Regulating labor, trade, mining, or manufacturing, or the rate of interest on money.

(13) Granting any pension.

(14) Creating, increasing, or decreasing, or authorizing to be created, increased, or decreased, the salaries, fees, percentages, or allowances of public officers during the term for which they are elected or appointed.

(15) Declaring streams navigable, or authorizing the construction of booms or dams therein, or the removal of obstructions therefrom.

(16) Affecting or regulating fencing or the boundaries of land, or the running at large of stock.

(17) Creating private corporations, or amending, renewing, or extending the charters thereof.

(18) Granting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity.

(19) Naming or changing the name of any private corporation or association.

(20) Remitting the forfeiture of the charter of any private corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution and the laws passed in pursuance thereof.

Source: Present section 63.

Comment: No change, with the exception of substituting "Commonwealth" for "State."

(1) *Powers of the General Assembly.* In constitutional theory, a state's government is a government of plenary powers, except as limited by State and Federal Constitutions.[62] Unlike the Federal Constitution, which is a grant of power, a state constitution is a restraint on power. Accordingly, unlike Congress, whose legislative powers ultimately trace to the grants of Article I of the Federal Constitution, a state's legislature has all legislative powers not prohibited to it by the Federal or State Constitution. Virginia cases, like those in other states, accept these propositions as fundamental. A typical Virginia case carries the reminder that "the State Constitution is not a grant of power, but only the restriction of powers otherwise practically unlimited; that except so far as restrained by the Constitution, the legislature has plenary power . . . ." [63]

These principles are so well accepted that they would likely be applied even if not explicitly spelled out in a state's constitution. Nevertheless, out of an abundance of caution, the principles are laid down in the first paragraph of present section 63, a paragraph added by amendment in 1928. The paragraph states three propositions: (1) that the Legislature has power to legislate on any subject unless the Constitution says otherwise; (2) that the canon of construction, *expressio unius est exclusio alterius*, does not apply in interpreting the legislative powers of the General Assembly; and (3) that the deletion of powers expressly granted in the Constitution before 1928 is not of itself to imply a denial of such powers. The Commission which recommended the 1928 amendments explained in its report that the new language was "meant to obviate the necessity of conferring powers on the General Assembly in other sections; and to prevent any misunderstanding on account of omissions." [64]

62. See, e.g., Frank P. Grad, "The State Constitution: Its Function and Form for Our Time," 54 *Va. L. Rev.* 928, 966 (1968), reprinted in *State Constitutional Revision* (Charlottesville, Va., 1968), pp. 111, 149.

63. Strawberry Hill Land Co. v. Starbuck, 124 Va. 71, 77, 97 S.E. 362, 364 (1918). The unanimous opinion was written by Associate Justice Prentis, later chairman of the commission which in 1927 recommended the language now contained in the first paragraph of section 63.

64. *Report of the Commission to Suggest Amendments to the Constitution* (Richmond, 1927), p. 19.

The Commission is of the opinion that the principles stated in the first paragraph of the section serve a useful purpose. The first proposition's reminder that the General Assembly has power to legislate on any subject, unless the Constitution denies or limits that power, is especially appropriate in a Constitution which, as the Commission would have it, is freed of needless detail. The second proposition, rebutting negative inferences from specific grants of authority, is valuable in light of the mischief which courts of other states, though happily not those of Virginia, have done in applying the *expressio unius* rule in constitutional interpretation.[65] The third proposition, rebutting negative implications arising from deletions of specific grants of authority, parallels the first proposition in making it possible to omit unnecessary detail from the Constitution without running the risk that the deletion will be construed to mean a denial of authority to the Legislature.

(2) *Limits on local, special, or private laws.* Present section 63 directs the General Assembly to confer certain powers (such as granting divorces) on the courts and not itself to pass special acts in such cases. Section 63 further limits the Assembly by enumerating twenty classes of cases in which the Assembly shall not enact local, special, or private laws. A majority of states have constitutional inhibitions against the enactment of special, local, or private laws.[66] Such restrictions are justified on a number of grounds, some of the principal ones being that (1) special legislation diverts the time and energies of the Legislature from the more central task of framing general laws, (2) special bills, because of their number and limited interest, too often pass with only cursory consideration, (3) special legislation breeds special favors to some and discrimination against others, and (4) a multitude of special laws, especially in areas where there are also general laws, makes it difficult to determine what the law on a subject is. On the other hand, were prohibitions against special legislation to be applied to every subject and rigidly enforced, a legislature would have little to do. As Mr. Justice Frankfurter once said, "Legislation is essentially empiric. It addresses itself to the more or less

65. Grad, *op. cit. supra* note 62, pp. 966-68, *State Constitutional Revision,* pp. 149-51. The Supreme Court of Appeals of Virginia, in the only Virginia case discussing the constitutional relevance of the *expressio unius* rule, called for the exercise of "great caution" before the rule be applied in a constitutional context, lest the Legislature be hampered "in amply providing for the health, morals, safety, and welfare of the people"; the court believed the canon should be applied only if a "plainly necessary result" of the constitutional language. Pine v. Commonwealth, 121 Va. 812, 821-22, 93 S.E. 652, 654 (1917). The *expressio unius* canon seems not to have been considered in a constitutional context by the Supreme Court of Appeals since the amendment of section 63 in 1928.

66. *State Constitutional Provisions Affecting Legislatures,* p. 37.

crude outside world and not to the neat, logical models of the mind." [67] It is difficult to deny that there are times when a special law will do the job better than will a general law.

Whatever the arguments on the merits, it is well recognized that legislative bodies do in fact pass a great number of laws which the average man would think to be special in their application, whatever a court might hold.[68] Many cases have been decided interpreting the limitations on special legislation laid down by section 63, but it is no mean feat to try to reconcile the myriad of holdings and to extract meaningful general principles from them.[69]

Three approaches to section 63 are possible. One is to delete the list of prohibitions altogether and leave the problem of special legislation to the operation of such more generalized prohibitions as those of the federal equal protection clause, an anti-discrimination clause, if one is adopted in the Bill of Rights, and provisions operating on such specific subjects as local government [70] and corporations.[71] A second approach is to attempt to revise and update the list in section 63, by deleting items which seem obsolete today and adding prohibitions suggested by modern problems. To do a thorough job of updating section 63's enumeration would, in effect, require a survey of the entire body of law in Virginia, a mammoth undertaking. The third approach, the one adopted by the Commission, is to leave section 63 as it is.

Section 15. General laws.

In all cases enumerated in the preceding section, and in every other case which, in its judgment, may be provided for by general laws, the General Assembly shall enact general laws. Any general law shall be subject to amendment or repeal, but the amendment or partial repeal thereof shall not operate directly or indirectly to enact, and shall not have the effect of enactment of, a special, private, or local law.

No general or special law shall surrender or suspend the right and power of the Commonwealth, or any political subdivision thereof, to tax corporations and corporate property, except as authorized by Article X. No private corporation, association, or individual shall be specially exempted from the operation of any general law, nor shall a general law's

67. Morey v. Doud, 354 U.S. 457, 472 (1957) (dissenting opinion).

68. On the practice in the Virginia Legislature as of 1956, see Marshall T. Bohannon, "Local Bills—Some Observations," 42 *Va. L. Rev.* 845 (1956).

69. See Note, "Special Legislation in Virginia," 42 *Va. L. Rev.* 860 (1956).

70. See proposed Local Government article, section 2, *infra*, p. 219.

71. See proposed Corporations article, section 6, *infra*, p. 284.

operation be suspended for the benefit of any private corporation, association, or individual.

Source: Present section 64.

Comment: No change in substance. Linguistic changes are (1) substituting "Commonwealth" for "State", (2) changing the reference to the Taxation and Finance article to Article X (the proposed number of that article), (3) changing "last" to "preceding" in the first line, and (4) changing "its" to "a general law's" in the last sentence, for clarity.

On the problem of special laws, see commentary on section 14 of the Legislative article, *supra,* pp. 150-54.

On the Commonwealth's power to regulate corporations, see section 6 of the Corporations article, *infra,* p. 290.

Section 16. Appropriations to religious or charitable bodies.

The General Assembly shall not make any appropriation of public funds, personal property, or real estate to any church or sectarian society, or any association or institution of any kind whatever which is entirely or partly, directly or indirectly, controlled by any church or sectarian society. Nor shall the General Assembly make any like appropriation to any charitable institution which is not owned or controlled by the Commonwealth; the General Assembly may, however, make appropriations to nonsectarian institutions for the reform of youthful criminals and may also authorize counties, cities, or towns to make such appropriations to any charitable institution or association.

Source: Present section 67.

Comment: No change in substance. Some linguistic changes, not affecting substance, have been made, for clarity.

The section's ban on appropriations to churches or other religious bodies is, of course, only one of several provisions in the Virginia Constitution guaranteeing religious liberties. Proposed section 16 of the Bill of Rights (combining, without change, the provisions of present sections 16 and 58) guarantees the free exercise of religion and prohibits an establishment of religion.[72] Section 10 of the proposed Education article (present section 141) limits appropriations of state money for private education to nonsectarian schools.[73]

As to the section's ban on appropriations to private charities, it is arguable that at least some such appropriations would be in the public inter-

72. *Supra,* p. 100.
73. *Infra,* p. 269.

est. Private charitable organizations often perform functions which, were they not the subject of private initiative, would surely have to be performed by public bodies at public expense. Therefore a reasonable argument can be made that it is a legitimate use of state money to aid private groups which in effect are carrying out a program having a public purpose. The problem, however, lies in fashioning a constitutional provision which would allow selective and limited appropriations in legitimate cases without opening the floodgates to demands by, and appropriations to, the vast number of private groups who would consider themselves equally entitled to share in the public largess. The Commission suspects that relaxing the present prohibition might open a Pandora's Box and therefore has concluded to leave the prohibition as it now stands.

Section 17. Impeachment.

The Governor, Lieutenant Governor, Attorney General, judges, members of the State Corporation Commission, and all officers appointed by the Governor or elected by the General Assembly, offending against the Commonwealth by malfeasance in office, corruption, neglect of duty, or other high crime or misdemeanor may be impeached by the House of Delegates and prosecuted before the Senate, which shall have the sole power to try impeachments. When sitting for that purpose, the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the senators present. Judgment in case of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Commonwealth; but the person convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. The Senate may sit during the recess of the General Assembly for the trial of impeachments.

Source: Present section 54.

Comment: Two changes have been made: the substitution of "Commonwealth" for "State"; and the deletion of the words "and executive officers at the seat of government" from the first sentence. The reason for the deletion is that the omitted language no longer has any relevance in a modern context. It was originally applicable to certain elected executive officers [74] in addition to the ones presently named in section 54. All executive officers who now serve in state government at a level which would

74. E.g., the State Treasurer, the Commissioner of Agriculture and Immigration, and the Superintendent of Public Instruction, all of whom were elective before the constitutional amendments of 1928.

make impeachment appropriate are now either named specifically in the proposed section or would fall under the category of being appointed by the Governor or elected by the General Assembly.

An alternative method of removing judges would be available under the system conceived by the Commission in section 10 of the proposed Judicial article, *infra*, pp. 205-6.

Section 18. Auditor of Public Accounts.

An Auditor of Public Accounts shall be elected by the joint vote of the two houses of the General Assembly for the term of four years. His powers and duties shall be prescribed by law.

Source: Present section 82.

Comment: No change, except that the section is moved into the Legislative article from its present position in the Executive article of the Constitution. The Auditor is properly a legislative rather than an executive officer.

ARTICLE V

EXECUTIVE

In the Commission's study of the constitutional provisions touching the office of Governor and the state administration, the Commission has sought to ensure that the executive branch of the government is as strong as the other independent and coordinate branches. One of the discernible flaws in the Constitution of 1776, in the judgment of men like Thomas Jefferson, James Madison, Edmund Randolph, and St. George Tucker, was its creation of a weak and ineffectual chief executive, subservient to the legislative branch. What all of these men wanted was a government of checks and balances, in which each of the three principal branches had a measure of independence. As Tucker put it, was the union of executive and legislative powers any "less dangerous when the legislature has the executive at its devotion, than when the executive dictates to an obedient legislature?" [1]

This defect in Virginia's Constitution has long since been corrected. It is Virginia's good fortune that the present Constitution creates a strong and responsible chief executive. Hence the significant changes which the

1. *Tucker's Blackstone* (Philadelphia, 1803), I, Appendix, 120. For like statements by Jefferson, see *Writings of Thomas Jefferson*, ed. Paul L. Ford (New York, 1892), III, 223; by Madison, see *Writings of James Madison*, ed. Gaillard Hunt (New York, 1900-10), II, 166; by Randolph, see 44 *Va. Mag. Hist. & Biog.* 35, 48, 105 (1936).

Commission would propose in the Executive article are few in number. These changes are summarized here; they are discussed in greater detail in the section-by-section commentary.

(1) *Executive disability.* There is widespread agreement that the existing provision dealing with disability of the Governor (section 78) is inadequate. The Commission has studied a number of alternative ways of handling this vexing question. Its recommendation (proposed section 15) closely parallels the Twenty-fifth Amendment to the United States Constitution, which was the outgrowth of years of study of the problem of presidential disability, was the subject of extended public discussion, and was unanimously approved by the General Assembly of Virginia in 1966.

(2) *The Governor as administrator.* The Commission recommends that the Governor, as head of the Commonwealth's administrative structure, have clear constitutional authority to appoint and discharge his policy-making advisors at the top levels. Therefore the Commission offers a new section (proposed section 10) which provides that, as to principal executive departments headed by individuals (not those headed by a board or commission), (a) the Governor shall appoint the department heads subject to such legislative confirmation as the General Assembly may prescribe, (b) these men shall serve at the pleasure of the Governor (that is, they may be removed without cause), and (c) the General Assembly shall prescribe the qualifications of department heads. The ability of the General Assembly to provide for confirmation and to prescribe qualifications should serve as a sufficient check to ensure that future Governors continue the practice of appointing able men.

(3) *Executive reorganization.* Another proposal advanced by the Commission to enhance the Governor's ability to act as an efficient administrator is a new section (proposed section 9) for executive initiation of administrative reorganization. The proposal would allow the Governor to put into effect practices which a good business executive would want to adopt in his business. Section 9 authorizes the Governor to initiate reorganization of the executive branch which, if not disapproved by the General Assembly, becomes effective and has the force of law. The proposal does not strengthen the office of the Governor at the expense of the Legislature. Both have their place in the proposed arrangement: the Governor can take the initiative, but the General Assembly can have the final say, if it wishes it.

(4) *Deletions in Article V.* Like other parts of the present Constitution, the Executive article has a number of sections which are quite unnecessary in a constitution. They constitute detail of a kind which belongs in the general laws. In particular, it is unnecessary for the Constitution, as it does now, to name specific non-elective offices such as the Secretary

of the Commonwealth or agencies such as the Bureau of Labor and Statistics. In the first place, the General Assembly has full power to create offices and bureaus without their being named in the Constitution; it does so frequently. Moreover, it is illogical to name a few offices and agencies in the Constitution when the vast majority of administrative departments and positions are created by legislation alone. Therefore the Commission proposes the deletion of present sections 80 (Secretary of the Commonwealth), 81 (State Treasurer), and 86 (Bureau of Labor and Statistics). This recommendation carries further the salutary process begun in 1928, when many such unnecessary sections were deleted from the Constitution.

Several other sections are proposed to be deleted as unnecessary. The sections dealing with checks and balances (section 84) and bonds of officers (section 85) are meaningless and serve no useful function; both sections in effect leave it to the General Assembly to pass whatever laws they please on these subjects—which is exactly what it can do if the sections are deleted. Deletion of section 83, which provides that the salaries of executive officers cannot be increased or diminished during their terms of office, is recommended on the ground that the section may have a negative effect on the Commonwealth's ability to recruit and retain expert talent. Deleting this provision does not affect the ban in present section 72 on increasing or diminishing the Governor's salary, a ban which the Commission has also proposed extending to the salary of the Lieutenant Governor and that of the Attorney General.

(5) *Deletion of Articles X and XI.* The Commission proposes the deletion of Articles X (Agriculture and Commerce) and XI (Public Welfare and Penal Institutions). The General Assembly has the power, which it regularly exercises, to create and provide for the governance of executive departments by general law. Such departments need not be named in the Constitution. It makes no sense to have an article creating one department when other departments of equal dignity and importance are created by statute.[2] Article XI, concerning public welfare and penal institutions, is even less necessary. That article is an empty shell, its substantive provisions having been deleted in the revisions of 1928.

(6) *Textual reorganization.* The Commission proposes a change in the organization of Article V which does not affect substance. Present section 73 enumerates in haphazard order some of the powers and duties of the

2. Having an article creating the Department of Agriculture and Immigration (as it was called until 1966) made sense so long as the Commissioner of Agriculture and Immigration was popularly elected. The office was made appointive, however, by the constitutional amendments of 1928. Further, that the people were obliged to vote in 1966 on the question whether the department's name should include "Immigration" or "Commerce" underscores how burdensome it is to include such matters in the Constitution.

Governor. The Commission proposes to rearrange these provisions into several sections, so that the nature and extent of the Governor's powers will be clearer to one who reads the Constitution. The reorganization itself implies no change in substance; where substantive changes are intended, this is made clear in the commentary accompanying the sections. The proposed sections into which the provisions of present section 73 have been distributed are section 5, dealing with the Governor's legislative responsibilities, section 7, relating to executive and administrative powers, and section 12, executive clemency.

Other subjects studied. The Commission also studied several other questions of policy, as to which it does not recommend any change from present practice.

(1) *Governor's term.* Considerable interest has been shown in the question whether the Governor ought to be allowed to succeed himself. The Commission recommends that the one-term limitation of present section 69 (proposed section 1) be retained.

(2) *Slate election of Governor and Lieutenant Governor.* Another proposal considered and ultimately rejected by the Commission would have had the candidates for Governor and Lieutenant Governor run as a team so that a voter would cast a single vote for a slate of two candidates. This would in effect adopt the practice now traditionally followed, but not constitutionally required, for the election of the President and Vice-President of the United States. Although some state constitutions provide for this manner of electing the Governor and Lieutenant Governor, the Commission does not believe that such a system would be of any special benefit to Virginia.

Section 1. Executive power; Governor's term of office.

The chief executive power of the Commonwealth shall be vested in a Governor. He shall hold office for a term commencing upon his inauguration on the Saturday after the second Wednesday in January, next succeeding his election, and ending in the fourth year thereafter immediately after the inauguration of his successor. He shall be ineligible to the same office for the term next succeeding that for which he was elected, and to any other office during his term of service.

Source: Present section 69.

Comment: No change, except to substitute "Commonwealth" for "State."

(1) *Executive power.* This section vests the "chief executive power" of the Commonwealth in the Governor. At the outset, in 1776, Virginia's

Constitution created a chief executive quite dependent upon the legislative branch of government. In the years that followed, the people lost their mistrust—born of colonial experience—of governors, and it is Virginia's good fortune that the powers of its Governor are commensurate with the duties and responsibilities of the office. Nothing is more debilitating, as any business executive or other leader knows, than to have responsibility without authority. The adequacy of the powers of Virginia's Governor—a contrast with the inadequate chief executive powers in many states—has been commented on both within and without the Commonwealth.[3] It is the sufficiency of the Governor's powers to deal with most problems confronting his office and the Commonwealth which has led the Commission to recommend only modest changes in the Executive article of the Constitution.

(2) *Term of office.* Whether the Governor ought to be allowed to succeed himself is a question occasioning considerable interest in Virginia.[4] The present rule, laid down in section 69, is that a Governor may not succeed himself (although he may run for a term not immediately succeeding the one he has already served). The Commission proposes retaining the present limitation.

Practice in other states is divided on whether a governor may succeed himself. Fourteen states, besides Virginia, prohibit a governor from succeeding himself. Seven states limit a governor to two successive terms; one state prohibits any third term. A slight majority of the states (27) place no limit on the number of terms that a governor may serve.[5]

The chief argument for allowing a Governor to succeed himself is that the voters have the widest possible choice of candidates; prohibiting a Governor from running for reelection removes from the race the candidate most familiar to the voters.[6] It is also argued that the possibility of reelection operates as a powerful incentive for the incumbent Governor to do a good job and build a favorable record to offer to the voters.

The Commission solicited the views of all living former Governors on the question of succession. Of those who responded to this inquiry, all preferred Virginia's present one-term rule. One of the reasons assigned for retaining the existing limit was that the affairs of the Commonwealth are better managed if the Governor is not facing the prospect of a re-

3. See Carter O. Lowance, "The Governor of Virginia," *University of Virginia News Letter*, Feb. 15, 1960, reprinted in Virginia State Chamber of Commerce, *Readings in Virginia Government* (Richmond, 1965), p. 37; Joseph A. Schlesinger, *Politics in the American States* (Boston, 1965), p. 229.

4. See Public Views Documents 29, 30, 58, 72, 85, 107, 108, 126, 140, 153, 165, 171.

5. Figures compiled by the Commission.

6. See *Maryland Constitutional Convention Commission Report* (Baltimore, 1967), p. 156.

election campaign. Not being able to succeed himself, a Governor can deal with public matters relatively free of political considerations. Moreover, the greater the powers of the Governor's office, the more reason to want some safeguard against self-perpetuation in office of one who would seek to serve his own interests at the expense of the citizens of Virginia.[7] The Commission concludes that the one-term limit has worked to the advantage of the Commonwealth and so proposes its retention.

Section 2. Election of Governor.

The Governor shall be elected by the qualified voters of the Commonwealth at the time and place of choosing members of the General Assembly. Returns of the election shall be transmitted, under seal, by the proper officers, to the State Board of Elections, or such other officer or agency as may be designated by law, which shall cause the returns to be opened and the votes to be counted in the manner prescribed by law. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number of votes, one of them shall be chosen Governor by the joint vote of the two houses of the General Assembly. Contested elections for Governor shall be decided by a like vote. The mode of proceeding in such cases shall be prescribed by law.

Source: Present section 70.

Comment: The substantive requirements of present section 70 are retained in proposed section 2. The only change, other than linguistic changes, is the simplification of the procedure for counting the votes in a gubernatorial election. Present section 70 requires that the returns be opened and the votes counted in the presence of a majority of the members of the Senate and House of Delegates. That this procedure is both unnecessary and wasteful of the Legislature's time seems obvious.

In 1966 the General Assembly adopted an amendment to section 70 to take this cumbersome task from the General Assembly and place the responsibility for making the official count in the hands of the State Board of Elections.[8] The Commission's proposal follows that of the General Assembly in resting the responsibility for concluding the official count in the State Board of Elections, yet it permits the General Assembly to designate another agency to carry out this task if it so desires.

7. On the arguments for and against allowing a Governor to succeed himself, see generally J. E. Kellenbach, "Constitutional Limitations on Reeligibility of National and State Chief Executives," 46 *Am. Pol. Sci. Rev.* 438 (1952).

8. S.J. Res. 48, Va. Acts of Assembly (1966), p. 1589.

No person except a citizen of the United States shall be eligible to the office of Governor; nor shall any person be eligible to that office unless he shall have attained the age of thirty years and have been a resident of the Commonwealth and a registered voter in the Commonwealth for five years next preceding his election.

Source: Present section 71.

Comment: The proposed section changes present section 71 in two respects: by eliminating the distinction between foreign-born and natural-born citizens, and by requiring that to be Governor one must have been a registered voter in the Commonwealth for five years.

(1) *Citizenship.* The first change is the elimination of the discrimination in qualifications imposed on foreign-born citizens as opposed to native-born citizens. The distinction in the present Constitution might never present an actual case, but the Commission believes that the Constitution should not give even token support to the notion that there are classes of citizenship in the Commonwealth. Citizenship achieved through naturalization carries with it the privilege of free participation in the affairs of Virginia; it is not second class citizenship.[9]

(2) *Having been a registered voter.* The other change is that the proposed section requires, in addition to the requirement of residence, that one seeking election to the office of Governor shall have been a registered voter in the Commonwealth for five years. The concept of residence involves some difficulty and is subject to varying definitions. The Virginia Supreme Court of Appeals has interpreted residence to mean domicile.[10] Once it is established that domicile is the primary concept, an even more

Section 3. Qualifications of Governor.

complex factual determination may be necessary. The Commission believes that the requirement of residence, with all of its potential uncertainty, is still a desirable one. However, the additional requirement that one be a registered voter for five years is a more objective and certain test of a prospective candidate's relation to the Commonwealth. Unlike residency, registration is a matter of public record and can easily be verified.

9. The constitutions of 35 states provide that the governor must be a citizen of the United States. Of these 35 constitutions, 19 provide that the governor must have been a citizen for periods ranging from two to twenty years; the other 16 are silent on this point. None of the 35 constitutions which require United States citizenship draw the distinction found in section 71 of the Virginia Constitution between foreign-born and native-born citizens.

10. See Kegley v. Johnson, 207 Va. 54, 147 S.E.2d 735 (1966); Dotson v. Commonwealth, 192 Va. 565, 66 S.E.2d 490 (1951); Williams v. Commonwealth, 116 Va. 272, 81 S.E. 61 (1914).

(3) *Age.* No change is proposed. Under the proposed section, as under present section 71, one must be thirty years of age to be Governor.

Section 4. Place of residence and compensation of Governor.

The Governor shall reside at the seat of government. He shall receive for his services a compensation to be prescribed by law, which shall neither be increased nor diminished during the period for which he shall have been elected. While in office he shall receive no other emolument from this or any other government.

Source: Present section 72.

Comment: No change.

The Commission believes that the provision requiring the Governor to reside in Richmond, while originally designed to bar an absentee Governor from the office and perhaps unnecessary today, retains certain symbolic value. It works no hardship on the Governor and indeed enhances the prestige of the Mansion. Likewise the Commission does not believe that the prohibition on an increase in the Governor's salary is an undue burden. Certainly the prohibition against diminishing his salary is valuable.[11] In short, it is believed that there is no compelling reason for change in this section.

Section 5. Legislative responsibilities of Governor.

The Governor shall communicate to the General Assembly, at every session, the condition of the Commonwealth, recommend to its consideration such measures as he may deem expedient, and convene the General Assembly on application of two-thirds of the members of both houses thereof, or when, in his opinion, the interest of the Commonwealth may require.

Source: Derived from the first sentence of the first paragraph of present section 73.

Comment: No change in substance.

As noted in the commentary introducing the Executive article, the Commission proposes to reorganize the heterogeneous and involved provisions of present section 73, with few changes in substance, into several sections,

11. Between 1850 and 1928, the Constitution spelled out the exact amount of the Governor's salary. The Commission which recommended the 1928 revision of the Constitution wisely suggested deleting that provision and substituting the language of present section 72, which, as to compensation, is almost the exact language found in the Constitution before 1850.

each of which will group related powers of the Governor in a more comprehensible manner.

Proposed section 5 is concerned with the Governor's role in proposing legislation and in convening the General Assembly. The language of the proposed section is virtually the exact language of the relevant lines of present section 73, except that "Commonwealth" is substituted for "State." The affirmative provisions of the section recognize the desirability of the Governor's direct involvement in the legislative process.

Section 6. Presentation of bills; veto powers of Governor.

Every bill which shall have passed the Senate and House of Delegates shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but, if not, he may 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 the same. If, after such consideration, two-thirds of the members present, which two-thirds shall include a majority of the members elected to that house, shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members present, which two-thirds shall include a majority of the members elected to that house, it shall become a law, notwithstanding the objections.

The Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills returned to the General Assembly without his approval.

If the Governor approve the general purpose of any bill but disapprove any part or parts thereof, he may return it, with recommendations for its amendment, to the house in which it originated, whereupon the same proceedings shall be had in both houses upon the bill and his recommendations in relation to its amendment as is above provided in relation to a bill which he shall have returned without his approval, and with his objections thereto; provided, that if after such reconsideration, both houses, by a vote of a majority of the members present in each, shall agree to amend the bill in accordance with his recommendation in relation thereto, or either house by such vote shall fail or refuse to so amend it, then and in either case the bill shall be again sent to him, and he may act upon it as if it were then before him for the first time. In all cases above set forth, the names of the members voting for and against the bill or item or items of an appropriation bill, shall be entered on the journal of each house.

If any bill shall not be returned by the Governor within seven days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall, by final adjournment, prevent such return; in which case it shall be a law if approved by the Governor, in the manner and to the extent above provided, within thirty days after adjournment, but not otherwise.

Source: Present section 76.

Comment: Only two changes are proposed.

(1) *Time for Governor's consideration of bills during sessions.* The first proposed change is that the Governor be given seven days within which to consider legislation passed by the General Assembly. Presently the Governor is permitted five days (six including Sundays) to consider legislation. The proposed change simply gives him a full week. With the ever increasing amount of legislation passed by the General Assembly and presented to the Governor, this seems a modest extension.

(2) *Time for Governor's consideration of bills after adjournment.* The other proposed change is to lengthen from ten to thirty days after adjournment of the General Assembly the time given the Governor to sign bills. With the frantic rush of legislative activity at the end of a session, the Governor is unable to weigh the merits of bills within a ten-day period. The General Assembly, recognizing the impossibility of accomplishing this task within ten days, has resorted to the device of a "constructive session." The Commission's proposal would make unnecessary the constructive session. It does not change the requirement that a bill presented at the end of a session must be signed by the Governor to become effective. It simply assures the Governor adequate time, thirty days, in which to consider bills.[12]

(3) *Veto power.* No change is proposed in the Governor's veto power. Present section 76 provides the Governor a strong veto. He may do any of the following: (a) He may return the bill to the house in which it originated with his objections, in which case the bill becomes law only if two-thirds of the members present in each house vote for the bill. This two-thirds must constitute a majority of the members elected to each house to override the Governor's veto. (b) He may veto any particular item or items of an appropriation bill. (c) He may return the bill with recommendation for its amendment.

12. This proposal should be considered together with that in proposed section 11 of the Legislative article, requiring that the presiding officer of each house of the General Assembly sign within twenty days after adjournment those bills passed by both houses.

Pocket vetoes are restricted to bills presented at or near the end of the session, for only then is affirmative action by the Governor required before a bill can become law. In all other instances if he does not act on a bill presented to him by the General Assembly, it automatically becomes law.[13]

(4) *Executive amendment.* The provision (also unchanged) allowing the Governor to return a bill with suggestions for change, the executive amendment, has worked well in Virginia. From 1940 to 1956, for example, 150 bills were returned to the General Assembly with executive amendments. Only two of the amendments failed to receive approval.[14] By use of this procedure, much potential friction between the legislative and executive branches of government is avoided and the Governor enjoys a more harmonious relationship with the General Assembly.

(5) *Item veto.* Use of the veto power has not provoked extensive litigation. There is one decision of importance, however. The present Constitution provides that a Governor can veto an item or items of an appropriation bill without rendering the entire bill ineffective. Nearly all the states allow item vetoes on appropriation bills, and the usefulness of the device is generally agreed upon. However, to find a word which accurately describes that portion of a bill which the Governor may veto without vetoing the whole bill presents serious problems of draftsmanship. There is no indication that the word "item" was a term of art prior to 1902, and the debates of the 1901-02 convention are silent on the definition. However, the Supreme Court of Appeals has in a 1940 case [15] defined the word rather carefully. It is difficult to describe the Court's understanding of "item" in a few words. Under the decision, a condition, a qualification, or a provision providing how money is to be used may not be removed if its removal would affect any other appropriation. The Commission recommends continued use of the word "item" in the Constitution.

Section 7. Executive and administrative powers.

The Governor shall take care that the laws be faithfully executed.

The Governor shall be commander-in-chief of the armed forces of the Commonwealth and shall have power to embody such forces to repel invasion, suppress insurrection, and enforce the execution of the laws.

13. The general literature on the veto power includes Frank W. Prescott, "The Executive Veto in American States," 3 *Western Pol. Q.* 99 (1950); Frank W. Prescott, "The Executive Veto in Southern States," 10 *J. Politics* 659 (1948).

14. Coleman B. Ransome, Jr., *The Office of Governor in the United States* (Birmingham, Ala., 1956), p. 183.

15. Commonwealth v. Dodson, 176 Va. 281, 11 S.E.2d 120 (1940).

The Governor shall conduct, either in person or in such manner as shall be prescribed by law, all intercourse with other and foreign states.

The Governor shall have power to fill vacancies in all offices of the Commonwealth for the filling of which the Constitution and laws make no other provision. If such office be one filled by the election of the people, the appointee shall hold office until the next general election, and thereafter until his successor qualifies, according to law. The General Assembly shall, if it is in session, fill vacancies in all offices which are filled by election by that body.

Gubernatorial appointments to fill vacancies in offices which are filled by election by the General Assembly or appointment by the Governor which is subject to confirmation by the Senate or the General Assembly made during the recess of the General Assembly shall expire at the end of thirty days after the commencement of the next regular session of the General Assembly.

Source: Derived from present section 73.

Comment: As part of the reorganization of the provisions of present section 73, proposed section 7 deals with various executive and administrative powers which can be grouped together (and distinguished, for example, from the powers related to legislation in the preceding section). Changes in the provisions which have been grouped into proposed section 7 are generally stylistic in nature.

(1) *Faithful execution of the laws.* The first paragraph of the proposed section is taken, without change, from the first two lines of present section 73. Every state constitution, except one, has a "faithful execution" clause. In Virginia, the constitutional mandate is supplemented by statutory authorization to the Governor, with the advice of the Attorney General, to institute judicial proceedings "in order to protect or preserve the interests or legal rights of the Commonwealth in all cases not provided for by existing law." [16]

(2) *Commander-in-chief.* The second paragraph of the proposed section is taken from lines 9 through 12 of present section 73. A slight change has been made: the more inclusive phrase "armed forces" has been substituted for the phrase "land and naval forces." The suggested language is broad enough to encompass air forces (which might not be included in "land and naval forces") and also makes the constitutional language symmetrical with its statutory counterpart, in which as of March 31, 1964,

16. Va. Code Ann. § 2.1-49 (repl. vol. 1966). Cf. National Municipal League, *Model State Constitution* (6th ed.; New York, 1963) § 5.04; N.J. Constitution, Art. V, § 1, ¶ 11.

"armed forces" was substituted for "land and naval forces." [17] Likewise, in the constitutional provision, the words "such forces" have been substituted for the present phrase "the militia."

(3) *Foreign affairs.* The third paragraph is unchanged. It is taken from lines 12 through 15 of the first paragraph of present section 73. This provision, a rarity in state constitutions, was introduced into the Virginia Constitution by the Convention of 1829-30,[18] in which some delegates wondered out loud whether Virginia might not some day have to resume its sovereignty. Foreign affairs, of course, are the province of the Federal Government, but the usefulness of a provision relating to "intercourse with other [American] . . . states" is evident in a day of increasing regional and other interstate cooperation.[19]

(4) *Pro tempore filling of vacant offices.* The final paragraph of the proposed section is derived from the second paragraph of present section 73. This paragraph has been revised to distinguish between offices which are filled without legislative action, e.g., the Attorney General or a gubernatorial appointee not subject to legislative confirmation, and offices which are filled by the General Assembly or appointed by the Governor subject to legislative approval. There is no reason why interim appointments in the former category should run only until the next regular session of the General Assembly.

(5) *Suspension of executive officers.* Lines 15 through the end of the first paragraph of present section 73, dealing with suspension of executive officers for culpable acts, have been omitted. In view of the broadened powers of removal in proposed section 10, this part of present section 73 is unnecessary.

Section 8. Information from administrative officers.

The Governor may require information in writing, under oath, from any officer of any executive or administrative department, office, or agency, or any public institution upon any subject relating to their respective departments, offices, agencies, or public institutions; and he may inspect at any time their official books, accounts, and vouchers, and ascertain the conditions of the public funds in their charge, and in that

17. Va. Code Ann. § 44-8 (supp. 1968). This change passed both houses unanimously (House Bill No. 342). Journal of the House of Delegates (1958), p. 543; Journal of the Senate (1958), p. 794.

18. See *1829-30 Convention Debates*, p. 722.

19. Section 73 expressly contemplates legislative participation in the conduct of relations with other states. See, e.g., Va. Code Ann. §§ 9-53 through 9-60 (repl. vol. 1964) (Commission on Interstate Cooperation).

connection may employ accountants. He may require the opinion in writing of the Attorney General upon any question of law affecting the official duties of the Governor.

Source: Present section 74.

Comment: The section is basically unchanged. The proposed language clarifies the extent of the Governor's power to require information from state officers, agencies, or institutions. This section is one of the most effective administrative tools at the Governor's command. It permits the Governor to pinpoint responsibility for administrative action within state government.

Section 9. Administrative reorganization.

Except as may be otherwise prescribed by this Constitution, the functions, powers, and duties of the administrative departments and divisions and of the agencies of the Commonwealth within the legislative and executive branches shall be prescribed by law. The Governor may reallocate the functions, powers, and duties of the departments and divisions and of 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 each member of the General Assembly at least forty-five days prior to the commencement of a regular or special session of the General Assembly. A proposed change shall become effective on a date designated by the Governor following the adjournment of the General Assembly and thereafter have the force of law unless either the Senate or the House of Delegates, prior to the adjournment of the General Assembly, by resolution of a majority of the members elected thereto, shall have disapproved the change.

Source: New section.

Comment: The proposed section places upon the General Assembly the responsibility to prescribe by law the functions, powers, and duties of each department or agency within the executive and legislative branches of government. In the case of the executive branch, the Governor is given the power to initiate reorganization proposals. When such reorganization requires changes in the allocation of functions, powers, and duties which are prescribed by law, the Governor must submit the proposed reorganization scheme to the members of the General Assembly at least forty-five days prior to the commencement of a regular or special session of the Assembly. Unless a majority of either House of the General Assembly disapproves of the plan prior to the end of the session, it becomes effective

and has the force of law on a date following the end of the legislative session.

This provision would not permit the General Assembly to modify a gubernatorial reorganization plan. The General Assembly's function under this section is to either approve or disapprove the plan. Disapproval by either house will kill the proposal. Ruling out modification requires that the Governor's plan stand or fall on its merits; it cannot be watered down with the addition of amendments. If the General Assembly determines that a proposed plan has merit but should be modified, then a member of the Assembly can introduce legislation encompassing the Governor's original plan as well as the modification thereof, and the bill, like any other bill, would have to pass both houses and be signed by the Governor.

Executive initiation of state reorganization is the *sine qua non* of the reorganization movement. Since the General Assembly meets infrequently and is often overwhelmed with matters of immediate importance, the Governor is in an advantageous position to oversee the operation of state agencies. Granting the Governor initiative for the organization of state agencies insures constant supervision and is likely to prevent duplication of effort or the continued existence of an agency which has outlived its usefulness, either of which means needless waste of public funds. Additionally the Governor is a central figure directly responsible to the electorate and should be held accountable for the efficient operation of governmental agencies.

The idea of executive initiated reorganization is not new. On the federal level the President has long been given such authorization by statute,[20] and some state constitutions have provisions similar to that proposed herein.[21] The executive initiative proposal does not erode the powers of the General Assembly over legislative matters, for either house of the General Assembly can always veto any gubernatorial proposal. The Commission believes that as Virginia's administrative structure becomes more complex, executive initiation of reorganization, coupled with legislative power to disapprove reorganizations, is the surest way to keep the administrative machinery responsive to Virginia's needs and streamlined in the interests of efficiency and economy.

20. 5 U.S.C. §§ 901 through 913 (Supp. III, 1968). For the history of federal reorganization, see Joseph E. Kallenbach, *The American Chief Executive: The Presidency and the Governorship* (New York, 1966), pp. 380ff.

21. Michigan Const., Art. V, § 2; Alaska Const., Art. III, § 23. On the reorganization movement generally, see Herbert Kaufman, *Politics and Policies in State and Local Government* (Englewood Cliffs, N.J., 1963), pp. 42ff; Council of State Governments, *Reorganizing State Governments* (Chicago, 1950), p. 3.

Section 10. Appointment and removal of administrative officers.

Except as may be otherwise provided in this Constitution, the Governor shall appoint each officer serving as the head of an administrative department or division of the executive branch of the government, subject to such confirmation as the General Assembly may prescribe. Each officer appointed by the Governor pursuant to this section shall have such professional qualifications as may be prescribed by law and shall serve at the pleasure of the Governor.

Source: New section.

Comment: The proposed section gives the Governor constitutional power to appoint and remove the heads of executive departments.[22] It is recommended because the Commission believes that the executive power of the Commonwealth should be concentrated in the Governor if he is to be an efficient administrator.

This section is intended to cover only the major policy-making departments which have a single officer as the head of the department. It does not empower the Governor to appoint the members of a board or commission which heads a principal department. (This power may, of course, be granted by statute.) Likewise, the proposal applies only to administrative departments or divisions. The appointment and removal of the heads of subordinate agencies would be as prescribed by law. As the government is presently structured, the departments or divisions to which this section is intended to apply are those listed in section 2.1-1 of the Virginia Code which have a single executive as the head and for the election of which no constitutional provision is made. At the present time this would include the following twelve departments or divisions: the Department of Accounts, the Department of Conservation and Economic Development, the Department of Labor and Industry, the Department of Military Affairs, the Department of Property Records and Insurance, the Division of Motor Vehicles, the Department of Professional and Occupational Registration, the Department of State Police, the Department of Taxation, the Department of the Treasury, the Department of Welfare and Institutions, and the Department of Purchases and Supply.

22. In the states, the general rule is that a governor has only such removal powers as are given him by the Constitution or by statutes. See Ferrell Heady, *State Constitutions: The Structure of Administration* (New York, 1961), p. 13. By contrast, the President of the United States has an inherent power of removal without consent of Congress under Article II of the Constitution. Myers v. United States, 272 U.S. 52 (1926). The application of the Myers rule is limited to purely executive offices by Humphrey v. United States, 295 U.S. 602 (1935).

Excepted from the proposed section is the Department of Law, headed by the Attorney General, provision for whose election is made in the Constitution.

Similarly excepted are those departments headed by boards: the Department of Agriculture and Commerce, the Department of Alcoholic Beverage Control, the Department of Corporations; the Department of Education, the Department of Health, the Department of Highways, the Department of Mental Hygiene and Hospitals, the Department of Workmen's Compensation, and the Department of Community Colleges.

Thus, of the twenty-two presently existing administrative departments and divisions, twelve would be covered by this proposed section. Eight would be excepted for the reason that the department is headed by a board or commission, and one, the Department of Law, would be excepted because the Attorney General, an elected official, heads the department. The Department of Corporations, headed by the State Corporation Commission, is of course unique in many respects. It is not strictly speaking an executive department. Further, it is headed by a commission whose membership is determined by the Constitution.[23]

Although certain public administrators recommend that policy-making departments be headed by a single individual and not by boards or commissions, the Commission does not believe that the Constitution should prohibit the establishment of policy-making boards to head principal departments. This is a question which can be determined by general law. It is important to note, however, that having a policy-making board rather than a single individual heading a department dilutes the Governor's constitutional appointive and removal power.

The proposed section permits the General Assembly to require legislative confirmation of gubernatorial appointees if it so desires. Presently, legislative confirmation of department heads by the General Assembly is the general rule. The Commissioner of Labor and Industry is appointed by the Governor and confirmed by the Senate, and the Administrator of the Department of Property Records and Insurance is appointed by the State Insurance Board. In all other instances where single individuals head departments, confirmation by the General Assembly is required. The Commission does not believe that the requirement of legislative confirmation seriously impedes the Governor's ability to manage the executive branch of government. At the same time, the Commission believes that there is no reason for the Constitution itself to require legislative confirmation in all instances.

23. The original functions of the SCC—chartering of corporations and rate making—are clearly legislative in character, yet the SCC exercises broad judicial and executive powers as well. See introductory commentary to the Corporations article.

As to removal, however, the Commission recommends most strongly that the Governor be allowed maximum freedom to remove his department heads. The chief executive suffers the criticism of the electorate if one of his major policy-makers does not adequately fulfill the responsibilities of his office, and the Governor should have the power to remove such an individual. Without such power, the Governor stands "exasperatingly powerless to remedy flagrant conditions of administrative incompetence, ineptitude, and lack of cooperation . . . ." [24]

Presently, the removal powers are contained in an array of sometimes conflicting statutes. There is no single general power of removal given to the Governor. The Comptroller and State Treasurer are subject to removal for cause by the General Assembly pursuant to section 2.1-17 of the Virginia Code. The Administrator of the Department of Property Records and Insurance serves at the pleasure of the State Insurance Board, while the Director of the Department of Professional and Occupational Registration is subject to removal for cause by a circuit or corporation court, as specified in section 15.1-63 of the Code. The remaining eight departments with individual officers at the head who are appointed by the Governor serve at the pleasure of the Governor and can be removed without cause. These departments and divisions are: Conservation and Economic Development, Labor and Industry, Military Affairs, Motor Vehicles, Purchases and Supply, State Police, Taxation, and Welfare and Institutions.

There has been no abuse of the presently existing gubernatorial power of removal which by legislation covers a broader area than the proposed section. The General Assembly has given the Governor power to remove without cause members of boards or commissions heading principal departments—members of the Highway Commission, for instance.[25] Also the Governor has been authorized to remove many subordinate officials at will, e.g., the members of the Virginia Fuel Commission.[26] Proposed section 10 in no way interferes with these and other similar legislative decisions. The object of giving the Governor the power to remove his appointees—whether by legislative action or by constitutional authorization —is the same. It is to create a sufficiently strong chief executive. The Commission believes the constitutional mandate should be confined to selected policy-makers; beyond that, how extensive his removal power should be is a question of judgment which can best be dealt with by the General Assembly.

24. John Mabry Mathews, *Principles of American State Administration* (New York, 1927), pp. 187-88. To like effect see Temporary State Commission of the Constitutional Convention of New York, *State Government* (New York, 1967), p. 102.

25. Va. Code Ann. § 33-1 (repl. vol. 1966).

26. Va. Code Ann. § 45.1-156 (repl. vol. 1967).

The limited power of suspension given to the Governor in the first paragraph of present section 73 is at odds with the philosophy of this proposed section, and it is recommended that the suspension provision of section 73 be deleted.

Section 11. Effect of refusal of General Assembly to confirm an appointment by the Governor.

No person appointed to any office by the Governor, whose appointment is subject to confirmation by the General Assembly, under the provisions of this Constitution or any statute, shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment, nor shall such person be eligible for reappointment during the recess of the General Assembly to fill the vacancy caused by such refusal to confirm.

Source: Present section 86-a.

Comment: No change.

Section 86-a was included in the Constitution for the first time in 1928. However, it was not among those provisions suggested for inclusion by the study commission which reported in 1927. Apparently the "short ballot" proposals, which enlarged the scope of the Governor's appointive power, gave rise to some fear that the Governor might be overreaching in the exercise of this power. It has been suggested that section 86-a was a *quid pro quo* for the short ballot.[27] The Commission does not fear the possibility of a dictatorial Governor in a constitutional framework which is properly balanced. This section is one which helps to maintain the balance, and for that purpose its retention is proposed.

Section 12. Executive clemency.

The Governor shall have power to remit fines and penalties under such rules and regulations as may be prescribed by law; to grant reprieves and pardons after conviction except when the prosecution has been carried on by the House of Delegates; to remove political disabilities consequent upon conviction for offenses committed prior or subsequent to the adoption of this Constitution; and to commute capital punishment.

He shall communicate to the General Assembly, at each session, particulars of every case of fine or penalty remitted, of reprieve or pardon

27. Governor Byrd, who had proposed to the General Assembly what became section 86-a, described the proposal as one of the "safeguards to prevent abuse of the appointive power by the Governor." Harry F. Byrd, *A Discussion of the Amendments Proposed to the Constitution of Virginia: Proposal No. 1* (Richmond, 1928), p. 5.

granted, and of punishment commuted, with his reasons for remitting, granting, or commuting the same.

Source: Derived from the last three paragraphs (paragraphs 3-5) of present section 73.

Comment: (1) *Executive clemency.* The powers of the Governor to grant reprieves and pardons and to exercise other forms of executive clemency are spelled out in the proposed section. The two paragraphs are the same as the third and fourth paragraphs of present section 73. There is no change save a stylistic change in the first paragraph to make the paragraph read more clearly.

Powers of reprieve and pardon are recognized in all fifty states and in the Federal Government. In Virginia, the power of reprieve and pardon has existed in the Constitution since 1776; in 1850 the relevant provision was expanded to cover (as does present section 73) related powers such as the remission of fines and penalties and the commutation of capital punishment.[28] Cogent arguments exist for there being a pardoning power, among them changed attitudes towards the seriousness of particular crimes, cases of later proved innocence or of mitigating circumstances, and technical violations which have led to harsh results.[29] Accordingly, the Commission proposes no change in the Governor's pardoning and related powers.

(2) *Pardoning board.* The Commission does propose, however, the omission from the Constitution of the last paragraph of present section 73. That paragraph allows the creation of a board to grant reprieves and pardons and to commute capital punishment. This provision, added to the Constitution in 1928 and amended in 1944 to make the board's power, once conferred, exclusive, was not used until 1945. At that time a board was created [30] but was abolished in 1948,[31] and no board created under section 73 has existed since.

The power to pardon is generally thought of as executive in nature. In the majority of states, as in Virginia, the power and the responsibility devolve directly on the governor, rather than on a board. In the judgment of the Commission, ultimate responsibility for exercising the powers of executive clemency should remain with the Governor, where it now rests. The quick abandonment of a board when tried, and the disuse since 1948

28. Constitution of 1850, Art. IV, § 5.
29. Reasons for retaining the pardoning power are summarized in U.S. Department of Justice, *Attorney General's Survey of Release Procedures,* III (*Pardon;* 1939), 299.
30. See Journal of the House of Delegates (1948), p. 86.
31. Va. Code Ann. § 53-228 (repl. vol. 1967).

of the authority conferred by the last paragraph of section 73, leads the Commission to believe the paragraph should be deleted.

Deletion of this paragraph would in no way prevent the creation of an advisory board whose counsel the Governor could seek in deciding whether to exercise his powers of executive clemency. No constitutional provision is necessary to authorize the creation of such a board.

Section 13. Lieutenant Governor: election and qualifications.

A Lieutenant Governor shall be elected at the same time and for the same term as the Governor, and his qualifications and the manner and ascertainment of his election, in all respects, shall be the same.

Source: Present section 77.

Comment: No change.

In prescribing the manner of election and qualifications for the Lieutenant Governor, this section simply incorporates by reference whatever the manner of election and qualifications for the Governor happen to be. Therefore changes which the Commission has proposed in the sections governing the election and qualifications of the Governor (proposed sections 2 and 3) would apply to the Lieutenant Governor as well.

Several state constitutions have provisions requiring that a candidate for the office of lieutenant governor run jointly with a candidate for governor.[32] Election of a candidate for governor automatically carries with it election of his running mate; there can be no ticket splitting. The theory apparently is that a lieutenant governor is a kind of assistant governor and should be beholden to the governor for his office. In the judgment of the Commission, Virginians would rather have the option of voting individually on the three statewide elective posts, those of Governor, Lieutenant Governor, and Attorney General. Thereby each man can be voted up or down according to his individual merits. Therefore the Commission does not propose that Virginia adopt the tandem method of electing the Governor and Lieutenant Governor.

Section 14. Duties and compensation of Lieutenant Governor.

The Lieutenant Governor shall be President of the Senate but shall have no vote except in case of an equal division. He shall receive for his services a compensation to be prescribed by law, which shall not be in-

32. Alaska, Connecticut, Hawaii, Michigan, New Mexico, and New York. Such a provision was proposed in Maryland in 1967. See *Maryland Constitutional Convention Commission Report* (Baltimore, 1967), Art. IV, § 4.05.

creased nor diminished during the period for which he shall have been elected.

Source: Present section 79.

Comment: The proposed section is the same as present section 79, except that the proposed section omits the last portion of section 79, which ties the salary of the Lieutenant Governor to that of the Speaker of the House of Delegates. The proposal provides instead that his compensation shall be prescribed by law, with the qualification (like that applying to the Governor in proposed section 4) that it shall not be increased nor diminished during his term.

Section 15. Succession to the office of Governor.

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.

Whenever the Governor transmits to the President pro tempore of the Senate and the Speaker of the House of Delegates his written declaration that he is unable to discharge the powers and duties of his office and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Lieutenant Governor as Acting Governor.

Whenever the Attorney General, the President pro tempore of the Senate, and the Speaker of the House of Delegates, or a majority of the total membership of the General Assembly, transmit to the Clerk of the Senate and the Clerk of the House of Delegates their written declaration that the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall immediately assume the powers and duties of the office as Acting Governor.

Thereafter, when the Governor transmits to the Clerk of the Senate and the Clerk of the House of Delegates his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Attorney General, the President pro tempore of the Senate, and the Speaker of the House of Delegates, or a majority of the total membership of the General Assembly, transmit within four days to the Clerk of the Senate and the Clerk of the House of Delegates their written declaration that the Governor is unable to discharge the powers and duties of his office. Thereupon the General Assembly shall decide the issue, convening within forty-eight hours for that purpose if not already in session. If

within twenty-one days after receipt of the latter declaration or, if the General Assembly is not in session, within twenty-one days after the General Assembly is required to convene, the General Assembly determines by three-fourths vote of the elected membership of each house of the General Assembly that the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall continue to discharge the same as Acting Governor; otherwise, the Governor shall resume the powers and duties of his office.

In the case of the removal of the Governor from office or in the case of his disqualification, death, or resignation, the Lieutenant Governor shall become Governor.

If a vacancy exists in the office of Lieutenant Governor when the Lieutenant Governor is to succeed to the office of Governor or to serve as Acting Governor, the Attorney General, if he is eligible to serve as Governor, shall succeed to the office of Governor for the unexpired term or serve as Acting Governor. If the Attorney General is ineligible to serve as Governor, the Speaker of the House of Delegates, if he is eligible to serve as Governor, shall succeed to the office of Governor for the unexpired term or serve as Acting Governor. If a vacancy exists in the office of the Speaker of the House of Delegates or if the Speaker of the House of Delegates is ineligible to serve as Governor the House of Delegates shall convene and fill the vacancy.

Source: The proposed section replaces present section 78.

Comment: The proposal represents a substantial change from the provisions of present section 78. There is virtually unanimous agreement that the present disability provisions of section 78 are inadequate. However, there is no such unanimity on what should be proposed instead. This difficult question of executive disability is the subject of the Twenty-fifth Amendment to the United States Constitution. To reach agreement on that amendment required nearly forty years.

The problem of executive disability has been the source of great concern at both federal and state levels. The disability of President Wilson and, much later, the heart attacks suffered by President Eisenhower were among the events which brought nationwide attention to bear on the question.[33] The problem is a real one on the state level, too. The Governor of Illinois was bedridden for nearly a year, from November 1938 to October 1939; the Governor of Louisiana was disabled in 1959; Nebraska's Governor suffered a stroke in 1959 and died after a long illness in Sep-

33. Among recent writings on presidential disability are Senator Birch Bayh, *One Heartbeat Away* (Indianapolis, 1968), and John D. Feerick, *From Failing Hands: The Story of Presidential Succession* (New York, 1965).

tember 1960.[34] The situation in Illinois in 1938-39 was so critical that "for several months the people . . . did not know whether the powers and duties of the chief executive were being discharged by the elected official entitled to exercise them under the constitution." [35]

The proposed section undertakes to provide for orderly succession and to provide a method for resolving the question of disability. The proposed section generally parallels the Twenty-fifth Amendment to the United States Constitution, which was ratified unanimously by the General Assembly of Virginia in 1966.

(1) *Failure of Governor to assume office.* The first paragraph of the proposed section provides for succession by the Lieutenant Governor-elect in the event that the Governor-elect fails to assume office. If the Governor-elect fails to assume office for any reason other than disqualification, resignation, or death, the Lieutenant Governor-elect serves as Acting Governor.

(2) *Disability of Governor.* The second, third, and fourth paragraphs follow the Twenty-fifth Amendment rather closely. In the event that the Governor is disabled and voluntarily transmits his written declaration to that effect to the President pro tempore of the Senate and the Speaker of the House of Delegates, the Lieutenant Governor takes over as Acting Governor.

In the event that the Governor is disabled but is unable or unwilling to certify his disability, paragraph three provides that either a group composed of the Attorney General, the President pro tempore of the Senate, and the Speaker of the House of Delegates, or a majority of the General Assembly can inform the clerks of both houses of the General Assembly of the Governor's disability. In that event, the Lieutenant Governor immediately assumes the powers and duties of the office of Governor.

The Governor can immediately reclaim his office by filing with the clerks of both houses a declaration that no disability exists. If, however, either of the two groups referred to in paragraph three of the proposal disputes the Governor's claim, the Lieutenant Governor continues to serve as Acting Governor until the General Assembly can decide the issue. To deprive the Governor of his office requires a three-fourths vote of the elected membership of each house of the General Assembly.

(3) *Line of succession.* Finally, the proposal prescribes the line of succession to the office of Governor or service as Acting Governor.[36] First

34. Richard H. Hansen, "Executive Disability: A Void in State and Federal Law," 40 *Neb. L. Rev.* 697, 698-99 (1961).

35. Note, "Gubernatorial Disability," 8 *U. Chi. L. Rev.* 521, 526 (1941).

36. The last clause of present section 78 empowers the General Assembly to pro-

in line of succession is the Lieutenant Governor. Next comes the Attorney General, the only other official with a true statewide constituency. Following the Attorney General is the Speaker of the House of Delegates. Though he is not elected statewide, there is to some degree a statewide endorsement of the Speaker through the people's elected representatives. Moreover, he is likely to have extensive knowledge of the affairs of the Commonwealth; this should qualify him to assume the powers and duties of the office of Governor. This section avoids the necessity for there ever being a special election to fill the vacancy in the office of Governor. The line of succession is open ended since the House of Delegates will always have a Speaker or the means by which to select one.[37]

Section 16. Commissions and grants.

Commissions and grants shall run in the name of the Commonwealth of Virginia, and be attested by the Governor, with the seal of the Commonwealth annexed.

Source: Present section 75.

Comment: No change.

As commissions evidence title to public office [38] and grants are evidence of title to property, it was thought desirable to leave the prescribed form in the Constitution.

ARTICLE VI

JUDICIARY

Two major themes dominated the Commission's approach to the Judicial article: avoidance of statutory detail and avoidance of rigidity in the structure of the judicial system. It is immediately clear upon a reading of the present article that it is overburdened with matters purely statutory in nature. The Commission seeks in its proposals to restore a proper balance and to seek a return in the Constitution to the statement of fundamental principle and the avoidance of unnecessary detail.

vide for succession after the Lieutenant Governor. The statute passed under this authorization is Va. Code Ann. § 24-150 (repl. vol. 1964).

37. The order of succession varies considerably in the constitutions of other states. See *Index Digest of State Constitutions*, p. 509.

38. Lest this be thought a small matter, the reader may recall that the celebrated case of Marbury v. Madison, 1 Cranch (5 U.S.) 137 (1803), began with the failure to deliver a commission to one of outgoing President John Adams' "midnight" appointees.

A second concern of the Commission is to assure that the Judicial article creates a sound structure without at the same time placing unwise limitations on the possibility of growth through the action of the General Assembly. The present Article fares better against this standard, although there are several respects in which the Commission proposes changes in order to assure the achievement of this goal.

In addition to the achievement of these general ends, there is one particular substantive problem that engaged the Commission's attention: the problem of judicial disability. It is important that judges achieve a high level of independence from the possibility of influence by the other branches of the government; therefore judges should not be subject to the routine controls which apply to other government officials. But this does not mean that the public has no interest in controlling the conduct of judges, at least to the extent of having an available and effective remedy for misconduct, neglect of duty, senility, and other failures—some reflecting no fault on the part of the judge—which cast reflections on the judiciary and which interfere with the effective and fair administration of justice. How best to achieve the needed balance between independence on the one hand and a remedy for improper discharge of duty on the other—was the major substantive difficulty which the Commission faced in this area. And it did so in the belief that the constitutional and statutory methods now in effect are not working.

Further discussion of each of these points should provide a context for the more detailed commentary on the proposed Judicial article.

Deletion of unnecessary detail. In the present Judicial article appear two types of detail of the sort that should not appear in a constitution. One kind of detail attempts to resolve substantive problems which are not matters of fundamental principle, though they may well be matters on which resolution is needed for the orderly conduct of government. For example, it is provided in section 106 that "writs shall run in the name of the 'Commonwealth of Virginia,' and be attested by the clerks of the several courts. Indictments shall conclude 'against the peace and dignity of the Commonwealth.' " Section 92 provides that "the Supreme Court of Appeals shall have the management of the law library"; section 93 that the Supreme Court "shall hold its sessions at two or more places in the State"; section 88 that "each of the judges [of the Supreme Court] shall have the title of justice." While it is often a close question of judgment that separates what should be treated in the Constitution from what should not, surely matters such as those just mentioned should not.

The second type of detail which the Commission believes unnecessary is found in those provisions authorizing the General Assembly to act in cases where it is clear from other provisions that the General Assembly

already possesses the power to act. For example, section 87 provides, as in substance does section 1 of the proposed Judicial article, that the judicial power of the Commonwealth shall be vested in a Supreme Court and "such other courts . . . as may be hereafter established by law." Section 87 also provides, again as does proposed section 1, that the jurisdiction of the courts of the Commonwealth "shall be regulated by law." These provisions clearly authorize the General Assembly to create courts other than those which are created by the Constitution itself and to define their jurisdiction. Yet section 100 provides that "the General Assembly shall have the power to establish a court or courts of land registration." Such a provision is unnecessary in light of the powers granted the General Assembly by section 87.

Court structure. There is a temptation at the constitutional level [1] to attempt the implementation of the ideas of judicial reform which the draftsmen themselves happen to hold. It could thus have been recommended that the present judicial system as it has developed over the years be specifically described in the Constitution and thereby preserved until the next move for amendment. Or it could have been recommended that sweeping reform be attempted, for example, by the creation of a single, unified court structure for the entire Commonwealth, complete with new names, new jurisdictional divisions, intermediate appellate courts, and so on.

Neither idea was appealing to the Commission. The principle emerged very early in its deliberations that the function of the Judicial article in this regard was to create a framework of general principles within which the General Assembly would have the major responsibility of implementation and of response to the need for change. An illustration of a specific recommendation which was the product of this thinking is the suggestion in proposed section 4 that the Chief Justice be designated as the administrative head of the judicial system, that he should have specified powers to assign judges within the system, and that the General Assembly should have the authority to develop other methods to assure that the quality of justice in Virginia does not suffer because wastefully administered. The same focus produced the recommendation in proposed section 5 that the present practice of rule-making by the courts be specifically recognized at the constitutional level and approved much on the same basis as it now operates.

There was a second consequence of this line of thinking. The present Constitution provides in section 87 that judicial power shall be vested in the Supreme Court of Appeals, circuit courts, city courts, and other courts

1. Those who participated in the revision effort that recently was attempted in Maryland succumbed to this temptation. See *Maryland Constitutional Convention Commission Report* (Baltimore, 1967), pp. 175-79, 184-92.

of the General Assembly's creation. There is then a great deal of detail in succeeding sections about the structure of circuit and city courts, much of which falls into one or the other of the two types of unwarranted detail that have been described above. Thus, for example, there is in section 98 an elaborate and complicated division of city courts into courts for cities of the first class and for cities of the second class, complete with population figures to draw the line between them. The fact that there are no city courts for cities of the second class left within the judicial structure of the Commonwealth is only one of the reasons why the references to city courts of the second class in half a dozen or more sections of the present Judicial article are matters of unnecessary detail.

The resolution of this issue resulted in a recommendation by the Commission not to name in the Constitution any specific courts other than the Supreme Court and, as a corollary, not to specify the details of jurisdictional and venue divisions among the different courts of the Commonwealth. A contrary position would have involved difficult judgments of which courts to specify and what jurisdictional and venue issues to address, and at the same time would have created larger possibilities of freezing into the Constitution a judgment which the General Assembly should have the authority to change as conditions warrant.

Judicial disability. The details of the Commission's conclusions on the subject of disabled judges appear in the commentary which accompanies proposed section 10. It should nevertheless be noted here that the Commission is impressed with the ineffectiveness of the presently authorized methods of dealing with this problem and with the need for an acceptable alternative. Impeachment under section 54 and removal by the General Assembly for cause under section 104, so rarely used as to be ineffective, are the only constitutionally sanctioned methods of proceeding in such cases. They are clearly unacceptable in cases where the disability of a judge is the result of factors which are beyond his control, and where the judge has rendered long and valuable service to his profession. They also are unacceptable in the case of minor transgressions which do not rise to the level of requiring the ultimate sanction of impeachment or removal.

The Commission's recommendation on this issue has two assumptions: first, that there should be an agency with continuing responsibility to receive and investigate complaints which could be the basis for remedial action; and, second, that the major responsibility for assuring the adherence to proper standards of conduct ought to rest with the judiciary itself, with the ultimate recourse of impeachment still available in the background. The Commission's proposals thus retain present section 54,[2] permitting the impeachment of judges, but also add in proposed section

2. See Legislative article, proposed section 17 at p. 156, *supra*.

10 an alternative method by which the courts themselves, by the action of the Supreme Court, can act to remedy situations where forced retirement (with full benefits), censure, or outright removal from office become necessary. The Supreme Court is authorized to take such action after a hearing which is initiated by a Judicial Inquiry and Review Commission, composed of a representative number of judges, lawyers, and laymen to be prescribed by the General Assembly.

Section 1. Judicial power; jurisdiction.

The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may from time to time establish. Trial courts of general jurisdiction, appellate courts, and such other courts as shall be so designated by the General Assembly shall be known as courts of record.

The Supreme Court shall, by virtue of this Constitution, have original jurisdiction in cases of mandamus and prohibition and in matters of judicial censure, retirement, and removal under section 10 of this Article. All other jurisdiction of the Supreme Court shall be appellate. Subject to such reasonable rules as may be prescribed as to the course of appeals and other procedural matters, the Supreme Court shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the constitutionality of a law under this Constitution or the Constitution of the United States and in cases involving the life or liberty of any person.

Subject to the foregoing limitations, the General Assembly shall have the power to determine the original and appellate jurisdiction of the courts of the Commonwealth.

Source: Present sections 87 (first paragraph) and 88 (third and fourth paragraphs).

Comment: This section introduces a number of changes, both to conform the existing provisions to the general philosophy of a simple and straightforward judicial article and to implement several important substantive principles.

(1) *Courts named in the Constitution.* Present section 87 states that "the judicial power of the State shall be vested in a Supreme Court of Appeals, circuit courts, city courts and such other courts, inferior to the Supreme Court of Appeals, as are hereinafter authorized, or as may be hereafter established by law."

The first sentence of the proposal retains the substance of this provision, but makes a number of changes in language. The first is a change in the name of the highest court from "Supreme Court of Appeals" to "Supreme

Court." The present name is a potential source of confusion on several counts. The court is not exclusively confined, despite its name, to hearing appeals. In addition to appeals, the court hears original cases, cases which are initiated in the highest court and which thus are not "appeals" from another court or agency. Further, there is the likely confusion were Virginia to adopt at some time in the future an intermediate appellate court and to include within its title the logical phrase, "court of appeals."

Secondly, the proposed section, having named the Supreme Court, does not refer by name to the other courts in the judicial system. Because present section 87 names the circuit and city courts explicitly, subsequent sections of the present Constitution must go on in great detail to describe many of the characteristics of these courts and the judges who sit on them. The result is a judicial article which looks more like a statute book than a constitution. Most of this detail ought in fact to be left to the statute books. In addition, there seems to be little logic underlying the reference in the present Constitution to city courts but not to hustings courts, to circuit courts but not to corporation courts, and so on. A judicial article ought to create the outline of a judicial structure together with its essential elements. This purpose is not served by locking the Commonwealth into some particular named courts but not others and into a system that may prove inefficient and ineffective for the future.

Thirdly, the proposed section clarifies a possible ambiguity in the present Constitution. It is undoubtedly the case under the existing language of section 87 that the General Assembly would have the power to create a tier of intermediate appellate courts between the Supreme Court and the trial courts of general jurisdiction. The proposed language, by permitting the General Assembly to establish "other courts of original or appellate jurisdiction," removes any possible doubt on the point. Quite aside from the position one might take on the merits of having such courts either now or in the future, surely the possibility of their use should not be foreclosed at the constitutional level. As with other details of court structure, the issue is best left to the General Assembly rather than frozen into the Constitution.

Fourthly, several other, and minor, linguistic changes are made in the restatement of present section 87 as proposed section 1. The word "Commonwealth" is substituted for "State." The word "subordinate" has replaced "inferior," as more fittingly describing the relationship between different levels of courts. The phrase "as the General Assembly may from time to time establish" has been substituted for the more cumbersome and hypertechnical "as are hereinafter authorized, or as may be hereafter established by law."

(2) *Courts of record.* The second sentence of the proposal, dealing with the designation of certain courts as "courts of record," is new. Since many other sections must refer to courts or to judges, and given the desirability of not naming all of the courts of the Commonwealth in the Constitution, some language is needed to permit certain necessary discriminations. For example, the selection of judges by the General Assembly is a process which presumably should apply only to trial courts of general jurisdiction—the present circuit courts, corporation courts, and their equivalent—and to the appellate courts which review their work. Judges of the present municipal courts, on the other hand, are not now subject to the same selection procedures and would not become subject to them under the proposed section. The proposed language—"courts of record"—supplies a terminology, familiar because of its present usage, by which such a point can be made.

Similarly, the prohibition against judges practicing law during their terms of office should, as is the case in the present Constitution, no doubt be limited to judges of "courts of record," as that term is being used here, rather than extended to judges of courts not of record as well. On the other hand, the limitation on the power of the General Assembly to reduce the salary of a sitting judge presumably should apply to all judges, not just judges of courts of record, as should the authority given localities to supplement judicial salaries.

The second sentence also permits the General Assembly to designate additional courts as courts of record for constitutional purposes. This power might be exercised, for example, if regional domestic relations courts were provided throughout the Commonwealth and if it were thought desirable to have their judges selected by the General Assembly and subject to the prohibitions and protections of the Constitution.

(3) *Original and appellate jurisdiction of the Supreme Court.* The second paragraph of the proposed section is derived from present section 88. The paragraph deals, among other things, with the distribution of the Supreme Court's jurisdiction between original and appellate cases. Present section 88 (third paragraph) vests the Court with original jurisdiction in habeas corpus cases and in cases of mandamus and prohibition. All other cases which come before the Court must be appellate in character.

The proposed section takes one type of case away from the original docket and adds another. Otherwise, the present distribution is preserved, and most of the business of the Court would remain, as at present, appellate.

Habeas corpus has been removed from the Court's original jurisdiction for the practical reason that it has proved uneconomical, given the current docket problems of the Supreme Court. Because the Court cannot con-

veniently provide factual hearings, it has developed the practice of remanding habeas corpus cases to the trial courts with such frequency that sound administration would seem to call for them to be initiated at that level in the first place.[3]

The proposed section's addition to the Court's original jurisdiction is required by the provision in proposed section 10 dealing with censure, retirement, and removal of judges. Cases arising under that section will be initiated by complaint in the Supreme Court.

(4) *Mandatory appellate jurisdiction of the Supreme Court.* The second paragraph of proposed section 1 also specifies those cases in which the appellate jurisdiction of the Supreme Court is mandatory. Under the third paragraph of the proposal, as under present section 87, the General Assembly has the authority to contract or expand the jurisdiction of the Supreme Court by determining the types of cases in which appeals shall lie. Present section 88 (fourth paragraph) limits that power by providing that the Court "shall, by virtue of this Constitution" have jurisdiction in two classes of cases: those involving the constitutionality of a law, and those involving the life or liberty of any person. The second paragraph of the proposed section retains this limitation, with several minor stylistic changes. Procedural matters, such as time limitations and the course of appeals, are subject to such reasonable rules as may be made by the Supreme Court or the General Assembly acting under the authority given in proposed section 5.[4]

(5) *Self-executing language.* The language "by virtue of this Constitution" in the second paragraph of the proposed section is meant to clarify the intention that the Constitution on these points be self-executing.

3. There is a persuasive argument in favor of beginning habeas corpus cases at the appellate level. In most cases, the first question to be decided is whether a hearing should be held. If not, then the petition can be disposed of on the basis of the legal questions it presents. If these determinations can be made initially at the appellate level, it may well save time, since appeals from the denial of hearings will be avoided and since the questions of law posed by non-hearing cases will be disposed of initially at a higher level in the judicial system. In spite of the persuasive character of such arguments, however, it does not appear sound to burden the Supreme Court with such cases. If an intermediate appellate court is established at some future time, it will then become appropriate to assess the relative merits of these and other arguments and it may well then become advisable to provide for the original papers in habeas corpus cases to be filed at the appellate level. Cf. American Bar Association Project on Minimum Standards for Criminal Justice, *Post-Conviction Remedies* (Tentative Draft; New York, 1967) § 1.4(a), pp. 28-31.

4. It is possible to read the present language of section 88 as authorizing the General Assembly to make exceptions to the cases involving constitutional questions of life or liberty which the court can hear, subject to the limitation that such exceptions be "reasonable." It is unclear that this is the intent of the present provision; if such is the intent, then the Constitution should be changed on this point. In any event, the language of proposed section 1 accomplishes this result.

Present section 88 (fourth paragraph) now contains this language with respect to cases in which appellate jurisdiction is mandatory. With regard to the original jurisdiction of the Supreme Court, however, the present provision (section 88, third paragraph) states that the Supreme Court "shall have" original jurisdiction in the specified cases, a phrasing which could mean either that the General Assembly has an unenforceable duty to confer such jurisdiction on the Court or that the Court has such jurisdiction by the direct operation of the Constitution itself. The latter interpretation is believed to be the intention of the original; hence for clarification and consistency the self-executing language "by virtue of this Constitution" has been added.[5]

(6) *Powers of the General Assembly over jurisdiction of courts.* The last paragraph of the proposal involves no change of substance from the present Constitution, although it does represent consolidation of language which can be found in several places. As to the Supreme Court, the General Assembly is presently given the authority in section 88 (fourth paragraph) to prescribe the appellate jurisdiction of the Court in all cases except those previously noted. Further, present section 87 provides that the jurisdiction of all courts, including the Supreme Court, shall be regulated by law except so far as conferred by the Constitution itself. The last paragraph of the proposal performs the same function as these two provisions of the present Constitution and does so in what is believed to be more economical and more precise language.

Section 2. Supreme Court.

The Supreme Court shall consist of seven justices. The Court may sit in bank or in panels, under such regulations as the Court itself may promulgate. No decision shall become the judgment of the Court, however, except on the concurrence of at least three justices, and no law shall be declared unconstitutional under either this Constitution or the Constitution of the United States except on the concurrence of at least four justices.

Source: Present section 88 (first two paragraphs).

Comment: The first paragraph of present section 88 has been retained in substance, as explained below. The second paragraph is so detailed and complex that its meaning is rather elusive. The proposal retains the sense of this paragraph, but in what is thought to be more readily understandable language.

5. This change was made to resolve a problem of consistency within present section 88. No implications are intended by the failure to add such language at other

(1) *Size of Supreme Court.* The first paragraph of present section 88 states that the Supreme Court shall consist of seven justices. There has been some sentiment expressed in the public hearings of the Commission and in other quarters as well favoring an increase in the size of the Court.[6] Some have suggested a figure of nine; others have gone as high as eleven. Other suggestions have been to leave the Court at seven but to authorize the General Assembly to raise it to nine or eleven, or to leave the number to general law altogether.[7]

The Commission has concluded that the size of the Court should be retained at seven. In the judgment of the Commission, an increase in the size of the Court would not increase its efficiency—in fact, it might well decrease efficiency. The premise of the Commission's recommendation is that it would not be desirable for the Court to develop a regular practice of sitting in panels, since this would subject the decision of most cases to the judgment of only three (or five) members of the high court. Such a practice, unless accompanied by regular in bank sessions, could well result in inconsistent decisions by differing small groups within the Court and, as has occurred in some federal circuits, could result in a case turning as much on the composition of the panel as the merits of the case itself.

If a regular practice of sitting in panels is unsound, the question of increasing the size of the Court comes down to whether there is advantage in having a single panel of nine or eleven hearing each case, as opposed to a single panel of seven. Experience in other states, as well as *a priori* considerations, suggest that past a certain point the efficiency of a group decreases as its size increases.[8] Nine judges, as opposed to seven, means two more people to whom all opinions must be circulated, and creates two

points in the Constitution where present language has been retained; sections now self-executing remain self-executing.

6. See Public Views Documents 11, 31, 58, 190.

7. The Federal Constitution is silent on the size of the Supreme Court of the United States. The dangers inherent in leaving the size of the highest tribunal to general law may be suggested by recalling the plan, proposed by the President in 1937 but rejected by Congress, to name additional justices to the Court for each sitting member over age 70 who did not resign or retire. See Robert H. Jackson, *The Struggle for Judicial Supremacy* (New York, 1941); James McGregor Burns, *Roosevelt: The Lion and the Fox* (New York, 1956), chap. 15 ("Court Packing: The Miscalculated Risk").

8. The number of judges on the courts of last resort of the various states are as follows:

9 justices—5 states
7 justices—24 states
6 justices—2 states
5 justices—17 states
4 justices—1 state
3 justices—1 state.

Council of State Governments, *The Book of the States* (Chicago, 1968), p. 107.

more possibilities that additional concurring or dissenting opinions will be prepared. The larger the group that must agree in order to constitute a majority, the more difficult it will be to produce a single written opinion that accurately expresses the views of those who support the majority result. And the more opinions that are produced, the more the workload of each justice increases, without necessarily producing a greater number of decided cases.

(2) *Quorum.* The first paragraph of present section 88 also states that any four justices may form a quorum. This provision has been omitted from the proposal on the ground that, given the remainder of the proposed section, it is redundant. The purpose of a quorum requirement is to prevent too small a number of justices from acting on a case. This purpose is achieved by the two limitations stated in the last sentence of the proposal, namely that at least three justices must concur in order for a decision to become the judgment of the Court and that at least four must concur in order to hold a law unconstitutional. Given these limitations, no additional purpose would be served by stating a quorum requirement in the Constitution.

(3) *Number of justices required to act.* As noted above, the second paragraph of present section 88 is difficult to fathom. A sentence-by-sentence analysis will illustrate this, as well as the fact that the proposed section states more concisely and clearly what seems to be the basic sense of the present section.

The paragraph in present section 88 begins by authorizing the Court to sit in bank or in two divisions of not less than three justices each, as the Court may from time to time determine. The proposed section retains the authority of the Court to decide whether to sit as a group or in panels. While the proposal does not say how many panels there shall be or how many justices will sit on them, the fact that three justices must agree in order for a decision to become the judgment of the Court prevents the evil at which the present requirement of only two divisions of no less than three justices each is aimed.

The next sentence of the paragraph in section 88 begins by stating that when the Court sits in divisions, each division shall be able to exercise the full powers of the Court subject to the control of the Court sitting in bank, and then provides that no decision shall become the judgment of the Court without the assent of at least three judges. Up to this point, the sentence seems to have said nothing which is not contained (or clearly implied) in the proposed section. The proposed section accomplishes the same result by providing that the whole Court may regulate the manner in which panels shall be used and requiring the concurrence of three justices before a decision by the Court can be rendered.

The paragraph in section 88 then turns to the question of constitutional issues; it provides that cases involving a construction of the Virginia or the United States Constitution must be decided by the full Court and that at least four judges must concur in any decision that a law "is or is not" in violation of either Constitution. The proposal preserves the sense of this requirement by forbidding the declaration of a law as unconstitutional except on the concurrence of at least four justices. The purpose of a special limitation of this sort would appear to be to prevent a small majority from invalidating legislation, since this brings judicial and legislative judgments into conflict. The *affirmance* of legislative action, on the other hand, would not seem to present the occasion for special protections; in such cases, it would seem enough to allow three justices to concur in holding a law to be constitutional.

The paragraph in section 88 next turns to two provisions, both puzzling. The first provision states that if only three justices can agree on an opinion in a constitutional case, no decision shall be rendered and the case shall be reheard by a full court (which by an earlier provision is required to hear all constitutional questions anyway). Apparently, then, it is possible for a constitutional case never to be decided, so long as no more than three justices can agree on a single opinion. Under the proposal, on the other hand, if four could not agree that a law was unconstitutional, then the law would have to be upheld as constitutional.

Also puzzling is the provision of section 88 which seems to require that, in all cases where the jurisdiction of the Court depends upon the fact that the constitutionality of a law is involved, the Court cannot decide the case on its merits unless the contention of the appealing party is sustained. The objective of this provision is elusive to say the least, and it is omitted in the proposed section.

This paragraph in section 88 then closes with a final sentence, the thrust of which seems to be that if the Court is sitting in a division of three, one justice can effect the hearing of the case in bank, either by dissenting from the views of his colleagues or by certifying that the decision of the division is in conflict with a prior decision of the Court. The substance of this provision is retained in the requirement of the proposal that three justices concur in any decision of the Court. A single justice in a panel of three, under this provision, could thereby cause an in bank hearing of the case simply by refusing to agree with the other two.

Section 3. Selection of Chief Justice.

The Chief Justice of the Supreme Court shall be the justice who has the longest continuous service on the Court, or, if two have served for the

same period, the justice who is senior in years. If an eligible justice declines to serve, the Chief Justice shall be the justice who would next succeed to the office.

Source: Present section 88 (last paragraph).

Comment: The first sentence of the proposal is designed to preserve the substance of the last paragraph of present section 88. The present language was rewritten primarily because of the decision to break up present section 88 into more logically placed components. The second sentence of the proposal is new.

(1) *Selection of Chief Justice.* Consideration was given to methods other than seniority (the present method) of selecting the Chief Justice. The Commission concluded, however, that another method of selection might well introduce political or other complications that would outweigh any benefits. Therefore the Commission recommends retaining the present method.

(2) *Option to decline being Chief Justice.* The second sentence of the proposal was added to meet the possibility that the senior justice may not, for whatever reason, desire to assume the additional administrative responsibilities of being Chief Justice. Under present section 88, it would appear that he would be presented with the option of becoming Chief Justice or resigning from the Court. The second sentence of the proposal removes that dilemma. Moreover, the Commission intends by the proposed language that one who has become Chief Justice may, if he chooses, retire from that post while remaining on the Court.

Section 4. Administration of the judicial system.

The Chief Justice of the Supreme Court shall be the administrative head of the judicial system. He may temporarily assign any judge of a court of record to any other court of record except the Supreme Court and may assign a retired judge of a court of record, with his consent, to any court of record except the Supreme Court. The General Assembly may adopt such additional measures as it deems desirable for the improvement of the administration of justice by the courts and for the expedition of judicial business.

Source: Present sections 92, 97, and 99.

Comment: This proposal effects a consolidation of several matters dealt with in different parts of the present Judicial article and at the same time collects them under the general principle for which they seem to stand: the efficiency of the judicial system. Present section 97 provides, among

other things, that "the judge of one circuit may be required or authorized to hold court in any other circuit or city." Present section 99 contains the same provision with regard to judges of city courts. Section 92, on the other hand, confers upon the Supreme Court the power to appoint its officers and to set their duties, terms of office, and compensation. Section 92 also gives the Court power to manage its law library and to appoint its librarian and other employees.

(1) *The efficient administration of justice.* The common theme of these three sections is the need for the judicial department of government to address itself to administrative problems, in the same sense that the executive and the legislature should do. Many of the problems which have characterized the judicial process across the country—largely in the form of congested dockets which delay litigation for months and often years [9]—are the result of a failure to recognize the need for attention to the administration of the system. More judges and more expenditures of public funds are not always the answer; often, simple measures of efficiency, particularly if implemented before the problem gets out of hand, will suffice.

It is the history of many problems of government that they are allowed to become critical before a movement can be mounted to address their solution. As Virginia grows in population, and caseloads in the courts increase, problems already plaguing other states will surely mount here. On the thesis that anticipation now will avoid much difficulty in the future, proposed section 4 suggests concentration of administrative authority in the Chief Justice with the expectation that it will become his primary responsibility to assure that Virginia is prepared to meet the future.[10]

(2) *Assignment of judges.* To this end, the Chief Justice is given one specific administrative power, namely the power—now recognized in sections 97 and 99 and now exercised by him under existing practice—temporarily to assign judges from one court of record to another. The need for this authority, of course, is to provide temporary relief to a circuit or city when unusual situations arise. The sound administration of justice is not advanced when court delays in one part of the Commonwealth cannot be met with manpower from an area with a lighter judicial workload.

9. See, e.g., Maurice Rosenberg, "Court Congestion: Status, Causes, and Proposed Remedies," in *The Courts, the Public and the Law Explosion,* ed. Harry W. Jones (Englewood Cliffs, N.J., 1965), p. 29.

10. See John H. Romani, "The Courts," in John P. Wheeler, Jr., ed., *Salient Issues of Constitutional Revision* (New York, 1961), p. 129; Sheldon D. Elliott, *Improving Our Courts* (New York, 1959), pp. 15-16; American Bar Association, *Report of the Section of Judicial Administration* (Chicago, 1938), pp. 10-11; Hans Zeisel et al., *Delay in the Court* (Boston, 1959), pp. xxi, xxii, 14.

The Chief Justice would not have the power to assign any judge to the Supreme Court, even on a temporary basis. With this exception, however, it is the intention to authorize the temporary use of any judge of a court of record on any other court of record.[11]

The proposal also confirms present authority to appoint retired judges of a court of record (including retired Supreme Court justices) to temporary duties on any court of record except the Supreme Court.[12] The reason for its inclusion is to permit the advantageous use of experienced and qualified personnel in spite of the fact of retirement. Many retired judges are no longer capable of maintaining the day-to-day workload of an active sitting judge, but nevertheless are perfectly able and willing to function on a more limited basis. The use of this resource to meet problems of congestion would be both sound from the point of view of the judicial system and welcome from the point of view of many retired judges.

(3) *Additional measures.* In addition to the assignment of judges, there are many steps which can be taken through legislation to improve the efficiency of the administration of justice in the courts. The keeping of accurate and detailed statistics on the volume and character of judicial business provides the basis for predicting problems before they become serious. Provision for an administrative director of the courts responsible to the Chief Justice aids in keeping him properly informed. Provision for a Judicial Council, directed by the Chief Justice and manned by judges, lawyers, and laymen, provides an actively interested and constantly functioning resource for new ideas in the improvement of the system.

Each of these ideas has been implemented in Virginia and other states, with varying success across the country.[13] It is the function of the last sentence of proposed section 4 to assure that Virginia can, through the action of the General Assembly, continue to develop methods for dealing with the administrative problems of the judicial system.

11. Courts not of record, incidentally, can meet their problems in other ways. Their creation and regulation is a matter for legislation, and problems of congestion in such courts can likewise be met by legislation.

12. See Va. Code Ann. §§ 51-7, 51-13 (repl. vol. 1967).

13. For constitutional provisions setting up judicial administrative directors see, e.g., La. Const. Art. VII § 12.1; N.J. Const. Art. VI, § 6. See also the discussion in Robert C. Finley, "Constitutional Responsibility and Authority for Court Administration," 47 *Judicature* 30 (1963); Edward C. Gallas, "The Profession of Court Management," 51 *Judicature* 334 (1968); and Edward B. McConnell, "The Administration of a State Court System (N.J.)," 51 *Judicature* 253 (1968). For discussions of the use of statistics and related tools see, John C. Scanlon and Kenneth Weingarten, "The Role of Statistical Data in the Functioning of the Courts," 12 *Buffalo L. Rev.* 522 (1963); Joseph A. Navarro and Jean G. Taylor, "An Application of Systems Analysis to Aid in the Efficient Administration of Justice," 51 *Judicature* 47 (1967).

