



# AN ANALYSIS

of the

# PROPOSED CONSTITUTION

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## THE EXECUTIVE BRANCH

The executive article of the proposed constitution represents a major revision of the present constitution in this area. At present, the governor cannot exercise unified direction of all the departments and agencies in the executive branch because of constitutional and statutory obstacles. In this analysis of provisions on the executive branch, emphasis will be given to their effect on the governor's role as head of the executive branch.

### Summary of Major Changes

1. The term for governor and other elective executive officers is extended from two to four years.
2. The number of elective executive officers is reduced from eight to four.
3. The powers of the governor are increased.
  - a) The governor's capacity to supervise the executive branch would be increased by a requirement that executive agencies be consolidated into not more than 20 major departments.
  - b) The governor is granted authority to keep the executive branch organized efficiently.
  - c) The governor would have increased power to appoint, remove and supervise department heads.
  - d) The governor would be given authority for an executive budget and for control of expenditures.
4. New provision is made for temporary succession to the governorship.

### The Governor: Election and Term

The governor will be elected for a four-year term in November of non-Presidential even-

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numbered years—the first election for the four-year term will be in 1966. The lengthened term is intended to provide the governor with more time to develop executive policy and administrative efficiency and to give the electorate a better basis for judging the quality of the governor’s administration. Election of the governor in non-Presidential years is intended to separate state and national issues and to stimulate voter interest in such elections.

The age requirement of 30 years is retained for eligibility to the office of governor or lieutenant governor; four years as a registered elector replaces the present requirement of five years of United States citizenship and two years of state residence.

**Other Elective Officers.** The lieutenant governor will be nominated in party convention and elected jointly with the governor for the same term. The lieutenant governor will continue to be president of the senate. He will have the deciding vote (now prohibited) in case of equal division. The governor may “request” him to perform other duties but shall not delegate any power to him. The secretary of state and attorney general will be nominated in party convention and elected at the same election and for the same term as the governor and lieutenant governor.

Four presently elected state officers would become appointive: state treasurer by the governor; superintendent of public instruction and highway commissioner<sup>1</sup> by boards; and auditor general by the legislature.

### **The Governor: Executive and Administrative Powers**

The governor is vested with the “executive power” under the proposed constitution which is intended to be more extensive than the “chief executive power” with which he is presently vested.

#### **Executive Organization**

The present constitution provides no framework for organization of the executive branch beyond the designation of several elective executive officers and of several elective and appointive boards and commissions. At present there are also scores of departments and agencies operating under statutory authority in the absence of any constitutional restriction on their number. Most of these departments and agencies are headed by boards and commissions rather than single directors.

**Mandatory Allocation Within Limit of 20 Departments.** An important new feature in the proposed constitution is the prescribed maximum of 20 principal departments, among and within which all executive and administrative agencies are required to be consolidated and grouped “as far as practicable according to major purposes.” The only exceptions to this requirement are the offices of governor and lieutenant governor, boards controlling state institutions of higher education, and temporary commissions or agencies in existence for two years or less. This prescribed maximum of 20 principal departments concerned with major functions is intended to increase the governor’s supervisory capacity in his area of responsibility. The present fragmentation of administrative functions among scores of departments and agencies severely hampers effec-

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<sup>1</sup> The state highway commissioner is presently elected under statutory authority.

tive supervision by the governor. The initial allocation or consolidation must be carried out by law within two years after the effective date of the proposed constitution or by the governor during the third year.

**Five of these principal departments** are designated in the proposed constitution: one headed by a state treasurer appointed by the governor; two headed by executive officers who remain elective—the secretary of state and the attorney general; one headed by an appointed four-member (bipartisan) highway commission; and one by an elective eight-member state board of education.<sup>2</sup> One or more of the other agencies having constitutional status such as the civil service commission, the liquor control commission, and the new civil rights commission could be made heads of principal departments by statute or be allocated within appropriate principal departments without thereby modifying their constitutional status.

**To promote continued efficient executive organization**, the governor would have continuing authority to alter the pattern of executive organization and the assignment of functions among the principal departments. Where such changes “require the force of law,” the governor would submit executive orders to the legislature to become effective at a time designated by the governor unless disapproved within 60 days by a majority of both houses of the legislature. However, the legislature would retain its power to enact statutes relating to executive organization.

### **The Governor’s Power of Appointment and Removal**

Four types of department heads are possible under the proposed constitution. Three types are required: (1) an appointive single executive; (2) an elective officer; (3) a board or commission having constitutional status; (4) a fourth type is permitted—a board or commission established by statute.

The head of each principal department is required to be a single executive unless otherwise provided by the constitution or law. Two of these single executives heading principal departments remain elective officers—secretary of state and attorney general. The governor’s power of appointment with respect to these offices is restricted to filling vacancies—with no senate confirmation required.

The state treasurer and other single executives heading principal departments must be appointed by the governor subject to senate confirmation. Senate confirmation—“by and with the advice and consent of the senate”—has been redefined to mean “appointment subject to disapproval by a majority vote” of those elected to and serving in the senate “within 60 session days” or the appointment “shall stand confirmed.”<sup>3</sup> These appointed single executive heads of principal departments “shall serve at the pleasure of the governor.”

When a board or commission is the head of a principal department, unless otherwise provided in the constitution, the members must be appointed by the governor subject to the new form of senate confirmation. The term of office and removal procedure for such members would be as prescribed by the constitution or by law. The term of office for

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<sup>2</sup> See Number 8 of this series.

any statutory board or commission “created or enlarged” under the proposed constitution would be a maximum of four years, however. This feature would increase the governor’s power to appoint members of such boards during his four-year term.

