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THE PROPOSED CONSTITUTION FOR TEXAS

by

Elizabeth Levatino* and Steve Bickerstaff**

The present Texas Constitution was drafted by a constitutional convention in 1875, and adopted by the voters in 1876. Beginning in 1887, only eleven years after the adoption of the then "new" constitution, attempts to call a constitutional convention for substantial revision of the document have been undertaken unsuccessfully. Finally, however, the machinery for substantial revision of the constitution, approved by the voters in 1972 and continued through the action of the 64th Texas Legislature three years later, will culminate on November 4, 1975, when a revised constitution will be presented to the voters for the first time since 1876.

One reason given for the continual call for substantial revision has been the inflexibility of the present constitution. The lack of flexibility is reflected in the number of amendments which have been proposed and adopted. The adoption of no less than 220 amendments, over half of which have occurred in the past twenty-five years, leads one to the conclusion that the constitution has increasingly been a barrier to state and local government rather than a workable guideline for meeting the current needs of Texas citizens and demands on Texas government.

The constrictions caused by the constitution as reflected in the amendment process were demonstrated in a study conducted by Dr. Janice C. May for the Texas Advisory Commission on Intergovernmental Relations. It was shown that during the period from 1951 to 1972, ninety-eight of 145 amendments submitted to the voters have dealt with government finance. Sixty-eight of these concerned finance on the state level and thirty on the local level; seventy-two percent passed. Twenty-nine of the state level finance amendments have related to the thirteen constitutionally established funds.

The next largest category of amendments to the Texas Constitution is that of amendments amending earlier amendments. Eighty-five such proposals were submitted between 1951 and 1972, of which sixty-three passed. Sixty-four of these proposed amendments to amendments concerned finance.

A third category encompasses the forty-six amendments which were designed to overcome limitations on local government.

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2. See, e.g., Tex. Const. art. VII, §§ 2 (Perpetual School Fund), 11 (Permanent University Fund).
3. J. May, supra note 1, at 7.
4. Id. at 2. As Dr. May points out, the sheer number of amendments has created the need for more amendments; that is, "length breeds length." May, Constitutional Revision in Texas, in The Texas Constitution: Problems and Prospects for Revision 75 (1971).
5. J. May, supra note 1, at 2.
Looking briefly at the amendment process from another perspective, the five most amended constitutional articles are Article III, Legislative Department—sixty-seven proposed, forty-seven adopted; Article XVI, General Provisions—twenty-seven proposed, nineteen adopted; Article VIII, Taxation and Revenue—fifteen proposed, nine adopted; Article IX, Counties—thirteen proposed, twelve adopted; and Article VII, Education—ten proposed, nine adopted. The high number of amendments to the legislative article reflects another problem with the present constitution—that of organization. Article III contains provisions which relate not only to the legislature and legislative processes, but also to finance, to special districts and local government, and, until recently, to retirement systems. The undesirability of this piecemeal, band-aid treatment for the ills of the Texas Constitution was one of the major reasons for seeking the commencement of a comprehensive revision process. Such a process was authorized by the voters through the establishment of the Constitutional Revision Commission in 1973 and the convening of the Texas Legislature as a Constitutional Convention in 1974. The thirty-seven member Constitutional Revision Commission studied the present constitution and proposals for its revision for a nine-month period, held nineteen public hearings which were attended by over 4,000 Texas citizens, and finally presented its recommendations for a revised Texas Constitution to the Texas Legislature on November 3, 1973. On January 8, 1974, the 1974 Constitutional Convention, comprised of the state's 150 representatives and thirty-one senators, convened. On July 30, 1974, the Constitutional Convention dissolved, unable to agree on a proposed constitution for submission to the voters. On January 14, 1975, the 64th Legislature convened and by April 16, 1975, it had reconsidered the work of the Constitutional Revision Commission and the Constitutional Convention, and passed Senate Joint Resolution 11, thereby approving for presentation to the voters of Texas comprehensive proposals for revising the Texas Constitution, and giving the voters the option to accept or reject each proposal.

This Article will consider certain provisions contained in the proposed constitution, tracing their development through the Constitutional Revision Commission, the committee of the Constitutional Convention which considered the provisions, the Constitutional Convention itself, and finally, as approved by the 64th Legislature in the form in which they will be presented to the voters on November 4, 1975. Limitations of time and space prevent analysis of each section here, so the provisions discussed were chosen as those presenting significant, substantive alterations in the present constitution. However, it must be pointed out that no section was ignored by the groups involved in the revis-

6. Id. at 6.
7. TEX. CONST. art. III, §§ 49, 49a, 49-b, 49-c, 49-d, 49-d-1, 49-e, 50, 50a, 50b, 50b-1, 51, 51-a, 51-b, 51-c, 51-d, 65.
8. Id. §§ 48-d, 51g, 52, 52-b, 52d, 52e (adopted in 1967), 52e (adopted in 1968), 53, 55, 62, 63, 64.
9. Id. §§ 48a (1936), 48b (1965), 51-e (1944), 51-f (1944) (all of which were repealed on April 22, 1975).
sion process, even if the section ultimately remained the same. For example, in the legislative article, a unicameral rather than a bicameral legislature was considered but rejected by both the Constitutional Revision Commission and the Committee on the Legislature of the Constitutional Convention. Similarly, the processes for direct legislation by initiative and referendum were rejected by these same bodies as of little real value in the legislative process. The most space and discussion has been allocated to article VIII, for it will have a direct effect on virtually every citizen. Because this article is discussed in more detail than are the others, a slightly different format, stressing the impact of the provision, has been followed.