Section 5. Rules of practice and procedure.

The Supreme Court shall have general rule-making authority over the practice and procedures to be used in the courts of the Commonwealth. The General Assembly shall have the power to adopt such rules in cases where the Court has not acted and, in cases where the Court has acted, shall have the power to amend, modify, or set aside the Court's rules or to substitute rules of its own.

Source: New section.

Comment: It has been the practice in Virginia for at least 50 years and is currently the practice in at least 30 other states for the major responsibility for development of an orderly and consistent set of rules of practice and procedure to fall on the highest court.[14] The present Constitution is silent on this matter. The intention of proposed section 5 is both to confirm existing practice and to clarify a possible point of ambiguity.

(1) *Initiative in Supreme Court.* There are many reasons why the initiative in rule-making should come from the judiciary. The courts must live with the rules from day to day and are in an excellent position to evaluate the way in which they work and to sense the need for change as it arises. The Supreme Court is the logical body in which to concentrate rule-making power, both for reasons of custom within the Commonwealth and because of the Court's status as the highest arm of the judicial branch.

(2) *Ultimate authority in General Assembly.* At present it is unclear who, as between the Supreme Court and the General Assembly, would have the final say in the event of a dispute between the two as to the content of a particular rule of practice and procedure. It is possible, on the one hand, to take the view that rule-making is an inherent function of a common-law court, and thus to argue that the creation of the Supreme Court by the Constitution itself carries with it the Court's inherent power to make such rules, to the exclusion of any legislative control. On the other hand, it is equally possible to argue that making rules of procedure is no different from making other rules of law by which the courts must be bound. By this view, it is within the power of the legislature to modify an exercise of rule-making authority by the courts.

Unseemly battles of this sort are not part of the tradition of Virginia and, although they have arisen in other states, it is unlikely that they will occur here. The purpose of the second sentence of the proposal, nonetheless, is to cement the point that, while the major responsibility and the initiative should fall to the Supreme Court, the General Assembly should have ultimate control.

14. Va. Code Ann. § 8-1.1 (repl. vol. 1957). This section dates from 1919.

Section 6. Opinions and judgments of the Supreme Court.

When a judgment or decree is reversed, modified, or affirmed by the Supreme Court, or when original cases are resolved on their merits, the reasons for the Court's action shall be stated in writing and preserved with the record of the case. The Court may, but need not, remand a case for a new trial. In any civil case, it may enter final judgment, except that the award in a suit or action for unliquidated damages shall not be increased or diminished.

Source: Present section 90.

Comment: Proposed section 6 follows present section 90 closely. There have been three changes. Two are stylistic in nature; the third is a substantive addition, designed to strengthen the existing section by making it applicable in an additional context.

(1) *Original cases.* The substantive change is the addition of the words "or when original cases are resolved on their merits" in the first sentence. As presently worded, section 90 requires written opinions by the Court only in cases where a judgment or decree is "reversed, modified or affirmed," in other words, only in appellate cases. No reason is seen why the Court should not have the same obligation in original cases. The added language imposes such an obligation.

(2) *Clarifying changes.* The words "for the court's action" have been substituted in the first sentence for the word "therefor." No change of substance is intended. Also, the words "the award in a suit or action" have been substituted for the word "judgment" in the last sentence of present section 90. Again, no change of substance is intended; the purpose of the change is to clarify the undoubted intention of the present language. Once judgment has been rendered, of course, damages are no longer "unliquidated." The point of the provision is to prevent the Supreme Court from revising a damage award in a claim for unliquidated damages once the amount has been liquidated at the trial level. This point is more accurately made in the revised language.

Section 7. Selection and qualification of judges.

The justices of the Supreme Court shall be chosen by the vote of a majority of the members elected to each house of the General Assembly for terms of twelve years. The judges of all other courts of record shall be chosen by the vote of a majority of the members elected to each house of the General Assembly for terms of eight years. During any vacancy which may exist while the General Assembly is not in session, the Governor may appoint a successor to serve until thirty days after the commence-

ment of the next regular session of the General Assembly. Upon election by the General Assembly, a new justice or judge shall begin service of a full term.

All justices of the Supreme Court and all judges of other courts of record shall be residents of the Commonwealth and shall, at least five years prior to their appointment or election, have been admitted to the bar of the Commonwealth. Each judge of a trial court of record shall during his term of office reside within the jurisdiction of the court to which he was appointed or elected or in an immediately adjoining political subdivision of the Commonwealth.

Source: Present sections 73, 87, 91, 96, 99, and 102.

Comment: This proposed section consolidates a number of provisions which are scattered throughout the present Judicial article but all of which deal with the qualifications and selections of judges. The objectives of the proposal and the changes which it suggests can perhaps best be understood through an examination of each of the present sections which are affected.

(1) *Supreme Court.* Section 91 states in substance that the justices of the Supreme Court shall be chosen for twelve-year terms by the joint vote of the two houses of the General Assembly. It also states the qualifications one must have in order to be eligible for the Court: in the alternative, one who has held a judicial station in the United States is eligible, as is one who has practiced law in Virginia or in some other state for 5 years.

Proposed section 7 retains the twelve-year term for Supreme Court justices, as well as the present method of selection. The Commission considered alternative plans, such as the life tenure of the federal courts coupled with executive appointment and Senate confirmation, and variants of the much-discussed "Missouri" plan, involving an initial selection for a term of years followed by an election for life tenure on the judicial record.[15] In the judgment of the Commission, the plans do not offer advantages which the history and tradition of the judicial selection process in Virginia have not achieved.

A change of substance—though more theoretical than practical—is recommended, however, in the qualifications for judicial office. The proposal requires of Supreme Court nominees that they be residents of the Commonwealth and that they have been admitted to the Virginia bar for at least five years before their selection. Eliminated from eligibility by this provision would be those whose only qualifications complying with

15. States other than Missouri which have adopted a form of the latter plan include Illinois, Iowa, Kansas, Nebraska, and Utah. Council on State Governments, *The Book of the States* (Chicago, 1968), pp. 110-11.

present section 91 would be having held judicial office in some other state or having been admitted to the bar for five years in another state. As a practical matter, such persons are not likely to be selected for membership on the Virginia Supreme Court anyway, and no advantage is seen in retaining their eligibility.

It also should be noted that the words "the joint vote of the two houses" which appear in present section 91 have been replaced in proposed section 7 with the words "a majority of the members elected to each house." The reason for the change is to clarify an ambiguity. The present language is subject to the interpretation that the two houses must vote together and a majority of the total vote would suffice for election. Thus, under this approach, any combination of 71 senators and delegates would be sufficient to elect a justice to the Supreme Court. What is of course meant by the present language, however,—and made explicit by the substituted language—is that a majority in each house vote favorably. Thus, the affirmative vote of 21 senators and 51 delegates is needed for election.

(2) *Circuit judges.* Present section 96 deals with the selection of circuit judges and with their qualifications. No change of substance is recommended except on one minor point to be noted below. The decision not to name in the Judicial article, specific courts other than the Supreme Court, made it desirable, however, to consolidate this section into a single general section dealing with the selection and qualifications of judges.

The present section provides that circuit judges will be selected by the "joint vote of the two houses" for eight-year terms. This is retained in the proposed section, although the quoted language has been replaced, as discussed above, by more explicit language.

Present section 96 also states that the qualifications of circuit judges shall be the same as for the Supreme Court. This provision also is retained in substance.

Finally, section 96 states that circuit judges shall reside during their terms of office within the circuits over which they preside. The purpose of this provision undoubtedly is to assure that the trial judge of general jurisdiction is available within the community on extraordinary occasions when he may be needed, as well as to assure that he is familiar with the local conditions and problems of the area in which he serves. There are cases on record, however, where annexation of territory by a city has excluded the circuit judge's residence so that he would not be forced by the annexation to move and where a corporation judge maintained a hotel room in the city over which he presided so that he could continue his actual residence in the adjoining county. A constitutional mandate which requires such artifices in order to achieve a reasonable result ought to

be abandoned or relaxed. The Commission has chosen the latter alternative; in the proposed section, judges of courts of record would be permitted to live either within the jurisdiction which they serve or within an immediately adjoining subdivision. This recommendation preserves the substance of the residence requirement and yet avoids the need for technical aberrations.

(3) *City judges.* Present section 99, regarding city judges, is relevant to the subject matter of the proposed section in the same manner as section 96, regarding circuit judges. Section 99 provides that city judges shall be selected by the joint vote of the two houses for eight-year terms, that they must have the same qualifications as Supreme Court justices, and that they must reside in the city over which they exercise jurisdiction. The proposed section deals with these matters in the same way as discussed above with regard to circuit judges.

There is one other aspect of present section 99 which perhaps deserves additional comment. The requirement of residence within the city for city judges is qualified in section 99 with regard to corporation court judges in corporations with a city charter and fewer than 10,000 inhabitants. Such judges are permitted to live without the city limits This part of the section has been omitted from the proposal on the grounds that it is detail which does not justify treatment at the constitutional level. The purpose of the exception would seem to be met by proposed section 4 in any event.

(4) *Term of judges appointed to fill vacancies.* Section 102 provides, in its fourth sentence, that judicial vacancies shall be filled by electing a successor for the remainder of the unexpired term. Thus, a judge who dies after serving seven years of his eight-year term must be replaced by a judge elected for only one year.

No reason has been found for continuing this as a constitutional requirement. The principle which supports eight-year terms for lower court judges and twelve-year terms for Supreme Court justices would seem to be best served by electing a replacement judge for a full term. If there is advantage in having a shorter term for new judges, it would seem better to apply such a term across the board, rather than to leave it to the accident of when a vacancy will occur. The proposed section explicitly provides that new judges begin full terms (eight or twelve years, as the case may be) upon their election by the General Assembly.

(5) *Governor's power to fill vacancies.* Present sections 73 and 87 both speak to the power of the Governor to fill judicial vacancies which occur while the General Assembly is not in session. Section 87 provides simply that the Governor may be authorized by law to appoint judges pro tempore. Section 73 provides more explicitly that the Governor can fill

pro tempore vacancies which occur during the recess of the General Assembly for which no other constitutional provision is made and that such vacancies will expire thirty days after the commencement of the "next session" of the General Assembly. The proposed section continues the Governor's authority with regard to judicial appointments, together with the limitation that the appointment must expire after thirty days of the next General Assembly session. The words "next regular session" are used, however, to clarify an ambiguity in the present language in a manner thought to conform both to the intention of the original and to the principle of the matter. Special sessions are generally called for specific purposes; it is best not to require that the General Assembly devote attention on such occasions to other matters that may divert them from the purpose of the session.

Section 8. Additional judicial personnel.

The General Assembly may provide for additional judicial personnel, such as judges of courts not of record and magistrates or justices of the peace, and may prescribe their jurisdiction and provide the manner in which they shall be selected and the terms for which they shall serve.

The General Assembly may confer upon the clerks of the several courts having probate jurisdiction, jurisdiction of the probate of wills and of the appointment and qualification of guardians, personal representatives, curators, appraisers, and committees of persons adjudged insane or convicted of felony, and in the matter of the substitution of trustees.

Source: Present sections 101 and 108.

Comment: The first paragraph of the proposal is substantially new, although its inclusion makes unnecessary the provision in present section 108 that the General Assembly can provide for the selection of justices of the peace and for their jurisdiction.[16] The second paragraph of the proposal preserves without change present section 101.

(1) *Power of General Assembly.* The first paragraph of the proposal confirms a power which the General Assembly in fact already exercises and which is clearly essential to the functioning of a proper judicial system. The Assembly's power is implicit in the existing Constitution; this proposal makes it explicit.

Under present section 87 (and section 1 of this proposal), the General Assembly is empowered to create such courts subordinate to the Supreme Court as it deems properly suited to an efficient system for the administration of justice. City courts and circuit courts are named expressly in

16. On justices of the peace, see Note, "The Justice of the Peace in Virginia: A Neglected Aspect of the Judiciary," 52 *Va. L. Rev.* 151 (1966).

the present Constitution; other courts may be added from time to time. Present sections 91 (Supreme Court), 96 (circuit courts), 99 (city courts), and 108 (justices of the peace) go on to provide how personnel to man the named courts will be chosen and the terms for which they will serve. As to other types of courts (e.g., regional domestic relations courts, municipal courts and other courts not of record, or intermediate appellate courts), no mention is made in the Constitution as to the manner in which their judges will be selected, their qualifications, or the terms for which they will serve.

This gap is now filled by the combination of this proposed section and proposed sections 1 and 7. Under proposed section 1, there are two types of courts: courts of record and courts not of record. The selection, tenure, and qualifications for judges of courts of record are governed by proposed section 7. Proposed section 8 leaves it to the General Assembly to deal with such matters for judges of courts not of record. Additional flexibility is built into the system by permitting the General Assembly, under proposed section 1, to increase (but not decrease) the group of judges selected under section 7 by designating their courts as courts of record.

(2) *Duties of clerks.* As noted, the second paragraph of the proposal is a retention of present section 101 without change. It has been consolidated into proposed section 8 because of its affinity to the general subject matter to which the section is mainly addressed. And while its permissive character might suggest that the General Assembly would have the granted power even if the Constitution were silent on the point, it was retained in order to assure that Virginia's tradition of permitting such matters to be disposed of by one who is technically not a "judge" could be continued. In the absence of such a provision, it would be possible to argue that there are implications in the use of the term "judge" and "court of record" that would forbid the assignment of such matters to one who was not a "judge" in the constitutional sense. Such implications are not intended, and the point is assured by the retention of present section 101.

Section 9. Commission; compensation; retirement.

All justices of the Supreme Court and all judges of other courts of record shall be commissioned by the Governor. They shall receive such salaries and allowances as shall be prescribed by the General Assembly, which shall be apportioned between the Commonwealth and its cities and counties in the manner provided by law. Unless expressly prohibited or limited by the General Assembly, cities and counties shall be permitted to supplement from local funds the salaries of any judges serving within

their geographical boundaries. The salary of any justice or judge shall not be diminished during his term of office.

The General Assembly may enact such laws as it deems necessary for the retirement of justices and judges, with such conditions, compensation, and duties as it may prescribe. The General Assembly may also provide for the mandatory retirement of justices and judges after they reach a prescribed age.

Source: Present sections 102 and 103.

Comment: This proposed section represents a consolidation of present sections 102 and 103, as well as several substantive changes. The affinity of subject matter between the two sections is the reason for their integration.

(1) *Commissioning of judges.* The first sentence of the proposal is derived from the first sentence of present section 102. Clarifying changes are proposed, but no change in substance is intended. Section 102 states simply that "judges shall be commissioned by the Governor," without specifying clearly who is meant to be encompassed within the term "judge." Certainly the term is meant to include justices of the Supreme Court; the proposed section explicitly includes the justices. On the other hand, it is unlikely that judges of courts not of record are meant to be included. This point is clarified in the proposal.

(2) *Salaries and allowances.* The second sentence of the proposal effects a consolidation of one matter contained in present section 102 and another found in present 103. The sentence provides, as does section 102, that judges shall receive such salaries and allowances as the General Assembly prescribes. It goes on, however, to speak to the issue of how the salaries and allowances shall be apportioned between the Commonwealth and local units of government. Present section 103 requires the localities to pay one-half of the salaries of city and circuit courts of record, and provides as well that the entire salary of the circuit judge for the City of Richmond shall be borne by the Commonwealth.

The proposal is silent on apportionment of salaries, except to remand the issue to the General Assembly. To begin with, how judicial salaries shall be apportioned seems a matter of detail better suited to statutory than to constitutional treatment. Moreover, it seems unwise to fix at the constitutional level the allocation of state and local expenses on one particular matter in isolation. It also seems unwise to mandate local contributions to judicial salaries when it may well prove the case in a particular locality that the funds expended for that purpose will have to be fed back to the locality in another form. Also, it seems clear, that the maintenance of a sound court structure is primarily a state responsibility and that at the

very least the way should be cleared at the constitutional level for the Commonwealth, should it wish, to assume the major items of expense, while leaving to localities their major roles in such areas as public education.

(3) *Local supplements to judges' salaries.* The third sentence of the proposal is derived from present section 103. The present provision allows cities to supplement judicial salaries solely out of local funds. No mention is made of counties.

The Commission debated the question of whether local salary supplements are a good idea. On the one hand, it was argued that the judge who was to be involved in the resolution of disputes between a local government and its citizens should not be at all dependent upon that local government for a determination of the amount of his salary. While the safeguard of no reduction in salary during his term of office is important in this regard, it does not resolve the whole problem since the judge is still dependent upon the good graces of the local government for any increases. It thus is a compromise with the essential independence of the judiciary for the system to permit even the appearance of such a relationship.

The countering argument relied on the value of local supplements as an inducement to higher quality on the bench. The cost of living in some areas of the Commonwealth is likely to be different than in others, as are the economic factors influencing the earning power of potential judges. Local supplements are one way of permitting the localities to respond to their own peculiar situations, the better to attract the abler members of the bar to the bench.

Resolution of this problem took the form which appears in the third sentence of the proposal. The General Assembly is explicitly authorized to prohibit or to limit the amount of local supplements. Unless the Assembly acts, supplements are permissible. At the same time, however, no reason was seen for limiting the use of supplements to cities as opposed to counties. The proposal thus expressly authorizes counties, like cities, to make supplements in the absence of General Assembly action.

(4) *No diminution of judges' salaries.* The fourth sentence of the proposal also draws on both sections 102 and 103. The sentence is placed as it is in order to assure that it will be applicable both to the salary figure set by the General Assembly (section 102) and to any salary figure set as a local supplement (section 103). It should also be noted that here, as elsewhere, when the term "judge" is not modified (such as being limited to judges of courts of record), it includes judges of courts of record, judges of courts not of record, and others who perform judicial duties with such frequency that it is appropriate to call them "judges."

(5) *Retirement.* The second paragraph of the proposal includes the provisions of present section 102 with regard to the retirement of justices and judges, but makes two additions. The present language specifies that the General Assembly may prescribe "such compensation and such duties" as it deems advisable. The word "conditions" has been added to the list, in order to assure that the General Assembly would have the power, for example, to provide that retired judges could continue to sit under a plan developed under proposed section 4 or that they could not practice law and still draw a pension. The Commission considered whether there should be a constitutional ban on a retired judge's practicing law while drawing a pension, but the Commission concluded that this is properly a matter for legislative judgment, to be developed along with the remainder of the details of the retirement system.

The second addition to the retirement provisions relates to the General Assembly's authority to provide a mandatory retirement age for justices and judges. There is an existing statute [17] which does just that, and which is of arguable constitutionality under the present language of sections 91, 96, 99, and 102. Supreme Court justices and circuit and city court judges are elected under the Constitution to fixed terms. It is certainly arguable that once elected, they are entitled to serve out those terms and that, short of removal for misconduct, there is nothing that the General Assembly can do to cut them short. An answering argument is that section 102 by giving the General Assembly the power to "enact such laws as it may deem necessary" for the retirement of judges also gives the General Assembly the disputed power. The last sentence of the proposal resolves any potential controversy on this point by explicitly authorizing the passage of such legislation.

Section 10. Disabled and unfit judges.

The General Assembly shall create a Judicial Inquiry and Review Commission consisting of members of the judiciary, the bar, and the public and vested with the power to investigate, either on complaint by any citizen or on its own motion, charges which would be the basis for retirement, censure, or removal of a judge. The Commission shall be authorized to conduct hearings and to subpoena witnesses and documents. Proceedings before the Commission shall be confidential.

If the Commission finds the charges to be well-founded, it may file a formal complaint before the Supreme Court.

Upon the filing of a complaint, the Supreme Court shall conduct a hearing in open court and, upon a finding of disability which is or is likely to be permanent and which seriously interferes with the performance by

17. Va. Code Ann. § 51-3 (repl. vol. 1967).

the judge of his duties, or upon a finding of unfitness for further judicial service, may retire the judge from office. A judge retired under this authority shall be considered for the purpose of retirement benefits to have retired voluntarily.

If the Supreme Court after the hearing on the complaint finds that the judge has engaged in misconduct while in office, or that he has persistently failed to perform the duties of his office, or that he has engaged in conduct prejudicial to the proper administration of justice, it may censure him or may remove him from office.

This section shall apply to justices of the Supreme Court, to judges of courts of record, and to members of the State Corporation Commission. The General Assembly may provide by general law for a procedure for the retirement, censure, or removal of judges of any court not of record, or other personnel exercising judicial functions.

Source: Present sections 54 and 104.

Comment: The cnly constitutionally sanctioned methods by which judges can now be removed from office are by impeachment under section 54 or removal by the General Assembly under section 104. Impeachment procedures permit the House of Delegates to determine that a judge has offended against the Commonwealth "by misfeasance in office, corruption, neglect of duty, or other high crime or misdemeanor" and to charge him before the Senate. Trial then occurs before the full Senate, with a two-thirds vote for conviction. Removal from office and disqualification to hold further offices of trust under the Commonwealth are the sanctions following a conviction.

Removal of judges under section 104 involves a different procedure and apparently can be invoked whether or not grounds for impeachment are its basis. The section provides simply that judges may be removed from office "for cause" by a concurrent vote of both houses of the General Assembly. There are additional requirements that a majority of the members elected to each house must concur, that the cause for removal must be entered on the journal of each house, and that the judge in question receive twenty days' notice before any action is taken.

(1) *The need for an alternative.* There are a number of disadvantages shared by both of these methods for the removal of judges. The existing methods are rarely used. The difficulty of moving the General Assembly to act against a judge is apparent. It is right that it should be difficult. But it is not right, on the other hand, that there should be no other remedy against disabled or unfit judges.

There are two major classes of cases, for example, which cannot be reached by these two procedures. The first is that of the judge who has

given long and meritorious service to the bench, but who—because of age, accident, physical disability, or mental illness—reaches a stage in his career where he is not able to function adequately. Unless he recognizes his difficulties and is willing voluntarily to retire, an awkward and difficult situation arises. His disability might well justify the conclusion that he is offending against the Commonwealth by his neglect of duty. But resort to impeachment in such a case would be too harsh, both on practical and moral grounds. It is unlikely that many members of the General Assembly would act, particularly when the result of the impeachment would be to deny retirement benefits and expose to public shame and disgrace a judge who long had been a productive and respected member of his profession. The injustice of the matter is clearly apparent. And it is not cured by resort to the alternative procedure of removal for cause under section 104.

The second type of case which cannot effectively be reached by the existing constitutional methods is that of the judge who through inattention to his duties has indeed engaged in conduct which casts discredit upon the judiciary and himself but who has not done so to a degree which justifies the ultimate sanction of removal from office.

The conclusion of the Commission is that impeachment and removal are not adequate procedures to meet the needs of the system. This conclusion is widely shared, both in Virginia [18] and elsewhere.[19]

(2) *The proposal.* While the details are left for development by the General Assembly, proposed section 10 requires the creation of a Judicial Inquiry and Review Commission, to be manned by an appropriate combination of judicial, lawyer, and public members. The function of the Commission is to receive complaints made of the judiciary and to ascertain, on the basis of such further inquiry as is appropriate. which have sufficient merit to deserve serious attention. Commission attention to such matters is required to be confidential.

If the Commission comes to the view that formal action against a judge is warranted, two courses of action are open. In the case of a judge who has become disabled for physical or mental reasons, it can urge voluntary retirement with more force than any existing body can do. In the case of

18. "The Disabled Judge," *Virginia State Bar Association Reports*, LXXVIII (1967), pp. 9, 45; Note, "A Proposal for the Removal or Retirement of Unfit Judges," 54 *Va. L. Rev.* 554 (1968); "Virginia Considers Adoption of Judicial Discipline Commission," 51 *J. Am. Jud. Soc'y* 272 (1968); Public Views Documents 21, 43, 65.

19. Note, "Remedies for Judicial Misconduct and Disability: Removal and Discipline of Judges," 41 *N.Y.U.L. Rev.* 149 (1966); H. Malcolm McDonald, "Texas Removes and Replaces a Judge," 38 *J. Am. Jud. Soc'y* 47 (1954); Editorial, "New Ways to Deal with Judicial Misconduct," 48 *J. Am. Jud. Soc'y* 163 (1965); Roger Traynor, "Who Can Best Judge the Judges?" 53 *Va. L. Rev.* 1266 (1967). For a summary of how each state approaches this problem, see Pennsylvania Constitutional Convention, *The Judiciary* (Reference Manual No. 5; Harrisburg, Pa., 1967), pp. 184-94.

minor but potentially serious transgressions, it can seek voluntary compliance in the future with proper standards of conduct. If voluntary action is not forthcoming, on the other hand, a complaint can be filed in the Supreme Court. At that point, the proceeding becomes public and an open court hearing will be held to determine whether formal action by the Court is necessary.

The major characteristic of the action which the Court can take is its flexibility. In the case of physical or mental disability which seriously interferes with the performance of judicial duties, a judge can be retired.[20] He will still be entitled to retirement benefits, however, and the inevitable moral overtones of impeachment or removal under section 104 can, one hopes, be avoided. In the case of misconduct or neglect of duty, the Court has the alternatives of forced retirement on the ground of unfitness for further judicial service, public censure to serve as a deterrent to further misconduct or neglect, or removal from office. Only in the latter case would it be expected that retirement benefits would be lost.

Finally, it should be noted that the coverage of the provision is also left flexible. By operation of the Constitution, the procedure would be applicable to all judges of courts of record, including justices of the Supreme Court, and to members of the State Corporation Commission. Whether a system should be created for the retirement, censure, or removal of judges of courts not of record or to other personnel exercising judicial functions would be left for the General Assembly to determine by general law.[21]

20. Involuntary retirement by the Supreme Court is available in Virginia now by statute. See Va. Code Ann. §§ 52-22, 52-23, 52-24 (repl. vol. 1967). There are two reasons, however, why a constitutional provision such as is now proposed is still desirable. Firstly, the statute may well be unconstitutional. It is certainly arguable that the impeachment remedy under section 54 and the removal remedy under section 104 are meant to exhaust the possibilities of removing a judge before his constitutional term is up. See Note, "The Chandler Incident and Problems of Judicial Removal," 19 *Stan. L. Rev.* 448, 460-66 (1967); Note, "The Exclusiveness of the Impeachment Power Under the Constitution," 51 *Harv. L. Rev.* 330 (1937); Burke Shartel, "Federal Judges—Appointment, Supervision, and Removal—Some Possibilities Under the Constitution," 28 *Mich. L. Rev.* 870 (1930). Secondly, the statute requires the Supreme Court to take the initiative in discovering cases where such action may be appropriate. The advantage of having a Commission is that this burden is removed from the Court and responsibility is placed in a body which may concentrate its entire attention to such matters.

21. There is an ouster procedure now available for judges of courts not of record which is designed to permit local action against misconduct. See Va. Code Ann. §§ 15.1-63 through 15.1-66 (repl. vol. 1967). See also Note, "A Proposal for the Removal or Retirement of Unfit Judges," 54 *Va. L. Rev.* 554, 558-59 (1968). The proposal here will thus give to the General Assembly the options of leaving this as it is, adding to it the possibility of action under proposed section 10, or substituting the possibility of action under proposed section 10.

(3) *Effect on Existing Provisions.* While it is contemplated that proposed section 10 would be the basis for most actions that might be taken against a judge, it has not been recommended by the Commission that the impeachment provisions of section 54 be amended to exclude judges.[22] It therefore will still be possible to use the impeachment procedure against a judge if an appropriate case arises.

Two reasons form the basis for this recommendation. The first is to preserve the possibility of action by the legislative branch in the event that the Commission does not act in a particularly flagrant case. The second is to preserve the possibility of action against a justice of the Supreme Court in the event that the Court itself proves reluctant to act against one of its number.

Section 104, on the other hand, has been omitted from these proposals. The power of impeachment provides a basis on which the General Assembly can act if the occasion demands. Given proposed section 10, no reason was seen for preserving the additional possibility of removal for cause by the Assembly.

Section 11. Incompatible activities.

No justice or judge of a court of record shall, during his continuance in office, engage in the practice of law within or without the Commonwealth, or seek or accept any non-judicial elective office, or hold any other office of public trust, or make any contribution to or hold any office in a political party or organization, or engage in partisan political activities, or receive any remuneration for his judicial service except the salaries and allowances authorized under section 9 of this Article.

Source: Present section 105.

Comment: The proposed section goes considerably beyond present section 105 in detailing certain matters which are incompatible with a judicial position. Its basic thrust, on the other hand, is well within existing canons of judicial ethics as advanced by the American and Virginia State Bar Associations.

(1) *The existing section.* Present section 105 prohibits judges from practicing law in Virginia or elsewhere and from holding any other office of public trust during their continuance in office. These limitations are retained in the proposal. The exception in present section 105 relating to judges of city courts in cities of the second class has been omitted as unwise detail for a Constitution.

22. Present section 54 has been preserved in the Legislative article in proposed section 17 at p. 156, *supra.*

(2) *Additional limitations.* The Canons of Judicial Ethics, promulgated by the Supreme Court of Appeals in 1938,[23] include as Canon 28 the following provision:

> While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.
>
> He should neither accept nor retain a place on any party committee nor act as a party leader, nor engage generally in partisan activities.

The limitations in proposed section 11 on partisan political activity are derived from this canon and are believed by the Commission to be so fundamental as to justify statement in the Constitution.

Two other subjects are addressed by the additions made in this proposal. The first relates to the seeking or acceptance of a non-judicial elective office by an active judge.[24] The second relates to the acceptance of money for judicial service other than the salaries and allowances authorized by the General Assembly or a local government as set forth in proposed section 8.[25] Both matters speak for themselves.

(3) *Appointment powers of judges.* Present section 31 of the Constitution provides that circuit and city judges are to appoint the members of the electoral boards for their respective localities. There is a practice in Virginia of using the local judges as the appointing authorities for a number of other local officials. For example, judges by statute now act as the appointing authorities for the initial appointments to, as well as the filling of vacancies on, boards of zoning appeals. More pervasive and significant is the responsibility, given the judges by statute, to fill vacancies on city councils and boards of supervisors and to fill vacancies in such offices as those of Commonwealth's attorney and sheriff.[26]

The appointing power given judges in Virginia today is a vestige of the era when justices of the county courts in Virginia not only acted as judges but exercised as well many of the powers and functions of local government. The justices tried cases, levied county taxes, built roads and bridges,

23. See 171 Va. xvii (1938).
24. *Ibid.*, Canon 30.
25. *Ibid.*, Canon 32.
26. Va. Code Ann. §§ 15.1-494 (repl. vol. 1964), 15.1-808 (repl. vol. 1964), 24-145 (repl. vol. 1964).

recommended militia appointments, and in effect appointed county officers such as sheriff and coroner. Thomas Jefferson voiced strong objections to blending legislative, executive, and judicial functions in the county justices, in violation of the principle of the separation of powers.[27] St. George Tucker said that uniting non-judicial powers in the justices was "perfectly incompatible with the principles of a democracy." [28] For decades the powers of the county courts were the subject of much debate in Virginia, especially in the Constitutional Convention of 1829-30.[29]

Most executive and legislative functions of local government today rest where they belong, in the hands of elected local officials. To that extent judges now are free to be judges, unencumbered with non-judicial duties. But the practice of allowing judges to make appointments to a range of other posts is the major survival of the old system. The Commission is unanimously of the view that this practice should be discontinued and that judges should not be burdened with responsibilities which are not judicial in character. As in the days of Jefferson and Tucker, the practice violates one of the most fundamental principles on which our democracy is founded, namely that the government should consist of separate legislative, executive, and judicial departments, each acting as a check on the other and each exercising an independent function. It is not consistent with this basic doctrine of separation of powers, which is explicitly articulated in present section 39 of the Virginia Constitution, to require the judiciary to make appointments to local legislative and executive offices. In particular it seems unsound to allow a judge to appoint a Commonwealth's attorney, who will then try criminal cases before him, or to appoint a sheriff whose official acts are likely to be reviewed by the judge in criminal cases. Moreover, it would seem unsound for certain judicial officers to be appointed by other judges; a judge should not exercise the power of appointment over another judge whose work he will review on appeal. Both of these practices compromise, in appearance if not in fact, the independence of the judiciary.

The Commission is not, however, recommending that the Constitution itself bar judges from exercising such powers of appointment. The Constitution already states the principle of the separation of powers which would be the basis of such a prohibition. The Commission believes that it has proceeded as far as is necessary at the constitutional level by its

27. See *Writings of Thomas Jefferson,* ed. Paul L. Ford (New York, 1892), X, 38, 40-41.

28. *Tucker's Blackstone* (Philadelphia, 1803), I, App., 115.

29. See *1829-30 Convention Debates*, pp. 502, 505-06, 507-09, 513, 525-29, 626-27. The county courts did not lack for their defenders, among them Chief Justice John Marshall. See *ibid.*, pp. 504-05.

proposal for revision of section 31,[30] the only place in the present Constitution explicitly giving judges powers of appointment. The Commission proposes leaving the general problem of appointments by judges to the legislative process. Reexamination in the legislative forum of the question of the appointing powers of judges will allow side-by-side consideration of two important points: what alternatives to the existing system can be devised, and how the high calibre of appointments which have been made in the past can continue in the future under whatever system is devised.

Section 12. Attorney General.

An Attorney General shall be elected by the qualified voters of the Commonwealth at the same time and for the same term as the Governor; and the fact of his election shall be ascertained in the same manner. No person shall be eligible for election or appointment to the office of Attorney General unless he is a citizen of the United States, has attained the age of thirty years, and has the qualifications required for a judge of a court of record. He shall perform such duties and receive such compensation as may be prescribed by law, which compensation shall neither be increased nor diminished during the period for which he shall have been elected.

Source: Present section 107.

Comment: Three changes of substance in present section 107 have been made. The first is to require that the Attorney General have the qualifications of a judge of a court of record and be thirty years of age. The Commission decided that since the Attorney General is the state's chief legal officer, he should be an attorney. The age limitation is required so that if the Attorney General succeeds to the Governorship under Article V, section 15, he will be otherwise qualified. The second is the deletion of the requirement of gubernatorial commissioning of the Attorney General and the deletion of the provision making the Attorney General removable by the methods applicable to judges. In at least these senses, the Attorney General is an executive rather than a judicial official. The third change is the addition of salary protection prohibiting an increase or decrease during the period for which he was elected. This is consistent with the treatment of other elective officers.

Some suggestions have been made that the Attorney General ought to be appointed by the Governor rather than being popularly elected, the argument being that the Attorney General is the Governor's chief legal

30. See section 8 of the proposed Franchise article, *supra*, pp. 119-20.

advisor and is head of the Department of Law. The Commission believes, however, that the reasoning which underlay the constitutional amendments in 1928 making such officials as the State Treasurer and the Commissioner of Agriculture and Immigration appointive does not obtain in the case of the Attorney General. In the judgment of the Commission, there is merit in not having the Commonwealth's chief legal officer dependent upon the executive branch, and hence no change in the method of selecting the Attorney General is recommended.

ARTICLE VII

LOCAL GOVERNMENT

Virginia's structure of local government is unique in that cities and counties are independent of each other.[1] This structure has avoided the complaint of multi-layered government so frequently voiced in other states. At the same time it has generated a tradition of strong and responsible local government. The Commission proposes no radical change in the structure of local government in Virginia.

It does propose some changes designed to increase efficiency by providing for more flexibility in meeting the pressures of the present and the needs of the future. These pressures and needs are largely a consequence of an expanding population, an increase in industrialization, and the growing impact of problems transcending in scope the limits of local governmental units.

The Commission's proposals touch on: more uniform constitutional treatment of counties and cities, the size of units of local government, adoption by cities and counties of charters, powers of local governments, general laws and special acts, local debt, regional government, and elimination of obsolete and statutory matter from the Constitution. These proposals are summarized in this introduction and are discussed in more detail in the commentaries accompanying the sections of the proposed Local Government article.

Local government in Virginia: basic data. There are now 96 counties and 37 cities. The population of the 96 counties in 1966 ranged from 2,923 in Highland County to 366,949 in Fairfax County. The population of the

1. For a history of county government, see Albert Ogden Porter, *County Government in Virginia: A Legislative History, 1607-1904* (New York, 1947), and Raymond B. Pinchbeck, "Origins and Evolution of County Government in Virginia" (unpublished paper, University of Richmond Institute for Business and Community Development), 11 pp. For a history of city and town government, see Chester Bain, *"A Body Incorporate": The Evolution of City-County Separation in Virginia* (Charlottesville, 1967).

37 cities in 1966 ranged from 5,097 in Norton to 313,512 in Norfolk.[2] One hundred ninety-five towns also furnish some government services. The population of these towns in 1966 ranged from 86 in Columbia to 11,440 in Vienna.[3] While other states have complained of multilayered local government, special districts, and separately-levied property taxes,[4] Virginia's counties and cities have functioned each with its own governing body responsible for all functions within the boundaries of the governmental unit. Counties and cities possess full and unlimited control over the assessment and levy of real estate taxes; they have unit-wide school divisions; and the governing bodies control school budgets.[5] In counties the boards of supervisors control all taxing districts, such as sanitary districts, mosquito control districts, and fire districts. This control makes the board of supervisors in the county and the council in the city responsible to the people for all functions, thus giving the voters more effective control over their government. The Commission does not think this basic system should be disturbed.

County organization was rigidly fixed in the 1902 Constitution. Amendments adopted in 1928 permitted optional forms of government which the General Assembly has made available to counties.[6] These optional forms of government are designed to permit more efficient administration and more services for the people. City organization has a similar history. The 1902 Constitution required all cities to adopt a "strong-mayor" plan of government organization. Amendments to the Constitution since 1902 permit cities to adopt optional plans of government.[7] Every city of Virginia now operates under such an optional plan. In addition to the county, city, town, and special district, authorities are frequently created to provide self-supporting services.[8]

2. Bureau of Population and Economic Research, Graduate School of Business Administration, University of Virginia, *Estimates of the Population of Virginia Counties and Cities: July 1, 1967* (Charlottesville, 1967).

3. *Report of the Secretary of the Commonwealth, 1966-67* (Richmond, 1967).

4. See especially U.S. House of Representatives Committee on Government Operation, *Unshackling Local Government,* H. Rept. 1270, 90th Cong., 2d Sess. (Washington, D.C., 1968).

5. See Virginia Association of Counties and Institute of Government, University of Virginia, *Virginia County Supervisors Manual* (2nd ed.; Charlottesville, 1968).

6. The 1928 amendments were based on the report of the New York Bureau of Municipal Research, *County Government in Virginia,* commissioned by Governor Harry F. Byrd. Other studies include Leroy Hodges, The Southern Commercial Congress, Bureau of Economics and Public Efficiency, *Reorganization of County Government in Virginia* (Washington, D.C., 1915); *Report of the Commission on Simplification and Economy of State and Local Government* (Richmond, 1924).

7. Amendments were adopted in 1912 and 1920. Acts of Assembly (1912), p. 622; Acts of Assembly (1920), p. 522.

8. Authorities are usually created to provide "self-supporting" services, such as water and sewer facilities, hospitals, airports, and low income housing. Some au-

Like treatment of counties and cities. One object of the Commission's recommendations is to treat counties and cities more nearly alike. In some states it is natural that counties and cities receive different treatment because only the county exercises some delegated state functions, such as conducting elections and enforcing state law. But in Virginia, separation of counties and cities eliminates such distinctions. Moreover, the General Assembly has by general law given counties the powers of cities and towns. Since Virginia's counties and cities are on a par with each other, the Commission proposes that the Constitution deal with counties and cities in more uniform fashion than is presently the case. In particular, the Commission proposes a single Local Government article so that both the likenesses and the dissimilarities in constitutional treatment of counties and cities will be more evident.

Size of units of local government. Without disturbing the status of existing counties, cities, and towns, the Commission recommends that in the future a minimum population of 1,000 should be required for the incorporation of new towns and 25,000 for the incorporation of new cities. See proposed section 1. The present constitutional requirements do not serve a useful purpose. More important, these requirements are detrimental to the sound operation of local government because they permit the formation of new units of government which (1) syphon off needed county tax revenue and (2) are insufficient in size to carry on the unit's given functions. The distinction between cities of the first and second class, a distinction which exists in the present constitution only in the Judicial article, has been eliminated in that article.

The figure of 25,000 for a city (and charter county, as discussed below) has been arrived at by a study of the minimum population deemed efficient in providing future services including, in particular, the operation of an efficient school system.

Charter counties. No reason is apparent to deny counties with a population of at least 25,000 the same powers enjoyed by cities of similar size. A provision permitting, but not requiring, such counties to request or

thorities are created pursuant to general laws, some by special acts. The authority usually has its own governing board, which is subject to varying degrees of control by the county's or city's governing body. For instance, a water and sewer authority, created with broad powers, is virtually independent of the local governing body; a housing authority must have every project approved by the local governing body; and hospital and health center commission members serve at the pleasure of the governing body. Most authorities are formed to finance projects by the issuance of bonds payable solely from the revenues of the project. There are some 127 local or regional authorities with an aggregate of $317,013,000 of revenue bonds outstanding. For a discussion of authorities and special districts in Virginia, see S. J. Makielski, Jr., and David G. Temple, *Special District Government in Virginia* (Charlottesville, 1967).

adopt charters or amendments thereto, is thus provided. See proposed sections 1 and 2.

Powers of cities and charter counties. Responsive to the need for local autonomy and responsibility the Commission proposes that cities and charter counties be accorded all powers not specifically denied them by the Constitution, their charters, or acts of the General Assembly. This provision would tend to cut down the need for special acts of the Legislature granting specific powers, but it would still retain in the Legislature the power to retain control over matters of concern to the State at large. See proposed section 3.

General laws and special acts. In the interests of coherence, efficiency, and good government—including the need to reduce the number of special acts properly so designated and the number of special acts purporting to be general laws—the Commission deemed it desirable to:

(1) Define "general laws" (proposed section 1);

(2) Retain the present authorization for special acts adopting or amending a city or town charter if so requested by the city or town, and extend this privilege to charter counties (proposed section 2);

(3) Permit cities and charter counties to amend their own charters if an election is held in the locality (proposed sections 2 and 3);

(4) Continue the provision for general laws for less populous and non-charter counties (proposed section 2).

Local debt. The local debt ceiling of 18% based on the assessed value of real estate in cities and towns has found common acceptance, and no change in either the ceiling or base is recommended. The following changes are, however, recommended:

(1) That counties be put on the same basis as cities.

(2) That wherever an election is not required for the issuance of bonds a public hearing be required.

(3) That the issuance of bonds be limited to capital projects except under certain exceptional circumstances (noted in detail later).

(4) That every bond issue incorporate a sinking fund provision.

(5) That in light of the safeguards described in (2), (3) and (4) and in order to reduce the need for more expensive financing through the "authority" device, the issuance of pure revenue bonds be permitted without an election as is currently permitted (assuming the General Assembly authorizes a bond issue) such units of government as the State Highway

Department, state colleges and universities for dormitories, and sanitary districts.

The provisions above would result in two differences between county and city debt: (1) county debt would include bonds of towns and sanitary districts within the county since all three units draw on the same tax base; (2) an election would still be required for issuance of sanitary district bonds.

Because of the uncertainties attending the nature and functions of future regional governments contemplated by the Metropolitan Areas Study Commission, it seemed unwise to attempt to deal with their debt limitations through a constitutional percentage provision. Instead it is provided that bonded indebtedness of regional governments be submitted to the voters for their approval.

The constitutional debt limitations, as well as the other limitations in this article, are minimal limitations. Additional restrictions may, of course, be imposed by statute or charter.

Regional government. The Commission recommends provisions delineating the powers and functions of regional governments. These recommendations are in substantial accord with those of the Metropolitan Areas Study Commission.[9] See proposed sections 1, 2, 3, 6, 10.

State Commission on Local Government. The Commission recommends that the Constitution provide for the creation of a State Commission on Local Government while leaving it to the General Assembly to decide what the new Commission's powers and duties should be. See proposed section 11.

Elimination of obsolete provisions and statutory matter. In 1902, section 117 set forth the requirements for general laws and special acts with regard to cities and towns. Subsections (b), (c), (d), and (e), added in 1912 and 1920, permit optional plans of government, thereby eliminating the necessity to spell out any special form of government in the Constitution. For this reason, much of section 117, the last paragraph of section 120, that part of section 121 requiring two branches in a city council, and much of section 123 have been removed. Similarly the 1902 provisions requiring election by magisterial districts in counties have been modified by the 1928 amendment permitting optional forms of government. For this reason much of section 111 has been eliminated. The last sentence of section 113, dealing with bonds of public officers, and section 115, dealing with examination of books, have been eliminated as more appropriate for treatment by statute. Section 114, stating that counties shall not be liable for the acts of their sheriffs, is inappropriate for constitutional treat-

9. *Metropolitan Areas Study Commission Report* (Richmond, 1967).

ment. The provision was first placed in the Virginia Constitution during reconstruction and is identical to a constitutional provision of New York, the only state other than Virginia that has such a provision in its constitution. No local government, whether county, city, or town, is liable at common law for the acts of its police officers.[10] There is no reason to treat county law officers specially in the Constitution, nor is there any reason to prevent the General Assembly from dealing with governmental immunity as it sees fit.

Section 1. Definitions.

As used in this Article (1) "county" includes any one of the 96 existing unincorporated territorial subdivisions of the Commonwealth, any such unit hereafter created, or any such unit which becomes a "charter county" as provided by law, (2) "charter county" means a county which has a population of 25,000 or more and which has adopted a charter as provided by law, (3) "city" means an incorporated community which has within defined boundaries a population of 25,000 or more and which has become a city as provided by law, (4) "town" means an incorporated community which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law, (5) "regional government" means a unit of general government organized as provided by law within defined boundaries encompassing at least two counties, or at least two cities, or at least one county and one city, provided that if any part of a county, city, or town be included within such boundaries, the entire county, city, or town shall be included therein, and (6) "general law" means a law which on its effective date applies alike to all charter counties, noncharter counties, cities, towns, or regional governments or to a class thereof provided that, first, such class shall be based on a reasonable classification and, second, in no event shall a class contain, nor shall a law containing a class exclude, fewer than two charter counties, or two noncharter counties, or two cities, or two towns not in the same county, or two regional governments. The General Assembly may increase by general law the population minima provided in this Article for charter counties, cities, and towns. Any incorporated community which on January 1, 1969, held a valid city or town charter may continue as a city or town, respectively, without regard to the population minima in this section.

Source: Present section 116.

Comment: Proposed sections 1 and 2 are commented on together in the commentary accompanying section 2, *infra*.

10. 18 McQuillin, *Municipal Corporations* §§ 53.22, 53.51, 53.79, 53.80 (3d ed. 1949). The provision first appeared in the Underwood Constitution of 1870, Art. III, § 6, and may be compared with New York Constitution of 1846, art. XIII, § 13.

Section 2. Organization and government.

The General Assembly shall provide by general law for the organization, government, powers, change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments, including optional plans of government for counties, cities, or towns to be effective if approved by a majority vote of the qualified voters voting on the plan in any such county, city, or town.

The General Assembly shall provide by general law for the adoption or amendment of a charter by any county having a population of 25,000 or more, or by a city, to be effective if approved by a majority vote of the qualified voters voting thereon in such county or city. The General Assembly may provide by general law or special act for the adoption or amendment of a charter of a county having a population of 25,000 or more, a city, or a town upon the request, made in the manner provided by general law, of any such county, city, or town. No charter or amendment thereto shall be adopted which conflicts with other sections of this Article specifying that general laws be enacted or which provides for the extension or contraction of boundaries of any charter county, city, or town.

The General Assembly may also provide by special act for the powers of regional governments, including such powers of legislation, taxation, and assessment as the General Assembly may determine.

No new county shall be formed with an area of less than six hundred square miles; nor shall any county from which it is formed be reduced below that area nor reduced in population below 25,000.

Source: Section 1 is derived from present section 116. Section 2 is derived from present sections 117, 110, 61, and 126.

Comment: Proposed sections 1 and 2 will be considered together since section 1 is a definition section.

In order to reduce fragmentation of local governmental units, the definitions of towns and cities contained in present section 116 have been changed by raising the population minima for their future creation. A savings clause exempts existing cities and towns from having to meet the new population standards. An increase in the minimum for new cities and the establishment of a minimum for new towns will result in the formation of fewer separate units of government and more efficient operation of existing units of local government.

Towns. The incorporation of a town takes valuable revenue from a county's budget. State statutes give a town a special share of ABC revenue, auto-license revenue, and sales tax revenue. The town continues to receive county services and uses these additional funds for its own pur-

poses or services, often on a scale which is no longer efficient. The county is equipped to provide special services to small areas within the county by creating a sanitary district or other special district. The use of such districts need not be discouraged since they do not fragment the county as a basic unit of government. Moreover, as more counties reapportion (as they will be required to do), the more populous areas in the counties will increase their influence on the governing boards and thereby more successfully secure desired services.

The present general statute for the creation of towns establishes 1,000 as the minimum population for incorporation.[11] There has been only one special act to incorporate a new town since 1960.[12] The Metropolitan Areas Study Commission recommended 1,000 as the constitutional minimum.[13] Recommendations as high as 5,000 were made to the Commission on Constitutional Revision. A higher minimum would, indeed, prevent fragmentation. On the other hand, it is appreciated that persons living in a small area of a county might need to exert the pressure of separate incorporation to assure themselves adequate county or sanitary district services. The Commission therefore recommends a constitutional minimum of 1,000.

Cities. Fragmentation caused by incorporation of cities is more serious than that caused by incorporation of towns. This is true because the city assumes a separate status, taking away from the county all the people and taxable resources within the new city's boundaries.[14] The Commission's studies showed that of the twenty-seven towns with an estimated population in 1966 of over 3,500, thirteen or almost 50% had over 20% of the population of the counties in which they were located. Approximately the same percentage had over 20% of the taxable property in their respective counties.[15]

In 1902 Virginia had seventeen cities. That number has now more than doubled. As Virginians continue to leave their farms and migrate to populated centers, the prospect of a further increase in the number of new cities is apparent. With more efficient communication and transportation now available, the need for increasing units of government is less pressing. Furthermore, the incorporation of a new city not only hinders county

11. Va. Code Ann. § 15.1-967 (repl. vol. 1964), as recommended by Report of Virginia Advisory Legislative Council, *Governmental Subdivisions in Virginia* (Richmond, 1955).

12. Chester Bain, *"A Body Incorporate": City-County Separation in Virginia* (Charlottesville, 1968), Appendix B.

13. *Metropolitan Areas Study Commission Report* (Richmond, 1967), p. 89.

14. See generally Bain, *"A Body Incorporate": City-County Separation in Virginia*, pp 105-13.

15. Figures compiled by the Commission. See Local Government Tables 3 and 4 at pp. 251, 252 *infra.*

government, it also permits, under present population minima, the creation of a new unit of government which is too small to function efficiently. When a town becomes a city it must provide its own constitutional officers and its own school system. The Commission believes that a unit of government with a population base of less than 25,000 has greater difficulties in operating efficiently, thereby burdening the taxpayer.[16] Although the present Constitution permits city-county cooperation in the operation of school systems, this authority has not been used. Therefore, the Commission recommends a population minimum of 25,000 for the creation of new cities, because: (1) so many towns are approaching a population of 10,000 that a 10,000 minimum would not be effective to prevent fragmentation; [17] (2) current studies suggest a minimum of 50,000 for a unit of general government; certainly, with a separate school system to support, a minimum of 25,000 finds support in such studies; [18] (3) towns which cannot become cities will exert greater influence in county affairs because of the recent one-man, one-vote decisions, and (4) 25,000 corresponds to the figure recommended for organization of "charter counties."

The present Constitution distinguishes between cities of the first class and those of the second class—cities above and below 10,000 population—only in the Judicial article. No such distinction is drawn in the present articles on counties (Article VII) or cities and towns (Article VIII). The proposed Judicial article eliminates this constitutional distinction. Whether distinctions such as that now existing between cities of the first and second class should be drawn would, after the adoption of the revised Constitution, be left to general law. Nothing in the proposed Local Government article prevents classification of units of government, so long as a classification meets the standards laid down in the article.

Counties. The definition of "county" is in accord with existing law. The definition of "charter county" is new to the Constitution but recognizes

16. Determining the proper minimum figure is not easy. The Committee for Economic Development determined that a unit of government should not have a population of less than 50,000 in order to carry out its functions, including the operation of a school system. *Modernizing Local Government* (New York, 1966), chap. 3. The National Municipal League, in correspondence with the Commission, stated it to be impossible to determine the size of the most efficient unit of local government. Further correspondence revealed that the Advisory Commission on Intergovernmental Relations and the Council of State Governments have made no study for such a determination. The State Division of Planning is of the opinion that 25,000 is a satisfactory minimum since it would take a population of 30,000 to support a school district of 10,000 pupils. It has been determined that no school district can provide efficiently a full range of educational services if it has an enrollment of fewer than 10,000 pupils.

17. Figures compiled by the Commission.

18. Committee on Economic Development, *Modernizing Local Government* (New York, 1966), chap. 3.

existing developments in the area of "urban counties." For a number of years the General Assembly has adopted "optional forms of government" which apply only to one county.[19] These "optional forms of government" statutes have the effect of a charter for that county. Under modern conditions no reason is apparent to deny the "urban counties" the same constitutional flexibility now afforded cities in providing services for their citizens. Twenty-five thousand is used as a minimum for the "charter county" because it represents the conclusion of the Commission as to an appropriate minimum population figure for a basic unit of government. This figure is also appropriate when one considers the counties which would be granted this power, as shown in Local Government Table 5, *infra*, p. 253.

The Commission would hope that some smaller counties would be encouraged to consolidate to take advantage of the benefits of the "charter county" provisions. If they do not, the counties would not be penalized. They would continue to govern themselves, as they do now, pursuant to general laws passed by the General Assembly. On the other hand, the new Constitution will not encourage such units to remain small by granting them additional powers.

Regional government. "Regional government" is a new definition. In Chapter 479 of the Acts of the General Assembly of 1966 the General Assembly stated:

> Recognizing that in recent years the process of industrialization has rapidly accelerated in Virginia and has caused concentrations of population which present special and urgent governmental problems, and further recognizing that such problems must be regarded as problems of entire metropolitan areas comprising both cities and surrounding urban counties—[the General Assembly] hereby declares that it is the policy of this Commonwealth and necessary in the public interest that the expansion and development of such metropolitan areas proceed on a sound and orderly basis within a governmental framework and economic environment which will foster the constructive growth and efficient administration of such areas . . . .

By this Act the General Assembly created the Metropolitan Areas Study Commission. That body, in devoting itself to the study of metropolitan areas and their problems, held hearings, prepared interim reports,[20] and

19. E.g., Henrico, Albemarle, Fairfax, and Arlington. For a brief description of the acts, see Virginia Association of Counties and Institute of Government, University of Virginia, *Virginia County Supervisors Manual* (2d ed.; Charlottesville, 1968), chap. 17.

20. *Governing the Virginia Metropolitan Areas: An Assessment* (1967); *Metropolitan Virginia 1967: A Brief Assessment.*

had many studies prepared.[21] The Commission recommended the creation of a new unit of general government with area-wide powers, including the powers to tax, assess localities, and provide services.[22]

The Commission on Constitutional Revision has studied the report, studies, and statutes recommended by the Metropolitan Areas Study Commission, and has studied documents and studies submitted by other groups, as well as solutions tried in other states.[23] Of the feasible alternatives, the formation of a new entity of general government was recommended by the Metropolitan Areas Study Commission as the most workable and beneficial solution to a very critical problem in Virginia. The Commission on Constitutional Revision recommends a definition of regional government consistent with the foregoing concept.[24] Proposed section 2 provides that the General Assembly shall provide by general law for regional governments. Proposed section 3 authorizes the General Assembly to provide by special act for powers of regional governments, and the last sentence of section 3 authorizes the General Assembly to provide for transfer of functions to regional governments. Proposed section 6 would permit members of local governing bodies to be named to a regional government. The last paragraph of section 10 requires an election in the region prior to the issuance of bonds by the regional government. These provisions should be included in the Constitution to spell out the controls imposed on regional governments and the powers of taxation they possess.

General laws. "General laws" are defined to make clear that such laws will be only those which can be construed as laws of general application and effect. Several other states have adopted a similar definition.[25] The

21. See John Knapp, *Projections to 1980 for Virginia Metropolitan Areas* (Virginia Division of Planning; Richmond 1967). The Division of Planning has completed or has in progress detailed Projections and Economic Base Analyses for each regional area in the state.

22. *Metropolitan Areas Study Commission Report.* Some of the statutory recommendations of the Commission were adopted by the 1968 General Assembly. See Va. Code Ann. §§ 15.1-1400-1505 (supp. 1968).

23. Advisory Commission on Intergovernmental Relations, *Alternative Approaches to Governmental Reorganization in Metropolitan Areas* (Washington, D.C., 1962), summarizes most alternatives which have been considered. See also ACIR, *Governmental Structure, Organization and Planning in Metropolitan Areas* (Washington, D.C., 1961), ACIR, *Factors Affecting Voter Reactions to Governmental Reorganizations in Metropolitan Areas* (Washington, D.C., 1965), ACIR, *Metropolitan America: Challenge to Federalism* (Washington, D.C., 1966). See also new constitutions in Massachusetts and Pennsylvania. Mass. Const., Art. 89, § 8; Pa. Const. Art. IX.

24. The Commission makes no recommendation as to the precise name of such regional governments, e.g., "service districts." In statutes implementing the concept of regional governments, the General Assembly may give such governments whatever name it will.

25. Mass. Const., Art. II, § 8; Minn. Const., Art. XI, § 2. See also Art. XI, § 26 of the Constitution proposed by the 1967 New York Constitutional Convention.

definition permits "reasonable" classification, but puts a limit on such classification by specifying a minimum number of units in each classification. The minimum of two units to a class will do away with statutes intended to apply to only one unit of government by the use of arbitrary population categories. Such a minimum would afford some protection to a city or charter county which adopts its own charter against possible interference in its affairs by special acts passed by the General Assembly and leave decision-making for a single unit of government at the local level. The minimum of two units in each class is obviously the least the Commission could recommend. The Commission feels there are possible benefits to be gained by having a higher minimum if the General Assembly seriously desires to get away from indirect attempts at special legislation.

Organization and government. Section 2, and to some extent section 3, set forth the principles of organization and government for cities, counties, towns, and regional governments, as defined in section 1.

Unifying the provisions for county and city government raises the related problem of requirements for general laws and special acts. The 1902 Constitution, and subsequent amendments to it, required general laws in many areas of county and city government. Sections 65, 110, and 115 require the General Assembly to provide by general laws for counties, optional forms of county government, and borrowing of money by counties. Section 117 requires the General Assembly to provide by general law for cities and towns, but includes power for the passage of special acts by a two-thirds vote of the General Assembly for "organization and government" of cities and towns. Other sections, such as section 126, dealing with the expansion and contraction of boundaries of cities and towns, state that general laws are required. The purpose of a general law requirement in the area of local government is obvious. It protects the local government from interference by the General Assembly in the local government's affairs. It also protects the General Assembly from undue requests for special treatment. Piecemeal attempts at defining general laws and repeated litigation have not proved satisfactory.

The Commission seeks in its proposals to bring order out of these conflicting provisions and treatment for counties and cities. Its recommendations would operate as follows:

(a) The General Assembly would usually follow the basic principle that general laws be enacted for organization, government, powers, change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments. The General Assembly would continue to provide, by general law, for optional plans of government.

(b) The General Assembly would be permitted, but not required, to adopt or amend charters for cities and towns, upon the request of a city or town. The Commission believes such special acts should be permitted, if such special legislation does not burden the legislature.[26] If a requested change is a minor one and requested by the charter county or city, there is no apparent need to require the added expense and delay of an election prior to its adoption. This recommendation would authorize special acts only upon the request of the charter counties, cities. and towns, thus giving these localities protection against interference by the General Assembly in local affairs. Authority to pass such special acts would be subject to the particular limitations in other sections. The provision would also authorize the General Assembly to delegate the function of approving charter amendments to some other body (as is now done for towns) by general law, if the need should arise.

(c) Cities would be allowed to adopt and amend their own charters subject to a local election without an act of the General Assembly, thus eliminating the need for many special acts. The requirement of an election would be a sufficient check on action by the council of a city. In addition the exercise of any power could be limited by general laws of the General Assembly. No detailed procedure is spelled out in the Constitution because the Commission believes that if the General Assembly agrees with the Commission's constitutional proposals and submits them to the people, surely it will carry out the constitutional mandate to provide a procedure for local charter enactments.

(d) Counties of 25,000 or more would also be allowed to adopt and amend their charters, on the same basis as cities. Many "optional forms of government" which have been passed by the General Assembly apply only to one county. They have the effect, therefore. of a charter for that county. These "urban counties" should be permitted to provide services for their citizens with the same flexibility available to cities. The present

26. Special legislation apparently has been a problem in the past. The two-thirds vote requirement in Section 117 of the 1902 Constitution was aimed at restricting such legislation. Section 51 of that Constitution required a standing committee to weed out non-essential special acts. Neither has been effective. Section 51 was repealed in 1948 after consideration of special acts by that Committee became a meaningless formality. The General Assembly itself declared special legislation to be a significant problem in 1950, 1952, and 1956, when it called on the Virginia Advisory Legislative Council to study various aspects of the problem and recommended possible solutions. Several recommendations of the VALC have been implemented: fish and game regulation has been delegated to a commission, charter amendments must be introduced within the first twenty days of the session, special counsel has been provided the Committee on Cities, Counties, and Towns, and uniform charter provisions have been enacted which may be incorporated by reference in municipal charters.

Nevertheless, a study of the acts of recent sessions of the General Assembly reveals only a slight decrease in the number of special acts.

Constitution requires a local election for the adoption and amendment of optional forms of government. When an election is held, there appears no need for a special act of the General Assembly.

(e) The General Assembly would continue to pass general laws applicable to less populous counties and to counties with a population over 25,000 which do not elect to adopt a charter. The alternatives available to counties with a population over 25,000 would be retention of the traditional form of government, the adoption of an optional form of government, or the adoption of a charter. Less populous counties do not need or may not be able to afford the special self-government provisions associated with a charter.

A charter provision may be adopted on any subject (1) not forbidden or restricted by the General Assembly, (2) not forbidden by a specific provision of the Constitution, including the extension and contraction of boundaries of any town, city, or charter county, (3) not required by the Constitution to be governed by general law.

Consolidation. The provisions on consolidation should be uniform. The present Constitution leaves to the General Assembly the decision whether an election should be required for annexation and for consolidation of cities with counties, but the Constitution allows no such option as to the consolidation of counties. The General Assembly requires an election in the case of consolidation or merger of a city and a county but not in the case of annexation.[27] The Commission is of the opinion the General Assembly should have the same flexibility to provide for consolidation or merger among counties. The Commission recommends, therefore, that the requirement of an election in each county prior to consolidation between counties, which is the sole requirement of its kind remaining in the Constitution, be removed. The General Assembly can, of course, require a referendum in mergers between counties just as is presently the case with a merger between a city and a county.

Regional governments. The third paragraph of proposed section 2 permits the General Assembly to provide by special act for regional governments. This power is in addition to its power to act by general law. Emerging regional governments will need the special attention of the General Assembly to meet particular area needs.

Formation of new counties. The last paragraph of proposed section 2, dealing with the formation of new counties, is derived from present section 61.

27. The requirement that no election be held has been highly praised. See Chester Bain, *Annexation in Virginia* (Charlottesville, 1966), p. 216 *et seq.*

Authorities. The Commission made a thorough study of local authorities in Virginia. It found there are numerous such authorities, created both by general law and special act, usually limited to a single revenue-producing undertaking, and governed by a board of directors possessing varying degrees of independent responsibility. Local authorities have incurred a large amount of "revenue bond" indebtedness. While some governmental experts claim that local authorities are beneficial, inasmuch as they permit a locality to obtain the services of well qualified people on the authority's board of governors, others deplore the fragmentation of local governmental control over local public services. Although the Commission does not recommend a constitutional provision dealing specially with authorities, it hopes that the need for such authorities will be reduced by the proposed provision permitting counties, cities, and towns to issue revenue bonds without an election, since many authorities are now created to avoid an election on local revenue bond obligations. As to authorities generally, the Commission believes that more information about and supervision of authorities is warranted. In the course of its study of local government, the Commission had considerable difficulty gathering the needed data on authorities, their operations, and their finances. In the judgment of the Commission, there is a need for stricter requirements as to the central filing of reports by authorities and as to audits of the authorities' finances. Such supervision of the affairs of authorities can, of course, be accomplished through legislation.

Unit of general government. "Unit of general government" is intended to be a term of art, new to this Constitution. The term denotes a unit of government organized with a sufficient range or number of powers and basic functions so as to be considered organized for "general purposes." It is contrasted with units organized for "special purposes," such as authorities. Every unit of general government need not possess the full panoply of governmental powers, but it would be hard to visualize such a unit without the power to tax real estate. Certainly every county, city, and town in Virginia is a unit of general government. Certainly special purpose authorities are not. Moreover the power to tax alone is not sufficient. For instance, special taxing districts, such as sanitary districts, would not be a unit of general government. Furthermore, more than one unit of general government may exist in the same area. Just as counties and cities in some states and counties and towns in Virginia share functions in a single geographical area, so there could be an allocation of functions and powers between other units of general government within the meaning of the term as used in this section.

Section 3. Powers.

A charter county or a city may exercise any power or perform any function which is not denied to it by this Constitution, by its charter, or by laws enacted by the General Assembly pursuant to section 2.

The General Assembly may provide by general law that any county, city, town, or other unit of government may exercise any of its powers or perform any of its functions and may participate in the financing thereof jointly or in cooperation with the Commonwealth or any other unit of government within or without the Commonwealth. The General Assembly may provide by general law or special act for transfer to or sharing with a regional government of any services, functions, and related facilities of any county, city, town, or other unit of government within the boundaries of such regional government.

Source: Derived from present sections 65, 110, and 111.

Comment: *Powers.* Cities and counties in Virginia and in other states have been hampered in the exercise of their powers by a strict rule of construction, first suggested in the nineteenth century. The rule, known as the Dillon Rule, requires a narrow interpretation of all powers conferred on local government, because they are "delegated powers." [28]

The General Assembly has tried to expand by statute the powers conferred on local government, but often without much success. It has authorized any city or town to adopt a charter provision which permits the municipality to exercise all powers pertinent to the exercise of the affairs and functions of a municipal corporation.[29] It has authorized all counties to adopt any measure they deem expedient to the health, safety, and general welfare of the inhabitants.[30] It has also authorized counties to exercise the same powers conferred on cities and towns.[31] However, these statutes have been narrowly construed.[32] Such interpretation of local powers promotes piecemeal legislation and continual requests for special legislation to spell out local authority.

Many other states have considered this same problem. Some states in their constitutions have carved out special areas "reserved" for local government, excluding whole areas from consideration by the legislature. The Commission disagrees with this approach. Not only does it have a

28. For Judge Dillon's statement of the rule, see John F. Dillon, *Law of Municipal Corporations* (2d ed.; New York, 1873), I, 173.
29. Va. Code Ann. § 15.1-839 (repl. vol. 1964).
30. Va. Code Ann. § 15.1-510 (repl. vol. 1964).
31. Va. Code Ann. § 15.1-522 (repl. vol. 1964).
32 See, e.g., Board of Supervisors of Henrico County v. Corbett, 206 Va. 167, 142 S.E.2d 546 (1965); *Opinions of the Attorney General, 1962-63*, p. 34; Opinion of the Attorney General, August 1, 1968 to Hon. Lucas D. Phillips, Leesburg, Va.

balkanizing effect, preventing proper legislative consideration, it also creates a new problem of defining "local," similar to the problem of construing "local legislation" under section 65 of the Virginia Constitution. Judicial interpretation of these terms tends to restrict expansion of their definition to meet changing conditions.

The Commission recommends that Dillon's Rule be reversed by constitutionally conferring on cities and charter counties all powers not denied them by the Constitution, their charter, or laws enacted by the General Assembly pursuant to section 3.[33] The local units would then have broad powers, but the General Assembly would still have a veto over subjects it deems improper for local legislation without having to state every proper subject.[34] There would not be the problem encountered in other states of judicial construction of constitutional language such as "local."

The Commission is not making a judgment as to precisely which powers ought to be exercised by the locality. The point of the proposal is to leave the ultimate decision on that to the General Assembly. The proposal recognizes the difficulties and disadvantages of attempting in the Constitution to label a subject as of purely "local" or "state" concern. Balancing local and state interests is a peculiarly legislative judgment. The proposal grants initially broad powers to each locality and leaves it to the General Assembly to say whether decision-making in a particular subject area should be on a statewide or local basis.[35]

33. For relevant public statements, see Public Views Documents, 29, 72, 85, 103, 120, 140, 188.

34. The Commission studied other limitations contained in other constitutions but found no uniformity on additional restrictions. See Alaska Const., Art. X, § 11; Mass. Const. Art. II, Amend., Art. LXXXIX, § 7; Texas Const. Art. XI, § 5; Model State Constitution § 8.02. It therefore recommends that restrictions be determined by the General Assembly.

35. An example of the type of legislation which might be drafted initially would be a statute providing that unless otherwise provided, no city or charter county shall enact ordinances, pass resolutions, or otherwise enact legislation which

(1) affects territories outside the corporate boundaries of such city or charter county, or which impairs the powers of any other unit of local government;

(2) provides private civil laws governing civil relationships, including torts or contract law;

(3) defines and provides punishment for felonies;

(4) impairs the functions, powers, or duties of the Commonwealth or any agency thereof or other public authority;

(5) prescribes the number, jurisdiction, or procedure of courts, or in any way diminishes the powers of the judicial branch;

(6) affects governmental tort liability;

(7) provides for motor vehicle regulation and registration inconsistent with that of the Commonwealth;

(8) provides for taxation of subjects reserved for taxation by the Commonwealth;

(9) prescribes the time and manner of election of state and local officers;

(10) impairs the power of the Commonwealth in relation to public education;

(11) prescribes the duties or compensation of policemen, firemen, or other public

One class of notable exceptions to localities' powers would arise from several sections of the Constitution itself. Wherever the Constitution authorizes the General Assembly to allow a locality to exercise a given power, the obvious and necessary implication is that a local government may not exercise such power until the General Assembly has acted to say that it may.[36] Such specific provisions would control over the general grant of powers to localities contained in section 3 of the Local Government article.

Zoning. The Commission considered a proposal to state a constitutional limit on local enactments by giving utilities or other public service corporations regulated by the State Corporation Commission a right of appeal to that Commission from the decisions of local zoning boards affecting the statewide service of such utilities. It was argued that such local decisions can have a harmful effect on service provided in areas far removed from the locality which makes the decision. The Commission felt, however, this was a matter much more suited for treatment by statute than by constitutional prohibition. It therefore does not propose such a provision in the Constitution.[37]

Joint exercise, transfer, and sharing of powers. The second sentence of section 3 reiterates the powers of the General Assembly to authorize joint exercise of powers of political subdivisions.

The General Assembly has always provided broad authority for joint exercise of powers. Existing statutes, particularly Va. Code Ann. § 15.1-21, give broad authority for the joint exercise of powers by all political subdivisions. Similar power is authorized by statute for joint projects in many other specific areas.[38] These statutes have never been restricted by the somewhat ambiguous language of section 110 of the present Constitu-

officers whose duties or compensation are prescribed by the Constitution or by general laws of the General Assembly;

(12) affects subjects of legislation expressly conferred upon the General Assembly by the Constitution;

(13) provides for the regulation of activities, occupations, or businesses the exclusive regulation of which has been conferred by the Constitution or by laws passed by the General Assembly upon any agency, board, commission, or other regulatory body.

36. See, e.g., section 5(a) of the proposed Franchise article (residence requirements for elective officials), section 16 of the proposed Legislative article (appropriations to charities), section 3 of the proposed Taxation and Finance article (assessments upon abutting property owners), and sections in the Local Government article itself, including the second paragraph of proposed section 3 (joint exercise of powers).

37. Public Views Document 203. See City of Richmond v. Southern Ry. Co., 203 Va. 220, 225, 123 S.E.2d 641, 645 (1962).

38. E.g., airports (§ 5.1-36), regional planning (§§ 15.1-20 and 15.1-433), recreation (§§ 15.1-273 and 15.1-1276), projects generally (§ 15.1-1305), contracts (§ 15.1-306), sewage disposal (§ 15.1-320), county planning (§ 15.1-443), transportation (§ 15.1-319), hospitals (§§ 32-233 and 32-281).

tion which concerns "conjointly held offices." The recommended provision in proposed section 3 would reinforce the statutes and state as general policy that cooperative arrangements between local, state, and national governments are permissible.

The last sentence of the proposed section authorizes the General Assembly to provide, by general law or special act, for the transfer to or sharing with a regional government of any function of a unit of local government. A similar proposal was made by the Metropolitan Areas Study Commission. As regional governments are formed, the General Assembly will desire to provide for orderly transition of any such transfer or assumption of functions.

Section 4. County and city officers.

There shall be elected by the qualified voters of each county and city a treasurer, a sheriff or sergeant, an attorney for the Commonwealth, a clerk, who shall be clerk of the court in the office of which deeds are recorded, and a commissioner of revenue. The duties and compensation of such officers shall be prescribed by general law.

Regular elections for such officers shall be held on Tuesday after the first Monday in November. Such officers shall take office on the first day of the following January and shall hold their respective offices for the term of four years, except that the clerk shall hold office for eight years.

Notwithstanding the provisions of this section, the General Assembly may provide for county or city officers or methods of their selection without regard to the provisions of this section either (1) by general law to become effective in any county or city when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon, or (2) by special act upon the request, made after such an election, of any county or city. No such law shall reduce the term of any person holding an office at the time the election is held. A county or city not required to have or to elect such officers prior to the effective date of this Constitution shall not be so required by this section.

Source: Derived from present sections 110, 111, 112, 118, 119, 120, and 122.

Comment: *Treasurer, sheriff, Commonwealth's attorney, clerk and commissioner of revenue.* Most cities and counties now choose by popular election five constitutional officers. The Commission has heard some suggestions to change the system of selecting these local officers,[39] but it is not making such a recommendation. Under section 110 of the present Con-

39. See Public Views Documents 58, 61, 64, 67.

stitution, the General Assembly has the power to authorize counties to adopt optional forms of government not having the elected constitutional officers, subject to a popular referendum. The Commission, as discussed below, proposes like options for cities. The availability of machinery for optional forms of government makes unnecessary a Commission recommendation on deletion of constitutional officers. Nor does it recommend an increase in the length of terms of some of the officers, as proposed by the officers' associations.[40]

The proposed section adopts a uniform provision for the named five constitutional officers in counties and cities. The first sentence is taken substantially from the first sentence of present section 110. The second sentence continues the second sentence of present section 111. The second paragraph, setting forth the date of election and terms of office, adopts section 112 as the standard of uniformity.

Since 1928, counties have been permitted by the Constitution to adopt optional forms of government without these named officers.[41] The General Assembly has adopted implementing legislation, passed in some counties, which permits an optional form of government without a treasurer or commissioner of revenue.[42] If a county may be authorized to adopt such a plan of government, a city should also. The last paragraph of the proposed section extends to a city the same authority to provide for officers without regard to this section which is now possessed by a county, provided (1) the General Assembly so authorizes by general law and any proposal is approved by the people in the county or city, or (2) the General Assembly so authorizes by special act adopted at the request of the locality, after an election therein. The language would permit the General Assembly to include these provisions in a complete form of government, or not, as it desired. The Commission felt that no constitutional officer could complain of his office ceasing to be elective if such a proposal, before it became law, had to be submitted to the people who elected him. As pointed out above, the General Assembly has had this power for constitutional officers in counties since 1928.

The next to the last sentence of the proposed section is new and would protect an incumbent during his term. The last sentence prevents application of the section to those counties which have abolished one or more officers under the present Constitution, and to those cities of the second class which do not have a court, Commonwealth's attorney, or court clerk.

40. Public Views Documents 172, 173.
41. Lipscomb v. Nuckols, 161 Va. 936, 172 S.E. 886 (1934); Haden v. Ham, 161 Va. 934, 172 S.E. 891 (1934).
42. Va. Code Ann. §§ 15.1-605, 15.1-640 (repl. vol. 1964).

Other officers. The new section deletes certain provisions for other "officers" contained in the present Constitution. The reference in section 110 to the county surveyor is eliminated as no longer necessary. The enumeration of the powers of the mayor in section 120 is eliminated since the General Assembly, by constitutional amendments in 1912 and 1920, has had broad powers to provide optional forms of government in cities and towns.[43] The fourth paragraph in section 110, dealing with ministerial officers and conjointly appointed officers, is eliminated. It appears not to be used and is obsolete.

Section 5. County, city, and town governing bodies.

The governing body of each county, city, or town shall be elected by the qualified voters of such county, city, or town in the manner provided by law.

If the members are elected by district, the district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. When members are so elected by district, the governing body of any county, city, or town may, in a manner provided by law, increase or diminish the number, and change the boundaries, of districts, and shall in 1971 and every ten years thereafter, and also whenever the boundaries of such districts are changed, reapportion the representation in the governing body among the districts in a manner provided by law. Whenever the governing body of any such unit shall fail to perform the duties so prescribed in the manner herein directed, a suit shall lie on behalf of any citizen thereof to compel performance by the governing body.

Unless otherwise provided by law, the governing body of each city or town shall be elected on the second Tuesday in June and take office on the first day of the following September. Unless otherwise provided by law, the governing body of each county shall be elected on the Tuesday after the first Monday in November and take office on the first day of the following January.

Source: Derived from present sections 111, 112, 121, and 122.

Comment: Proposed section 5 makes uniform for counties, cities, and towns provisions formerly contained in sections 111 and 121. The restrictions on the size of county magisterial districts are obsolete after the recent one-man, one-vote decisions of the United States Supreme Court.[44]

Apportionment. The present provisions for apportionment, now contained in section 121, are used in the proposed section as the basis for the

43. See present section 117.
44. Avery v. Midland County, 390 U.S. 474 (1968).

apportionment for both cities and counties, when members of the governing body are elected by district. There is an additional requirement, conforming with the apportionment provisions for General Assembly districts,[45] that local election districts be composed of contiguous and compact territory.[46] These provisions do not apply to or forbid the possible requirement in at-large elections that members reside in a particular district.[47] Such a provision has been adopted in Virginia Beach and has been approved by the United States Supreme Court.[48] Nor does this provision require single-member districts. Multi-member districts are permitted so long as representation is proportional to population.[49]

The proposed section extends to counties the present provision in section 121 on cities and authorizes the governing body of a city or county to apportion and reapportion itself. Apportionment or reapportionment is essentially a legislative decision and should be performed initially by a legislative body, rather than a judicial body. Under the present statute, courts now reapportion the representation in governing bodies of counties.[50]

Suits. The section continues the section 121 requirement for judicial enforcement of the section. The word "suit" is used, rather than the present term "mandamus," because mandamus is an extraordinary writ. "Suit" is more comprehensive. The word "appeal" was not used because the broad right to court remedy contemplated here is, in fact, not an appeal; an initial hearing is available to any citizen in the jurisdiction.

Election dates. The last paragraph retains the election dates set forth in present sections 112 and 122, which obtain unless changed by the General Assembly. In the opinion of the Commission the proposed section states existing law. This is true because amendments to the local government articles passed subsequent to sections 112 and 122 permit optional forms of government or "organization and government" without regard to sections 112 and 122. The Attorney General has ruled that election dates are not implicit in "organization and government," but that apportionment of election districts is.[51] The Supreme Court of Appeals has never decided

45. See section 6 of the proposed Franchise article, *supra*, p. 117.

46 The requirement of present section 111 that no magisterial district shall contain less than thirty square miles, a requirement widely recognized as obsolete, has not been retained in the proposed revision.

47. Such plans are expressly permitted by section 5 of the proposed Franchise article, *supra*, p. 115-16.

48. Dusch v. Davis, 387 U.S. 112 (1967).

49. See commentary on section 6 of the proposed Franchise article, *supra*, p. 118-119.

50. Va. Code Ann. § 15.1-572 (supp. 1968).

51. *Opinions of the Attorney General, 1961-62*, p. 48; *Opinions of the Attorney General, 1958-59*, p. 14.

the issue. The Commission recommends that the General Assembly have power, by general law, to change the election dates, if it so desires.

Section 6. Multiple offices.

Unless two or more units exercise functions jointly as authorized in section 3, no person shall at the same time hold more than one office mentioned in this Article. No member of a governing body shall be eligible, during his tenure of office or for one year thereafter, to hold any office filled by the governing body by election or appointment, except that a member of a governing body may be named a member of such other boards, commissions, and bodies as may be permitted by general law.

Source: Derived from present sections 113 and 121.

Comment: The Commission recommends that the two existing provisions on multiple offices be retained as section 6 and be applied uniformly to cities and counties. The first sentence of the proposed section forbids a person to hold more than one office mentioned in the article. This sentence is taken from the present section 113, which now applies only to counties. The second sentence is taken from the second paragraph of section 121, which now applies only to cities. The second sentence prevents a person from being named to any other office appointed or elected by the governing body unless permitted by general law. Although the proviso is not stated in section 121, the General Assembly may authorize appointment of members to other boards under the amendment permitting optional plans of government.[52] This power has been used extensively in the appointment of members of governing bodies to planning commissions. The General Assembly has also adopted a statute authorizing the appointment of members of governing bodies to regional governments.[53]

The second sentence in present section 113, relating to bonds of officers, is eliminated as more properly governed by statute.

Section 7. Procedures.

No ordinance or resolution appropriating money exceeding the sum of $500, imposing taxes, or authorizing the borrowing of money shall be passed except by a recorded affirmative vote of a majority of all members elected to the governing body. In case of the veto of such an ordinance or resolution, where the power of veto exists, it shall require for passage thereafter a recorded affirmative vote of two-thirds of all members elected to the governing body.

52. Section 117(b), (c), (d).
53. Va. Code Ann. § 15.1-1427(b) (repl. vol. 1964, supp. 1968).

On the final vote on any ordinance or resolution, the name of each member voting and how he voted shall be recorded.

Source: Present section 123.

Comment: The first sentence of this section, setting forth procedural requirements for certain kinds of ordinances, derives from the next to the last sentence in section 123. The appropriation provision is raised from $100 to $500. Where section 123 applies only to cities, this provision will apply to cities and counties. The Commission recommends the retention of these procedural requirements as a basic safeguard to the fiscal integrity of local government.

The provisions of section 123 detailing the veto power of a mayor were made obsolete by prior constitutional amendments permitting optional forms of government without regard to section 123. These provisions, therefore, have been eliminated.

The second paragraph is new. It requires the recording of names of members of a governing body and how they voted on any final action taken by the governing body. It is similar to such a provision in section 10 of the proposed Legislative article, applicable to the General Assembly.

Section 8. Consent to use public property.

No street railway, gas, water, steam or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone, or bridge company, nor any corporation, association, person, or partnership engaged in these or like enterprises shall be permitted to use the streets, alleys, or public grounds of a city or town without the previous consent of the corporate authorities of such city or town.

Source: Present section 124.

Comment: No change.

Use of city streets and other public property. The section was first passed in 1902 to prevent the General Assembly from permitting by special act a utility company to locate in the streets of a city or town without its permission.[54] The Commission feels this section has worked well to protect a city's or town's interest in and control of its public places, and does not recommend that it be changed.

Moreover, the Commission does not recommend that this section be expanded to include counties. The section deals above all with streets. In all counties save two the State Highway Department, not the county, has control over the streets in the county. Therefore, the section has little

54. *1901-02 Convention Debates,* II, 1961-65.

relevance to counties. Public grounds of a county may be protected by legislation, if necessary.

Franchises and annexation. The Commission considered a request to amend the section to resolve a problem raised by some utility companies.[55] The following case is posed for purposes of illustration. A private utility has a franchise from the State Corporation Commission to operate in a county, and the territory in which it operates is annexed by a city or town. The annexing city or town argues that, because of this section, the utility must remove its lines from the streets, make satisfactory arrangements with the city or town to obtain a franchise, or sell its facilities. The utility argues this choice constitutes a taking of its property without just compensation. The Commission believes that, assuming *arguendo* the merits of the utility's position, the city or town still has an interest in exercising control over all the streets within its boundaries. The Commission believes that any argument that under the hypothesized facts there would be a taking of property for which compensation must be paid is best resolved by the courts. Whether any form of government regulation gives rise to a "taking" in the constitutional sense is a judicial question which courts are accustomed to handling. Therefore the Commission proposes no language to deal specifically with the problem.

Section 9. Sale of property and granting of franchises by cities and towns.

No rights of a city or town in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works shall be sold except by an ordinance or resolution passed by a recorded affirmative vote of three-fourths of all members elected to the governing body.

No franchise, lease, or right of any kind to use any such public property or any other public property or easement of any description in a manner not permitted to the general public shall be granted for a longer period than thirty years except for air rights together with easements for columns of support, which may be granted for a period not exceeding sixty years. Before granting any such franchise or privilege for a term of years, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor. Such grant, and any contract in pursuance thereof, may provide that upon the termination of the grant, the plant as well as the property, if any, of the grantee in the streets, avenues, and other public places shall thereupon, without compensation to the grantee, or upon the payment of a fair valuation therefor,

55. See Public Views Document 164.

become the property of the said city or town; but the grantee shall be entitled to no payment by reason of the value of the franchise. Any such plant or property acquired by a city or town may be sold or leased or, unless prohibited by general law, maintained, controlled, and operated by such city or town. Every such grant shall specify the mode of determining any valuation therein provided for and shall make adequate provisions by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant.

Source: Present section 125.

Comment: Proposed section 9 continues section 125 with only one important change, dealing with air rights (described in the next paragraph). The last sentence of the first paragraph of section 125, requiring a three-fourths vote to override a mayor's veto of a council's action to sell public property, has been eliminated, since it adds no constitutional safeguard to the requirement (retained in proposed section 9) that any ordinance or resolution for such sale be originally passed by a vote of three-fourths of the members of the governing body.

Air rights. The proposal permits localities to grant franchises for air rights for periods extending to sixty years.[56] The present franchise limitation has prevented some cities from obtaining beneficial leases of air spaces over its streets or other public places. The cities argue that such lease of the air rights, as, for instance, over a downtown street, does not interfere with the public's use of the street for transportation purposes. On the other hand major construction of office buildings, high rise apartments, parking garages, or pedestrian malls could provide, with both lease income and a leasehold tax, a good source of revenue for a city. Investigation reveals that this type of construction has benefited cities in other states. It has possible substantive benefit where a new highway in an urban area would dislocate residents. In such case the authority contemplated by this amendment would allow private enterprise to cooperate with a city to replace housing in the same neighborhood for those who would otherwise be dislocated. The thirty-year restriction now found in section 125 hinders the financing of this type of construction. This follows because this type of construction is financed with a 20-30 year loan, and financial institutions require lease terms to approach twice the loan term when the leasehold and leasehold improvements are used as security.

The 1966 General Assembly, without opposition, proposed such an amendment to the Constitution.[57] The same amendment was introduced

56. See Public Views Documents 38, 90.
57. Acts of Assembly (1966), chap. 727.

at the 1968 session,[58] but was later referred to this Commission. The Commission recommends the change for the reasons indicated above in the belief that the public's interest in open air space will not be seriously impaired.

The purpose of the amendment is to authorize the lease of air space for major construction. This does not necessarily mean a building; it may mean pedestrian walkways or malls. As in other affairs, the locality will ultimately have to exercise its judgment in dealing with the public's property. But the amendment is not intended to authorize a franchise term of sixty years for utility lines and poles as "air space with easements for columns of support" or for overhangs for abutting property.