**Commissions Having Constitutional Status.** Under a new provision the governor would be required to appoint a state highway commission having four members (not more than two of the same political party) subject to the new form of senate confirmation for four-year staggered terms. This commission would appoint, and have power to remove, a state highway director who would be principal executive officer of the state highway department. Another new provision requires the governor to appoint a civil rights commission having eight members (not more than four of the same political party) subject to the new form of senate confirmation for four-year staggered terms.<sup>4</sup> The governor would continue to appoint the state civil service commission having four members (not more than two of the same political party) for eight-year staggered terms.<sup>5</sup> Senate confirmation is not required for such appointments.

**Investigation and Removal For Cause.** The governor’s power (and duty) to inquire into the “condition and administration of any public office and the acts of any public officer, elective or appointive” could be exercised at any time rather than only when the legislature is not in session as presently provided. The governor’s power to remove from office “any elective or appointive state officer, except legislative or judicial” for gross neglect of duty, corrupt conduct in office, or “any other misfeasance or malfeasance” could also be exercised at any time under the proposed constitution rather than only when the legislature is not in session as presently provided.<sup>6</sup>

### **The Governor’s Power of Supervision**

The governor would continue to be required to “take care that the laws be faithfully executed, “ and to “transact all necessary business” with government officers. His authority to “require information in writing from all executive and administrative state officers” with respect to the duties of their offices is also continued.

The governor is given new power to initiate court proceedings (except against the legislature) to enforce constitutional or statutory mandates or to restrain violations of such by any state officer, department or agency, or by any local government. Another new provision specifies that each principal department “shall be under the supervision of the governor unless otherwise provided by this constitution.”

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<sup>3</sup> Senate confirmation could take two forms—passing a resolution of approval or taking no action within 60 session days. This new definition is applicable to all constitutional and statutory requirements of senate confirmation.

<sup>4</sup> The powers and duties of this commission are discussed in Number 2 of this series.

<sup>5</sup> Changes with respect to the civil service commission are discussed in Number 11 of this series.

<sup>6</sup> The governor is given new power to suspend such officers for the same causes.

## Reprieves, Commutations and Pardons

Under the present constitution the governor has largely unrestricted power to grant reprieves, commutations and pardons while statutory regulations in this area may relate only “to the manner of applying for pardons.” In the proposed constitution, all of the governor’s power to grant reprieves, commutations and pardons is made “subject to procedures and regulations prescribed by law.”

## The Governor: Powers Relating to the Legislature

Under the proposed constitution the governor will continue to have authority to convene the legislature “on extraordinary occasions.” He may convene the legislature elsewhere than at the state capital when it becomes dangerous “from any cause” rather than only “from disease or a common enemy” as presently provided.

**Messages.** The requirement that the governor “communicate by message” to the legislature is continued but it is newly required “at the beginning of each session.” The part of the present provision requiring a message list the close of his official term” is omitted. The governor’s authority to “recommend measures” to the legislature is continued.

**Legislative Vacancies.** The requirement that the governor issue writs of election for vacancies in the legislature is continued. A new feature added to this provision requires that any such election be held “in a manner prescribed by law.”

**Veto of Bills.** The governor’s power to disapprove bills passed by the legislature is continued in a revised form and remains in the legislative article (Art. IV, Sec. 33). The governor will have more time in which to consider bills—fourteen days “measured in hours and minutes” whether or not the legislature is in session. At present, he has “ten days, Sundays excepted” if the legislature is in session and “five days, Sundays excepted” after adjournment for bills passed in the last five days of a session. The majority required to override a veto would be two-thirds of the members elected to and serving in each house, which continues the present requirement except for the “and serving” feature.

**Item Veto.** The governor’s power to veto items in appropriation bills is continued. The new time limit for vetoes and the minor change in the majority for repassage over the veto would also be applicable to item vetoes.

**Executive Budget.** The proposed constitution has a new provision which requires the governor to submit to the legislature a detailed budget setting forth proposed expenditures and estimated revenue for all state operating funds. Proposed expenditures cannot exceed the estimated revenue for each fund. The governor is required concurrently to submit general appropriation bills including the budget items to the legislature together with any necessary revenue bills to meet proposed expenditures. The governor is also authorized to submit amendments to appropriation bills to either house.

**Reduction of Authorized Expenditures.** A new provision provides a method by which authorized expenditures are to be reduced if it “appears” that actual revenues will fall below the estimates on which appropriations were based. The governor is to

reduce expenditures in accordance with procedures prescribed by law with the approval of the appropriation committees of both houses. No such reduction can apply to the legislative or judicial branches, or to funds constitutionally dedicated. Expenditure of appropriated funds is declared not to be mandatory.

### **The Governor: Succession and Residence**

The line of succession to the office of governor is altered to follow the revised list of elective executive officers—lieutenant governor, secretary of state and attorney general—beyond which others may be designated by law.

An important new feature provides a method of determining the “inability” of the governor whereby the next in line of succession would act as governor until the inability ceases. On joint request of the president pro tempore of the senate and the speaker of the house, a majority of the supreme court shall make a “final and conclusive” determination whether the governor or person acting as governor is suffering under an inability. On its own initiative, the supreme court shall determine “if and when the inability ceases.” This is intended to fill the constitutional gap relative to “temporary” succession common to the federal and most state constitutions.

**Executive Residence.** A new provision in the proposed constitution requires a suitably furnished residence to be provided for the governor at the state capital. An allowance for its maintenance shall be provided by law.