Elimination of language. The Commission recommends certain other changes in the language of the section. It has attempted to eliminate excess verbiage and to use language that conforms with other sections. No change of substance is effected. The last sentence, relating to additional restrictions imposed by law or charter, has been dropped, also without making any substantive change. As explained in the introductory comment, legislation or charters may contain restrictions in addition to any of the minimal limitations on powers imposed by this article.

Counties. The Commission considered extending section 125 to counties but decided not to make this recommendation. Traditionally most counties in Virginia have not had the franchise power and do not presently have such power. If the General Assembly allows counties to exercise the power of franchise, it can provide limitations it deems suitable.

Short-term leases. The Commission considered, but does not recommend, one other proposal, which would amend the section to authorize a municipality to lease public property for periods of less than five years, without public notice.[59] It was argued that present requirements for newspaper notice over an extended period are so burdensome and expensive that short-term franchises are not granted. After studying the proposal, the Commission concluded that the fault, if it exists, lies in the statute imposing the restrictions, not in the Constitution, which imposes none. The section only requires that notice be given publicly. The statute requires that notice be given for extended periods of time.[60] The General Assembly could, if it sees fit, amend the statute to lessen the advertising requirements for short term franchises. The Commission does not recommend that the Constitution be amended to remove altogether a requirement of public notice.

58. S.J. Res. 35.
59. See Public Views Documents 38, 90.
60. Va. Code Ann. §§ 15.1-308 et seq. (repl. vol. 1964).

Section 10. Debt.

No county, city, or town shall issue any bonds or other interest-bearing obligations which, including existing indebtedness, shall at any time exceed eighteen per centum of the assessed valuation of real estate in the county, city, or town subject to taxation, as shown by the last preceding assessment for taxes. In determining the limitation for a county there shall be included, unless hereafter excluded, indebtedness of any town or district therein empowered to levy taxes on real estate. In determining the limitation for a county, city, or town, there shall not be included the following classes of indebtedness.

(a) Certificates of indebtedness, revenue bonds, or other obligations issued in anticipation of the collection of the revenues of such county, city, town, or district for the then current year, provided that such certificates, bonds, or other obligations mature within one year from the date of their issue, be not past due, and do not exceed the revenue for such year.

(b) Bonds pledging the full faith and credit of such county, city, town, or district authorized by an ordinance enacted in accordance with section 7 and approved by the affirmative vote of the qualified voters of the county, city, town, or district voting upon the question of their issuance, for a supply of water or other specific undertaking from which the county, city, town, or district may derive a revenue; but from and after a period to be determined by the governing body, not exceeding five years from the date of such election, whenever and for so long as such undertaking fails to produce sufficient revenue to pay for costs of operation and administration (including interest on bonds issued therefor), and the cost of insurance against loss by injury to persons or property. and an amount to be covered into a sinking fund sufficient to pay the bonds at or before maturity, all outstanding bonds issued on account of such undertaking shall be included in determining such limitation.

(c) Bonds of a county, city, town, or district if the principal and interest thereon are payable exclusively from the revenues and receipts of a water system or other specific undertaking from which the county, city, town, or district may derive a revenue.

No debt shall be contracted by or on behalf of any district of any county or by or on behalf of any regional government or district thereof except by authority conferred by the General Assembly by general law. The General Assembly shall not authorize any such debt, except the classes described in subsections (a) and (c), unless in the general law authorizing the same, provision be made for submission to the qualified voters of the district or region for approval or rejection, by a majority vote of the qualified voters voting in an election, on the question of con-

tracting such debt. Such approval shall be a prerequisite to contracting such debt.

Except for the class of obligations described in subsection (a), no county, city, town, regional government, or district therein shall issue any bonds or other interest-bearing obligations unless (1) the bonds are issued for capital projects or incident to transfers of jurisdiction or functions between units of general government, (2) a public hearing or election is held on the question of the issuance of the bonds, and (3) the proceedings authorizing the issuance of the bonds provide for payments into a sinking fund sufficient to pay the bonds at or before maturity.

Source: Derived from sections 115 and 127.

Comment: The Commission carefully examined the operation of the existing provisions on local debt. It consulted many financial experts and studied local revenues and their sources. The Commission recommends that (1) the debt limits for cities and towns remain the same, with one change to permit the issuance of so-called "pure revenue bonds" without an election, (2) counties be given the same power to borrow as now possessed by cities and towns, (3) certain fiscal safeguards be added to all local borrowing (a) to forbid deficit financing, (b) to require a public hearing on all bond issues where no election is held, and (c) to require a sinking fund on all bond issues. These proposals are discussed in detail below.

Cities and towns. As a result of its study of local revenue, the Commission found that each locality receives a large part of its income from the state or federal government. Of the taxes available to the locality, income from license taxes and sales taxes have increased. The Commission found, however, that the primary source of revenue available to the local government and within its exclusive control remains the tax on real estate.[61] Other revenue, such as water and sewer revenue, is often specially pledged and taken out of the computation of the debt limit by operation of present section 127(b). In light of all these factors, the Commission concluded that considerations governing local debt limitations were different from those at the state level and that the assessed value of local real estate, rather than some other base, such as gross or net revenues, continues to be the most valid indicator of local wealth. It therefore recommends that

61. Figures compiled by the Commission based on *U.S. Census of Governments* (1962) and Auditor of Public Accounts of Virginia, *Comparative Cost of County Government* (1966). One may obtain an idea of the mixture of local, state, and federal contributions in a broad range of programs in U.S. Senate Government Operations Committee, *Catalog of Federal Aids to State and Local Governments*, 88th Cong., 2nd Sess. (Washington, D.C., 1964); Supp. 89th Cong., 1st Sess. (Washington, D.C., 1965); and Second Supp., 89th Cong., 2nd Sess. (Washington, D.C., 1966).

no change be made in the base for computation of the debt limit as set forth in present section 127.

The Commission feels there should be a limit on the power to borrow without a referendum. The Commission studied the present limit of 18% of assessed value of real estate which has been in section 127 since the section was adopted in 1902. It found that, when the limitation is applied to current assessed values, most cities have substantial additional capacity to borrow.[62] The Commission also noted that since each city has the power to raise assessed values and lower tax rates, it may raise its debt limit and borrowing capacity without changing the effective tax burden on the real property owner. The Commission studied the debt limit provisions in all other states and found that in comparison with other states the 18% limit is realistic.[63] Financial experts see the 18% limit as adequate to provide both a safe limit and sufficient capacity. The Commission recommends retaining the 18% limit.

Present section 127(b) excludes from the limitation any bonds issued to finance a "revenue producing undertaking" when the proposal has been approved by the voters. This section has worked well for self-supporting projects. The Commission does not recommend a change.

The Commission recommends one change in the election requirement of section 127 for cities and towns. This change affects the issuance of so-called "pure revenue bonds," i.e., those obligations guaranteed solely by the revenues of an undertaking financed by the issuance of the bonds. This type of bond is, in effect, being issued now by cities and towns through the creation of local authorities. Although authorities have some benefits, the creation of these local authorities promotes fragmentation of governmental control because the authority has its own board of directors. In addition, other units or agencies of government, such as the State Highway Department, state colleges, and probably counties and sanitary districts, may now issue this type of obligation without an election.[64] For all of these reasons the Commission recommends that authority to issue such revenue bonds without an election be extended to cities and towns.

Counties. The Commission recommends that the power which cities and towns now have to borrow money be extended to counties. Counties and cities now perform many of the same functions. An urban or suburban

62. See Table 1, p. 249 *infra.*

63. U.S. House of Representatives Committee on Government Operations, *Unshackling Local Government,* H. Rep. 1270, 90th Cong., 2nd Sess. (Washington, D.C., 1968), Appendix 5.

64. Of course, such units and agencies issue bonds only if the General Assembly authorizes them to do so. For cases, see Almond v. Gilmer, 188 Va. 822, 51 S.E.2d 272 (1949); Farquhar v. Board of Supervisors of Fairfax County, 196 Va. 54, 82 S.E.2d 577 (1955); Button v. Day, 204 Va. 270, 130 S.E.2d 459 (1963).

county has substantially the same demands for service and the same need for borrowing that any city has. Even less developed counties have a much greater demand for services and need for borrowing than counties had many years ago. As new problems arise, as the need for schools and other county services increase, and as more counties become urban, or suburban, and provide city services, there is no reason to distinguish between counties and cities as to their right to issue bonds.

Present section 115 requires an election before the county may issue any bonds, unless the bonds are sold to the State Literary Fund or the Virginia Supplemental Retirement System. The Commission found, however, that in over half of the counties over 90% of the obligations have been issued to the State Literary Fund or the Virginia Supplemental Retirement System.[65] Thus, for those counties, the exception is the rule, and no election is held prior to the issuance of bonds. Moreover, these counties may be paying a higher rate of interest to the Virginia Supplemental Retirement System than they otherwise would have to pay. This follows because at the time the Retirement System purchases bonds from a county it plans to resell the bonds on the public market within several months. In summary, counties now issue bonds without an election, but often at a rate of interest higher than they would otherwise pay.

The counties which do not borrow from the Supplemental Retirement System are often those with a larger population and a greater need for borrowing than is offered by the Retirement Fund. These are the "urban" counties with expanding populations which have the same recurring need for borrowing as cities have. For instance, Fairfax County has a larger population than the City of Richmond, and has substantially the same or even a greater annual need for borrowing money than Richmond. Yet, unlike Richmond, Fairfax must resort to an election procedure each time it needs to borrow money. Furthermore, Richmond's credit rating has not suffered because an election is not required. It maintains the highest available credit rating (AAA).

The Commission's proposal would empower counties to issue bonds as cities now do, that is, up to 18% of assessed valuation without an election, and above that amount, if the voters approve bonds for a "revenue producing undertaking." In the opinion of the Commission, this proposal would not invite an excessive degree of county borrowing. The Commission made a study of the existing indebtedness of each county and city in the Commonwealth. That study showed that existing indebtedness of counties, as a percentage of the value of real estate in the locality, is not too much less than the percentage which cities have issued without an election require-

65. See Tables, p. 250 *infra*.

ment.[66] Based on this history, the inference is justified that bond issues by counties would not increase substantially, but county governments would have flexibility to meet the needs of their people. The computation of indebtedness under the new proposal would include bonds issued to the Literary Fund and the Supplemental Retirement System, and all other indebtedness of the county unless excluded by the section.

There would remain two differences between county debt and city debt. First, county indebtedness, as computed under the new section, would include bonds of towns and sanitary districts within the county. These bonds are to be included in computing the county debt limitations since all three —the county, the town, and the sanitary district—draw on the same tax base: real estate in the county. The Commission's study showed these inclusions would have minimal effect on the county authorization. Without such a restriction, there would be potential evasion of the county limit by the creation of additional towns and sanitary districts, each with its own borrowing authority. Bonds of towns and sanitary districts would not be included in computing the county indebtedness if they were of a class excluded under clauses (a), (b), or (c).

The second distinction applies to sanitary districts, the special tax districts in counties. Section 115 now requires an election in each sanitary district before sanitary district bonds may be issued. Since the governing board of the sanitary district is the board of supervisors of the county, many of whom will live outside the sanitary district, the Commission recommends that the election should be retained to protect those living in the district against the issuance of district bonds, without their consent.

Procedural safeguards. The Commission recommends three safeguards to insure fiscal integrity when bonds are issued. These safeguards are to be applied to whatever unit of government issues bonds. Firstly, bonds would be issued only for capital projects or incident to transfer of jurisdiction or functions between political subdivisions. Bonds should not be issued to meet current expenses. The Commission recognized that all the costs incident to transfer of jurisdiction or functions between political subdivisions may not be strictly "capital projects." For instance, under the current annexation law the annexing city or town must compensate the county for "loss of revenue." Although this cost could not technically be called capital, it is not a "current expense," and a local government could not be expected to pay such expenses out of its current budget.

Secondly, the Commission recommends that a public hearing be required on all proposals to issue bonds where an election is not held. Such public notice would be an obvious benefit to the public and it should not interfere with normal planning of the governmental unit.

66. See Table 2, p. 250 *infra*.

Finally, the Commission also recommends that a sinking fund sufficient to pay bonds at or before maturity be required on all bond issues. Flexibility in setting up the sinking fund is left to the governmental unit or to the General Assembly, but provision should be made each year looking toward the ultimate repayment of the bonds outstanding.

Regional governments. There is no existing constitutional provision to restrict the issuance of bonds by regional governments Regional governments probably will take on a different character in different areas of the Commonwealth. There will be a need for the issuance of bonds, but one regional government which takes over a large number of functions from local governments will need a different bond capacity from a regional government which takes on fewer or less expensive functions. In light of its developing character as a unit of government, it would be unrealistic to put an absolute limit on the debt capacity of all regional governments. Whatever limit one might choose would have to be low, because there would be an automatic tendency to combine this limit with the 18% limit on counties and cities. But a low limit would not be sufficient for a regional government which has assumed a large number of functions. In addition a limit on issues of all local government would allow a county or city, by issuing bonds up to its limit, to reduce significantly the needed capacity of a regional government.

For these reasons, the Commission recommends there be no percentage limitation on borrowing by regional governments, but recommends instead that each proposal be submitted to the voters in the region for their approval. This procedure has historical precedent, because this is the check which has been used for county borrowing during the last forty years when counties needed the flexibility now thought desirable for regional governments. Such a requirement will operate as an effective check on any ill-advised action by the governing board of the regional government. The Commission does not recommend that each smaller unit within the region approve the bonds because such a requirement might hinder the ability of the regional government to function.

Further safeguards, in addition to popular referendum, can, of course, be imposed by the General Assembly. As regional governments come into being, experience may cause the General Assembly to spell out additional limitations or safeguards beyond those in the Constitution. The Assembly might, for example, decide that there should be a statutory ceiling on regional debt, stated in terms of percentages of real estate values or some other base. But since regional governments do not presently exist, the Commission feels it would be premature to predict in detail in the Constitution what safeguards may be necessary.

Section 11. Commission on Local Government.

The General Assembly shall create a Commission on Local Government with appropriate powers and duties to encourage and promote the development of governmental subdivisions of the Commonwealth.

Source: New section.

Comment: One of the most important recommendations of the Metropolitan Areas Study Commission dealt with the creation of a State Commission on Local Government. As visualized, the State Commission would be empowered by the General Assembly to handle aspects of state coordination of local government affairs, such as boundary changes, formation of governmental units, approval of intergovernmental contracts, and transfers of local government powers.[67]

The Commission on Constitutional Revision studied the State Commission concept, as recommended. It also studied methods being used or recommended in other states to handle similar problems of intergovernmental relations and solutions of regional problems.[68] The Commission recommends the creation of a State Commission on Local Government, empowered to handle these problems, but subject to the control of the General Assembly, not independent of it. The purpose of such a Commission would be to carry out the program of the General Assembly, which would retain the right to exert whatever control it deems appropriate, especially since this is a new and emerging concept.

The Commission thinks that such matters of boundary changes, formation of governmental units, approval of intergovernmental contracts, and transfers of local government powers do not involve only the solution of local problems, but deal as well with the organization and reorganization of state subdivisions. The creation of such a State Commission does not defeat "local control over local issues," because the issues involved are not purely local.

The Commission studied whether it was necessary to include such an agency in the Constitution. After the Metropolitan Areas Study Commission had made its recommendation, it was argued that a state agency with such "quasi-legislative" and "quasi-judicial" power would violate the separation of powers provisions in the Constitution. After its study the Commission is of the opinion that the creation of such an agency by the General Assembly, without constitutional sanction, would not violate the

67. *Metropolitan Areas Study Commission Report* (Richmond, 1967).

68. See Alaska Const., Art. X, § 14; Pa. Const., Art. IX, § 8. See generally U.S. House of Representatives Committee on Government Operations, *Unshackling Local Government*, H. Rep. 1270, 90th Cong., 2nd Sess. (Washington, D.C., 1968), Appendix I, for summary of recent action in this area.

separation of powers. In order to remove any doubt, however, the Commission recommends that the Constitution provide for a Commission on Local Government.

More important, this explicit provision recognizes the vital importance of local government to the future welfare of the Commonwealth and its people. Our form of government rests on a premise that governmental decisions and actions ought to be taken as close to the people as possible. Atrophy of local initiative would work an unhealthy imbalance in the American system in which national, state, and local governments all play an important part. Hence the Commission believes that the Constitution itself ought to give institutional recognition and encouragement to efforts to keep Virginia's local government viable and able to meet the demands of the future.

While the proposed section places a duty on the General Assembly to create a Commission on Local Government it does not specify what the powers or duties of that body shall be. The section leaves to the General Assembly to decide, with experience as a guide, what the functions of the Commission on Local Government ought to be. At the outset, the body would likely devote much of its efforts to study of local and regional problems, both those of metropolitan areas and those of rural areas. The Commission on Constitutional Revision is by no means limiting the Commission on Local Government's focus to metropolitan problems. The study of the needs of rural areas is important to the well-being of the Commonwealth's people, whether they live in cities or in the countryside, and the proposed Commission would presumably give attention to the health of local government in all parts of the Commonwealth, urban and rural.

TABLES

Tables 1 and 2 show the existing local debt and debt limits for Virginia cities and counties as compiled by the Commission.

Table 1 is for cities in 1966. The first two columns show ordinary debt plus "127(b)" debt which is excluded from the debt limit. The middle columns show the assessed valuation of real estate in each city, the current debt limit based on that assessed valuation, and the ratio of city debt (excluding 127(b) debt) to the present *debt limit*. Thus the percentage represents the part of the city's capacity to borrow which it has used up, based on current assessments. The totals for assessed valuation are somewhat conservative because the public service corporation figures are based on valuation only of land and buildings owned by these corporations. Other property may be included in the definition of "real estate." The columns on the right show the true value of real estate and the debt limit based on such true value, if property were to be assessed at 100%. The assess-

ment ratios were provided by the State Department of Taxation. The last column shows the ratio of current debt to the hypothetical *debt limit.* Thus, the percentage represents the part of the city's capacity to borrow which it has used up, if it assessed its property at 100%.

Table 2 is for counties in 1966. The first eight columns show county debt, including sanitary district debt. The totals are somewhat high because some of the sanitary district debt, and possibly some county debt, would be excluded since issued for "revenue-producing undertakings." The ninth column shows the percentage of outstanding county debt which has been issued without an election. The middle columns show the current assessed valuation of real estate in each county, a debt limit based on 18% of that valuation, and the ratio of current county debt to that *debt limit.* Thus, the percentage represents the part of the borrowing capacity which the county would have used up if an 18% limit were imposed on current assessed valuations. The columns on the right show the true value of real estate in each county, if property were assessed at 100%, the hypothetical debt limit of 18% based on these true values, and the ratio of current debt to that hypothetical *debt limit.* Thus the percentage represents the part of the borrowing capacity the county would have used up if it assessed its property at 100%. A study of town debt, excluding 127(b) debt showed the inclusion of such debt would not significantly affect the county debt totals.

Table 3 shows the assessed value of real estate in towns over 3,500 population as a percentage of the assessed value of real estate in their respective counties.

Table 4 shows the 1966 population of towns over 3,500 population and their percentage of their county population.

Table 5 shows the distribution of counties by population.

TABLE 1

	Cities	Debt	127b	Total Assessed Real Estate	Current Debt Limit 18%	Ratio of Debt to Current Debt Limit		Total True Value	Hypoth. Debt Limit	Ratio of Debt to Hypoth Debt Limit	
1.	Alexandria	30,721,223		342,908,048	61,723,448.64	50%	1.	796,253,368	143,325,606	21%	1.
2.	Bristol	75,000	2,631,000	22,223,114	4,000,160.52	2%	2.	64,997,648	11,699,577	.6%	2.
3.	Buena Vista	515,450	430,000	8,648,764	1,556,777.52	33%	3.	23,470,695	4,224,725	12%	3.
4.	Charlottesville	5,003,000	3,735,000	60,842,644	10,951,675.92	46%	4.	230,266,010	41,447,882	12%	4.
5.	Chesapeake	12,494,082	4,747,000	120,846,884	21,752,439.12	57%	5.	404,745,348	72,854,163	17%	5.
6.	Clifton Forge	877,000	402,000	9,726,939	1,700,849.02	52%	6.	25,859,688	4,654,744	19%	6.
7.	Colonial Heights	4,463,000		59,849,981	10,772,996.58	41%	7.	63,662,590	11,459,266	39%	7.
8.	Covington	1,460,000	1,090,000	14,589,159	2,626,048.62	56%	8.	54,866,360	9,875,945	15%	8.
9.	Danville	12,262,000	5,129,000	133,408,317	24,013,497.06	51%	9.	214,155,893	38,548,061	32%	9.
10.	Fairfax	3,588,000	5,300,000	72,569,915	13,062,584.70	27%	10.	165,777,558	29,839,960	12%	10.
11.	Falls Church	3,405,413	2,126,083	43,870,577	7,896,703.86	43%	11.	101,806,685	18,325,203	19%	11.
12.	Franklin	2,159,960	245,000	16,826,133	3,028,703.94	71%	12.	35,063,083	6,311,355	34%	12.
13.	Fredericksburg	960,676	1,259,409	33,143,133	5,965,781.58	16%	13.	82,456,683	14,842,203	6%	13.
14.	Galax	90,000		4,674,909	841,483.62	11%	14.	38,383,948	6,909,111	1%	14.
15.	Hampton	25,632,159		167,480,892	30,146,560.56	85%	15.	471,383,055	84,848,950	30%	15.
16.	Harrisonburg	1,600,000	1,605,000	31,421,443	5,655,859.74	28%	16.	89,888,208	16,179,877	10%	16.
17.	Hopewell	1,470,425	750,000	40,419,957	7,275,592.26	20%	17.	93,230,165	16,781,430	9%	17.
18.	Lexington	460,382	16,000	6,425,965	1,156,673.70	40%	18.	30,400,763	5,472,137	8%	18.
19.	Lynchburg	12,777,000	6,533,000	120,816,610	21,746,989.80	59%	19.	258,147,995	46,466,639	27%	19.
20.	Martinsville	1,856,300	1,425,000	52,117,488	9,381,147.84	20%	20.	113,424,533	20,416,416	9%	20.
21.	Newport News	31,764,000	12,233,000	220,798,006	39,743,741.08	80%	21.	645,435,715	116,178,429	27%	21.
22.	Norfolk	63,507,617	14,020,000	480,341,833	86,461,709.94	73%	22.	1,175,556,318	211,600,137	30%	22.
23.	Norton	100,000	523,900	3,470,579	624,704.22	16%	23.	14,176,248	2,551,725	4%	23.
24.	Petersburg	6,472,000	1,125,000	64,175,361	11,551,564.98	56%	24.	150,196,928	27,035,447	24%	24.
25.	Portsmouth	25,273,917	8,320,000	214,177,526	38,552,956.48	66%	25.	326,160,178	58,708,832	43%	25.
26.	Radford	851,175	853,000	13,058,477	2,350,545.86	36%	26.	39,262,543	7,067,258	12%	26.
27.	Richmond	69,109,851	8,263,149	963,395,974	171,411,275.32	40%	27.	1,137,492,960	204,748,733	38%	27.
28.	Roanoke	11,210,675	5,924,000	187,904,124	33,812,742.32	33%	28.	481,241,475	86,623,466	13%	28.
29.	South Boston	499,345	670,000	7,256,406	1,306,153.08	38%	29.	31,438,465	5,658,924	9%	29.
30.	Staunton	4,343,000	260,000	35,696,846	6,425,432.28	68%	30.	107,822,440	19,408,039	22%	30.
31.	Suffolk	1,629,000	425,000	26,233,619	4,722,057.42	34%	31.	64,800,548	11,664,099	14%	31.
32.	Va. Beach	25,373,800		221,330,453	39,839,481.54	64%	32.	693,074,008	124,753,321	20%	32.
33.	Waynesboro	3,559,900	630,000	24,251,939	4,365,349.02	82%	33.	105,943,823	19,069,888	19%	33.
34.	Williamsburg	1,363,886	1,650,000	30,542,683	5,497,682.94	25%	34.	78,088,933	14,056,008	10%	34.
35.	Winchester	1,226,550	1,815,000	42,885,171	7,719,330.78	16%	35.	91,772,553	16,519,060	7%	35.

No.	County	DEBT PURPOSES: General Government Bonds	General Government Tem orar	Roa Bonds	Regular	School VSRS	Literary	Temporary	Total	% Debt w/o Election	No.	Total Assessed Real Esta e	Current Debt Limit	Ratio of Debt to Limit	Total True Value	Hypo. Debt Limit	Ratio Debt to Hypo. Debt	Debt to
1	Accomack				0	0	1,235,420		1,235,420	100%	1	15,369,833	2,766,519	45%	110,250,458	19,845,082	6%	1.
2	Albemarle	75,000			0	2,690,000	141,175		4,006,175	71?	2	27,794,544	5,003,017	80%	199,768,835	35,958,390	11%	2.
3	Allegheny	835,000			0	760,000	641,700		2,236,700	63%	3	10,808,779	1,945,580	11%	57,418,248	10,335,285	22%	3.
4	Amelia	225,000	50,000		0	0	135,000		440,000	31%	4	813,798	146,483	30%	29,892,345	5,380,622	8%	4.
5	Amherst	760,000			0	1,572,000	538,100		2,870,100	74%	5	15,030,488	2,705,487	11%	77,015,620	13,862,812	21%	5.
6	Appomattox				0	0	654,050		654,050	100%	6	7,141,202	1,285,416	51%	33,536,425	6,036,557	11%	6.
7	Arlington	24,655,000		9,260,000	21,782,000	0	92,975		55,789,975	17%	7	538,331,249	96,903,224	58%	1,590,312,173	286,256,191	19%	7.
8	Augusta	945,000			2,405,000	0	524,800		3,874,800	14%	8	50,310,961	9,055,972	43%	194,100,928	34,938,167	11%	8.
9	Bath				75,000	0	63,600		138,600	47%	9	7,690,871	1,384,356	10%	32,646,603	5,876,389	2%	9.
10	Bedford				0	3,008,000	880,853		3,888,853	100%	10	28,707,623	5,167,372	75%	151,376,520	27,247,774	14%	10.
11	Bland		5,500		74,000	0	355,800		435,700	82%	11	1,482,132	266,783	16%	14,790,343	2,662,262	16%	11.
12	Botetourt				1,700,000	0	515,485		2,215,485	23%	12	14,569,993	2,622,598	84%	79,855,408	14,373,973	15%	12.
13	Brunswick				0	974,000	661,400		1,635,400	100%	13	14,273,837	2,569,290	64%	74,349,925	13,382,987	12%	13.
14	Buchanan		60,000		0	800,000	1,315,900		2,175,900	97%	14	18,622,475	3,352,045	65%	146,405,588	26,353,006	8%	14.
15	Buckingham				0	0	1,077,750		1,077,750	100%	15	9,841,536	1,771,476	61%	42,599,168	7,667,850	14%	15.
16	Campbell				2,620,000	385,000	1,343,650		4,348,650	40%	16	36,564,482	6,581,606	66%	166,808,055	30,025,450	14%	16.
17	Caroline				0	300,000	1,068,235		1,368,235	100%	17	10,866,636	9,235,995	15%	58,002,445	10,440,440	13%	17.
18	Carroll				0	750,000	780,566		1,530,566	100%	18	7,741,699	1,393,505	11%	70,190,885	12,634,359	12%	18.
19	Charles City				0	0	682,350		682,350	100%	19	4,057,114	730,280	95%	21,812,493	3,926,249	17%	19.
20	Charlotte				300,000	0	275,680		575,680	48%	20	7,025,719	1,264,629	46%	52,559,298	9,460,674	6%	20.
21	Chesterfield	12,495,000			27,940,000	0	163,600		40,598,600	14%	21	180,298,528	14,453,735	28%	557,291,245	100,312,424	4%	21.
22	Clarke		50,000		0	0	500,330		550,330	100%	22	12,401,917	2,232,345	25%	61,024,480	10,984,406	5%	22.
23	Craig				0	0	119,700		119,700	100%	23	1,950,167	351,030	34%	10,735,243	1,932,344	6%	23.
24	Culpeper				0	0	430,450	100,000	530,450	81%	24	18,070,436	3,252,678	16%	95,796,828	17,243,429	3%	24.
25	Cumberland				0	0	696,633		696,633	100%	25	5,213,572	938,442	74%	26,460,055	4,762,810	15%	25.
26	Dickenson				155,000	0	455,800		610,800	75%	26	5,858,545	1,054,538	58%	54,231,988	9,761,758	6%	26.
27	Dinwiddie				1,425,000	0	677,644		2,102,644	32%	27	14,498,816	2,609,786	81%	70,385,478	12,669,386	17%	27.
28	Essex				0	250,000	90,000		340,000	100%	28	11,959,250	2,152,665	16%	40,806,275	7,345,130	5%	28.
29	Fairfax	44,150,000	4,000,000		83,925,000	0	958,580		133,033,580	7%	29	963,585,552	173,445,399	76%	2,704,653,613	486,837,650	27%	29.
30	Fauquier				1,990,000	750,000	724,500		3,464,500	43%	30	30,029,463	3,245,303	11%	231,486,458	41,667,562	8%	30.
31	Floyd				0	350,000	535,400		885,400	100%	31	6,564,893	1,181,680	75%	32,610,378	5,869,868	15%	31.
32	Fluvanna				180,000	0	142,900		322,900	44%	32	8,290,293	1,492,252	22%	35,129,095	6,323,237	5%	32.
33	Franklin				0	1,515,000	1,684,775		3,199,775	100%	33	13,528,448	2,435,120	13%	104,415,720	18,794,830	17%	33.
34	Frederick				0	1,440,000	554,000		1,994,000	100%	34	33,628,839	6,053,191	33%	137,478,595	24,746,147	8%	34.
35	Giles	60,000			1,800,000	0	880,900		2,740,900	32%	35	14,163,973	2,550,515	11%	89,230,233	16,187,442	17%	35.
36	Gloucester	140,000			260,000	245,000	250,000		895,000	55%	36	14,653,754	2,637,675	34%	86,413,235	15,554,382	6%	36.
37	Goochland				0	350,000	826,090		1,176,090	100%	37	12,543,337	2,257,800	52%	60,393,443	10,870,820	11%	37.
38	Grayson				0	0	835,425	12,000	867,425	99%	38	3,844,070	691,932	13%	48,955,400	8,811,972	10%	38.
39	Greene				0	0	407,190	25,000	432,190	94%	39	2,474,450	445,401	97%	18,857,330	3,394,319	13%	39.
40	Greensville				0	220,000	452,000		672,200	100%	40	9,870,148	1,776,626	38%	46,653,545	8,397,638	8%	40.
41	Halifax				20,000	1,705,000	1,102,400		2,827,400	99%	41	19,933,578	3,558,644	79%	110,142,495	19,825,649	14%	41.
42	Hanover				814,000	1,680,000	621,125		3,115,125	71%	42	39,746,205	7,154,316	44%	171,263,138	30,827,365	10%	42.
43	Henrico	17,816,900			14,565,000	1,460,000	336,250		34,178,150	.5%	43	281,802,448	50,724,440	67%	781,678,540	140,702,137	24%	43.
44	Henry	1,000			0	5,250,000	2,182,350		7,433,350	99%	44	31,844,357	6,531,984	11%	185,986,243	33,477,524	22%	44.
45	Highland				0	0	305,500		305,500	100%	45	3,401,630	612,293	50%	19,536,125	3,516,503	9%	45.
46	Isle of Wright				90,000	1,570,000	754,000		2,414,000	96%	46	17,910,777	3,223,939	75%	99,864,943	17,975,690	13%	46.
47	James City	210,000			1,500,000	0			1,710,000	88%	47	12,509,921	2,251,785	76%	72,977,255	13,135,906	13%	47.
48.	King & Queen				25,000	0	123,900		148,900	83%	48	8,954,038	1,611,726	9%	32,347,245	5,822,504	3%	48.
49	King George				70,500	1,000,000	440,875		1,511,375	95%	49	7,073,486	1,273,227	12%	35,242,490	6,343,648	24%	49.
50	King William				0	0	480,680		480,680	100%	50	12,136,327	2,184,546	22%	47,930,393	8,627,471	6%	50.
51	Lancaster				0	0	595,928		595,928	100%	51	13,803,412	2,484,614	24%	61,884,368	11,139,186	5%	51.
52	Lee		187,000		397,000	0	759,380		1,343,380	57%	52	5,675,938	1,021,668	13%	52,014,595	9,362,627	14%	52.
53	Loudoun				7,690,000	85,000	1,484,520		9,259,520	17%	53	87,172,010	15,690,961	59%	330,084,210	59,415,158	16%	53.
54	Louisa				0	0	938,610		938,610	100%	54	10,902,831	1,962,509	48%	56,724,753	10,210,456	9%	54.
55	Lunenburg				935,000	0	535,350		1,470,350	36%	55	8,136,577	1,464,583	10%	44,660,818	8,038,947	18%	55.
56	Madison				0	0	584,675		584,675	100%	56	6,328,306	1,139,095	51%	41,529,040	7,475,227	8%	56.
57	Mathews	85,000			0	0	317,154		402,154	79%	57	9,005,970	1,729,074	23%	43,445,150	7,820,127	5%	57.
58	Mecklenburg	75,000	350,000		840,000	0	1,665,400		2,930,400	57%	58	22,923,061	4,126,510	71%	110,473,215	19,885,179	15%	58.
59	Middlesex				0	640,000	85,000		725,000	100%	59	12,450,264	2,241,047	32%	40,522,713	7,294,088	10%	59.
60	Montgomery				2,970,000	0	53,500		3,023,500	2%	60	22,732,451	4,091,841	74%	133,990,063	24,118,211	13%	60.
61	Nansemond				2,550,000	800,000	889,000		4,249,000	38%	61	21,733,882	3,912,698	11%	124,528,680	21,681,516	20%	61.
62	Nelson				0	0	696,000		696,000	100%	62	7,784,396	1,401,191	50%	45,404,565	8,172,822	9%	62.
63	New Kent				344,000	0	15,000		359,000	4%	63	6,095,837	1,097,250	33%	34,291,393	6,172,451	6%	63.
64	Northampton				425,000	100,000	60,000		665,000	36%	64	9,495,254	1,709,145	39%	57,515,548	10,352,799	6%	64.
65	Northumberland				0	260,000	653,320		913,320	100%	65	13,637,998	3,114,839	29%	64,615,770	11,630,839	8%	65.
66	Nottoway				0	0	262,400		262,400	100%	66	10,257,450	1,846,341	14%	46,513,175	8,372,372	3%	66.
67	Orange		100,000		0	0	1,679,430		1,779,430	94%	67	15,227,046	2,740,868	65%	71,856,515	12,934,173	14%	67.
68	Page				17,000	765,000	123,900		905,900	98%	68	9,811,886	1,766,139	51%	71,701,315	12,906,237	7%	68.
69	Patrick				0	0			-0-	-0-	69	8,514,892	1,532,680		56,472,660	10,165,079		69.
70	Pittsylvania				6,335,000	0	25,000		6,360,000	.3%	70	50,992,076	9,178,573	69%	196,858,790	35,434,582	18%	70.
71	Pohatan		15,000		45,000	0	79,200		139,200	57%	71	8,288,437	1,491,918	9%	32,589,518	5,866,113	2%	71.
72	Prince Edward				0	0	150,400		150,400	100%	72	8,638,249	1,554,884	10%	55,873,898	10,057,302	1%	72.
73	Prince George				0	750,000	400,000		1,150,000	100%	73	2,668,295	516,293	22%	77,162,863	13,889,315	8%	73.
74	Prince William	6,831,000	1,000,000		16,350,000	530,000	799,711		25,510,711	3%	74	104,197,113	10,755,480	24%	430,434,408	77,478,193	33%	74.
75	Pulaski				902,000	0	84,250		986,250	9%	75	15,723,604	2,830,248	35%	98,133,353	17,664,004	6%	75.
76	Rappahannock				0	0	103,200		103,200	100%	76	4,053,655	729,657	14%	35,068,835	6,312,390	2%	76.
77	Richmond				0	300,000	314,610		614,610	100%	77	8.504.223	1,530,760	40%	31.092.330	5,596,619	11%	77.
78	Roanoke	475,000			4,970,000	1,550,000	1,802,425		8,797,425	38%	78	133,169,697	24,078,545	37%	358,305,643	64,494,980	14%	78.
79	Rockbridge				0	580,000	1,804,750		2,384,750	100%	79	13,940,507	2,401,545	99%	79,948,900	14,390,802	17%	79.
80	Rockingham	105,000			950,000	1,800,000	709,625		3,564,625	70%	80	49,254,284	8,865,771	40%	195,937,135	35,268,684	10%	80.
81	Russell				619,000	1,570,000	1,636,175		3,825,175	84%	81	22,108,617	3,979,551	96%	93,279,878	16,790,378	23%	81.
82	Scott				950,000	0	357,200	38,000	1,345,200	27%	82	6,675,610	1,201,609	11%	58,003,375	10,440,608	13%	82.
83	Shenandoah		50,000		515,000	0	681,000		1,246,000	55%	83	21,081,232	3,794,011	33%	110,158,118	19,828,461	6%	83.
84	Smyth				1,119,000	770,000	835,500		2,724,500	59%	84	9,631,198	1,733,615	16%	102,703,995	18,486,719	15%	84.
85	Southhampton		200,000		400,000	720,000	837,500		2,157,500	72%	85	16,409,445	2,953,700	73%	94,148,630	16,946,753	13%	85.
86	Spotsylvania	680,000	75,000		0	650,000	1,124,010		2,529,010	70%	86	27,447,333	4,940,519	51%	84,979,120	15,296,242	17%	86.
87	Stafford	30,000			0	2,075,000	840,700		2,945,700	99%	87	27,261,449	4,907,060	60%	97,763,045	17,597,348	17%	87.
88	Surry				0	0	295,000		295,000	100%	88	5,674,082	1,021,334	29%	39,167,530	7,050,155	4%	88.
89	Sussex				0	0	360,000		360,000	100%	89	8,913,812	1,604,486	22%	52,879,730	9,518,351	4%	89.
90	Tazewell				1,257,000	1,750,000	4,360		3,011,360	58%	90	14,652,502	2,637,450	11%	117,004,498	21,060,810	14%	90.
91	Warren				24,000	0	578,355		602,355	96%	91	15,775,632	2,857,673	21%	111,500,323	20,070,058	3%	91.
92	Washington	550,666			1,711,000	0	2,598,210	200,000	5,059,876	51%	92	10,839,933	1,947,187	26%	165,116,733	29,720,652	17%	92.
93	Westmoreland				0	0	1,126,620		1,126,620	100%	93	16,001,235	2,882,022	39%	64,750,938	11,655,169	10%	93.
94	Wise	1,500			640,000	0	1,961,500		2,603,000	75%	94	20,453,892	3,681,700	71%	84,245,430	15,164,177	17%	94.
95	Wythe		100,000		0	694,000	1,557,500		2,351,500	96%	95	13,324,819	2,398,467	98%	82,859,198	14,914,656	16%	95.
96	York	600,000			4,680,000	0	32,200		5,312,200	.6%	96	29,170,605	5,250,708	10%	148,945,413	26,810,174	20%	96.

TABLE 3.

Assessed Values in Towns of More Than 3,500 Population: 1966

Town	County	Assessed Value Subject to Local Taxation		Percent
		Town	County	in Town
Abingdon	Washington	$ 2,585,365	$ 17,538,087	15%
Bedford	Bedford	8,975,867	46,175,819	19
Big Stone Gap	Wise	4,237,183	31,992,074	13
Blacksburg	Montgomery	8,725,078	31,694,885	28
Blackstone	Nottoway	5,630,675	19,866,751	28
Bluefield	Tazewell	2,746,873	24,806,354	11
Christiansburg	Montgomery	7,276,422	31,694,885	23
Emporia	Greensville	5,321,334	18,445,334	29
Farmville	Prince Edward	6,922,724	16,045,795	43
Front Royal	Warren	15,606,715	27,338,501	57
Herndon	Fairfax	10,729,407	1,155,269,996	9
Leesburg	Loudoun	17,025,557	120,459,147	14
Luray	Page	4,476,391	14,485,274	31
Manassas	Prince William	13,732,329	156,407,390	9
Manassas Park	Prince William	4,733,828	156,407,390	3
Marion	Smyth	5,193,158	18,115,456	29
Poquoson	York	6,049,041	59,938,877	10
Pulaski	Pulaski	11,001,268	27,919,355	39
Richlands	Tazewell	3,705,744	24,806,354	15
Rocky Mount	Franklin	4,604,020	20,817,771	22
Salem	Roanoke	37,441,329	173,475,212	22
South Hill	Mecklenburg	4,532,344	35,910,034	13
Tazewell	Tazewell	3,194,503	24,806,354	13
Vienna	Fairfax	49,645,249*	1,155,269,996	4
Vinton	Roanoke	10,577,316	173,475,212	6
Warrenton	Fauquier	9,179,351	57,425,417	16
Wytheville	Wythe	7,864,190	21,201,943	37

*Approximate figure found by taking same percentage of Vienna real estate that the personal property in Herndon represented, to the real estate in Herndon.

TABLE 4

Towns of Over 3,500 Population and Their Percentage of Their County Population

Town	(1966) Population	County	Percent County Population
Abingdon	5,065	Washington	12%
Bedford	6,505	Bedford	20%
Big Stone Gap	4,752	Wise	11%
Blacksburg	9,000	Montgomery	24%
Blackstone	3,711	Nottoway	24%
Bluefield	4,321	Tazewell	10%
Christiansburg	7,498	Montgomery	20%
Emporia	5,635*	Greensville	33%
Farmville	4,377	Prince Edward	31%
Front Royal	8,319	Warren	54%
Herndon	4,103	Fairfax	1%
Leesburg	5,084	Loudoun	15%
Luray	3,793	Page	23%
Manassas	7,416	Prince William	7%
Manassas Park	5,805	Prince William	7%
Marion	8,777	Smyth	27%
Poquoson	5,731	York	20%
Pulaski	10,832	Pulaski	38%
Richlands	5,088	Tazewell	12%
Rocky Mount	4,267	Franklin	15%
Salem	22,920*	Roanoke	30%
South Hill	3,993	Mecklenburg	12%
Tazewell	4,625	Tazewell	11%
Vienna	16,027	Fairfax	4%
Vinton	5,709	Roanoke	7%
Warrenton	4,094	Fauquier	15%
Wytheville	6,530	Wythe	29%

*Now Cities

Source of Population Statistics: Bureau of Population and Economic Research, University of Virginia, January, 1967.

TABLE 5*

Distribution of Counties by Population

(In Thousands)

2-10	10-16	16-25	25-50
Amelia	Allegheny	Botetourt	Accomack
Appomattox	Buckingham	Brunswick	Albemarle
Bath	Caroline	Carroll	Amherst
Bland	Charlotte	Culpeper	Augusta
Charles City	Floyd	Dickenson	Buchanan
Clark	Gloucester	Dinwiddie	Campbell
Craig	James City	Giles	Fauquier
Cumberland	Louisa	Grayson	Franklin
Essex	Lunenberg	Greensville	Frederick
Fluvanna	Nelson	Isle of Wight	Halifax
Goochland	Northumberland	Lee	Hanover
Greene	Nottoway	Northampton	Henry
Highland	Orange	Page	Loudoun
King & Queen	Patrick	Rockbridge	Mecklenberg
King George	Prince Edward	Scott	Montgomery
King William	Spottsylvania	Shenandoah	Nansemond
Lancaster	Sussex	Southampton	Prince George
Madison	Warren	Stafford	Pulaski
Mathew	Westmoreland	Wythe	Rockingham
Middlesex			Russell
New Kent			Smyth
Powhatan			Tazewell
Rappahannock			Washington
Richmond			Wise
Surrey			York

50-100	100-250	250-500
Chesterfield	Arlington	Fairfax
Pittsylvania	Henrico	
Prince William		
Roanoke		

*Compiled from Bureau of Population and Economic Research, University of Virginia, *Estimates of the Population of Virginia Counties and Cities, July 1, 1967*, pp. 9-10.

ARTICLE VIII

EDUCATION

The Education article of the present Virginia Constitution was designed to protect and foster the growth of a public school system in a time when public education did not enjoy the secure place it now has. Section 129's broad mandate for a free public school system, the elaborate provisions protecting the Literary Fund in section 134, and the provisions guaranteeing a minimum state appropriation for local public schools in section 135, were designed to protect and to nourish the public schools, which had

fallen upon difficult times in the closing days of the last century. Similarly, the restraint in section 141 upon grants of public funds to private educational institutions appears to have been intended to foster growth of the public school system, which at one time had a very long way to go in order to approach the quality and importance of the numerous private schools in Virginia.[1]

These provisions reflect continuing support of a political philosophy as to education which had obtained for many years in Virginia. The conflict should by now be a thing of the past; Virginia's public school system had, long before the 1950's, become an institution of great vitality, broad acceptance, and apparent permanence.[2] Further real need for specific constitutional protection might have seemed questionable. But conflict over the concept of public education reappeared in connection with another conflict, running equally deep, that over racial segregation. When the federal judiciary, in 1954, invalidated the requirement of racially segregated schools in section 140 of the Virginia Constitution,[3] the Commonwealth's commitment to public education was shaken, and the importance of constitutional protections for public schools again became apparent.

Post-1954 events had a marked effect on the education provisions of the Constitution. Judicial enforcement of section 141[4] led to its amendment in 1956 to permit public tuition grants to students attending nonsectarian private schools. Section 129, as interpreted, gave way to the provisions of sections 134 and 135, which imposed only a minimal obligation of financial support upon the Commonwealth and none at all upon local governments.[5] Local public school closings were thus permitted without need for constitutional amendment.[6]

While there is little question of Virginia's commitment to public education today, as the level of appropriations in recent years attests, many problems loom. Retention of small school districts drawn upon county or city lines becomes ever more costly.[7] Increasing sophistication of educa-

1. *1901-02 Convention Debates*, I, 1237-48.
2. By 1948 Virginia's public school budget totaled almost 100 million dollars. *Annual Report of the Superintendent of Public Instruction* (Richmond, 1949), p. 213.
3. Brown v. Board of Education, 347 U.S. 483 (1954).
4. Almond v. Day, 197 Va. 419, 89 S.E.2d 851 (1955).
5. County School Board v. Griffin, 204 Va. 650, 133 S.E.2d 565 (1963).
6. Intervention by the federal judiciary has terminated local public school closings. Griffin v. County School Board, 377 U.S. 218 (1964). It has also restricted and may ultimately invalidate current private tuition grant legislation. See commentary on proposed section 10, *infra*, pp. 270-71, and federal cases discussed there.
7. Note, for example, in the 1966-67 school year in Chesterfield County with a school population of 24,247 the per pupil cost of education was $439.57; while in Highland County with a school population of 633 the per pupil cost was $523.00.

tional technique combines with inflation to increase per capita educational cost, especially in sparsely populated areas.[8] Urbanization increases the gap in local ability to pay for good public schools.[9] Increasing mobility of the population means that the education of every Virginia child is a matter of state, as well as local, concern. Per capita political representation and migration to the cities is shifting the balance of legislative power from rural to urban or suburban areas, and may destroy the ability of poorer rural areas to obtain adequate state assistance through the political process.[10] Some localities, for various reasons, are reluctant to give adequate support to their public schools though able to do so; others are financially unable to meet the demands. The ability of private schools and colleges to compete with publicly financed institutions becomes increasingly doubtful,[11] yet constitutional and political obstacles of uncertain dimension limit the possibilities of governmental aid to private education.[12]

There are major problems that must be faced in revising Virginia's constitutional provisions dealing with education. In the proposed Education article, the Commission attempts to meet these problems by four major proposals.

Commitment to public education. First, the Commission proposes to strengthen the Commonwealth's commitment to public education. This is signalled elsewhere by addition of language to proposed section 15 of the Bill of Rights recognizing the importance of education to the preservation of free government. It is made explicit in section 1 of the proposed Education article, which strengthens and builds upon section 129 of the present Constitution by providing that there shall be in the Commonwealth a statewide system of free public elementary and secondary schools, offering an opportunity to every Virginia child to participate in an educational

Annual Report of the Superintendent of Public Instruction (Richmond, 1967), p. 250-54.

8. For example, the total per capita cost per pupil in Washington County rose from $98.96 in 1947 to $450.27 in 1967. *Annual Report of the Superintendent of Public Instruction* (Richmond, 1949), p. 299; *ibid.* (1967), p. 252.

9. In the 1966-67 school year the relatively sparsely populated county of Buckingham paid only 28% of its educational cost while the Commonwealth paid 55% and the Federal Government paid 17%. Heavily populated Chesterfield County paid 66% of the cost of education in the same year and the Federal Government paid only 3% and the Commonwealth 31%. *Annual Report of the Superintendent of Public Instruction* (Richmond, 1967), p. 202-07.

10. At present 56% of Virginia's population lives in the Commonwealth's six metropolitan areas, and 85% of the State's entire growth between 1950 and 1960 occurred in these six areas. *Metropolitan Areas Study Commission Report* (November 1967), p 9.

11. See Public Views Documents 98, 99, 100.

12. See Board of Education v. Allen, 392 U.S. 236 (1968); Flast v. Cohen, 392 U.S. 83 (1968).

program of high quality.[13] This commitment to public education is reinforced by proposed section 3, which makes compulsory school attendance mandatory rather than dependent upon the will of the General Assembly. The Commission recognizes that section 1 establishes a goal towards which the Commonwealth is to strive, rather than a condition that can be promptly achieved. Thus it will be necessary that statewide standards of minimum quality be initially tailored to achievable goals and elevated from time to time as resources permit. The commitment to this process of elevation of educational standards is to be given a high priority. Proposed section 2 imposes initial responsibility for establishing and revising standards of quality upon the State Board of Education, subject to review by the General Assembly.

State and local support for schools. The second major change proposed by the Commission deals with fiscal responsibility for the public school system. Under the present Constitution, section 135 requires only a token state appropriation for the public school system, and section 136 makes local appropriations entirely discretionary.[14] Section 2 of the proposed Education article would require the General Assembly to ensure that each school division be provided the funds necessary to provide an educational program meeting the statewide standards of quality. The section expressly recognizes the traditional primary responsibility of the localities for their own schools. It also recognizes the necessity for the active participation of the local authorities in every aspect of school organization, and directs the General Assembly to take care that there be an equitable sharing between state and local governments of the cost of maintaining the schools. A substantial degree of local autonomy is preserved, nonetheless, in that the local governments retain exclusive control of the tax resources segregated for local taxation by section 171 of the present Constitution.[15]

Consolidation of school divisions. The Commission's third major proposal is designed to facilitate efficient use of resources by consolidation of school divisions that are too small for efficient operation. Under sections 132 and 133 of the present Constitution, the General Assembly has authorized consolidation of school boards, but the legislation permits effective consolidation only with the consent of the governing bodies of the areas to be affected. In practice local loyalties and prejudices have prevented effective consolidation in every instance. Perhaps because of the emotional content of consolidation issues, the General Assembly has not been able to deal adequately with the problem. The Commission recommends that the problems of consolidation of school divisions be placed

13. See proposed Education article, section 1 at p. 257 *infra.*
14. County School Board v. Griffin, 204 Va. 650, 133 S.E.2d 565 (1964).
15. See section 4 of the proposed Taxation and Finance article, p. 300 *infra.*

in the hands of a body that is somewhat insulated from the political pressures generated by consolidation. Section 5(a) of the proposed Education article would give the State Board of Education authority to define, revise, and consolidate school divisions, subject only to the present limitation that counties and cities not be divided between school divisions.

Aid to private institutions. The Commission recommends a new section 11 that would permit appropriations of state funds to be used for scholarship loans for collegiate and graduate education, without reference to the public or private nature of the institution attended. The proposed section also allows creation of a state authority to assist private colleges in borrowing money to build educational facilities. Both provisions of section 11 are a response to the financial pressures on Virginia's private institutions of higher learning yet would involve no state appropriations to the institutions themselves. Section 141 of the present Constitution, relating to public aid to nonpublic educational institutions, remains intact as new section 10.

Deletions. Sections 135 and 136, relating to support of schools, are superseded by the provisions of proposed sections 1 and 2 and are therefore deleted. Section 140, requiring racially segregated schools is deleted. The remaining sections of the present Education article have their counterparts in the proposed article and range from sections (notably section 141) which are unchanged to sections which are extensively revised.

Conclusion. The Commission believes that its proposals relating to education are as important as any it can make, in whatever area. The Commission has sought to frame an Education article which would reflect the inspired insight of the most devout believer in the efficacy of education in the Commonwealth's history, Thomas Jefferson. As Jefferson put the case in his description of a bill for the general diffusion of knowledge,[16]

> But of all the views of this law none is more important, none more legitimate, than that of rendering the people the safe, as they are the ultimate, guardians of their own liberty . . . . Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories. And to render even them safe their minds must be improved to a certain degree. This indeed is not all that is necessary, though it be essentially necessary. An amendment of our constitution must here come in aid of the public education.

Section 1. Public schools of high quality to be maintained.

The General Assembly shall provide by law for a statewide system of free public elementary and secondary schools open to all children of

16. *Writings of Thomas Jefferson,* ed. Paul L. Ford (New York, 1892), III, 254.

school age, and shall ensure that an educational program of high quality is established and maintained.

Source: Section 129, strengthened and enlarged.

Comment: The proposed section states the fundamental principles which govern the Education article as a whole. It requires a statewide system of free public elementary schools and enjoins the General Assembly to strive continually toward the goal of an educational program of high quality.

Judicial interpretation of present section 129. Section 129 states: "The General Assembly shall establish and maintain an efficient system of public free schools throughout the State." Nonetheless, the Supreme Court of Appeals in *County School Board v. Griffin* (1963)[17] ruled constitutional the absence of public schools in Prince Edward County, on the ground that Article IX and the statutes enacted pursuant to it establish a local option system in which operation of the schools is left to the determination of the local authorities and the receipt of state funds is conditioned by law upon appropriation of local funds. Thus, when Prince Edward County refused to support its schools, the Commonwealth was entitled to withhold the bulk of its support. Section 129, the Court found, does nothing more than require the existence of an "efficient system," which can exist despite the absence of operative schools in one or more governmental units, and whose efficiency—with or without functioning schools—is largely a matter for legislative discretion.

The Court's conclusion regarding section 129 was buttressed by its determination that under section 135 the General Assembly is obligated to make only minimal appropriations for school support, and that under section 136 the localities are free to support local public schools or not as they will. Accordingly, a locality declining to provide school support cannot be compelled to do so, nor need the General Assembly itself appropriate the funds necessary to keep the schools in operation, although under section 135 it may do so. If the Court had found that the "efficient system" of section 129 necessitated the actual existence of schools, the General Assembly would be obligated to bear the entire cost of public education in localities that refuse to pay their fair share. This, in fact, was the conclusion of Chief Justice Eggleston's dissenting opinion.[18]

Proposed section 1. The proposed section indicates clearly the nature of the system which the General Assembly is to create: it is to be a statewide system "open to all children of school age" and one which provides "an educational program of high quality." The constitutional mandate

17. 204 Va. 650, 133 S.E.2d 565 (1963).
18. *Ibid.* at 673, 133 S.E.2d at 582.

that the school system reach a basic level of excellence, providing an educational program of high quality, is an extension of earlier constitutional commitments to education in the Commonwealth.[19] The State Board of Education and the General Assembly are to determine and enforce standards of minimum quality as provided in proposed section 2. Such standards are considered necessary to ensure that all school-age children in Virginia have an opportunity for an education sufficient to prepare them for the duties of citizenship and for further academic work or for gainful and satisfying employment.

Section 1 is the linchpin of the Education article. Subsequent sections dealing with the public schools are intended to assist and guide the General Assembly in effectuating section 1's mandate. Thus, the conflicting aspects of sections 135 and 136, described above, have been eliminated. As will be seen, under proposed section 2 the localities, with the help of the Commonwealth, are to provide sufficient funds to establish and maintain public schools meeting the standards of quality.

Section 2. State and local support of public schools; standards of quality.

The General Assembly shall ensure that funds necessary to establish and maintain an educational program of high quality are provided each school division, and it shall take care that the cost of maintaining such programs is divided equitably between the localities, wherein rests the primary responsibility for the public schools, and the Commonwealth. The standards of quality shall be determined and prescribed from time to time by the State Board of Education, subject to revision only by the General Assembly.

Source: The section is new, and replaces sections 135 and 136, as well as parts of sections 132 and 133 by implication.

Comment: (1) *Duty to support schools.* Under present section 136, local governing bodies have absolute discretion to support or not to support local public schools. Under present section 135, although the General Assembly is obligated to appropriate designated funds for the support of elementary schools in the public school system, the amount of obligatory state support is insignificantly small. If a locality elects not to appropriate any funds for its public schools, the General Assembly may refuse to allocate any state funds to the public school division for

19. See the report of the Committee on Education. *1901-02 Convention Debates*, pp. 1050-1195. This was in large part the result of Alderman's "May Campaign" for education. Cornelius J. Heatwole, *A History of Education in Virginia* (New York, 1916), pp. 305-20.

that locality, as far as the present Virginia Constitution is concerned, and the only obligation to keep the schools in that locality open stems from federal equal protection requirements.

The proposed Education article changes this. Section 2 requires the General Assembly to ensure that funds sufficient to provide an educational program of high quality are made available to every school division. If funds are not available from any other source, the General Assembly is to provide them. Section 2 does contemplate another source, however; it recognizes that the localities have primary responsibility for support of their schools.

(2) *Standards of quality.* The language "of high quality" is intended to convey the idea of a progressively higher statewide standard, achievable under present conditions, but to be advanced as resources and circumstances permit. It would clearly be unworkable to enshrine a fixed standard in the Constitution, and undesirable to leave the standard to judicial construction. Therefore standards of quality are to be established by the State Board of Education, the governmental agency most familiar with the needs of the public school system, subject to revision only by the General Assembly, which, because of its fiscal responsibility for meeting the standards, must have ultimate control of them.

(3) *Ensuring local support.* At present the proportion of the cost of operating public schools defrayed by general fund appropriations ranges from approximately 20% in some of the wealthier localities to approximately 80% in some of the poorer ones. Variations in cost per pupil are great, as are variations in taxable local resources per pupil. At present, even though the localities have no constitutional duty to provide support, cost sharing is accomplished by use of a limited witholding device. In order to receive its full share of state funds, a locality must appropriate a certain amount of local money for the schools. This has been only partially effective. Despite state sharing of teacher salaries up to specified levels and up to specified teacher-student ratios, for example, many localities pay less than the specified level and hire fewer teachers than the number towards whose support the state would contribute. Further, because the school budget is by far the largest item on the budget of each local government, any locality that is willing to forego its public schools may profit fiscally by doing so; even after loss of state funds, local taxes from the sources segregated for local taxation are more than enough to take care of the other needs of local government.

The only arrangement that would make the public schools completely secure without exposing the Commonwealth to the possible necessity of providing complete support to the schools of a recalcitrant locality would necessarily involve sacrifice of the independence of the local governments.

As long as real property and most tangible personal property are preserved to the localities for taxation, the possibility exists that some local government will fail to provide a fair share towards the support of its public schools. On the other hand, the independence of local government is a tradition of long standing in Virginia, and conducive to good government. On balance, the Commission does not believe that local independence should or need be sacrificed in order to make local financial support of the public schools secure.

Instead, the Commission's proposed Education article would make far less drastic changes. Section 2 recognizes that the localities do have primary responsibility for the public schools and thus imposes upon them an obligation of support that they do not bear under present section 136. The General Assembly is charged with the duty of effectuating an equitable division of costs between the localities and the states. In lieu of the limited withholding of state educational funds utilized by present formula appropriations to induce appropriations of local funds for education, section 2 contemplates withholding of all state funds from a locality that does not meet its support obligation, if the General Assembly regards this as desirable. Yet local tax resources remain insulated from the General Assembly. If the possible loss of all state funds—including the locality's share of the sales tax—is not sufficient to induce compliance, section 5(b) requires the State Board of Education to report this to the Governor; this should bring the pressure of public opinion to bear on the defaulting local government. Section 2 requires the Commonwealth to supply the deficit in the meantime, pending pressure on the locality to pay its share ultimately being sufficient to bring about compliance on its part.

(4) *Proportions of state and local support.* The General Assembly is given the task of determining how the cost of the public school system is to be divided between the Commonwealth and the localities. The constitutional standard is that the division be equitable. In making this division, the General Assembly will have the benefit of past legislative experience. The Commission has consulted with the office of the Superintendent of Public Instruction concerning the present legislative practice in making school appropriations and believes that this practice may be adapted, without undue difficulty, to serve the purposes of proposed section 2. The present practice takes into account a variety of factors, including an appraisal of costs and of local ability to pay, as well as the use of limited standards of quality. All this is presently done solely for the purpose of determining the state public school appropriation and its allocation among the school divisions. The office of the Superintendent of Public Instruction has indicated it could also feasibly be adapted to determine what would be an equitable division of costs under proposed section 2.

The determination would probably involve at least the following five elements:

(a) Determination of the amount needed by each school division to establish and maintain schools meeting the state standards of quality. As at present, recommendations of the State Board of Education would be considered. At present, however, operating costs per capita are assumed to be uniform statewide, which does not square with the facts. A division-by-division cost breakdown is contemplated by section 2.

(b) Determination of the maximum percentage of available local taxable resources that a locality might be required to appropriate to its public schools. At present, this is done to determine what the state appropriation will be. True values of taxable property are presently used. This should be expanded to take into account the local share of the sales tax and other available local revenues. Under proposed section 2, a percentage of available local revenues would be fixed not merely as a step in calculating the state appropriation to the locality, but as a ceiling on the local appropriation the General Assembly would require the locality to make. The percentage would have to be set at a level that would leave even the poorest localities sufficient free revenues to meet the other costs of local government.

(c) Some wealthy localities might, under the percentage set in (b) above, appropriate local funds more than sufficient to meet the entire budget of their local schools, or such a high proportion as to be unfair or politically unacceptable. In any event, state concern in public education should be accompanied by substantial state financial participation even in the schools of wealthy localities. Accordingly, some minimum level of state participation is desirable, that would enable such wealthy localities to reduce their school appropriations below the level established in (b) above if they should wish to do so. At present this is accomplished by a formula for state aid for teachers' salaries. Standards of quality are presently utilized in this formula: upon the basis of a graduated state-prescribed salary schedule, the Commonwealth pays 60% of the salaries of teachers, up to state-prescribed student-teacher ratios. This or a similar device could and should be retained under proposed section 2.

(d) School divisions in some poorer localities, especially those where per capita education costs are high, will be left with inadequate funds to maintain state standards of quality even after receiving the 60% state aid for teachers' salaries and the full percentage of local revenues under (2) above. This is particularly likely to occur in certain rural counties where taxable resources are low and per capita costs high because of small school population and the higher salaries required to lure qualified teachers out of urban areas. The proposed Education article contem-

plates that this situation will be met in two ways. First, unless it elevates the maximum level of local participation under (b) above, or lowers the state standards of quality, the General Assembly must appropriate sufficient extra funds to the school division to enable it to meet the state standards of quality. Second, the State Board of Education may reduce the per capita cost of meeting the state standards of quality by consolidating the school division in question with one or more adjacent school divisions, and the General Assembly may, in the unlikely event this should become necessary, exert appropriate pressure upon the Board to do so. Present practice involves theoretically similar state supplements, and the General Assembly presently has power to reduce cost by consolidating school divisions (though it may not subdivide a county or city in doing so). The proposed Education article would make state supplements perform their functions better by recognizing that per capita education costs are not in fact uniform throughout the Commonwealth, and would facilitate cost reduction by consolidation of divisions by placing that function, as sensitive as it is to local pressures, primarily in the hands of the State Board of Education.

(e) In determining the amount needed to establish and maintain schools meeting comprehensive standards of quality in each school division under (a) above, the cost of servicing capital debt must be taken into account. Otherwise divisions in poorer localities would be unable to meet state standards of quality, which are to be comprehensive This may, however, operate unfairly to the advantage of some localities whose past capital outlays for education have been unreasonably small compared to available taxable wealth. Such a locality might, under the proposed Education article, be required to make significant capital improvements in its school division, and then benefit indirectly, at the expense of the rest of the Commonwealth, because its cost under (a) above would be enlarged, entitling it to, or thus increasing, its state appropriation under (d) above. Some legislative method of adjusting such inequities may prove necessary.

Section 3. Compulsory education; free textbooks.

The General Assembly shall provide by law for the compulsory education of every child of appropriate age and of sufficient mental and physical ability. It shall ensure that textbooks are provided at no cost to each child attending public school whose parent or guardian is financially unable to furnish them.

Source: The first sentence derives from present section 138; the second sentence derives from section 139.

Comment: The proposed section goes beyond present section 138 to require, rather than authorize, the General Assembly to provide for compulsory education. The section makes no change in section 139's requirement that the Assembly provide free textbooks to all public school students having impecunious parents or guardians.

The requirement that the General Assembly provide for compulsory education is an important aspect of the constitutional commitment to education for the people of Virginia. Section 3 leaves to the General Assembly definition of such matters as age limits, requisite mental and physical ability, acceptable schools, and length of the school year. The term "school-age" is not used in describing those children subject to compulsory education, since it appears in section 1, and will very probably receive a broader definition there than in section 3. If possible, it is best to avoid using the same term in different contexts, unless it is to receive a uniform definition in each.

Section 4. State Board of Education.

The general supervision of the public school system shall be vested in a State Board of Education of seven members, to be appointed by the Governor, subject to confirmation by the General Assembly. Each appointment shall be for four years, except that those to fill vacancies shall be for the unexpired terms. Terms shall be staggered, so that no more than two regular appointments shall be made in the same year.

Source: Present section 130.

Comment: This section provides for a State Board of Education in essentially the same terms as present section 130. Proposals to increase the membership of the Board from seven to nine or ten were considered by the Commission [20] but rejected because the Commission was not convinced that any advantage would be gained thereby.

Section 5. Powers and duties of State Board of Education.

The powers and duties of the State Board of Education shall be as follows:

(a) It shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the prescribed standards of quality, and shall periodically review the adequacy of existing school divisions for this purpose. No county or city shall be divided in the formation of such divisions.

20. See Public Views Documents 86, 107, 140.

(b) It shall make annual reports to the Governor concerning the condition and needs of public education in the Commonwealth, and shall in such report identify any school divisions which have failed to establish and maintain schools meeting the prescribed standards of quality.

(c) It shall certify to the school board of each division a list of persons having reasonable business and academic qualifications for the office of division superintendent of schools, one of whom shall be selected to fill the post by the division school board. In the event a division school board fails to select a division superintendent within the time prescribed by law, the State Board of Education shall appoint him.

(d) It shall manage and invest the Literary Fund under regulations prescribed by law.

(e) It shall have authority to approve textbooks and instructional aids and materials for use in courses in the public schools of the Commonwealth.

(f) Subject to the ultimate authority of the General Assembly, the Board shall have primary responsibility and authority for effectuating the educational policy set forth in this Article, and, pursuant thereto, it shall have such other powers and duties as may be prescribed by law.

Source: This section is new in part. It would replace section 132 and the last two paragraphs of section 133.

Comment: The proposed section, together with section 2, creates a State Board of Education of sufficient strength to execute effectively the educational policy set forth in this Constitution.

(a) Section 132 of the present Constitution authorizes the State Board of Education to divide the Commonwealth into "appropriate school divisions," of not less than a county or city each, and without dividing any county or city between school divisions. Section 133 provides that the supervision of public schools in each county and city shall be vested in a school board; it provides further that (1) each magisterial district of a county shall be a separate school district, unless otherwise provided by law; (2) the magisterial district shall be the unit of representation on county school boards, unless the General Assembly provides otherwise; and (3) in cities of one hundred and fifty thousand or more, the school board shall have power to prescribe the number and boundaries of school districts, subject to the approval of the local governing body.

Under the present Constitution, a "division" is an administrative unit to the extent that it is under the supervision of a single superintendent; otherwise the school system is divided into counties and cities, each of which has a separate school board and a separate fiscal structure. Under

existing legislation,[21] the State Board of Education may consolidate two or more counties, cities, or counties and cities, into a single school division, but they will remain separate fiscal units with separate school boards unless the affected governing bodies agree to establish a single school board. In practice no such agreement is ever reached, and efforts to persuade the General Assembly to effect fiscal consolidation of school divisions have never succeeded.

The Commission is convinced that fiscal consolidation of some school divisions is necessary to efficient operation and to the maintenance of educational programs of acceptably high quality. The small size of the student population of some cities and counties makes it impossible to provide the necessary facilities and breadth of offerings except at an exorbitant cost per pupil. The proposed Education article contemplates the school division as the basic unit of administration in the school system, for all purposes: it is to have one school board, one supervisor, one budget. As at present, counties and cities may not be divided in the formation of school divisions, but the State Board of Education is given authority to establish, consolidate, and revise school divisions, without the consent of the counties and cities affected.

Under proposed section 7, the General Assembly is to determine the basis of representation on school boards of consolidated school divisions. This may be upon the basis of population, school population, fiscal contribution, some combination of the above, or some other basis.

While there are some instances in which pupils in an isolated portion of a city or county might more easily be sent to the closer schools of an adjoining county or city in a separate school division, the Commission does not believe it is feasible to authorize separation of a county or city between two school divisions, and believes that the General Assembly has authority to authorize transfer of such students to the neighboring school division, with appropriate provision for fiscal adjustment between the two divisions.

(b) The Board will be the state institution most intimately acquainted with the condition of public education in Virginia, both as regards its needs and its failures. Under (b), the Board is to take the initiative, with the assistance of the Superintendent of Public Instruction, in coming to grips with both. By identifying those localities not providing their equitable contribution to support of the schools, the Board's report will bring to bear the pressure of public opinion to produce local appropriations for school support. See Comment to section 2, *supra*.

(c) This provision brings together powers held by the Board under present sections 132 and 133.

21. Va. Code Ann. § 15.1-264 (supp. 1968).

(d) With the exception of the substitution of "Literary Fund" for "school fund" in the interest of clarity, this power is identical with that now provided in section 132.

(e) and (f) Under these provisions, the Board is given powers which are essentially the same as those now granted under section 132.

It is well to reiterate that under section 2 the Board is also empowered to determine the standards of quality, subject to legislative modification. Since the standards are fundamental to the educational policy of the proposed Education article, the power to decide their nature is quite significant. Also of notable import is the Board's position as the state institution which will in all likelihood report to the General Assembly on the needs of each school division and on the proportion in which each division should be supported by state or local funds.

Section 6. Superintendent of Public Instruction.

A Superintendent of Public Instruction, who shall be an experienced educator, shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of the Governor making the appointment, but the General Assembly may alter by statute this method of selection and term of office. The powers and duties of the Superintendent shall be prescribed by law.

Source: Present section 131.

Comment: This section retains the substance of present section 131. Detail concerning the transition from an elected to an appointed Superintendent, operative in 1929 but now obsolete, has been deleted.

Statements were submitted to the Commission suggesting that the State Board of Education appoint the Superintendent of Public Instruction to serve as its executive officer, for so long as the association is mutually agreeable.[22] Such a system would have two major advantages. First, it would eliminate possible loss of effectiveness in the event of disagreement between the Board and the Superintendent. They would enjoy much the same relationship as the president of a university and his board of trustees. Second, Board appointment of the Superintendent would reduce possible political pressures upon him. The Commission, however, does not think it necessary to recommend this as a change at the constitutional level since the proposed section, like present section 131, allows the General Assembly to change the method of selecting the Superintendent. Thus the Assembly may by statute provide for the Board to appoint the Superintendent, and no constitutional change is necessary to accomplish this.

22. Public Views Documents 43, 86, 91, 107.

Section 7. School boards.

The supervision of schools in each school division shall be vested in a school board, to be composed of trustees selected in the manner, for the term, and to the number provided by law.

Source: Present section 133 (first sentence).

Comment: The proposed section provides for the supervision of local schools in essentially the same terms as present section 133, except that there is to be but one school board per school division. The way in which school trustees are to be chosen is left entirely to the General Assembly. As far as representation upon the school board is concerned, the Legislature must decide both how the seats are to be apportioned within each county or city and how the seats are to be apportioned between different counties and cities when there are several within the school division. At present the magisterial district is the basis for representation within a county, and the Assembly may choose to retain this method.

Section 8. The Literary Fund.

The General Assembly shall set apart as a permanent and perpetual school fund the present Literary Fund; the proceeds of all public lands donated by Congress for free public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the Commonwealth by forfeiture, of all fines collected for offenses committed against the Commonwealth, and of the annual interest on the Literary Fund; and such other sums as the General Assembly may appropriate. But so long as the principal of the Fund totals as much as ten million dollars, the General Assembly may set aside all or any part of additional moneys received into its principal for public school purposes, including the teachers retirement fund, to be held and administered as prescribed by law.

Source: Present section 134.

Comment: The proposed section is essentially the same as present section 134, but makes one significant addition to its predecessor. It gives the principal of the Fund another source of income, the annual interest on the moneys in the Fund, thus providing additional revenue for loans to local school boards to defray nonoperational expenses.

Section 9. Other educational institutions.

The General Assembly may provide for the establishment, maintenance, and operation of any educational institutions which are desirable for the

intellectual, cultural, and occupational development of the people of this Commonwealth. Members of the boards of visitors, trustees, or governing bodies of such institutions shall be appointed as provided by law.

Source: The proposed section replaces present sections 137 and 142.

Comment: The Commission feels that the proposed section would give recognition to the importance of such institutions and is desirable. The boards of visitors of existing institutions should be protected from ultimate subjugation to a single central agency regulating all public higher education in Virginia; yet the General Assembly should have some flexibility to provide for central governance of some systems of institutions for higher education, such as, perhaps, the community colleges. While no formula seems entirely satisfactory for this dual purpose, the proposed language at least suggests that boards of visitors of existing institutions have some constitutional status.

Section 10. Appropriations for educational purposes.

No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the Commonwealth or some political subdivision thereof; provided, first, that the General Assembly may, and local governing bodies, subject to such limitations as may be imposed by the General Assembly, may appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate, or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the Commonwealth or any such local governmental unit; second, that the General Assembly may appropriate funds to an agency, or to a school or institution of learning owned or controlled by an agency, created and established by two or more states under a joint agreement to which this Commonwealth is a party for the purpose of providing educational facilities for the citizens of the several states joining in such agreement; third, that local governments may make appropriations to nonsectarian schools of manual, industrial, or technical training, and also to any school or institution of learning owned or exclusively controlled by such local governmental unit.

Source: Present section 141.

Comment: No change.

Section 141 limits the power of the Commonwealth to make appropriations of public funds to schools or institutions of learning not controlled by the Commonwealth or one of its political subdivisions. In 1956 the prohibition was relaxed to allow state or local appropriations for

educational purposes in private nonsectarian schools. Section 141, as thus amended, became the basis for the tuition grant program now operating in Virginia. Currently, students attending private nonsectarian schools or public schools outside their district can receive state tuition grants of $125 for elementary school students and $150 for high school students in an academic year. Localities are authorized to supplement the state grants.[23]

At the public hearings held by the Commission, and in statements received from interested citizens, the Commission heard a range of views on what revisions it should propose for section 141. On the one hand, some citizens would return section 141 to the form it had before 1956, thus ending the tuition grant program. Others would go in the other direction: they would amend section 141 to allow tuition grants or other state aid to children in sectarian schools on the same basis as to those in nonsectarian schools. Still others would delete section 141 altogether, while yet others would leave it just as it is at the moment.[24]

(1) Those who would tighten up section 141 and thus put an end to the present program of tuition grants argue that the program represents a drain on the public treasury, diverting money which otherwise would be available for the support of public education in Virginia. Moreover, they maintain that the 1956 amendment to section 141, and the tuition grant program enacted thereafter, were part and parcel of Virginia's "massive resistance" to racial integration of the public schools, ordered pursuant to *Brown v. Board of Education.*

Those who defend the tuition grant program maintain that the program is a neutral one, available to all who qualify, without regard to the motives of those who want the grants. It is argued that the tuition grants tend to a healthy pluralism in education, a system in which parents can choose either public or private education for their children.

The cost of the tuition grant program in Virginia in the academic year 1959-60 was, for state and local aid combined, a little over $1,000,000; the combined figure rose to just under $3,000,000 for 1963-64.[25] The figure has remained fairly constant since that time. Expenditures for tuition grants have been modest compared with outlays for public education. In 1968 the General Assembly's total appropriation for public schools (including federal money) was $370 million for the first year and $403 million

23. See Va. Code Ann. §§ 22-115.29 through 22-115.35 (repl. vol. 1964 and supp. 1968).

24. See Public Views Documents 36, 50, 53, 54, 59, 81, 92, 93, 94, 97, 100, 127, 128, 129, 130, 166, 177, 189.

25. Thomas Jefferson Center for Studies in Political Economy, *Report on the Virginia Plan for Universal Education* (Charlottesville, 1965), p. 9.

for the second year.[26] In the 1966-67 school year, local school boards received $251 million from appropriations by the localities.[27]

Tuition grants, viewed in the context of racial segregation, have been severely restricted by the federal courts. A three-judge federal district court refused to strike down the entire Virginia tuition grant program on the equal protection grounds urged by the plaintiffs in that case but did enjoin payments of tuition grants in the case of racially segregated private schools whose "preponderant financial support" was in the form of tuition grants paid to parents of students in those schools.[28] Three-judge federal district courts in Louisiana and South Carolina have gone further than did the federal court in Virginia. Those courts have held that a state's tuition grant plan cannot do indirectly what the state cannot do directly—perpetuate racial segregation in education.[29] The decision in Virginia was not appealed, but the U.S. Supreme Court affirmed the decisions coming from Louisiana and South Carolina.

(2) Some observers would retain the provision allowing aid to children in private schools but would delete the word "nonsectarian" so that aid might go to children in sectarian private schools on equal terms with those in private schools. In support of this change it is argued that the change would recognize a healthy variety in Virginia's schools, that higher taxes and rising costs are squeezing private schools and their patrons, that grants for education in sectarian schools would be more than offset by the savings to the Commonwealth and its localities because those children are not in public schools, and that a sense of fairness and the philosophy of the free exercise of religion dictate that no distinction should be drawn by the Constitution between those attending religious schools and those attending nonsectarian schools.

In opposition, those defending the present language of section 141, including the word "nonsectarian," argue that the provision is an important part of the line which Virginia has traditionally drawn between church and state. Diluting the prohibitions of the section, they argue, would be an invitation to other forms of state aid to religion.

(3) A third view is to abolish section 141 altogether. This would leave the question of state aid to children in sectarian schools to an interpreta-

26. Acts of Assembly (1968), ch. 806, items 553-603, pp. 1484-93.

27. *Annual Report of the Superintendent of Public Instruction* (Richmond, 1967), p. 167.

28. Griffin v. State Board of Education, 239 F. Supp. 560 (E.D. Va. 1965).

29. Poindexter v. Louisiana Financial Assistance Comm'n, 275 F. Supp. 833 (E.D. La. 1967), *aff'd mem.*, 389 U.S. 571 (1968); South Carolina State Board of Education v. Brown, 37 U.S.L.W. 3206 (Sup. Ct. Dec. 10, 1968). The Supreme Court has also declared a combination of tuition grants and closed schools in a county to violate the equal protection clause. Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964).

tion of the general religious clauses of the Virginia and Federal Constitutions. Thus, the constitutionality of a particular state program—such as tuition grants, or textbooks, or school buses—available to students in sectarian schools would turn on the application, under the Federal Constitution, of the First Amendment's clause prohibiting an establishment of religion and guaranteeing the free exercise of religion, and under the Virginia Constitution, the free exercise clause in section 16 of the Bill of Rights and the anti-establishment provisions of section 58 (which the Commission's proposals would move, unchanged, to the Bill of Rights). There is a good deal of case law under the First Amendment, notable decisions being the 1947 case upholding the constitutionality of providing public school bus transportation for children attending parochial schools [30] and the recent decision upholding the lending of state-owned textbooks to children in parochial schools.[31]

(4) A fourth approach is to leave section 141 as it is. This is the recommendation of the Commission. It would be unfortunate were a proposal to amend section 141 to stir deep animosities and have a tendency to split Virginia's people along religious lines. One need only recall the bitter fight in New York recently when a constitutional convention proposed to repeal the so-called "Blaine Amendment" in New York's Constitution (prohibiting state aid to sectarian schools) [32] That battle, complete with controversial newspaper advertisements,[33] has been widely credited with having been the leading cause in the defeat at referendum of the entire package of proposals for revising the New York Constitution.[34] Sensitive to Virginia's strong tradition of both religious freedom, and separation of church and state (which are complementing concepts), the Commission proposes to leave section 141 as it now stands.

Section 11. Aid to nonpublic higher education.

The General Assembly may provide for loans to students attending nonprofit institutions of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education. The General Assembly

30. Everson v. Board of Education, 330 U.S. 1 (1947).
31. Board of Education v. Allen, 392 U.S. 236 (1968).
32. New York Const., Art. XI, § 3.
33. See, e.g., the advertisements in the New York Times, Oct. 23, 1967, p. 49, Oct. 26, 1967, p. 36, Oct. 31, 1967, p. 27.
34. The campaign over the Blaine Amendment's repeal echoed with such phrases as "religious war," "false and scurrilous campaign," "essentially dishonest" advertising (referring to the pro-charter ads), and like phrases. See New York Times, Oct. 9, 1967, p. 1, Oct. 26, 1967, p. 1, Oct. 31, 1967.

may also provide for a state agency or authority to assist in borrowing money for construction of educational facilities at such institutions.

Source: New section.

Comment: The proposed section, drafted in very precise language, allows two kinds of programs which the Commonwealth may undertake to assist non-profit institutions of higher education in Virginia (other than those whose purpose is to provide religious or theological education): state loans to students at such institutions, and the creation of a state agency or authority to assist in borrowing money for construction of educational facilities at such institutions.[35]

The proposal is a modest, but important, response to the crisis facing private universities and colleges in Virginia. Private institutions presently enroll approximately one-third of all undergraduates in Virginia, at no expense to the Commonwealth. Yet rising costs are squeezing private colleges and universities to the point where a distinguished educator has expressed the fear that in ten years' time "only a handful of extremely well endowed private institutions" in the entire nation "will remain as viable quality institutions." [36] In a number of states, private institutions have had to be absorbed into the state system as the only alternative to closing their doors. Should private colleges in Virginia be unable to pull their share of the load, the result would be serious on two counts: greater cost to the Commonwealth to educate students who would have been in private institutions, and a weakening of Virginia's rich heritage of pluralism and diversity in higher education.

The Commission does not propose any state appropriations to private colleges and universities. Its proposals are much more modest. In the first place, the proposed section would allow the Commonwealth to extend to students in private institutions, whether church-related or not, loan programs available to students in public or private nonsectarian colleges in Virginia. For example, students in church-related colleges could be made eligible for the State Teacher Scholarships given by the State Board of Education. These loans, given to undergraduates preparing for teaching in the public school system, can be cancelled either by a specified period of teaching or by repayment.

The other aspect of the proposal is the provision allowing the General Assembly to create an agency or authority having the power to assist in borrowing money for construction of facilities related to the educational process (such as classroom buildings, dormitories, student unions, health

35. For relevant public statements, see Public Views Documents 98, 99, 100.

36. Allan M Cartter, in Proceedings of the Sixteenth Legislative Work Conference, Southern Regional Education Board, August 27-29, 1967, pp. 67-73.

centers, and dining halls) at private colleges and universities in Virginia. Such a program would cost the Commonwealth nothing; it would simply ease the problem of private colleges faced with high interest rates on money borrowed for capital improvements. A number of states have created public agencies to issue tax exempt revenue bonds to provide construction funds for private colleges.[37]

The proposed section has been fashioned so as to avoid involving the Commonwealth in religious activities. To begin with, the section excludes any aid to institutions whose primary purpose is to provide religious training or theological education.[38] Thus, for example, a theological seminary would not qualify. Among those colleges and universities which would qualify, the section makes no distinction between those which are church-related and those which are not. Many of the private colleges in Virginia are church-related, but typically they operate like any other college. For example, of the twelve members of the Association of Independent Colleges (composed of nearly all of the accredited private non-profit four-year colleges in Virginia), nine have some degree of church relationship. Yet none of the nine (all ineligible for any form of aid under the present Constitution) imposes any religious tests for student admission or faculty selection, and none serves primarily a single religious faith.[39] All, in short, are an integral part of Virginia's commitment to higher education, their doors open without discrimination to the youth of the Commonwealth. The proposed section, in the judgment of the Commission, recognizes their contribution without in any way weakening the wall of separation between church and state so carefully erected in other sections of the Constitution.

ARTICLE IX

CORPORATIONS

The principle that a Constitution ought to be confined to fundamentals and that unnecessary detail should be left to the statute books is especially relevant in understanding the Commission's proposals for revision of the Corporations article. The existing article is prolix and contains a mass of legislative detail. Its essentials can and should be stated in far less space.

In the existing Corporations article, sections 155 and 156, which deal specifically with the State Corporation Commission (SCC),[1] are the core

37. E.g., the New York Dormitory Authority Act, *Public Authorities Law*, Title 4, Article 8, §§ 1675-90 (McKinney, Supp. 1968).

38. A like distinction is drawn in the Federal Higher Education Facilities Act of 1963, 20 U.S.C. § 751(a)(2)(c), (Supp. III, 1968).

39. See Public Views Document 100, pp. 5-6.

1. To avoid confusion, in the Corporations commentary the State Corporation Com-

of the article. Little else in the present article needs to be spelled out in the Constitution. Even the provisions dealing with the SCC are unnecessarily detailed.

Therefore the Commission proposes a Corporations article which preserves the basic structure of the SCC, as well as certain fundamental principles relating to the regulation of domestic and foreign corporations, but omits the vast amount of statutory detail. In proposing these omissions, the Commission by no means exercises any judgment on the merits of the provisions omitted; the only judgment made is that such matters ought to be left to general law and not included in the Constitution.

History of the Corporations article. The present Corporations article is of recent vintage in Virginia's constitutional history, appearing for the first time in the Constitution of 1902. Prior to 1902 railroads were supervised by the Railroad Commissioner, whose office was a creature of statute and who was without power to perform any effective regulatory function. It was with knowledge of this experience that A. Caperton Braxton, Chairman of the Committee on Corporations of the 1901-02 Convention, began his presentation of the Committee's report with the following statement: "The question of the control and regulation of railroad companies and the fixing of their rates and charges is . . . the greatest and the most important economic question before the civilized world." [2]

The Convention's answer to this question was the creation of the State Corporation Commission. The SCC was given unprecedented status as a fourth branch of government in the Constitution of 1902. There were several reasons. First, there was the fear expressed by Braxton and others that the General Assembly would not create an effective regulatory body: [3]

> I will give you another reason why these railroads, very naturally, wish to take this battleground from this tribunal into legislature. We are here for an indefinite season. We are enlisted for the war . . . but the legislature has a short session of 90 days; and all you have to do is to hold on and fight for time and delay, and discuss it and discuss it and wait until tomorrow and tomorrow and tomorrow! and then when ninety days comes, you have always got the goal in sight, and say, "if we can hold on until then, we have got them."

Certainly much of the detail in present Article XII springs from a fear of the power of the railroad lobby in the General Assembly.[4] In general the members of the Constitutional Convention concluded that they were

mission is referred to as "SCC." Reference to the "Commission" means the Commission on Constitutional Revision, in this as in the commentaries on other articles.

2 *1901-02 Convention Debates*, p. 2142.

3 *Ibid.*, p. 2426.

4. *Ibid.*, pp. 2167-68.

in a better position to spell out the powers, duties, and procedures of the SCC than was the General Assembly.[5]

Another important reason for giving the SCC constitutional status was the fear, more strongly held in an age when regulatory agencies were in their infancy, that a delegation and blending of legislative, executive, and judicial authority in a single agency would violate the separation of powers provisions of the Virginia Constitution.[6]

The SCC at its inception had but two main functions: (1) the regulation of "transportation and transmission" companies, and (2) the issuance of corporate charters, a power granted in order to end the General Assembly's practice of creating corporations by special legislation. However, the scope of its potential authority was as broad then as it is today, and pursuant to this constitutional authorization the General Assembly has continuously widened the SCC's subject matter jurisdiction.[7] Since 1902 there have been more than forty instances in which the General Assembly has by statute imposed additional duties on the State Corporation Commission.

Functions of the SCC. Although the SCC is often compared with the public service commissions of other states, it is a unique body.[8] In addition to performing normal regulatory functions, it is armed with the powers of a court of record. It can enforce its orders by its own appropriate process anywhere in the Commonwealth. Its executive functions are numerous, for it is the department of government charged with the administration of all laws made in pursuance of the Constitution "for the creation, visitation, supervision, regulation, and control of corporations . . . ." [9] There is a great deal of evidence to support the conclusion that the SCC is truly a fourth branch of government with a wider range of responsibilities than any other administrative agency.[10] Its responsibilities range from the regulation of railroads to serving as a central filing agency

5. *Ibid.*, p. 2167.

6. *Ibid.* Federal agencies combining aspects of legislative, executive, and judicial power were not unknown in 1902 (the Interstate Commerce Commission had been created in 1887), but those agencies were by no means as common as they are today. See the Commission's proposals regarding section 39 of the Virginia Constitution, *supra*, pp. 121-22.

7. See section 156(c). The Supreme Court of Appeals has broadly construed the power of the General Assembly to confer additional duties on the SCC. See Lewis Trucking Corp. v. Commonwealth, 207 Va. 23, 28-29, 147 S.E.2d 747, 751 (1966).

8. All 50 states have public service commissions. U.S. Senate Comm. on Government Operations, 90th Cong., 1st Sess., *State Utility Commissions* (Comm. print 1967) p. 1. In sixteen states the commission is created by constitution; in the remaining states it is a creature of statute.

9. Section 156(a).

10. Ralph T. Catterall, "The State Corporation Commission in Virginia," 48 *Va. L. Rev.* 139 (1962).

under the Uniform Commercial Code, from regulation of insurance rates to investigating cases of suspected arson.[11]

Recommendations for revision of the SCC provisions. Although the State Corporation Commission early encountered great hostility and perhaps would not have been created by legislative action in 1902, the General Assembly has since 1906 expressed basic confidence in the SCC by continuously increasing its responsibilities. The need to insulate the SCC from the possibility of crippling change by a hostile General Assembly no longer exists. As is not unusual with agencies exercising a broad range of legislative, executive, and judicial functions, the SCC is relatively independent of control by the three major branches of government. However, the Commission believes that the independence of the SCC has been one of its major strengths. The Commission has no desire to change the basic structure of the SCC, let alone to make it so dependent on legislative whim that it cannot function as a viable agency. Nevertheless, the Commission believes that there is special reason to review the status and relationship to other departments of government of such a strong organ of government—hybrid in nature—which departs from the traditional system of checks and balances designed for the people's protection.

It is impossible to assign the SCC to any one of the three traditional branches of government. It is more nearly a legislative body than anything else. Its original functions—rate-making and issuing corporate charters—are historically legislative. Its members are elected by the legislative branch, and much of its authority comes from the General Assembly. Thus if the SCC is to be subject to scrutiny by any one of the traditional branches of government, the Commission believes the General Assembly should be a watchdog.

The Commission feels that its proposals, which are modest, do not interfere with the actual independence of the SCC. The Commission believes that its proposals strike a proper balance in preserving the independence of the SCC while at the same time providing the elected representatives of the people with the opportunity to check any potential abuse of power. Following is a brief summary of certain of the more important recommendations which the Commission proposes.[12]

(1) *Structure of the SCC.* The Commission proposes no change in the basic structure of the SCC, its membership, the manner of selecting Commissioners, and their terms of office. The Commission recommends, how-

11. A detailed list of the duties of the SCC is found in the 1966 *Report of the State Corporation Commission,* pp. 3-4.

12. Some statements received by the Commission called for abolition of the constitutional basis of the SCC or of its constitutionally conferred powers. See Public Views Documents 50, 72, 107, 126, 140, 184.

ever, that because of the many judicial functions performed by the SCC all the members of that body should have the qualifications prescribed for judges. The present Constitution provides only that one member of the Commission shall have such qualifications.

(2) *Appointment and removal of employees of the SCC.* Section 155 of the present Constitution provides that the SCC shall have absolute authority to appoint and remove all of its employees. One of the reasons for the inclusion of this and other detailed provisions in 1902 was the need to build the entire structure of the SCC in the Constitution. That need no longer exists, and the Commission believes it unwise to freeze such detail into the revised Constitution.

The Commission fully appreciates the need for independence in appointing and removing officials occupying policy-making positions. However, the Commission does not believe that the desired independence of the SCC will be threatened if in personnel practices regarding its non-policy making employees it is treated as any other state agency and is made subject to the Virginia Personnel Act.[13] Even without the present constitutional provision, there would be no prohibition, as the Personnel Act operates, against the SCC's exercising its independent judgment in appointing its key officials. However, in order to insure the ability of the SCC to appoint and remove officials in sensitive positions, the Commission has provided that heads of divisions and assistant heads of divisions shall be appointed and subject to removal by the SCC.

(3) *Jurisdiction of the SCC.* The basic constitutional jurisdiction of the SCC—the chartering of corporations and regulation of utilities—is preserved in proposed section 2. In fact, this mandatory jurisdiction is expanded to include gas and electric companies as well as railroad and telephone companies. The Constitution of 1902 does not require that the SCC regulate the rates of gas and electric utilities as they are excluded from the constitutional definitions of "transportation" and "transmission" companies. Of course, gas and electric companies have long been subjected to SCC regulation by general law.[14]

(4) *Rule-making power.* Proposed section 3 provides, among other things, that the SCC shall have power to prescribe rules of practice and procedure, subject to the ultimate authority of the General Assembly. This is the same rule-making authority given in the Judiciary article to the Supreme Court, i.e., power to prescribe its own rules, subject to the ultimate control of the General Assembly.

13. Va. Code Ann. §§ 2.1-110 through 2.1-116 (repl. vol. 1966).
14. See Va. Code Ann. § 56-35 (repl. vol. 1959).

(5) *Appeals from the SCC.* Present section 156(d), paragraph 1, provides for appeals as a matter of right from certain actions of the SCC affecting transmission and transportation companies. Under authority granted in section 156(d), paragraph 2, the General Assembly has provided by statute that *any* final decision of the SCC may be appealed to the Supreme Court of Appeals as a matter of right.[15] The Commission believes that this statutory provision is sound and that the right of appeal is sufficiently fundamental to be included in the Constitution. Accordingly, proposed section 4 provides for an appeal of right while leaving all matters of procedure to general law.

General provisions in the Corporations article. An examination of the proposed article clearly shows that one of the Commission's major recommendations for revision of the Corporations article is mass excision. With the exception of the proposals for the SCC discussed above, the Commission recommends inclusion of only two additional sections. Proposed section 5 preserves the essence of present section 163, dealing with the terms on which foreign corporations may do business in Virginia. Proposed section 6 incorporates, with a minimum of wordage, the essence of three existing sections. First, it requires, as does existing section 154, that corporate affairs be governed by general laws.[16] Second, section 6 preserves the substance of present section 158 that corporations hold their charters and conduct their business subject to the Constitution and laws of the Commonwealth, including such laws as may be enacted in the future. Third, the proposed section reinforces the concept of the "reserved power" of the Commonwealth over corporations by stating that the police power of the Commonwealth shall not be abridged.

Deletions. Under the Commission's proposals, much of the existing Corporations article would be deleted and left to statute law. The sections dealing with the SCC and the provisions dealing with foreign corporations and with general laws governing corporations can, as already noted, be stated much more succinctly, without losing substance. What remains in the present Corporations article, after the sections on the SCC, foreign corporations, and general laws have been dealt with, is clearly unsuited for inclusion in a Constitution and ought to be left to general law.

Proposed for deletion are the following:

Section 153 (definitions). The detailed definitions of terms found in present section 153 are essentially statutory in nature. Moreover, authorities on the drafting of state constitutions warn against the effort to at-

15. Va. Code Ann. § 12-63 (repl. vol. 1964).

16. This requirement is reinforced in the provisions of sections 14 and 15 of the proposed Legislative article, which correspond to present sections 63 and 64.

tempt such specificity in definitions, which, with technological or other change, often turn out to be straight-jackets.[17] The exclusion of municipal corporations accomplished by section 153 is done in proposed section 2.

Section 157 (fees from corporations). Statutory detail. Note, for example, the setting of minimum and maximum fees for annual registration, detail obviously inappropriate to a Constitution.

Section 160 (long and short haul provisions). Statutory detail.

Section 161 (prohibition of free transportation for legislators and public officials). Statutory detail.

Section 162 (abolition of fellow-servant doctrine). Statutory detail. Va. Code Ann. §§ 8-641 to 8-646 (repl. vol. 1957) afford railway employees the same or greater protection than that afforded by section 162.

Section 165 (trusts and monopolies). This section directs the General Assembly to enact legislation preventing trusts, combinations, and monopolies.[18] The section recalls the excitement at the turn of the century over manipulations of the economy by the great trusts, flavored by such writings as Ida M. Tarbell's indictment of the Standard Oil Company and by such scandals as the Sugar Trust's swindling the Federal Government out of $4 million in customs duties by false weights. Section 165, however, is not self-executing, nor does it define what constitutes trusts, combinations, and monopolies. This is left to the General Assembly. Moreover, the General Assembly has enacted relevant legislation. There is little reason to think that, without section 165, the Assembly will repeal such legislation; even if it did, section 165 offers no remedy. Hence the section would seem to serve no useful purpose.

Section 166 (right to parallel railroads). Statutory detail. The section is the product of an era preoccupied with the building of railroads. The General Assembly can provide for such matters by general law.

Section 167 (issuance of stocks and bonds). Statutory detail. The section directs the General Assembly to enact laws regarding the issuance of stocks and bonds. Statute law exists to deal with this subject,[19] and a constitutional provision is unnecessary.

17. See Frank P. Grad, "The State Constitution: Its Function and Form for Our Time," 54 *Va. L. Rev.* 928, 968 (1968), reprinted in *State Constitutional Revision* (Charlottesville, Va., 1968), pp. 111, 151. Consider, for example, an Oklahoma case, which, interpreting a provision of the Oklahoma Constitution taken almost verbatim from Virginia's section 153, held that the Oklahoma provision's definition of "transportation company" by listing the kinds of transport (railroads, canals, etc.) known when the provision was adopted, rendered the Oklahoma Corporation Commission powerless to regulate airlines. Application of Central Airlines, Inc., 199 Okla. 300, 185 P.2d 919 (1947).

18. See Standard Drug v. General Electric, 202 Va. 367, 117 S.E.2d 289 (1960); Flax v. Richmond, 189 Va. 273, 52 S.E.2d 250 (1949).

19. See Va. Code Ann. §§ 13.1-16, 13.1-17 (repl. vol. 1964).

In general, it should be noted that much of present Article XII already appears in the Code of Virginia. Thus many of the deletions proposed above would require no further legislative activity. In some cases provisions of the Corporations article proposed to be deleted have no counterpart in the Code; in such cases, should one want to preserve the substance of the deleted constitutional section, legislation would be necessary. This could be readily accomplished by a study of the deleted sections and the existing legislation and by proposals for such further legislation as might be thought necessary.

Section 1. State Corporation Commission.

There shall be a permanent commission which shall be known as the State Corporation Commission and which shall consist of three members. Members of the Commission shall be elected by the General Assembly and shall serve for regular terms of six years. The members of the Commission shall have the qualifications prescribed for judges of courts of record, and any Commissioner may be impeached or removed in the manner provided for the impeachment or removal of judges of courts of record. Whenever a vacancy in the Commission shall occur or exist when the General Assembly is in session, the General Assembly shall elect a successor for such unexpired term. If the General Assembly is not in session, the Governor shall forthwith appoint pro tempore a qualified person to fill the vacancy for a term ending thirty days after the commencement of the next regular session of the General Assembly, and the General Assembly shall elect a successor for such unexpired term.

The Commission shall annually elect one of its members chairman and shall have such subordinates and employees as may be provided by law, all of whom shall be appointed and subject to removal in accordance with the statutory provisions for state employees generally, except that its heads of divisions and assistant heads of divisions shall be appointed and subject to removal by the Commission.

Source: Present section 155 (first, third, and fourth paragraphs).

Comment: The proposed section, creating the SCC, makes no change in the basic structure of the SCC. Thus the provisions dealing with membership, terms of office, and manner of selection are unchanged. The number of commissioners was set at three in the Constitution of 1902 and has remained unchanged; a membership of three is by far the prevailing number on the public service commissions of the American states.[20] A

20. In ten states, including Virginia, the membership of the public service commission is prescribed by constitution; in the remaining states, the membership is

term of six years was settled on by the Convention of 1901-02 after discussion of other possibilities, such as eight or twelve years (to make commissioners' terms comparable to those of circuit judges or Supreme Court of Appeals judges).[21] In having a term of six years, here again Virginia's Constitution is in line with the prevailing practice for the public service commissions of other states.[22] It is generally agreed that the commissioners' terms ought to be long enough to allow them to become familiar with the complex issues set before them and also to give them, in view of their sensitive duties, a sufficient measure of independence.[23] Virginia's Constitution is unique among state constitutions in providing for selection of commissioners by the Legislature; the prevailing practice is appointment by the governor, usually with, sometimes without, legislative confirmation.[24] To repeat, in all of the just-mentioned respects—membership, terms, selection—the Commission proposes no change in the existing provisions.

Under the present section, members of the SCC are removable in the manner provided for justices of the Supreme Court of Appeals.[25] Proposed section 1 has essentially the same provisions; SCC commissioners are removable in the manner provided for judges of courts of record.[26]

The provision for filling vacancies is basically unchanged in proposed section 1, but it has been reworded to conform with Va. Code Ann. § 12-9 (repl. vol. 1964), which is less confusing than the existing constitutional language.

prescribed by statute. Thirty-seven states have three-man commissions. One state has a two-man commission; the remaining eleven states have commissions of either five or seven members. For factors affecting size of a regulatory commission, see James W. Fesler, *The Independence of State Regulatory Agencies* (Chicago, 1942), p. 45.

21. See *1901-02 Convention Debates*, pp. 2566-69.

22. In thirty-one states the term is six years. Fourteen states have terms less than six years; five states provide for longer terms. In most states the term is provided by statute.

23. See Fesler, *The Independence of State Regulatory Agencies*, p. 6.

24. In eleven states, the governor appoints the commissioners, without legislative confirmation. In 22 states he appoints them, subject to some form of confirmation. Commissioners are popularly elected in eleven states. Besides Virginia, one state (South Carolina) provides for selection by the legislature; it does so by statute. Members of the SCC in Virginia were appointed by the Governor, subject to legislative confirmation, until 1919. From that time until 1929, commissioners were popularly elected Since 1929 they have been selected by the General Assembly.

25. Virginia's system of removing SCC commissioners differs from that of most states. Twenty-six states provide for removal by the governor; the other states have a variety of provisions.

26. The Commission's proposal in section 10 of the proposed Judicial article for a system of retiring or removing disabled or unfit judges explicitly includes members of the State Corporation Commission. See pp. 205-06 *supra*.

Unnecessary detail found in present section 155 has been deleted in the proposed section. Thus omitted is the present provision (first paragraph of section 155) dealing with terms of the commissioners who were in office in 1928 (a provision obviously now obsolete); the conflict-of-interest provisions of section 155's second paragraph (appropriate for statutory treatment);[27] authorization (section 155, fifth paragraph) for the General Assembly to establish subordinate divisions and branches (a power implicit in the authority given the Assembly by proposed section 2 to confer additional powers and duties on the Commission); quorum and other provisions of section 155's sixth paragraph (unnecessary in the light of the procedural and rule-making provisions of proposed section 3); and the mandate (section 155, seventh paragraph) that the General Assembly provide suitable quarters and funds for the SCC (a relic of the climate in which the SCC was created in 1902).

The rule-making provisions of present section 155, fourth paragraph, are incorporated, with changes in substance, into proposed section 3.

Qualifications of Commissioners. The proposed section provides that all Commissioners shall have the qualifications prescribed for judges. This represents a change from the present section, which requires only that one member shall have such qualifications.

Appointment and removal of subordinates. To insure the independence of the SCC from political pressures—a necessary and desirable goal for regulatory bodies—the proposed section provides that the SCC shall be free to appoint and remove its key employees in sensitive positions.[28] Arguably, such a provision is unnecessary;[29] however, the Commission believes that this is a matter of sufficient importance to be included in the Constitution. The Commission does not believe, however, that SCC employees, such as stenographers, below the level of policy-making positions ought to be treated differently from other state employees who enjoy

27. Section 5(c) of the proposed Franchise article expressly preserves the General Assembly's power to legislate against conflicts of interest by elective or appointive officials of the Commonwealth.

28. As the SCC's staff is presently organized, officers which would be presumed to come within the grant of appointing and removing powers to the SCC would be heads and assistant heads of, for example, the following divisions: Clerk's office, the Bureau of Insurance, the Bureau of Banking, the Transportation Division, the Engineering Division, the Accounting Division, the Securities Division, the Aeronautics Division, the Division of Assessment and Taxation, the Division of Motor Carrier Taxation, and the Fire Marshal's Office.

29. Va. Code Ann. § 2.1-115 (repl. vol. 1966) provides that the appointing authorities of the various state agencies shall be the personnel officers of their respective agencies. They are authorized to make appointments of persons for employment in the agency. By the express terms of the statute the Governor is prohibited from exercising authority with respect to the selection or terms of office of any person employed in accordance with the statute.

the benefits of the Personnel Act. Therefore the proposed section limits the SCC's independent power of appointment and removal to employees in high-level positions. This represents a change from present section 155, which gives the SCC this power as to all of its subordinates, without limitation.[30]

Section 2. Powers and duties of the Commission.

Subject to the provisions of this Constitution and to such requirements as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters, and amendments or extensions thereof, of domestic corporations and all licenses of foreign corporations to do business in this Commonwealth.

Except as may be otherwise prescribed by this Constitution or by law, the State Corporation Commission shall be charged with the duty of administering the laws made in pursuance of this Constitution for the regulation and control of corporations doing business in this Commonwealth.

The State Corporation Commission shall have the power and be charged with the duty of regulating the rates, charges, and services and, except as may be otherwise authorized by this Constitution or by general law, the facilities of railroad, telephone, gas, and electric companies.

Municipal corporations or other political subdivisions of the Commonwealth shall not be subject to the jurisdiction of the State Corporation Commission except as may be prescribed by law.

The State Corporation Commission shall have such other powers and duties not inconsistent with this Constitution as may be prescribed by law.

Source: Portions of present section 156(a), (b), and (c).

Comment: The proposed section undertakes, with a minimum of wordage, to confer jurisdiction on the SCC. The basic regulatory functions and the chartering functions of the SCC are preserved. The existing section is prolix and contains a mass of material which could best be omitted entirely or dealt with by legislation.

30. There have been at least two opinions from the office of the Attorney General that the SCC employees are exempted from coverage of the Virginia Personnel Act, Va. Code Ann. §§ 2.1-110 through 2.1-116 (repl. vol. 1966). One unpublished opinion was submitted by Attorney General Abram P. Staples to Governor Colgate W. Darden, Jr., on January 11, 1944. The other, submitted to the Honorable T. H. Bradford, Director of the Budget, by Attorney General J. Lindsay Almond, Jr., on September 1, 1948, is published and appears in *Opinions of the Attorney General, 1948-49*, p. 225. Both Attorneys General were of the opinion that the exemption in § 2.1-116(1) stating that the act does not apply to officers and employees for whom the Constitution specifically directs the manner of selection controls in view of the language of present section 155 of the Constitution.

Chartering corporations. While recognizing that some observers would propose the elimination of the chartering functions, the Commission believes that the SCC has carried out these functions well and that there is no compelling reason to change the existing method of chartering corporations. The first paragraph of the proposed section confers this power on the SCC.

Regulation of corporations. The second paragraph of proposed section 2 follows present section 156(b) and makes it clear that, save as the Constitution provides otherwise, e.g., the granting of charters, the superior authority over corporations rests with the General Assembly.

Regulation of utilities. Present section 156(b) confers paramount authority for the regulation of the rates and charges of transportation and transmission companies on the SCC. However, the constitutional definitions of "transportation and transmission" companies in present section 153 do not include companies furnishing gas and electricity, two of the most vital services provided to citizens of Virginia. It is proposed that the SCC be given exclusive and paramount jurisdiction to regulate the rates, charges, and services of railroad, telephone, gas, and electric companies.[31] These companies provide basic services throughout the Commonwealth and by the nature and the extent of their operations and the types of service performed could be effectively regulated only by a central agency. Transportation and transmission companies as defined in section 153 now encompass railroad and telephone companies.[32]

The extent to which the SCC shall regulate other transportation and transmission companies is, in proposed section 2, ultimately within the control of the General Assembly.[33] Thus it will remain possible for the

31. It has not been thought necessary to preserve the provision of the last paragraph of present section 156(b) dealing with the power of a county, city, or town regarding public utilities operating within their boundaries. The powers of localities with respect to such matters as paving or the location of lines and poles is unaffected by the language of the proposed section. As to powers of localities, see section 3 of the proposed Local Government article, *supra* p. 228.

32. Telegraph companies are likewise included within the definition of transmission companies in section 153. By not specifically mentioning telegraph companies, proposed section 2 would by no means prevent the General Assembly from subjecting telegraph companies to detailed regulation if it chose to do so. However, except in the instances of the four vital public services enumerated in section 2, the Commission has attempted to avoid statutory specificity in the section.

33. Motor carriers are subjected to SCC supervision by Va. Code Ann. § 56-276 (repl. vol. 1959), and air carriers by Va. Code Ann. § 56-145 (repl. vol. 1959). In Gruber v. Commonwealth, 140 Va. 312, 125 S.E. 427 (1924), the Supreme Court of Appeals upheld the constitutionality of legislation subjecting motor carriers to SCC jurisdiction although Article XII does not mention motor carriers. The airline industry was all but unknown in 1902, and section 153 makes no mention of air carriers. Mail was carried to and from Paris by balloon during the Franco-Prussian War (1870-71), but it is doubtful that this was a successful commercial venture.

Assembly, as it has done in the past, to decide that certain classes of motor and air carriers should not be under SCC jurisdiction.[34]

Proposed section 2 distinguishes between the regulation of rates, charges, and services of the named utilities, over which the SCC has constitutional jurisdiction, and regulation of those utilities' "facilities," over which the SCC has jurisdiction only to the extent general law does not provide otherwise. This distinction recognizes the fact that localities and other state agencies besides the SCC are concerned with certain aspects of utility operations. Localities have an obvious interest in such matters as the location of utility facilities, such as poles and wires, and compliance with zoning ordinances. Similarly, other state agencies besides the SCC may be concerned with utility facilities, for example, state agencies charged by law with administering air and water quality standards.

Since state and local interests are involved, and since state and local agencies and governing bodies may be acting, resolution of any possible conflict among such interests and actions is best resolved by the General Assembly through general laws. The Commission considered a proposal made to it to permit the SCC to review and set aside localities' zoning decisions having a detrimental effect on the adequacy of utility services but concluded not to recommend the Constitution give the SCC such power. Here again it seems wise not to anticipate such problems or to freeze answers into the Constitution, but instead to make it possible for the General Assembly to act should the need arise.[35]

Municipal corporations. The fourth paragraph of the proposal preserves the independence of municipal corporations from SCC jurisdiction. However, the General Assembly may provide for SCC regulation of municipally owned utilities if it so desires.

Additional powers and duties as conferred by law. The final paragraph of the proposed section expressly authorizes the General Assembly to confer powers and duties on the SCC beyond those conferred by the Constitution. The language of the proposal simply confirms present practice. Present section 156(c) allows the General Assembly to confer additional powers and duties on the SCC. While the existing language might, on its face, seem to suggest that such additional powers and duties must relate to corporations,[36] the General Assembly has repeatedly given the SCC

34. Va. Code Ann. § 56-274 (supp. 1968) exempts thirteen classes of motor vehicles carrying passengers and property from detailed SCC supervision. Similarly, Va. Code Ann. § 56-143 (repl. vol. 1959) exempts certain aircraft from SCC jurisdiction.

35. See commentary to proposed Local Government article, section 3, *supra* p. 230.

36. "The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation or control of corporations . . . ." Section 156(c).

duties which are not limited to corporate matters,[37] and the Supreme Court of Appeals has explicitly recognized that present section 156 in no way limits the authority of the General Assembly to impose on the SCC such additional duties as the Assembly wishes.[38]

Unnecessary detail. Much unnecessary detail presently found in section 156(a), (b), and (c) has been omitted, such as the prescribing of SCC forms and the SCC's having the duties of the former Railroad Commissioner and the Board of Public Works (section 156(a)) and provisions regarding books of and reports from public utilities (section 156(b)).

The procedural and notice provisions of present section 156(b) and (c) are superseded by proposed section 3, *infra*.

Section 3. Procedures of the Commission.

Before promulgating any general order, rule, or regulation, the Commission shall give reasonable notice of its contents.

In all matters within the jurisdiction of the Commission, it shall have the powers of a court of record to administer oaths, to compel the attendance of witnesses and the production of documents, to punish for contempt, and to enforce compliance with its lawful orders or requirements by adjudging and enforcing by its own appropriate process such fines or other penalties as may be prescribed or authorized by law. Before the Commission shall enter any finding, order, or judgment against a party it shall afford such party reasonable notice of the time and place at which he shall be afforded an opportunity to introduce evidence and be heard.

The Commission shall prescribe its own rules of practice and procedure. The General Assembly shall have the power to adopt such rules in cases where the Commission has not acted, to amend, modify, or set aside the Commission's rules, or to substitute rules of its own.

Source: Present sections 155 (fourth paragraph), 156(b) (third paragraph), and 156(c) (first paragraph).

Comment: The proposed section confers certain judicial and rule-making powers on the SCC. At the same time it attempts to provide constitutional safeguards of notice, while avoiding specificity which might be obsolete in the future.

37. E.g., licensing airplane pilots, Va. Code Ann. § 5.1-6 (repl. vol. 1966); investigating fires, §§ 27-55, 27-56 (repl. vol. 1964); adopting fire regulations for public buildings, § 27-72 (repl. vol. 1964); and acting as the agency for filing statements under the Uniform Commercial Code, § 8.9-401 (added vol. 1964).

38. Lewis Trucking Corp. v. Commonwealth, 207 Va. 23, 28-29, 147 S.E.2d 747, 751 (1966)

Notice. The first paragraph of the proposed section adopts in more general language the notice provisions of section 156(b), paragraph 3, and provides that the SCC must give reasonable notice of its general orders, rules and regulations.

Judicial powers. While creation of an agency exercising some functions traditionally associated with legislative, executive, and judicial departments is today well accepted, the power to punish for contempt and to levy fines may be a special case. If these be viewed, as they widely are, as intrinsically judicial powers,[39] they could not be granted to an agency simply by statute. Therefore the second paragraph of the proposed section provides for the SCC's exercise of the contempt power and for its power to levy fines, as well as the power to administer oaths and the power to compel the attendance of witnesses and the production of documents.

Rule-making. Present section 155, paragraph 4, provides that the SCC shall have absolute authority to prescribe its own rules of practice and procedure. The proposed section makes this power subject to the ultimate authority of the General Assembly. This provision parallels that in the proposed Judicial article, section 5, dealing with the rule-making power of the Supreme Court.

Section 4. Appeals from actions of the Commission.

The Commonwealth, any party in interest, or any party aggrieved by any final finding, order, or judgment of the Commission shall have, of right, an appeal to the Supreme Court. The method of taking and prosecuting an appeal from any action of the Commission shall be prescribed by law or by the rules of the Supreme Court. All appeals from the Commission shall be to the Supreme Court only.

No other court of the Commonwealth shall have jurisdiction to review, reverse, correct, or annul any action of the Commission or to enjoin or restrain it in the performance of its official duties, provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court to the Commission.

Source: Present section 156.

Comment: *Appeals of right.* Proposed section 4 is concerned with appeals from the SCC. The first paragraph provides that an appeal of right shall lie from any final action of the SCC to the Supreme Court. The present Constitution provides for an appeal of right in certain instances,

39. See ICC v. Brimson, 154 U.S. 447, 485 (1894). See also Higginbotham v. Commonwealth, 206 Va. 291, 294, 142 S.E.2d 746, 749 (1965); Holt v. Commonwealth, 205 Va. 332, 336-37, 136 S.E.2d 809, 813 (1964), *rev'd on other grounds,* 381 U.S. 131 (1965).

and the General Assembly has provided by statute for an appeal from any final actions of the SCC by any party in interest or aggrieved.[40] The Commission believes that an appeal of right is sufficiently important for inclusion in the Constitution.

No interference by lower courts. The second paragraph of the proposed section retains the provisions of section 156(d), paragraph 2, insulating the Commission from interference with its functions by lower courts. This reinforces the provisions in the proposal's first paragraph, preserved from present section 156(d), that all appeals from the SCC shall be to the Supreme Court only.

Deletions. The proposed section omits much of the laborious and unnecessary detail of present section 156(d) through (h). It eliminates the existing distinction between "transportation and transmission" companies and others. Also omitted is the requirement in section 156(g) that the Supreme Court must, if it reverses a rate order of the SCC affecting transportation or transmission companies, substitute its own order, rather than remand; such a provision places an impossible administrative burden upon the Supreme Court. All matters of procedure are left to general law.

Section 5. Foreign corporations.

No foreign corporation shall be authorized to carry on in this Commonwealth the business of, or to exercise any of the powers or functions of, a public service enterprise, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the Constitution and laws of this Commonwealth. However, nothing in this section shall restrict the power of the General Assembly to enact such laws specially applying to foreign corporations as the General Assembly may deem appropriate.

Source: Present section 163.

Comment: The existing section contains certain obsolete, unnecessary, and conflicting clauses which should be omitted. The proposed section preserves the essence of the present section with a minimum of verbiage. In particular, the proposal preserves the requirement of the existing section prohibiting a foreign public service corporation from doing business in Virginia. This provision requiring public service companies to be domestic corporations is a highly salutary one, and its retention is proposed. Likewise, the proposed section preserves the plenary power of the Commonwealth to regulate in all respects the activities of foreign cor-

40. Va. Code Ann. §§ 12-63 to 12-63.1 (repl. vol. 1964), § 8-462 (repl. vol. 1957).

porations doing business in Virginia, including the power to enact laws applying to foreign corporations as such.

Section 6. Corporations subject to general laws.

The creation of corporations, and the extension and amendment of charters whether heretofore or hereafter granted, shall be provided for by general law, and no charter shall be granted, amended, or extended by special act, nor shall authority in such matters be conferred upon any tribunal or officer, except to ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter, amendment, or extension applied for and to issue or refuse the same accordingly. Such general laws may be amended, repealed, or modified by the General Assembly. Every corporation chartered in this Commonwealth shall be deemed to hold its charter and all amendments thereof under the provisions of, and subject to all the requirements, terms, and conditions of, this Constitution and any laws passed in pursuance thereof. The police power of the Commonwealth to regulate the affairs of corporations, the same as individuals, shall never be abridged.

Source: Present sections 154, 158, 159.

Comment: The power of the Commonwealth to amend or repeal corporate charters is reserved by sections 154 and 158 of the Virginia Constitution. In a series of cases beginning with *Winfree v. Riverside Cotton Mills Co.*, 113 Va. 717, 75 S.E. 309 (1912), continuing through *French v. Cumberland Bank and Trust Co.*, 194 Va. 475, 74 S.E.2d 265 (1953), and culminating in *O'Brien v. Socony Mobil Oil Co.*, 207 Va. 707, 152 S.E.2d 278 (1967), the Supreme Court of Appeals has effectively rejected arguments based on the old doctrine of "vested rights" which, if accepted, would shackle the Commonwealth in its regulation of corporations. In each of those cases, however, the Court has in its opinion referred to the reserved power provisions of sections 154 and 158. Arguably a constitutional provision containing a reservation of powers to amend corporate charters or otherwise to affect corporate relationships is unnecessary in light of the statutory reservation found in Va. Code Ann. §§ 13.1-129 and 13.1-291. However, as these reservations apply to specific acts, the Virginia Stock Corporation Act and the Virginia Non-Stock Corporation Act respectively, and not to all corporation laws, a general power of reservation is perhaps necessary.

Accordingly, the proposed section does three things. Firstly, drawing on the language of present section 154, it requires that corporate affairs be governed by general laws and not by special acts (thus reinforcing the

mandate of Legislative sections 14 and 15.)[41] Secondly, restating in simpler language the substance of present section 158, the proposed section makes it clear that corporations hold their charters and conduct their business subject to the Constitution and laws of the Commonwealth, including such laws as may be enacted in the future. Finally, stating in simpler language the substance of present section 159, the proposed section reinforces the "reserved power" of the Commonwealth over corporate affairs by stating that the Commonwealth's police power shall never be abridged. Strictly speaking, this last statement is unnecessary, since a state cannot in any event bargain away its police power. See *Stone v. Mississippi*, 101 U.S. 814 (1879). Nevertheless, the statement may be useful by way of emphasis.

The proposed section, like present section 159, makes present section 164 unnecessary. Section 164 provides that the right of the Commonwealth to regulate common carriers and public service corporations shall never be abridged. The Supreme Court of Appeals has observed that, especially in light of section 159, section 164 is quite superfluous.[42] This is equally true under proposed section 6.

ARTICLE X

TAXATION AND FINANCE

The Commission makes several recommendations in the area of taxation, among them proposals dealing with the conformity of certain state tax laws with federal tax laws, assessment of agricultural and other open space land on the basis of use, and certain revisions in the provisions governing tax exemptions. The Commission's major proposal regarding finance would increase the overall limitation on the amount of general obligation debt that may be incurred subject, however, to much stricter safeguards than are contained in the present Constitution. Other proposals relate to self-liquidating debt and to industrial loans.

The proposed article on Taxation and Finance follows generally the structure of Article XIII of the present Constitution. The Commission recommends the rearrangement of some provisions for better order and the rephrasing of some provisions for clarity. In such cases, no change in substance is intended. Further, several sections and parts of sections of the

41. The General Assembly has provided by general laws for the creation of corporations and the extension or amendment of charters. Va. Code Ann. §§ 13.1-48 to -52, 13.1-55 to -60 (repl. vol. 1964).

42. Vinton v. Roanoke, 195 Va. 881, 894, 80 S.E.2d 608, 617 (1954); Richmond v. Chesapeake and Potomac Tel. Co., 127 Va. 612, 627, 105 S.E. 127, 137 (1920).

present Constitution are deleted entirely because they are either obsolete or they are more appropriate for legislative treatment than for constitutional treatment.

The more important proposals are summarized here. Detailed commentary accompanies the text of each section.

TAXATION

(1) *Conforming taxes.* The Commission recommends that section 50 of the present Constitution, which is section 11 of the proposed Legislative article (Article IV), be amended to permit conformity of the income, gift, and death tax laws of Virginia with those of the United States. This is in accord with most of the recommendations received by the Commission from its consultants and from the public on this subject. Most authorities agree that conformity of such laws will result in convenience and clarity to the taxpayer and in efficiency and economy to the State Department of Taxation. It should be noted that the General Assembly will still have the responsibility of fixing the tax rate and will not be permitted to conform it by reference to the tax laws of the United States.

(2) *Agricultural and other lands.* The proposal contains a provision which would permit the General Assembly to provide for the assessment of agricultural, horticultural, forest, or open space lands on the basis of use. The purpose of such proposal is to provide the General Assembly with the power to help preserve such lands located in urban areas for their present use by assuring that they are realistically and fairly assessed.

(3) *Exemptions.* The problem of tax exempt property, which is discussed in detail under proposed section 6, was explored thoroughly by the Commission. Though no major change in concept is recommended, the Commission believes that the additions it does recommend to section 183 of the present Constitution may, as a practical matter, alleviate some of the revenue problems localities are having because of the high percentage of tax exempt property within their jurisdictions.

(4) *Deletions.* The Commission proposes that the following sections of the present Constitution be deleted for the reasons stated:

Section 173, dealing with the capitation tax, is deleted as obsolete.

Section 174 (statute of limitations) and sections 176-181 (taxation of railroad and canal companies) are deleted as unnecessary detail, more appropriate to statutory treatment than to inclusion in a constitution. Deletion of such sections, of course, implies no judgment on the merits of the provisions themselves, only a judgment that they are matters for general law.

Section 183-a, making judges' salaries subject to state income taxes, is deleted as obsolete. It is now well accepted that the salaries of state and federal judges are subject to both state and federal income taxes.[1]

Section 189, allowing the General Assembly to authorize localities to exempt manufactories from local taxation for a period of years, has been deleted on the merits. The Commission believes that this section embodies an unsound approach to the Commonwealth's economic development and that it should be deleted.

FINANCE

The Commission is well aware that its recommendations with respect to state debt are among the most important that it is making. The Commission proposes constitutional provisions designed to continue the Commonwealth's sound fiscal policy and, at the same time, to permit continued growth and prosperity in these modern times.

Some contemporary commentators and experts in the field of governmental finance believe that state constitutions should be silent upon the subject of state debt, thus leaving the matter entirely to the legislative body. They claim that constitutional restrictions upon the inherent power of the legislature in the field of finance indicate a lack of confidence in the elected representatives of the people and argue that the legislature and the Governor should be entirely free to develop fiscal policies to meet the requirements of their time.[2]

These arguments prove too much. If one were to make consistent application of the suggestion that constitutional limitations betray a lack of confidence in the people's elected representatives, one would do away with constitutions altogether. The premise of having written constitutions is that they do, and are meant to, limit what popular majorities and their elected representatives can do. The question in a constitutional system is, not whether there should be limits, but rather which subjects are so fundamental that the Constitution should not be silent on them. In the judgment of the Commission, state debt is such a vital matter that it must be counted among the "fundamentals" to which a constitution must address itself.

Having fiscal limits does not, of course, imply that those limits should be so severe and rigid as to retard the Commonwealth's capacity for sound and healthy development. The Commission believes that the Consti-

1. See Graves v. New York *ex rel.* O'Keefe, 306 U.S. 466, 486 (1939); O'Malley v. Woodrough, 307 U.S. 268 (1939).

2. See Edward M. Kresky, "Taxation and Finance," in John P. Wheeler, Jr., ed., *Salient Issues of Constitutional Revision* (New York, 1961), p. 136; Frank M. Landers, "Taxation and Finance," in W. Brooke Graves, ed., *Major Problems in State Constitutional Revision* (Chicago, 1960), p. 225.

tution should provide sufficient capacity for financing, within definite bounds, to allow the Governor and the General Assembly to meet current and future needs. Accordingly the Commission proposes revisions to provide that capacity, coupled with adequate safeguards to assure the continuation of a sound fiscal policy.

There is general agreement that the reasonably foreseeable needs for enlarged educational facilities — for the community college program as well as established educational institutions—will require capital expenditures in excess of then current revenues. The Commission is strongly of the view that capital improvements should be financed in major part from current revenues to the extent that this is feasible without unreasonable tax increases and that long-term debt should supplement rather than replace current revenues for such purposes.

The Commission's proposals, therefore, are intended to chart a middle course which permits reasonable recourse to debt under carefully prescribed limitations.

(1) *General obligation debt and sinking fund.* In brief, the Commission recommends that the general obligation debt limit be tied to revenues rather than to the assessed value of taxable real estate, that the limit be increased, that a limit on the amount that can be authorized in any one biennium be imposed, that a portion of the biennial limit may be authorized by a vote of a two-thirds majority of the members of each house of the General Assembly without a vote of the people, and that stricter sinking fund and repayment provisions be adopted. See proposed section 9(b).

(2) *Self-liquidating debt.* The Commission further recommends that, to a limited extent and under strict safeguards, the full faith and credit of the Commonwealth be made available, to be placed behind certain self-liquidating projects, such as dormitories at Virginia's institutions of higher learning. It is believed that millions of dollars can be saved by this proposal through the reduction in interest rates on necessary debt. See proposed section 9(c).

(3) *Industrial loans.* Lastly, the Commission proposes that section 185 of the present Constitution (section 10 of this proposed article) be revised to permit the Commonwealth to establish an authority to guarantee loans to finance industrial development and expansion.

(4) *Deletion.* Section 184-b of the present Constitution, which prohibits issuance of certain evidences of indebtedness, is deleted as unnecessary.

Section 1. Taxable property; uniformity; classification and segregation.

All property, except as hereinafter provided, shall be taxed. All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, except that the General Assembly may provide for differences in the rate of taxation to be imposed upon real estate by a city or town within all or parts of areas added to its territorial limits, or by a new unit of general government, within its area, created by or encompassing two or more, or parts of two or more, existing units of general government. Such differences in the rate of taxation shall bear a reasonable relationship to differences between nonrevenue producing governmental services giving land urban character which are furnished in one or several areas in contrast to the services furnished in other areas of such unit of government.

The General Assembly may define and classify taxable subjects. Except as to classes of property herein expressly segregated for either state or local taxation, the General Assembly may segregate the several classes of property so as to specify and determine upon what subjects state taxes, and upon what subjects local taxes, may be levied.

Source: Present section 168 and third sentence of present section 169.

Comment: The substance of present section 168 is retained without change.

Expanding on the third sentence of present section 169, the proposal gives the General Assembly authority to provide for tax differentials in situations where land is added to existing units of government or where two or more existing units of government are consolidated to form a new unit of government. The purpose of the proposal is to facilitate voluntary consolidations by allowing recognition to be given to the fact that, when units of government are joined, the character of the land in the larger area thus created may vary widely, from well built up urbanized land to sparsely developed rural land. The section is so drafted that its principle can be applied to lands "added to" a city or town, whether by consolidation, annexation, or other method, as well as to land of a newly created unit of government. Moreover, the tax differentials need not be applied to all of a newly added area, nor to all of a unit of government which forms part of a new unit; in either case, the tax differentials can be tailored to the character of the land.

By use of the phrase "governmental services giving land urban character," the section allows the General Assembly to recognize that some

land, even though brought into a unit of government having an urban hub, may at the time be distinctly non-urban in character. Illustrative of services giving land urban character are streets, streetlights, curbs, gutters, and fireplugs. Governmental services unrelated to land and therefore not affecting its urban character within the meaning of the section include such services as libraries, hospitals, and welfare programs. To be relevant in affecting the urban character of land, governmental services must be nonrevenue producing. The theory behind this distinction is that where users must pay charges for governmental services, e.g., water or sewers, the availability or nonavailability of such services ought not to be taken into account in determining tax differentials; otherwise, the user of such services would pay twice: once in user charges, again in higher taxes.

There is no intention to disturb the existing practice by which counties create special taxing districts, such as sanitary districts.

The section's reference to "units of general government" uses a term which is defined in the commentary to section 2 of the proposed Local Government article.

Section 2. Assessments.

Except as hereinafter provided, all assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses and provide for the assessment thereof for taxation on the basis of such use, may establish appropriate procedures for the determination of ranges of values applicable to such classifications of real estate, may allow relief from or deferral of portions of taxes otherwise payable on such real estate if it were not so classified, and may prescribe the limits and extent of such relief from or deferral of taxes otherwise payable on such real estate.

So long as the Commonwealth shall levy upon any public service corporation a state franchise, license, or other similar tax based upon or measured by its gross receipts or gross earnings, or any part thereof, its real estate and tangible personal property shall be assessed by the State Corporation Commission or other central state agency, in the manner prescribed by law.

Source: Present section 169. The source of the first sentence of the first paragraph and all of the second paragraph of the proposal is section 169 of the present Constitution. (The substance of the next to last sentence of present section 169 has been transferred to proposed section 1, and the last sentence of present section 169 has been transferred to proposed sec-

tion 6.) The second sentence of the first paragraph of the proposal is new.

Comment: (1) *Fair market value assessment.* The proposal does not change the substance of the first two sentences of section 169.[3] The Commission gave careful consideration to the present requirement that property be assessed at fair market value and the alternatives thereto. The Commission recognized that the fair market value standard is seldom applied and that the Supreme Court of Appeals of Virginia has stated that the present constitutional provision is more honored in its breach than in its observance.[4] The Commission also gave careful consideration to the many suggestions it received from various interested organizations and citizens.[5]

The requirement that assessments be at fair market value first appeared in the Constitution of 1902. The Constitutions of 1851, 1864, and 1870 declared that "all property . . . shall be taxed in proportion to its value."[6] It is clear from the debates of the Constitutional Convention of 1902 that the prevailing practice at that time was similar to the practice of today, that is, assessment at fair market value being the exception rather than the rule and the ratio of assessments to fair market value varying substantially from one locality to another. It is equally clear that the Convention believed that assessment at fair market value was an important factor in obtaining a fair distribution of the tax burden.[7] For that reason, the Constitution of 1902 added the fair market value requirement.

Of course, assessment at less than fair market value, *per se,* is not inequitable so long as assessments are uniform within a taxing jurisdiction. However, studies by the Commission indicate that uniformity is more readily achieved if the standard of fair market value is used. Nothing is to be gained so far as uniformity is concerned by the alternative of authorizing assessments "based on," "derived from," or "at a percentage of" fair market value since, in each case, fair market value must first be ascertained. The only thing to be gained by such an approach would be to conform the Constitution to existing practice. The Commis-

3. The word "similar" has been inserted between "other" and "tax" to conform it to the interpretation of the Supreme Court of Appeals in East Coast Freight Lines v. City of Richmond, 194 Va. 517, 74 S.E.2d 283 (1953).

4. See, e.g., Washington Bank v. Washington County, 176 Va. 216, 218, 10 S.E.2d 515 (1940); Lehigh Portland Cement Co. v. Commonwealth, 146 Va. 146, 150, 135 S.E. 669 (1927).

5. On assessments in general, see Public Views Documents 12, 14, 20, 34, 42, 43, 56, 64, 69, 83, 85, 88, 104, 105, 107, 116, 119, 131, 134, 149, 150, 163, 167, 184, 185, 186, 187, 193, 194, 195.

6. Constitution of 1851, Art. IV, § 22; Constitution of 1864, Art. IV, § 23; Constitution of 1870, Art. X, § 1.

7. *1901-02 Convention Debates,* pp. 2643-46.

sion, however, believes that practice should be conformed to the Constitution. The existing mandate is perfectly clear and ought to be made effective.

Two additional factors worthy of note considered by the Commission were: (a) the debt limit for counties and cities in the proposed revision is tied to the assessed value of taxable real estate, which makes uniformity of assessment throughout the Commonwealth desirable; and (b) the General Assembly enacted legislation in 1966 which, over a period of twenty years, will result in the application of local assessment ratios to public service corporation property, thereby removing a major inducement for underassessment.[8]

Thus, the Commission has concluded that the Constitution should not retreat from its mandate that property be assessed at its fair market value. The meaning of the existing constitutional language is entirely clear, and its mandate is unmistakable. The Commission believes the General Assembly, which has ample power to act, and the localities should carry out the duty imposed by the Constitution.

(2) *Agricultural and other land.* The second sentence of the first paragraph of the proposal is new and would provide the General Assembly with the power to permit preferential tax treatment of agricultural, horticultural, forest, or open space lands. By the adoption of Senate Joint Resolution No. 43, the General Assembly at its 1968 session declared that:

> [Whereas], it is in the public interest to encourage the preservation of farm land, forest land, and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the State, to conserve the State's natural resources, and to provide for the welfare and happiness of the inhabitants of the State through a beautiful landscape; and
>
> [Whereas], it is also in the public interest to prevent the forced conversion of farm land, forest land, and open space land to more intensive uses as a result of economic pressures brought about through the assessment thereof for purposes of property taxation; . . . .

By that resolution, the General Assembly recommended that the Commission of the Industry of Agriculture and interested groups continue their investigation of land assessment and taxation practices and make their reports and recommendations available to the Commission on Constitutional Revision for its review and consideration.

The recommendations of the Commission of the Industry of Agriculture were (1) that the words "or other value basis" be added after the words "fair market value" in the first sentence of present section 169, and (2)

8. Va. Code Ann. § 58-514.2 (supp. 1968).

that the words "growing timber" be added after the words "personal effects" in the last sentence of present section 169, which deals with the permissive exemption from taxation of household goods and personal effects.[9] The first recommendation was considered by the Commission on Constitutional Revision and rejected since its effect would be to permit the assessment of *all* property on *any* basis of value which would completely emasculate the long-standing requirement that property be assessed at its fair market value. The Commission on Constitutional Revision was of the opinion that preferential tax treatment should be limited to land dedicated to the uses prescribed by Senate Joint Resolution No. 43. Most, if not all, of the states which have dealt with the problem of preferential assessment have limited such treatment to land within the categories included in the proposal.

The proposal is intended to provide the General Assembly with the flexibility to enact legislation necessary effectively to meet present and future problems and to provide safeguards to prevent abuse. A balance would have to be struck giving relief to those who legitimately ought to qualify for tax relief in the public interest and yet not giving windfalls to speculators. There are a number of techniques for the preservation of open space; of these, special assessments or tax arrangements are but one technique. Other approaches, such as zoning or the purchase of scenic easements or development rights, are more familiar devices, and it is fair to say that techniques which use assessments or tax rates as a way of preserving open space land are in an experimental stage. The experience of other states which have framed such legislation should be helpful.[10] Careful study will be required before the General Assembly attempts to exercise the power which it would possess under the Commission's proposal.

The second recommendation by the Commission of the Industry of Agriculture, which would permit the General Assembly to allow localities to exempt growing timber from taxation, was rejected for the reason that proposed section 2 would provide the General Assembly with sufficient power to meet any special problems involving such property.

(3) *Statewide assessment of property.* Consideration was given to the recommendation of the Virginia Association of Counties that assessment of all real estate and tangible personal property be made on a statewide

9. Public Views Document 205.

10. Md. Ann. Code art. 81, § 19 (repl. vol. 1965); Fla. Stat. Ann. § 193.201 (supp. 1968); Cal. Rev. & Tax Code § 402.5 (supp. 1968). See also William H. Whyte, *The Last Landscape* (New York, 1968); Peter A. Eveleth, "An Appraisal of Techniques to Preserve Open Space" 9 *Vill. L. Rev.* 559, 586-90 (1964); Note, "Techniques for Preserving Open Space" 75 *Harv. L. Rev.* 1622, 1641-42 (1962).

basis by a new state agency.[11] The Commission believes that the General Assembly could so provide under the present Constitution and so makes no recommendation for constitutional revision on this point.[12]

Section 3. Taxes or assessments upon abutting property owners.

The General Assembly by general law may authorize any county, city, town, or regional government to impose taxes or assessments upon abutting property owners for such local public improvements as may be designated by the General Assembly; however, such taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners.

Source: The proposal derives from the last two sentences of present section 170.

Comment: The present provision relating to taxation of abutting landowners is not clearly phrased or organized. It appears, however, to authorize certain cities, towns, and counties to impose special taxes for specified purposes without the necessity of enabling legislation by the General Assembly. By contrast, the proposed section would give the General Assembly power to *authorize any* county, city, town, or regional government, to impose such taxes for *any* public improvement *designated* by the General Assembly.

Under the proposed section, such taxes could only be imposed on abutting property owners and would be limited to an amount not to exceed resulting benefits.[13]

Throughout the proposed Taxation and Finance article, "regional government" is used in the same sense as it is used in section 7 of the proposed Local Government article.

Section 4. Property segregated for local taxation; exceptions.

Real estate, coal and other mineral lands, and tangible personal property, except the rolling stock of public service corporations, are hereby segregated for, and made subject to, local taxation only, and shall be assessed for local taxation in such manner and at such times as the General Assembly may prescribe by general law.

Source: Present sections 171 and 172.

11. Public Views Document 85.

12. See section 171 of the present Constitution. The General Assembly's power in this regard is continued in proposed section 4.

13. For comments on the constitutional provisions relating to assessments on abutting property owners, see Public Views Documents 4, 38, 67, 90, 103, 121, 142, 193, 194.

Comment: No change in substance. Sections 171 and 172 have been merged into a single section. The following changes, not touching substance, are proposed:

(1) The first sentence of section 171 is deleted as superfluous, since the rest of the section clearly segregates the named classes of property for local taxation.

(2) The phraseology of sections 171 and 172 that the named property "shall be assessed or reassessed for local taxation in such manner and at such times as the General Assembly has heretofore prescribed, or may hereafter prescribe, by general law" has been modernized with no change of meaning intended.

(3) The present language of section 172 relating to the assessment of coal and other mineral lands is identical to the present language of section 171 relating to the assessment of other real estate. Thus, the proposal inserts "coal and other mineral lands" after "real estate" for purposes of brevity. Again, this proposed revision is not intended to change the practice under the present Constitution by which coal and mineral lands may be assessed in a different manner than other real estate.

The reference to "rolling stock of public service corporations," the language of present section 171, has been retained; it is not meant to be implied that a public service enterprise must in fact be incorporated for the section's segregation of rolling stock to apply.

Consideration was given to recommending the amendment of present section 171 to except real estate and tangible personal property of public service corporations from constitutional segregation for local taxation and to provide that the General Assembly shall segregate such property for *either* state or local taxation. Though such an amendment has much merit, it would represent a marked departure from one of the basic principles of taxation in Virginia, and the Commission determined not to recommend it in this revision.[14]

Section 5. Franchise taxes; taxation of corporate stock.

The General Assembly, in imposing a franchise tax upon corporations, may in its discretion make the same in lieu of taxes upon other property, in whole or in part, of such corporations. Whenever a franchise tax shall

14. One observer suggested that the advent of nuclear power stations in Virginia accentuates the disparity between those localities which, having such plants, have a tax bonus and other localities which, lacking such installations, must tax local property owners more heavily. This, it is suggested, is unfair when such power plants serve large areas of the State and not just the locality where they are located. See Public Views Documents 149, 163.

be imposed upon a corporation doing business in this Commonwealth, or whenever all the capital, however invested, of a corporation chartered under the laws of this Commonwealth shall be taxed, the shares of stock issued by any such corporation shall not be further taxed.

Source: First two sentences of present section 170.

Comment: Since a state constitution is a limitation upon power, rather than a grant of power, it is not necessary in the Constitution to specify which taxes the General Assembly may impose. It is only necessary to have provisions limiting or placing conditions upon the Assembly's power to tax. Thus the provision in present section 170 relating to income taxes is, properly speaking, not a grant of power to tax incomes, but rather a limit on the Assembly to tax only incomes above six hundred dollars. Similarly the provisions as to franchise taxes are, taken together, a limitation because they require that when a franchise tax is levied upon a corporation or when all its capital is taxed, no further tax may be levied on the corporation's stock.

The Commission believes that the limit in section 170 to income taxes on incomes "in excess of six hundred dollars per annum" is unnecessary detail and that the level of exemptions, presently $1,000 for individuals in Virginia, can be determined by statute. On the premise that the section need only deal with limits on the taxing power, it then becomes unnecessary to refer to the power to tax incomes at all. Nor is it necessary for the Constitution to say that an income tax may be graduated; present section 170 does not mention a graduated income tax, only an income tax, yet the graduated income tax in Virginia is an accepted fact. Similarly, it is unnecessary to say that the General Assembly may impose license taxes, for it has that power anyway.[15]

The provision relating to franchise taxes is retained, as it operates as a condition attached to the imposition of such taxes. The reference to "transportation, industrial, or commercial" corporations is deleted, as the General Assembly seems to have treated this language as encompassing corporations of all types.[16]

Section 6. Exempt property.

(a) Unless otherwise provided in this Constitution, the following prop-

15. The reference in section 170, after the words "license tax," to "upon any business which cannot be reached by the ad valorem system" is meaningless in light of decisions of the Supreme Court of Appeals. See, e.g., City of Norfolk v. Griffith Powell Co., 102 Va. 115, 45 S.E. 889 (1903).

16. See, e.g., Va. Code Ann. §§ 58-457, 58-516, 58-517, 58-518, 58-546, 58-578, 58-597, 58-602 (repl. vol. 1959).

erty, and no other, shall be exempt from taxation, state and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth exempt by law.

(2) Buildings with land they actually occupy, the furniture and furnishings therein, and endowment funds, lawfully owned and held by churches or religious bodies, and wholly and exclusively used for religious worship or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

(3) Private or public burying grounds or cemeteries and endowment funds, lawfully held, for their care, provided the same are not operated for profit.

(4) Property owned by public libraries, incorporated colleges, or other incorporated institutions of learning, not conducted for profit, together with the endowment funds thereof not invested in real estate. But this provision shall apply only to property primarily used for literary, scientific, or educational purpose or purposes incidental thereto. It shall not apply to industrial schools which sell their product to other than their own employees or students.

(5) Real estate belonging to, and actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals, nunneries, and homes for the afflicted, aged, or infirm, conducted not for profit, but exclusively as charities; and parks or playgrounds held by trustees for the perpetual use of the general public.

(6) Buildings with the land they actually occupy, and the furniture and furnishings therein, belonging to any benevolent or charitable association and used exclusively for lodge purposes or meeting rooms by such association, together with such additional adjacent land as may be necessary for the convenient use of the buildings for such purposes.

(7) Property of the Association for the Preservation of Virginia Antiquities, the Confederate Memorial Literary Society, the Mount Vernon Ladies' Association of the Union, the Virginia Historical Society, the Thomas Jefferson Memorial Foundation, the posts of the American Legion, and such other similar patriotic or historical organizations or societies as may be prescribed by a three-fourths vote of the members elected to each house of the General Assembly.

(b) The General Assembly may define as a separate subject of taxation household goods and personal effects and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(c) Except as to class (a) (1) above, the General Assembly by general law may restrict, in whole or in part, but not extend, any or all of the above exemptions.

(d) Nothing contained in this section shall be construed to exempt from taxation the property of any person, firm, association, or corporation who shall, expressly or impliedly, directly or indirectly, contract or promise to pay a sum of money or other benefit on account of death, sickness, or accident to any of its members or other persons.

(e) Whenever any building or land, or part thereof, mentioned in this section, and not belonging to the Commonwealth, shall be leased or shall otherwise be a source of revenue or profit, all of such building and land shall be liable to taxation as other land and buildings in the same county, city, town, or regional government. But the General Assembly may provide for the partial taxation of property not exclusively used for the purposes herein named.

(f) Nothing herein contained shall be construed as authorizing or requiring any county, city, town, or regional government to tax for its purposes, in violation of the rights of the lessees thereof, existing under any lawful contract heretofore made, any real estate owned by such county, city, town, or regional government, as heretofore leased by it.

(g) Obligations issued by county, city, town, or regional governments may be exempted by the authorities of such governments from local taxation.

(h) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(i) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of exempt property for police and fire protection, refuse collection, and public utility services provided by such governments.

Source: Present section 183.

Comment: The entire area of tax exemptions is one of major concern, and the Commission gave it extensive study. The Commission received statements from many individuals and organizations. Some expressed

deep concern over the impact which such exemptions are having on local fiscal structure and would restrict exemptions. Others would add new exemptions for classes of people, such as the aged, or enlarge existing classes of exemptions, for example, by adding specific named organizations to those already enumerated in section 183.[17]

It would be desirable to modernize, standardize, and shorten the provisions of section 183. However, the Commission determined it would not be practicable to attempt the removal of exemptions already existing, especially in the case of specifically named organizations. At the same time, the Commission believes that it would not be in the best interests of the Commonwealth to create yet more exemptions from taxation. The basic policy ought to be one of equality in the tax structure, and exemptions, widely applied, undercut this policy. Moreover, tax exemptions already are having serious effects on local finances, and widening the circle of exemptions would only magnify that problem.

The Commission tried its hand at extensively rewriting section 183 but found that each version tended to give rise to as many problems as it solved. Moreover, a substantial body of case law and administrative interpretation has grown up around the present section. Hence the Commission has concluded that the best course may be to leave the basic structure of the section as it is. Some changes are recommended, however, and the Commission believes that these changes will provide the means by which the most serious problems relating to tax exempt property can be alleviated or minimized.

In proposed section 6, the paragraphs of present section 183 are renumbered. The following changes are proposed:

(1) In subparagraph (a) (5), the words "and homes for the afflicted, aged, or infirm" are added. The intent is to assure that such homes, which increasingly serve community needs, are accorded the same treatment as hospitals. As in the case of hospitals, the exemption would apply only to homes "conducted not for profit, but exclusively as charities."

(2) In subparagraph (a) (7), the words "patriotic or historical" are inserted after the word "similar." This is intended as a limiting, rather than as a broadening, of the exemption.

(3) In subparagraph (a) (7), which is the only one in which action by the General Assembly is contemplated, provision for a three-fourths vote of all the members elected to each house is inserted.

(4) In paragraph (b), the household goods and personal effects pro-

17. For comments on section 183 and exemptions, see Public Views Documents 10, 15, 37, 38, 57, 61, 64, 66, 73, 83, 89, 90, 103, 105, 112, 116, 122, 131, 134, 147, 151, 174, 183, 186, 192, 193, 196, 198, 205, 206, 211.

vision contained in present section 169 is set forth. It is revised to permit the General Assembly directly to exempt such property.

(5) In paragraph (c), the provision of the present Constitution that the General Assembly may restrict exemptions, other than those contained in (a) (1), has been amended to permit such restriction "in whole or in part."

(6) In paragraph (h) a requirement of strict construction is included. The Supreme Court of Appeals of Virginia in *City of Richmond v. Southside Day Nursery Ass'n*, 207 Va. 561, 151 S.E.2d 370 (1966), stated at page 565: "Since the early case of *Commonwealth v. Lynchburg Y.M.C.A.*, 115 Va. 745, 80 S.E. 589 (1914), this court has applied a liberal interpretation to the exemption provisions of § 183 of the Virginia Constitution."

The Commission believes that in light of the apparent inclination of the General Assembly to expand the statutory definition of the constitutional exemptions, a strict construction of the Constitution is desirable. This recommendation is in accord with the general rule that tax exemptions should be strictly construed.

A proviso has been added to paragraph (h) which is intended to protect existing exemptions from the strict construction requirement.

(7) In paragraph (i), the General Assembly is authorized to empower local governing bodies to impose service charges upon owners of exempt property for police and fire protection, refuse collection, and public utility services. This recommendation is made to allow a locality to be compensated for essential services which it provides to the exempt property at the expense of all taxpayers. A survey made by the Commission indicates that the percentage of tax exempt property is constantly and rapidly increasing throughout the Commonwealth and presents a major problem to urban areas. The following examples illustrate the severity of the problem at the present time:

Locality	*Percent of Property Exempt* [18]
Alexandria	25.00%
Arlington (county)	40.00%
Chesapeake	22.27%
Lynchburg	22.50%
Portsmouth	49.00%
Richmond	26.20%
Roanoke	14.97%

18. Part of this exempt property is owned by either the state or federal governments. State property can be the subject of service charges under section 6(i) if the General Assembly so provides. Federal property can be reached, of course, only if

Allowing localities to impose service charges should, in the judgment of the Commission, alleviate to some extent the burden localities carry because of present exemptions and the potential burden should the General Assembly by statute extend the list of exemptions.

Section 7. Collection and disposition of state revenues.

All taxes, licenses, and other revenues of the Commonwealth shall be collected by its proper officers and paid into the state treasury. No money shall be paid out of the state treasury except in pursuance of appropriations made by law; and no such appropriation shall be made which is payable more than two years and six months after the end of the session of the General Assembly at which the law is enacted authorizing the same.

Source: Present section 186.

Comment: No change of substance, except that the provisions relating to debt created during the War between the States have been omitted as unnecessary.

Section 8. Limit of tax or revenue.

No other or greater amount of tax or revenues shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the Commonwealth.

Source: Present section 188.

Comment: No change, except substitution of "Commonwealth" for "State."

Section 9. State debt.

No debt shall be contracted by or in behalf of the Commonwealth except as provided herein.

Source: The text of proposed section 9, which is broken down in the pages which follow, derives from present sections 184, 184-a, and 187.

Comment: The words "or liability" which appear after "debt" in the

the Federal Government consents. See the study committee report for the Commission on Intergovernmental Relations, *Payments in Lieu of Taxes and Shared Revenues* (Washington, D.C., 1955), considering such devices as payments in lieu of taxes and consents to property tax liability. See also the Kestnbaum Commission's subsequent report, Commission on Intergovernmental Relations, *A Report to the President* (Washington, D.C., 1955).

first sentence of present section 184-a have been deleted as superfluous and as perhaps misleading.

For full explanation of each subsection of section 9, see the commentary in the pages which follow.

As with the titles of sections themselves, the titles of the four subsections of section 9—(a), (b), (c), and (d)—are not part of the text of the section and have no operative effect.

Section 9(a).

(a) Debts to meet emergencies and redeem previous debt obligations. The General Assembly may (1) contract debts to suppress insurrection, repel invasion, or defend the Commonwealth in time of war; (2) contract debts, or may authorize the Governor to contract debts, to meet casual deficits in the revenue or in anticipation of the collection of revenues of the Commonwealth for the then current fiscal year within the amount of authorized appropriations, provided that the total of such indebtedness shall not exceed thirty per centum of the general fund revenues for the preceding fiscal year and that each such debt shall mature within twelve months from the date such debt is incurred; and (3) contract debts to redeem a previous debt obligation of the Commonwealth.

The full faith and credit of the Commonwealth shall be pledged to any debt created under this subsection. The amount of such debt shall not be included in the limitations on debt hereinafter established, except that the amount of debt incurred pursuant to clause (3) above shall be included in determining the limitation on the aggregate amount of debt contained in subsection (b) hereof unless the debt so incurred pursuant to clause (3) above is secured by a pledge of net revenues from capital projects of institutions or agencies described in subsection (c) hereof, which net revenues the Governor shall certify are anticipated to be sufficient to pay the principal of and interest on such debt and to provide such reserves as the law authorizing the same may require, in which event the amount thereof shall be included in determining the limitation on the aggregate amount of debt contained in subsection (c) hereof.

Source: Present section 184.

Comment: In the main, this proposal contains the substance of the provisions of section 184 of the present Constitution, with certain additions.

Clause 2 of the first paragraph, which deals with the power to contract debts to meet casual deficits or in anticipation of revenue, is intended to accomplish two purposes. First, it clarifies the power to borrow in anticipation of revenues. Second, it places a limitation on the amount that can be borrowed in anticipation of revenues or to meet casual deficits, and it

requires repayment of any such debt within twelve months from the date it is incurred.

Though the Commission believes the Commonwealth has the power to borrow in anticipation of revenues under the present Constitution, the clarification of the power and the limitation upon it are deemed desirable.

The second paragraph is new. Since subsections 9(b) and 9(c) of the proposal affirmatively provide for the pledging of the full faith and credit of the Commonwealth, it was thought appropriate (whether absolutely essential or not) to include such provision here. Further, provision is made to include the amount of debt created to redeem previous debt obligations within the aggregate limitations on debt imposed by subsections (b) and (c). If the new debt is of the type provided for in subsection (b), it will be included in the limitation of that subsection; if it is of the type provided for in subsection (c), self-liquidating debt, it will be included in the limitations of that subsection.

Section 9(b).

(b) General obligation debt for capital projects and sinking fund.

The General Assembly may, in any one biennium, upon the affirmative vote of a majority of the members elected to each house, authorize the creation of debt to which the full faith and credit of the Commonwealth is pledged, not to exceed one-tenth of the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the authorization by the General Assembly of such debt, for new capital projects to be distinctly specified in the law authorizing the same; provided that any such law shall specify capital projects constituting a single purpose and shall not take effect until it shall have been submitted to the people at an election and a majority of those voting on the question shall have approved such debt. The General Assembly may, in any one biennium, upon the affirmative vote of two-thirds of the members elected to each house and without approval by the people, authorize the creation of debt to which the full faith and credit of the Commonwealth is pledged, not to exceed one-twentieth of the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding such authorization, for new capital projects to be distinctly specified in the law authorizing the same. The aggregate amount of debt authorized by the General Assembly in any one biennium under this subsection (b) shall not exceed one-tenth of the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the date when any such debt is authorized by the General Assembly.

No debt shall be incurred under this subsection (b) if the amount thereof when added to the aggregate amount of all outstanding debt to which the full faith and credit of the Commonwealth is pledged other than that

excluded from this limitation by subsections (a) and (c) hereof, less any amounts set aside in sinking funds for the repayment of such outstanding debt, shall exceed an amount equal to the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the incurring of such debt.

All debt incurred under this subsection (b) shall mature within a period not to exceed the estimated useful life of the projects as stated in the authorizing law, which statement shall be conclusive, or a period of thirty years, whichever is shorter; and all debt incurred under clause (3) of subsection (a) hereof, except that which is secured by net revenues anticipated to be sufficient to pay the same and provide reserves therefor, shall mature within a period not to exceed thirty years. Such debt shall be amortized, by payment into a sinking fund or otherwise, in annual installments of principal to begin not later than one-tenth of the term of the bonds, and any such sinking fund shall not be appropriated for any other purpose. No such installment shall exceed the smallest previous installment by more than one hundred per centum. If sufficient funds are not appropriated in the budget for any fiscal year for the timely payment of the interest upon and installments of principal of such debt, there shall be set apart from the first general fund revenues received during such fiscal year and thereafter a sum sufficient to pay such interest and installments of principal.

Source: Present sections 184-a and 187.

Comment: (1) *Main features of proposal.* The proposed section contains substantial changes from sections 184-a and 187 of the present Constitution The main features of the proposal are:

(a) The debt limit is tied to general fund revenues, rather than to the assessed value of taxable real estate as it is in present section 184-a.

(b) A limit is imposed upon the amount of debt that can be created in any one biennium.

(c) One half of the biennial limit may be incurred if approved by a two-thirds vote of all the members elected to each house of the General Assembly, without approval by the people. If a greater amount of debt (up to the ceiling for the biennium) is deemed necessary in any one biennium, approval of the people is required.

(d) An overall debt limit of an amount not to exceed the average general fund revenues for three years is imposed.

(e) Repayment provisions are imposed which are much stricter than those contained in section 187 of the present Constitution.

(2) *History.* Limitations upon the inherent power of the Commonwealth to incur debt first appeared in the Constitution of 1870, if the

Constitution of 1864, which was of questionable validity, is not counted. At that time the state debt amounted to approximately $46 million. Much of that debt had been incurred for works of internal improvement, and some, of course, resulted from the War between the States.

The Constitution of 1870 prohibited any debt except to meet casual deficits, to redeem previous liabilities, to suppress insurrection, to repel invasion, or to defend the Commonwealth in time of war—the forerunner of section 184 of the present Constitution.

The debt limitation provision of the 1870 Constitution was incorporated, without change, into the Constitution of 1902 as section 184. However, section 185 of the 1902 Constitution did exempt public roads from the general prohibition against state involvement in works of internal improvement.

In 1920 section 184 of the 1902 Constitution was amended to permit borrowing to construct or reconstruct public roads. No limit was placed on the amount of such debt, and approval by the voters was not required.

In 1928 section 184 was revised to delete the provision which permitted borrowing for public roads, and present section 184-a, which permits borrowing for capital outlay purposes not to exceed one percent of the assessed value of taxable real estate upon approval of the voters, was added.

The debt provisions of the Constitution have not been altered since 1928.

(3) *General comment.* The Commission regards its proposal as a sound one, building on the present constitutional policy embodied in section 184-a, as adopted in 1928. New limitations and greater flexibility are proposed, but these are carefully framed to assure that capital improvements will be financed by borrowed money only to a limited extent and that when debt is created there will be an orderly and fiscally sound program to repay it.

This is accomplished by safeguards that do not exist in the present Constitution. These include new provisions which strictly regulate: (i) the amount of general debt which may be created each biennium; (ii) the maximum amount which may be created without a vote of the people, provided it is authorized by a two-thirds vote of each house of the General Assembly; (iii) the overall limit on total outstanding debt for which the full faith and credit of the Commonwealth is pledged; (iv) the repayment and sinking fund requirements; and (v) the conditions under which outstanding state debt may be redeemed and refinanced. All of these provisions are new, and although they incorporate many of the features of modern municipal finance, the Commission considers them to be essentially conservative.

The Commission's proposals will permit the debt financing of only part of the estimated capital needs of the Commonwealth, thus requiring continued financing of the major part thereof from current revenues. A sound, long-range program for capital improvements should be established by the General Assembly, the cost of such improvements to be borne by a proper balance between current revenues and borrowed funds. The recommendations of the Commission are structured to encourage such a program.

(4) *Reasons for proposal.* The one generalization which can be made with certainty is that the capital outlay needs of the Commonwealth will continue to increase at an unprecedented rate. The General Assembly provided $103 million for capital expenditures in 1966-67. Requests for such outlays for the 1968-69 biennium were nearly $250 million. The General Assembly cut these back to the approximately $191 million which was authorized. The authorizations included, in approximate amounts, $37 million in general fund appropriations, $19 million in special funds, $81 million in general obligation bonds, and $54 million in revenue bonds. Some knowledgeable sources have estimated that future capital outlay requirements will average at least $100 million a biennium.

Whatever the actual amounts may be, few will question that these needs cannot be met out of current revenues without a substantial increase in taxes. The traditional method of financing capital outlays from accumulated surplus is no longer available to the Commonwealth.

Of course, the alternative to financing capital projects solely from current revenues is to finance them partly from current revenues and partly from borrowed funds. Since the voters of Virginia in November 1968 approved the laws enacted by the 1968 General Assembly authorizing the Commonwealth to contract debt in the amount of $81 million, no further general obligation debt may be contracted under the present constitutional limitation until the assessed value of real estate (to which the present 1% limitation is tied) moves upward. The Commission is convinced that the present debt limit is too restrictive to accommodate future needs of the Commonwealth and therefore recommends that the revised Constitution provide the framework within which the General Assembly, with recourse to the people when necessary, can authorize reasonable amounts of additional debt. The widespread interest among the people of Virginia in seeing the present constitutional limitations on debt modified was brought home to the Commission by the many communications it received on the subject.[19]

19. For statements which, while varying in details, agreed in asking for a relaxation of the constitutional limitations on general obligation bonds, see Public Views Documents 17, 25, 30, 36, 43, 49, 56, 58, 61, 67, 72, 83, 85, 86, 87, 96, 107, 108, 111,

(5) *Tying debt to General Fund revenues.* The proposal would tie the debt limit to a percentage of general fund revenues rather than to a percentage of the assessed value of taxable real estate. Such a change is in accord with the recommendations of almost all the experts in public finance. This approach recently was adopted in Pennsylvania and in Delaware. The theory is that a debt limit should bear some relationship to the ability of the state to repay its debts. When, as in Virginia, real estate is not taxed by the state, this relationship does not exist. In his now classic *American State Debts*,[20] B. U. Ratchford made the following observation:

> A few states have expressed debt limits in terms of the assessed values of taxable property, but assessed values are no longer, if they ever were, an accurate measure of wealth. Since the states have generally abandoned the property tax as a source of revenue, the figures for assessed values now have even less significance than formerly.
>
> Estimates of the wealth and income of states have not yet achieved sufficient accuracy or official recognition to warrant using them in a constitutional limitation. For these reasons the only measure of debt-paying capacity which may feasibly be used is the revenue receipts of the state . . . .

Ratchford's specific recommendation was a limitation which would allow the legislature to borrow up to one hundred per centum of the average revenue receipts for the five preceding years and which would allow the electorate, by a referendum vote, to authorize an increase to two hundred per centum. Pennsylvania chose a limit of one and three-quarters times such average revenues.[21] Delaware set its limit at three and four-tenths times the General Fund revenues for the preceding year.[22]

The Commission, therefore, recommends that the debt limit be tied to general fund revenues. It determined that a moderate—yet progressive—limit for such debt would be an amount equal to the average of such revenues for the preceding three fiscal years. At the present time it is estimated that the average general fund revenue for the three fiscal years ending in 1969 is approximately $546 million, and the debt limit would be approximately that amount (including the $81 million debt authorized by the General Assembly and approved by the voters in November, 1968).

It should be noted that the difference between the amount that could be borrowed under the provisions of the present Constitution, without amendment, and the amount that could be borrowed under the proposal is not

114, 115, 118, 126, 139, 140, 141, 150, 177, 184, 185, 194. For statements asking that the present limits be retained, see Documents 116, 121, 155, 156.

20. B. U. Ratchford, *American State Debts* (Durham, N.C., 1941), pp. 593-94.

21. Pa. Const., Art. VIII, § 7.

22. Del. Const., Art. VIII, § 3A.

as great as many might believe. Under section 184-a of the present Constitution, the limit is one per centum of the "assessed" value of taxable real estate, and section 169 of the present Constitution requires that land shall be assessed at fair market value. As a matter of fact, the latest available figures of the State Department of Taxation reveal that the assessed value of all taxable real estate in Virginia averages only approximately thirty-three per centum of the true value of such real estate. Therefore, if assessments had been made as required by the Constitution, the debt limitation would have been based on an assessed value of approximately $24,000,000,000 in 1967 as compared with $8,127,000,000 (approximately)—the base used by the 1968 General Assembly. The true debt limit would then have been approximately $240 million rather than $81 million. By 1969, if assessed values of taxable real estate increase at the same rate as they have over the past five years—approximately eight per centum per year—the fair market value of taxable real estate would be approximately $28 billion and the debt limit would be $280 million. If the one per centum limitation were simply increased to two per centum, as some have suggested, the amount that could be borrowed would be approximately $560 million. Further, the present Constitution imposes no biennial limit and does not contain strict repayment provisions. Thus under these conditions it would be possible to create debt at a faster rate, and with fewer safeguards as to repayment, than under the Commission's proposal.

(6) *Safeguards.* Several safeguards are proposed that would prohibit a rapid, unchecked growth of state debt. One of the most important is the limitation upon the amount that could be authorized in any one biennium. The Commission recommends that this limitation be established at one-tenth of the average general fund revenues for the preceding three fiscal years—approximately $54 million based on the above figures. In addition, the repayment provisions serve as another practical restraint.

The Commission gave careful consideration to the provision of the present Constitution that laws authorizing the creation of debt must be approved by the voters before becoming effective. While subscribing generally to the wisdom of this requirement, where there are no other significant limitations (as might be said about the present debt provision), the Commission recognizes its weaknesses.

The referendum required by the constitutions of approximately twenty states has been severely criticized by most of the commentators.[23] It is suggested by many of these experts that the advantages of a referendum are far outweighed by the disadvantages—particularly if it is required

23. See Edward M. Kresky, "Taxation and Finance," in John P. Wheeler, Jr., ed., *Salient Issues of Constitutional Revision* (New York, 1961), p. 142; A. James Heins, *Constitutional Restrictions Against State Debt* (Madison, Wis., 1963), p. 87.

in every case. The safeguard which the referendum provides can be better achieved by less cumbersome procedures. Often a referendum is accompanied by a costly and time-consuming campaign, the benefits of which are questionable. One of the chief disadvantages of requiring a referendum is that, rather than encouraging prudence, it encourages inclusion of items in the bond proposal simply on the basis of their political or geographical appeal. This kind of something-for-everybody approach is the antithesis of sound spending on state needs. A referendum requirement also tends to frustrate orderly capital planning and spending, as the tendency is to go to the voters for maximum amounts. Greater protection against imprudent borrowing can be obtained by requiring extraordinary majorities of the General Assembly for approval of debt, by biennial limitations on the amount that can be borrowed, and by strict repayment provisions. All of these safeguards are built into the Commission's proposals.

Based upon its studies and the advice of experts with whom it has consulted, the Commission recommends a provision which it believes provides both flexibility and safeguards. This provision permits the General Assembly to borrow one half of the biennial limit without a referendum, but only upon the approval of two-thirds of all members elected to each house. Based on the general fund revenues for the three fiscal years ending in 1969, approximately $27 million could be borrowed in a biennium in this manner. Massachusetts and Delaware also have such a rule. The requirement of this extraordinary majority is designed to check the amount of full faith and credit debt incurred and to ensure sound deliberation by the General Assembly. When combined with the limitation on the amount which may be authorized at any one session with a referendum, the likelihood of rapid, unchecked growth in state debt is eliminated. Overall, these two restrictions appear to provide a satisfactory modification of the absolute requirement for a referendum. The Commission believes that the biennial limit will have the added effect of encouraging the Commonwealth to adopt and follow a carefully drawn plan for capital outlays. This, according to Ratchford, will eliminate one of the major factors which led to financial disasters in the last century—haphazard borrowing.

The biennial and aggregate debt limits were carefully chosen after consideration of the Commonwealth's estimated capital outlay needs and the general fund revenues.

(7) *Sinking fund.* Of primary importance as a safeguard is provision for a sinking fund. Present section 187, in pertinent part, provides simply that every law which creates debt shall likewise provide for a sinking fund for the payment of the same. Because of the proposed liberalization of the General Assembly's power to incur general obligation debt, the Commis-

sion recommends that the section relating to the repayment of that debt be more restrictive than that contained in the present Constitution. The main features of the proposal are:

First, it is proposed that all such debt mature within a period not to exceed thirty years or the useful life of the project, whichever is shorter. By this the Commission does not suggest that the term be thirty years; it merely provides a ceiling.

Second, provision is made to assure a regular and timely repayment schedule and to prevent a schedule that would call for "ballooning" at the end. However, a certain amount of flexibility is provided so that schedules fitting the particular issue can be devised.

Next, the machinery for assuring repayment is provided in the event the General Assembly fails to carry out its responsibilities.

Lastly, any debt created under section 9(a) to redeem previous debt obligations, if not self-liquidating, is subject to substantially the same repayment provisions that are applicable to debt created under section 9(b).

The Commission believes that this proposal provides adequate safeguards and yet is flexible enough to be workable both now and in the future.

The language in present section 187 dealing with the repayment of debt existing at the time of the partition of Virginia has been deleted as obsolete.

Section 9(c).

(c) Debt for certain revenue producing capital projects.

The General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth, and such debt shall not be included in determining the limitation on debt contained in subsection (b) hereof, provided that

(1) the creation of such debt is authorized by the affirmative vote of two-thirds of the members elected to each house of the General Assembly; and

(2) such debt is created for specific revenue producing capital projects (including the enlargement or improvement thereof), which shall be distinctly specified in the law authorizing the same, of institutions and agencies administered solely by the executive department of the Commonwealth or of institutions of higher learning of the Commonwealth.

Before any such debt shall be authorized by the General Assembly, and again before it shall be incurred, the Governor shall certify in writing,

filed with the State Treasurer, his opinion, based upon responsible engineering and economic estimates, that the anticipated net revenues to be pledged to the payment of principal of and interest on such debt will be sufficient to meet such payments as the same become due and to provide such reserves as the law authorizing such debt may require, and that the projects otherwise comply with the requirements of this subsection (c), which certifications shall be conclusive.

No debt shall be incurred under this subsection (c) if the amount thereof when added to the aggregate amount of all outstanding debt authorized by this subsection (c) and the amount of all outstanding debt incurred under clause (3) of subsection (a) which is to be included in the limitation of this subsection (c), less any amounts set aside in sinking funds for the payment of such debt, shall exceed an amount equal to the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the incurring of such debt.

Source: New section.

Comment: (1) *Main features of proposal.* This proposal provides for the issuance of self-liquidating bonds backed by the full faith and credit of the Commonwealth.

The main features of the proposal are:

(a) The issuance of such bonds must be approved by a two-thirds vote of all the members elected to each house of the General Assembly. Approval by the people is not required.

(b) Such bonds may only be issued for revenue producing projects of statewide benefit.

(c) The Governor must twice certify that in his opinion the project complies with the requirements of the subsection and that it is financially feasible.

(d) An overall limit of an amount not to exceed the average of the general fund revenues for three years is imposed.

(2) *General comment and reasons for proposal.* The concept of financing certain revenue producing projects of the Commonwealth by issuing revenue bonds is not new. In fact, various institutions and instrumentalities of the Commonwealth have already incurred approximately $400 million in bonded indebtedness secured solely by revenues. The majority of this indebtedness has been incurred by institutions of higher learning and by bridge, tunnel, and highway commissions or authorities.

This device is utilized by every state and in large measure was developed to permit the creation of debt outside constitutional restrictions. Such debt is secured solely by revenues, and, legally, is not backed by the full

faith and credit of the state. This is known as the "special fund" doctrine. It is universally recognized that the interest rates paid on nonguaranteed revenue bonds are considerably higher than they would be on guaranteed, general obligation bonds with comparable covenants.[24] Estimates of the difference between interest paid on nonguaranteed bonds and on guaranteed bonds range from one half of one per centum to one per centum. On large issues with long term, the actual dollar difference is staggering. Yet, as a general rule, the risk of default on revenue bonds is slight since the feasibility of the projects financed by their proceeds is subject to stringent engineering and economic tests before the bonds can be marketed. Therefore, the Commission is of the opinion that under limited circumstances and under strict safeguards, it should be constitutionally permissible for the General Assembly to place the full faith and credit of the Commonwealth behind certain self-liquidating projects.

It should be borne in mind that the intent of the proposed section is not to authorize the creation of debt for any new purpose; rather it is to provide the means by which debt that would be created anyway can be created on more advantageous terms than is presently possible. To insure that the authority granted the General Assembly under the proposal is not abused, the following limitations and safeguards are imposed:

(a) Such debt may be incurred only for self-liquidating capital projects administered solely by the executive department.

(b) The Governor must certify to the General Assembly his opinion, based on responsible estimates, that the project is economically feasible and that it is administered solely by the executive department. The Assembly can, of course, impose even higher standards before authorizing the debt, but it cannot create lower standards, that is, it cannot act without the Governor's certification.

(c) Such debt must be authorized by an extraordinary majority—two-thirds of the members of each house of the General Assembly.

24. U.S. Department of Housing, Education and Welfare, *HEW Indicators* (Washington, D.C., 1961), p. 16; A. James Heins, *Constitutional Restrictions Against State Debt* (Madison, Wis., 1963), pp. 36-81; James A. Maxwell, *Financing State and Local Government* (Washington, D.C., 1965), p. 204; William E. Mitchell, *The Effectiveness of Debt Limits on State and Local Government Borrowing* (New York, 1967); B. U. Ratchford, *American State Debts* (Durham, N.C., 1941), p. 514; Roland L. Robinson, *Postwar Market for State and Local Government Securities* (Princeton, N.J., 1960), pp. 210-12; Colgate W. Darden, "Virginia's Indirect Debt," *The University of Virginia Newsletter*, XXXIX, February 15, 1963; Ernest Kurnow, "The Non-guaranteed debt of State and Local Governments," 15 *Nat'l Tax J.* 239, 243 (1962); John L. O'Donnell, "The Tax Cost of Constitutional Debt Limitation in Indiana," 15 *Nat'l Tax J.* 406 (1962); B. U. Ratchford, "State and Local Debt Limitations," *Nat'l Tax Ass'n Proceedings*, Oct. 1958, p. 223; W. H. Tifer, "Revenue Bond Financing: Advantages and Disadvantages," 32 *Municipal Finance*, No. 1, Aug. 1959, p. 76-77.

(d) Revenues from the project sufficient to pay principal and interest must be pledged to the payment of the debt.

(e) An overall limit of an amount not to exceed the average General Fund revenues for the preceding three years is imposed.

Section 9(d).

(d) Obligations to which section not applicable.

The restrictions of this section shall not apply to any obligation incurred by the Commonwealth or any institution, agency, or authority thereof if the full faith and credit of the Commonwealth is not pledged or committed to the payment of such obligation.

Source: New provision.

Comment: Added for the sake of clarity and completeness, this subsection serves to emphasize that the provisions of section 9 operate only when the full faith and credit of the Commonwealth is pledged or committed to the payment of an obligation. If an obligation in no way involves the Commonwealth's full faith and credit, then under the proposed section, as is the case at present, the constitutional debt limitations are not relevant.

Section 10. Lending of credit, stock subscriptions, and works of internal improvement.

Neither the credit of the Commonwealth nor of any county, city, town, or regional government shall be directly or indirectly, under any device or pretense whatsoever, granted to or in aid of any person, association, or corporation; nor shall the Commonwealth or any such unit of government subscribe to or become interested in the stock or obligations of any company, association, or corporation for the purpose of aiding in the construction or maintenance of its work; nor shall the Commonwealth become a party to or become interested in any work of internal improvement, except public roads and public parks, or engage in carrying on any such work; nor shall the Commonwealth assume any indebtedness of any county, city, town, or regional government, nor lend its credit to the same. This section shall not be construed to prohibit the General Assembly from establishing an authority with power to insure and guarantee loans to finance industrial development and industrial expansion and from making appropriations to such authority.

Source: Present section 185.

Comment: Section 185 of the present Constitution is included in full in the proposed section, except that the language pertaining to subscription to railroad stock authorized prior to 1903 is omitted as no longer necessary,

and "regional governments" has been added to "counties, cities, and towns."

The last sentence of the proposed section is new and would specifically authorize a legislative program to guarantee loans through a public authority to aid industrial financing. Such a program, involving the Industrial Building Authority, was held to violate section 185 in *Button v. Day*, 208 Va. 494, 158 S.E.2d 735 (1968).

The General Assembly in 1966 adopted a resolution calling for the amendment of section 185, and it was introduced again at the 1968 session (SJR 30 and SB 285). The language of the proposal is identical to the resolution with one major exception. The resolution contains a requirement that the loan guarantee would be secured by a first deed of trust on the industrial property; the proposal would leave the matter of security to the General Assembly or the authority. The requirement that the guarantee be secured by a first deed of trust would defeat the purpose of the revision, which is to encourage conventional financing with a portion thereof being guaranteed by the authority, since the first deed of trust should secure the primary lender.

The Division of Industrial Development of the Governor's Office has requested the Commission to recommend an appropriate amendment permitting such a guarantee program. Many states have guarantee plans or direct loan programs, and the Division of Industrial Development suggests that Virginia will be at a severe disadvantage in the competition for new industry unless it can avail itself of a guarantee plan. The problem has been made more acute by recent legislation which severely restricts the tax benefits of industrial revenue bonds.

TAXATION AND FINANCE APPENDIX A COMPARATIVE FIGURES: GENERAL FUND AND ASSESSED VALUATION OF REAL ESTATE IN VIRGINIA

Fiscal Year	General Fund Revenues	Assessed Value of Real Estate
1969 (est.)	698,824,665*	
1968	481,360,163	
1967	458,708,994	8,126,561,722
1966	372,359,658	7,526,474,055
1965	329,690,937	6,806,387,498
1964	304,200,649	6,320,752,275
1963	292,230,417	5,871,703,100
1962	247,908,423	5,394,548,643
1961	237,372,083	5,085,406,813
1960	199,877,231	4,684,917,955
1959	181,469,955	4,396,964,934
1958	171,658,174	4,142,102,226

ARTICLE XI

CONSERVATION

Virginia's Constitution presently has no conservation article. The Commission proposes that such an article be added, in recognition of the growing awareness that among the fundamental problems which will confront the Commonwealth in coming years will be those of the environment.

In the early days of the Republic, it was easy to take natural resources for granted. In the latter half of the Twentieth Century, it is not so easy. Growing population, urbanization, industrial uses, recreational needs, and other forces have given rise to the necessity for some hard thinking about the adequacy and quality of the environment and resources of the Commonwealth.

Section 1 of the proposed article on Conservation makes the conservation, development, and utilization of our natural resources a stated policy of the Commonwealth. Section 2 makes clear the power of the Common-

*Report of General Fund Revenues, Sept. 30, 1968, Dept. of Accounts, Office of the Comptroller. The substantial increase of the estimated 1969 general fund revenues over the 1968 revenues results, in the main, from one-time windfall tax collections during the 1968-69 fiscal year and from sales tax revenues.

wealth to develop and conserve its natural resources either on its own or in cooperation with state or federal governments or with individuals or corporations. The section also has the important effect of resolving any doubts about the power of the Commonwealth to enter into long-range undertakings, for example, in the form of an interstate compact, which would require a financial commitment beyond the period of a single biennial budget.

Section 3 retains the oyster bed provisions of present section 175, unchanged save for the substitution of "Commonwealth" for "State."

The proposed Conservation article, by making a statement of policy and by removing possible legal barriers to effective governmental programs, should operate as part of the climate of state and private initiative to deal with such increasingly important problems as air and water pollution, access to the countryside for recreation and other purposes, and other problems of the environment. The object of the Commission's proposal for a Conservation article is, in the words of a recent study group in Virginia, to help the people of the Commonwealth to achieve "a good life, an opportunity to enjoy the things we have acquired; a place of pleasure, dignity, and permanence which we can pass on to future generations with satisfaction and pride." [1]

Section 1. Lands and resources of the Commonwealth.

The General Assembly shall make provision for the conservation, development, and utilization of the natural resources of the Commonwealth.

Source: New section.

Comment: This section declares the conservation, development, and utilization of natural resources to be a stated policy of the Commonwealth. A number of sections of the Virginia Code deal with land and water resources,[2] but the Commission feels that a general policy statement should be included in the Constitution.

Section 2. Development of natural resources.

The General Assembly may undertake the development or utilization of lands or natural resources of the Commonwealth, either by the creation of public authorities or by leases or other contracts with agencies of the United States, with other states, with units of government in the Com-

1. *Report of the Virginia Outdoor Recreation Study Commission* (Richmond, 1965), p. 8. See also Public Views Documents 6, 132, 182, 191, 209, 212.

2. See, e.g., Va. Code Ann. §§ 10-84 to 10-90.1; 10-22 to 10-31; and 29-3 to 29-23.1 (repl. vol. 1964).

monwealth, or with private persons or corporations. Subject to the debt limitations of Article X, section 9, nothing in this Constitution shall be construed to limit the Commonwealth in participating for any period of years in the cost of projects which shall be the subject of a joint undertaking between the Commonwealth and any agency of the United States or of other states.

Source: New section.

Comment: This section makes clear the power of the Commonwealth to take effective measures to develop and conserve its natural resources, either on its own or in cooperation with state or federal governments or with individuals or corporations. In particular, the section resolves any doubts about the power of the Commonwealth to enter into long-range undertakings, for example, an interstate compact, which might require a financial commitment beyond the period of a single biennial budget.[3]

Section 3. Natural oyster beds.

The natural oyster beds, rocks, and shoals in the waters of the Commonwealth shall not be leased, rented, or sold but shall be held in trust for the benefit of the people of the Commonwealth, subject to such regulations and restrictions as the General Assembly may prescribe, but the General Assembly may, from time to time, define and determine such natural beds, rocks, or shoals by surveys or otherwise.

Source: Present section 175.

Comment: No change except to substitute "Commonwealth" for "State." The section is relocated from its present location in the Taxation and Finance article, to the proposed Conservation article, to which the subject of oyster beds is more related.

ARTICLE XII

FUTURE CHANGES

From 1776 until 1870, Virginia constitutions contained no provision either for amendments or for the calling of constitutional conventions. Nevertheless, both methods of changing the Constitution were in fact used regularly. Conventions to revise the Constitution were called in 1829-30,

3. See letter opinion of the Attorney General, July 28, 1964, to Governor Albertis S. Harrison, Jr., regarding Virginia's participation in development of the Potomac River Basin.

in 1850-51, and in 1867-68,[1] and at other times amendments were effected without resort to a convention. At the Convention of 1867-68, explicit provision for constitutional change was inserted into the Constitution.[2]

Under the present Constitution two methods exist for making changes in the Constitution: by amendment or by convention. The Commission proposes no alteration of present section 196, which prescribes the method of amending the Constitution. The Commission does recommend, however, that section 197, governing the calling of constitutional conventions, be revised in several particulars. The central change which the Commission would effect is to require that any proposal coming out of a constitutional convention must be submitted to the people for approval before it can become effective. The present Constitution contains no such requirement, and the Commission believes this to be a defect which ought to be remedied.

Section 1. Amendments.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates, and shall be published for three months previous to the time of such election. If at such regular session or any subsequent extra session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as it shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the voters, qualified to vote in elections by the people, voting thereon, such amendment or amendments shall become part of the Constitution.

Source: Present section 196.

Comment: No change except linguistic changes. The phrase "the name of each member and how he voted" has been substituted for "with the ayes and noes taken thereon," to conform the language of this section to comparable language in the Legislative article. Also, the word "voters"

1. A convention, whose legal status and effect has never been clear, met in 1864 in Alexandria to write a constitution for the "restored government" of Virginia—that part of the Commonwealth controlled by federal troops.
2. Constitution of 1870, Art. XII.

has been substituted for the word "electors" in the last sentence. No change in substance is effected.

Section 2. Constitutional convention.

The General Assembly may, by a vote of two-thirds of the members elected to each house, call a convention to propose a general revision of, or specific amendments to, this Constitution, as the General Assembly in its call may stipulate.

The General Assembly shall provide by law for the election of delegates to such a convention, and shall also provide for the submission at the next succeeding general election, of the proposals of the convention to the voters qualified to vote in elections by the people. If a majority of those voting vote in favor of any proposal, it shall become effective on the date prescribed by the General Assembly in submitting the convention proposals to the voters.

Source: Present section 197.

Comment: Several substantive changes are proposed, the primary purpose of the changes being to introduce certain safeguards into the convention process.

(1) *Call by the Assembly.* Under the proposed section, a two-thirds majority in each house is necessary in the General Assembly to call a constitutional convention. Present section 197 requires a simple majority.

(2) *General or limited convention.* The proposed section allows the General Assembly, in its call, to provide either for a general convention or for a convention limited to the consideration only of specified subjects for amendment. Although present section 197 is silent on whether the Assembly may call a limited convention, the Supreme Court of Appeals has held that under the existing section a convention can be limited.[3]

(3) *Action of the people.* The most significant feature of the proposal is that which shifts action by the people from approval of the calling of a convention (the provision of present section 197) to approval of the convention's actual proposals. Clearly it is far more important that the people be able to pass on, and thereby to accept or reject, the changes which the convention would effect in the Constitution than it is that they say whether there should be a convention in the first place. The General Assembly is competent to call a convention (historically the Assembly had this power), but only the people should have the final say as to whether any change in

3. Staples v. Gilmer, 183 Va. 613, 33 S.E.2d 49 (1945). See Robert K. Gooch, "The Recent Limited Constitutional Convention in Virginia," 31 *Va. L. Rev.* 708 (1945).

the Constitution proposed by a convention should become effective. Twice in the Commonwealth's history—in 1776 and in 1902—constitutions were proclaimed without being first submitted to the people, and on both occasions there were grave doubts about the propriety of such action.[4] On both occasions, the constitutions so promulgated were accepted by the courts as being valid,[5] but the Commission is of the view that the Constitution itself ought clearly to provide that the people must have the final word on constitutional amendment or revision.

Thus, under the proposed section, the people would act twice: to elect delegates to the convention and, subsequently, to vote on the convention's proposals. The election of delegates would be the occasion on which expressions of popular opinion would be forthcoming, as a guide to the deliberations of the convention. The essential step, of course, and the safeguard notably lacking in present section 197, would be approval or disapproval by the people of the convention's proposals.

SCHEDULE

The purpose of a schedule is to provide for the transition from an existing constitution to either a revised constitution or a new one. Intended simply to obviate inconveniences which might otherwise arise from the transition, a schedule does not introduce independent and substantive provisions into the Constitution unless that intention plainly appears.[1]

The Commission proposes a schedule to accomplish four results: (1) to specify the effective date of the revised Constitution; (2) to make clear the extent to which the adoption of the revised Constitution effects no change in existing private and public law in the Commonwealth, the terms and status of officers, and the dates of elections; (3) to specify the only instances in which a provision of the revised Constitution is not to take im-

4. Jefferson repeatedly argued that, not having been submitted to the people, the Constitution of 1776 was no more than a statute, amendable at will by the Legislature. He so argued in his *Notes on the State of Virginia,* published in 1785, and was still urging the same argument as late as a letter he wrote to John Hambden Pleasants in 1824. *Writings of Thomas Jefferson,* ed. Paul L. Ford (New York, 1892), III, 225-29; X, 302. As to the Constitution of 1902, the convention of the Democratic Party which, meeting in Norfolk in May 1900, voted to make calling a constitutional convention a party issue also resolved "that when such Constitution shall have been framed it shall be submitted to a vote of the people for ratification or rejection . . . ." It was generally agreed that members of the 1901-02 Convention elected as Democrats were bound by this pledge. Nevertheless, the Convention voted to promulgate the document without a popular referendum. See Ralph C. McDanel, *The Virginia Constitutional Convention of 1901-02* (Baltimore, 1928), pp. 113-35.

5. Kamper v. Hawkins, 3 Va. 20 (1793); Taylor v. Commonwealth, 101 Va. 829, 44 S.E. 754 (1903).

1. Willis v. Kalmbach, 109 Va. 475, 64 S.E. 342 (1909).

mediate effect (unless a provision itself contains some exception); and (4) to take account of the need for the General Assembly to implement the revised Constitution in the general laws of the Commonwealth. The schedule proposed by the Commission performs the same function as the schedule of 1902, but in fewer words.[2]

Effective date of revised Constitution. Like section 25 of the 1902 schedule, proposed section 1 specifies the effective date of the revised Constitution, in this case July 1, 1971.

Officers and elections. Proposed section 2 preserves the terms, tenure, status, compensation, and oath of incumbent officers, unless the revised Constitution or laws passed pursuant thereto provide otherwise. Similarly, unless otherwise provided by Constitution or laws, dates for the election or appointment of all officers, state and local, are to take place at the same time at which they would have taken place had there been no revision of the Constitution. The proposed section thus performs, in concise language, the same function as sections 9, 10, 11, 12, 14, 15, and 16 of the 1902 Schedule.

Existing laws, proceedings, and obligations. Proposed section 3 makes clear that, unless the revised Constitution or laws passed pursuant thereto provide otherwise, the adoption of the revised Constitution has no effect on the common and statute law of the Commonwealth, pending judicial proceedings or judgments, obligations owing to or by the Commonwealth, or any of its officers, agencies, or political subdivisions, or any private obligations or rights. The section thus performs, in concise language, the same function as sections 1, 3, 4, and 5 of the present Constitution. Proposed section 4 preserves pending petitions for original habeas corpus in the Supreme Court, since under the proposed Judicial article habeas corpus cases could reach the Supreme Court only through appeal.

Exceptions. Proposed sections 5 and 6 make specific exceptions, for incumbents, to certain qualifications for office which, with the adoption of the revised Constitution, might otherwise oust an incumbent from office.

General Assembly implementation. Adoption of the revised Constitution carries with it the likelihood that more than the ordinary attention will be required to statute law at the first ensuing session of the General Assembly. This was the case in 1902, and sections 19 and 20 of the 1902

2. Only three cases in the Supreme Court of Appeals, all decided before 1910, have involved the 1902 Schedule. Town of Hampton v. Jones, 105 Va. 306, 54 S.E. 16 (1906); Fulkerson v. City of Bristol, 105 Va. 555, 54 S.E. 468 (1906); Willis v. Kalmbach, 109 Va. 475, 64 S.E. 342 (1909). Both the commission which recommended the 1928 revisions in the Constitution and the General Assembly which acted on those revisions ignored the schedule in their revisions. See *Report of the Commission to Suggest Amendments to the Constitution* (Richmond, 1927), pp. 3-6.

schedule recognized this fact. Similarly, proposed section 7 makes sure that the General Assembly will have ample time and opportunity to enact such legislation as may be necessary to implement the revision in the Constitution.

Section 1. Effective date of revised Constitution.

This revised Constitution shall, except as is otherwise provided herein, go into effect at noon on the first day of July, nineteen hundred and seventy-one.

Source: Section 25 of the Schedule of the present Constitution.

Comment: This proposed section, like its counterpart in the 1902 Schedule, provides the effective date of the revised Constitution.

Section 2. Officers and elections.

Unless otherwise provided herein or by law, nothing in this revised Constitution shall affect the oath, tenure, term, status, or compensation of any person holding any public office, position, or employment in the Commonwealth, nor affect the date for filling any state or local office, elective or appointive, which shall be filled on the date on which it would otherwise have been filled.

Source: This section performs the function which in 1902 was performed by sections 9, 10, 11, 12, 14, 15, and 16 of the Schedule of the present Constitution.

Comment: Proposed section 2 leaves the term, tenure, status, and compensation of incumbent officers undisturbed, unless otherwise provided by the revised Constitution itself or by laws passed pursuant thereto. Likewise, officers who have already taken the necessary oath of office need not take another one. The section applies to every officer, state or local, elective or appointive, legislative, executive, or judicial, in the Commonwealth.

Similarly, the section leaves the existing dates for elections to, or other filling of, offices undisturbed, unless the revised Constitution or laws passed pursuant thereto provide otherwise. Thus, elections for statewide offices, for the General Assembly, and for all other offices, state and local, and elections or appointments to all other offices, state and local, legislative, executive, or judicial, will, after the effective date of the revised Constitution, take place at the date at which they would have taken place had there been no revision of the Constitution.

Section 3. Laws, proceedings, and obligations unaffected.

The common and statute law in force at the time this revised Constitution goes into effect, so far as not in conflict therewith, shall remain in force until they expire by their own limitation or are altered or repealed by the General Assembly. Unless otherwise provided herein or by law, the adoption of this revised Constitution shall have no effect on pending judicial proceedings or judgments, on any obligations owing to or by the Commonwealth or any of its officers, agencies, or political subdivisions, or on any private obligations or rights.

Source: This section performs the function which in 1902 was performed by sections 1, 3, 4, and 5 of the Schedule to the present Constitution.

Comment: This section makes clear that the adoption of the revised Constitution has no effect on existing public or private law in the Commonwealth unless the Constitution or laws passed pursuant thereto make some specific change in the law. Thus existing statutes, judicial decisions, actions and other proceedings pending in the courts of the Commonwealth, judgments of courts, public debts and other obligations, taxes, fines, fees, private contracts, causes of action, and the whole range of private and public rights, duties, obligations, and other relationships are altogether unaffected by the adoption of the revised Constitution unless the document itself or a law passed pursuant thereto makes some change in the existing order of things.

Section 4. Pending petitions for original writs of habeas corpus.

The original habeas corpus jurisdiction of the Supreme Court which existed prior to the adoption of this revised Constitution shall continue only with regard to those petitions for writs filed prior to the effective date of this revised Constitution.

Source: New.

Comment: Section 1 of the proposed Judiciary article, which is derived from sections 87 and 88 of the present Constitution, deletes the provision granting original jurisdiction to the Supreme Court in cases of habeas corpus. This section of the Schedule phases in this change so that the original jurisdiction of the Supreme Court shall continue with regard to petitions for writs filed prior to the effective date of the revision.

Section 5. Qualifications of judges.

All justices of the Supreme Court and judges of courts of record who were appointed or elected prior to the effective date of this revised Con-

stitution shall be allowed to complete the term for which they were appointed or elected and may be reelected for one term without regard to the requirements of Article VI, section 7, that they shall be residents of Virginia and shall, at least five years prior to their election or appointment, have been members of the bar of the Commonwealth.

Source: New.

Comment: Section 7 of the proposed Judicial article, which is derived from present sections 73, 87, 91, 96, 99, and 102, alters the qualifications for justices and judges stated in present section 91. Under sections 91, 96, and 99, a justice or judge must have held a judicial station in the United States or have practiced law in some state for five years. Section 7 of the proposed Judicial article requires Virginia residency and admission to the Virginia bar at least five years prior to the appointment or election. Lest there be some present judge who had met the requirements of present section 91 but who, by chance, is not a member of the state bar, this section provides that any justice or judge who is appointed or elected prior to the effective date of this revision may serve his term and be reelected for one term without being a member of the Virginia bar. Thus judges not meeting the new requirements would have eight to twelve years to meet them.

Section 6. Qualifications of members of State Corporation Commission.

Members of the State Corporation Commission elected or appointed prior to the effective date of this revised Constitution shall be deemed qualified to complete the term for which they were appointed or elected without regard to the requirement of Article IX, section 1, that all members shall have the qualifications prescribed for judges of courts of record.

Source: New.

Comment: Section 1 of the proposed Corporations article, which is derived from section 155 of the present Constitution, requires that all, rather than only one, of the members of the State Corporation Commission meet the qualifications of judges of courts of record. Although all members of the Commission now meet these requirements, it was felt that if a commissioner were appointed or elected prior to the effective date of this revision he should be allowed to complete the term for which he was elected or appointed. The section provides for this exception.

Section 7. First session of General Assembly following adoption of revised Constitution.

The General Assembly shall convene at the Capitol at noon on the first Wednesday in January, nineteen hundred and seventy-one. It shall enact such laws as may be deemed proper, including those necessary to implement this revised Constitution. The General Assembly shall be vested with all the powers, charged with all the duties, and subject to all the limitations prescribed by this Constitution except that this session shall continue as long as may be necessary; that the salary and allowances of members shall not be limited by Article IV, section 6; and that the effective date limitation of Article IV, section 13, shall not be operative.

Source: Sections 19 and 20 of the Schedule of the present Constitution.

Comment: This section provides for a special session of the General Assembly to adopt implementing legislation to make the revision effective, just as sections 19 and 20 did in 1902. In addition, this section, like sections 19 and 20, provides that the session is to be unlimited in length, that the effective date of laws enacted at this session shall be as the General Assembly sees fit, and that the members of the General Assembly shall be paid during the entire session. The Commission felt that all of these steps were necessary to provide adequate implementation of the proposed revision.

IV

Comparison in Parallel Tables of Present Constitution and Proposed Revisions

Below is set out in parallel tables the provisions of the present Constitution (lefthand column) and the comparable provisions of the Constitution as they would appear if the proposed revisions were adopted.

To some extent the present and proposed sections do not match up perfectly. Therefore in some instances the righthand column simply refers the reader to the section of the proposed revised Constitution covering the subject-matter of the section appearing in the lefthand column.

If no change is proposed in an existing section, the righthand column simply indicates that fact, without reproducing the text of the section.[1]

If it is proposed that an existing section be deleted, the righthand column so indicates.

Reasons for the proposed changes are not given in these parallel tables. For reasons supporting the proposals, and for explanations of the effect of proposed changes, see the article-by-article and section-by-section commentary in the body of the Report. Reasons for proposing deletions can be found both in the commentary accompanying the relevant article and in more summary form in Chapter V, *infra*.

PRESENT CONSTITUTION	PROPOSED REVISION
ARTICLE I. BILL OF RIGHTS	**ARTICLE I. BILL OF RIGHTS**
A DECLARATION OF RIGHTS made by the good people of Virginia in the exercise of their sovereign powers, which rights do pertain to them and their posterity, as the basis and foundation of government.	No change.
Section 1. Equality and rights of men. That all men are by nature equally free and independent and have certain	No change.

1. Since section titles are not part of the text, changes in titles are not specifically adverted to in these tables. On the status of section titles, see pp. 14-15, *infra*.

PRESENT CONSTITUTION	PROPOSED REVISION
inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.	
Section 2. People the source of power. That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.	No change.
Section 3. Government instituted for common benefit. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.	No change.
Section 4. No exclusive emoluments or privileges; offices not to be hereditary. That no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.	No change.
Section 5. Legislative, executive and judicial departments of State should be separate; elections should be periodical. That the legislative, executive and judicial departments of the State should	No change except to substitute "Commonwealth" for "State."

PRESENT CONSTITUTION	PROPOSED REVISION
be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by regular elections, in which all or any part of the former members shall be again eligible, or ineligible, as the laws may direct.	
Section 6. Suffrage; taxation; private property for public uses; consent of governed. That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed, or deprived of, or damaged in, their property for public uses, without their own consent, or that of their representatives duly elected, or bound by any law to which they have not, in like manner, assented for the public good.	No change.
Section 7. Laws should not be suspended. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.	No change.
Section 8. Concerning criminal prosecutions generally. That in criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers; nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense. Laws may be enacted providing for the trial of offenses not felonious by a	**Section 8. Criminal prosecutions.** That in criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and, in the interest of the Commonwealth as well as the accused, to have a public and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers; nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense. Laws may be enacted providing for

PRESENT CONSTITUTION	PROPOSED REVISION
justice of the peace or other inferior tribunal without a jury, preserving the right of the accused to an appeal to and a trial by jury in some court of record having original criminal jurisdiction. Laws may also provide for juries consisting of less than twelve, but not less than five, for the trial of offenses not felonious, and may classify such cases, and prescribe the number of jurors for each class. In criminal cases, the accused may plead guilty; and, if the accused plead not guilty, with his consent and the concurrence of the Commonwealth's attorney and of the court entered of record, he may be tried by a smaller number of jurors, or waive a jury. In case of such waiver, or plea of guilty the court shall try the case.	the trial of offenses not felonious by a court not of record without a jury, preserving the right of the accused to an appeal to and a trial by jury in some court of record having original criminal jurisdiction. Laws may also provide for juries consisting of less than twelve, but not less than five, for the trial of offenses not felonious, and may classify such cases, and prescribe the number of jurors for each class. In criminal cases, the accused may plead guilty. If the accused plead not guilty, he may, with his consent and the concurrence of the Commonwealth's attorney and of the court entered of record, be tried by a smaller number of jurors, or waive a jury. In case of such waiver or plea of guilty, the court shall try the case. The provisions of this section shall be self-executing.
Section 9. Excessive bail or fines and cruel and unusual punishments prohibited. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.	**Section 9. Prohibition of excessive bail and fines, cruel and unusual punishment, suspension of habeas corpus, bills of attainder, and ex post facto laws.** That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of invasion or rebellion, the public safety may require; and that the General Assembly shall not pass any bill of attainder, or any ex post facto law.
Section 10. General warrants of search or seizure prohibited. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.	No change.

PRESENT CONSTITUTION	PROPOSED REVISION
Section 11. No person to be deprived of property without due process of law; trial by jury to be held sacred. That no person shall be deprived of his property without due process of law; and in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five in cases cognizable by justices of the peace, or to not less than seven in cases not so cognizable.	**Section 11. Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases.** That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious or political conviction, race, color, or national origin shall not be abridged. That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.
Section 12. Freedom of the press and of speech. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments; and any citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right.	**Section 12. Freedom of speech and of the press; right peaceably to assemble, and to petition.** That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.
Section 13. Militia the proper defense of a free State; standing armies should be avoided; military should be subordinate to civil power. That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural and safe	No change.

PRESENT CONSTITUTION	PROPOSED REVISION
defense of a free State; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.	
Section 14. Government should be uniform. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.	No change.
Section 15. Qualities necessary to preservation of free government. That no free government, or the blessings of liberty can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.	**Section 15. Qualities necessary to preservation of free government.** That no free government, nor the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue; by frequent recurrence to fundamental principles; and by the recognition by all citizens that they have duties as well as rights, and that such rights cannot be enjoyed save in a society where law is respected and due process is observed. That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development through an effective system of public education.
Section 16. Religious freedom. That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.	**Section 16. Free exercise of religion; no establishment of religion.** That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance,

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	love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.
Section 17. Construction of the bill of rights. The rights enumerated in this bill of rights shall not be construed to limit other rights of the people not therein expressed.	No change except capitalization of "Bill of Rights."
ARTICLE II. ELECTIVE FRANCHISE AND QUALIFICATIONS FOR OFFICE	**ARTICLE II. FRANCHISE AND OFFICERS**
Section 18. Qualifications of voters. Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote, thirty days, next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people; but removal from one precinct to another, in the same	**Section 1. Qualifications of voters.** In elections by the people, the qualifications of voters shall be as follows. Each voter shall be a citizen of the United States, shall be twenty-one years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this Article. No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor, and no person adjudicated to be of unsound mind shall be qualified to vote until his com-

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county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days after such removal. The right of citizens to vote shall not be denied or abridged on account of sex.	petency has been reestablished in the manner provided by law. The residence requirements shall be that each voter shall have been a resident of the Commonwealth for six months and of the precinct where he votes for thirty days. A person who is qualified to vote except for having moved his residence from one precinct to another fewer than thirty days prior to an election may in any such election vote in the precinct from which he has moved. Residence, for all purposes of qualification to vote, requires both domicile and a place of abode. Any person who will be qualified to vote at the next general election shall be permitted to register in advance and also to vote in any intervening primary election. Otherwise, the qualifications to vote in any primary election shall be the same as in general elections.
Section 19 Registration of voters; those registered prior to nineteen hundred and four. Persons registered under the general registration of voters during the years nineteen hundred and two and nineteen hundred and three, whose names were required to be certified by the officers of registration for filing, record and preservation in the clerks' offices of the several circuit and corporation courts, shall not be required to register again, unless they shall have ceased to be residents of the State, or become disqualified by section twenty-three.	Deleted. See savings clause in Franchise § 2.
Section 20. Who May Register. Every citizen of the United States, having the qualifications of age and residence required in section eighteen, shall be entitled to register, provided: First. That he has personally paid to the proper officer all State poll taxes legally assessed or assessable against him for the three years next preceding that in which he offers to register; or, if he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one	**Section 2. Registration of voters.** The General Assembly shall provide by law for the registration of all persons otherwise qualified to vote, and shall ensure that the opportunity to register is made conveniently available. Registrations accomplished prior to the effective date of this section shall be effective hereunder. The registration books shall not be closed to new or transferred registrations more than thirty days before the election in which they are to be used. Applications to register shall require

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dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; and, Second. That, unless physically unable, he make application to register in his own handwriting, on a form which may be provided by the registration officer, without aid, suggestion, or other memorandum, in the presence of the registration officer, stating therein his name, age, date and place of birth, residence and occupation at the time and for the one year next preceding, and whether he has previously voted, and, if so, the State, county, and precinct in which he voted last; and, Third. That he answer on oath any and all questions affecting his qualifications as an elector, submitted to him by the registration officer, which questions, and his answers thereto, shall be reduced to writing, certified by the said officer, and preserved as a part of his official records.	the applicant to provide under oath the following information and no other: name; age; date and place of birth; whether the applicant is presently a United States citizen; residence during the six months immediately preceding the effective date of registration; place and time of any previous registrations to vote; and whether the applicant has ever been adjudicated to be of unsound mind or convicted of a felony, and if so, under what circumstances the applicant's right to vote has been restored. All applications to register shall be completed in person before the registrar and by or at the direction of the applicant and signed by the applicant, unless physically disabled. No fee shall be charged to the applicant incident to an application to register. Nothing in this Article shall preclude the General Assembly from requiring as a prerequisite to registration to vote the ability of the applicant to read and write, such ability to be determined by a fair, reasonable, and nondiscriminatory test to be prescribed by the General Assembly.
Section 21. Conditions for voting. A person registered under the general registration of voters during the years nineteen hundred and two and nineteen hundred and three, or under the last section, shall have the right to vote for all officers elective by the people, subject to the following conditions: That unless exempted by section twenty-two, he shall, as a prerequisite to the right to vote, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote. If he shall have registered after the first day of January, nineteen hundred and four, he shall, unless physically unable, prepare and deposit his ballot without aid, on such printed form as the law may prescribe; but any voter registered prior to that date may be aided in the preparation of his ballot by such officer of election as he himself may designate.	Deleted. See savings clause in Franchise § 2.

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Section 22. Persons exempt from payment of poll tax as condition of right to vote. No person. nor the wife or widow of such person, who, during the late war between the States, served in the army or navy of the United States, or of the Confederate States, or of any State of the United States, or of the Confederate States, shall at any time be required to pay a poll tax as a prerequisite to the right to register or vote. The collection of the State poll tax assessed against anyone shall not be enforced by legal process until the same has become three years past due.	Deleted.
Section 23. Persons excluded from registering and voting. The following persons shall be excluded from registering and voting: Idiots, insane persons and paupers; persons who, prior to the adoption of this Constitution, were disqualified from voting, by conviction of crime, either within or without this State, and whose disabilities shall not have been removed; persons convicted after the adoption of this Constitution, either within or without this State, of treason, or of any felony, bribery, petit larceny, obtaining money or property under false pretenses, embezzlement, forgery or perjury; persons who while citizens of this State, after the adoption of this Constitution, have fought a duel with a deadly weapon, or sent or accepted a challenge to fight such a duel, either within or without this State, or knowingly conveyed such a challenge, or aided or assisted in any way in the fighting of such duel.	See Franchise **§ 1.**
Section 24. Who not deemed to have gained legal residence. No officer, soldier, seaman, or marine of the United States army or navy shall be deemed to have gained a residence as to the right of suffrage, in the State, or in any county, city or town thereof by reason of being stationed therein; nor shall an inmate of any charitable institution or a student in any institution of	Deleted.

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learning, be regarded as having either gained or lost a residence, as to the right of suffrage, by reason of his location or sojourn in such institution.	
Section 25. Directions to General Assembly in regard to registration and transfers. The General Assembly shall provide for the annual registration of voters under section twenty, for an appeal by any person denied registration, for the correction of illegal or fraudulent registration thereunder, and also for the proper transfer of all voters registered under this Constitution.	**Section 4. Powers and duties of General Assembly.** The General Assembly shall establish a uniform system for permanent registration of voters pursuant to this Constitution, including provision for appeal by any person denied registration, correction of illegal or fraudulent registrations, proper transfer of all registered voters, and cancellation of registrations in other jurisdictions of persons who apply to register to vote in the Commonwealth. The General Assembly shall provide for maintenance of accurate and current registration lists and shall provide for cancellation of the registration of any voter who has not voted at least once during four consecutive calendar years. The General Assembly may provide for registration and voting by absentee application and ballot for members of the armed forces of the United States in active service, and their spouses, who are otherwise qualified to vote, and may provide for voting by absentee ballot for other categories of persons who are qualified to vote but are unable, without serious inconvenience, to vote in person. The General Assembly shall provide for the nomination of candidates, shall regulate the time, place, manner, conduct, and administration of primary, general, and special elections, and shall have power to make any other law regulating elections not inconsistent with this Constitution.
Section 26. Persons qualified to vote at next election shall be admitted to registration. Any person who, in respect to age or residence, would be qualified to vote at the next election, shall be admitted to registration, notwithstanding that at the time thereof he is not so qualified, and shall be entitled to vote at said	See Franchise § 2.

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election if then qualified under the provisions of this Constitution.	
Section 27. Method of voting. All elections by the people shall be by ballot; all elections by any representative body shall be viva voce, and the vote recorded in the journal thereof. The ballot box shall be kept in public view during all elections, and shall not be opened, nor the ballots canvassed or counted, in secret. So far as consistent with the provisions of this Constitution, the absolute secrecy of the ballot shall be maintained.	**Section 3. Method of voting.** In elections by the people, the following safeguards shall be maintained. Voting shall be by ballot or by machines for receiving, recording, and counting votes cast. No ballot or list of candidates upon any voting machine shall bear any distinguishing mark or symbol, other than words identifying political party affiliation; and their form shall be as uniform as is practicable throughout the Commonwealth or smaller governmental unit in which the election is held. Each office to be filled shall be clearly set forth upon all ballots and voting machines together with an alphabetical list of the names of the candidates. In elections other than primary elections, provision shall be made whereby votes may be cast for persons other than the listed candidates. Secrecy in casting votes shall be maintained, except as provision may be made for assistance to handicapped voters, but the ballot box or voting machines shall be kept in public view and shall not be opened, nor the ballots canvassed nor the votes counted, in secret. Votes may be cast only in person, except as otherwise provided in this Constitution. [See also Legislature § 10 and Local Government § 7]
Section 28. Ballots. The General Assembly shall provide for ballots without any distinguishing mark or symbol, for the use in all State, county, city and other elections by the people, and the form thereof shall be the same in all places where any such election is held. All ballots shall contain the names of the candidates, and of the offices to be filled, in clear print and in due and orderly succession; but any voter may erase any name and insert another.	
Section 29. Privileges of voters during election. No voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger; to attend any court as suitor, juror, or witness; and no voter shall be subject to arrest under any civil process during his attendance at election or in going to or returning therefrom.	**Section 9. Privileges of voters during election.** No voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger, nor to attend any court as suitor, juror, or witness; nor shall any such voter be subject to arrest under any civil process during his attendance at election or in going to or returning therefrom.

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Section 30. General Assembly may prescribe property qualification for voting in county, city or town elections. The General Assembly may prescribe a property qualification not exceeding two hundred and fifty dollars for voters in any county or subdivision thereof, or city or town, as a prerequisite for voting in any election for officers, other than the members of the General Assembly, to be wholly elected by the voters of such county or subdivision thereof, or city, or town, such action, if taken, to be had upon the initiative of a representative in the General Assembly of the county, city or town affected; provided, that the General Assembly, in its discretion, may make such exemptions from the operation of said property qualifications as shall not be in conflict with the Constitution of the United States.	Deleted.
Section 31. Electoral boards; appointment and composition; powers and duties of; who ineligible. There shall be in each county and city an electoral board, composed of three members, appointed by the circuit court of the county, or the corporation court of the city, or the judge of the court in vacation. In the appointment of the electoral boards representation as far as practicable shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and the next highest number of votes. The present members of such boards continue in office until the expiration of their respective terms; and thereafter their successors shall be appointed for the term of three years. Any vacancy occurring in any board shall be filled by the same authority for the unexpired term. Each electoral board shall appoint the judges, clerks and registrars of election for its county or city; and, in appointing the judges of election, representation as far as possible shall be given to each of the two political parties which,	**Section 8. Electoral boards; registrars and officers of election.** There shall be in each county and city an electoral board composed of three members, selected as provided by law. In the appointment of the electoral boards, representation, as far as practicable, shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and the next highest number of votes. The present members of such boards shall continue in office until the expiration of their respective terms; thereafter their successors shall be appointed for the term of three years. Any vacancy occurring in any board shall be filled by the same authority for the unexpired term. Each electoral board shall appoint the judges, clerks, and registrars of election for its county or city. In appointing these and other officers of election, representation, as far as practicable, shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and next highest number of votes.

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at the general election next preceding their appointment, cast the highest and the next highest number of votes. No person, nor the deputy of any person, holding any office or post of profit or emolument, under the United States government, or who is in the employment of such government, or holding any elective office of profit or trust in the State, or in any county, city, or town thereof, shall be appointed a member of the electoral board or registrar or judge of election.	No person, nor the deputy of any person, who is employed by or holds any office or post of profit or emolument under the United States government, or who holds any elective office of profit or trust in the Commonwealth, or in any county, city, or town, shall be appointed a member of the electoral board or registrar or judge of election.
Section 32. Qualifications of officers and of notaries public. Every person qualified to vote shall be eligible to any office of the State, or of any county, city, town or other subdivision of the State, wherein he resides, except as otherwise provided in this Constitution, and except that this provision as to residence shall not apply to any office elective by the people where the law provides otherwise; and except, further, that the requirements of this section as to residence and voting qualifications shall not apply to the appointment of persons to fill positions or posts requiring special technical or professional training and experience. Persons eighteen years of age shall be eligible to the office of notary public and qualified to execute the bonds required of them in that capacity.	**Section 5. Qualifications to hold elective office.** The only qualification to hold any office of the Commonwealth or of its governmental units, elective by the people, shall be that a person must be qualified to vote for that office, except as otherwise provided in this Constitution, and except that: (a) the General Assembly may impose more restrictive geographical residence requirements for election of its members, and may permit other governing bodies in the Commonwealth to impose more restrictive geographical residence requirements for election to such governing bodies, but no such requirement shall impair equal representation of the persons entitled to vote; (b) the General Assembly may provide that residence in a local governmental unit is not required for election to designated elective offices in local governments, other than membership in the local governing body; and (c) nothing in this section shall limit the power of the General Assembly to prevent conflict of interests, dual office-holding, or other incompatible activities by elective or appointive officials of the Commonwealth or of any political subdivision.
Section 33. When terms of officers to begin and end. Unless otherwise prescribed by law, the terms of all officers elected under this Constitution shall begin on the first	Deleted.

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day of February next succeeding their election, unless otherwise provided in this Constitution. All officers elected or appointed, shall continue to discharge the duties of their offices after their terms of service have expired until their successors have qualified.	
Section 34. Oath to be prescribed. Members of the General Assembly, and all officers, executive and judicial, elected or appointed after this Constitution goes into effect shall, before they enter on the performance of their public duties, severally take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Virginia, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as ....., according to the best of my ability, so help me God."	**Section 7. Oath or affirmation.** All officers elected or appointed under or pursuant to this Constitution shall, before they enter on the performance of their public duties, severally take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as ....., according to the best of my ability (so help me God)."
Section 35. Primary elections; who may vote. No person shall vote at any legalized primary election for the nomination of any candidate for office unless he is at the time registered and qualified to vote at the next succeeding election.	See Franchise § 1.
Section 36. General Assembly shall enact laws to regulate elections. The General Assembly shall enact such laws as are necessary and proper for the purpose of securing the regularity and purity of general, local and primary elections, and preventing and punishing any corrupt practices in connection therewith; and shall have power, in addition to other penalties and punishments now or hereafter prescribed by law for such offenses, to provide that persons convicted of them shall thereafter be disqualified from voting or holding office.	See Franchise § 4.

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Section 37. Voting machines. The General Assembly may provide for the use throughout the State, or in any one or more counties, cities, or towns in any election, of machines for receiving, recording and counting the votes cast thereat; provided, that the secrecy of the voting be not thereby impaired.	See Franchise § 1.
Section 38. Duties of treasurers, clerks of circuit and corporation courts and sheriffs in regard to making, filing, delivering and posting list of paid toll taxes; how corrected. The treasurer of each county and city shall, at least five months before each regular election, file with the clerk of the circuit court of his county, or of the corporation court of his city, a list of all persons in his county or city, who have paid not later than six months prior to such election, the State poll taxes required by this Constitution during the three years next preceding that in which such election is held; which list shall be arranged alphabetically, by magisterial districts in the counties, and in such manner as the General Assembly may direct in the cities, shall state the white and colored persons separately, and shall be verified by the oath of the treasurer. The clerk, within ten days from the receipt of the list, shall make and certify a sufficient number of copies thereof, and shall deliver one copy for each voting place in his county or city, to the sheriff of the county or sergeant of the city, whose duty it shall be to post one copy, without delay, at each of the voting places, and, within ten days from the receipt thereof, to make return on oath to the clerk, as to the places where and dates at which said copies were respectively posted, which return the clerk shall record in a book kept in his office for the purpose; and he shall keep in his office, for public inspection, for at least sixty days after receiving the list, not less than ten certified copies thereof,	Deleted.

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and also cause the list to be published in such other manner as may be prescribed by law. The original list returned by the treasurer shall be filed and preserved by the clerk among the public records of his office for at least five years after receiving the same.

Within thirty days after the list has been so posted, any person who shall have paid his capitation tax, but whose name is omitted from the certified list, may after five days' written notice to the treasurer, apply to the circuit court of his county, or corporation court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or judge shall promptly hear and decide.

The clerk shall deliver, or cause to be delivered, with the poll books, at a reasonable time before every election, to one of the judges of election of each precinct of his county or city, a like certified copy of the list, which shall be conclusive evidence of the facts therein stated for the purpose of voting. The clerk shall also, within sixty days after the filing of the list by the treasurer, forward a certified copy thereof, with such corrections as may have been made by order of the court or judge, to the officer designated by law, who shall charge the amount of the poll taxes stated therein to such treasurer, unless previously accounted for.

Further evidence of the prepayment of the capitation taxes required by this Constitution, as a prerequisite to the right to register and vote, may be prescribed by law.

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ARTICLE III. DIVISION OF POWERS

Section 39. Departments to be distinct.

Except as hereinafter provided, the legislative, executive and judicial departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others, nor any person exercise the

ARTICLE III. DIVISION OF POWERS

Section 1. Departments to be distinct.

The legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time, pro-

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power of more than one of them at the same time.	vided, however, administrative agencies may be created by the General Assembly with such authority and duties as the General Assembly may prescribe. Provision may be made for judicial review of any final finding, order, or judgment of such administrative agencies.
ARTICLE IV. LEGISLATIVE DEPARTMENT	**ARTICLE IV. LEGISLATURE**
Section 40. General Assembly to Consist of Senate and House of Delegates. The legislative power of the State shall be vested in a General Assembly, which shall consist of a Senate and House of Delegates.	No change except to substitute "Commonwealth" for "State." Becomes Legislature § 1.
Section 41. Number and election of senators. The Senate shall consist of not more than forty and not less than thirty-three members, who shall be elected quadrennially by the voters of the several senatorial districts on the Tuesday succeeding the first Monday in November.	No change. Becomes Legislature § 2.
Section 42. Number and election of delegates. The House of Delegates shall consist of not more than one hundred and not less than ninety members, who shall be elected biennially by the voters of the several house districts, on the Tuesday succeeding the first Monday in November.	No change except in punctuation. Becomes Legislature § 3.
Section 43. Apportionment of Commonwealth into senatorial and house districts. The present apportionment of the Commonwealth into senatorial and house districts shall continue; but a reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter.	**Franchise Article, section 6. Apportionment.** Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly. Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation

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	in proportion to the population of the district. The General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section every ten years.
Section 44. Qualifications of senators and delegates; who ineligible; removal from district vacates office. Any person may be elected senator who, at the time of election, is actually a resident of the senatorial district and qualified to vote for members of the General Assembly; and any person may be elected a member of the House of Delegates who, at the time of election, is actually a resident of the house district and qualified to vote for members of the General Assembly. But no person holding a salaried office under the State government, and no judge of any court, attorney for the Commonwealth, sheriff, sergeant, treasurer, assessor of taxes, commissioner of the revenue, collector of taxes, or clerk of any court, shall be a member of either house of the General Assembly during his continuance in office and the election of any such person to either house of the Genral Assembly, and his qualification as a member thereof, shall vacate any such office held by him; and no person holding any office or post of profit or emolument under the United States government or who is in the employment of such government, shall be eligible to either house. The removal of a senator or delegate from the district for which he is elected shall vacate his office.	**Section 4. Qualifications of senators and delegates.** Any person may be elected to the Senate who, at the time of the election, is a resident of the senatorial district which he is seeking to represent and is qualified to vote for members of the General Assembly. Any person may be elected to the House of Delegates who, at the time of the election, is a resident of the house district which he is seeking to represent and is qualified to vote for members of the General Assembly. A senator or delegate who moves his residence from the district for which he is elected shall thereby vacate his office. No person holding a salaried office under the government of the Commonwealth, and no judge of any court, attorney for the Commonwealth, sheriff, sergeant, treasurer, assessor of taxes, commissioner of the revenue, collector of taxes, or clerk of any court shall be a member of either house of the General Assembly during his continuance in office; and his qualification as a member shall vacate any such office held by him. No person holding any office or post of profit or emolument under the United States government, or who is in the employment of such government, shall be eligible for election to either house.
Section 45. Salaries of members of General Assembly to be fixed by law; members not to be elected by the General Assembly to civil offices of profit. The members of the General Assembly shall receive for their services a salary to be fixed by law and paid from the public treasury; but no act increasing such salary shall take effect until	**Section 5. Compensation; election to civil office of profit.** The members of the General Assembly shall receive such salary and allowances as may be prescribed by law, but no increase in salary or allowances shall take effect for a given member until after the end of the term for which he was elected. No member during the term for which he shall have been elected shall be elected by the Gen-

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after the end of the term for which the members voting thereon were elected; and no member during the term for which he shall have been elected shall be elected by the General Assembly to any civil office of profit in the State.

Section 46. Time and duration of meetings of General Assembly; adjournments; majority shall be a quorum; power of smaller number than a quorum.

The General Assembly shall meet once in two years on the second Wednesday in January next succeeding the election of the members of the House of Delegates and not oftener unless convened in the manner prescribed by this Constitution. No session of the General Assembly shall continue longer than sixty days; but with the concurrence of three-fifths of the members elected to each house, the session may be extended for a period not exceeding thirty days. Members shall be allowed a salary for not exceeding sixty days at any regular session, and for not exceeding thirty days at any extra session. Neither house shall, without the consent of the other, adjourn to another place nor for more than three days. A majority of the members elected to each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall have power to compel the attendance of members in such manner and under such penalty as each house may prescribe.

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eral Assembly to any civil office of profit in the Commonwealth.

Section 6. Legislative sessions.

The General Assembly shall meet once in two years on the second Wednesday in January next succeeding the election of members of the House of Delegates and may continue in session for a period not longer than ninety days. Neither house shall, without the consent of the other, adjourn to another place, nor for more than three days.

The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and shall convene a special session upon the application of two-thirds of the members elected to each house. Members shall be allowed salary and allowances for not exceeding thirty days at any special session.

Section 8. Quorum.

A majority of the members elected to each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and shall have power to compel the attendance of members in such manner and under such penalty as each house may prescribe. A smaller number, not less than two-fifths of the membership of each house, may meet and may, notwithstanding any other provision of this Constitution, enact legislation if the Governor by proclamation declares that a quorum of the General Assembly cannot be convened because of enemy attack upon the soil of Virginia by nuclear or other incapacitative devices. Such legislation shall remain effective only until thirty days after a quorum of the General Assembly can be convened.

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Section 47. Power of each house of General Assembly to elect its presiding officer, make its own rules, fill vacancies, and judge of the election and qualification of members and punish and expel members. The House of Delegates shall choose its own Speaker; and, in the absence of the Lieutenant Governor, or when he shall exercise the office of Governor, the Senate shall choose from its own body a president pro tempore. Each house shall select its officers, settle its rules of procedure, and direct writs of election for supplying vacancies which may occur during the session of the General Assembly; but, if vacancies occur during the recess, such writs may be issued by the Governor, under such regulations as may be prescribed by law. Each house shall judge of the election, qualification, and returns of its members; may punish them for disorderly behavior, and, with the concurrence of two-thirds, expel a member.	**Section 7. Organization of General Assembly.** The House of Delegates shall choose its own Speaker; and, in the absence of the Lieutenant Governor, or when he shall exercise the office of Governor, the Senate shall choose from its own body a president pro tempore. Each house shall select its officers, settle its rules of procedure, and direct writs of election for supplying vacancies which may occur during a session of the General Assembly. If vacancies occur while the General Assembly is not in session, such writs may be issued by the Governor under such regulations as may be prescribed by law. Each house shall judge of the election, qualification, and returns of its members, may punish them for disorderly behavior and, with the concurrence of two-thirds of its elected membership, may expel a member.
Section 48. Privileges of members of General Assembly. Members of the General Assembly shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the sessions of their respective houses; and for any speech or debate in either house shall not be questioned in any other place. They shall not be subject to arrest, under any civil process, during the sessions of the General Assembly, or the fifteen days next before the beginning or after the ending of any session.	**Section 9. Immunity of legislators.** Members of the General Assembly shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during the sessions of their respective houses; and for any speech or debate in either house shall not be questioned in any other place. They shall not be subject to arrest under any civil process during the sessions of the General Assembly, or during the fifteen days before the beginning or after the ending of any session.
Section 49. Journal of proceedings. Each house shall keep a journal of its proceedings, which shall be published from time to time, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.	**Section 10. Journal of proceedings.** Each house shall keep a journal of its proceedings, which shall be published from time to time. The vote of each member voting in each house on any question shall, at the desire of one-fifth of those present, be recorded in the journal. On the final vote on any bill, and on the vote in any election or im-

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Section 50. Enactment of laws; tax laws shall specifically state the tax and require a vote of majority of members.

No law shall be enacted except by bill. A bill may originate in either house, may be approved or rejected by the other, or amended by either, with the concurrence of the other.

No bill shall become a law unless, prior to its passage, it has been:

(a) Referred to a committee of each house, considered by such committee in session and reported;

(b) Printed by the house in which it originated prior to its passage therein;

(c) Read by title on three different calendar days in each house; and unless—

(d) Upon its final passage a yea and nay vote has been taken thereon in each house, the names of the members voting for and against entered on the journal, and a majority of those voting, which shall include at least two-fifths of the members elected to each house, recorded in the affirmative.

Only in the manner required in subdivision (d) of this section shall an amendment to a bill by one house be concurred in by the other, or a conference report be adopted by either house, or either house discharge a committee from the consideration of a bill and consider the same as if reported. The printing and reading, or either, required in subdivisions (b) and (c) of this section, may be dispensed with in a bill to codify the laws of the State, and in any case of emergency by a vote of four-fifths of the members voting in each house taken by the yeas and nays, and the names of the members voting for and against, entered on the journal.

No bill which creates or establishes a new office, or which creates, continues

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peachment conducted in the General Assembly or on the expulsion of a member, the name of each member voting in each house and how he voted shall be recorded in the journal.

Section 11. Enactment of laws.

No law shall be enacted except by bill. A bill may originate in either house, may be approved or rejected by the other, or may be amended by either, with the concurrence of the other.

No bill shall become a law unless, prior to its passage:

(a) it has been referred to a committee of each house, considered by such committee in session, and reported;

(b) it has been printed by the house in which it originated prior to its passage therein;

(c) it has been read by its title, or its title has been printed in a daily calendar, on three different calendar days in each house; and

(d) upon its final passage a vote has been taken thereon in each house, the name of each member voting for and against recorded in the journal, and a majority of those voting in each house, which majority shall include at least two-fifths of the members elected to that house, recorded in the affirmative.

Only in the manner required in subparagraph (d) of this section shall an amendment to a bill by one house be concurred in by the other, or a conference report be adopted by either house, or either house discharge a committee from the consideration of a bill and consider the same as if reported. The printing and reading, or either, required in subparagraphs (b) and (c) of this section, may be dispensed with in a bill to codify the laws of the Commonwealth, and in the case of an emergency by a vote of four-fifths of the members voting in each house, the name of each member voting and how he voted to be recorded in the journal.

No bill which creates or establishes a new office, or which creates, continues, or revives a debt or charge, or which makes, continues, or revives any appro-

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or revives a debt or charge, or makes, continues or revives any appropriation of public or trust money, or property, or releases, discharges or commutes any claim or demand of the State, or which imposes, continues or revives a tax, shall be passed except by the affirmative vote of a majority of all the members elected to each house, the vote to be by the yeas and nays, and the names of the members voting for and against, entered on the journal. Every law imposing, continuing or reviving a tax shall specifically state such tax, and no law shall be construed as so stating such tax, which requires a reference to any other law or any other tax. The presiding officer of each house shall, in the presence of the house over which he presides, sign every bill that has been passed by both houses and duly enrolled. Immediately before this is done, all other business being suspended, the title of the bill shall be publicly read. The fact of signing shall be entered on the journal.	priation of public or trust money or property, or which releases, discharges, or commutes any claim or demand of the Commonwealth, or which imposes, continues, or revives a tax, shall be passed except by the affirmative vote of a majority of all the members elected to each house, the name of each member voting and how he voted to be recorded in the journal. Every law imposing, continuing, or reviving a tax shall specifically state such tax. However, any law by which income, gift, or death taxes are imposed may define or specify the subject and provisions of such tax, exclusive of rates, by reference to any provision of the laws of the United States as those laws may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision. The presiding officer of each house shall, not later than twenty days after adjournment, sign every bill that has been passed by both houses and duly enrolled. The fact of signing shall be recorded in the journal.
Section 50-a. Meetings of General Assembly in case of enemy attack. In any case of enemy attack upon the soil of Virginia by nuclear fusion or fission bombs or devices, if the Governor by proclamation declares that due to the emergency created thereby a quorum of the General Assembly cannot be assembled, a lesser number, but not less than two-fifths of the members elected to each house, may meet, and may enact legislation without regard to the limitations on required affirmative votes set forth in Sec. 50; provided, (a) that any such law may be enacted only by the recorded affirmative vote of four-fifths of the members of each house present and voting; (b) that no such law shall remain in effect longer than one year from the date of approval by the Governor and may not be again adopted except in compliance with Sec. 50 hereof; and (c) that each bill	See Legislature § 8.

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passed under this section shall set forth therein the proclamation of the Governor together with the text of such bill and the entire bill, including such proclamation, shall be subject to judicial inquiry as to the matters set forth therein.	
Section 51. (Omitted in present Constitution.)	Deleted.
Section 52. Law shall embrace but one object, which shall be expressed in its title; how laws revived or amended. No law shall embrace more than one object which shall be expressed in its title; nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length.	**Section 12. Form of laws.** No law shall embrace more than one object, which shall be expressed in its title. Nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length.
Section 53. Time when laws take effect. No law, except a general appropriation law, shall take effect until at least ninety days after the adjournment of the session of the General Assembly at which it is enacted, unless in case of an emergency (which emergency shall be expressed in the body of the bill) the General Assembly shall otherwise direct, by a vote of four-fifths of the members voting in each house, such vote to be taken by the yeas and nays, and the names of the members voting for and against entered on the journal.	**Section 13. Effective date of laws.** All laws, except a general appropriation law, shall take effect on the first day of the fourth month following the month of adjournment of the session of the General Assembly at which it has been enacted, unless a subsequent date is specified or unless in the case of an emergency (which emergency shall be expressed in the body of the bill) the General Assembly shall specify an earlier date by a vote of four-fifths of the members voting in each house, the name of each member voting and how he voted to be recorded in the journal.
Section 54. Impeachment; proceeding under; extent of judgment under; indictment, et cetera, to lie. The Governor, Lieutenant Governor, Attorney General, judges, members of the State Corporation Commission, and executive officers at the seat of government, and all officers appointed by the Governor or elected by the General Assembly, offending against the State by malfeasance in office, corruption, neglect	No change except to substitute "Commonwealth" for "State." Becomes Legislature § 17.

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of duty, or other high crime or misdemeanor may be impeached by the House of Delegates and prosecuted before the Senate which shall have the sole power to try impeachments. When sitting for that purpose, the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the senators present. Judgment in case of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the State; but the person convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. The Senate may sit during the recess of the General Assembly for the trial of impeachments.	
Section 55. Apportionment of State into Congressional districts by General Assembly. The General Assembly shall by law apportion the State into districts, corresponding with the number of representatives to which it may be entitled in the House of Representatives of the Congress of the United States; which districts shall be composed of contiguous and compact territory containing as nearly as practicable, an equal number of inhabitants.	**Franchise Article, section 6. Apportionment.** Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly. Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. The General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section every ten years.
Section 56. Directions to General Assembly concerning elections and declaring offices vacant. The manner of conducting and making returns of elections, of determining contested elections, and of filling vacancies in office, in cases not specially provided for by this Constitution, shall be prescribed by law, and the General Assembly may declare the cases in which any office shall be deemed vacant where no provision is made for that purpose in this Constitution.	Deleted.

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Section 57. Power of General Assembly to remove disabilities. The General Assembly shall have power, by a two-thirds vote, to remove disabilities incurred under section twenty-three, of article two, of this Constitution, with reference to duelling.	Deleted.
Section 58. Prohibitions on General Assembly as to suspension of writ of habeas corpus, and enactment of laws referring to religion and other laws. The privileges of the writ of habeas corpus shall not be suspended unless when, in cases of invasion or rebellion, the public safety may require. The General Assembly shall not pass any bill of attainder, or any ex post facto law, or any law impairing the obligation of contracts, or any law abridging the freedom of speech or of the press. It shall not enact any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly. No man shall be compelled to frequent or support any religious worship, place, or ministry, whatsoever nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect, their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves, or others any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.	See Bill of Rights §§ 9, 11, 12, 16.

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Section 59. General Assembly shall not incorporate churches or religious denominations; may secure church property. The General Assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.	Deleted.
Section 60. Lotteries and sale of lottery tickets prohibited. No lottery shall hereafter be authorized by law; and the buying, selling, or transferring of tickets or chances in any lottery shall be prohibited.	Deleted.
Section 61. Formation, division and consolidation of counties. No new county shall be formed with an area of less than six hundred square miles; nor shall the county or counties from which it is formed be reduced below that area; nor shall any county be reduced in population below eight thousand. But any county, the length of which is three times its mean breadth, or which exceeds fifty miles in length, may be divided at the discretion of the General Assembly. The General Assembly may provide for the consolidation of existing counties on a vote of a majority of the qualified voters of each of such counties voting at an election held for that purpose.	See Local Government § 2.
Section 62. Power of the General Assembly to enact liquor laws. The General Assembly may enact laws controlling, regulating, or prohibiting the manufacture or sale of intoxicating liquors.	Deleted.
Section 63. Powers of the General Assembly and limitations thereon. The authority of the General Assembly shall extend to all subjects of legislation, not herein forbidden or re-	No change except to substitute "Commonwealth" for "State." Becomes Legislature § 14.

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stricted; and a specific grant of authority in this Constitution upon a subject shall not work a restriction of its authority upon the same or any other subject. The omission in this Constitution of specific grants of authority heretofore conferred shall not be construed to deprive the General Assembly of such authority, or to indicate a change of policy in reference thereto, unless such purpose plainly appear.

The General Assembly shall confer on the courts power to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities, and shall not, by special legislation, grant relief in these or other cases of which the courts or other tribunals may have jurisdiction.

The General Assembly may regulate the exercise by courts of the right to punish for contempt.

The General Assembly shall not enact any local, special or private law in the following cases:

1. For the punishment of crime.
2. Providing a change of venue in civil or criminal cases.
3. Regulating the practice in, or the jurisdiction of, or changing the rules of evidence in any judicial proceedings or inquiry before the courts or other tribunals, or providing or changing the methods of collecting debts or enforcing judgments or prescribing the effect of judicial sales of real estate.
4. Changing or locating county seats.
5. For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interests.
6. Extending the time for the assessment or collection of taxes.
7. Exempting property from taxation.
8. Remitting, releasing, postponing, or diminishing any obligation or liability of any person, corporation or association to the State or to any political subdivision thereof.
9. Refunding money lawfully paid into the treasury of the State or the treasury of any political subdivision thereof.

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10. Granting from the treasury of the State, or granting, or authorizing to be granted from the treasury of any political subdivision thereof, any extra compensation to any public officer, servant, agent, or contractor. 11. For conducting elections or designating the places of voting. 12. Regulating labor, trade, mining or manufacturing, or the rate of interest on money. 13. Granting any pension. 14. Creating, increasing, or decreasing, or authorizing to be created, increased, or decreased, the salaries, fees, percentages, or allowances of public officers during the term for which they are elected or appointed. 15. Declaring streams navigable, or authorizing the construction of booms or dams therein, or the removal of obstructions therefrom. 16. Affecting or regulating fencing or the boundaries of land, or the running at large of stock. 17. Creating private corporations, or amending, renewing, or extending the charters thereof. 18. Granting to any private corporation, association, or individual any special or exclusive right, privilege or immunity. 19. Naming or changing the name of any private corporation or association. 20. Remitting the forfeiture of the charter of any private corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution, and the laws passed in pursuance thereof.	
Section 64. General Assembly shall enact general laws in cases mentioned in preceding section, and wherever general laws will apply; amendment or partial repeal of general laws shall not enact special law; restrictions as to laws. In all cases enumerated in the last section, and in every other case which, in its judgment, may be provided for by	**Section 15. General laws.** In all cases enumerated in the preceding section, and in every other case which, in its judgment, may be provided for by general laws, the General Assembly shall enact general laws. Any general law shall be subject to amendment or repeal, but the amendment or partial repeal thereof shall not operate directly or indirectly to enact, and shall not have the effect of enactment of, a special, private, or local law.

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general laws, the General Assembly shall enact general laws. Any general law shall be subject to amendment or repeal, but the amendment or partial repeal thereof shall not operate directly or indirectly to enact, and shall not have the effect of enactment of, a special, private, or local law. No general or special law shall surrender or suspend the right and power of the State, or any political subdivision thereof, to tax corporations and corporate property, except as authorized by article thirteen. No private corporation, association, or individual shall be specially exempted from the operation of any general law, nor shall its operation be suspended for the benefit of any private corporation, association, or individual.	No general or special law shall surrender or suspend the right and power of the Commonwealth, or any political subdivision thereof, to tax corporations and corporate property, except as authorized by Article X. No private corporation, association, or individual shall be specially exempted from the operation of any general law, nor shall a general law's operation be suspended for the benefit of any private corporation, association, or individual.
Section 65. Powers of local and special legislation may be conferred by General Assembly, by general law, on supervisors and councils. The General Assembly may, by general laws, confer upon the boards of supervisors of counties, and the councils of cities and towns, such powers of local and special legislation as it may, from time to time, deem expedient, not inconsistent with the limitations contained in this Constitution.	See Local Government § 3.
Section 66. Clerk of House of Delegates to be Keeper of the Rolls, without compensation. The Clerk of the House of Delegates shall be Keeper of the Rolls of the State but shall receive no compensation from the State for his services as such.	Deleted.
Section 67. Limitations on appropriations by General Assembly to charitable and other institutions; exceptions. The General Assembly shall not make any appropriation of public funds, or personal property, or of any real estate	**Section 16. Appropriations to religious or charitable bodies.** The General Assembly shall not make any appropriation of public funds, personal property, or real estate to any church or sectarian society, or any association or institution of any kind whatever which is entirely or partly, di-

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to any church, or sectarian society, association, or institution of any kind whatever, which is entirely or partly, directly or indirectly, controlled by any church or sectarian society; nor shall the General Assembly make any like appropriation to any charitable institution which is not owned or controlled by the State; except that it may, in its discretion, make appropriations to nonsectarian institutions for the reform of youthful criminals; but nothing herein contained shall prohibit the General Assembly from authorizing counties, cities, or towns to make such appropriations to any charitable institution or association.	rectly or indirectly, controlled by any church or sectarian society. Nor shall the General Assembly make any like appropriation to any charitable institution which is not owned or controlled by the Commonwealth; the General Assembly may, however, make appropriations to nonsectarian institutions for the reform of youthful criminals and may also authorize counties, cities, or towns to make such appropriations to any charitable institution or association.
Section 68. Auditing committee, appointment and constitution; powers and duties. At each regular session, the General Assembly shall appoint a standing committee, consisting of two members of the Senate and three members of the House of Delegates, to be known as the auditing committee. Such committee shall annually, or oftener, in its discretion, examine the books and accounts of the State Treasurer, and all other executive officers at the seat of government whose duties pertain to auditing or accounting for the State revenue, and of the public institutions of the Commonwealth. Such committee shall report the result of its investigations to the Governor, and cause the same to be published in two newspapers of general circulation in the State. At the beginning of each session the Governor shall submit such reports to the General Assembly. The committee may sit during the recess of the General Assembly, receive such compensation as may be prescribed by law, and may employ one or more accountants to assist in its investigations.	Deleted.

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ARTICLE V. EXECUTIVE DEPARTMENT	**ARTICLE V. EXECUTIVE**
Section 69. Governor; term of office. The chief executive power of the State shall be vested in a Governor. He shall hold office for a term commencing upon his inauguration on the Saturday after the second Wednesday in January, next succeeding his election and ending in the fourth year thereafter immediately after the inauguration of his successor. He shall be ineligible to the same office for the term next succeeding that for which he was elected, and to any other office during his term of service.	No change except to substitute "Commonwealth" for "State." Becomes Executive § 1.
Section 70. How and when elected; how results ascertained; how tie or contested elections decided. The Governor shall be elected by the qualified voters of the State at the time and place of choosing members of the General Assembly. Returns of the election shall be transmitted, under seal, by the proper officers, to the Secretary of the Commonwealth, or to such other officer as may be prescribed by law, who shall deliver them to the Speaker of the House of Delegates on the first day of the next session of the General Assembly. The Speaker of the House of Delegates shall, within three days thereafter, in the presence of a majority of the Senate and of the House of Delegates, open the returns, and the votes shall then be counted. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number of votes, one of them shall be chosen Governor by the joint vote of the two houses of the General Assembly. Contested elections for Governor shall be decided by a like vote The mode of proceeding in such cases shall be prescribed by law.	**Section 2. Election of Governor.** The Governor shall be elected by the qualified voters of the Commonwealth at the time and place of choosing members of the General Assembly. Returns of the election shall be transmitted, under seal, by the proper officers, to the State Board of Elections, or such other officer or agency as may be designated by law, which shall cause the returns to be opened and the votes to be counted in the manner prescribed by law. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number of votes, one of them shall be chosen Governor by the joint vote of the two houses of the General Assembly. Contested elections for Governor shall be decided by a like vote. The mode of proceeding in such cases shall be prescribed by law.
Section 71. Qualifications of Governor. No person except a citizen of the United States shall be eligible to the	**Section 3. Qualifications of Governor.** No person except a citizen of the United States shall be eligible to the of-

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office of Governor; and if such person be of foreign birth, he must have been a citizen of the United States for ten years next preceding his election; nor shall any person be eligible to that office unless he shall have attained the age of thirty years, and have been a resident of the State for five years next preceding his election.	fice of Governor; nor shall any person be eligible to that office unless he shall have attained the age of thirty years and have been a resident of the Commonwealth and a registered voter in the Commonwealth for five years next preceding his election.
Section 72. His place of residence and compensation. The Governor shall reside at the seat of government. He shall receive for his services a compensation to be prescribed by law, which shall neither be increased nor diminished during the period for which he shall have been elected. While in office he shall receive no other emolument from this or any other government.	No change. Becomes Executive § 4.
Section 73. Duties and powers of Governor. The Governor shall take care that the laws be faithfully executed; communicate to the General Assembly, at every session, the condition of the State; recommend to its consideration such measures as he may deem expedient, and convene the General Assembly on application of two-thirds of the members of both houses thereof, or when, in his opinion, the interest of the State may require. He shall be commander in chief of the land and naval forces of the State; have power to embody the militia to repel invasion, suppress insurrection and enforce the execution of the laws; conduct, either in person or in such manner as shall be prescribed by law, all intercourse with other and foreign States; and, during the recess of the General Assembly, shall have power to suspend from office for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law, all executive officers at the seat of government, except the Lieutenant Governor; but, in any case in which this power is so exercised, the Governor shall report to the General Assembly, at the beginning of the next session there-	**Section 5. Legislative responsibilities of Governor.** The Governor shall communicate to the General Assembly, at every session, the condition of the Commonwealth, recommend to its consideration such measures as he may deem expedient, and convene the General Assembly on application of two-thirds of the members of both houses thereof, or when, in his opinion, the interest of the Commonwealth may require. **Section 7. Executive and administrative powers.** The Governor shall take care that the laws be faithfully executed. The Governor shall be commander-in-chief of the armed forces of the Commonwealth and shall have power to embody such forces to repel invasion, suppress insurrection, and enforce the execution of the laws. The Governor shall conduct, either in person or in such manner as shall be prescribed by law, all intercourse with other and foreign states. The Governor shall have power to fill vacancies in all offices of the Commonwealth for the filling of which the Con-

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of, the fact of such suspension and the cause therefor, whereupon the General Assembly shall determine whether such officer shall be restored or finally removed.

The Governor shall have power, during the recess of the General Assembly, to appoint, pro tempore, successors to all officers so suspended, and to fill, pro tempore, vacancies in all offices of the State for the filling of which the Constitution and laws make no other provision. Such appointments to vacancies shall be by commissions to expire at the end of thirty days after the commencement of the next session of the General Assembly.

He shall have power to remit fines and penalties under such rules and regulations as may be prescribed by law; and, except when the prosecution has been carried on by the House of Delegates, to grant reprieves and pardons after conviction; to remove political disabilities consequent upon conviction for offenses committed prior or subsequent to the adoption of this Constitution, and to commute capital punishment.

He shall communicate to the General Assembly, at each session, particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting or commuting the same.

The General Assembly may, however, provide for a board, not exceeding three in number, to be appointed by the Governor, and to serve during his pleasure. Such board may be vested with any one or more or all of the following powers, which when so conferred shall be exclusive: (a) to commute capital punishment; (b) to grant reprieves or pardons in misdemeanor cases; or (c) to grant reprieves or pardons in felony cases.

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stitution and laws make no other provision. If such office be one filled by the election of the people, the appointee shall hold office until the next general election, and thereafter until his successor qualifies, according to law. The General Assembly shall, if it is in session, fill vacancies in all offices which are filled by election by that body.

Gubernatorial appointments to fill vacancies in offices which are filled by election by the General Assembly or appointment by the Governor which is subject to confirmation by the Senate or the General Assembly made during the recess of the General Assembly shall expire at the end of thirty days after the commencement of the next regular session of the General Assembly.

Section 10. Appointment and removal of administrative officers.

Except as may be otherwise provided in this Constitution, the Governor shall appoint each officer serving as the head of an administrative department or division of the executive branch of the government, subject to such confirmation as the General Assembly may prescribe. Each officer appointed by the Governor pursuant to this section shall have such professional qualifications as may be prescribed by law and shall serve at the pleasure of the Governor.

Section 12. Executive clemency.

The Governor shall have power to remit fines and penalties under such rules and regulations as may be prescribed by law; to grant reprieves and pardons after conviction except when the prosecution has been carried on by the House of Delegates; to remove political disabilities consequent upon conviction for offenses committed prior or subsequent to the adoption of this Constitution; and to commute capital punishment.

He shall communicate to the General Assembly, at each session, particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of

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	punishment commuted, with his reasons for remitting, granting, or commuting the same.
(New section)	**Section 9. Administrative reorganization.** Except as may be otherwise prescribed by this Constitution, the functions, powers, and duties of the administrative departments and divisions and of the agencies of the Commonwealth within the legislative and executive branches shall be prescribed by law. The Governor may reallocate the functions, powers, and duties of the departments and divisions and of 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 each member of the General Assembly at least forty-five days prior to the commencement of a regular or special session of the General Assembly. A proposed change shall become effective on a date designated by the Governor following the adjournment of the General Assembly and thereafter have the force of law unless either the Senate or the House of Delegates, prior to the adjournment of the General Assembly, by resolution of a majority of the members elected thereto, shall have disapproved the change.
Section 74. Further powers of Governor. The Governor may require information in writing, under oath, from the officers of the executive department and superintendents of State institutions upon any subject relating to the duties of their respective offices and institutions; and he may inspect at any time their official books, accounts and vouchers, and ascertain the conditions of the public funds in their charge, and in that connection may employ accountants. He may require the opinion in writing of the Attorney General upon any question of law affecting the official duties of the Governor.	**Section 8. Information from administrative officers.** The Governor may require information in writing, under oath, from any officer of any executive or administrative department, office, or agency, or any public institution upon any subject relating to their respective departments, offices, agencies, or public institutions; and he may inspect at any time their official books, accounts, and vouchers, and ascertain the conditions of the public funds in their charge, and in that connection may employ accountants. He may require the opinion in writing of the Attorney General upon any question of law affecting the official duties of the Governor.

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Section 75. Commissions and grants; how they shall run and how attested. Commissions and grants shall run in the name of the Commonwealth of Virginia, and be attested by the Governor, with the seal of the Commonwealth annexed.	No change. Becomes Executive § 16.
Section 76. Bills, duties of Governor in regard to; proceedings of General Assembly in passing bills over veto of Governor; effect of failure of Governor to sign. Every bill which shall have passed the Senate and House of Delegates shall, before it becomes a law, be presented to the Governor. If he approves, he shall sign it; but, if not, he may 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 the same. If, after such consideration, two-thirds of the members present, which two-thirds shall include a majority of the members elected to that house, shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members present, which two-thirds shall include a majority of the members elected to that house, it shall become a law, notwithstanding the objections. The Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills returned to the General Assembly without his approval. If he approve the general purpose of any bill, but disapprove any part or parts thereof, he may return it, with recommendations for its amendment, to the house in which it originated, whereupon the same proceedings shall be had in both houses upon the bill and his recommendations in re-	**Section 6. Presentation of bills; veto powers of Governor.** Every bill which shall have passed the Senate and House of Delegates shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but, if not, he may 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 the same. If, after such consideration, two-thirds of the members present, which two-thirds shall include a majority of the members elected to that house, shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members present, which two-thirds shall include a majority of the members elected to that house, it shall become a law, notwithstanding the objections. The Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills returned to the General Assembly without his approval. If the Governor approve the general purpose of any bill but disapprove any part or parts thereof, he may return it, with recommendations for its amendment, to the house in which it originated, whereupon the same proceedings shall be had in both houses upon the bill and his recommendations in relation to its amendment as is above provided in relation to a bill which he shall have returned without his approval, and with his objections thereto;

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lation to its amendment as is above provided in relation to a bill which he shall have returned without his approval, and with his objections thereto; provided, that if after such reconsideration, both houses, by a vote of a majority of the members present in each, shall agree to amend the bill, in accordance with his recommendation in relation thereto, or either house by such vote shall fail or refuse to so amend it, then, and in either case the bill shall be again sent to him, and he may act upon it as if it were then before him for the first time. But in all the cases above set forth the votes of both houses shall be determined by ayes and noes, and the names of the members voting for and against the bill, or item or items of an appropriation bill, shall be entered on the journal of each house. If any bill shall not be returned by the Governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall, by final adjournment, prevent such return; in which case it shall be a law if approved by the Governor, in the manner and to the extent above provided, within ten days after such adjournment, but not otherwise.	provided, that if after such reconsideration, both houses, by a vote of a majority of the members present in each, shall agree to amend the bill in accordance with his recommendation in relation thereto, or either house by such vote shall fail or refuse to so amend it, then and in either case the bill shall be again sent to him, and he may act upon it as if it were then before him for the first time. In all cases above set forth, the names of the members voting for and against the bill or item or items of an appropriation bill, shall be entered on the journal of each house. If any bill shall not be returned by the Governor within seven days after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the General Assembly shall, by final adjournment, prevent such return; in which case it shall be a law if approved by the Governor, in the manner and to the extent above provided, within thirty days after adjournment.
Section 77. Lieutenant Governor, election and qualifications. A Lieutenant Governor shall be elected at the same time and for the same term as the Governor, and his qualifications and the manner and ascertainment of his election, in all respects, shall be the same.	No change. Becomes Executive § 13.
Section 78. Duties of Lieutenant Governor. In case of the removal of the Governor from office, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation shall devolve upon the Lieutenant Governor;	**Section 15. Succession to the office of Governor.** 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

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and the General Assembly shall provide by law for the discharge of the executive functions in other necessary cases.

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Lieutenant Governor-elect shall serve as Acting Governor.

Whenever the Governor transmits to the President pro tempore of the Senate and the Speaker of the House of Delegates his written declaration that he is unable to discharge the powers and duties of his office and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Lieutenant Governor as Acting Governor.

Whenever the Attorney General, the President pro tempore of the Senate, and the Speaker of the House of Delegates, or a majority of the total membership of the General Assembly, transmit to the Clerk of the Senate and the Clerk of the House of Delegates their written declaration that the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall immediately assume the powers and duties of the office as Acting Governor.

Thereafter, when the Governor transmits to the Clerk of the Senate and the Clerk of the House of Delegates his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Attorney General, the President pro tempore of the Senate, and the Speaker of the House of Delegates, or a majority of the total membership of the General Assembly, transmit within four days to the Clerk of the Senate and the Clerk of the House of Delegates their written declaration that the Governor is unable to discharge the powers and duties of his office. Thereupon the General Assembly shall decide the issue, convening within forty-eight hours for that purpose if not already in session. If within twenty-one days after receipt of the latter declaration or, if the General Assembly is not in session, within twenty-one days after the General Assembly is required to convene, the General Assembly determines by three-fourths vote of the elected membership of each house of the General Assembly that the Governor is unable to discharge the powers and duties of his office, the Lieutenant Gov-

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	ernor shall continue to discharge the same as Acting Governor; otherwise, the Governor shall resume the powers and duties of his office. In the case of the removal of the Governor from office or in the case of his disqualification, death, or resignation, the Lieutenant Governor shall become Governor. If a vacancy exists in the office of Lieutenant Governor when the Lieutenant Governor is to succeed to the office of Governor or to serve as Acting Governor, the Attorney General, if he is eligible to serve as Governor, shall succeed to the office of Governor for the unexpired term or serve as Acting Governor. If the Attorney General is ineligible to serve as Governor, the Speaker of the House of Delegates, if he is eligible to serve as Governor, shall succeed to the office of Governor for the unexpired term or serve as Acting Governor. If a vacancy exists in the office of the Speaker of the House of Delegates or if the Speaker of the House of Delegates is ineligible to serve as Governor the House of Delegates shall convene and fill the vacancy.
Section 79. Lieutenant Governor shall be President of Senate; compensation as such. The Lieutenant Governor shall be President of the Senate, but shall have no vote except in case of an equal division; and while acting as such shall receive a compensation equal to that allowed to the Speaker of the House of Delegates.	**Section 14. Duties and compensation of Lieutenant Governor.** The Lieutenant Governor shall be President of the Senate but shall have no vote except in case of an equal division. He shall receive for his services a compensation to be prescribed by law, which shall not be increased nor diminished during the period for which he shall have been elected.
Section 80. Secretary of the Commonwealth. A Secretary of the Commonwealth shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of each Governor making the appointment; provided however, that the first appointment under this section shall not be made until the expiration of the term of office of the Secretary of the Commonwealth, which began Febru-	Deleted.

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ary first, nineteen hundred and twenty-six; but after January first, nineteen hundred and thirty-two, the election or appointment of a Secretary of the Commonwealth may be made in such manner and for such term as may be prescribed by law. The powers and duties of the Secretary of the Commonwealth shall be prescribed by law. On and after the first day of February, nineteen hundred and thirty, the General Assembly may abolish the office of Secretary of the Commonwealth.	
Section 81. State Treasurer. A State treasurer shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of each Governor making the appointment; provided, however, that the first appointment under this section, as hereby amended, shall not be made until the expiration of the term of office of the State treasurer, which began February first, nineteen hundred and twenty-six; and provided, further, that the General Assembly shall have power, by statute enacted after January first, nineteen hundred and thirty-two, to provide for the election or appointment of a State treasurer in such manner and for such term as may be prescribed by statute. No State treasurer shall be elected at the general election to be held on the Tuesday succeeding the first Monday in November, nineteen hundred and twenty-nine. The powers and duties of the State treasurer shall be prescribed by law.	Deleted.
Section 82. Auditor of Public Accounts. An Auditor of Public Accounts shall be elected by the joint vote of the two houses of the General Assembly for the term of four years. His powers and duties shall be prescribed by law.	No change. Becomes Legislature § 18.
Section 83. Salaries of officers of executive department. The salary of each officer of the executive department shall be fixed by	Deleted.

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law, and shall not be increased or diminished during his term of office.	
Section 84. Checks and balances on officers entrusted with collection of revenue, establishment of. The General Assembly shall provide by law for the establishment and maintenance of an efficient system of checks and balances between the officers at the seat of government entrusted with the collection, receipt, custody or disbursement of the revenues of the State.	Deleted.
Section 85. Bond of officers handling State funds. All State officers and their deputies, assistants or employees charged with the collection, custody, handling or disbursement of public funds, shall be required to give bond for the faithful performance of such duties; the amount of such bond in each case, and the manner in which security shall be furnished, to be specified and regulated by law.	Deleted.
Section 86. Bureau of Labor and Statistics. The General Assembly shall have power to establish and maintain a Bureau of Labor and Statistics, under such regulations as may be prescribed by law.	Deleted.
Section 86-a. Effect of refusal of General Assembly to confirm an appointment by the Governor. No person appointed to any office by the Governor, whose appointment is subject to confirmation by the General Assembly, under the provisions of this Constitution or any statute, shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment, nor shall such person be eligible for reappointment during the recess of the General Assembly to fill the vacancy caused by such refusal to confirm.	No change. Becomes Executive § 11.

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ARTICLE VI. JUDICIARY DEPARTMENT	**ARTICLE VI. JUDICIARY**
Section 87. Composition and jurisdiction. The judicial power of the State shall be vested in a Supreme Court of Appeals, circuit courts, city courts, and such other courts, inferior to the Supreme Court of Appeals, as are hereinafter authorized, or as may be hereafter established by law. The jurisdiction of these tribunals, and of the judges thereof, except so far as conferred by this Constitution, shall be regulated by law. The Governor may be authorized by law to appoint judges pro tempore.	**Section 1. Judicial power; jurisdiction.** The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may from time to time establish. Trial courts of general jurisdiction, appellate courts, and such other courts as shall be so designated by the General Assembly shall be known as courts of record. The Supreme Court shall, by virtue of this Constitution, have original jurisdiction in cases of mandamus and prohibition and in matters of judicial censure, retirement, and removal under section 10 of this Article. All other jurisdiction of the Supreme Court shall be appellate. Subject to such reasonable rules as may be prescribed by the General Assembly as to the course of appeals and other procedural matters, the Supreme Court shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the constitutionality of a law under this Constitution or the Constitution of the United States and in cases involving the life or liberty of any person. Subject to the foregoing limitations, the General Assembly shall have the power to determine the original and appellate jurisdiction of the courts of the Commonwealth.
Section 88. Supreme Court of Appeals; composition and jurisdiction. The Supreme Court of Appeals shall consist of seven judges, any four of whom when convened shall form a quorum. The judges may sit in bank, or in two divisions, consisting of not less than three judges each, as the court may, from time to time, determine. In case the court shall sit in divisions, each of such divisions shall have the full power	**Section 2. Supreme Court.** The Supreme Court shall consist of seven justices. The Court may sit in bank or in panels, under such regulations as the Court itself may promulgate. No decision shall become the judgment of the Court, however, except on the concurrence of at least three justices, and no law shall be declared unconstitutional under either this Constitution or the Constitution of the United States except on the concurrence of at least four justices.

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and authority of said court in the determination of causes, the issuing of writs, and the exercise of all powers authorized by this Constitution, or provided by law, subject to the general control of the court sitting in bank, and such rules and regulations as the court may make; but no decision of any division shall become the judgment of the court unless concurred in by at least three judges; and no case involving a construction of the Constitution of this State or of the United States, shall be decided except by the court in bank and the assent of at least four of the judges shall be required for the court to determine that any law is or is not repugnant to the Constitution of this State or of the United States; and if, in a case involving the constitutionality of any such law, not more than three of the judges sitting agree in opinion on the constitutional questions involved, and the case cannot be determined without passing on such question, no decision shall be rendered therein, but the case shall be reheard by a full court; and in no case where the jurisdiction of the court depends solely upon the fact that the constitutionality of a law is involved, shall the court decide the case upon its merits, unless the contention of the appellant upon the constitutional question be sustained. In event the judges composing any division shall differ as to the judgment to be rendered in any cause, or in event any judge of either division, within a time and in a manner to be fixed by the rules to be adopted by the court, shall certify that in his opinion any decision of any division of the court is in conflict with any prior decision of the court, or of any division thereof, the cause shall then be considered and adjudged by the full court, or a quorum thereof.

The court shall have original jurisdiction in cases of habeas corpus, mandamus and prohibition, but in other cases in which it shall have jurisdiction, shall have appellate jurisdiction only.

Subject to such reasonable rules as may be prescribed by law as to the course of appeals, the limitation as to

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Section 3. Selection of Chief Justice.

The Chief Justice of the Supreme Court shall be the justice who has the longest continuous service on the Court, or, if two have served for the same period, the justice who is senior in years. If an eligible justice declines to serve, the Chief Justice shall be the justice who would next succeed to the office.
[See also Judiciary §§ 1, 3]

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the time, the value, amount or subject matter involved, the security required, if any, the granting or refusing of appeals, and the procedure therein, it shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the constitutionality of a law as being repugnant to the Constitution of this State or of the United States, or involving the life or liberty of any person; and in such other cases as may be prescribed by law. No appeal shall be allowed to the Commonwealth in a case involving the life or liberty of a person, except that an appeal by the Commonwealth may be allowed in any case involving the violation of a law relating to the State revenue. No bond shall be required of an accused person as a condition of appeal, but a supersedeas bond may be required where the only punishment imposed in the court below is a fine. Each of the judges shall have the title of justice. The judge longest in continuous service shall be chief justice; and if two or more shall have so served for the same period, the senior in years of these shall be chief justice.	
Section 89. Special court of appeals. The General Assembly may, from time to time, provide for a special court of appeals to try any cases on the docket of the Supreme Court of Appeals, in respect to which a majority of the judges are so situated as to make it improper for them to sit; and also to try any cases on said docket which cannot be disposed of with convenient dispatch. The said special court shall be composed of not less than three nor more than five of the judges of the circuit courts and city courts of record, or of the judges of either of said courts, or of any of the judges of said courts, together with one or more of the judges of the Supreme Court of Appeals.	Deleted.

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Section 90. Opinions and judgments of the Supreme Court of Appeals. When a judgment or decree is reversed, modified or affirmed by the Supreme Court of Appeals, the reasons therefor shall be stated in writing and preserved with the record of the case. The court may, but need not, remand a case for a new trial. In any civil case, it may enter final judgment, except that judgment for unliquidated damages shall not be increased or diminished.	**Section 6. Opinions and judgments of the Supreme Court.** When a judgment or decree is reversed, modified, or affirmed by the Supreme Court, or when original cases are resolved on their merits, the reasons for the Court's action shall be stated in writing and preserved with the record of the case. The Court may, but need not, remand a case for a new trial. In any civil case, it may enter final judgment, except that the award in a suit or action for unliquidated damages shall not be increased or diminished.
Section 91. Qualifications and terms of judges of Supreme Court of Appeals; how chosen. The judges of the Supreme Court of Appeals shall be chosen by the joint vote of the two houses of the General Assembly for terms of twelve years. They shall, when chosen, have held a judicial station in the United States, or shall have practiced law in this or some other State for five years.	**Section 7. Selection and qualification of judges.** The justices of the Supreme Court shall be chosen by the vote of a majority of the members elected to each house of the General Assembly for terms of twelve years. The judges of all other courts of record shall be chosen by the vote of a majority of the members elected to each house of the General Assembly for terms of eight years. During any vacancy which may exist while the General Assembly is not in session, the Governor may appoint a successor to serve until thirty days after the commencement of the next regular session of the General Assembly. Upon election by the General Assembly, a new justice or judge shall begin service of a full term. All justices of the Supreme Court and all judges of other courts of record shall be residents of the Commonwealth and shall, at least five years prior to their appointment or election, have been admitted to the bar of the Commonwealth. Each judge of a trial court of record shall during his term of office reside within the jurisdiction of the court to which he was appointed or elected or in an immediately adjoining political subdivision of the Commonwealth.

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Section 92. Officers of Supreme Court of Appeals. The officers of the Supreme Court of Appeals shall be appointed by the court or by the judges in vacation. Their duties, compensation and tenure of office shall be prescribed by law. The Supreme Court of Appeals shall have the management of the law library and the appointment of the librarian and other employees thereof.	**Section 4. Administration of the judicial system.** The Chief Justice of the Supreme Court shall be the administrative head of the judicial system. He may temporarily assign any judge of a court of record to any other court of record except the Supreme Court and may assign a retired judge of a court of record, with his consent, to any court of record except the Supreme Court. The General Assembly may adopt such additional measures as it deems desirable for the improvement of the administration of justice by the courts and for the expedition of judicial business.
(New section)	**Section 5. Rules of practice and procedure.** The Supreme Court shall have general rule-making authority over the practice and procedures to be used in the courts of the Commonwealth. The General Assembly shall have the power to adopt such rules in cases where the Court has not acted and, in cases where the Court has acted, shall have the power to amend, modify, or set aside the Court's rules or to substitute rules of its own.
Section 93. Sessions of Supreme Court of Appeals. The Supreme Court of Appeals shall hold its sessions at two or more places in the State, as may be fixed by law.	Deleted.
Section 94. Judicial circuits, number and constitution. The judicial circuits of the State shall continue as at present until changed as hereinafter provided.	Deleted. See Judiciary § 1.
Section 95. Powers of General Assembly to rearrange judicial circuits; limitations. The General Assembly may rearrange the said circuits and increase or diminish the number thereof. But no new circuit shall be created containing, by the last United States census or other census provided by law, less than forty	Deleted. See Judiciary § 1.

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thousand inhabitants, nor when the effect of creating it will be to reduce the number of inhabitants in any existing circuit below forty thousand, according to such census.	
Section 96. Circuit judges; election, qualifications; residence and term of office. For each circuit a judge shall be chosen by the joint vote of the two houses of the General Assembly for a term of eight years. He shall, when chosen, possess the same qualifications as judges of the Supreme Court of Appeals, and during his continuance in office shall reside in the circuit of which he is judge.	See Judiciary § 7.
Section 97. Terms of circuit courts; judges may be required to hold terms in other circuits. The number of terms of the circuit courts to be held for each county and city shall be prescribed by law. But no separate circuit court shall be held for any city of the second class, until the city shall abolish its existing city court. The judge of one circuit may be required or authorized to hold court in any other circuit or city.	See Judiciary §§ 1, 4.
Section 98. Division of cities into classes; courts of each class. additional courts of cities, how provided; abolition and cessation of corporation or city court. For the purpose of a judicial system, the cities of the State shall be divided into two classes. Cities having a population of ten thousand or more, as shown by the last United States census, or other census provided by law, shall be cities of the first class and those having a population of less than ten thousand, as thus shown, shall be cities of the second class. In each city of the first class, there may be, in addition to the circuit court, a corporation court. In any city con-	Deleted. See Judiciary § 1.

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taining thirty thousand inhabitants or more, the General Assembly may provide for a court or courts with such number of judges for each court as the public interest may require, and in every such city the city courts, as they now exist, shall continue until otherwise provided by law.

In every city of the second class the corporation or hustings court now existing shall continue under the name of the corporation court of such city; but it may be abolished by a vote of a majority of the qualified voters of such city at an election held for the purpose. And whenever the office of judge of a corporation or hustings court of a city of the second class, whose annual salary is less than eight hundred dollars, shall become and remain vacant for ninety days consecutively, such court shall thereby cease to exist. In case of the abolition of the corporation or hustings court of any city of the second class, such city shall thereupon come in every respect within the jurisdiction of the circuit court of the county wherein it is situated, until otherwise provided by law; and the records of such corporation or hustings court shall thereupon become a part of the records of such circuit court, and be transferred thereto, and remain therein until otherwise provided by law. During the existence of the corporation or hustings court, the circuit court of the county in which such city is situated shall have concurrent jurisdiction with said corporation or hustings court, in actions at law and suits in equity, unless otherwise provided by law.

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Section 99. Judges of city courts; qualifications, term of office and residence; holding court in other circuits.

See Judiciary §§ 1, 4, 7.

For each city court of record a judge shall be chosen for a term of eight years by a joint vote of the two houses of the General Assembly. He shall, when chosen, possess the same qualifications as judges of the Supreme Court of Appeals, and during his continuance

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in office, shall reside within the jurisdiction of the court over which he presides; but the judge of the corporation court of any corporation having a city charter, and less than ten thousand inhabitants, may reside outside of the city limits; and such judge may be judge of such corporation court and judge of the corporation court of some other city having less than ten thousand inhabitants. The judges of city courts may be required or authorized to hold the circuit or city courts of any county or city.	
Section 100. Courts of land registration. The General Assembly shall have power to establish such court or courts of land registration as it may deem proper for the administration of any law it may adopt for the purpose of the settlement, registration, transfer or assurance of titles to land in the State, or any part thereof.	Deleted. See Judiciary § 1.
Section 101. Clerks of courts; jurisdiction in cases of wills, insane persons, et cetera. The General Assembly may confer upon the clerks of the several courts having probate jurisdiction, jurisdiction of the probate of wills, and of the appointment and qualification of guardians, personal representatives, curators, appraisers, and committees of persons adjudged insane or convicted of felony, and in the matter of the substitution of trustees.	**Section 8. Additional judicial personnel.** The General Assembly may provide for additional judicial personnel, such as judges of courts not of record and magistrates or justices of the peace, and may prescribe their jurisdiction and provide the manner in which they shall be selected and the terms for which they shall serve. The General Assembly may confer upon the clerks of the several courts having probate jurisdiction, jurisdiction of the probate of wills and of the appointment and qualification of guardians, personal representatives, curators, appraisers, and committees of persons adjudged insane or convicted of felony, and in the matter of the substitution of trustees.
Section 102. Judges, how commissioned; salaries and allowances; terms of office; vacancies; retirement and compensation. Judges shall be commissioned by the Governor They shall receive such salaries and allowances as shall be prescribed by law, the amount of which	**Section 9. Commission; compensation; retirement.** All justices of the Supreme Court and all judges of other courts of record shall be commissioned by the Governor. They shall receive such salaries and allowances as shall be prescribed by the General Assembly, which shall be apportioned between the Commonwealth and its

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shall not be diminished during their term of office. Their term of office shall commence on the first day of February next following their election. Whenever a vacancy occurs in the office of judge, his successor shall be elected for the unexpired term. The General Assembly may enact such laws as it may deem necessary for the retirement of the said judges with such compensation and such duties as it may prescribe.	cities and counties in the manner provided by law. Unless expressly prohibited or limited by the General Assembly, cities and counties shall be permitted to supplement from local funds the salaries of any judges serving within their geographical boundaries. The salary of any justice or judge shall not be diminished during his term of office. The General Assembly may enact such laws as it deems necessary for the retirement of justices and judges, with such conditions, compensation, and duties as it may prescribe. The General Assembly may also provide for the mandatory retirement of justices and judges after they reach a prescribed age.
Section 103. Salaries of judges. The salaries of judges shall be paid out of the State treasury, but the State shall be reimbursed for one-half of the salaries of each of the circuit judges by the counties and cities composing the circuit, according to their respective populations, and of each of the judges of a city of the first class by the city in which such judge presides; except that the entire salary of the judge of the circuit court of the city of Richmond shall be paid by the State. A city may increase the salary of its circuit or city judge, or any one or more of them, such increase to be paid wholly by such city and not to be diminished during the term of office of such judge. A city containing less than ten thousand inhabitants shall pay the salary of its city judge.	
Section 104. Removal of judges for cause. Judges may be removed from office for cause, by a concurrent vote of both houses of the General Assembly; but a majority of all the members elected to each house must concur in such vote, and the cause of removal shall be entered on the journal of each house. The judge against whom the General Assembly may be about to proceed shall have notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon.	**Section 10. Disabled and unfit judges.** The General Assembly shall create a Judicial Inquiry and Review Commission consisting of members of the judiciary, the bar, and the public and vested with the power to investigate, either on complaint by any citizen or on its own motion, charges which would be the basis for retirement, censure, or removal of a judge. The Commission shall be authorized to conduct hearings and to subpoena witnesses and documents. Proceedings before the Commission shall be confidential. If the Commission finds the charges to be well-founded, it may file a formal complaint before the Supreme Court. Upon the filing of a complaint, the

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	Supreme Court shall conduct a hearing in open court and, upon a finding of disability which is or is likely to be permanent and which seriously interferes with the performance by the judge of his duties, or upon a finding of unfitness for further judicial service, may retire the judge from office. A judge retired under this authority shall be considered for the purpose of retirement benefits to have retired voluntarily. If the Supreme Court after the hearing on the complaint finds that the judge has engaged in misconduct while in office, or that he has persistently failed to perform the duties of his office, or that he has engaged in conduct prejudicial to the proper administration of justice, it may censure him or may remove him from office. This section shall apply to justices of the Supreme Court, to judges of courts of record, and to members of the State Corporation Commission. The General Assembly may provide by general law for a procedure for the retirement, censure, or removal of judges of any court not of record, or other personnel exercising judicial functions.
Section 105. Judges shall not practice law or hold office of public trust; exception. No judge of a court of record shall practice law within or without this State, nor hold any other office of public trust during his continuance in office; except that the judge of a city court in a city of the second class may hold the office of commissioner in chancery of the circuit court for the county in which the city is located.	**Section 11. Incompatible activities.** No justice or judge of a court of record shall, during his continuance in office, engage in the practice of law within or without the Commonwealth, or seek or accept any non-judicial elective office, or hold any other office of public trust, or make any contribution to or hold any office in a political party or organization, or engage in partisan political activities, or receive any remuneration for his judicial service except the salaries and allowances authorized under section 9 of this Article.
Section 106. Writs and indictments. Writs shall run in the name of the "Commonwealth of Virginia", and be attested by the clerks of the several courts. Indictments shall conclude "against the peace and dignity of the Commonwealth."	**Deleted.**

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Section 107 Attorney General, election, commission, duties and compensation. An Attorney General shall be elected by the qualified voters of the State at the same time and for the same term as the Governor; and the fact of his election shall be ascertained in the same manner. He shall be commissioned by the Governor, perform such duties and receive such compensation as may be prescribed by law, and shall be removable in the manner prescribed for the removal of judges.	**Section 12. Attorney General.** An Attorney General shall be elected by the qualified voters of the Commonwealth at the same time and for the same term as the Governor; and the fact of his election shall be ascertained in the same manner. No person shall be eligible for election or appointment to the office of Attorney General unless he is a citizen of the United States, has attained the age of thirty years, and has the qualifications required for a judge of a court of record. He shall perform such duties and receive such compensation as may be prescribed by law, which compensation shall neither be increased nor diminished during the period for which he shall have been elected.
Section 108. Justices of the peace. The General Assembly may provide for the appointment or election of justices of the peace and prescribe their jurisdiction.	See Judiciary § 8.
Section 109 Applications for bail. The General Assembly shall provide by whom and in what manner, applications for bail shall be heard and determined.	Deleted. See Judiciary §§ 1, 8.
ARTICLE VII ORGANIZATION AND GOVERNMENT OF COUNTIES	**ARTICLE VII LOCAL GOVERNMENT**
Section 110. County officers, number, terms and compensation; county organization. There shall be elected by the qualified voters of each county a treasurer, a sheriff, an attorney for the Commonwealth, and a county clerk, who shall be the clerk of the circuit court; and there shall also be elected by the qualified voters of each county one commissioner of the revenue. The duties and compensation of such officers shall be prescribed by general law.	**Section 4. County and city officers.** There shall be elected by the qualified voters of each county and city a treasurer, a sheriff or sergeant, an attorney for the Commonwealth, a clerk, who shall be clerk of the court in the office of which deeds are recorded, and a commissioner of revenue. The duties and compensation of such officers shall be prescribed by general law. Regular elections for such officers shall be held on Tuesday after the first Monday in November. Such officers shall take office on the first day of the following January and shall hold their respec-

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There shall be appointed for each county, in such manner as may be provided by law, one county surveyor. The General Assembly may provide for the election or appointment of a superintendent of the poor, other ministerial and executive officers for each county, and for the election or appointment of such officers for two or more counties conjointly. The provisions for such conjointly elected or appointed officers shall apply only to such counties as may adopt the same by a majority vote of the qualified voters of each of such counties voting in any election held for such purpose. The General Assembly may provide for the consolidation by two or more counties, or by one or more counties with one or more cities, of their charitable and penal institutions. But such consolidation shall apply only to such counties and cities as may authorize the same, in such manner as has heretofore been, or may hereafter be, prescribed by law. Notwithstanding the provisions of this article, the General Assembly may, by general law, provide for complete forms of county organization and government different from that provided for in this article, to become effective in any county when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon.	tive offices for the term of four years, except that the clerk shall hold office for eight years. Notwithstanding the provisions of this section, the General Assembly may provide for county or city officers or methods of their selection without regard to the provisions of this section, either (1) by general law to become effective in any county or city when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon, or (2) by special act upon the request, made after such an election, of any county or city. No such law shall reduce the term of any person holding an office at the time the election is held. A county or city not required to have or to elect such officers prior to the effective date of this Constitution shall not be so required by this section.
Section 111. Magisterial districts, supervisors; how chosen, powers and duties. The magisterial districts shall, until changed by law, remain as now constituted; provided, that hereafter no additional districts shall be made containing less than thirty square miles. Subject to the provisions of section one hundred and ten, in each district there shall be elected by the qualified voters thereof, one supervisor. The supervisors of the districts shall constitute the board of supervisors of the county, which shall meet at stated periods, and at other times as often as may be necessary, lay	**Section 3. Powers.** A charter county or a city may exercise any power or perform any function which is not denied to it by this Constitution, by its charter, or by laws enacted by the General Assembly pursuant to section 2. The General Assembly may provide by general law that any county city, town, or other unit of government may exercise any of its powers or perform any of its functions and may participate in the financing thereof jointly or in cooperation with the Commonwealth or any other unit of government within or without the Commonwealth. The

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the county and district levies, pass upon all claims against the county, subject to such appeal as may be provided by law, and perform such duties as may be required by law.

[See also present § 65]

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General Assembly may provide by general law or special act for transfer to or sharing with a regional government of any services, functions, and related facilities of any county, city, town, or other unit of government within the boundaries of such regional government.

Section 5. County, city, and town governing bodies.

The governing body of each county, city, or town shall be elected by the qualified voters of such county, city, or town in the manner provided by law.

If the members are elected by district, the district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. When members are so elected by district, the governing body of any county, city, or town may, in a manner provided by law, increase or diminish the number, and change the boundaries, of districts, and shall in 1971 and every ten years thereafter, and also whenever the boundaries of such districts are changed, reapportion the representation in the governing body among the districts in a manner provided by law. Whenever the governing body of any such unit shall fail to perform the duties so prescribed in the manner herein directed, a suit shall lie on behalf of any citizen thereof to compel performance by the governing body.

Unless otherwise provided by law, the governing body of each city or town shall be elected on the second Tuesday in June and take office on the first day of the following September. Unless otherwise provided by law, the governing body of each county shall be elected on the Tuesday after the first Monday in November and take office on the first day of the following January.

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Section 112. Elections for county and district officers, when held; terms of officers. Regular elections for county and district officers shall be held on Tuesday after the first Monday in November, and such officers shall enter upon the duties of their offices on the first day of January next succeeding their election, and shall hold their respective offices for the term of four years, except that the county clerks shall hold office for eight years.	See Local Government §§ 4, 5.
Section 113 No person shall hold more than one office at the same time. Additional security may be required of officer. Subject to the provisions of section one hundred and ten foregoing, no person shall at the same time hold more than one of the offices mentioned in this article. Any officer required by law to give bond may be required to give additional security thereon, or to execute a new bond, and in default of so doing his office shall be declared vacant.	**Section 6. Multiple offices.** Unless two or more units exercise functions jointly as authorized in section 3, no person shall at the same time hold more than one office mentioned in this Article. No member of a governing body shall be eligible, during his tenure of office or for one year thereafter, to hold any office filled by the governing body by election or appointment, except that a member of a governing body may be named a member of such other boards, commissions, and bodies as may be permitted by general law.
Section 114. County not responsible for acts of sheriffs. Counties shall not be made responsible for the acts of the sheriffs.	Deleted.
Section 115. Examination of books, accounts, et cetera, of officers handling public funds. The General Assembly shall provide for the examination of the books, accounts and settlements of county and city officers who are charged with the collection and disbursement of public funds.	Deleted.
Section 115-a Power of counties and districts to borrow money and to issue evidences of indebtedness restricted. No debt shall be contracted by any	**See Local Government § 10.**

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county, or by or on behalf of any district of any county, or by or on behalf of any school board of any county, or by or on behalf of any school district in any county. except in pursuance of authority conferred by the General Assembly by general law; and the General Assembly shall not authorize any county, or any district of any county, or any school board of any county, or any school district in any county, to contract any debt except to meet casual deficits in the revenue, a debt created in anticipation of the collection of the revenue of the said county, board or district for the then current year, or to redeem a previous liability, unless in the general law authorizing the same provision be made for the submission to the qualified voters of the proper county or district, for approval or rejection, by a majority vote of the qualified voters voting in an election, on the question of contracting such debt; and such approval shall be a prerequisite to contracting such debt. No scrip, certificate or other evidence of county or district indebtedness shall be issued except for such debts as are expressly authorized in this Constitution or by the laws made in pursuance thereof.

This section shall not be construed as prohibiting the General Assembly from authorizing, by general law, the school board of any county to contract to borrow money from the Virginia Supplemental Retirement System, or any successor thereto, for the purpose of school construction with the approval of the governing body of the county.

ARTICLE VIII. ORGANIZATION AND GOVERNMENT OF CITIES AND TOWNS

Section 116. Definitions of "cities" and "towns".

As used in this article the words "incorporated communities" shall be construed to relate only to cities and towns. All incorporated communities, having within defined boundaries a population of five thousand or more, shall be known

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Section 1 Definitions.

As used in this Article (1) "county" includes any one of the 96 existing unincorporated territorial subdivisions of the Commonwealth, any such unit hereafter created or any such unit which becomes a charter county" as provided by law, (2) "charter county" means a

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as cities; and all incorporated communities, having within defined boundaries a population of less than five thousand, shall be known as towns. In determining the population of such cities and towns the General Assembly shall be governed by the last United States census, or such other enumeration as may be made by authority of the General Assembly; but nothing in this section shall be construed to repeal the charter of any incorporated community of less than five thousand inhabitants having a city charter at the time of the adoption of this Constitution, or to prevent the abolition by such incorporated communities of the corporation or hustings court thereof.	county which has a population of 25,000 or more and which has adopted a charter as provided by law, (3) "city" means an incorporated community which has within defined boundaries a population of 25,000 or more and which has become a city as provided by law, (4) "town" means an incorporated community which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law, (5) "regional government" means a unit of general government organized as provided by law within defined boundaries encompassing at least two counties, or at least two cities, or at least one county and one city, provided that if any part of a county, city, or town be included within such boundaries, the entire county, city, or town shall be included therein, and (6) "general law" means a law which on its effective date applies alike to all charter counties, noncharter counties, cities, towns, or regional governments or to a class thereof provided that, first, such class shall be based on a reasonable classification and, second, in no event shall a class contain, nor shall a law containing a class exclude, fewer than two charter counties, or two noncharter counties, or two cities, or two towns not in the same county, or two regional governments. The General Assembly may increase by general law the population minima provided in this Article for charter counties, cities, and towns. Any incorporated community which on January 1, 1969, held a valid city or town charter may continue as a city or town, respectively, without regard to the population minima in this section.
Section 117. General Assembly shall enact laws for government of cities and towns; how special act therefor passed; as to city charters existing at adoption of Constitution. (a) General laws for the organization and government of cities and towns shall be enacted by the General Assem-	**Section 2. Organization and government.** The General Assembly shall provide by general law for the organization, government, powers, change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments, including optional plans of government for counties, cities, or towns to be effective if approved by a majority vote of the qualified voters

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bly, and no special act shall be passed in relation thereto, except in the manner provided in article four of this Constitution, and then only by a recorded vote of two-thirds of the members elected to each house. But each of the cities and towns of the State having at the time of the adoption of this Constitution a municipal charter may retain the same, except so far as it shall be repealed or amended by the General Assembly; provided, that every such charter is hereby amended to conform to all the provisions, restrictions, limitations and powers set forth in this article, or otherwise provided in this Constitution.

(b) The General Assembly may, by general law or by special act (passed in the manner provided in article four of this Constitution) provide for the organization and government of cities and towns without regard to, and unaffected by any of the provisions of this article, except those of sections one hundred and twenty-four, one hundred and twenty-five (except so far as the provisions of section one hundred and twenty-five recognize the office of mayor and the power of veto), one hundred and twenty-six and one hundred and twenty-seven of this article, and except those mentioned in subsection (d) of this section. The term "council", as used in any of said sections, shall include the body exercising legislative authority for the city or town, and all ordinances enacted and resolutions adopted by such body shall have the same force and effect for all purposes, as if enacted or adopted in accordance with the provisions of section one hundred and twenty-three of this article. But such organization and government shall apply only to such cities or towns as may thereafter adopt the same by a majority vote of those qualified voters of any such city or town voting in any election to be held for the purpose, as may be provided by law.

(c) The General Assembly, at the request of any city or town, made in manner provided by law, may grant to it any special form of organization and government authorized by subsection (b) of this section, and subject to all of the

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voting on the plan in any such county, city, or town.

The General Assembly shall provide by general law for the adoption or amendment of a charter by any county having a population of 25,000 or more, or by a city, to be effective if approved by a majority vote of the qualified voters voting thereon in such county or city. The General Assembly may provide by general law or special act for the adoption or amendment of a charter of a county having a population of 25,000 or more, a city, or a town upon the request, made in the manner provided by general law, of any such county, city, or town. No charter or amendment thereto shall be adopted which conflicts with other sections of this Article specifying that general laws be enacted or which provides for the extension or contraction of boundaries of any charter county, city, or town.

The General Assembly may also provide by special act for the powers of regional governments, including such powers of legislation, taxation, and assessment as the General Assembly may determine.

No new county shall be formed with an area of less than six hundred square miles; nor shall any county from which it is formed be reduced below that area nor reduced in population below 25,000.

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provisions of that subsection, except that it shall not be necessary for such city or town to thereafter adopt the same. (d) Any laws or charters enacted pursuant to the provisions of this section shall be subject to the provisions of this Constitution relating expressly to judges and clerks of courts, attorneys for the Commonwealth, commissioners of revenue, city treasurers and city sergeants. (e) Any form of organization and government authorized by any provisions of this section which may have been adopted heretofore by any city or town pursuant to any act of the General Assembly enacted before such provisions became effective, and which is now in operation, is hereby declared legal and valid ab initio, and shall have the same force and effect as if it had been authorized by this Constitution at the time of its adoption.	
Section 118. Clerks of city courts, elections, duties and number; only one in city of less than thirty thousand inhabitants. In each city which has a court in the office of which deeds are admitted to record, there shall be elected, for a term of eight years, by the qualified voters of such city, a clerk of said court, who shall perform such duties as may be required by law. There shall be elected in like manner and for a like term all such additional clerks of courts for cities as the General Assembly may prescribe, or as are now authorized by law, so long as such courts shall continue in existence. In a city of less than thirty thousand inhabitants there shall be not more than one clerk of the court, who shall be clerk of all the courts of record in such city.	See Local Government § 4.
Section 119. Commonwealth's attorney in cities; commissioner of revenue in cities. In every city, so long as it has a corporation court, or a separate circuit court, there shall be elected, for a term	See Local Government § 4.

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of four years, by the qualified voters of such city, one attorney for the Commonwealth, who shall also, in those cities having a separate circuit court, be the attorney for the Commonwealth for such circuit court.

In every city there shall be elected one commissioner of the revenue for a term of four years.

The duties and compensation of such officers shall be prescribed by law.

Section 120. City officers, their titles, election, powers and duties.

See Local Government § 4.

In every city there shall be elected, by the qualified voters thereof, one city treasurer, for a term of four years; one city sergeant, for a term of four years, whose duties shall be prescribed by law; and a mayor for a term of four years, who shall be the chief executive officer of such city. All city and town officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities or towns, or of some division thereof, or appointed by such authorities thereof as the General Assembly shall designate.

The mayor shall see that the duties of the various city officers, members of the police and fire departments, whether elected or appointed, in and for such city, are faithfully performed. He shall have power to investigate their acts, have access to all books and documents in their offices, and may examine them and their subordinates on oath. The evidence given by persons so examined shall not be used against them in any criminal proceedings. He shall also have power to suspend such officers, and the members of the police and fire departments, and to remove such officers, and also such members of said departments, when authorized by the General Assembly, for misconduct in office or neglect of duty, to be specified in the order of suspension or removal; but no such removal shall be made without reasonable notice to the officer complained of, and an opportunity afforded him to be heard

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in person, or by counsel, and to present testimony in his defense. From such order of suspension or removal, the city officer so suspended or removed shall have an appeal of right to the corporation court, or, if there be no such court, to the circuit court of such city, in which court the case shall be heard de novo by the judge thereof, whose decision shall be final. He shall have all the other powers and duties which may be conferred and imposed upon him by general laws.	
Section 121. City council, composition, how elected, powers and duties; ineligibility of members to certain offices; powers and duties as to reapportionments; when mandamus against council lies.	See Local Government § 5.
There shall be in every city a council, composed of two branches, having a different number of members, whose powers and terms of office shall be prescribed by law, and whose members shall be elected by the qualified voters of such city, in the manner prescribed by law, but so as to give, as far as practicable, to each ward of such city, equal representation in each branch of said council in proportion to the population of such ward; but the General Assembly may permit the council to consist of one branch.	
No member of the council shall be eligible, during his tenure of office as such member, or for one year thereafter, to any office to be filled by the council by election or appointment.	
The council of every city may, in a manner prescribed by law, increase or diminish the number, and change the boundaries, of the wards thereof, and shall, in the year nineteen hundred and thirty-three, and in every tenth year thereafter, and also whenever the boundaries of such wards are changed, reapportion the representation in the council among the wards in a manner prescribed by law; and whenever the council of any such city shall fail to perform the duty	

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so prescribed, a mandamus shall lie on behalf of any citizen thereof to compel its performance.	
Section 122. Election and terms of office of city officers. The mayors and councils of cities shall be elected on the second Tuesday in June, and their terms of office shall begin on the first day of September, succeeding. All other elective officers, provided for by this article, or hereafter authorized by law, shall be elected on the Tuesday after the first Monday in November, and their terms of office shall begin on the first day of January succeeding, except that the terms of office of clerks of the city courts shall begin coincidently with that of the judges of said courts; provided, that the General Assembly may change the time of election of all or any of the said officers, except that the election and the beginning of the terms of mayors and councils of cities shall not be made by the General Assembly to occur at the same time with the election and beginning of the terms of office of the other elective officers provided for by this Constitution.	See Local Government §§ 4, 5.
Section 123. Ordinances, proceedings to pass over veto of mayor; as to appropriation ordinances vetoed. Every ordinance, or resolution having the effect of an ordinance, shall, before it becomes operative, be presented to the mayor. If he approves he shall sign it, but if not, if the council consists of two branches, he may return it with his objections in writing, to the clerk, or other recording officer, of that branch in which it originated; which branch shall enter the objections at length on its journal and proceed to reconsider it. If after such consideration two-thirds of all the members elected thereto shall agree to pass the ordinance or resolution, it shall be sent, together with the objections, to the other branch, by which it shall likewise be considered, and if	**Section 7. Procedures.** No ordinance or resolution appropriating money exceeding the sum of $500, imposing taxes, or authorizing the borrowing of money shall be passed except by a recorded affirmative vote of a majority of all members elected to the governing body. In case of the veto of such an ordinance or resolution, where the power of veto exists, it shall require for passage thereafter a recorded affirmative vote of two-thirds of all members elected to the governing body. On the final vote on any ordinance or resolution, the name of each member voting and how he voted shall be recorded.

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approved by two-thirds of all the members elected thereto, it shall become operative, notwithstanding the objections of the mayor. But in all such cases the votes of both branches of the council shall be determined by yeas and nays, and the names of the members voting for and against the ordinance or resolution shall be entered on the journal of each branch. If the council consists of a single branch, the mayor's objections, in writing, to any ordinance, or resolution having the effect of an ordinance, shall be returned to the clerk, or other recording officer of the council, and be entered at length on its journal; whereupon the council shall proceed to reconsider the same. Upon such consideration the vote shall be taken in the same manner as where the council consists of two branches, and if the ordinance or resolution be approved by two-thirds of all the members elected to the council, it shall become operative, notwithstanding the objections of the mayor. If any ordinance or resolution shall not be returned by the mayor within five days (Sunday excepted) after it shall have been presented to him, it shall become operative in like manner as if he had signed it, unless his term of office, or that of the council, shall expire within said five days. The mayor shall have the power to veto any particular item or items of an appropriation ordinance or resolution; but the veto shall not affect any item or items to which he does not object. The item or items objected to shall not take effect except in the manner provided in this section as to ordinances or resolutions not approved by the mayor. No ordinance or resolution appropriating money exceeding the sum of one hundred dollars, imposing taxes, or authorizing the borrowing of money, shall be passed, except by a recorded affirmative vote of a majority of all the members elected to the council or to each branch thereof where there are two; and in case of the veto by the mayor of such ordinance or resolution, it shall require a recorded affirmative vote of two-thirds of all the members elected to the council, or to	

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each branch thereof where there are two, to pass the same over such veto in the manner provided in this section. Nothing contained in this section shall operate to repeal or amend any provision in any existing city charter requiring a two-thirds vote for the passage of any ordinance as to the appropriation of money, imposing taxes or authorizing the borrowing of money.

Section 124. Consent of corporate authorities necessary to use of streets, alleys, or public grounds by certain companies or persons.

No street railway, gas, water, steam or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone or bridge company, nor any corporation, association, person or partnership engaged in these or like enterprises, shall be permitted to use the streets, alleys, or public grounds of a city or town without the previous consent of the corporate authorities of such city or town.

Section 125. Sale of corporate property and granting of franchises by cities and towns.

The rights of no city or town in and to its water front, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, and other public places, and its gas, water, and electric works shall be sold, except by an ordinance or resolution passed by a recorded affirmative vote of three-fourths of all the members elected to the council, or to each branch thereof where there are two, and under such other restrictions as may be imposed by law; and in case of the veto by the mayor of such an ordinance or resolution, it shall require a recorded affirmative vote of three-fourths of all the members elected to the council, or to each branch thereof where there are two, had in the manner heretofore provided for in this ar-

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Section 8. Consent to use public property.

No street railway, gas, water, steam or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone, or bridge company, nor any corporation, association, person, or partnership engaged in these or like enterprises shall be permitted to use the streets, alleys, or public grounds of a city or town without the previous consent of the corporate authorities of such city or town.

Section 9. Sale of property and granting of franchises by cities and towns.

No rights of a city or town in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works shall be sold except by an ordinance or resolution passed by a recorded affirmative vote of three-fourths of all members elected to the governing body.

No franchise, lease, or right of any kind to use any such public property or any other public property or easement of any description in a manner not permitted to the general public shall be granted for a longer period than thirty years except for air rights together with easements for columns of support, which may be granted for a period not exceeding sixty years. Before granting

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ticle, to pass the same over the veto. No franchise, lease or right of any kind to use any such public property or any other public property or easement of any description, in a manner not permitted to the general public, shall be granted for a longer period than thirty years. Before granting any such franchise or privilege for a term of years, except for a trunk railway, the municipality shall first, after due advertisement, receive bids therefor publicly, in such manner as may be provided by law, and shall then act as may be required by law. Such grant, and any contract in pursuance thereof, may provide that upon the termination of the grant the plant as well as the property, if any, of the grantee in the streets, avenues, and other public places shall thereupon, without compensation to the grantee, or upon the payment of a fair valuation therefor, be and become the property of the said city or town; but the grantee shall be entitled to no payment by reason of the value of the franchise; and any such plant or property acquired by a city or town may be sold or leased, or, if authorized by law, maintained, controlled and operated, by such city or town. Every such grant shall specify the mode of determining any valuation therein provided for and shall make adequate provisions by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates, and the maintenance of the property in good order throughout the term of the grant. Nothing herein contained shall be construed as preventing the General Assembly from prescribing additional restrictions on the powers of cities and towns in granting franchises or in selling or leasing any of their property, or as repealing any additional restriction now required in relation thereto in any existing municipal charter.	any such franchise or privilege for a term of years, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor. Such grant, and any contract in pursuance thereof, may provide that upon the termination of the grant, the plant as well as the property, if any, of the grantee in the streets, avenues, and other public places shall thereupon, without compensation to the grantee, or upon the payment of a fair valuation therefor, become the property of the said city or town; but the grantee shall be entitled to no payment by reason of the value of the franchise. Any such plant or property acquired by a city or town may be sold or leased or, unless prohibited by general law, maintained, controlled, and operated by such city or town. Every such grant shall specify the mode of determining any valuation therein provided for and shall make adequate provisions by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant.

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Section 126. Corporate limits, contraction or extension of, General Assembly shall provide for. The General Assembly shall provide by general laws for the extension and the contraction, from time to time, of the corporate limits of cities and towns; and no special act for such purpose shall be valid.	See Local Government § 2.
Section 127. Concerning bonded indebtedness of cities and towns. No city or town shall issue any bonds or other interest-bearing obligations for any purpose, or in any manner, to an amount which, including existing indebtedness, shall, at any time, exceed eighteen per centum of the assessed valuation of the real estate in the city or town subject to taxation, as shown by the last preceding assessment for taxes; provided, however, that nothing above contained in this section shall apply to those cities and towns whose charters existing at the adoption of this Constitution authorize a larger percentage of indebtedness than is authorized by this section; and provided, further, that in determining the limitation of the power of a city or town to incur indebtedness there shall not be included the following classes of indebtedness. (a) Certificates of indebtedness, revenue bonds or other obligations issued in anticipation of the collection of the revenues of such city or town for the then current year; provided that such certificates, bonds or other obligations mature within one year from the date of their issue, and be not past due, and do not exceed the revenue for such year. (b) Bonds authorized by an ordinance enacted in accordance with section one hundred and twenty-three, and approved by the affirmative vote of the majority of the qualified voters of the city or town voting upon the question of their issuance, at the general election next succeeding the enactment of the ordinance, or at a special election held for that purpose, for a supply of water or	**Section 10. Debt.** No county, city, or town shall issue any bonds or other interest-bearing obligations which, including existing indebtedness, shall at any time exceed eighteen per centum of the assessed valuation of real estate in the county, city, or town subject to taxation, as shown by the last preceding assessment for taxes. In determining the limitation for a county there shall be included, unless hereafter excluded, indebtedness of any town or district therein empowered to levy taxes on real estate. In determining the limitation for a county, city, or town, there shall not be included the following classes of indebtedness. (a) Certificates of indebtedness, revenue bonds, or other obligations issued in anticipation of the collection of the revenues of such county, city, town, or district for the then current year, provided that such certificates, bonds, or other obligations mature within one year from the date of their issue, be not past due, and do not exceed the revenue for such year. (b) Bonds pledging the full faith and credit of such county, city, town, or district authorized by an ordinance enacted in accordance with section 7 and approved by the affirmative vote of the qualified voters of the county, city, town, or district voting upon the question of their issuance, for a supply of water or other specific undertaking from which the county, city, town, or district may derive a revenue; but from and after a period to be determined by the governing body, not exceeding five years from the date of such election, whenever and for so long as such undertaking fails to

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other specific undertaking from which the city or town may derive a revenue; but from and after a period to be determined by the council, not exceeding five years from the date of such election, whenever and for so long as such undertaking fails to produce sufficient revenue to pay for cost of operation and administration (including interest on bonds issued therefor), and the cost of insurance against loss by injury to persons or property, and an annual amount to be covered into a sinking fund sufficient to pay, at or before maturity, all bonds issued on account of said undertaking, all such bonds outstanding shall be included in determining the limitation of the power to incur indebtedness, unless the principal and interest thereof be made payable exclusively from the receipts of the undertaking.	produce sufficient revenue to pay for costs of operation and administration (including interest on bonds issued therefor), and the cost of insurance against loss by injury to persons or property, and an amount to be covered into a sinking fund sufficient to pay the bonds at or before maturity, all outstanding bonds issued on account of such undertaking shall be included in determining such limitation. (c) Bonds of a county, city, town, or district if the principal and interest thereon are payable exclusively from the revenues and receipts of a water system or other specific undertaking from which the county, city, town, or district may derive a revenue. No debt shall be contracted by or on behalf of any district of any county or by or on behalf of any regional government or district thereof except by authority conferred by the General Assembly by general law. The General Assembly shall not authorize any such debt, except the classes described in subsections (a) and (c), unless in the general law authorizing the same, provision be made for submission to the qualified voters of the district or region for approval or rejection, by a majority vote of the qualified voters voting in an election, on the question of contracting such debt. Such approval shall be a prerequisite to contracting such debt. Except for the class of obligations described in subsection (a), no county, city, town, regional government, or district therein shall issue any bonds or other interest-bearing obligations unless (1) the bonds are issued for capital projects or incident to transfers of jurisdiction or functions between units of general government, (2) a public hearing or election is held on the question of the issuance of the bonds, and (3) the proceedings authorizing the issuance of the bonds provide for payments into a sinking fund sufficient to pay the bonds at or before maturity.
Section 128. (Omitted in present Constitution.)	Deleted.

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(New section)	**Section 11. Commission on Local Government.** The General Assembly shall create a Commission on Local Government with appropriate powers and duties to encourage and promote the development of governmental subdivisions of the Commonwealth.
ARTICLE IX. EDUCATION AND PUBLIC INSTRUCTION	**ARTICLE VIII. EDUCATION**
Section 129. Free schools to be maintained. The General Assembly shall establish and maintain an efficient system of public free schools throughout the State.	**Section 1. Public schools of high quality to be maintained.** The General Assembly shall provide by law for a statewide system of free public elementary and secondary schools open to all children of school age, and shall ensure that an educational program of high quality is established and maintained.
Section 130. State Board of Education; composition; vacancies, how filled. The general supervision of the school system shall be vested in a State Board of Education, to be appointed by the Governor, subject to confirmation by the General Assembly, and to consist of seven members. The first appointment under this section shall be one member for one year, two members for two years, two members for three years, and two members for four years, and thereafter all appointments shall be made for a term of four years, except appointments to fill vacancies, which shall be for the unexpired terms.	**Section 4. State Board of Education.** The general supervision of the public school system shall be vested in a State Board of Education of seven members, to be appointed by the Governor, subject to confirmation by the General Assembly. Each appointment shall be for four years, except that those to fill vacancies shall be for the unexpired terms. Terms shall be staggered, so that no more than two regular appointments shall be made in the same year.
Section 131. Superintendent of Public Instruction. A Superintendent of Public Instruction, who shall be an experienced educator, shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of each Governor making the appointment; provided, however, that the first appointment under this section, as hereby amended, shall not be made until	**Section 6. Superintendent of Public Instruction.** A Superintendent of Public Instruction, who shall be an experienced educator, shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of the Governor making the appointment, but the General Assembly may alter by statute this method of selection and term of office. The powers

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the expiration of the term of office of the Superintendent of Public Instruction, which began February first, nineteen hundred and twenty-six; and provided, further, that the General Assembly shall have power, by statute enacted after January first, nineteen hundred and thirty-two, to provide for the election or appointment of a Superintendent of Public Instruction in such manner and for such term as may be prescribed by statute. No Superintendent of Public Instruction shall be elected at the general election to be held on the Tuesday succeeding the first Monday in November, nineteen hundred and twenty-nine. The powers and duties of the Superintendent of Public Instruction shall be prescribed by law.	and duties of the Superintendent shall be prescribed by law.
Section 132. Powers and duties of State Board of Education. The duties and powers of the State Board of Education shall be as follows: First. It shall divide the State into appropriate school divisions, comprising not less than one county or city each, but no county or city shall be divided in the formation of such divisions. It shall certify to the local school board or boards of each division in the State a list of persons having reasonable academic and business qualifications for division superintendent of schools, one of whom shall be selected as the superintendent of schools for such division by the said school board or boards, as provided by section one hundred and thirty-three of this Constitution. Second It shall have the management and investment of the school fund under regulations prescribed by law. Third. It shall have such authority to make rules and regulations for the management and conduct of the schools as the General Assembly may prescribe; but until otherwise provided by law, the State Board of Education may continue existing rules and regulations in force and amend or change the same. Fourth. It shall select textbooks and educational appliances for use in the schools of the State, exercising such dis-	**Section 5. Powers and duties of State Board of Education.** The powers and duties of the State Board of Education shall be as follows: (a) It shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the prescribed standards of quality, and shall periodically review the adequacy of existing school divisions for this purpose. No county or city shall be divided in the formation of such divisions. (b) It shall make annual reports to the Governor concerning the condition and needs of public education in the Commonwealth, and shall in such report identify any school divisions which have failed to establish and maintain schools meeting the prescribed standards of quality. (c) It shall certify to the school board of each division a list of persons having reasonable business and academic qualifications for the office of division superintendent of schools, one of whom shall be selected to fill the post by the division school board. In the event a division school board fails to select a division superintendent within the time prescribed by law, the State Board of Education shall appoint him.

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cretion as it may see fit in the selection of books suitable for the schools in the cities and counties, respectively; provided, however, the General Assembly may prescribe the time in which the State Board of Education may change the textbooks.	(d) It shall manage and invest the Literary Fund under regulations prescribed by law. (e) It shall have authority to approve textbooks and instructional aids and materials for use in courses in the public schools of the Commonwealth. (f) Subject to the ultimate authority of the General Assembly, the board shall have primary responsibility and authority for effectuating the educational policy set forth in this Article, and, pursuant thereto, it shall have such other powers and duties as may be prescribed by law.
Section 133. School districts; school trustees. The supervision of schools in each county and city shall be vested in a school board, to be composed of trustees to be selected in the manner, for the term and to the number provided by law. Each magisterial district shall constitute a separate school district, unless otherwise provided by law, and the magisterial district shall be the basis of representation on the school board of such county or city, unless some other basis is provided by the General Assembly; provided, however, that in cities of one hundred and fifty thousand or over, the school boards of respective cities shall have power, subject to the approval of the local legislative bodies of said cities, to prescribe the number and boundaries of the school districts. The General Assembly may provide for the consolidation, into one school division, of one or more counties or cities with one or more counties or cities. The supervision of schools in any such school division may be vested in a single school board, to be composed of trustees to be selected in the manner, for the term and to the number provided by law. Upon the formation of any such school board for any such school division, the school boards of the counties, or cities in the school division shall cease to exist. There shall be appointed by the school board or boards of each school division,	**Section 7. School boards.** The supervision of schools in each school division shall be vested in a school board to be composed of trustees selected in the manner, for the term, and to the number provided by law. [See also Education §§ 2, 5(a), 5(c)]

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one division superintendent of schools, who shall be selected from a list of eligibles certified by the State Board of Education and shall hold office for four years. In the event that the local board or boards fail to elect a division superintendent within the time prescribed by law, the State Board of Education shall appoint such division superintendent.	
Section 134. Literary fund. The General Assembly shall set apart as a permanent and perpetual literary fund, the present literary fund of the State; the proceeds of all public lands donated by Congress for public free school purposes; of all escheated property; of all waste and unappropriated lands; of all property accruing to the State by forfeiture, and all fines collected for offenses committed against the State, and such other sums as the General Assembly may appropriate; provided that when and so long as the principal of the literary fund amounts to as much as ten million dollars, the General Assembly may set aside all or any part of moneys thereafter received into the principal of said fund for public school purposes including teachers retirement fund to be held and administered in such manner as may be provided by general law.	**Section 8. The Literary Fund.** The General Assembly shall set apart as a permanent and perpetual school fund the present Literary Fund; the proceeds of all public lands donated by Congress for free public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the Commonwealth by forfeiture, of all fines collected for offenses committed against the Commonwealth, and of the annual interest on the Literary Fund; and such other sums as the General Assembly may appropriate. But so long as the principal of the Fund totals as much as ten million dollars, the General Assembly may set aside all or any part of additional moneys received into its principal for public school purposes, including the teachers retirement fund, to be held and administered as prescribed by law.
Section 135. Appropriations for school purposes, school age. The General Assembly shall apply the annual interest on the literary fund; that portion of the capitation tax provided for in the Constitution to be paid into the State treasury, and not returnable to the counties and cities; and an amount equal to the total that would be received from an annual tax on property of not less than one nor more than five mills on the dollar to the schools of the primary and grammar grades, for the equal benefit of all the people of the State, to be apportioned on a basis of school population; the number of children between the ages of seven and	**Section 2. State and local support of public schools; standards of quality.** The General Assembly shall ensure that funds necessary to establish and maintain an educational program of high quality are provided each school division, and it shall take care that the cost of maintaining such programs is divided equitably between the localities, wherein rests the primary responsibility for the public schools, and the Commonwealth. The standards of quality shall be determined and prescribed from time to time by the State Board of Education, subject to revision only by the General Assembly.

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twenty years in each school district to be the basis of such apportionment. And the General Assembly shall make such other appropriations for school purposes as it may deem best, to be apportioned on a basis to be provided by law.	
Section 136. Local school taxes. Each county, city or town, if the same be a separate school district, and school district is authorized to raise additional sums by a tax on property, subject to local taxation, not to exceed in the aggregate in any one year a rate of levy to be fixed by law, to be apportioned and expended by the local school authorities of said counties, cities, towns and districts in establishing and maintaining such schools as in their judgment the public welfare may require; provided that such primary schools as may be established in any school year shall be maintained at least four months of that school year, before any part of the fund assessed and collected may be devoted to the establishment of schools of higher grade The boards of supervisors of the several counties, and the councils of the several cities and towns, if the same be separate school districts, shall provide for the levy and collection of such local school taxes.	
Section 137. Agricultural, normal, manual training and technical schools. The General Assembly may establish agricultural normal, manual training and technical schools, and such grades of schools as shall be for the public good.	**Section 9. Other educational institutions.** The General Assembly may provide for the establishment, maintenance, and operation of any educational institutions which are desirable for the intellectual, cultural, and occupational development of the people of this Commonwealth. Members of the boards of visitors, trustees, or governing bodies of such institutions shall be appointed as provided by law.
Section 138. Compulsory education. The General Assembly may, in its discretion, provide for the compulsory education of children of school age.	**Section 3. Compulsory education: free textbooks.** The General Assembly shall provide by law for the compulsory education of

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Section 139. Free textbooks. Provision shall be made to supply children attending the public schools with necessary textbooks in cases where the parent or guardian is unable, by reason of poverty, to furnish them.	every child of appropriate age and of sufficient mental and physical ability. It shall ensure that textbooks are provided at no cost to each child attending public school whose parent or guardian is financially unable to furnish them.
Section 140. Mixed schools prohibited. White and colored children shall not be taught in the same school.	Deleted.
Section 141. State appropriations prohibited to schools or institutions of learning not owned or exclusively controlled by the State or some subdivision thereof; exceptions to rule. No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided, first, that the General Assembly may, and the governing bodies of the several counties, cities and towns may, subject to such limitations as may be imposed by the General Assembly, appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the State or any such county, city or town; second, that the General Assembly may appropriate funds to an agency, or to a school or institution of learning owned or controlled by an agency, created and established by two or more States under a joint agreement to which this State is a party for the purpose of providing educational facilities for the citizens of the several States joining in such agreement; third, that counties, cities, towns, and districts may make appropriations to nonsectarian schools of manual, industrial, or technical training, and also to any school or institution of learning owned or exclusively controlled by such county, city, town, or school district.	No change except to substitute "Commonwealth" for "State."

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(New section)	**Section 11. Aid to nonpublic higher education.** The General Assembly may provide for loans to students in, and a state agency or authority to assist in borrowing money for construction of educational facilities at, nonprofit institutions of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education.
Section 142. Boards of visitors and trustees of educational institutions, how appointed, and term of office. Members of the boards of visitors or trustees of educational institutions shall be appointed as may be provided by law, and shall hold for the term of four years; provided, that at the first appointment, if the board be of an even number, one-half of them, or, if an odd number, the least majority of them, shall be appointed for two years.	See Education § 9.
ARTICLE X. AGRICULTURE AND COMMERCE	Deleted.
Section 143. Department of Agriculture and Commerce, where maintained, how controlled, composition, qualification of members, how appointed and term of office. There shall be a Department of Agriculture and Commerce, which shall be permanently maintained at the capital of the State, and which shall be under the management and control of a Board of Agriculture and Commerce, composed of one member from each congressional district, at least five of whom shall be practical farmers, appointed by the Governor for a term of four years, subject to confirmation by the Senate, and the president of the Virginia Polytechnic Institute, who shall be ex officio member of the board.	Deleted.

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Section 144. Powers and duties of same. The powers and duties of the board shall be prescribed by law; provided, that it shall have power to elect and remove its officers, and establish elsewhere in the State subordinate branches of said department.	Deleted.
Section 145. Commissioner of Agriculture and Commerce. A Commissioner of Agriculture and Commerce shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of each Governor making the appointment; provided, however, that the General Assembly shall have power, by statute enacted after January first, nineteen hundred and thirty-two, to provide for the election or appointment of a Commissioner of Agriculture and Commerce in such manner and for such terms as may be prescribed by statute. The powers and duties of the Commissioner of Agriculture and Commerce shall be prescribed by law.	Deleted.
Section 146. President of Board of Agriculture and Commerce to be ex officio member of board of visitors of Virginia Polytechnic Institute. The president of the Board of Agriculture and Commerce shall be ex officio a member of the board of visitors of the Virginia Polytechnic Institute.	Deleted.
ARTICLE XI. PUBLIC WELFARE AND PENAL INSTITUTIONS	Deleted.
Section 147. Public welfare, charitable, reformatory, or penal institutions. Such public welfare, charitable, sanitary, benevolent, reformatory or penal institutions as the claims of humanity and the public good may require shall be established and operated by the Commonwealth under such organization and in such manner as the General Assembly may prescribe.	Deleted.

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Unless otherwise prescribed by law, the existing institutions and laws with respect thereto shall continue.	
Section 148. (Omitted in present Constitution.)	Deleted.
Section 149. (Omitted in present Constitution.)	Deleted.
Section 150. (Omitted in present Constitution.)	Deleted.
Section 151. (Omitted in present Constitution.)	Deleted.
Section 152. Office of Commissioner of State Hospitals abolished.	Deleted.
The office of Commissioner of State Hospitals for the insane is hereby abolished.	
ARTICLE XII. CORPORATIONS	ARTICLE IX. CORPORATIONS
Section 153. Definition of terms used in article; article not to conflict with Federal Constitution.	Deleted.
As used in this article, the term "corporation" or "company" shall include all trusts, associations and joint stock companies having any powers or privileges not possessed by individuals or unlimited partnerships, and exclude all municipal corporations and public institutions owned or controlled by the State; the term "charter" shall be construed to mean the charter of incorporation by, or under, which any such corporation is formed; the term "transportation company" shall include any company, trustee, or other person owning, leasing or operating for hire a railroad, street railway canal, steamboat or steamship line, and also any freight car company, car association, or car trust, express company, or company, trustee or person in any way engaged in business as a common carrier over a route acquired in whole or in part under the	

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right of eminent domain; the term "rate" shall be construed to mean "rate of charge for any service rendered or to be rendered"; the terms "rate", "charge" and "regulation" shall include joint rates, joint charges, and joint regulations respectively; the term "transmission company" shall include any company owning, leasing or operating for hire any telegraph or telephone line; the term "freight" shall be construed to mean any property transported, or received for transportation by any transportation company; the term "public service corporation" shall include all transportation and transmission companies, all gas, electric light, heat and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any street, alley or public highway, whether along, over, or under the same, in a manner not permitted to the general public; the term "person", as used in this article, shall include individuals, partnerships and corporations, in the singular as well as plural number; the term "bond" shall mean all certificates or written evidences of indebtedness issued by any corporation and secured by mortgage or trust deed; the term "frank" shall be construed to mean any writing or token, issued by, or under authority of, a transmission company, entitling the holder to any service from such company free of charge. The provisions of this article shall always be so restricted in their application as not to conflict with any of the provisions of the Constitution of the United States, and as if the necessary limitations upon their interpretation had been herein expressed in each case.	
Section 154. As to chartering a corporation, and legislation relating thereto by General Assembly; surrender of charters; special acts regulating corporations prohibited. The creation of corporations, and the extension and amendment of charters (whether heretofore or hereafter	**Section 6. Corporations subject to general laws.** The creation of corporations, and the extension and amendment of charters whether heretofore or hereafter granted, shall be provided for by general law, and no charter shall be granted, amended, or extended by special act, nor shall authority in such matters be conferred upon any tribunal or officer,

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granted), shall be provided for by general laws, and no charter shall be granted, amended or extended by special act, nor shall authority in such matters be conferred upon any tribunal or officer, except to ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter, amendment or extension applied for, and to issue, or refuse, the same accordingly. Such general laws may be amended or repealed by the General Assembly; and all charters and amendments of charters, now existing and revocable, or hereafter granted or extended, may be repealed at any time by special act. Provision shall be made, by general laws, for the voluntary surrender of its charter by any corporation, and for the forfeiture thereof for non-user or misuser. The General Assembly shall not, by special act, regulate the affairs of any corporation, nor, by such act, give it any rights, powers or privileges.

Section 155. State Corporation Commission; how selected; term of office; how vacancies filled; who ineligible; qualifications of at least one member; how removed or impeached; officers, how selected; rules of order and procedure; general provisions; salaries.

There shall be a permanent commission, to consist of three members, which shall be known as the State Corporation Commission. Their regular term of office shall be six years, respectively. Whenever a vacancy in the commission shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term, subject to confirmation by the General Assembly or until his successor be chosen as provided by law. Commissioners selected for regular terms shall, at the beginning of the terms for which selected, and those appointed to fill vacancies, shall immediately upon their selection or appointment, enter upon the duties of their of-

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except to ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter, amendment, or extension applied for and to issue or refuse the same accordingly. Such general laws may be amended, repealed, or modified by the General Assembly. Every corporation chartered in this Commonwealth shall be deemed to hold its charter and all amendments thereof under the provisions of, and subject to all the requirements, terms, and conditions of, this Constitution and any laws passed in pursuance thereof. The police power of the Commonwealth to regulate the affairs of corporations, the same as individuals, shall never be abridged.

Section 1. State Corporation Commission.

There shall be a permanent commission which shall be known as the State Corporation Commission and which shall consist of three members. Members of the Commission shall be elected by the General Assembly and shall serve for regular terms of six years. The members of the Commission shall have the qualifications prescribed for judges of courts of record, and any Commissioner may be impeached or removed in the manner provided for the impeachment or removal of judges of courts of record. Whenever a vacancy in the Commission shall occur or exist when the General Assembly is in session, the General Assembly shall elect a successor for such unexpired term. If the General Assembly is not in session, the Governor shall forthwith appoint pro tempore a qualified person to fill the vacancy for a term ending thirty days after the commencement of the next regular session of the General Assembly, and the General Assembly shall elect a successor for such unexpired term.

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fice. The commissioners shall be elected by the General Assembly. The present commissioners shall continue in office until the expiration of their present terms. The terms of their successors shall begin on the first day of February next succeeding their selection. No person while employed by, or holding any office in relation to, any transportation or transmission company, or while in any wise financially interested therein, or while engaged in practicing law, shall hold office as a member of said commission, or perform any of the duties thereof. Nor shall any such person be interested, either directly or indirectly, in any insurance company, association or fraternal organization, or in any bank, trust or other like company doing business in this State and which is by law made subject to the supervision of said State Corporation Commission, but this section shall not be so construed as to prevent any such person from being a policyholder in any insurance company, insurance association, or fraternal organization. At least one of the commissioners shall have the qualifications prescribed for judges of the Supreme Court of Appeals; and any commissioner may be impeached or removed in the manner provided for the impeachment or removal of a judge of said court. The commission shall annually elect one of its members chairman of the same, and shall have one clerk, and such other clerks, officers, assistants and subordinates as may be provided by law, all of whom shall be appointed, and subject to removal by the commission. It shall prescribe its own rules of order and procedure, except so far as the same are specified in this Constitution or any amendment thereof. The General Assembly may establish within the department, and subject to the supervision and control of the commission, subordinate divisions, or bureaus of insurance, banking or other special branches of the business of that department. All sessions of the commission shall be public, and a permanent record shall	The Commission shall annually elect one of its members chairman and shall have such subordinates and employees as may be provided by law, all of whom shall be appointed and subject to removal in accordance with the statutory provisions for state employees generally, except that its heads of divisions and assistant heads of divisions shall be appointed and subject to removal by the Commission.

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be kept of all its judgments, rules, orders, findings and decisions, and of all reports made to or by it. Two of the commissioners shall constitute a quorum for the exercise of the judicial, legislative and discretionary functions of the commission, whether there be a vacancy in the commission or not, except as otherwise provided by law, but a quorum shall not be necessary for the exercise of its administrative functions, which are mandatory. The commission shall keep its office open for business on every day except Sundays and legal holidays.

The General Assembly shall provide suitable quarters for the commission and funds for its lawful expenses, including pay for witnesses summoned, and costs of executing processes issued by the commission of its own motion; and shall fix the salaries of the members of the commission.

Section 156. Powers, duties and method of procedure of commission.

(a) Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State.

The commission shall prescribe the forms of all reports which may be required of such corporations by this Constitution or by law. It shall have all the rights and powers of, and perform all the duties devolving upon, the Railroad Commissioner and the Board of Public Works on July tenth, nineteen hundred and two, except so far as they are or

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Section 2. Powers and duties of the Commission.

Subject to the provisions of this Constitution and to such requirements as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters, and amendments or extensions thereof, of domestic corporations and all licenses of foreign corporations to do business in this Commonwealth.

Except as may be otherwise prescribed by this Constitution or by law, the State Corporation Commission shall be charged with the duty of administering the laws made in pursuance of this Constitution for the regulation and control of corporations doing business in this Commonwealth.

The State Corporation Commission shall have the power and be charged with the duty of regulating the rates, charges, and services and, except as may be otherwise authorized by this Constitution or by general law, the facilities of railroad, telephone, gas, and electric companies.

Municipal corporations or other politi-

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may be inconsistent with the law or this Constitution.

(b) The commission shall have the power and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies; and to that end the commission shall, from time to time, prescribe and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service facilities and conveniences as may be reasonable and just, which said rates, charges, classifications, rules, regulations and requirements the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void.

The commission shall also have the right at all times to inspect the books and papers of all transportation and transmission companies doing business in this State, and to require from such companies, from time to time, special reports and statements, under oath, concerning their business, it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any transportation or transmission company in favor of, or against, any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation or otherwise, in connection with the public duties of such company.

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cal subdivisions of the Commonwealth shall not be subject to the jurisdiction of the State Corporation Commission except as may be prescribed by law.

The State Corporation Commission shall have such other powers and duties not inconsistent with this Constitution as may be prescribed by law.

Section 3. Procedures of the Commission.

Before promulgating any general order, rule, or regulation, the Commission shall give reasonable notice of its contents.

In all matters within the jurisdiction of the Commission, it shall have the powers of a court of record to administer oaths, to compel the attendance of witnesses and the production of documents, to punish for contempt, and to enforce compliance with its lawful orders or requirements by adjudging and enforcing by its own appropriate process such fines or other penalties as may be prescribed or authorized by law. Before the Commission shall enter any finding, order, or judgment against a party it shall afford such party reasonable notice of the time and place at which he shall be afforded an opportunity to introduce evidence and be heard.

The Commission shall prescribe its own rules of practice and procedure. The General Assembly shall have the power to adopt such rules in cases where the Commission has not acted, to amend, modify, or set aside the Commission's rules, or to substitute rules of its own.

Section 4. Appeals from actions of the Commission.

The Commonwealth, any party in interest, or any party aggrieved by any final finding, order, or judgment of the Commission shall have, of right, an appeal to the Supreme Court. The method of taking and prosecuting an appeal from any action of the Commission shall be prescribed by law or by the rules of the Supreme Court. All appeals from the Commission shall be to the Supreme Court only.

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Before the commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement shall first be given, by the commission, at least ten days' notice of the time and place when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the City of Richmond, Virginia, together with notice of the time and place when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement made by the commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also, as long as it remains in force, be published in each subsequent annual report of the commission.

The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic for transportation and transmission companies shall be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the General Assembly to legislate thereon by general laws; provided, however, that nothing in this

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No other court of the Commonwealth shall have jurisdiction to review, reverse, correct, or annul any action of the Commission or to enjoin or restrain it in the performance of its official duties, provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court to the Commission.

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section shall impair the right which has heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons.

(c) In all matters pertaining to the public visitation, regulation or control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging and enforcing by its own appropriate process, against the delinquent or offending company (after it shall have been first duly cited, proceeded against by due process of law before the commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law.

The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation or control of corporations, or with the prescribing and

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enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally.

Any corporation failing or refusing to obey any valid order or requirement of the commission, within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed, or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the commission, shall be a separate offense; provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

(d) From any action of the commission prescribing rates, charges or classifications of traffic, or affecting the train schedule of any transportation company. or requiring additional facilities, conveniences or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon, or an increase thereof, as provided for in subsection (e) of this section, an appeal (subject to such reasonable limitation as to time, regulations as to procedure and provisions as to costs, as may be prescribed by law) may be taken by the corporation whose rates, charges or classifications of traffic, schedule, facilities, conveniences or service are affected, or by any person deeming himself aggrieved by such action, or (if allowed by law) by the Commonwealth. Until otherwise provided by law, such appeal shall be taken in the

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manner in which appeals may be taken to the Supreme Court of Appeals from the inferior courts, except that such an appeal shall be of right, and the Supreme Court of Appeals may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges or classifications of traffic, schedules, facilities, conveniences or service are affected, the Commonwealth shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee.	
The General Assembly may also, by general laws, provide for appeals from any other action of the commission, by the Commonwealth or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the Supreme Court of Appeals only; and in all appeals to which the Commonwealth is a party it shall be represented by the Attorney General or his legally appointed representatives. No court of this Commonwealth (except the Supreme Court of Appeals, by way of appeal as herein authorized) shall have jurisdiction to review, reverse, correct or annul any action of the commission, within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court of Appeals to the commission in all other cases where such writs, respectively, would lie to any inferior tribunal or officers.	
(e) Upon the granting of an appeal a writ of supersedeas may be awarded by the appellate court, suspending the operation of the action appealed from until the final disposition of the appeal, but, prior to the final reversal thereof by the appellate court, no action of the commission prescribing or affecting the rates, charges or classifications of traffic of any transportation or transmission company shall be delayed, or suspended,	

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in its operation, by reason of any appeal by such corporation, or by reason of any proceedings resulting from such appeal, until a suspending bond shall first have been executed, and filed with, and approved by, the commission (or approved on review by the Supreme Court of Appeals), payable to the Commonwealth, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal. The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and nothwithstanding any supersedeas) of the order or requirement appealed from, to keep such accounts, and to make to the commission, from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal, be not sustained on such appeal, and the commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase the said suspending bond, whenever, in the opinion of the commission, the same may be necessary to insure the prompt refunding of the overcharge aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded, with legal interest from the date of collection thereof, by the company to the parties entitled thereto, in such manner, and through such methods of distribution, as may be prescribed by the commis-

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sion or by law. All such appeals affecting rates, charges or classifications of traffic shall have precedence upon the docket of the appellate court, and shall be heard and disposed of promptly by the court, irrespective of its place of session, next after the habeas corpus and Commonwealth's cases already on the docket of the court. (f) In no case of appeal from the commission shall any new or additional evidence be introduced in the appellate court; but the chairman of the commission, under the seal of the commission, shall certify to the appellate court all the facts upon which the action appealed from was based, and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the commission as may be selected, specified and required to be certified by any party in interest, as well as such other evidence, sc introduced or considered, as the commission may deem proper to certify. The commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the appellate court upon disposing of the appeal. The appellate court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the commission appealed from, as well as any other matter arising under such appeal; provided, however, that the action of the commission appealed from shall be regarded as prima facie just, reasonable and correct, but the court may, when it deems necessary in the interest of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the commission by any party in interest), before the appeal is finally decided. (g) Whenever the court, upon appeal, shall reverse an order of the commission	

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affecting the rates, charges or the classification of traffic of any transportation or transmission company, it shall at the same time, substitute therefor such order as, in its opinion, the commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations, affecting any or all actions of the commission theretofore entered by it, and appealed from, but based upon circumstances different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the commission, prescribing or altering such rates, charges, classifications, rules or regulations shall be retroactive.

(h) The right of any person to institute and prosecute in the ordinary courts of justice any action, suit or motion against any transportation or transmission company, for any claim or cause of action against such company, shall not be extinguished or impaired by reason of any fine or other penalty which the commission may impose, or be authorized to impose, upon such company, because of its breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding, shall the reasonableness, justness or validity of any rate, charge, classification of traffic, rule, regulation or requirement, theretofore prescribed by the commission, within the scope of its authority, and then in force, be questioned; provided, however, that no case based upon or involving any order of the commission shall be heard or disposed of against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme

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Court of Appeals, as authorized by this Constitution or by any law passed in pursuance thereof. (i) The commission shall make annual reports to the Governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or the creation, supervision, regulation or control of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law. (j) In addition to the modes of amendment provided for in article fifteen of this Constitution, the General Assembly, upon the recommendation of the State Corporation Commission, may, by law, from time to time, amend subsections (a) to (i) inclusive, of this section, or any of them, or any such amendment thereof; provided, that no amendment made under authority of this subsection shall contravene the provisions of any part of this Constitution other than the subsections last above referred to, or any such amendment thereof. (k) All books, papers and documents pertaining to the Board of Public Works and the office of Railroad Commissioner, which have been transferred to the State Corporation Commission, shall continue to be a part of its records.	
Section 157. Fees from corporations. Provisions shall be made by general laws for the payment of a fee to the Commonwealth by every domestic corporation, upon the granting, amendment or extension of its charter, and by every foreign corporation upon obtaining a license to do business in this State, as specified in this section; and also for the payment, by every domestic corporation and foreign corporation doing business in this State, of an annual registration fee of not less than five dollars, nor more than twenty-five dollars, which shall be irrespective of any specific license or other tax imposed by law upon such company for the privilege of carrying on its business in this State, or upon its franchise or property;	Deleted.

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and for the making, by every such corporation (at the time of paying such annual registration fee), of such report to the State Corporation Commission, of the status, business or condition of such corporation, as the General Assembly may prescribe. No foreign corporation shall have authority to do business in this State until it shall have first obtained from the commission a license to do business in this State, upon such terms and conditions as may be prescribed by law. The failure by any corporation for two successive years to pay its annual registration fee, or to make its said annual reports, shall, when such failure shall have continued for ninety days after the expiration of such two years, operate as revocation and annulment of the charter of such corporation if it be a domestic company, or, of its license to do business in this State, if it be a foreign company, and the General Assembly shall provide additional and suitable penalties for the failure of any corporation to comply promptly with the requirements of this section, or of any laws passed in pursuance thereof. The commission shall compel all corporations to comply promptly with such requirements, by enforcing, in the manner hereinbefore authorized, such fines and penalties against the delinquent company as may be provided for, or authorized by this article; but the General Assembly may relieve from the payment of said registration fee any purely charitable institution or institutions.

Section 158. Effect of amendment of previously obtained charter of corporation.

See Corporations § 6.

Every corporation heretofore chartered in this State, which shall hereafter accept, or effect, any amendment or extension of its charter, shall be conclusively presumed to have thereby surrendered every exemption from taxation, and every nonrepealable feature of its charter and of the amendments thereof, and also all exclusive rights or privileges theretofore granted to it by

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the General Assembly and not enjoyed by other corporations of a similar general character; and to have thereby agreed to thereafter hold its charter and franchises, and all amendments thereof, under the provisions and subject to all the requirements, terms and conditions of this Constitution and of any laws passed in pursuance thereof, so far as the same may be applicable to such corporation.	
Section 159. Eminent domain and police power of State never abridged. The exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the General Assembly from taking the property and franchises of corporations and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well being of the State.	See Corporations § 6.
Section 160. Concerning rates of transportation and transmission companies. No transportation or transmission company shall charge or receive any greater compensation, in the aggregate, for transporting the same class of passengers or property, or for transmitting the same class of messages, over a shorter than over a longer distance, along the same line and in the same direction—the shorter being included in the longer distance; but this section shall not be construed as authorizing any such company to charge or receive as great compensation for a shorter as for a longer distance. The State Corporation Commission may, from time to time, authorize any such company to disregard the foregoing provisions of this section, by charging such rates as the commission may prescribe as just and equitable between such company and the public, to or from any junctional or	Deleted.

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competitive points or localities, or where the competition of points located without this State may make necessary the prescribing of special rates for the protection of the commerce of this State; but this section shall not apply to mileage tickets, or to any special excursion, or commutation rates, or to special rates for services rendered to the government of this State, or of the United States, or in the interest of some public object, when such tickets or rates shall have been prescribed or authorized by the commission.	
Section 161. Free transportation to members of General Assembly and of State, county, district or municipal officers, prohibited; penalty; policemen and firemen excepted.	Deleted.
No transportation or transmission company doing business in this State shall grant to any member of the General Assembly, or to any State, county, district or municipal officer, any frank, free pass, free transportation, or any rebate or reduction in the rates charged by such company to the general public for like services. For violation of the provisions of this section the offending company shall be liable to such penalties as may be prescribed by law; and any member of the General Assembly, or any such officer, who shall, while in office, accept any gift, privilege or benefit, prohibited by this section, shall thereby forfeit his office, and be subject to such further penalties as may be prescribed by law; but this section shall not prevent a street railway, transportation or transmission company from granting free transportation or free service, within this State, to any member of the police force or fire department while in the discharge of his official duties, nor prohibit the acceptance by any such policeman or fireman of such free transportation.	

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Section 162. Fellow-servant doctrine abolished to extent stated. The doctrine of fellow-servant, so far as it affects the liability of the master for injuries to his servant, resulting from the acts or omissions of any other servant or servants of the common master, is to the extent hereinafter stated, abolished as to every employee of a railroad company, engaged in the physical construction, repair or maintenance of its roadway, track or any of the structures connected therewith, or in any work in or upon a car or engine standing upon a track, or in the physical operation of a train, car, engine, or switch, or in any service requiring his presence upon a train, car or engine; and every such employee shall have the same right to recover from every injury suffered by him from the acts or omissions of any other employee or employees of the common master, that a servant would have (at the time when this Constitution goes into effect), if such acts or omissions were those of the master himself in the performance of nonassignable duty; provided, that the injury, so suffered by such railroad employee, result from the negligence of an officer, or agent of the company of a higher grade of service than himself, or from that of a person employed by the company, having the right, or charged with the duty, to control or direct the general services of the immediate work of the party injured, or the general services or the immediate work of the coemployee through or by whose act or omission he is injured; or that it result from the negligence of a coemployee engaged in another department of labor, or engaged upon, or in charge of, any car upon which, or upon the train of which it is a part, the injured employee is not at the time receiving the injury, or who is in charge of any switch, signal point or locomotive engine, or is charged with dispatching trains or transmitting telegraphic or telephonic orders therefor and whether such negligence be in the performance of an assignable or nonassignable duty. The	Deleted.

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physical construction, repair or maintenance of the roadway, track or any of the structures connected therewith, and the physical construction, repair, maintenance, cleaning or operation of trains, cars or engines shall be regarded as different departments of labor within the meaning of this section. Knowledge by any such railroad employee injured, of the defective or unsafe character or condition of any machinery, ways, appliances or structures shall be no defense to an action for injury caused thereby. When death, whether instantaneous or not, results to such an employee from any injury for which he could have recovered, under the above provisions, had death not occurred, then his legal or personal representative, surviving consort and relatives (and any trustee, curator, committee or guardian of such consort or relatives) shall, respectively, have the same rights and remedies with respect thereto as if his death had been caused by the negligence of a coemployee while in the performance, as vice principal of a nonassignable duty of the master. Every contract or agreement, express or implied, made by an employee, to waive the benefit of this section, shall be null and void. This section shall not be construed to deprive any employee or his legal or personal representative, surviving consort or relatives (or any trustee, curator, committee or guardian of such consort or relatives), of any rights or remedies that he or they may have by the law of the land, at the time this Constitution goes into effect. Nothing contained in this section shall restrict the power of the General Assembly to further enlarge, for the abovenamed class of employees, the rights and remedies hereinbefore provided for, or to extend such rights and remedies to, or otherwise enlarge the present rights and remedies of any other class of employees of railroads or of employees of any person, firm or corporation.

Section 163. As to foreign corporations.

No foreign corporation shall be authorized to carry on, in this State, the

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Section 5. Foreign corporations.

No foreign corporation shall be authorized to carry on in this Common-

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business, or to exercise any of the powers or functions of a public service corporation, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the Constitution and laws of this State, where the same can be made applicable to such foreign corporation without discriminating against it. But this section shall not affect any public service corporation whose line or route extends across the boundary of this Commonwealth, nor prevent any foreign corporation from continuing in such lawful business as it may be actually engaged in within this State, when this Constitution goes into effect; but any such foreign public service corporation, so engaged, shall not, without first becoming incorporated under the laws of this State, be authorized to acquire, lease, use or operate, within this State, any public or municipal franchise or franchises, in addition to such as it may own, lease, use or operate, when this Constitution goes into effect. The property within this State, of foreign corporations, shall always be subject to attachment, the same as that of nonresident individuals; and nothing in this section shall restrict the power of the General Assembly to discriminate against foreign corporations whenever, and in whatsoever respect, it may deem wise or expedient.	wealth the business of, or to exercise any of the powers or functions of, a public service enterprise, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the Constitution and laws of this Commonwealth. However, nothing in this section shall restrict the power of the General Assembly to enact such laws specially applying to foreign corporations as the General Assembly may deem appropriate.
Section 164. Right of regulation and control of common carriers and public service corporations never surrendered or abridged. The right of the Commonwealth through such instrumentalities as it may select, to prescribe and define the public duties of all common carriers and public service corporations, to regulate and control them in the performance of their public duties, and to fix and limit their charges therefor shall never be surrendered or abridged.	Deleted. See Corporations § 6.

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Section 165. General Assembly shall enact laws preventing all trusts, combinations and monopolies inimical to the public welfare. The General Assembly shall enact laws preventing all trusts, combinations and monopolies, inimical to the public welfare.	Deleted.
Section 166. Right to parallel railroads; as to building road parallel to Richmond, Fredericksburg and Potomac railroad; duties of connecting railroad. The exclusive right to build or operate railroads parallel to its own or any other line of railroad, shall not be granted to any company; but every railroad company shall have the right, subject to such reasonable regulations as may be prescribed by law, to parallel, intersect, connect with or cross, with its roadway, any other railroad or railroads but no railroad company shall build or operate any line of railroad not specified in its charter, or in some amendment thereof. All railroad companies whose lines of railroad connect, shall receive and transport each other's passengers, freight and loaded or empty cars, without delay or discrimination. Nothing in this section shall deprive the General Assembly of the right to prevent, by statute, repealable at pleasure, any railroad from being built parallel to the present line of the Richmond, Fredericksburg and Potomac railroad.	Deleted.
Section 167. Concerning issuance of stocks and bonds by corporations; penalty for violation. The General Assembly shall enact general laws regulating and controlling all issues of stock and bonds by corporations. Whenever stock or bonds are to be issued by a corporation, it shall, before issuing the same, file with the State Corporation Commission a statement (verified by the oath of the president	Deleted.

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or secretary of the corporation, and in such form as may be prescribed or permitted by the commission) setting forth fully and accurately the basis, or financial plan upon which such stock or bonds are to be issued; and where such basis or plan includes services or property (other than money), received or to be received by the company, such statement shall accurately specify and describe, in the manner prescribed or permitted by the commission, the services or property, together with the valuation at which the same are received or to be received and such corporation shall comply with any other requirements or restrictions which may be imposed by law. The General Assembly shall provide adequate penalties for the violation of this section, or of any laws passed in pursuance thereof and it shall be the duty of the commission to adjudge and enforce (in the manner hereinbefore provided), against any corporation refusing or failing to comply with the provisions of this section, or of any laws passed in pursuance thereof, such fines and penalties as are authorized by this Constitution, or may be prescribed by law.

ARTICLE XIII. TAXATION AND FINANCE

Section 168. Taxable property; taxes shall be uniform as to class of subjects and levied and collected under general laws.

All property, except as hereinafter provided, shall be taxed; all taxes, whether State, local or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. The General Assembly may define and classify taxable subjects, and, except as to classes of property herein expressly segregated for either State or local taxation, the General Assembly may segregate the several classes of property so as to specify and determine upon

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ARTICLE X. TAXATION AND FINANCE

Section 1. Taxable property; uniformity; classification and segregation.

All property, except as hereinafter provided, shall be taxed. All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, except that the General Assembly may provide for differences in the rate of taxation to be imposed upon real estate by a city or town within all or parts of areas added to its territorial limits, or by a new unit of general government, within its area, created by or encompassing two or more, or parts of two or more, existing units of general government. Such differences in the rate

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what subjects State taxes, and upon what subjects local taxes may be levied.	of taxation shall bear a reasonable relationship to differences between non-revenue producing governmental services giving land urban character which are furnished in one or several areas in contrast to the services furnished in other areas of such unit of government. The General Assembly may define and classify taxable subjects. Except as to classes of property herein expressly segregated for either state or local taxation, the General Assembly may segregate the several classes of property so as to specify and determine upon what subjects state taxes, and upon what subjects local taxes, may be levied.
Section 169. How property assessed; General Assembly may grant cities and towns right to reduce taxation for a period of years on land added to corporate limits, and allow counties, cities and towns to exempt or partially exempt from taxation household goods and personal effects.	**Section 2. Assessments.**
Except as hereafter provided, all assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. So long as the State shall levy upon any public service corporation, other than a railway or a canal corporation, a State franchise, license, or other tax, based upon or measured by its gross receipts, or gross earnings, or any part thereof, its real estate and tangible personal property shall be assessed by the State Corporation Commission, or other central State agency, in the manner prescribed by law. The General Assembly may allow a lower rate of taxation to be imposed for a period of years by a city or town upon land added to its corporate limits, than is imposed on similar property within its limits at the time such land is added. The General Assembly may define as a separate subject of taxation household goods and personal effects	Except as hereinafter provided, all assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses and provide for the assessment thereof for taxation on the basis of such use, may establish appropriate procedures for the determination of ranges of values applicable to such classifications of real estate, may allow relief from or deferral of portions of taxes otherwise payable on such real estate if it were not so classified, and may prescribe the limits and extent of such relief from or deferral of taxes otherwise payable on such real estate. So long as the Commonwealth shall levy upon any public service corporation a state franchise, license, or other similar tax based upon or measured by its gross receipts or gross earnings, or any part thereof, its real estate and tangible personal property shall be assessed by the State Corporation Commission or other central state agency, in the manner prescribed by law. [See also Taxation and Finance §§ 1, 6]

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and may allow the governing bodies of counties, cities, and towns to exempt or partially exempt such property from taxation.	
Section 170. Income, license, and State franchise taxes; taxation of shares of stock issued by corporations; taxes or assessments upon abutting landowners in cities, towns and certain counties for local public improvements; none elsewhere. The General Assembly may levy a tax on incomes in excess of six hundred dollars per annum; may levy a license tax upon any business which cannot be reached by the ad valorem system; and may impose State franchise taxes, and in imposing a franchise tax may, in its discretion, make the same in lieu of taxes upon other property, in whole or in part, of a transportation, industrial, or commercial corporation. Whenever a franchise tax shall be imposed upon a corporation doing business, in this State, or whenever all the capital, however invested, of a corporation chartered under the laws of the State, shall be taxed, the shares of stock issued by any such corporation shall not be further taxed. No city or town or county having the right, under this section, to impose taxes or assessments for local improvements upon abutting property owners shall impose any tax or assessment upon abutting landowners for street or other public improvements, except for making and improving the walkways upon then existing streets, and improving and paving then existing alleys, and for either the construction, or for the use of sewers, and the same when imposed, shall not be in excess of the peculiar benefits resulting therefrom to such abutting landowners. Except in cities and towns and counties having a population greater than five hundred inhabitants per square mile, as shown by the United States census, no taxes or assessments, for local public improve-	**Section 5. Franchise taxes; taxation of corporate stock.** The General Assembly, in imposing a franchise tax upon corporations, may in its discretion make the same in lieu of taxes upon other property, in whole or in part, of such corporations. Whenever a franchise tax shall be imposed upon a corporation doing business in this Commonwealth, or whenever all the capital, however invested, of a corporation chartered under the laws of this Commonwealth shall be taxed, the shares of stock issued by any such corporation shall not be further taxed. **Section 3. Taxes or assessments upon abutting property owners.** The General Assembly by general law may authorize any county, city, town, or regional government to impose taxes or assessments upon abutting property owners for such local public improvements as may be designated by the General Assembly; however, such taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners.

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ments, shall be imposed on abutting landowners.	
Section 171. Real estate and tangible personal property, except the rolling stock of public service corporations, segregated for local taxation exclusively. No State property tax for State purposes shall be levied on real estate or tangible personal property, except the rolling stock of public service corporations. Real estate and tangible personal property, except the rolling stock of public service corporations, are hereby segregated for, and made subject to, local taxation only, and shall be assessed or reassessed for local taxation in such manner and at such times as the General Assembly has heretofore prescribed, or may hereafter prescribe, by general laws.	**Section 4. Property segregated for local taxation; exceptions.** Real estate, coal and other mineral lands, and tangible personal property, except the rolling stock of public service corporations, are hereby segregated for, and made subject to, local taxation only, and shall be assessed for local taxation in such manner and at such times as the General Assembly may prescribe by general law.
Section 172. Assessment of coal and mineral lands. Coal and other mineral lands shall be assessed or reassessed for local taxation, in such manner and at such times as the General Assembly has heretofore prescribed, or may hereafter prescribe, by general laws.	
Section 173. State, county and municipal capitation taxes. The General Assembly shall levy a State capitation tax of, and not exceeding one dollar and fifty cents per annum on every resident of the State not less than twenty-one years of age, except those pensioned by this State for military services; one dollar of which shall be applied exclusively in aid of the public free schools, and the residue shall be returned and paid by the State into the treasury of the county or city in which it was collected, to be appropriated by the proper authorities to such county or city purposes as they shall respectively determine. Such State capitation tax shall not be a lien upon, nor collected by legal process from, the personal prop-	Deleted.

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erty which may be exempt from levy or distress under the poor debtor's law. The General Assembly may authorize the board of supervisors of any county, or the council of any city or town, to levy an additional capitation tax not exceeding one dollar per annum on each such resident within its limits, to be applied to city, town or county purposes.	
Section 174. Statute of limitations shall not run against State taxes; failure to assess not to defeat subsequent assessment and collection of taxes; exception as to bona fide purchaser for value. After this Constitution shall be in force, no statute of limitations shall run against any claim of the State for taxes upon any property; nor shall the failure to assess property for taxation defeat a subsequent assessment for and collection of taxes for any preceding year or years, unless such property shall have passed to a bona fide purchaser for value, without notice; in which latter case the property shall be assessed for taxation against such purchaser from the date of his purchase.	Deleted.
Section 175. The natural oyster beds. The natural oyster beds, rocks and shoals, in the waters of this State shall not be leased. rented or sold, but shall be held in trust for the benefit of the people of this State, subject to such regulations and restrictions as the General Assembly may prescribe, but the General Assembly may, from time to time, define and determine such natural beds, rocks or shoals by surveys or otherwise.	No change except substitution of "Commonwealth" for "State." Becomes Conservation § 3.
Section 176. Assessment and taxation of railroad and canal companies. The State Corporation Commission shall annually ascertain and assess, in the manner prescribed by law, the value of the roadbed and other real estate,	Deleted.

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rolling stock, and all other personal property whatsoever (except its franchise and the nontaxable shares of stock issued by other corporations) in this State, of each railway corporation, whatever its motive power, now or hereafter liable for taxation upon such property; the canal bed and other real estate, the boats and all other personal property whatsoever (except its franchise and the nontaxable shares of stock issued by other corporations) in this State, of each canal corporation, empowered to conduct transportation; and subject to such segregation of property, if any, as is provided in section one hundred and seventy-one of this Constitution, such property shall be taxed for State, county, city, town and district purposes in the manner prescribed by law, at such rates of taxation as may be imposed by them, respectively, from time to time, upon the real estate and personal property of natural persons.

Section 177. Franchise tax of railroad and canal companies.

Every such railway or canal corporation shall also pay an annual State franchise tax to be prescribed by law, upon the gross receipts hereinafter specified in section one hundred and seventy-eight, for the privilege of exercising its franchise in this State, which, with the taxes provided for in section one hundred and seventy-six, shall be in lieu of all other taxes or license charges whatsoever upon the franchise of such corporation, the shares of stock issued by it, or upon its property assessed under section one hundred and seventy-six; provided, that nothing herein contained shall exempt such corporation from the annual fee required by section one hundred and fifty-seven of this Constitution, or from assessments for street and other public local improvements authorized by section one hundred and seventy; and provided, further, that nothing herein contained shall annul or interfere with or prevent any contract or agreement by ordinance between street railway corporations and municipalities, as to com-

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pensation for the use of the streets or alleys of such municipalities by such railway corporations.	
Section 178. Amount and ascertainment of such franchise tax. The amount of such franchise tax shall be equal to such per centum of the gross transportation receipts of such corporation for the year preceding the year for which the tax is levied, or the year for which the tax is levied, as may be prescribed by law, to be ascertained by the State Corporation Commission in the following manner: (a) When the road or canal of the corporation lies wholly within this State, the tax shall be equal to the prescribed per centum of the entire gross transportation receipts of such corporation. (b) When the road or canal of the corporation lies partly within and partly without this State, or is operated as a part of a line or system extending beyond this State, the tax shall be equal to the prescribed per centum of the gross transportation receipts earned within this State, to be determined as follows: By ascertaining the average gross transportation receipts per mile over its whole extent, within and without this State, and multiplying the result by the number of miles operated within this State; provided, that from the sum so ascertained there may be a reasonable deduction because of any excess of value of the terminal facilities or other similar advantages in other States over similar facilities or advantages in this State.	Deleted.
Section 179. Reports of corporations to Corporation Commission. Each corporation mentioned in sections one hundred and seventy-six and one hundred and seventy-seven shall annually, at the time prescribed by law, make to the State Corporation Commission, a report which shall show the property taxable in this State belonging to the corporation on the date that may be prescribed by law, and its total gross	Deleted.

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transportation receipts for the year ending on that date. Upon receiving such report the State Corporation Commission shall, after thirty days' notice previously given, as provided by law, assess the value of the property of the corporation not exempt from taxation, and ascertain the amount of the franchise tax and not State taxes chargeable against it. All taxes for which the corporation is liable shall be paid as prescribed by law. Such taxes, until paid, shall be a lien upon the property within this State of the corporation owning the same, and take precedence of all other liens or incumbrances.	
Section 180. Application for relief from assessment for taxation; proceedings thereunder. The Commonwealth, or any political subdivision thereof, or a corporation, aggrieved by the assessment and ascertainment made under sections one hundred and seventy-six and one hundred and seventy-eight foregoing, may, according to such course of procedure as may be prescribed by law, apply for relief first to the State Corporation Commission and then to the Circuit Court of the City of Richmond. If the court be of opinion that the assessment or tax is excessive, it shall reduce the same; but if of opinion that it is insufficient, shall increase the same. Unless the applicant paid the taxes under protest, when due, the court, if it disallows the application, shall give judgment against it for a sum, by way of damages, equal to interest at the rate of one per centum per month upon the amount of taxes from the time the same were payable. If the application be allowed, in whole or in part, appropriate relief shall be granted, including the right to recover any excess of taxes that may have been paid, with legal interest thereon, and costs from the State or local authorities, or both, as the case may be; the judgment to be enforceable by mandamus or other proper process issuing from the	Deleted.

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court finally adjudicating the application. Subject to the provisions of article six of this Constitution, the Supreme Court of Appeals may allow a writ of error to either party.	
Section 181. Legislative power over system of corporate taxation. Notwithstanding the provisions of sections one hundred and seventy-one and one hundred and seventy-six to one hundred and eighty, inclusive, the General Assembly shall have power to change the system of taxation as to the corporations therein mentioned to be administered by the State Corporation Commission, or other central State agency. If the said system of taxation shall, for any reason become inoperative the General Assembly shall have power to prescribe some other system in lieu thereof, and to provide how and by what agencies it shall be administered.	Deleted.
Section 182. (Omitted in present Constitution.)	Deleted.
Section 183. Property exempt from taxation. Unless otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes: (a) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth issued since February fourteenth, eighteen hundred and eighty-two, or hereafter exempted by law. (b) Buildings with land they actually occupy, and the furniture and furnishings therein and endowment funds lawfully owned and held by churches or religious bodies, and wholly and exclusively used for religious worship, or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably	**Section 6. Exempt property.** (a) Unless otherwise provided in this Constitution, the following property, and no other, shall be exempt from taxation, state and local, including inheritance taxes: (1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth exempt by law. (2) Buildings with land they actually occupy, the furniture and furnishings therein, and endowment funds, lawfully owned and held by churches or religious bodies, and wholly and exclusively used for religious worship or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

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necessary for the convenient use of any such building.

(c) Private or public burying grounds or cemeteries and endowment funds, lawfully held, for their care, provided the same are not operated for profit.

(d) Property owned by public libraries, incorporated colleges or other incorporated institutions of learning, not conducted for profit, together with the endowment funds thereof not invested in real estate. But this provision shall apply only to property primarily used for literary, scientific or educational purpose or purposes incidental thereto. It shall not apply to industrial schools which sell their product to other than their own employees or students.

(e) Real estate belonging to, actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit, but exclusively as charities, also parks or playgrounds held by trustees for the perpetual use of the general public.

(f) Buildings with the land they actually occupy, and the furniture and furnishings therein, belonging to any benevolent or charitable association and used exclusively for lodge purposes or meeting rooms by such association, together with such additional adjacent land as may be necessary for the convenient use of the buildings for such purposes; and

(g) Property of the Association for the Preservation of Virginia Antiquities, the Confederate Memorial Literary Society, the Mount Vernon Ladies' Association of the Union, The Virginia Historical Society, The Thomas Jefferson Memorial Foundation, Incorporated, the posts of the American Legion and such other similar organizations or societies as may be prescribed by law.

Except as to class (a) above, general laws may be enacted restricting but not extending the above exemptions.

Nothing contained in this section shall be construed to exempt from taxation

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(3) Private or public burying grounds or cemeteries and endowment funds, lawfully held, for their care, provided the same are not operated for profit.

(4) Property owned by public libraries, incorporated colleges, or other incorporated institutions of learning, not conducted for profit, together with the endowment funds thereof not invested in real estate. But this provision shall apply only to property primarily used for literary, scientific, or educational purpose or purposes incidental thereto. It shall not apply to industrial schools which sell their product to other than their own employees or students.

(5) Real estate belonging to, and actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals, nunneries, and homes for the afflicted, aged, or infirm, conducted not for profit, but exclusively as charities; and parks or playgrounds held by trustees for the perpetual use of the general public.

(6) Buildings with the land they actually occupy, and the furniture and furnishings therein, belonging to any benevolent or charitable association and used exclusively for lodge purposes or meeting rooms by such association, together with such additional adjacent land as may be necessary for the convenient use of the buildings for such purposes.

(7) Property of the Association for the Preservation of Virginia Antiquities, the Confederate Memorial Literary Society, the Mount Vernon Ladies' Association of the Union, the Virginia Historical Society, the Thomas Jefferson Memorial Foundation, the posts of the American Legion, and such other similar patriotic or historical organizations or societies as may be

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the property of any person, firm, association, or corporation, who shall, expressly or impliedly. directly or indirectly, contract or promise to pay a sum of money or other benefit, on account of death, sickness, or accident to any of its members or other person.

Whenever any building or land, or part thereof, mentioned in this section, and not belonging to the State, shall be leased or shall otherwise be a source of revenue or profit, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city or town. But the General Assembly may provide for the partial taxation of property not exclusively used for the purposes herein named.

Nothing herein contained shall be construed as authorizing or requiring any county, city, or town to tax for county, city or town purposes, in violation of the rights of the lessees thereof, existing under any lawful contract heretofore made, any real estate owned by such county, city or town, as heretofore leased by it.

Obligations issued by counties, cities or towns may be exempted by the authorities of such localities from local taxation.

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prescribed by a three-fourths vote of the members elected to each house of the General Assembly.

(b) The General Assembly may define as a separate subject of taxation household goods and personal effects and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(c) Except as to class (a)(1) above, the General Assembly by general law may restrict, in whole or in part, but not extend, any or all of the above exemptions.

(d) Nothing contained in this section shall be construed to exempt from taxation the property of any person, firm, association, or corporation who shall, expressly or impliedly, directly or indirectly, contract or promise to pay a sum of money or other benefit on account of death, sickness, or accident to any of its members or other persons.

(e) Whenever any building or land, or part thereof, mentioned in this section, and not belonging to the Commonwealth, shall be leased or shall otherwise be a source of revenue or profit, all of such building and land shall be liable to taxation as other land and buildings in the same county, city, town, or regional government. But the General Assembly may provide for the partial taxation of property not exclusively used for the purposes herein named.

(f) Nothing herein contained shall be construed as authorizing or requiring any county, city, town, or regional government to tax for its purposes, in violation of the rights of the lessees thereof, existing under any lawful contract heretofore made, any real estate owned by such county, city, town, or regional government, as heretofore leased by it.

(g) Obligations issued by county, city, town, or regional governments may be exempted by the authorities of such governments from local taxation.

(h) Exemptions of property from taxation as established or authorized here-

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	by shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth. (i) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of exempt property for police and fire protection, refuse collection, and public utility services provided by such governments.
Section 183-a. Officers' salaries not exempt from income tax. The provisions of this Constitution forbidding the diminution of the salary or compensation of a judge or other officer during his term of office shall not be construed to exempt such salary or compensation from State income tax thereon.	Deleted.
Section 184. Authorization of certain debts. The General Assembly may contract debts to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.	**Section 9. State debt.** No debt shall be contracted by or in behalf of the Commonwealth except as provided herein. (a) Debts to meet emergencies and redeem previous debt obligations. The General Assembly may (1) contract debts to suppress insurrection, repel invasion, or defend the Commonwealth in time of war; (2) contract debts, or may authorize the Governor to contract debts, to meet casual deficits in the revenue or in anticipation of the collection of revenues of the Commonwealth for the then current fiscal year within the amount of authorized appropriations, provided that the total of such indebtedness shall not exceed thirty per centum of the general fund revenues for the preceding fiscal year and that each such debt shall mature within twelve months from the date such debt is incurred; and (3) contract debts to redeem a previous debt obligation of the Commonwealth.
Section 184-a. Authorization of certain liabilities if approved by popular vote: limitations as to amount. No debt or liability, except the debts specified in section one hundred and eighty-four, shall be hereafter contracted by or in behalf of the State, unless such debt shall be authorized by law for some single purpose constituting new capital outlay, to be distinctly specified therein, and a vote of a majority of all the members elected to each house shall be necessary to the passage of such law. On the final passage of such law in either house of the General Assembly, the question shall be taken by ayes and noes, to be duly	The full faith and credit of the Commonwealth shall be pledged to any debt

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entered on the journals thereof, and shall be "Shall this bill pass, and ought the same to receive the sanction of the people?" No such law shall take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for or against it. Such law shall be published, as may be prescribed by law, for at least three months next preceding such election.

The aggregate amount of the debts authorized by this section shall not at any one time exceed one per centum of the assessed value of all the taxable real estate in the State, as shown by the last preceding assessment.

None of the provisions of this section shall apply to the debts specifically authorized by section one hundred and eighty-four of this article.

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created under this subsection. The amount of such debt shall not be included in the limitations on debt hereinafter established, except that the amount of debt incurred pursuant to clause (3) above shall be included in determining the limitation on the aggregate amount of debt contained in subsection (b) hereof unless the debt so incurred pursuant to clause (3) above is secured by a pledge of net revenues from capital projects of institutions or agencies described in subsection (c) hereof, which net revenues the Governor shall certify are anticipated to be sufficient to pay the principal of and interest on such debt and to provide such reserves as the law authorizing the same may require, in which event the amount thereof shall be included in determining the limitation on the aggregate amount of debt contained in subsection (c) hereof.

(b) General obligation debt for capital projects and sinking fund.

The General Assembly may, in any one biennium, upon the affirmative vote of a majority of the members elected to each house, authorize the creation of debt to which the full faith and credit of the Commonwealth is pledged, not to exceed one-tenth of the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the authorization by the General Assembly of such debt, for new capital projects to be distinctly specified in the law authorizing the same; provided that any such law shall specify capital projects constituting a single purpose and shall not take effect until it shall have been submitted to the people at an election and a majority of those voting on the question shall have approved such debt. The General Assembly may, in any one biennium, upon the affirmative vote of two-thirds of the members elected to each house and without approval by the people, authorize the creation of debt to which the full faith and credit of the Commonwealth is pledged, not to exceed one-twentieth of the average of the general fund revenues of the Com-

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monwealth for the three fiscal years immediately preceding such authorization, for new capital projects to be distinctly specified in the law authorizing the same. The aggregate amount of debt authorized by the General Assembly in any one biennium under this subsection (b) shall not exceed one-tenth of the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the date when any such debt is authorized by the General Assembly.

No debt shall be incurred under this subsection (b) if the amount thereof when added to the aggregate amount of all outstanding debt to which the full faith and credit of the Commonwealth is pledged other than that excluded from this limitation by subsections (a) and (c) hereof, less any amounts set aside in sinking funds for the repayment of such outstanding debt, shall exceed an amount equal to the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the incurring of such debt.

All debt incurred under this subsection (b) shall mature within a period not to exceed the estimated useful life of the projects as stated in the authorizing law, which statement shall be conclusive, or a period of thirty years, whichever is shorter; and all debt incurred under clause (3) of subsection (a) hereof, except that which is secured by net revenues anticipated to be sufficient to pay the same and provide reserves therefor, shall mature within a period not to exceed thirty years. Such debt shall be amortized, by payment into a sinking fund or otherwise, in annual installments of principal to begin not later than one-tenth of the term of the bonds, and any such sinking fund shall not be appropriated for any other purpose. No such installment shall exceed the smallest previous installment by more than one hundred per centum. If sufficient funds are not appropriated in the budget for any fiscal year for the timely payment of the interest upon and installments of principal of such

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debt, there shall be set apart from the first general fund revenues received during such fiscal year and thereafter a sum sufficient to pay such interest and installments of principal.

(c) Debt for certain revenue producing capital projects.

The General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth, and such debt shall not be included in determining the limitation on debt contained in subsection (b) hereof, provided that

(1) the creation of such debt is authorized by the affirmative vote of two-thirds of the members elected to each house of the General Assembly; and

(2) such debt is created for specific revenue producing capital projects (including the enlargement or improvement thereof), which shall be distinctly specified in the law authorizing the same, of institutions and agencies administered solely by the executive department of the Commonwealth or of institutions of higher learning of the Commonwealth.

Before any such debt shall be authorized by the General Assembly, and again before it shall be incurred, the Governor shall certify in writing, filed with the State Treasurer, his opinion, based upon responsible engineering and economic estimates, that the anticipated net revenues to be pledged to the payment of principal of and interest on such debt will be sufficient to meet such payments as the same become due and to provide such reserves as the law authorizing such debt may require, and that the projects otherwise comply with the requirements of this subsection (c), which certifications shall be conclusive.

No debt shall be incurred under this subsection (c) if the amount thereof when added to the aggregate amount of all outstanding debt authorized by this subsection (c) and the amount of all outstanding debt incurred under clause (3) of subsection (a) which is to be

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	included in the limitation of this subsection (c), less any amounts set aside in sinking funds for the payment of such debt, shall exceed an amount equal to the average of the general fund revenues of the Commonwealth for the three fiscal years immediately preceding the incurring of such debt. (d) Obligations to which section not applicable. The restrictions of this section shall not apply to any obligation incurred by the Commonwealth or any institution, agency, or authority thereof if the full faith and credit of the Commonwealth is not pledged or committed to the payment of such obligation.
Section 184-b. Issues of evidences of indebtedness by State prohibited with certain exceptions. No scrip, certificates, or other evidence of indebtedness, shall be issued, except for the transfer or redemption of stock previously issued, or for such debts as are expressly authorized in this Constitution.	Deleted.
Section 185 Lending of credit to, or subscription to stock of, corporations or persons by State, county, city or town prohibited; State shall become interested in no work of internal improvements except public roads and public parks; exceptions as to counties, cities and towns. Neither the credit of the State, nor of any county, city, or town, shall be directly or indirectly, under any device or pretense whatsoever, granted to or in aid of any person, association, or corporation, nor shall the State, or any county, city, or town subscribe to or become interested in the stock or obligations of any company, association, or corporation, for the purpose of aiding in the construction or maintenance	**Section 10. Lending of credit, stock subscriptions, and works of internal improvement.** Neither the credit of the Commonwealth nor of any county, city, town, or regional government shall be directly or indirectly, under any device or pretense whatsoever, granted to or in aid of any person, association, or corporation; nor shall the Commonwealth or any such unit of government subscribe to or become interested in the stock or obligations of any company, association, or corporation for the purpose of aiding in the construction or maintenance of its work; nor shall the Commonwealth become a party to or become interested in any work of internal improvement, except public roads and public parks, or engage in carrying on any such work; nor shall the Commonwealth assume any indebtedness of any county, city, town, or regional government, nor lend its

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of its work; nor shall the State become a party to or become interested in any work of internal improvement, except public roads and public parks, or engage in carrying on any such work; nor assume any indebtedness of any county, city, or town, nor lend its credit to the same; but this section shall not prevent a county, city or town from perfecting a subscription to the capital stock of a railroad company authorized by existing charter conditioned upon the affirmative vote of the voters and freeholders of such county, city, or town in favor of such subscription; provided, that such vote was had prior to July first, nineteen hundred and three.	credit to the same. This section shall not be construed to prohibit the General Assembly from establishing an authority with power to insure and guarantee loans to finance industrial development and industrial expansion and from making appropriations to such authority.
Section 186. Collection and disposition of State revenue; payment of money from State Treasurer; what appropriation shall not be made. All taxes, licenses and other revenues of the State shall be collected by its proper officers and paid into the State treasury. No money shall be paid out of the State treasury except in pursuance of appropriations made by law; and no such appropriation shall be made which is payable more than two years and six months after the end of the session of the General Assembly at which the law is enacted authorizing the same; and no appropriation shall be made for the payment of any debt or obligation created in the name of the State during the war between the Confederate States and the United States. Nor shall any county, city, or town pay any debt or obligation created by such county, city or town in aid of said war.	**Section 7. Collection and disposition of state revenues.** All taxes, licenses, and other revenues of the Commonwealth shall be collected by its proper officers and paid into the state treasury. No money shall be paid out of the state treasury except in pursuance of appropriations made by law; and no such appropriation shall be made which is payable more than two years and six months after the end of the session of the General Assembly at which the law is enacted authorizing the same.
Section 187. Sinking fund for State debts; every law creating a debt to provide for a sinking fund for its payment. The General Assembly shall provide and maintain a sinking fund, in accordance with the provisions of section	See Taxation and Finance § 9(b).

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ten of the act, approved February the twentieth, eighteen hundred and ninety-two, entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February the fourteenth, eighteen hundred and eighty-two. Every law hereafter enacted by the General Assembly, creating a debt or authorizing a loan, shall provide for the creation and maintenance of a sinking fund for the payment or redemption of the same.	
Section 188. Limit of tax or revenue. No other or greater amount of tax or revenues shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the State.	No change except substitution of "Commonwealth" for "State." Becomes Taxation and Finance § 8.
Section 189. Authorization of exemption of manufactories from local taxation. The General Assembly may, by general law, authorize the governing bodies of cities, towns and counties to exempt manufacturing establishments and works of internal improvement from local taxation for a period not exceeding five years, as an inducement to their location.	Deleted.
ARTICLE XIV. MISCELLANEOUS PROVISIONS, HOMESTEAD AND OTHER EXEMPTIONS	Deleted.
Section 190. Homestead exemptions; when not to apply. Every householder or head of a family shall be entitled, in addition to the articles now exempt from levy or distress for rent, to hold exempt from levy, seizure, garnishment, or sale under exe-	Deleted.

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cution, order, or other process issued on any demand for a debt hereafter, contracted, his real and personal property, or either, including money and debts due him, to the value of not exceeding two thousand dollars, to be selected by him; provided, that such exemption shall not extend to any execution, order, or other process issued on any demand in the following cases: First. For the purchase price of said property, or any part thereof: If the property purchased, and not paid for, be exchanged for, or converted into, other property by the debtor, such last-named property shall not be exempted from the payment of such unpaid purchase money under the provisions of this article; Second. For services rendered by a laboring person or mechanic; Third. For liabilities incurred by any public officer, or officer of a court, or any fiduciary, or any attorney at law for money collected; Fourth. For a lawful claim for any taxes, levies, or assessments accruing after the first day of June, eighteen hundred and sixty-six; Fifth. For rent; Sixth. For the legal or taxable fees of any public officer, or officers of a court.	
Section 191. In what property homestead exemptions cannot be claimed. The said exemption shall not be claimed or held in a shifting stock of merchandise, or in any property the conveyance of which by the homestead claimant has been set aside on the ground of fraud or want of consideration.	Deleted.
Section 192. Manner and conditions on which homestead may be set apart to be prescribed by General Assembly. The General Assembly shall prescribe the manner and the conditions on which a householder or head of a family shall set apart and hold for himself and	Deleted.

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family a homestead in any part of the property hereinbefore mentioned. But this section shall not be construed as authorizing the General Assembly to defeat or impair the benefits intended to be conferred by the provisions of this article.	
Section 193. Homestead previously claimed not invalidated (liberally construed).	Deleted.
Nothing contained in this article shall invalidate any homestead exemption heretofore claimed under the provisions of the former Constitution; or impair in any manner the right of any householder or head of a family existing at the time that this Constitution goes into effect, to select the exemption, or any part thereof, to which he is entitled under the former Constitution; provided, that such right, if hereafter exercised. be not in conflict with the exemptions set forth in sections one hundred and ninety and one hundred and ninety-one. But no person who has selected and received the full exemption allowed by the former Constitution shall be entitled to select an additional exemption under this Constitution; and no person who has selected and received part of the exemption allowed by the former Constitution shall be entitled to select an additional exemption beyond the difference between the value of such part and a total valuation of two thousand dollars. So far as necessary to accomplish the purposes of this section, the provisions of chapter two hundred and seventy-four of the Code of Virginia, and the acts amendatory thereof, shall remain in force until repealed by the General Assembly. The provisions of this article shall be liberally construed.	
Section 194. Stay laws prohibited; exceptions.	Deleted.
The General Assembly is hereby prohibited from passing any law staying the collection of debts, commonly known	

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as "stay laws"; but this section shall not be construed as prohibiting any legislation which the General Assembly may deem necessary to fully carry out the provisions of this article.	
Section 195. Heirs of property; children of slaves. The children of parents, one or both of whom were slaves at and during the period of cohabitation, and who were recognized by the father as his children, and whose mother was recognized by such father as his wife, and was cohabited with as such, shall be as capable of inheriting any estate whereof such father may have died seized or possessed, or to which he was entitled, as though they had been born in lawful wedlock.	Deleted.
Section 195-a. Terms of office of incumbents. All incumbents of offices shall serve the term for which they have been previously selected, subject to all the contingencies which affect officials of a similar class hereafter selected.	Deleted. See Schedule.
(New Article)	**ARTICLE XI. CONSERVATION**
(New section)	**Section 1. Lands and resources of the Commonwealth.** The General Assembly shall make provision for the conservation, development, and utilization of the natural resources of the Commonwealth.
(New section)	**Section 2. Development of natural resources.** The General Assembly may undertake the development or utilization of lands or natural resources of the Commonwealth, either by the creation of public authorities or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations. Subject to the debt limitations of Article X, section 9, nothing in this Consti-

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tution shall be construed to limit the Commonwealth in participating for any period of years in the cost of projects which shall be the subject of a joint undertaking between the Commonwealth and any agency of the United States or of other states.

[Section 3 is found opposite present § 175, *supra*.]

ARTICLE XV. FUTURE CHANGES

Section 196. Amendments.

Any amendment or amendments to the Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates, and shall be published for three months previous to the time of such election. If, at such regular session or any subsequent extra session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as it shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors, qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become part of the Constitution.

Section 197. Constitutional convention; how called.

At such time as the General Assembly may provide, a majority of the members elected to each house being recorded in the affirmative, the question,

ARTICLE XII. FUTURE CHANGES

Section 1. Amendments.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates, and shall be published for three months previous to the time of such election. If at such regular session or any subsequent extra session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as it shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the voters, qualified to vote in elections by the people, voting thereon, such amendment or amendments shall become part of the Constitution.

Section 2. Constitutional convention.

The General Assembly may, by a vote of two-thirds of the members elected to each house, call a convention to propose a general revision of, or specific amendments to, this Constitu-

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"Shall there be a convention to revise the Constitution and amend the same?" shall be submitted to the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting thereon, shall vote in favor of a convention for such purpose, the General Assembly, at its next session, shall provide for the election of delegates to such convention; and no convention for such purpose shall be otherwise called.	tion, as the General Assembly in its call may stipulate. The General Assembly shall provide by law for the election of delegates to such a convention, and shall also provide for the submission at the next succeeding general election, of the proposals of the convention to the voters qualified to vote in elections by the people. If a majority of those voting vote in favor of any proposal, it shall become effective on the date prescribed by the General Assembly in submitting the convention proposals to the voters. No convention for such purpose shall be otherwise called.
ARTICLE XVI. RULES OF CONSTRUCTION	Deleted.
Section 198. Rules of construction. In this Constitution, the singular shall include the plural and the masculine the feminine. In conferring a power or imposing a duty, "may" is permissive and "shall" is mandatory. Omissions, having been often made for brevity, or because a part omitted was superfluous, do not necessarily imply a change of policy. These rules do not apply where a contrary intent plainly appears.	Deleted.
ARTICLE XVII. VOTING QUALIFICATIONS OF ARMED FORCES	Deleted.
Section 1. Certain members of armed forces exempt from payment of poll tax and from registering as condition of right to vote. No member of the armed forces of the United States, while in active service, shall be required to pay a poll tax or to register as a prerequisite to the right to vote in any and all elections, including legalized primary elections.	Deleted. See Franchise § 4.

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Section 2. Relief from the assessment and payment of poll taxes as affecting the armed forces in certain cases. All poll taxes for the years 1942, 1943, and 1944, assessed or assessable against any person who is, or who at any time during the existing World War II has been, a member of the armed forces of the United States in active service, are hereby cancelled and annulled. And, also, all poll taxes assessed or otherwise assessable for every year during any part of which such person is a member of said forces in active service during said war or any future war, and, also, for the three years next preceding such person's discharge from said active service, provided such discharge is not dishonorable, although such person was not in said service during all of said years, are hereby canceled and annulled. Members of the armed forces of the United States in active service shall be exempt from future assessments of poll taxes by this State for all years during a part of which they are hereafter engaged in such service.	Deleted.
Section 3. Voting by persons exempt from registering or paying poll taxes. Notwithstanding any other provision of this Constitution or of any law, every citizen of the United States, otherwise qualified to vote in this State, who is exempted from the payment of poll taxes by the provisions of this Article, shall be entitled to vote in any and all elections, including legalized primary elections, in person or by such absentee voting procedure as may be authorized by law, provided such citizen shall have registered or is exempted from registering by the provisions of this Article.	Deleted. See Franchise § 4.
SCHEDULE	**SCHEDULE**
Section 1. Common and statute laws; how long in force. The common law and the statute laws in force at the time this Constitution	**Section 3. Laws, proceedings, and obligations unaffected.** The common and statute law in force at the time this revised Constitution

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goes into effect, so far as not repugnant thereto or repealed thereby, shall remain in force until they expire by their own limitation, or are altered or repealed by the General Assembly.	goes into effect, so far as not in conflict therewith, shall remain in force until they expire by their own limitation or are altered or repealed by the General Assembly. Unless otherwise provided herein or by law, the adoption of this revised Constitution shall have no effect on pending judicial proceedings or judgments, on any obligations owing to or by the Commonwealth or any of its officers, agencies, or political subdivisions, or on any private obligations or rights.
Section 2. Effect of ordinances of Convention. All ordinances adopted by this Convention, and appended to the official original draft of the Constitution delivered to the Secretary of the Commonwealth, shall have the same force and effect, as if they were parts of this Constitution.	Deleted.
Section 3. Actions, writs and causes of action to continue; juristion of courts. Except as modified by this Constitution, all writs, actions and causes of action, prosecutions, rights of individuals, of bodies, corporate or politic, and of the State, shall continue. All legal proceedings, civil and criminal, pending at the time this Constitution goes into effect, or instituted prior to the first day of February, nineteen hundred and four, in any county or circuit court as now existing, shall be prosecuted therein: provided, that all such matters, which are not finally terminated before the day last above mentioned, shall, on that date, by operation of this Constitution and Schedule, be transferred to the circuit court of the county or city created under this Constitution, and shall be proceeded with therein. All such matters pending in the city courts, preserved by this Constitution, when the same goes into effect, or thereafter instituted therein, shall continue in said courts, and be therein proceeded with, until otherwise provided by law. All	See Schedule § 3.

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matters before justices of the peace or police justices at the time this Constitution goes into effect, shall be proceeded with before them, until otherwise provided by law. All legal proceedings prosecuted after this Constitution goes into effect, whether in any of the courts now existing, or in those created by this Constitution, shall be proceeded with in the manner now or hereafter provided by law, except as otherwise required by this Constitution.	
Section 4. Escheats, fines and forfeitures, etc. All taxes, fines, penalties, forfeitures and escheats, accrued or accruing to the Commonwealth, or to any political subdivision thereof, under the present Constitution, or under the laws now in force, shall, under this Constitution, enure to the use of the Commonwealth, or of such subdivision thereof.	See Schedule § 3.
Section 5. Recognizances, obligations, etc., remain binding and valid. All recognizances, and other obligations, and all other instruments entered into or executed before the adoption of this Constitution, or before the complete organization of the departments thereunder, to the Commonwealth, or to any county, or political subdivision thereof, city, town, board, or other public corporation, or institution therein, or to any public officer, shall remain binding and valid, and rights and liabilities thereunder shall continue and may be enforced or prosecuted in the courts of this State as now or hereafter provided by law.	See Schedule § 3.
Section 6. Supreme Court of Appeals. From the day this Constitution goes into effect, the present judges of the Supreme Court of Appeals, or their successors then in office, shall be the judges of the Supreme Court of Appeals created by this Constitution, and continue in office, unless sooner removed,	Deleted.

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until February the first, nineteen hundred and seven. The jurisdiction of the court shall be as now or hereafter provided by law, subject to the provisions of this Constitution. All proceedings, then pending in the court as now organized, shall, by virtue of this Constitution, be transferred to and disposed of by the court created by this Constitution.	
Section 7. County courts. The present judicial system of county and circuit courts of the Commonwealth is continued, and the terms of the several judges thereof, with the powers and duties now possessed by them respectively, are continued, until the first day of February, nineteen hundred and four, as if this Constitution had not been adopted; on which day the judicial system of circuit courts created by this Constitution shall go into operation. The terms of the judges of the city courts, as preserved by this Constitution, of the cities of Alexandria, Charlottesville, Danville, Fredericksburg, Lynchburg, Petersburg, Norfolk, Portsmouth, Richmond, Staunton, Manchester, Roanoke, Winchester, and Newport News, shall continue until the first day of February, nineteen hundred and seven; and the terms of the judges of the city courts, as preserved by this Constitution, of the cities of Bristol, Radford and Buena Vista, shall continue until the first day of February, nineteen hundred and four, unless the said courts shall be sooner abolished. The privilege now allowed by statute to judges of county courts and to judges of certain city courts to practice law, shall continue during the terms of the judges whose terms are continued by this Schedule, unless otherwise provided by law.	Deleted.
Section 8. Clerks of courts. The terms of the clerks of the county and circuit courts now in office, or their successors, shall continue until the first day of February, nineteen hundred and	Deleted.

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four; and thereupon, the several clerks of the county courts in those counties in which such clerks are now *ex-officio* clerks of the circuit courts of said counties shall be and become the county clerks of their respective counties, and the clerks of all the other county courts of the State, except the counties of Accomac, Augusta, Bedford, Campbell, Elizabeth City, Fairfax, Lee, Loudoun, Hanover, Henrico, Rockingham, Nansemond, Southampton, Pittsylvania, Nelson and Fauquier, and, as such, the clerks of the circuit courts created therefor by this Constitution and shall hold office as such until the first day of January, nineteen hundred and six, unless sooner removed, and their successors shall be elected on Tuesday after the first Monday in November, nineteen hundred and five; provided that the first term of the clerks so elected be for six years. In the counties of Accomac, Augusta, Bedford, Campbell, Elizabeth City, Fairfax, Lee, Loudoun, Hanover, Henrico, Rockingham, Nansemond, Southampton, Pittsylvania, Nelson, and Fauquier, in which there are now separate clerks for the county and circuit courts thereof, there shall be elected on Tuesday after the first Monday in November, nineteen hundred and three, county clerks for such counties. The terms of the clerks now in office, or their successors, of the several city courts preserved by this Constitution, shall continue until the first day of January, nineteen hundred and seven; and their successors shall be elected on Tuesday after the first Monday in November, nineteen hundred and five; but if any of such city courts shall be sooner abolished as provided in this Constitution or by law, then the term of the clerk of any such court shall thereupon determine.

Section 9. Governor and State officers.

The first election of the Governor and of all officers required by this Constitution, to be chosen by the qualified voters of the State at large, shall be held on the Tuesday after the first Monday in

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Section 2. Officers and elections.

Unless otherwise provided herein or by law, nothing in this revised Constitution shall affect the oath, tenure, term, status, or compensation of any person holding any public office, posi-

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November, nineteen hundred and five, and their terms of office shall begin on the first day of February following their election. The present incumbents of said offices, or their successors, shall continue in office until the last-named day.	tion, or employment in the Commonwealth, nor affect the date for filling any state or local office, elective or appointive, which shall be filled on the date on which it would otherwise have been filled.
Section 10. Members of General Assembly; county officers.	See Schedule § 2.
The first election of members of the House of Delegates, and of all county and district officers, to be elected by the people under this Constitution, except as otherwise provided in this Schedule, shall be held on Tuesday after the first Monday in November, in the year nineteen hundred and three; and the terms of office of the several officers elected at that or any subsequent election shall begin on the first day of January, next after their election, except as otherwise provided in this Constitution or in this Schedule. And the terms of the office of the sheriff, commonwealth's attorney, treasurer, commissioners of the revenue, superintendents of the poor, supervisors of the several counties, justices of the peace, and overseers of the poor, and of any incumbent of any other county or district office not abolished by this Constitution, nor herein specifically mentioned, now in office, or their successors, or whose terms of office shall begin on the first day of July, nineteen hundred and two, are continued until January the first, nineteen hundred and four.	
The terms of the present members of the House of Delegates, and the terms of the senators now in office, or (in case of vacancies therein), their successors, representing the senatorial districts bearing even numbers, are extended until the second Wednesday in January, nineteen hundred and four; provided, that the term of the senator, now residing in the city of Richmond, who by the provisions of the apportionment act, approved April the second, nineteen hundred and two, is continued in office as one of the senators from the thirty-eighth senatorial district thereby cre-	

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ated, be extended until the second Wednesday in January, nineteen hundred and six. The terms of the senators now in office, or (in case of vacancies therein), their successors, representing the senatorial districts bearing odd numbers are extended until the second Wednesday in January, nineteen hundred and six.

In the senatorial districts bearing even numbers. there shall be elected, on the Tuesday after the first Monday in November, nineteen hundred and three, for a term of four years, to begin on the second Wednesday in January succeeding their election, members of the Senate to represent such districts; in the senatorial districts bearing odd numbers, and in the city of Richmond to fill the vacancy, which will, as above provided, occur on the second Wednesday in January, nineteen hundred and six, there shall be elected, on the Tuesday after the first Monday in November, nineteen hundred and five, for a term of two years, to begin on the second Wednesday in January succeeding their election, members of the Senate to represent such districts; and on the Tuesday after the first Monday in November, nineteen hundred and seven, there shall be elected, for the term of four years, to begin on the second Wednesday in January succeeding their election, a senator from each senatorial district in the State.

Section 11. Terms of other officers.

See Schedule § 2.

All other state, county, and district officers, and their successors, who may be in office at the time this Constitution goes into effect, except the Auditor of Public Accounts, the Second Auditor, the Register of the Land Office, the Superintendent of Public Printing, the Commissioner of Labor and Industrial Statistics, Railroad Commissioner, notaries public, the Adjutant-General, the Superintendent and the Surgeon of the Penitentiary, the Manager and the Surgeon of the State Prison Farm, the superintendents of the several state hospitals, and the school superintendents

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for counties and cities, and school trustees, shall, unless their respective offices be abolished, or unless otherwise provided by this Constitution or Schedule, hold their respective offices, and discharge the respective duties and exercise the respective powers thereof, until January the first, nineteen hundred and four. The terms of the present incumbents in the offices of Auditor of Public Accounts, Second Auditor, Register of the Land Office, Superintendent of Public Printing, and Commissioner of Labor and Industrial Statistics, shall continue until March the first, nineteen hundred and four. The term of the Railroad Commissioner shall end as soon as the State Corporation Commission shall be organized. Notaries public shall continue in office until their respective commissions shall expire. The term of the office of Adjutant-General shall expire March the first, nineteen hundred and six. The Superintendent and the Surgeon of the Penitentiary, the Manager and the Surgeon of the State Prison Farm, the superintendents of the several state hospitals, shall continue in office until their successors shall be appointed by the respective boards empowered under this Constitution to make the several appointments. The school superintendents for counties and cities shall remain in office for their respective terms, and until their successors are appointed. School trustees now in office, or their successors, shall remain in office until otherwise provided by law. Electoral boards with the powers conferred by existing laws, except the appointment of registrars, shall remain in office until March the first, nineteen hundred and four.	
Section 12. State Boards. The terms of the State Board of Education, the State Corporation Commission, and the Board of Agriculture and Immigration, the directors of public institutions and prisons, and of each state hospital, and the Commissioner of State Hospitals, to be first elected, or appointed, under this Constitution, shall	See Schedule § 2.

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begin on March the first, nineteen hundred and three. The board of any of the above-named departments and institutions as now constituted shall continue until the boards created under this Constitution for such departments and institutions respectively are duly organized. And the terms of the members of the Board of Fisheries are continued until March the first, nineteen hundred and six. The terms of the trustees or visitors of the state educational institutions, and other honorary appointments made by the Governor, are continued until otherwise provided by law.	
Section 13. Charters. Charters of incorporation may, until the first day of April, nineteen hundred and three, be granted or amended by the courts of the State in accordance with the laws in force when this Constitution goes into effect, unless the General Assembly shall sooner provide for the creation of corporations as required by this Constitution.	Deleted.
Section 14. City officers. The terms of all officers elected by the qualified voters of a city, and of their successors, in office at the time this Constitution goes into effect, or whose terms of office begin on the first day of July, nineteen hundred and two, except the terms of mayors, of members of city councils and of the clerks of city courts, are continued until January the first, nineteen hundred and six; and their successors shall be elected on the Tuesday after the first Monday in November, nineteen hundred and five. The terms of all city officers, not so elected, shall expire as provided in the charters of the several cities, or as may be provided by law.	See Schedule § 2.
Section 15. Same; mayor and councilmen. Until otherwise provided by law, the mayors of the several cities shall continue in office until September the first,	See Schedule § 2.

PRESENT CONSTITUTION	PROPOSED REVISION
nineteen hundred and four, and their successors, shall be elected the second Tuesday in June, nineteen hundred and four. Until otherwise provided by law, the members of the several city councils shall continue in office for the terms prescribed in the charters of their respective cities, except that where their terms are prescribed as ending on the first day of July of any year, they shall be extended until the first day of September following.	
Section 16. Vacancies in office. Vacancies in any office, the term of which is confirmed or extended by this Schedule, occurring during such term or extension thereof, shall be filled in the manner prescribed by law.	See Schedule § 2.
Section 17. Bonds. All officers, whose terms of office are extended by this Schedule, required by law or municipal ordinance to give bond for the faithful discharge of the duties of their respective offices, shall, prior to the expiration of the terms for which they were respectively chosen, before the court or other authority before whom such officer was required by law or municipal ordinance to give such bond, enter into a new bond, in the same penalty and with such security as was prescribed by law or municipal ordinance in respect to his former bond, and with like conditions as therein prescribed, for the faithful discharge of the duties of his office for the extended term herein provided for, and until his successor shall have been duly chosen, and shall have qualified according to law. Upon the failure to give such bond within the time above prescribed, the office shall, upon the expiration of the term for which the incumbent thereof was chosen, become vacant.	Deleted.
Section 18. Qualifications of voters. In all elections held after this Constitution goes into effect, the qualifications of electors shall be those required by Article Two of this Constitution.	See Franchise § 1 and savings clause in Franchise § 2.

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Section 19. Extra session of General Assembly.

The General Assembly which convened on the first Wednesday in December, nineteen hundred and one, shall be called by the Governor to meet in session at the Capitol at twelve o'clock M., on Tuesday, the fifteenth day of July, nineteen hundred and two. It shall be vested with all the powers, charged with all the duties, and subject to all the limitations prescribed by this Constitution in reference to the General Assembly, except as to the limitation upon the period of its session, qualifications of members, and as to the time at which any of its acts shall take effect; but the ineligibility of the members thereof to be elected to any other office during their terms as members of the General Assembly shall be such as is imposed by this Constitution. The said General Assembly shall elect judges for all of the circuit courts provided for in this Constitution, and also of the corporation courts for Bristol, Radford, and Buena Vista, unless said city courts are sooner abolished.

Section 20. Powers and duties of General Assembly.

The said General Assembly shall enact such laws as may be deemed proper, including those necessary to put this Constitution into complete operation; to confirm those officers whose appointment is made by this Constitution subject to confirmation by the General Assembly or either house thereof; and to transact other proper business; and such session shall continue so long as may be necessary. The members shall receive for their services four dollars per day, for the time when the General Assembly is actually in session, including Sundays and recesses of not exceeding five days, and the mileage provided by law; the Speaker of the House of Delegates and President of the Senate shall each receive seven dollars per day for the same period and the mileage provided by law; and the other officers and employees shall receive such compensation for their

PROPOSED REVISION

Section 7. First session of General Assembly following adoption of revised Constitution.

The General Assembly shall convene at the Capitol at noon on the first Wednesday in January, nineteen hundred and seventy-one. It shall enact such laws as may be deemed proper, including those necessary to implement this revised Constitution. The General Assembly shall be vested with all the powers, charged with all the duties, and subject to all the limitations prescribed by this Constitution except that this session shall continue as long as may be necesary; that the salary and allowances of members shall not be limited by Article IV, section 6; and that the effective date limitation of Article IV, section 13, shall not be operative.

See Schedule, § 7.

PRESENT CONSTITUTION	PROPOSED REVISION
services as the General Assembly may prescribe. Provision may be made for compensation at said rate of four dollars per day of members of legislative committees which may sit during any recess of said session.	
Section 21. Clerks of Senate and House of Delegates. The compensation and duties of the Clerk of the House of Delegates and of the Clerk of the Senate shall continue as now fixed by law until the first of January, nineteen hundred and three, after which date their compensation shall be as prescribed by section Sixty-six of this Constitution.	See Schedule § 2.
Section 22. Oath to support the Constitution. When the General Assembly convenes on the fifteenth day of July, nineteen hundred and two, its members and officers, before entering upon the discharge of their duties, shall severally take and subscribe the oath or affirmation prescribed by section Thirty-four of the Constitution. And not later than the twentieth day of July, nineteen hundred and two, the Governor and all other executive officers of the State, whose offices are at the seat of government, and all judges of courts of record, shall severally take and subscribe such oath or affirmation; and upon the failure of any such officer, executive or judicial, to take such oath by the day named, his office shall thereby become vacant. Such oaths or affirmations shall be taken and subscribed before any person authorized by existing laws to administer an oath. The Secretary of the Commonwealth shall cause to be printed the necessary blanks for carrying into effect this provision, and the said oaths and affirmations so taken and subscribed, except of the members and officers of the General Assembly, shall be returned to and filed in his office; and those taken by the members and officers of the General Assembly shall be preserved in the records of the respective houses.	See Schedule § 2.

PRESENT CONSTITUTION	PROPOSED REVISION
Section 23. Official copy of Constitution. The official copy of the Constitution and Schedule, and of any ordinance adopted by the Convention, shall, as soon as they shall be enrolled, be signed by the President and attested by the Secretary of the convention, and the President will thereupon cause the same to be delivered to the Secretary of the Commonwealth, who will file and preserve the same securely, among the archives of the State in his custody. The Secretary of the Commonwealth will cause the Constitution, Schedule, and said ordinances to be transcribed in a book to be provided for the purpose and safely kept in his office. The Secretary of the Convention will immediately upon the adoption of this Schedule, deliver a certified copy of the Constitution and Schedule, and of said ordinances, to the Governor of the Commonwealth.	Deleted.
Section 24. Proclamation of Governor. The Governor is authorized and directed to immediately issue his proclamation announcing that this revised and amended Constitution has been ordained by the people of Virginia, assembled in Convention, through their representatives, as the Constitution for the government of the people of the State, and will go into effect as such, subject to the provisions of the Schedule annexed thereto, on the tenth day of July, nineteen hundred and two, at noon, and calling upon all the people of Virginia to render their true and loyal support to the same, as the organic law of the Commonwealth.	Deleted.
Section 25. When Constitution and Schedule take effect. This Constitution shall, except as is otherwise provided in the Schedule, go into effect on the tenth day of July, nineteen hundred and two, at noon. This Schedule shall take effect from its passage.	**Section 1. Effective date of revised Constitution.** This revised Constitution shall, except as is otherwise provided herein, go into effect at noon on the first day of July, nineteen hundred and seventy-one.

PRESENT CONSTITUTION	PROPOSED REVISION
(New section)	**Section 4. Pending petitions for original writs of habeas corpus.** The original habeas corpus jurisdiction of the Supreme Court which existed prior to the adoption of this revised Constitution shall continue only with regard to those petitions for writs filed prior to the effective date of this revised Constitution.
(New section)	**Section 5. Qualifications of judges.** All justices of the Supreme Court and judges of courts of record who were appointed or elected prior to the effective date of this revised Constitution shall be allowed to complete the term for which they were appointed or elected and may be reelected for one term without regard to the requirements of Article VI, section 7, that they shall be residents of Virginia and shall, at least five years prior to their election or appointment, have been members of the bar of the Commonwealth.
(New section)	**Section 6. Qualifications of members of State Corporation Commission.** Members of the State Corporation Commission elected or appointed prior to the effective date of this revised Constitution shall be deemed qualified to complete the term for which they were appointed or elected without regard to the requirement of Article IX, section 1, that all members shall have the qualifications prescribed for judges of courts of record.

V

Table of Sections of Present Constitution and How They Would Be Affected by the Proposed Revisions

Below is a list of the sections found in the present Constitution and a brief statement of how each section would be affected by the proposed revisions. The comments below are very summary. Fuller commentary, with reasons for proposed revisions and effect of such revisions, is found in the body of the commentary accompanying the text of the proposed revised Constitution.

ARTICLE I: BILL OF RIGHTS

Section 1. No change. Retained as Bill of Rights §1.

Section 2. No change. Retained as Bill of Rights §2.

Section 3. No change. Retained as Bill of Rights §3.

Section 4. No change. Retained as Bill of Rights §4.

Section 5. No change except substitution of "Commonwealth" for "State." Retained as Bill of Rights §5.

Section 6. No change. Retained as Bill of Rights §6.

Section 7. No change. Retained as Bill of Rights §7.

Section 8. Some changes of substance, to make explicit certain rights implicit in the present section, to emphasize the requirement of speedy trial, and to make the provisions of the section self-executing. Retained as Bill of Rights §8.

Section 9. The only change is one of reorganization—the incorporation, with no change in substance, into section 9 of the first five lines of present section 58 (dealing with habeas corpus, bills of attainder, and ex post facto laws). Retained as Bill of Rights §9.

Section 10. No change. Retained as Bill of Rights §10.

Section 11. Substantive changes are: the addition of "life" and "liberty" to the due process clause, the addition of an anti-discrimination clause, and a simplification of the provision for legislation reducing the size of civil juries. Retained as Bill of Rights §11.

Section 12. The principal change is one of organization; the provisions of present section 58 relating to speech and press have been added, without change, to section 12. The rights of assembly and petition, already implicit in the present section, are made explicit. Retained as Bill of Rights §12.

Section 13. No change. Retained as Bill of Rights §13.

Section 14. No change. Retained as Bill of Rights §14.

Section 15. The provisions of the present section are retained unchanged in Bill of Rights §15. Two additions are proposed, one bearing on the duties of citizenship, the other on the diffusion of knowledge.

Section 16. No change except of reorganization. To the provisions of the present section, which are unchanged, are added the religion provisions of present section 58.

Section 17. No change except in capitalization. Retained as Bill of Rights §17.

ARTICLE II: ELECTIVE FRANCHISE AND QUALIFICATIONS FOR OFFICE

Section 18. Replaced by Franchise §1, relating to qualification of voters. Substantive changes include reduction in the period of residence required to vote, provision for certain exceptions to the residence requirements, deletion of all references to the poll tax, and deletion as unnecessary of the provision relating to sex.

Section 19. Deleted. The savings clause in Franchise §2 makes present section 19 unnecessary.

Section 20. Superseded by Franchise §2, dealing with registration of voters. References to the poll tax have been deleted.

Section 21. Deleted. The savings clause in Franchise §2 makes the grandfather provisions of present section 21 unnecessary,

and the poll tax provisions of present section 21 are obsolete.

Section 22. Deleted as obsolete, like other provisions relating to the poll tax as a prerequisite to voting.

Section 23. Absorbed into Franchise §1. Disfranchisement for those convicted of a "felony" replaces the list of crimes found in present section 23. Disqualification of paupers is eliminated as unconstitutional under the Federal Constitution, and disqualification of duelers is eliminated as obsolete.

Section 24. Deleted as unnecessary. If such a provision is deemed desirable, the General Assembly can provide for a presumption like that in present section 24 without an express constitutional provision.

Section 25. Absorbed into Franchise §4. The provision for annual registration has been replaced by provision for permanent registration, with provision for periodic purges of nonvoters.

Section 26. Absorbed into Franchise §1 with no substantive change.

Section 27. The provisions of section 27 relating to methods of voting in popular elections have been absorbed, without change in substance, into Franchise §3. The provision for viva voce vote in representative bodies is superseded by the more definitive requirements of recording votes in the General Assembly (Legislative §10) and in local governing bodies (Local Government §7).

Section 28. Absorbed into Franchise §3, with the substantive change that candidates for the same office must be listed in alphabetical order, rather than "due and orderly succession."

Section 29. No change except stylistic changes. Retained as Franchise §9.

Section 30. Deleted on grounds that property qualifications should not be a prerequisite to voting.

Section 31. Retained as Franchise §8. One substantive change is made: the manner of selecting electoral boards is left to general law.

Section 32. Absorbed, with some substantive changes, into Franchise §5. The section, as revised, is limited to elective offices;

provisions in present section 32 relating to appointive offices and to notaries public have been deleted.

Section 33. Deleted as unnecessary, leaving the matter of when terms of officers begin and end to general law.

Section 34. No change except that statutory officers are made subject to the section. Retained as Franchise §7.

Section 35. Absorbed into Franchise §1.

Section 36. The powers given the General Assembly by present section 36 are given, in simpler language, in Franchise §4.

Section 37. The provisions of section 37 have been restated, in simpler language, in Franchise §3.

Section 38. Deleted as obsolete, since the poll tax is no longer a prerequisite to voting.

ARTICLE III: DIVISION OF POWERS

Section 39. Retained as Division of Powers §1. The present provision is retained, and to it is added a recognition of the existence of administrative agencies.

ARTICLE IV: LEGISLATIVE DEPARTMENT

Section 40. No change except to substitute "Commonwealth" for "State." Retained as Legislative §1.

Section 41. No change. Retained as Legislative §2.

Section 42. No change except in punctuation. Retained as Legislative §3.

Section 43. This section is combined with present section 55 into Franchise §6, dealing with apportionment.

Section 44. No change of substance. Reorganized and retained as Legislative §4.

Section 45. This section is preserved in substance in Legislative §5. Allowances as well as salaries are dealt with.

Section 46. Sessions of the General Assembly, the subject matter of the first three sentences, is dealt with in the first paragraph of Legislative §6. Biennial sessions are retained, but regular sessions may last 90 days. The fourth sentence (adjourn-

ments) is retained without change in the second paragraph of Legislative §6. The last sentence (quorum) is retained without change in Legislative §8.

Section 47. No change of substance. Retained as Legislative §7.

Section 48. No change of substance. Retained as Legislative §9.

Section 49. The requirements of this section are retained unchanged in Legislative §10, together with a new provision as to the recording of votes.

Section 50. Retained, with few changes, as Legislative §11. The principal change relates to conforming Virginia income, death, and gift tax laws to federal laws. Lesser changes relate to the reading of bills by title, and the signing of bills.

Section 50-a. Special quorum provisions in event of nuclear attack are treated, together with other quorum requirements.

Section 51. Omitted from the present Constitution.

Section 52. No change except in punctuation. Retained as Legislative §12.

Section 53. Retained as Legislative §13. The only substantive change relates to computation of the effective date of laws.

Section 54. No change except to substitute "Commonwealth" for "State." Retained as Legislative §17.

Section 55. This section is combined with present section 43 into Franchise §6, dealing with apportionment.

Section 56. Deleted as unnecessary detail. The General Assembly can regulate elections under Franchise §4 and needs no special constitutional authority to provide for the filling of vacant offices.

Section 57. Deleted as obsolete. No duels have been recorded in Virginia in this century.

Section 58. The provisions of this section have been transferred, with only linguistic changes, to Bill of Rights sections 9, 11, 12, and 16. The first five lines have been put into Bill of Rights section 9; lines 6 and 8-11 into section 11; line 7 into section 12; and the last twenty lines into section 16.

Section 59. Deleted, leaving the question of incorporation of churches to general law. The present section, banning incorporation

of churches, singles out religious bodies for exclusion from the benefits of a general law to which other bodies are entitled. By so discriminating against churches, the present section is probably unconstitutional under the First Amendment to the Federal Constitution.

Section 60. Deleted, leaving the question of dealing with lotteries to the General Assembly.

Section 61. The subject matter of this section, the formation, division, and consolidation of counties, is dealt with in Local Government §2.

Section 62. Deleted as unnecessary detail. It confirms a power which the General Assembly clearly would have anyway.

Section 63. No change except substitution of "Commonwealth" for "State." Retained as Legislative §14.

Section 64. No change in substance. Retained as Legislative §15.

Section 65. The powers of local governments, the subject of this section, are covered by Local Government §3.

Section 66. Deleted as unnecessary detail.

Section 67. Retained, with only changes in language, as Legislative §16.

Section 68. Deleted as unnecessary detail. Appointment of an auditing committee can properly be left to the action of the General Assembly.

ARTICLE V: EXECUTIVE DEPARTMENT

Section 69. No change except substitution of "Commonwealth" for "State." Retained as Executive §1.

Section 70. No change of substance except removing from the General Assembly the burden of making the official count of the vote in a gubernatorial election. Retained as Executive §2.

Section 71. Qualifications for Governor presently stated in section 71 are retained in Executive §3, with two changes, one relating to foreign birth, the other requiring that one have been a registered voter in Virginia for five years.

Section 72. No change. Retained as Executive §4.

Section 73. Because existing section 73 is long and poorly organized and because it makes it difficult to distinguish among the

various kinds of gubernatorial power, section 73 has been reorganized so that its provisions may be found in several sections of the proposed Executive article. From the first sentence of section 73, faithful execution of the laws is carried, without change, into Executive §7, and the rest of the first sentence is carried, without change, into Executive §5. Those parts of the second sentence dealing with military powers and foreign relations have been carried, without change of substance, into Executive §7. The rest of the second sentence has been superseded by Executive §10. The second paragraph of section 73 (pro tempore appointments) has been carried over into Executive §7. The third and fourth paragraphs of section 73 have been carried over, with no change in substance, into Executive §12. The final paragraph of section 73 has been deleted on the theory that ultimate responsibility for acts of clemency ought to remain with the Governor.

Section 74. No change of substance. Retained as Executive §8, with changes in language to clarify the power of the Governor to require information from state officers, agencies, or institutions.

Section 75. No change. Retained as Executive §16.

Section 76. Two changes are proposed, one relating to the time the Governor has to consider bills during a session of the General Assembly, the other relating to the time he has to consider bills after adjournment. Retained as Executive §6.

Section 77. No change. Retained as Executive §13.

Section 78. Executive §15, dealing with succession to the office of Governor represents a substantial change from present section 78, which Executive §15 replaces.

Section 79. No change in substance except in the provision regarding compensation. Retained as Executive §14.

Section 80. Deleted as unnecessary. The office and duties of the Secretary of the Commonwealth should, like other nonelective executive officers, be governed by general law. Indeed, under present section 80 the General Assembly can do as it likes with the office, underscoring the lack of any need for section 80.

Section 81. Deleted, like section 80, as unnecessary. The section is a survival of the time when, before 1928, the Treasurer was an elected official.

Section 82. No change except that the section is moved from the Executive to the Legislative article, where it appears as Legislative §18.

Section 83. Deleted on the ground that the section, prohibiting increase or decrease of executive officers' salaries during their term of office, may have a negative effect on the Commonwealth's ability to recruit and retain expert talent.

Section 84. Deleted as unnecessary detail. The section constitutes, in effect, unenforceable advice to the General Assembly.

Section 85. Deleted as unnecessary detail. The section is of no practical value since it leaves the actual decision on bonds to general law anyway.

Section 86. Deleted as unnecessary detail. The General Assembly has the power to create a Bureau of Labor and Statistics without any constitutional authorization being needed.

Section 86-a. No change. Retained as Executive §11.

ARTICLE VI: JUDICIARY DEPARTMENT

Section 87. The structure of the judicial system and the extent of the General Assembly's authority to regulate the jurisdiction of the courts, which are the subject matter of the first and second sentences, is dealt with in Judicial §1. The appointment of judges pro tempore, which is the subject matter of the third sentence, is dealt with in Judicial §7.

Section 88. The creation of the Supreme Court, which is the subject of the first sentence, is found in Judicial §2. The long second paragraph, relating to the Court's sitting and decisions, is also dealt with in Judicial §2, although in greatly simplified fashion. The third paragraph, relating to the Court's original and appellate jurisdiction, is preserved in substance (except for original habeas corpus jurisdiction) in Judicial §1. The substance of the long first sentence of the fourth paragraph, relating to appeals, is preserved in Judicial §1. The last sentence of the fourth paragraph is deleted, leaving the question of appeals by the Common-

wealth to be dealt with under the general case regarding double jeopardy. The fifth paragraph (bonds) and sixth paragraph (title of justice) are deleted as unnecessary detail. The last paragraph's provision for the selection of Chief Justice is preserved in Judicial §3.

Section 89. Deleted as unnecessary. The power of the General Assembly to create additional courts granted in Judicial §1 would include the power to accomplish the purposes of this section, although it would not include the power to create a court of coordinate jurisdiction with the Supreme Court of Appeals.

Section 90. This section, relating to opinions and judgments of the Supreme Court, is preserved and strengthened in Judicial §6.

Section 91. The subject matter of this section, the qualification, selection, and terms of Supreme Court justices, is dealt with in Judicial §7.

Section 92. Deleted as unnecessary detail. Judicial §4 deals in more comprehensive fashion with administration of the judicial system.

Section 93. Deleted as unnecessary detail. Sessions of the Supreme Court can be left to general law.

Section 94. Deleted as unnecessary detail. The power granted to the General Assembly by Judicial §1 is intended to cover section 94's subject matter.

Section 95. Deleted as unnecessary detail. Again, the section's subject matter is for the General Assembly under proposed §1.

Section 96. The subject matter of this section—the qualifications, selection, term, and residence of judges—is dealt with in Judicial §7.

Section 97. Most of this section, relating to terms of circuit courts, is omitted as unnecessary detail. Its subject matter is for the General Assembly under Judicial §1. The last sentence, the temporary reassignment of judges, is dealt with in Judicial §4.

Section 98. Deleted as unnecessary detail. Its subject matter is for the General Assembly under proposed §1.

Section 99. The qualifications, selection, term, and residence of judges, the subject of the first sentence of this section and the second sentence up to the first semicolon, are dealt with in Judicial §7. The material after the first semicolon and to the end of the second sentence is omitted as unnecessary detail and properly a matter for the General Assembly under Judicial §1. The last sentence, relating to temporary reassignment of judges, is dealt with in Judicial §4.

Section 100. Deleted as unnecessary detail. The General Assembly would have authority, under Judicial §1, to create a court of land registration.

Section 101. No change. Retained as second paragraph of Judicial §8.

Section 102. The first two sentences of this section, dealing with judges' commissions and salaries, are preserved in substance in Judicial §9. The third sentence, as to term of office, is omitted as unnecessary detail. The subject matter of the fourth sentence, filling of unexpired terms, is dealt with in Judicial §7. The last sentence, relating to retirement, is preserved in substance in Judicial §9.

Section 103. Salaries of judges are dealt with in Judicial §9.

Section 104. This section is superseded by Judicial §10, which deals with removal of judges.

Section 105. The prohibitions of this section are preserved in Judicial §11, which deals with incompatible activities.

Section 106. Deleted as unnecessary detail. The forms of writs and indictments are a proper subject for general law.

Section 107. Retained, with some changes in the Attorney General's qualifications, as Judicial §12.

Section 108. The General Assembly's authority to provide for justices of the peace is included in Judicial §8.

Section 109. Judicial sections 1 and 8 make present section 109 unnecessary. Under those sections the General Assembly would have the power to determine how applications for bail should be heard and by whom.

ARTICLE VII: ORGANIZATION AND GOVERNMENT OF COUNTIES

Section 110. The constitutional officers provided for in section 110 are retained in Local Government §4, except that the requirement that there be a county surveyor is deleted. As to joint undertakings, dealt with in the fourth and fifth paragraphs of section 110, see Local Governmnt §3. Provision for optional forms of government for counties, found in the last paragraph of section 110, is carried over into Local Government §2.

Section 111. The election of local governing bodies is covered by Local Government §5; their powers are covered by Local Government §3.

Section 112. Election dates for constitutional officers are covered by Local Government §4; election dates for local governing bodies are covered by Local Government §5.

Section 113. The first sentence of section 113 has been retained in substance in Local Government §6. The second sentence has been deleted as unnecessary detail.

Section 114. Deleted, leaving it to the General Assembly to decide whether counties ought to be responsible for acts of sheriffs.

Section 115. Deleted as unnecessary detail, leaving it (as section 115 in effect does) to the General Assembly to decide in what manner books and accounts of local officers should be examined.

Section 115-a. Local debt, the subject matter of section 155-a, is covered by Local Government §10.

ARTICLE VIII: ORGANIZATION AND GOVERNMENT OF CITIES AND TOWNS

Section 116. Definitions are set forth in Local Government §1.

Section 117. The matter of general and special laws applying to local governments is dealt with in Local Government §2.

Section 118. Local Government §4 retains the provision of present section 118 for an elected clerk with a term of eight years. The second paragraph of section 118 is deleted as unnecessary detail, more appropriate for statutory treatment.

Section 119. Local Government §4 retains the provision of present section 119 for an elected Commonwealth's Attorney and an elected Commissioner of the Revenue, each having a term of four years.

Section 120. Local Government §4 retains the provision of present section 120 for an elected City Treasurer and an elected City Sergeant, both having a term of four years. Provision for a mayor has been deleted, as has the second paragraph of section 120, which is unnecessary detail, more appropriate for statutory treatment.

Section 121. The election of local governing bodies, including city councils, is covered by Local Government §5.

Section 122. Election dates for constitutional officers are covered by Local Government §4; election dates for local governing bodies are covered by Local Government §5.

Section 123. Most of section 123 has been deleted as unnecessary detail, which can be left to general law; moreover, the use by Virginia cities of forms of government other than that contemplated by section 123 has made the section largely obsolete. The third sentence of the second paragraph (dealing with ordinances or resolutions appropriating money, imposing taxes, or borrowing money) is retained, with some change, as Local Government §7.

Section 124. No change. Retained as Local Government §8.

Section 125. Retained, without substantial change, as Local Government §9.

Section 126. Absorbed, without change in substance, into Local Government §2.

Section 127. Local debt, the subject matter of section 127, is covered by Local Government §10.

Section 128. Omitted from the present Constitution.

ARTICLE IX: EDUCATION AND PUBLIC INSTRUCTION

Section 129. This section has been retained, with strengthened language, as Education §1.

Section 130. No change of substance, although language has been simplified. Retained as Education §4.

Section 131. The substance of section 131 is retained as Education §6.

Section 132. Retained, with some changes of substance, as Education §5. The first operative sentence of section 132 has been notably altered in Education §5(a) so that the State Board of Education is to draw boundaries of school divisions in the manner most effective to realize the standards of quality. See also Education §2. The second operative sentence of section 132 (division superintendents), joined with the last paragraph of section 133, appears basically unchanged in Education §5(c). Similarly, the third operative sentence of section 132 (school fund) is carried over into Education §5(d), the fourth sentence (management of schools), into §5(f), and the fifth sentence (textbooks) into §4(e).

Section 133. The first sentence of section 133 has been replaced by Education §7, which vests the supervision of each school division in a single school board. The remaining sentences in the first paragraph of the existing section have been deleted, leaving representation on school boards to general law. The second paragraph of section 133 also has been omitted, as it conflicts with the command of Education §7 that there be only one school board per school division. See also Education §§2 and 5(a). The third paragraph of section 133 is retained in Education §5(c).

Section 134. Present Literary Fund provisions have been retained in Education §8, with one modification: that interest from the Fund is retained to become part of the Fund.

Section 135. Deleted. Education §§1 and 2 place a duty on the General Assembly to ensure that sufficient funds are forthcoming to establish and maintain schools meeting the standards of quality; section 135, tied to the lesser expectations of an earlier era, is obsolete today. Of the constitutional school funds enumerated in section 135, only the interest on the Literary Fund must, under the proposed Education article, still be devoted to school purposes; the interest has been made another source of Literary Fund income, under Education §8.

Section 136. Deleted. Education §2 places a nondiscretionary duty on local governmental units to support local schools to the

extent prescribed by the General Assembly; section 136 therefore becomes obsolete.

Section 137. The subject matter of this section is covered by Education §9, which underscores the power of the General Assembly (which the Assembly would have in the absence of any specific constitutional provision) to establish educational institutions.

Section 138. This section, revised to make it a duty of the General Assembly to provide for compulsory education, is retained as Education §3.

Section 139. No change of substance. Retained as the second sentence of Education §3.

Section 140. Deleted as obsolete, since segregated schools are no longer lawful.

Section 141. No change. Retained as Education §10.

Section 142. The provision that members of boards of visitors and trustees shall be appointed as may be provided by general law has been retained as the second sentence of Education §9. The remainder of section 142 has been deleted as unnecessary detail, more appropriate for statutory treatment.

ARTICLE X: AGRICULTURE AND COMMERCE

Sections 143-146. Deleted as unnecessary detail. The creation, powers, and duties of this department, as of the other executive departments, are properly left to general law.

ARTICLE XI: PUBLIC WELFARE AND PENAL INSTITUTIONS

Sections 147-152. Deleted as unnecessary detail. Sections 148-151 are already omitted in the present Constitution (as a result of the amendments of 1928), and the remaining sections, 147 and 152, serve no operative purpose, since they leave the whole area of penal welfare and institutions to the General Assembly.

ARTICLE XII: CORPORATIONS

Section 153. Deleted as unnecessary detail. The question of municipal corporations is dealt with in Corporations §2.

Section 154. The question of special legislation and that of the Commonwealth's reserved power over corporate matters is dealt with in Corporations §6.

Section 155. The structure of the State Corporation Commission, the subject matter of this section, is dealt with in Corporations §1.

Section 156. Of the subjects covered by this section, the powers and duties of the SCC are dealt with in Corporations §2, SCC procedures in Corporations §3, and appeals from SCC actions in Corporations §4. Much unnecessary detail has been deleted.

Section 157. Deleted as unnecessary detail, more appropriate for statutory treatment.

Section 158. The subject matter of this section, the Commonwealth's power over corporations, is dealt with in Corporations §6.

Section 159. The subject matter of this section, the Commonwealth's police power to regulate corporations, is dealt with in Corporations §6.

Section 160. Deleted as unnecessary detail, more appropriate for statutory treatment.

Section 161. Deleted as unnecessary detail, more appropriate for statutory treatment.

Section 162. Deleted as unnecessary detail, more appropriate for statutory treatment. Existing statutes already afford railway employees protection equal to or greater than that afforded by section 162.

Section 163. The substance of this section, relating to the regulation of foreign corporations, is retained in Corporations §5.

Section 164. Deleted as unnecessary. The section does nothing not accomplished by present section 159 or by proposed section 6.

Section 165. Deleted, leaving policy decisions as to trusts and monopolies to the General Assembly (where, in practical effect, the present section leaves them).

Section 166. Deleted as unnecessary detail, more appropriate for statutory treatment.

Section 167. Deleted as unnecessary detail, more appropriate for statutory treatment.

ARTICLE XIII: TAXATION AND FINANCE

Section 168. No change in substance. Retained as Taxation and Finance §1.

Section 169. The subject matter of this section is dealt with as follows: assessment at fair market value, Taxation and Finance §2; assessment of public service corporations, §2; taxation of land added to corporate limits, §1; taxation of household goods and personal effects, §6.

Section 170. That part of section 170 dealing with income, license, and franchise taxes and with taxation of shares of corporate stock is retained, with little change of substance, in Taxation and Finance §5. That part of section 170 dealing with taxation of abutting landowners is dealt with in Taxation and Finance §3.

Section 171. No change in substance. Combined with present section 172 and retained in Taxation and Finance §4.

Section 172. No change in substance. Combined with present section 171 and retained in Taxation and Finance §4.

Section 173. Deleted as obsolete. The General Assembly can provide by general law for capitation taxes, if it wishes.

Section 174. Deleted as unnecessary detail, more appropriate for statutory treatment.

Section 175. No change. Retained as Conservation §3.

Sections 176-181. Deleted as unnecessary detail, more appropriate for statutory treatment.

Section 182. Omitted from the present Constitution.

Section 183. The subject matter of this section, with some changes of substance, is dealt with in Taxation and Finance §6.

Section 183-a. Deleted as obsolete. It is now well accepted that the salaries of state and federal judges are subject to both state and federal income taxes. See *Graves v. New York ex rel. O'Keefe,* 306 U.S. 466, 486 (1939); *O'Malley v. Woodrough,* 307 U.S. 268 (1939).

Section 184. State debt generally, including the provisions of section 184, are dealt with in Taxation and Finance §9.

Section 184-a. State debt generally, including the provisions of section 184-a, are dealt with in Taxation and Finance §9.

Section 184-b. Deleted as unnecessary.

Section 185. Retained in Taxation and Finance §10, except that the language pertaining to railroad stock authorized prior to 1903 is omitted as no longer necessary.

Section 186. No change of substance, except that the provisions relating to War between the States debts have been deleted as unnecessary. Otherwise, the section is retained as Taxation and Finance §7.

Section 187. Sinking funds in general are dealt with in Taxation and Finance §9. That part of section 187 pertaining to a sinking fund servicing debts arising from the creation of West Virginia is omitted as obsolete.

Section 188. No change except substitution of "Commonwealth" for "State." Retained as Taxation and Finance §8.

Section 189. Deleted on the ground that tax exemptions as allowed by the section represent unsound policy.

ARTICLE XIV: MISCELLANEOUS PROVISIONS, HOMESTEAD AND OTHER EXEMPTIONS

Sections 190-195. Deleted as unnecessary detail, more appropriate for statutory treatment.

Section 195-a. Deleted. Provision for continuing offices of incumbent officeholders will be dealt with in the schedule to the revised Constitution.

ARTICLE XV: FUTURE CHANGES IN THE CONSTITUTION

Section 196. No change except a linguistic change relating to the manner of voting. Retained as Future Changes §1.

Section 197. Amended to allow the General Assembly to call a convention (general or limited) on two-thirds vote of the members of each house, to require that a convention's report be submitted to the General Assembly, and to require that the convention's proposals, if adopted by the General Assembly, also be ratified by the people. Future Changes §2.

ARTICLE XVI: RULES OF CONSTRUCTION

Section 198. Deleted as unnecessary. The commentary to the revised Constitution will deal with rules of construction.

ARTICLE XVII: VOTING QUALIFICATIONS OF ARMED FORCES

Sections 1-3. Absorbed into Franchise §4. Exemption of members of the armed forces from registration is deleted, but provision is made for registration by absentee application. All provisions relating to poll taxes are deleted.

SCHEDULE

Sections 1-25. Replaced by schedule to proposed revised Constitution, sections 1-7.

APPENDIX A

PUBLIC VIEWS RECEIVED BY THE COMMISSION*

Soon after the Commission was organized, letters were distributed widely throughout Virginia, and news releases were sent to news media (newspaper, radio, and television), inviting the citizens of Virginia to submit to the Commission their views on the Constitution and its revision. As letters, resolutions, and other statements were received, they were reproduced and a copy of every statement sent to each member of the Commission. About 200 such statements were received and distributed.

Public views were used by the Commission in a number of ways. Not only were copies of each statement sent to the members of the Commission, copies were sent also to counsel, with appropriate notations calling counsel's attention to statements bearing on matters being studied by one or another of the Commission's subcommittees. Public Views Documents were considered by the Commission and its staff both to throw light on questions already before the Commission and to suggest additional areas of Commission inquiry.

In the commentary which accompanies the body of this report, public views documents are sometimes referred to in text or footnotes. No systematic effort has been made in the writing of the report to be sure that every Public Views Document has been cited or referred to at the relevant point in the commentary. The fact that a particular document is not referred to in the commentary should not be taken to mean that the proposals made in that document were not considered. The converse is true: the staff took care to comb through the public statements to be sure that all proposals, unless found not to be relevant to some aspect of the Constitution, were considered. A close comparison of the commentary in this report with the subjects listed in this Appendix will reveal the extent to which proposals made by individuals or organizations were considered by the Commission, whether they ultimately became the subject of a Commission recommendation or not.

Below is a list of the statements received, the Public Views Document number assigned to each, and a brief summary of the subjects covered by each statement.

*The Public Views Documents of the Commission, together with other pertinent documents, will be available to the General Assembly at any session called to consider the Commission's report.

CCR No.	*From*	*Subject*
1.	Leon Dure (Charlottesville)	Freedom of association.
2.	Mrs. Mary Lewis Anderson (Roanoke)	Initiative and referendum.
3.	George E. Allen (Richmond attorney)	A constitution confined to fundamentals, leaving essentially legislative matters to the Legislature.
4.	William S. Hubard (Roanoke)	Assessments on abutting property (§170).
5.	FitzGerald Bemiss (Richmond)	(1) Confining Constitution to fundamentals; (2) local government, especially metropolitan areas.
6.	Mrs. Louise Bethea (Norfolk)	A conservation bill of rights.
7.	Peter K. Babalas (State Senator, Norfolk)	(1) Criminal procedure (§§8-10); (2) poll t x; (3) service on juries by military men (§24); (4) electoral boards (§31); (5) salaries, expenses, annual sessions, etc., of General Assembly (§41); (6) lotteries (§60); (7) statute of limitations on debts to State (§174); (8) local government.
8.	Mrs. Elizabeth Chestnut Barnes (Maryland)	An article critical of the proposed Maryland Constitution and of the Model State Constitution.
9.	William M. Blackwell (Richmond attorney)	(1) Eliminating legislative detail from the Constitution, and confining it to fundamentals; (2) use of modern language.
10.	Robert T. Armistead (Circuit judge, Williamsburg)	Constitutional exemptions from taxation (§183).
11.	Robert T. Armistead	Intermediate appellate courts; size of Supreme Court of Appeals (§88).
12.	Robert T. Armistead	Assessment of property (§169).
13.	J. F. Alspaugh (Director Division of Industrial Development)	Resolution of Governor's Advisory Board on Industrial Development re amendment of section 185 to legalize the Virginia Industrial Building Authority Act.

PUBLIC VIEWS

CCR No.	*From*	*Subject*
14.	Virginia State Horticultural Society	Resolution supporting constitutional amendment to allow farm, forest, and open space land to be taxed on basis of present use.
15.	Mrs Mary V. Stith (Richmond)	(1) Exemptions for taxpayers equal to public funds spent on welfare; (2) taxing capital gains at same rate as other income.
16.	Robert C. Fitzgerald (State Senator, Fairfax)	(1) Limits on power of State Corporation Commission, including division of its administrative and judicial powers; (2) giving General Assembly power to decide when a town should become a city (§116); (3) amendment of section 50 to allow simplification of state tax returns.
17.	W L. Lemmon (Delegate, Marion)	Raising ceiling on borrowing to 7.5% of assessed realty; limiting borrowing to capital needs; requiring referendum (§184a).
18.	W L. Lemmon	Annual sessions; length of sessions (§46)
19.	Turner N Burton (Director, Dept. of Professional and Occupational Registration)	Establishment of a recovery fund in lieu of bonds for real estate brokers and salesmen.
20.	Peter K. Babalas (State Senator, Norfolk)	Assessment of utilities for purposes of local taxation.
21.	William W Sweeney (Circuit judge, Lynchburg)	(1) Apportionment: For deleting requirement of section 111 that no magisterial district be less than 30 square miles in area; (2) judiciary: For a constitutional provision allowing legislation re discipline and removal of judges.
22.	Arthur T. Wright (Conservation consultant, Alexandria)	Conservation: For constitutional protection of the environment.
23.	L. Stanley Hardaway (Exec. Sec., State Board of Elections)	Poll tax: For deletion of constitutional requirements of a capitation tax (§§ 18, 20, 21, 22, 38; Art. XVII).
24.	Charles W Cobb, Jr. (Arlington)	Annual sessions; unicameral legislature; poll tax; persona. property tax; real property tax; abortion; criminal statutes; racial provisions.

CCR No.	*From*	*Subject*
25.	Herbert H Bateman (State Senator, Newport News)	Bond issues: (a) allow borrowing, (b) state ceiling in terms of revenue (not real estate), (c) limit borrowing to capital improvements, (d) do not provide for referendum.
26.	McCluer Gilliam (Lexington)	Public education.
27.	M. M Sutherland (Director Dept. of Conservation & Econ Development)	Transfer of surface water from one river basin to another.
28.	M. M. Sutherland	Water resource development projects.
29.	Robert J Wilkinson, Jr. (Instructor, Va. Western Community College, Roanoke)	(1) For a simpler, more flexible Constitution; (2) more local self-government; (3) encouragement of consolidations; (4) allowing lotteries; unicameral legislature; (5) Governor to succeed himself; (6) a "State Manager."
30.	G. Tyler Miller (President, Madison College)	(1) For allowing Governor to succeed himself; (2) for annual sessions of the Legislature; (3) more adequate constitutional provision for government of metropolitan areas; (4) for liberalized power to borrow for capital outlays.
31.	William E Spain (Hustings court judge, Richmond)	Judiciary: Against creation of an intermediate appellate court; consider larger Court of Appeals, sitting in panels.
32.	Judith Palkovitz	Article, "The Case for Annual Sessions," from *Virginia Town and City* (April 1968).
33.	Roanoke County Republican Committee	Filling vacancies in local offices.
34.	Stanley A. Owens (Delegate, Manassas)	Land assessments (§169).
35.	J. Harry Michael (State Senator, Charlottesville)	To allow borrowing from Va. Supplemental Retirement System for school purchases as well as school construction (§115a).
36.	League of Women Voters of Virginia	(1) For annual sessions of the Legislature (§46); (2) against tuition grants for private schools (§141); (3) for re-

CCR No.	*From*	*Subject*
		laxation of limit on borrowing by State (§184-a); (4) on election laws (including literacy and residence) and apportionment.
37.	John P. Haney (Williamsburg)	Tax relief for persons over 65.
38.	Virginia Municipal League	(1) Leasing of air rights; (2) differential tax rates in event of consolidation; (3) assessment for improvements; (4) tax exemptions; (5) municipal charters; (6) taxes on telephone companies; (7) assessments for water mains and electric lines; (8) schools in second class cities.
39.	Va. Society of Certified Public Accountants	Conforming Virginia income tax laws to federal laws (§50).
40.	Hampton delegation in General Assembly: Richard M. Bagley (Delegate), John D. Gray (Delegate), Hunter B Andrews (Senator)	A section-by-section commentary on the Constitution, including proposals regarding (1) Preamble; (2) changing "State" to "Commonwealth"; (3) other linguistic changes; (4) repeal of poll tax provisions; (5) other changes regarding suffrage, registration and elections; (6) apportionment; (7) annual sessions; (8) other changes in Legislative article; (9) Governor's succeeding himself; (10) other changes in Executive article; (11) enlarged Supreme Court; (12) other changes in Judicial article, including more general language; (13) proposals re local government; (14) consolidation of school districts; (15) other education proposals; (16) less detail in Corporations article; more power in General Assembly; (17) fair market value assessment; (18) conformity tax laws; (19) state bonds; (20) changes in Articles XIV-XVII.
41.	Home Builders Association of Virginia	(1) Law and order; (2) voting age 21; (3) limit on gubernatorial succession; (4) annual sessions; (5) intermediate courts.
42.	Virginia Farm Bureau Federation	Taxation of agricultural land based on its use (§169).

CCR No.	*From*	*Subject*
43.	C. Harrison Mann (Delegate, Arlington)	Comments on about 20 sections of the Constitution, including (1) striking poll tax references; (2) apportionment; (3) annual sessions; (4) conforming tax laws; (5) special assessments; (6) creation of courts; (7) judicial administration; (8) judicial appointments; (9) supplements to judges' salaries; (10) Supt. of Public Instruction; (11) local support of schools; (12) fair market value assessments; (13) state bonds.
44.	Carlton C. Massey (County Executive, Fairfax County)	Elimination of requirement of capitation tax.
45.	Virginia Railway Association	Uniformity of taxation (§168).
46.	J. B. Blackford (Richmond)	Lawyers and the law's delay.
47.	Roy B. Martin, Jr. (Mayor of Norfolk)	Taxing powers of localities.
48.	Hunter B. Andrews (Senator, Hampton)	For having articles of revised Constitution submitted to people separately.
49.	J. Warren White, Jr. (Delegate. Norfolk)	For amending section 184-a to change limit of 1% to 15%.
50.	Thomas R. McNamara (Delegate, Norfolk)	Questions raised concerning ten items, including annual sessions, terms of Delegates, debt limit tax conformity, residence for voting, State Corporation Commission, aid to children in sectarian schools, lotteries, segregated schools, and poll tax.
51.	R. Braxton Hill (Virginia Society of CPAs)	Tax conformity (§50). [See also CCR Document No. 39.]
52.	Denis Nicholas (Tidewater Homophile League)	Protection of homosexuals.
53.	Hume Taylor (Norfolk)	For allowing state aid to students in sectarian schools (§141).
54.	Joseph L. Stone (President Norfolk Human Relations Council)	(1) Representation based on population; (2) abolition of literacy test for voting; (3) end to tuition grants.

PUBLIC VIEWS

CCR No.	*From*	*Subject*
55.	Robert L. Stern (Old Dominion College)	Comments on a number of subjects, including (1) right of peaceable assembly; (2) striking poll tax references; (3) property qualifications for voting; (4) appointing power of judges; (5) segregated schools; (6) General Assembly sessions and pay; (7) apportionment; (8) deletion of Arts. X and XI; (9) intermediate appellate courts.
56.	Carrington Williams (Delegate, Fairfax)	Memorandum on taxing and borrowing powers, state and local.
57.	City Council, City of Covington	Resolution asking provision allowing localities to exempt water and air pollution control machinery from local taxation.
58.	Roanoke Valley Chamber of Commerce	Recommendations as to state debt, annual sessions, gubernatorial succession, tax conformity, consolidation of localities, judiciary, poll tax, appointment of clerk of court, "Christian" forebearance, and segregation. Also, how proposals for revision should go on ballot.
59.	Frank M. McCann (Holy Cross Catholic Church, Lynchburg)	(1) To broaden section 139 (free textbooks) beyond children in public schools; (2) to amend section 141 to allow aid to students in sectarian schools.
60.	Benjamin F. Sutherland (Clintwood)	Reform of suffrage, in particular absentee voting procedures.
61.	A A. Campbell (Delegate, Wytheville)	Section-by-section suggestions, including (1) deletion of a large number of obsolete or unnecessary sections; (2) suffrage; (3) annual sessions; (4) legislation, including special legislation; (5) term of Governor; (6) courts; (7) population of cities, (8) local government; (9) state bonds; (10) taxation based on land use; (11) tax exemptions.
62.	William H. Woodward (City Attorney, Bristol)	Differential tax rates in event of consolidation of political subdivisions.
63.	Guy W. Bolling (Dept. of Vocational Rehabilitation)	Appropriations to aid handicapped persons in sectarian schools (§67).

CCR No.	*From*	*Subject*
64.	Mrs. Anita T Sullivan (Gainesville)	(1) Election of local officials; (2) taxation of farmland on basis of use; (3) outlawing lobbying.
65.	Kenneth S Coe (Fredericksburg)	(1) Refusing the vote to welfare recipients (§23); (2) removing judges without impeachment.
66.	Robert E Lee Council, Boy Scouts of America	Extending tax exemptions to Boy Scouts of America (§183)
67.	E. A. Prichard (Mayor, City of Fairfax)	(1) For single-member legislative districts; (2) governing cities by general law rather than by charter; (3) abolition of Comm'r of Revenue and Treasurer as constitutional officers; (4) allowing assessments of property for improvements; (5) expressing debt limit in terms of taxable wealth; (6) adoption of Hahn Comm'n proposals.
68.	L. Victor McFall (Comm Atty, Clintwood)	Limit duties of circuit court judges to judicial matters.
69.	Virginia Electric and Power Company	(1) For retention of present system of taxing public service corporations; (2) for giving SCC express power to regulate public service corporations rates, etc.; (3) continuation of utility services in event of annexation (§124); giving SCC power to override local zoning.
70.	Ralph Eisenberg (Institute of Government)	Article "One Man—One Vote in Virginia Local Government" (From June 1968 issue of *Virginia Town and City*).
71.	Leon Dure	Pamphlet "Freedom of Assembly and Association."
72.	Arlington County Democratic Committee	For a Constitution stating basic principles, without present constitutional detail. Also, suggestions on a number of subjects, including (1) 18-year-old vote; (2) reduced residence requirements for voting; (3) exclusions from voting; (4) electoral boards; (5) appointing power of judges; (6) apportionment; (7) annual sessions; (8) Governor's succeeding himself; (9) simplified judicial article; (10) selection of judges; (11) powers and structures of local governments; (12) education; (13) State Cor-

CCR No	*From*	*Subject*
		poration Commission; (14) allowing state bonds; (15) homestead exemptions; (16) actions of constitutional conventions.
73.	The Norfolk Foundation	To extend tax exemptions (§183) to charitable foundations.
74.	M Caldwell Butler (Delegate, Roanoke)	For a simple suffrage provision, giving General Assembly general power over registration and conduct of elections. For reduction in residence requirement.
75.	Virginia Institute of Pastoral CARE Inc.	Employment of chaplains in state institutions (§67).
76.	Home Builders Association of Virginia	For annual sessions of the General Assembly.
77.	E Griffith Dodson, Jr. (Attorney, Roanoke)	Legislative procedures: For creation of a special body to report on each bill introduced in a session of the General Assembly.
78.	Donald Collier (Alexandria)	For a program of public education in and study of the Commission's proposals for revision.
79.	Citizens Property Rights Group (Fairfax County)	Comments on local government, schools, bonds, zoning, and other matters (some constitutional, some not).
80.	Mrs. Stella D. Neiman (Williamsburg)	Statement on education, especially school districts.
81.	Leon Dure (Charlottesville)	Monograph on "Universal Education."
82.	Thomas P. Bryan (Va. State Chamber of Commerce)	Advice that the Chamber will submit comprehensive views after its directors' meeting in late July.
83.	Carrington Williams (Delegate, Fairfax)	(1) Basis for state borrowing; (2) city and county borrowing; (3) development bonds; (4) joint undertakings and area government; (5) exemptions; (6) local income tax.
84.	John Hansen (Delegate, Chesterfield)	(1) Reapportionment; (2) single-member legislative districts.

CCR No.	*From*	*Subject*
85.	C. F. Hicks (Va. Ass'n of Counties)	(1) Statewide tax appraisals; (2) judges' appointing powers; (3) public education; (4) apportionment of local governments; (5) broad powers of counties; (6) annual sessions; (7) single-member legislative districts; (8) allowing Governor to succeed himself; (9) voter registration; (10) counties' debt; (11) state debt.
86.	Mrs. Rodney H. Bryson (Va. Congress of Parents and Teachers)	(1) Property prerequisite to voting; (2) annual sessions; (3) state borrowing; (4) public education; (5) State Board of Education; (6) Supt. of Public Instruction; (7) school boards; (8) free textbooks.
87.	Robert B. Traweek (Va. Ass'n for Retarded Children)	(1) Exclusions from voting; (2) consolidation of counties and cities, also services; (3) compulsory education; (4) state borrowing.
88.	Walter Ayers (Va. Farm Bureau)	Taxation of land based on use.
89.	John G. Triplett (Boy Scouts)	Extending tax exemptions to Boy Scouts and Girl Scouts.
90.	Conrad B. Mattox (Va. Municipal League)	(1) City and town charters; (2) differential tax rates in cities and towns; (3) assessments on abutting property owners; (4) franchises and air rights; (5) exemptions from taxation.
91.	Charles W. Perdue and A. C. Epps (Va. Educ. Ass'n)	(1) Joint state-local responsibility for public schools; (2) selection of Supt. of Public Instruction; (3) local effort re schools; (4) compulsory education; (5) school age formula; (6) consolidation of school districts.
92.	Nicholas A. Spinella (Catholic Diocese of Richmond)	For amendment of sections 139 and 141 to allow state aid to children in sectarian schools.
93.	Sarah H. Holzgrefe (Federation of Catholic PTAs)	For amendment of sections 139 and 141.
94.	Joseph B. Benedetti (Diocesan Council of Catholic Men)	For amendment of sections 139 and 141.

PUBLIC VIEWS

CCR No.	*From*	*Subject*
95.	Fred Shorter (VCU Republicans)	For lowering voting age to 18.
96.	Robert L. Lynch (Richmond)	(1) State borrowing; (2) capitation tax; (3) taxation of farmland.
97.	Mrs. Ruth L. Harvey (Old Dominion Bar Ass'n)	(1) 18-year-old vote; (2) residence period for voting; (3) simplified registration procedures; (4) poll tax; (5) single-member legislative districts; (6) reapportionment of local governments; (7) sovereign immunity; (8) civil service; (9) terms of clerks of court; (10) sheriffs' and sergeants' duties; (11) intermediate appellate courts; (12) death penalty; (13) judges' powers of appointment; (14) segregated schools; (15) tuition grants; (16) popular election of school boards; (17) state and local borrowing.
98, 99, 100.	Association of Independent Colleges in Virginia	(1) An authority to assist in borrowing money for construction at private colleges; (2) state scholarships for use at private colleges; (3) state's contracting for services of private colleges.
101.	Carl F. Bowmer (Home Builders Ass'n of Virginia)	(1) Law and order; (2) Governor's succeeding himself; (3) annual sessions; (4) voting age of 21; (5) intermediate appellate courts.
102.	W F. Massey (Oak Grove)	Having ballots available for public inspection after an election.
103.	Mercer Waite (County of Henrico)	(1) Tax relief for retired people; (2) size of magisterial districts; (3) assessments on abutting property owners; (4) allowing counties to exercise powers of cities; (5) modification of city-county separation.
104.	Howard H. Gordon (Chmn., Comm'n of Industry of Agriculture)	Asking CCR to consider results of study, now in progress, of assessment of farmland and timberland.
105.	William E. Cooper (Va. Forests, Inc.)	System of taxation which will encourage growing timber as a crop.

CCR No.	*From*	*Subject*
106.	Charles R. Fenwick (Senator, Arlington)	For annual sessions of the Legislature, with comments on length of sessions, subject matter, etc.
107.	Adelard L. Brault (Senator, Fairfax)	(1) Annual sessions; (2) two terms for the Governor; (3) intermediate appellate courts; (4) removal of judges; (5) size of magisterial districts; (6) state aid to children in parochial schools; (7) size of State Board of Education; (8) selection of Supt. of Public Instruction; (9) functions of State Corp. Comm'n; (10) state borrowing; (11) conforming income taxes; (12) assessment of farmland; (13) limited constitutional conventions; (14) popular ratification of convention proposals.
108.	Vincent F. Callahan, Jr. (Delegate, Fairfax)	(1) Vote for 20-year-olds; (2) outlawing capital punishment; (3) annual sessions; (4) state borrowing; (5) compulsory education; (6) single-member legislative districts; (7) residence requirements for voting; (8) second term for Governor; (9) reapportionment of Legislature; (10) referendum and recall; (11) obsolete and unconstitutional sections.
109.	Stanley A. Owens (Delegate, Manassas)	How to allow chaplains at state institutions in face of section 67 of Virginia Constitution and federal constitutional law.
110.	Mary Marshall (Delegate, Arlington)	(1) Annual sessions; (2) state borrowing; (3) 18-year-old vote; (4) residence requirement for voting; (5) property requirement for voting.
111.	Omer L. Hirst (Senator, Fairfax)	(1) Annual sessions; (2) length of sessions; (3) state borrowing; (4) authority to finance industrial development; (5) canvassing votes for Governor; (6) poll tax and segregated schools; (7) initiative; (8) continuing Commission on Constitutional Revision.
112.	Charles E. Beatley, Jr. (Mayor of Alexandria)	(1) Local income tax; (2) letting cities choose own fiscal organization; (3) tax relief for elderly people.

CCR No.	*From*	*Subject*
113.	Bert W. Johnson (County Manager, Arlington)	Request that CCR take into account forthcoming reports of Arlington citizens committee and of Va. Municipal League.
114.	George C. Rawlings, Jr. (Delegate, Fredericksburg)	(1) Property prerequisite to voting; (2) capitation tax; (3) reapportionment, (4) annual sessions; (5) executive officers' salaries; (6) size of magisterial districts; (7) free textbooks; (8) segregated schools; (9) amendments to corporations article; (10) state borrowing; (11) limited convention; (12) popular ratification of a convention's proposals; (13) 18-year-old vote; (14) public education.
115.	Karl Schmeidler (Va. Ass'n for Retarded Children)	(1) Exclusions from voting; (2) annual sessions; (3) consolidations of cities and counties, and of services; (4) public education; (5) state authority over schools; (6) compulsory education; (7) institutions; (8) state borrowing; (9) lending credit.
116.	Karl O. Spiess, Sr. (Homeowners Federation of Arlington)	(1) Annual sessions; (2) state borrowing; (3) taxes on taxes; (4) monopolies; (5) tax relief for the elderly; (6) 21-year-old vote; (7) right to bear arms; (8) freeholder vote on local bond issues; (9) right of privacy; (11) Hahn recommendations.
117.	Louis M. Teitelbaum (Alexandria City Democratic Committee)	Cities' fiscal problems; local income tax.
118.	Lee M. Rhoads (Chmn., No. Virginia Transp. Comm'n)	Revision of sections 184-a, 185, and 127 to facilitate state and local assistance to transit authorities.
119.	Manning Gasch (Fairfax County)	Tax relief for agricultural, timber, and other open space land.
120.	Augustus C. Johnson (Fairfax County)	For ending appointing powers of circuit court judges, specifically for election of school boards and electoral boards by local governing bodies.
121.	George R. Walker (Editor, Times, Portsmouth)	Attack on course which constitutional revision is taking. Also: (1) majority rule; (2) write-in ballots; (3) electoral

CCR No.	*From*	*Subject*
		boards; (4) emergency legislation; (5) public meetings of legislative bodies; (6) removal of officials for disability; (7) city councils; (8) ordinances; (9) local debt; (10) school districts; (11) rewriting Article XII; (12) uniform taxes; (13) assessments; (14) sewers and water lines; (15) state borrowing; (16) lending credit; (17) amendments.
122.	Thomas B. Wright (Board of Supervisors, Fairfax County)	Amendment of sections 168 and 169 to allow tax relief for retired people and to allow taxation of land on other than fair market value.
123.	Joseph G. Muenzer, Jr. (Fairfax County Taxpayers' Alliance)	If major constitutional changes are needed, a convention should be called.
124.	Mrs. Barbara Klingensmith (Fairfax County Federation of Citizens Associations)	(1) Submit amendments to people singly or in groups; (2) propose only necessary amendments.
125.	Herbert Miller (Georgetown Univ. Law School)	Restricting appointing powers of circuit courts.
126.	Bernard S. Cohen (Alexandria City Democratic Committee)	(1) For a simple Constitution without statutory detail; (2) anti-discrimination clause; (3) religious guarantees; (4) 18-year-old voting; (5) reducing residence requirements for voting; (6) poll tax; (7) ballots; (8) property qualification for voting; (9) reapportionment; (10) single-member districts; (11) reapportionment commission; (12) annual sessions; (13) Governor's succeeding himself; (14) deleting Bureau of Labor and Statistics; (15) selection of judges; (16) intermediate appellate courts; (17) choice of Chief Justice; (18) judicial article; (19) broad powers for local governments; (20) local income tax; (21) reorganization of cities' fiscal set-up; (22) Article IX; (23) Article X; (24) Article XI; (25) appointment of SCC Commissioners; (26) section 156; (27) SCC fees; (28) state borrowing; (29) localities' borrowing; (30) local income tax; (31) conforming income taxes; (32) homestead; (33) popular ratification of convention proposals.

CCR No.	*From*	*Subject*
127.	Thomas C. Lawler (Federation of Catholic Parent-Teacher Orgs. of No. Va.)	For amendment of sections 139 and 141 to allow state aid to children in parochial schools.
128.	David N. Webster (St. Mary's School Board, Alexandria)	For permitting state aid to children in private sectarian schools.
129.	Richard N. Haley (St. Mary's Home and School Ass'n)	Same.
130.	Richard P. Thomsen (Nat'l Ass'n of Independent Schools)	Same.
131.	James A. S. Roy (Nat'l Ass'n of Retired Civil Employees)	Tax relief for retired people.
132.	Arthur T. Wright (Conservation Consultant, Alexandria)	For a conservation bill of rights.
133.	Mrs. Betty Hallman (Arlington)	(1) Repudiation of the 17th Amendment to the U.S. Constitution; (2) restriction of the U.S. government to constitutional activities; (3) repeal of the 16th Amendment to the U.S. Constitution; (4) repudiation of illegal treaties and laws; (5) outlawing of voting machines; (6) repudiation of illegal U.S. Supreme Court rulings.
134.	Charles C. Quick (Nat'l Ass'n of Retired Civil Servants)	Tax relief for retired persons.
135.	Jacqueline Arps (Alexandria)	(1) Limit on number of people occupying a residence; (2) planning and development in rural areas; (3) registering under false name at hotel or motel; (4) taxes on petroleum products; (5) referendum on local appropriations; (6) localities' borrowing from the State.
136.	Weldon Cooper (Institute of Government, Charlottesville)	Article "Local Government and Constitutional Revision" from July 1968 issue of *Virginia Town and City*.

CCR No.	*From*	*Subject*
137.	Carl McFarland (University of Virginia)	Constitutional protection for educational gifts and trusts.
138.	J. Frank Alspaugh (Division of Industrial Development)	An industrial mortgage guarantee program.
139.	William R. Durland (Delegate, Fairfax)	(1) For annual sessions; (2) allow state borrowing up to 18% of assessed value of realty; (3) recommend gun control legislation.
140.	Clive L. Duval, II (Delegate, Fairfax)	(1) Add anti-discrimination clause; (2) specify right to counsel in criminal cases; (3) right of privacy; (4) delete references to poll tax; (5) reduce voting age to 18; (6) reduce residence requirement for voting; (7) have electoral boards appointed by local governing bodies; (8) spell out basis for legislative apportionment; (9) create apportionment commission; (10) provide annual sessions; (11) allow conforming income taxes; (12) allow lotteries; (13) allow Governor two terms; (14) provide intermediate appellate courts; (15) give broad powers to local governments; (16) enlarge State Board of Education; (17) delete section 140; (18) give Legislature control over regulatory agencies regulating corporations; (19) have statewide assessment of property, including utilities; (20) require minimum local support of schools; (21) allow state debt up to 18% of realty values; (22) provide decennial study of Constitution; (23) require popular approval of convention proposals.
141.	C. Harrison Mann, Jr. (Delegate, Arlington)	Statement on allowing state borrowing up to ceiling of 18% of assessed value of realty.
142.	Morton L. Wallerstein (Attorney, Richmond)	Amendment of section 170 to allow assessments of abutting property.
143.	John J. Wicker, Jr. (Richmond)	(1) Delete poll tax; (2) increase residence requirements; (3) ballots; (4) provide annual sessions; (5) retain capitation tax, make it $6; (6) allow limited conventions; (7) other suggestions.

CCR No.	*From*	*Subject*
144.	Virginia Railway Association	Retain appeal of right from State Corporation Commission guaranteed by section 156(d).
145.	George R. Humrickhouse (Chancellor, Episcopal Diocese of Virginia)	Repeal section 59, and allow churches to incorporate.
146.	Virginia Manufacturers Association	(1) Retain present voting age and residence requirements; (2) require literacy for voting; (3) if annual sessions are necessary, limit them to fiscal questions; (4) retain ban on Governor's succeeding himself; (5) keep elected Attorney General; (6) consider prohibiting localities from contracting with federal agencies without prior approval; (7) keep present limit on state debt.
147.	Virginia Association of Assessing Officers	(1) For eliminating most exemptions from taxation now allowed under section 183; (2) against statewide assessment.
148.	Karl O. Speiss, Sr. (Arlington)	Opposed to giving vote to 18-year-olds.
149.	FitzGerald Bemiss (Richmond)	For state, rather than local, taxation of property of public service corporations.
150.	William G. Downey, Jr. (Springfield)	Section-by-section recommendations.
151.	Henry F. Lerch (Girl Scout Council of Nation's Capital)	For amending section 183 to name Girl Scouts as a tax-exempt organization.
152.	Mrs. James R. Stitt (Colonial Beach)	(1) Outlaw corporal punishment in schools; (2) strengthen rural education; (3) have periodic health checks of schools; (4) provide free textbooks; (5) discontinue unrealistic history textbooks.
153.	George H. Hill (Newport News)	(1) For extending terms of Delegates to four years; (2) for retaining one-term limit on Governor but making term six years.
154.	Virginia State Ass'n, IBPOE	(1) For popular election of judges; (2) for vote for 18-year-olds.

CCR No.	*From*	*Subject*
155.	William A. Stuart (Attorney, Abingdon)	For retention of "pay-as-you-go" policy (§184).
156.	Thomas L. Johnson (Mary Washington College)	Opposed to increased support for public education, and therefore opposed to allowing borrowing by the State.
157.	George R. Walker (Editor, Portsmouth)	Comments on the manner in which the Commission has conducted its hearings and on the right of the Commission to propose revisions to the Constitution. (See also Public Views Document No. 121.)
158.	Rockbridge Area Regional Planning Commission	For facilitating consolidation of small school districts.
159.	Governors' Committee on Constitutional Revision	Summary of report "A Model State Executive" submitted to the National Governors' Conference, July 24, 1968.
160.	Gary M. Williams (Jarratt)	(1) For abolition of appointing powers of circuit court judges; (2) for renaming board of supervisors, and for related changes in county government.
161.	Va. Friends Leg. Comm.	For constitutional abolition of capital punishment.
162.	V. Floyd Williams (City Attorney. Alexandria)	For broader powers for local governments.
163.	FitzGerald Bemiss (Richmond)	For statewide assessment and taxation of public utility property. (This is a supplement to Mr. Bemiss' letter of July 22, Public Views Document No. 149.)
164.	John M. McGurn (President, VEPCO)	Memorandum on rights of public utilities in areas annexed by municipalities (§124).
165.	William F. Thomas, Jr. (Pulaski)	(1) For retaining one-term limit on Governor; (2) for continued popular election of clerks of court· (3) for leaving it to the Legislature whether to levy a capitation tax.
166.	John Page Williams (Church Schools, Episcopal Diocese of Virginia)	For allowing state aid to children in sectarian schools (§141).

CCR No.	*From*	*Subject*
167.	John M. McGurn (President, VEPCO)	Against (1) Bemiss' proposal for statewide assessment and taxation of utility property; (2) Va. Ass'n of Counties' proposals regarding establishment of a State Department of Tax Assessment and taxing utility property on basis other than original cost.
168.	T. Stacy Lloyd, Jr. Jerry G. Miller (Councilmen, Fredericksburg)	For constitutional or statutory action on the following: (1) one city-state warrant; (2) shorter time between election and assumption of office by councilmen and supervisors; (3) overlapping terms for county supervisors.
169.	Mrs. Evelyn W. Bradshaw (Virginia Beach)	For adding the popular initiative to the Constitution.
170.	Virginia Beach Friends Meeting	For constitutional abolition of capital punishment.
171.	Mrs. Edgar West (Rocky Mount)	(1) Allow Governor to run for a second term; (2) limit appointing powers of circuit judges.
172.	Treasurers' Association of Virginia	For increasing term of office of Treasurers to eight years.
173.	Commissioners of the Revenue Association	For increasing term of office of Commissioners of the Revenue to eight years.
174.	Virginia State Chamber of Commerce	(1) For keeping voting age at 21; (2) for reducing residence requirement for voting; (3) for periodic purges of voting lists; (4) for allowing references to other tax laws (§50); (5) against annual sessions (§46); (6) for deleting lottery prohibition (§60); (7) for deletion of unnecessary limits on powers of General Assembly (§63); (8) for allowing cities or counties to be named in legislation (§65); (9) for providing for orderly succession to office of Governor (§78); (10) for revision and simplification of Judiciary article; (11) for providing method for removing disabled judges; (12) for keeping elected Attorney General; (13) fo · General Assembly having power to give area-wide authority to a commission; (14) for simpler Local Government article; (15) for allowing localities to combine duties per-

CCR No.	*From*	*Subject*
		formed by constitutional officers; (16) for longer period for leases of public property (§125); (17) for allowing special act to adjust local boundaries (§126); (18) for deletion of section 140 (segregated schools); (19) for deletion of Articles X and XI; (20) no recommendations on Article XII; (21) for deletion of section 173 (capitation tax); (22) for leaving tax exemptions to General Assembly (§183); (23) for a basis other than real estate values as criterion for state debt (§184-a); (24) for allowing State to participate in industrial financing.
175.	S. Booker Carter (Attorney, Martinsville)	For amendment of section 111 to allow more flexible districting of county boards of supervisors.
176.	Joel B. Cooper (Attorney, Norfolk)	For deletion of section 60 (prohibiting lotteries).
177.	Norfolk Area Human Relations Council	(1) For reduced residence period for voting (§18); (2) for mandatory registration procedure (§18); (3) for deletion of section 30 (allowing property qualification for local elections); (4) for single-member districts in Legislature; (5) for amendment of section 111 in interest of equal representation; (6) for deletion of section 114 (acts of sheriffs); (7) for abolition of doctrine of sovereign immunity; (8) for anti-discrimination policy in state and local employment; (9) for intermediate appellate courts, with appeals of right; (10) for judges fixing sentence; (11) for abolition of capital punishment; (12) for abolition of tuition grants (§141); (13) for abolition of "pay-as-you-go" (§127), (§184-a); (14) for annual sessions (§46).
178.	Sheriffs' and City Sergeants' Ass'n	For (1) calling city sergeants "sheriffs," and (2) extending sheriffs' and sergeants' terms of office to 8 years.
179.	Commissioners of the Revenue Ass'n	For 8-year terms for Commissioners of the Revenue.
180.	Treasurers Ass'n of Virginia	For 8-year terms for Treasurers.

CCR No.	*From*	*Subject*
181.	Maurice B. Rowe (Commissioner of Agriculture)	Suggested revisions in Article X (Agriculture and Commerce).
182.	Mrs. Fred M. Packard (Sierra Club)	For inclusion of a conservation bill of rights.
183.	William B. Lawson (Arlington)	For inclusion of certain named corporations in the list of tax exemptions in section 183.
184.	Fairfax County Democratic Committee	(1) For annual sessions of the Legislature; (2) for allowing issuance of state bonds, related to state revenues; (3) for allowing assessment of realty on the basis of use; (4) for allowing creation of an industrial development authority; (5) for making the functions of the State Corporation Commission statutory; (6) for a method for filling vacancies in elected offices; (7) for a lower period of residence for voting; (8) for repeal of section 23 (persons excluded from registering or voting).
185.	Arlington County Republican Committee	(1) For single-member districts in the General Assembly (§43); (2) for annual sessions of the General Assembly (§46); (3) for limiting introduction of bills to first 30 days of a session; (4) for requiring journal entries of yeas and nays on all questions (§49); (5) for providing for initiative and referendum (§50); (6) for provision for one appeal of right from decisions of courts of record; (7) for adoption of "Missouri Plan" of selecting judges; (8) for restricting appointing power of judges; (9) for equality of tax assessments (§169); (10) for allowing state debt (§184-a); (11) for allowing constitutional amendment by popular initiative (§196); (12) to require constitutional convention question to be put on the ballot every 20 years (§197).
186.	Commission on the Aging	For tax relief for the elderly.
187.	J. B. Blackford (Richmond)	On real estate appraisals.
188.	American Civil Liberties Union of Virginia	(1) For an end to the appointing power of judges; (2) for an end to appoint-

CCR No.	*From*	*Subject*
		ment of judges by the General Assembly; (3) for one appeal of right in every case; (4) for abolition of capital punishment; (5) for fair administrative procedures, especially before SCC; (6) for broader powers for localities; (7) for freer franchise; (8) for automatic legislative reapportionment; (9) for guarantee of equal rights of citizens; (10) for providing that actions of constitutional conventions must be ratified by people.
189.	Nicholas A. Spinella (Richmond)	For amendment of section 141 to allow state aid to children in sectarian schools.
190.	Virginia Trial Lawyers Ass'n	For a judicial article allowing General Assembly to fix number of Supreme Court justices, allowing the Supreme Court to sit in divisions, and leaving other courts to be created by law.
191.	Fairfax County Federation of Citizens Ass'ns	Recommendations on (1) amendments to the Constitution; (2) disposition of public property; (3) legislative journal; (4) initiative and referendum; (5) appointing powers of judges; (6) State Corporation Commission; (7) single-member legislative districts; (8) annual sessions of the Legislature; (9) gubernatorial succession; (10) residence and age requirements for voting; (11) minimum age for state legislators; (12) reapportionment; (13) allow state bonds; (14) assessment at fair market value; (15) removal of obsolete provisions.
192.	Joseph S. Wholey (Arlington)	For giving counties authority to grant tax relief to retired persons.
193.	Va. Section, Int'l City Mgrs. Ass'n	(1) For annual sessions of the Legislature; (2) for 6-year term for Governor; (3) for power in Governor to initiate reorganization; (4) allowing counties to have charters; (5) against school boards being elective or having taxing power; (6) for allowing special assessments for sewers, etc.; (7) for allowing payroll taxes; (8) for assessing utilities on basis of local ratios to full value; (9) for review of present tax exemptions; (10) for repeal of capitation tax; (11) for giving urban counties utility franchise authority.

CCR No.	*From*	*Subject*
194.	Arlington County Board	(1) In general, for elimination of statutory detail from Constitution; (2) for 18-year-old vote; (3) for lower residence requirements for voting; (4) for leaving it to Legislature to determine felony or incompetency voting disqualifications; (5) for end to property qualification; (6) for limiting appointing powers of judges; (7) for annual sessions of Legislature; (8) for allowing state taxes to conform to federal taxes; (9) for at least one appeal of right from decisions of courts of record; (10) for giving general powers to counties; (11) for utility franchise power for counties; (12) for added language in section 129 (education); (13) for non-constitutional basis for State Corporation Commission; (14) for statewide assessment of property at fair market value; (15) for allowing special assessments on abutting property; (16) for repeal of capitation tax; (17) for allowing state borrowing; (18) for allowing constitutional amendment by initiative and referendum; (19) for requiring popular approval of a convention's proposals.
195.	Virginia Forestry Council	For allowing assessment of agricultural and forest land on basis of use.
196.	Izaak Walton League	For tax exempt status for Izaak Walton League (§183).
197.	J. B. Blackford (Richmond)	For calling a constitutional convention; for limiting the influence of lawyers and pulpmills.
198.	Retired Men's Club, Va. Peninsula	For allowing tax relief to retired and disabled people.
199.	George S. Knight (Alexandria)	For a constitutional guarantee of the right to bear arms.
200.	Fairfax County Board of Supervisors	(1) For allowing counties to grant franchises to public utilities; (2) for ending the constitutional status of the SCC; (3) for statewide assessments of property, including that of utilities; (4) for any type of special assessments on abutting property.

CCR No.	*From*	*Subject*
201.	Nicholas A. Spinella (Richmond)	For amending section 141 to allow state aid to sectarian schools.
202.	Arlington County Board	For a general grant of powers to counties.
203.	Virginia Electric and Power Company	For authority in SCC to override local decisions as to location of utility lines.
204.	Virginia State Bar	Proposal for a plan for the censure or removal of unfit judges.
205.	Howard H. Gordon Comm'n of the Industry of Agriculture	(1) Amend §169 relative to assessment of property at other than fair market value; (2) amend §169 to allow local governments to exempt growing timber as is provided for household goods and personal effects.
206.	S. E. Bonsack Vice President and General Manager, C & P Telephone Co.	(1) Present taxation provisions are satisfactory; (2) sees no reason to increase SCC membership; (3) sees no advantage in proliferating regulatory agencies or any change in appellate procedure.
207.	Ass'n of Retired Railroad Employees	Tax relief for persons over 65.
208.	Jonathan S. Gibson (Newport News)	Tax exemptions for persons over 65.
209.	Comm. on State Courts System, Va. Trial Lawyers Ass'n	For a simple judicial article allowing the General Assembly to create intermediate appellate courts.
210.	Board of Supervisors, Prince William County	Resolution asking that counties be permitted a charter form of government.
211.	A. T. Wright (Alexandria)	For a conservation statement in the Constitution.
212.	Va. Trial Lawyers Ass'n	For amending § 103 to leave state-local apportionment of judges' salaries to the Legislature and to allow counties to supplement judges' salaries.
213.	A. A. Akers (Amer. Ass'n of Retired Persons)	For tax relief for persons over 65.
214.	Matthias E. Kayhoe (Charlottesville)	For a conservation statement in the Constitution.

APPENDIX B

PUBLIC HEARINGS

In June and July 1968, the Commission on Constitutional Revision held a series of five public hearings at points about the Commonwealth. Before the hearings, news releases went out to newspapers and to radio and television stations in Virginia, giving the dates, times, and places of the hearings, and letters went out to individuals and organizations calling their attention to the hearings. About 150 people appeared and testified at the hearings, either on their own behalf or representing an organization. The hearings were held as follows:

Norfolk (June 17 in the Student Center at Old Dominion College)
Roanoke (June 21 at the Federal Courthouse)
Abingdon (June 22 at the Federal Courthouse)
Richmond (July 17 in the Auditorium of the Ninth Street Office Building)
Alexandria (July 18 in the Council Chamber of City Hall)

After each public hearing, the Executive Director compiled a summary of the views expressed at that hearing and sent a copy of the summary to each member of the Commission and to each of the Commission's counsel.

A summary of the speakers and the subjects on which they spoke follows. In many instances, a speaker also submitted a written statement. These statements were given Public Views Document numbers. In each such case, the number appears in the summaries below.

NORFOLK (June 17, 1968)

Roy B. Martin, Jr. (Mayor of Norfolk). Mr. Martin, who could not be present in person, was represented by Mr. Lawless, of the City Attorney's Office. Mr. Lawless read a letter from Mr. Martin, welcoming the Commission to Norfolk and inviting the Commission's attention to the need of Virginia localities for greater revenues. (Mr. Martin's letter will be Document No. 47.)

Mr. Barron F. Black (Norfolk Foundation). Mr. Black proposed an amendment to section 183(d) of the Constitution, adding the words "charitable foundations or their trustees" to the list of those groups allowed exemptions. Mr. Black's specific interest is exemption status for the Norfolk Foundation, a status which they have sought through legislation but which has not been forthcoming because of doubts whether such exemption would be permissible under present section 183(d).

Charles T. Abeles (Norfolk Foundation). Mr. Abeles underscored Mr. Black's statement and added comments on the extent of Norfolk Foundation scholarship aid and the importance to the Foundation of having an exempt status.

Hunter B. Andrews (Senator from Hampton). Senator Andrews proposed that the Constitution, when submitted to the people, be voted on article by article. (For elaboration of his views, see his letter of June 17, which is Document No. 48.)

Richard Bagley (Delegate from Hampton). Mr. Bagley expressed the hope that the Commission would produce a Constitution confined to fundamentals, leaving the details to be filled in by the General Assembly as the need arises.

John D. Gray (Delegate from Hampton). Delegate Gray asked the Commission's special attention to problems of local government in Virginia, the need for more viable governments for metropolitan areas, and the recommendations of the Metropolitan Areas Study Commission.

J. Warren White, Jr. (Delegate from Norfolk). Delegate White asked for a relaxation of the constitutional limit on borrowing by the State. Noting the "false illusion" that Virginia is free of debt, Mr. White observed that $400 million of revenue bonds are outstanding in Virginia. He proposed that section 184(a) be amended to change the allowable debt from 1% to 15%. Otherwise, he would leave the section as it is, including the requirement of a referendum. (For a written statement by Delegate White, see Document No. 49.)

Thomas R. McNamara (Delegate from Norfolk). Mr. McNamara submitted a letter to the Commission in which he lists ten questions which he thinks should be considered by the Commission. (See Document No. 50.)

R. Braxton Hill, Jr. (Virginia Society of Certified Public Accountants). The subject of Mr. Hill's remarks was amendment of section 50 of the Constitution to allow Virginia income tax laws to conform with federal income tax laws. Mr. Hill submitted to the Commission the following: (1) a written summary of his remarks (Document No. 51), (2) a copy of a resolution passed by the Society on May 24 (Document No. 39), (3) the report of the Virginia Income Tax Study Commission (H.D. 17, 1968 session), (4) a memorandum by Edwin S. Cohen regarding constitutional questions involved in the Commission's report, (5) H.B. 735 and S.B. 345 (1968 session) to amend the Code of Virginia to provide for conformity, (6) S.J.R. 72 (1968 session), requesting the Commission on Constitutional Revision to consider amendment of section 50.

Alan Hofheimer (Judiciary Committee, Virginia State Bar Association). Mr Hofheimer urged an alternative to section 104 of the Constitution to allow a less cumbersome and unpleasant procedure to remove disabled judges. Mr. Hofheimer pointed to the unanimous recommendation of the Bar Association committee that the Constitution be amended to allow plans such as those adopted in other states.

George C. L. Jensen (President, Tidewater Association for Retarded Children). Mr. Jensen touched on two subjects: (1) the belief that the word "idiot" in section 23 (dealing with disqualifications from voting) be replaced with a word more in accord with modern usage and understanding, and (2) the view that the education article should include specific reference to education for retarded children.

Denis Nicholas (Tidewater Homophile League). Mr. Nicholas (the name is a pseudonym) called for constitutional protection for homosexuals. No section of the present Constitution does this, although section 1 refers to the right to the pursuit of happiness. The League proposes an amendment to the Constitution declaring that the rights of the citizens of Virginia should not be abridged on account of race, color, religion, creed, sex, or "sexual orientation"—the latter phrase protecting homosexual conduct. (See Document No. 52.) The League plans to submit a legal brief to the Commission.

Hume Taylor (Catholic layman, Norfolk). Mr. Taylor called for amendment of section 141 of the Constitution to delete the phrase "non-sectarian," leaving it to the General Assembly to decide what aid, if any, should go to children attending sectarian schools. Taylor mentioned, as examples of aid localities could not under pres-

ent law give such children, driver education and used textbooks. (See Document No. 53.)

John B. Jonak (President, Virginia Council of Catholic Men). Like Mr. Taylor, Mr. Jonak called for amendment of section 141. Mr. Jonak said that he does not want aid to sectarian schools or to churches, only to students. He cited statistics on the number of children in sectarian schools and the cost of operating such schools.

Mrs. Ruth Bornn (Norfolk). Mrs. Bornn asked the Commission to produce a Constitution written in "clear and simple English." The Constitution ought, she said, to be intelligible to the citizenry, as it is a chief source of public enlightenment on their government.

Joseph L. Stone (President, Norfolk Human Relations Council). Mr. Stone submitted to the Commission a written statement touching on three subjects: (1) redistricting based on population, (2) abolition of a literacy test for voting, (3) opposition to the use of public money for tuition grants to children enrolled in other than public schools. (See Document No. 54.)

Mr. Fleming (Virginia Beach Chamber of Commerce). Mr. Fleming, who is on the Chamber's Agriculture Committee, argued that it should be possible to tax farmland on the basis of its use, rather than on the basis of value. He will submit a written statement at a later date.

ROANOKE (June 21, 1968)

F. Rodney Fitzpatrick (Roanoke Valley Chamber of Commerce). Mr. Fitzpatrick listed eleven recommendations of the Roanoke Valley Chamber of Commerce for revisions in the Virginia Constitution. (For specifics, see letter of June 21 from John A. Kelley, CCR Public Views Document No. 58.)

Evans B. Jessee (Roanoke attorney). Mr. Jessee asked amendment of section 141 to delete the word "non-sectarian." He believed that any aid permissible under the First Amendment to the Federal Constitution (e.g., lending textbooks, giving free lunches) to school children should be permissible under the Virginia Constitution.

Hale Collins (former state senator, Covington). Senator Collins agreed with Mr. Jessee on amending section 141. Like Mr. Jessee, he emphasized that he does not wish to interfere with separation of church and state, simply allow what the First Amendment allows.

James C. Turk (Senator, Radford; Senate Minority Leader). Senator Turk believed that a Constitution should be brief and clear—a fundamental framework. He observed that the present Constitution is too long and detailed and has too much material which belongs in statutes. On specific points: (1) take most of the election sections out, substituting a short article, (2) reduce period of residence (at least to six months) required for voting, (3) require literacy for voting, (4) elect Governor and Lieutenant Governor as a slate, (5) have annual sessions of the Legislature (but limit length of sessions), (6) have a merit system for selecting judges, (7) increase size (or allow increase in size) of Supreme Court of Appeals, and drop requirement that it meet in two places, (8) allow local governments to enact any legislation not prohibited by the General Assembly. Senator Turk said that he would submit a written statement at a later date.

Henry E. Howell, Jr. (Senator, Norfolk). Senator Howell touched on a number of subjects: (1) reduce voting age (perhaps set a permissible range of 18-21), (2) reduce residence requirement (might have longer period for voting for state officers than for voting in national elections), (3) property should not be a prerequisite to voting, even in local bond issue elections, (4) electoral boards should not be elected

by judges; they should be elected by the people or appointed by the Board of Supervisors, (5) have a brief and concise Constitution, leaving the details to the General Assembly, (6) have longer hours for registering to vote, (7) have elections on holidays (remove requirement of elections on Tuesdays), (8) make intermediate appellate courts possible, have more Supreme Court of Appeals judges (sitting in panels), reduce court costs, (9) allow Governor to succeed himself, (10) let Governor appoint his department heads, without requiring confirmation by General Assembly, (11) appoint Attorney General, (12) apply section 55 reapportionment language (re Congress) to apportionment of General Assembly, and give thought to creation of a reapportionment commission, (13) if limit on state bonds is needed, tie limit to state's average revenues for five years, not to realty assessments, (14) give people time to consider Commission's recommendations before the General Assembly meets in special session, (15) don't submit proposals to people in one package.

Willis M. Anderson (Delegate, Roanoke). Delegate Anderson will submit a written statement at a later date.

Frank N. Perkinson, Jr. (past president, Young Democratic Clubs of Virginia). Mr. Perkinson told of the Young Democrats' having appointed a committee, representative of all factions of the Democratic Party, to study pay-as-you-go in Virginia.

Hampton W. Thomas (Chairman, Young Democrats Study Committee on Pay-as-you-go in Virginia). Mr. Thomas summed up arguments against pay-as-you-go: (1) the need for capital improvements, (2) higher costs if construction is delayed, (3) the existence of a de facto moral debt in the form of revenue bonds, (4) the people's feeling that today's generation should not pay the whole cost of tomorrow's capital improvements. Mr. Thomas summarized the conclusions of the Young Democrats' recommendations to the 1968 General Assembly: (1) amend section 184 to permit borrowing without a referendum up to a limit and to exempt borrowing for roads, educational institutions, and mental facilities from borrowing limits, (2) permit the State to finance existing revenue bonds, (3) make use of section 184-a (the 1968 Assembly did this), (4) amend section 184a to raise the 1% limit (require referendum and allow bonds for any purpose), (5) review the State's capital needs and provide capital for the State's growth.

Richard C. Pattisall (Member of Young Democrats study group). Mr. Pattisall cited a public opinion poll showing the public to be for modification of pay-as-you-go.

Venson Oliphant (St. Gerard's Parish Advisory Board, Roanoke). Mr. Oliphant spoke for amending section 141 to delete reference to "non-sectarian" schools.

Frank M. McCann (Holy Cross parish, Lynchburg). Mr. McCann asked amendment of section 141 (along the lines advocated by earlier speakers) and also amendment of section 139 to require textbooks to be furnished free to those who are subject to compulsory attendance laws but who are unable to afford books (rather than furnishing free books to such people only when attending public schools). (See CCR Public Views Document No. 59).

Bates McCluer Gilliam (Lexington City Council). Mr. Gilliam called attention to the need for an adequate tax base for local government.

Guy B. Agnor, Jr. (City Manager, Lexington). Mr. Agnor asked for an end to the constitutional requirement that cities of the second class have a City Sergeant. Lexington, he said, doesn't need or want a City Sergeant, since sheriff has jurisdiction within the city and can do the job.

Father John J. O'Connell (Our Lady of Nazareth Church, Roanoke). Amend section 141 to remove "nonsectarian." Amend 139 re free textbooks.

PUBLIC HEARINGS

ABINGDON (June 22, 1968)

Benjamin F. Sutherland (Clintwood). Mr. Sutherland spoke on suffrage, particularly on reforms needed in absentee voting. He urged especially that the electoral process be a public matter at all stages to prevent abuses and frauds. (See Mr. Sutherland's written statement, CCR Public Views Document No. 60.)

George M. Warren, Jr. (Senator, Bristol). (1) There should be a "substantial modification" of the limits on the power to incur bonded indebtedness. (2) Lengthen sessions of General Assembly, rather than going to annual sessions. (3) Allow intermediate appellate courts.

Archie A. Campbell (Delegate, Wytheville). Delegate Campbell covered a number of subjects: (1) Poll tax: "You will, of course, abolish the poll tax." (2) Treat a fifth-grade education as equivalent to literacy for voting purposes. A failure to vote once in three years should mean need to re-register. (3) Have annual sessions of the Legislature. (4) Have four-year terms for House of Delegates. (5) Make it easier for parts of counties to be consolidated with other counties. (6) Either eliminate the ban on special legislation, or adhere to it. (7) Have six-year term for Governor. (8) Elect new judges on recommendation of Supreme Court of Appeals. Eliminate need to meet in Staunton. (9) Change population requirements for cities. (10) Allow consolidation of all local functions (joint officers). (11) Allow consolidation of parts of county school systems. (12) Reform taxes on agricultural lands. (13) State Tax Commission, rather than State Corporation Commission, should assess utility property. (14) Amend section 184-a to change 1% to 5%. (15) Have the State issue all bonds, eliminating authority bonds. (For elaboration of these points, see Delegate Campbell's written statement, CCR Public Views Document No. 61.)

Joseph P. Johnson, Jr. (Delegate, Abingdon). Military men under age 21 ought to be allowed to vote. Have annual sessions.

Bradley Roberts (former legislator). Mr. Roberts showed interest in intermediate appellate courts and in annual sessions.

G. R. C. Stuart (president-elect, Virginia State Bar Association). Speaking for the Town of Abingdon, Mr. Stuart wanted the Constitution to make it optional whether a town which had passed 5000 population would become a city of the second class.

Thomas L. Hutton (retired judge, Abingdon). Judge Hutton spoke for intermediate appellate courts and for consolidation of smaller counties into perhaps 30-40 counties in the State.

Judge J. Aubrey Matthews (23d Judicial Circuit). The limit of 30 square miles for magisterial districts (section 111) is troublesome in redistricting cases and ought to be eliminated.

William H. Woodward (president-elect, Virginia State Bar). Speaking for the City of Bristol (where interest in consolidation has been shown), Mr. Woodward said that section 168 ought to make it clear that differential tax rates in event of consolidation (allowed by statute at present) is constitutionally permissible. See CCR Public Views Document No. 62.)

William A. Stuart (former president, Virginia State Bar Association). "Virginia will be ill-advised to embark on a course of deficit spending." He will write the Commission a letter.

Guy W. Bolling (area supervisor, Department of Vocational Rehabilitation). Mr. Bolling said that the limitations of section 67 make it impossible to give needed help to handicapped persons who want to go to church-related colleges and schools. (See CCR Public Views Document No. 63.)

Waldo Miles (past president, Virginia State Bar Association). Mr. Miles welcomed the Commission to Abingdon.

Leslie M. Mullins (attorney, Norton). Norton has, but doesn't want, a Commissioner of the Revenue and a City Sergeant. There is a conflict between the Commissioner of the Revenue and the Director of Finance. As to the Sergeant, the county sheriff can do the job. Therefore Mr. Mullins hoped the requirement that there be these officers can be removed from the Constitution.

L. G. Robinson (counsellor, Vocational Rehabilitation Service). Mr. Robinson concurred with the statement of Mr. Bolling and with the need to amend section 67.

W. R. Cooke (Town Manager, Abingdon). Utility property should be taxed at fair market value and should be taxed by the State Tax Department, not by the State Corporation Commission. Mr. Cooke thinks that utility property is assessed nearer to 15-20% than to 40%.

RICHMOND (July 17, 1968)

Thomas P. Bryan (Delegate, Richmond; Chairman, State Affairs Committee, Virginia State Chamber of Commerce). Mr. Bryan informed the Commission that the Chamber will submit its views in comprehensive fashion after the Chamber's Board of Directors has met in late July. (For text of Mr. Bryan's statement, see CCR Public Views Document No. 82.)

Carrington Williams (Delegate, Fairfax). Delegate Williams had previously filed with the Commission a memorandum on taxation and finance (see Public Views Document No. 56). At the Richmond hearing, he supplemented his earlier statement and touched on the following subjects: (1) basis for state borrowing (in amending section 184-a) on the level of general fund appropriations, (2) equal borrowing capacities for counties and cities, (3) development bonds, (4) joint undertakings and area government, (5) allowing localities to determine what exemptions there should be from taxation, (6) allowing localities to impose an income tax. Commissioners and counsel should note that, in his supplemental memorandum, Delegate Williams has drafted specific constitutional language to accomplish the results he proposes. (For the text of the supplemental memorandum, see Public Views Document No. 83.)

Leslie D. Campbell, Jr. (Senator, Hanover). (1) Tax assessments: There should be authority for a locality to tax property on a basis other than fair market value. (2) Bonds: Do not relax the present limits on state borrowing.

John S. Hansen (Delegate, Chesterfield). On the subject of reapportionment, Delegate Hansen urged (1) that districts in the Legislature be based on equal population and be compact and contiguous, and (2) that all districts be single-member. (For text of Delegate Hansen's statement, see Public Views Document No. 84.)

Morrill M. Crowe (former mayor of Richmond). On the subject of tax-exempt property, Mr. Crowe noted the burden which exempting a high proportion of property places on other property owners. Mr. Crowe thought that there should be no exemptions for quasi-religious property, such as church-owned businesses.

John J. Wicker (former senator, Richmond). Mr. Wicker made the following points: (1) eliminate references to the poll tax; (2) suffrage: increase the time periods required for residence; (3) retain the capitation tax as a tax, make it $6; (4) ballots: insert some specific requirement as to order on ballots (e.g., alphabetical); provide for write-in votes; (5) divide sessions of the Legislature into two 30-day portions; (6) provide that the General Assembly may limit the subject matter of conventions. Mr. Wicker indicated that he would submit a written statement at a later date.

C. F. Hicks (Virginia Association of Counties). Mr. Hicks reported the following recommendations of the Executive Board of the Virginia Association of Counties:

(1) have uniform, statewide appraisal and assessment of property; create a State Department of Tax Assessment; (2) judges should not have appointive powers; (3) provisions re public education; (4) require decennial apportionment of local governments; (5) allow counties to have charter powers and to exercise such powers as are not denied them by constitutions or laws; (6) provide for annual sessions of the Legislature; have four-year terms and single-member districts; (7) allow the Governor to succeed himself; (8) delete poll tax references, and provide for efficient registration system; (9) allow counties to issue bonds on same basis as cities (i.e., 18% without referendum); (10) allow issuance of state bonds; use figure of 18% based on corporate and individual income. (For the text of the Executive Board's recommendations, see Public Views Document No. 85.)

Mrs. Rodney H. Bryson (Legislation Chairman, Virginia Congress of Parents and Teachers). Mrs. Bryson touched on the following points: (1) delete section 30, so that voting is never tied to property ownership; (2) consider whether the State needs annual sessions of the Legislature; consider also length of session; (3) revise section 184-a and remove the present limit on bonded indebtedness; (4) strengthen section 129 to guarantee educational opportunity; (5) increase the size of the State Board of Education from seven to nine; (6) have the Superintendent of Public Instruction appointed by the State Board of Education; (7) improve method of selecting local school boards; (8) amend section 139 to make free textbooks available to all children, not just indigents. (For text of Mrs. Bryson's remarks, see Public Views Document No. 86.)

Robert B. Traweek (Executive Director, Virginia Association for Retarded Children). Mr. Traweek presented the Association's thinking on several sections of the Constitution: (1) delete "idiots" from section 23 and give the General Assembly authority to deny the vote on grounds of "mental incompetence"; (2) continue to permit consolidation of cities and counties, as well as services (section 110); (3) have constitutional requirement of compulsory education (section 138); (4) delete section 152; (5) eliminate constitutional ceiling on state debt (section 184a). (For text of Mr. Traweek's statement, see Public Views Document No. 87.)

Walter Ayers (Public Affairs Director, Virginia Farm Bureau). Mr. Ayers appeared in support of amending the Constitution to allow land to be taxed on the basis of use. Mr. Ayers gave the Commission specific examples and statistics bearing on the problem. Having listed various systems used in other states to achieve a land use tax, Mr. Ayers said that the Bureau proposes for Virginia a dual assessment tied to a tax deferral. (For text of Mr. Ayers' remarks, see Public Views Document No. 88.)

Mrs. J. A. Throckmorton (League of Women Voters). The League had, before the Richmond hearings, submitted a written statement to the Commission. (See Public Views Document No. 36.) At the hearing, Mrs. Throckmorton summed up the League's proposals: (1) provide for annual sessions of the Legislature; (2) allow state borrowing; (3) have a mandatory registration form; (4) reduce the period of residence required for voters; (5) have permanent registration, with periodic purges; (6) have signature identification for voters; (7) base representation in the General Assembly on population, having compact and contiguous districts.

Mrs. Stella D. Neiman (Williamsburg). Mrs. Neiman's subject was the reorganization of school districts, with recognition that there is a minimum efficient size. Mrs. Neiman had earlier submitted a written statement to the Commission. (See Public Views Document No. 80.)

M. Caldwell Butler (Delegate, Roanoke). Delegate Butler hoped that the Commission's basic approach to constitutional revision would be to establish the framework of government and protect individual rights, then leave as much as possible to the

legislative process. Should there be doubt that the General Assembly would carry through the necessary revision, Delegate Butler hoped the Commission would recommend the calling of a constitutional convention. On specific subjects, Delegate Butler recommended the following: (1) provide for annual sessions; (2) remove time limits on length of Assembly sessions; (3) have the Assembly meet, adjourn, then return to consider legislation; (4) allow bonded debt, and don't tie debt limit to realty values; (5) place responsibility for education on the General Assembly; remove sections dealing with State Board of Education, school boards, etc., and leave this general area to the Assembly; put a strong mandate on the Assembly to establish a good school system. (On bonded debt, Delegate Butler said he would submit later a statement by a Mr. Mitchell on the meaninglessness of debt limits since unguaranteed debt is used instead.)

John G. Triplett (Scout Executive, Robert E. Lee Council, Boy Scouts of America). Mr. Triplett spoke for amending section 183 to provide tax exemption for the property of the Boy Scouts and Girl Scouts. (For the text of the Council's statement, see Public Views Document No. 89.)

Conrad B. Mattox (City Attorney, Richmond; Chairman, Committee on Constitutional Revision, Virginia Municipal League). The League had already submitted to the Commission the League's recommendations on constitutional revision. (See Public Views Document No. 38.) At the hearing, Mr. Mattox appeared to explain the reasoning behind the several recommendations: (1) the granting of city and town charters by the General Assembly (with special attention to the status of cities of the second class); (2) differential tax rates in cities and towns (sections 168, 169); (3) special assessments on abutting property owners (section 170); (4) leasing or granting a franchise for the use of publicly owned property, with special attention to air rights and to public bids (section 125); (5) exemptions from taxation (section 183). (For the text of Mr. Mattox's remarks, see Public Views Document No. 90; for the original League recommendations, see Document No. 38.)

Charles W. Perdue and A. C. Epps (Virginia Education Association). The Association had six recommendations: (1) make public schools a joint state-local responsibility (section 129); (2) have Superintendent of Public Instruction elected by the State Board of Education (section 131); (3) place more emphasis on local effort (section 136); (4) require compulsory education for children of school age (section 138); (5) revise school age formula to make ages 6-20 rather than 7-20 (section 135); (6) draft amendments to make possible effective consolidation of school districts, with special attention to the recommendations of the study commission now working on this problem. (For the text of the VEA statement, see Public Views Document No. 91.)

Nicholas A. Spinella (member, School Board, Catholic Diocese of Richmond). Mr. Spinella spoke for amendment of sections 139 and 141 to allow state aid to children in sectarian schools. (For text of Mr. Spinella's remarks, see Public Views Document No. 92.)

Sarah H. Holzgrefe (President, Federation of Catholic PTAs). Mrs. Holzgrefe also sought amendment of sections 139 and 141. (See Public Views Document No. 93.)

Joseph B. Benedetti (Richmond Diocesan Council of Catholic Men). Mr. Benedetti spoke for revision of sections 139 and 141. (See Public Views Document No. 94.)

Roland D. Ealey (Richmond attorney; speaking for Elks). Mr. Ealey asked for (1) popular election of judges of courts of record and courts not of record; (2) lowering the voting age to 18. Mr. Ealey said he would submit a written statement at a later date.

Fred Shorter (Virginia Commonwealth University Republicans). Mr. Shorter gave arguments for lowering the voting age to 18. He also submitted a proposed draft for Article II of the Constitution. (For text of Mr. Shorter's statement, including the draft article, see Public Views Document No. 95.)

Robert L. Lynch (Richmond). Mr. Lynch spoke on three subjects: (1) bonded indebtedness; (2) capitation tax; (3) taxation of farmland. (See Public Views Document No. 96.)

John B. Boatwright (Virginia Railway Association). The Virginia Railway Association had already submitted a written statement to the Commission on the subject of taxation of utility property. (See Public Views Document No. 45.) Mr. Boatwright indicated that a further statement would be submitted at a later date.

Mrs. Ruth L. Harvey (Old Dominion Bar Association). Mrs. Harvey presented the following proposals of the Old Dominion Bar Association: (1) give vote to 18-year-olds: (2) reduce period of residence for voting; (3) provide simplified registration procedures; (4) delete references to poll tax; (5) prefer single-member districts to multi-member districts; (6) apply one-man-one-vote to local governments; (7) make Commonwealth responsible for the wrongs of its officers and agents; (8) mandate a civil service system; (9) reduce terms of clerks of court to four years; (10) outline duties of sheriffs and sergeants; (11) create intermediate appellate courts; (12) ban death penalty; (13) limit judges' powers of appointment; (14) delete section 140; (15) eliminate authority for tuition grants (section 141); (16) provide for popular election of school boards; (17) delete limits on power of State and localities to borrow money (sections 127 and 184-a). (For the text of the Old Dominion Bar Association's proposals, see Public Views Document No. 97.)

William F. Quillian, Thomas C. Boushall, John A. Logan, and Harry Frazier, III (all appearing for the Association of Independent Colleges in Virginia). These representatives of independent colleges in Virginia urged constitutional amendments which would make possible the following objectives: (1) to permit the General Assembly to create an authority to assist in the borrowing of money to be used for construction purposes at private colleges in Virginia, with certain exceptions; (2) to permit state scholarships to be given to students attending private institutions, including church-related institutions, except students pursuing religious vocational programs; (3) to permit the State and its agencies to contract for services to be provided by private colleges. To these ends, the Association proposed repeal of section 141 and amendment of section 67. The Association has submitted several documents to the Commission, including a resolution of the Virginia Foundation of Independent Colleges (Public Views Document No. 98), a policy statement by the Association of Independent Colleges (No. 99), and a legal memorandum by the Association's counsel, Mr. Frazier (No. 100).

Carl F. Bowmer (Home Builders Association of Virginia). Mr. Bowmer invited the Commission's attention to the Association's written statement of May 29 (Public Views Document No. 41) touching on (1) law and order, (2) limit on gubernatorial succession, (3) annual sessions, (4) voting age (keep at 21), and (5) intermediate courts. (For the text of Mr. Bowmer's statement at the hearing, see Public Views Document No. 101.)

W. F. Massey (Oak Grove, Virginia). Mr. Massey asked that ballots be available for public inspection after an election. (See Public Views Document No. 102.)

J B. Blackford (Richmond). Mr. Blackford called for confining the influence of lawyers in Virginia's public affairs. He also recommended the calling of a convention to revise the Constitution.

Mercer Waite (County of Henrico). Recommendations of the County of Henrico included: (1) allowing real estate tax credit to retired people (sections 168, 169, 183); (2) deleting requirement that magisterial districts be at least 30 square miles (section 111); (3) allowing counties to assess abutting landowners for certain improvements (section 170); (4) allowing counties to exercise all powers exercised by cities, and allowing cities and counties to exercise all powers not prohibited by constitutions or laws; (5) modification of county-city separation. (See Public Views Document No. 103.)

The following two gentlemen reserved time at the hearing but, as it happened, simply submitted written statements without speaking.

Howard H. Gordon (Chairman, Commission of the Industry of Agriculture). Mr. Gordon's statement (Public Views Document No. 104) deals with assessment of farmland and timberland, advises of the study of the problem which the Commission of the Industry of Agriculture has contracted for, and asks the Commission on Constitutional Revision to consider the results of that study when they have been transmitted.

William E. Cooper (Executive Director, Virginia Forests, Inc.). Mr. Cooper's statement (Public Views Document No. 105) urges a system of taxation which will encourage timber as a crop.

ALEXANDRIA (July 18, 1968)

Charles R. Fenwick (Senator, Arlington). Senator Fenwick "strongly" recommended annual sessions of the General Assembly. He touched also on the length of sessions, subject matter, etc. (For the text of Senator Fenwick's statement, see CCR Public Views Document No. 106.)

Adelard L. Brault (Senator, Fairfax). Senator Brault made the following points: (1) provide for annual sessions of the Legislature; (2) allow the Governor to serve two successive terms; (3) provide for an intermediate appellate court; (4) adopt the Virginia State Bar Association's proposal for removal and discipline of judges; (5) delete requirement that a magisterial district must be at least 30 square miles; (6) amend sections 139 and 141 to allow aid to children in parochial schools; (7) increase size of State Board of Education; (8) have State Board of Education appoint the Superintendent of Public Instruction; (9) eliminate Article XII and have SCC functions exercised by agencies which are creatures of statute; (10) provide a "substantial" increase in permissible state debt, the specific figure to take into account how the electorate votes on the bond issue proposals in November; (11) allow conforming income taxes; (12) allow assessment of farmland on other than fair market value; (13) amend section 197 to allow calling of limited constitutional conventions and also to require that proposals of a convention be submitted to the people for action. (For the text of Senator Brault's statement, see Public Views Document No. 107.)

C. Harrison Mann, Jr. (Delegate, Arlington). Delegate Mann had already filed a written statement with the Commission (Public Views Document No. 43) and said that he would be filing a supplement on taxation. At the hearing Delegate Mann said he was "vigorously opposed" to changing the limit on the term of Governor. He spoke also on the State Corporation Commission, saying that the 1901-02 convention had created the SCC to protect the people from the utilities but that now the SCC had as its primary purpose to protect the utilities from the people. Delegate Mann proposed that Commissioners have three-year terms and that their terms expire in rotation, thus bringing one member up for reelection each year.

Vincent F. Callahan, Jr. (Delegate, Fairfax). Delegate Callahan made the following recommendations: (1) lower the voting age to 20 (section 18); (2) outlaw capital punishment (section 9); (3) have annual sessions of the Legislature (section 46);

(4) allow annual borrowing equal to ½ of 1% of assessed value of realty, up to limit of 18% (section 184a); (5) have constitutional mandate of compulsory education (section 138); (6) require single-member districts in the Legislature (section 43); (7) decrease residency requirements for voting (section 18); (8) allow the Governor to run for a second term (section 69); (9) require Assembly to be apportioned on basis of one man, one vote (section 43); (10) provide for referendum and recall; (11) delete obsolete or unconstitutional sections: segregated schools (140), poll tax (18, 20, 21, 22), dueling (23). (For the text of Delegate Callahan's statement, see Public Views Document No. 108.)

Stanley A. Owens (Delegate, Manassas). Delegate Owens spoke on the problem of how to allow chaplains at state institutions in the face of (1) section 67 of the Virginia Constitution; (2) the Federal Constitution and cases. (For the text of Delegate Owens' statement, see Public Views Document No. 109.)

Mary Marshall (Delegate, Arlington). Mrs. Marshall took the following positions: (1) provide for annual legislative sessions; (2) raise allowable state debt figure to 18%; (3) lower voting age to 18; (4) lower the residence requirement for voting in presidential elections; (5) eliminate any property requirement for voting. Mrs. Marshall submitted to the Commission a short research memorandum by Margaret Bryant on suffrage, especially the voting age. (See Public Views Document No. 110.)

Omer L. Hirst (Senator, Fairfax). Senator Hirst made the following recommendations: (1) provide for annual sessions of the General Assembly ("the most important contribution the Commission can make"); (2) extend length of sessions to 90 days, with power in Assembly to extend further; (3) allow borrowing up to 18% of assessed value of realty in State, without requiring referendum, for capital outlays; (4) amend section 185 to allow the creation of an authority to finance industrial development; (5) have the State Board of Elections canvass votes for Governor, etc.; (6) delete references to poll tax and segregated schools; (7) provide for constitutional initiative so that people may by petition put a question on the ballot; (8) propose that Assembly create a small, continuing, advisory Commission on Constitutional Revision. (For the text of Senator Hirst's statement, see Public Views Document No. 111.)

Charles E. Beatley, Jr. (Mayor of Alexandria). Mayor Beatley proposed (1) allowing local income taxes; (2) allowing cities to choose their own form of fiscal organization by allowing them to abolish officers such as Commissioner of the Revenue; (3) allow tax relief for elderly people. Mayor Beatley submitted copies of a Wisconsin Statute to which he referred in his remarks. (See Public Views Document No. 112.)

Bert W. Johnson (County Manager, Arlington). Mr. Johnson urged the Commission, before making its final report, to take into account two forthcoming documents: (1) a report of a blue ribbon citizens committee to be appointed by the Arlington County Board, (2) recommendations to be made by the Virginia Municipal League at its September meeting. (For the text of Mr.. Johnson's statement, see Public Views Document No. 113.)

George C. Rawlings, Jr. (Delegate, Fredericksburg). Delegate Rawlings spoke on behalf of the following: (1) eliminate authority to use property qualification for voting (section 30); (2) eliminate capitation tax (sections 135, 173); (3) apply principle of one man, one vote to legislative districts (sections 43, 55); (4) provide for annual sessions, every other year's session being a 30-day session largely for fiscal or local legislation (section 46); (5) allow increases in executive officers' salaries during their terms of office (sections 72, 83); (6) eliminate 30-square-mile requirement for magisterial districts (section 111); (7) provide for free textbooks for all children (section 139); (8) delete provision for segregated schools (section 140); (9) amend section 156(j) to delete provision for amendment on recommendation by

State Corporation Commission; (10) allow state debt up to 18% of assessed value of realty (section 184a); (11) allow limited convention, and require that action of a convention be ratified by the people; (12) allow 18-year-olds to vote; (13) strengthen mandate upon General Assembly to support efficient system of free public schools. (For the text of Delegate Rawlings' statement, see Public Views Document No. 114.)

Karl Schmeidler (Virginia Association for Retarded Children). Mr. Schmeidler made recommendations somewhat along the lines of those made by Mr. Traweek in Richmond. Mr. Schmeidler proposed the following: (1) amend section 23 to refer to "mental incompetence"; (2) provide for annual sessions (section 46); (3) continue to allow consolidations of counties and cities, as well as services (section 110); (4) mandate efficient system of free public schools (section 129); (5) continue state authority over running of schools (section 132); (6) mandate compulsory education (section 138); (7) rewrite section 147 (institutions); (8) allow General Assembly to decide what ceiling there should be on state debt (section 184a); (9) study prohibition against State's lending credit to counties, cities, and towns. (For the text of Mr. Schmeidler's statement, see Public Views Document No. 115.)

Karl O. Spiess, Sr. (Homeowners Federation of Arlington). Mr. Spiess attacked the concept of "creative federalism" and mentioned a number of specific proposals including annual sessions, requirement of referenda for bonds, no taxes upon taxes, monopolies and trusts, tax relief for the elderly, retaining present voting age, right to bear arms, freeholder vote on local bond issues, right of privacy, keeping present limits on debt, and opposition to the recommendations of the Hahn Commission. (For the text of Mr. Spiess' statement, see Public Views Document No. 116.)

Louis M. Teitelbaum (Alexandria City Democratic Committee). Mr. Teitelbaum asked relief from the difficult fiscal situation in which cities find themselves. Specifically he proposed that local governments be allowed to levy an income tax. (For the text of Mr. Teitelbaum's statement, see Public Views Document No. 117.)

E. A. Prichard (former mayor of Fairfax City). Mr. Prichard submitted the following: (1) counties and cities should have like power to incur debt; (2) limit on local debt should be stated in terms of the total revenue base of localities (since realty is not assessed at 100%, the 18% figure is unrealistic); (3) a city, like a county, should be allowed to do away with the offices of Treasurer and Commissioner of Revenue; (4) counties should be allowed charters; alternatively, write a general law covering cities' powers; (5) allow assessments on abutting property owners for curbs and sewers; (6) require single-member districts in the Legislature.

Lee M. Rhoads (Chairman, Northern Virginia Transportation Commission). Mr. Rhoads spoke on the need to revise sections 184a, 185, and 127 to facilitate state and local assistance to transit authorities. (For the text of Mr. Rhoads' statement, see Public Views Document No. 118. Together with the statement is a copy of the 1967 annual report of the Northern Virginia Transportation Commission, also submitted by Mr. Rhoads.)

John R. Bird (Great Falls Citizens Association). Noting the need for retaining agricultural and open space land in built-in areas, Mr. Bird recommended that it be made possible to tax agricultural land on the basis of use, rather than fair market value.

Manning Gasch (Fairfax County). Mr. Gasch asked tax relief for agricultural, timber, and other open space land. Limiting such relief to agricultural land, he thought, was too limited a plan. Mr. Gasch noted that he had earlier turned over relevant materials to the Commission. (For the text of Mr. Gasch's statement at the public hearing, see Public Views Document No. 119.)

David B. Kinney (Democratic candidate for Congress, 10th District). Mr. Kinney asked that the voting age be lowered to 18.

PUBLIC HEARINGS

Augustus C. Johnson (Fairfax County). Mr. Johnson called for an end to the appointing powers of circuit court judges. Among other specifics, Mr. Johnson called for election of school boards and electoral boards by local governing bodies. (For the text of Mr. Johnson's statement, see Public Views Document No. 120.)

George R. Walker (Editor, Times, Portsmouth). Mr. Walker, in his general remarks, attacked the composition of the Commission, its right to propose a revision of the Constitution, the lack of publicity given to its hearings, and the appearance of legislators at the public hearings. On specific constitutional items, Mr. Walker touched on (1) majority rule (section 3); (2) write-in ballots (section 28); (3) electoral boards (section 31); (4) emergency legislation (section 50); (5) public meetings of legislative bodies (new section); (6) removal of Governor and other officials for disability (new section); (7) city councils (section 121); (8) ordinances (section 123); (9) local debt (section 127); (10) school districts (section 133); (11) rewriting of Article XII; (12) uniform taxes (section 168); (13) assessments (section 169); (14) sewers and water lines (section 170); (15) state debt (section 184-a); (16) lending credit (section 185); (17) amendments (sections 196, 197). (For the text of Mr. Walker's statement, see Public Views Document No. 121.)

Thomas B. Wright (Board of Supervisors, Fairfax County). Mr. Wright recommended amendment of sections 168 and 169 to allow greater flexibility in property tax, so that the General Assembly might treat classes of persons (e.g., retired people) as well as their property differently and so that property might be taxed on other than fair market value. (For the text of Mr. Wright's statement, see Public Views Document No. 122.)

Joseph G. Muenzer, Jr. (President, Fairfax County Taxpayers Alliance.) Mr. Muenzer reported the Alliance's belief that if major changes are needed in the Constitution a convention should be called under section 197. (For the text of Mr. Muenzer's statement, see Public Views Document No. 123.)

Mrs. Barbara Klingensmith (Fairfax County Federation of Citizens Associations). The Federation believes that (1) amendments should be submitted to the people singly or in groups, and not in a package; (2) propose only those amendments necessary to assure state and local power to deal with modern problems. (For the text of the Association's resolutions, see Public Views Document No. 124.)

Herbert Miller (Georgetown University Law School). Mr. Miller called for restricting the appointing powers of circuit court judges. (For the text of Mr. Miller's statement, see Public Views Document No. 125.)

Miss Cornelia B. Rose (Arlington County Democratic Committee). The Committee had earlier submitted a written statement to the Commission (Public Views Document No. 72). Miss Rose invited the Commission's attention to that statement. In general, the Committee seeks a document outlining basic principles and omitting limitations which inhibit effective government. On specific points: (1) lower voting age to 18 (section 18); (2) reduce residence requirements (section 18); (3) have minimum exclusions from voting (section 23); (4) allow voting by those on federal enclaves in Virginia (section 24); (5) prohibit property qualifications for voting (section 30); (6) have electoral boards elected by local governing bodies (section 31); (7) limit judges to judicial duties (section 39); (8) apply one man, one vote to legislative districts (sections 43, 55); (9) limit multi-member districts; (10) create a commission for reapportioning the Legislature; (11) provide annual sessions, length to be set by the Assembly (section 46); (12) allow Governor two successive terms (section 69); (13) write a simple judicial article (Article VI); (14) eliminate legislative selection of judges; (15) give broad powers to localities (Articles VII and VIII); (16) provide for creation of regional governments; (17) repeal Article IX, except section 129; (18) have wider mandate for Legislature's promotion of culture, etc.; (19) delete Article X; (20) emphasize rehabilitation in section 147;

(21) make functions of State Corporation Commission subject to legislative control (Article XII); (22) end capitation tax (section 173); (23) end limit on state debt (sections 184, 184-a); (24) amend homestead article (Article XIV); (25) require that actions of a constitutional convention be submitted to the people for ratification.

Bernard S. Cohen (Alexandria City Democratic Committee). Mr. Cohen presented the Committee's recommendations, as follows: (1) eliminate the statutory detail from the Constitution; (2) include an anti-discrimination clause in the Bill of Rights; (3) clarify religious guarantees (section 16); (4) lower voting age to 18; (5) allow Assembly to reduce residence requirements; (6) delete references to poll tax; (7) leave ballot questions to Assembly (section 28); (8) delete authorization for property prerequisite to voting (section 30); (9) apply one man, one vote to General Assembly (section 43); (10) require single-member districts; (11) create a reapportionment commission; (12) provide for annual sessions of Assembly, length to be set by that body (section 46); (13) allow Governor to succeed himself (section 73); (14) delete section 86 (Bureau of Labor and Statistics); (15) have judges appointed by a Judicial Council (Article VI); (16) permit Assembly to create intermediate appellate courts; (17) have Governor designate Chief Justice; (18) several other judicial suggestions; (19) give local governments broader powers; (20) allow local income tax; (21) allow cities to reorganize fiscal offices; (22) delete Article IX, except section 129; (23) delete Article X (agriculture); (24) delete Article XI (institutions); (25) have Governor appoint SCC Commissioners, subject to Assembly approval (section 155); (26) delete section 156; (27) provide SCC imposition of fees subject to laws enacted by Assembly; (28) liberalize state borrowing power; (29) increase borrowing power of cities and towns; (30) allow local income taxes; (31) allow state income taxes to conform to federal taxes; (32) amend homestead article (Article XIV); (33) require that proposals of constitutional conventions be submitted to the people. (For the text of the Committee's recommendations, see Public Views Document No. 126.)

Thomas C. Lawler (President, Federation of Catholic Parent-Teacher Organizations of Northern Virginia). Mr. Lawler called for amendment of sections 139 and 141 to allow state aid to children in parochial schools. (See Public Views Document No. 127.)

David N. Webster (member of school board, St. Mary's Parochial School, Alexandria). Mr. Webster likewise asked amendment of section 141. (See Public Views Document No. 128.)

Richard L. Haley (President, St. Mary's Home and School Association, Alexandria). Mr. Haley agreed with Messrs. Lawler and Webster in asking that state aid to parochial school children be permitted. (See Public Views Document No. 129.)

Richard P. Thomsen (former headmaster, Episcopal High School; Washington representative, National Association of Independent Schools). Mr. Thomsen asked amendment of section 141 to allow the General Assembly to aid private schools if it wishes. (See Public Views Document No. 130.)

William L. Higgins (Arlington). Mr. Higgins, asking amendment of section 141, said the Constitution ought to be neutral on aid to parochial school children.

James A. S. Roy (McLean Chapter, National Association of Retired Civil Employees). Mr. Roy asked for tax relief for residences of retired people and submitted a resolution adopted by the chapter (Public Views Document No. 131).

Mrs. Vera Parsells (McLean). Mrs. Parsells also asked tax relief for retired people.

John I. Hardy (McLean). Mr. Hardy supported Mr. Roy and Mrs. Parsells.

Arthur T. Wright (conservation consultant, Alexandria). Mr. Wright asked the Commission to include in its proposals a conservation bill of rights. He indicated that he would, at a later date, submit specific language. (For the text of Mr. Wright's statement, see Public Views Document No. 132; see also Document No. 211.)

Mrs. Betty Hallman (Arlington). Mrs. Hallman proposed: (1) repudiation of the 17th Amendment to the U.S. Constitution; (2) restriction of the U.S. Government to constitutional activities; (3) repeal of the 16th Amendment to the U.S. Constitution; (4) repudiation of illegal treaties and laws; (5) outlawing of voting machines in Virginia; (6) repudiation of illegal U.S. Supreme Court rulings. (For the text of Mrs. Hallman's statement, see Public Views Document No. 133.)

Robert L. Montague, III (attorney, Alexandria) Mr. Montague suggested that the Commission consider an expanded law enforcement role for the Attorney General, something which might be accomplished by statute.

Charles C. Quick (Springfield Chapter, National Association of Retired Civil Employees). Mr. Quick asked tax relief for retired persons. (See Public Views Document No. 134.)

James B. Cash (Alexandria Chapter, NARCE). Also for tax relief for retired persons.

Jacqueline Arps (Alexandria). Mrs. Arps, who nad reserved time, did not speak but did submit a written statement including the following points: (1) a limit on the number of people who can occupy a residence; (2) more planning and development in rural areas; (3) making it an offense to register under a false name at a hotel or motel; (4) taxes on petroleum products; (5) referendum on large local appropriations; (6) localities' borrowing from the State. (For text of Mrs. Arps' statement, see Public Views Document No. 135.)

APPENDIX C

RESEARCH ASSOCIATES

Much of the Commission's in-depth research was done in the summer of 1968. Individuals who worked as research associates all or a substantial part of the summer were:

Judith A. Arlt
Laurence D. Beck
Nancy L. Buc
William G. Christopher
John T. DeFazio
Richard W. Garnett, III
Stephen A. Herman
Richard W. Hogan
Carroll S. Klingelhofer
Patrick M. McSweeney
Gail S. Marshall
Nancy A. Mattox
Kent B. Millikan
*Micaela L. Regan
Jeffrey R. Reider
W. Taylor Reveley, III
William M. Schildt
Robert M. Stein
Daniel A. Winterbottom, Jr.

In addition, other individuals did ad hoc research, mostly during the spring or fall of 1968. Those who did research for the Commission on this basis were:

Richard J. Bonnie
Peter M. Brown
Joel Deboe
William C. Fields
Leslie A. Grandis
Thomas G. Johnson, Jr.
Carroll L. Wagner, Jr.
David S. Walker
William C. Wooldridge

*Miss Regan worked for the Commission as a research associate from June through December 1968.

APPENDIX D

RESEARCH MEMORANDA*

Article I, Bill of Rights

1 "Bill of Rights: Abolition of Capital Punishment," 2 pp.
2 "Bill of Rights: Proposed Section 12—Jury Trial," 5 pp.
3 "Irrational Classification," 63 pp.
4 "Political Rights: Freedom of Speech, Press and Assembly, §§ 12, 58," 13 pp.

Article II, Franchise

5 "Franchise: Registration Oaths," 6 pp.
6 "Impact of Federal Reconstruction Statutes on Amendment of the Virginia Constitution, §§ 20, 24," 1 p.
7 "Suffrage: Disqualification for Dueling, §§ 23, 32, 57," 9 pp.
8 "Suffrage: Literacy Tests, § 20, 24-68," 23 pp.
9 "Suffrage: Minimum Age, § 18," 12 pp.
10 "Suffrage: Registration [Art. XVII, §§ 1-3]" 10 pp.
11 "Suffrage: Residence Requirements, §§ 18, 24," 117 pp.

Article III, Division of Powers

12 "Administrative Tribunals: Their Judicial Powers," 8 pp.

Article IV, Legislature

13 "Annual Sessions, § 46," 6 pp.
14 "Annual Sessions: § 46 Time Limits on Regular Legislative Sessions," 17 pp.
15 "Appropriations to Nonsectarian Institutions for the Reform of Youthful Criminals, § 67," 1 p.
16 "Civil Office of Profit, Office of Public Trust, and Similar Phrases in the Virginia Constitution, §§ 55, 105," 17 pp.
17 "Comparative Study of State Constitutional Limitations on Appropriations to Schools and Charities, §§ 67, 141," 25 pp.
18 "Frequency and Length of Legislative Sessions: An Initial Inquiry," 8 pp.
19 "The Journal of the General Assembly, §§ 49, 50d, 27," 11 pp.

*The Commission's research memoranda, together with other pertinent documents, will be available to the General Assembly at any session called to consider the Commission's report. Articles and sections referred to in the titles of the memorandums are those of the present Constitution.

20 "The Legislative Article: Description of the Extent of the General Assembly's Power, § 63," 4 pp.

21 "Limitations on Legislative Power: Local Legislation, §§ 63, 64, 117," 10 pp.

22 "Limitations on Legislative Power: Special ('Private') Legislation, §§ 63, 64, 117," 6 pp.

23 "Officeholding by Members of the Virginia General Assembly, §§ 44-45," 11 pp.

24 "Requirement that Law Embrace One Object, § 52," 9 pp.

Article V, Executive and State Administration

25 "The Appointment, Term of Office, Removal and Vacancy Provisions for State Officers in the Executive Branch of Virginia Government," 80 pp.

26 "Bureau of Labor and Statistics, § 86," 2 pp.

27 "The Checks and Balances Provision of § 84," 2 pp.

28 "Civil Service System," 4 pp.

29 "Creation of a Reorganization Commission," 4 pp.

30 "Elimination of Various Executive Officers From the Constitution, §§ 80, 81, 86," 6 pp.

31 "Executive Budget System, § 73," 5 pp.

32 "Executive Clemency, § 73," 9 pp.

33 "Executive Compensation, §§ 72, 83," 7 pp.

34 "Executive Initiation of Administrative Reorganization," 20 pp.

35 "Executive Pro Tempore Appointments to Fill Vacancies in Public Offices, § 73," 8 pp.

36 "Governor: Commander-in-Chief, § 73," 6 pp.

37 "The Governor's Power to Conduct the State's External Affairs, § 73," 5 pp.

38 "Gubernatorial Authority to Enforce Laws, § 73," 15 pp.

39 "Gubernatorial Power of Removal, § 73," 38 pp.

40 "Gubernatorial Tenure, § 69," 8 pp.

41 "Impeachment of Public Officers, § 54," 12 pp.

42 "Legislative Confirmation of Gubernatorial Appointments, § 86-a," 7 pp.

43 "Meaning of 'Executive Officers,' §§ 54, 69-86-a," 6 pp.

44 "Method of Selecting Governor, Lieutenant Governor and Attorney General," 15 pp.

45 "Order of Succession to the Office of Governor, § 78," 6 pp.
46 "Residence and Citizenship Requirements of Governor, § 71," 8 pp.
47 "Sources of the Governor's Power, §§ 69, 73, 74, 76," 7 pp.
48 "Succession to the Office of Governor, § 78," 26 pp.
49 "Veto Power, § 76," 24 pp.

Article VI, Judicial

50 "Constitutional Debates—1901-02, Index to the Judiciary," 2 pp.
51 "Disbarment Proceedings," 3 pp.
52 "Enforcement of the Canons of Judicial Ethics," 8 pp.
53 "The Exclusiveness of the Impeachment Power," 2 pp.
54 "Impeachment and Removal for Cause," 6 pp.
55 "Informal Memo on Rule-Making Power of Court," 6 pp.
56 "Involuntary Retirement of Judges," 2 pp.
57 "Judicial Article: Provision on Judicial Administration," 9 pp.
58 "Judicial Discipline and Removal: Proposals," 23 pp.
59 "Ouster," 2 pp.
60 "The Phrase: 'Inferior to the Supreme Court of Appeals' Legal Aspects," 5 pp.
61 "The Phrase: 'Inferior to the Supreme Court of Appeals' Psychological Aspects," 2 pp.
62 "Referring in the Constitution to Courts and Judges of Courts Not Yet Created," 5 pp.
63 "The Relationship Between Proposal Sections Six and Seven: Selection and Qualification of Judges and Additional Judicial Personnel," 4 pp.
64 "Removal of Jurisdiction: The Story of Federal Judge Stephen S. Chandler," 2 pp.

Article VII, Local Government

65 "Alternative Approaches to Metropolitan Government," 5 pp.
66 "Annexation of Territory of Charter Counties, § 26," 2 pp.
67 "Commission on Local Government: Advisability of Constitutional Sanction," 38 pp.
68 "Commission on Local Government: Comparative Study of Agencies and Proposals in Other States," 33 pp.
69 "Debt of Local Authorities: Final Summary," 4 pp.
70 "Effect of the Constitutional Amendment Giving Cities and Charter

Counties All Powers Not Expressly Denied Them on the Existing Provisions of the Virginia Code," 9 pp.

71 "History of Articles VII and VIII," 49 pp.

72 "Home Rule Statute Law," 12 pp.

73 "Joint Financing," 13 pp.

74 "Liability of Counties for Acts of Sheriff, § 114," 4 pp.

75 "Limitations Which State Constitutions Place on a City, Town or County's Exercise of Its 'Home-Rule' Powers," 6 pp.

76 "Local Authorities," 19 pp.

77 "Local Governmental Matching of Federal Funds," 6 pp.

78 "Local Governmental Revenue," 3 pp.

79 "Local Legislation and Local Autonomy," 50 pp.

80 "Optimum Size for Unit of Local Government," 9 pp.

81 "Revenue Sources of Local Government in Detail: 1962," 14 pp.

82 "The Service District," 12 pp.

83 "Statutes Conferring General Powers on Localities," 8 pp.

84 "Whether a City, Town or County Should Be Free to Lease 'Air-Rights' for Longer Than 30 Years, § 125," 6 pp.

85 "Whether Counties Should Be Subject to the Limitations Contained in § 125," 8 pp.

86 "Whether Dillon's Rule Applies to Towns as Well as Cities," 1 p.

87 "Whether the Word 'Office' in § 121 para. 2 Has Been Given 'Special' Meaning in Opinions by the Attorney General or the Supreme Court of Appeals," 4 pp.

88 "Whether Va. Code Ann. §§ 15.1-510, 15.1-839 and 15.1-522 Confer on Counties and Towns All Authority Not Denied Them in the Constitution and by More Specific Statutes," 8 pp.

Article VIII, Education

89 "Education—Interim Memorandum," 10 pp.

90 "Information of the Public School Authority," 1 p.

91 "The Literary Fund, § 134," 6 pp.

92 "The Literary Fund, § 134," 31 pp.

93 "Provisions from State Constitutions Establishing Boards of Education and Superintendents of Public Instruction," 9 pp.

94 "The Public School Authority," 7 pp.

95 "Right to Education, §§ 129-132," 39 pp.

96 "The School Fund, § 132," 2 pp.

97 "State Aid to Private Schools—Section 141," 23 pp.
98 "State Aid to Private Schools—N.Y.'s Blaine Amendment," 10 pp.
99 "Virginia Supplemental Retirement System," 2 pp.

Article IX, Corporations

100 "Corporations and the State Corporation Commission," 15 pp.
101 "Article XV, § 153, Definitions of Terms," 10 pp.
102 "Article XII, § 154, Should the Provision for Extension and Amendment of Corporate Charters by General Law Be Retained?" 10 pp.
103 "Article XII, § 155, Should SCC Be Retained Specifically as a Constitutional Body?" 36 pp.
104 "Article XII, § 156, Sectional Analysis," 38 pp.
105 "Corporation Fees, Should Section 157 Be Deleted?" 2 pp.
106 "Article XII, § 158, Should It Be Retained?" 3 pp.
107 "Article XII, § 159, Should § 159 Be Deleted?" 4 pp.
108 "Article XII, § 160, Long and Short Haul Rates," 1 p.
109 "Article XII, § 161, Free Transportation for General Assembly," 2 pp.
110 "Article XII, § 162, Fellow-Servant Doctrine," 4 pp.
111 "Article XII, § 163, Foreign Corporations," 6 pp.
112 "Article XII, § 164, Right to Regulate and Control Common Carriers and Public Service Corporations," 3 pp.
113 "Article XII, § 165, Trusts and Monopolies," 2 pp.
114 "Article XII, § 166, Railroads," 4 pp.
115 "Article XII, § 167, Issuance of Stocks and Bonds by Corporations," 2 pp.
116 "Separation of Powers and the SCC," 15 pp.

Article X, Taxation

117 "Assessment of Public Service Companies by the State Corporation Commission, § 169," 15 pp.
118 "Assessment of Real and Tangible Personal Property at Fair Market Value, § 169," 39 pp.
119 "Capitation Tax, § 173," 17 pp.
120 "Coal and Mineral Lands, § 172," 10 pp.
121 "Collection and Disposition of State Revenue," 17 pp.
122 "Debt in Anticipation of Collection of Revenue, § 184," 22 pp.
123 "Exemption of Officers' Salaries, § 183-a," 6 pp.
124 "Exemptions, § 169," 12 pp.

125 "First Two Sentences of Section 170," 36 pp.
126 "Internal Improvements and Industrial Development, § 185," 121 pp.
127 "Limit of Tax or Revenue, § 183," 6 pp.
128 "Local Tax Exemption for Manufacturers, § 189," 4 pp.
129 "Localities' Revenue from Taxation of Public Utility Property," 6 pp.
130 "Property Tax Exemption, § 168," 29 pp.
131 "The Proposed Deletion of the Last Two Sentences of § 170," 32 pp.
132 "Section 171, Segregation of Real Estate and Tangible Personal Property for Local Taxation," 18 pp.
133 "State Debt Limit, § 184," 156 pp.
134 "Statute of Limitations, § 174," 8 pp.
135 "Surrender of Power to Tax Corporations, § 64," 9 pp.
136 "Taxation of Railroads and Canal Companies, §§ 176-181," 12 pp.

Article XII, Future Changes

137 "Article XV, Section 196, Possible Addition of Initiative to Amending Process," 2 pp.
138 "Deletion of Articles XIV and XVI," 3 pp.

General

139 "Are Headnotes Part of the Constitution," 2 pp.
140 "The Form of the Ballot for Submitting a Revised Constitution to the People," 104 pp.

APPENDIX E

SELECTED BIBLIOGRAPHY

There is a growing literature on state constitutions, their contents, and their revision. What appears here is a highly selective bibliography, representing only a small part of the writing in the field. For what is, despite its name, a far more comprehensive bibliography, see Balfour J. Halévy, *A Selective Bibliography on State Constitutional Revision* (National Municipal League; 2d ed.; New York, 1967).

The bibliography which follows is for information only. The inclusion of a work in this bibliography does not necessarily imply approval of its contents by the Commission on Constitutional Revision.

In addition to the works listed here, sources on more specific subjects, e.g., annual sessions, voting age, etc., may be found in the footnotes to the appropriate article and section commentaries. The list which follows is broken down only into major categories, not into specific issues.

The categories listed in this bibliography are as follows:

1. General Works.
2. Virginia.
   a. General.
   b. 1776-1860.
   c. 1865-1900.
   d. 1901-02.
   e. Since 1902.
3. Recent Experience of Other States.
   a. Arkansas.
   b. California.
   c. Kentucky.
   d. Maryland.
   e. Michigan.
   f. New York.
   g. Pennsylvania.
4. Amendments and Conventions.
5. Bill of Rights.
6. Corporations.
7. Executive and State Administration.
   a. Virginia.
   b. General.

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