I. ARTICLE III—LEGISLATURE

A. Annual and Veto Sessions

Article III, section 7 of the proposed constitution provides that the legislature shall meet every year, with sessions in odd-numbered years not exceeding 140 consecutive days and sessions in even-numbered years not exceeding ninety days. The legislature may call itself into a “veto session” by petition of three-fifths of the membership of each house. This session would be solely to reconsider bills or resolutions for passage over a veto executed by the Governor within ten days of or after, the adjournment of the previous session. The present constitution provides in Article III, section 5 that the legislature meet every two years, and that only the Governor may convene a special session.

The Constitutional Revision Commission (CRC) recommended that the legislature be required to meet at least once every two years. In its deliberations, the CRC considered the present practice of a biennial session for 140 days duration. The members also considered a proposition providing for a 180-day session in odd-numbered years and a sixty-day session in even-numbered years. While it recognized that the present biennial session is insufficient, the CRC was of the opinion that any limitation on the length of the session would likely cause the traditional log-jam at the session’s end and

'(a) The legislature shall convene in regular session each year on a date prescribed by law. Sessions may not exceed 140 consecutive days in odd-numbered years and 90 consecutive days in even-numbered years.
'(f) The legislature by petition of three-fifths of the membership of each house may convene in veto session on the first Monday following the 50th day after adjournment solely to reconsider bills or resolutions for passage over a veto. Bills or resolutions that may be reconsidered are (1) bills, resolutions, or appropriation items that the governor vetoed within 10 days of adjournment and that the legislature did not reconsider before adjournment and (2) bills, resolutions, or appropriation items that, by virtue of action of the governor after adjournment, did not become law.
14. The precise wording of the CRC version states: “The Legislature shall meet at least once every two years and at such times and for such duration as provided by law.” CRC: Text 10,
hence would be insufficient for legislative needs. Believing that the legislature would meet for only the time needed, the CRC made its recommendation as a means to provide for the flexibility of annual sessions while avoiding the rush of last-minute bills inherent in a time limitation on sessions. The CRC pointed out that thirty-three states presently have annual sessions and of these half have no time limits.\(^{15}\)

The CRC was not unanimous in its recommendation for a very flexible legislative schedule. In a separate statement, a ten-member minority proposed that the annual sessions be limited to 180 days in odd-numbered years and sixty days in even-numbered years. The short session was to be limited to fiscal matters and matters submitted by the Governor and could be extended for thirty days by the Governor.\(^{16}\) These members suggested that the open-ended proposal would not guarantee elimination of the end-of-session rush. The majority's proposal would provide so much flexibility that the legislature could theoretically meet only once every two years or even year around. This uncertainty could deter qualified candidates from seeking legislative office. Consequently, these CRC members believed that guidelines as to frequency and duration of sessions should be contained in the constitution. No rationale was given for the limitation on the sixty-day session to consideration of fiscal matters only.\(^{17}\)

The Committee on the Legislature of the Constitutional Convention rejected the CRC recommendations for some of the same reasons that the CRC's ten-member minority cited in its separate statement. The Committee feared that the legislature would be allowed to remain in session too long without any assurance of increasing the quality of the legislation. The members were also of the opinion that a long session results in legislators losing touch with their constituents. The Committee rejected the limited biennial sessions in the present constitution as too restrictive and recommended to the Convention annual sessions not exceeding 180 days. In this proposal the Committee members anticipated a recess between the holding of legislative committee hearings and actual voting to allow return to home districts for conferring with constituents. Additionally, the Committee recommended that the legislature be allowed to convene itself on petition of two-thirds of the membership of each house.\(^{18}\)

Debate on the floor of the Constitutional Convention on this section included submission of the CRC proposal, which failed,\(^{19}\) and submission of variations upon and the particular proposal of the ten CRC members, all of which also failed.\(^{20}\) Much of the debate centered on the use of "consecutive" or "non-consecutive" in relation to a number of days for the session. Non-consecutive meeting days could allow for recesses, as desired by the Commit-

\(^{15}\) Id. at 83.


\(^{17}\) Id. at 5.

\(^{18}\) Comm. on Legislature 17.

\(^{19}\) 17 Convention Minutes, Apr. 5, 1974, at 69 (Minutes of the Constitutional Convention are on file at the Legislative Reference Library, Austin, Texas).

\(^{20}\) Id. at 12; 16 Convention Minutes, Apr. 4, 1974, at 150-77.
tee on the Legislature, but also could result in year-round sessions. The use of the words "consecutive days" ultimately prevailed. Attempts to limit the short session in even-numbered years to restricted subjects such as fiscal matters were ultimately defeated. Problems of defining "fiscal" and the belief that the purpose of annual sessions is to allow the legislature to respond more effectively to needs and circumstances as they arise combined for the defeat of such limitation.  

The Convention delegates finally compromised on annual sessions, unlimited as to subject matter, but limited in length to 140 consecutive days in odd-numbered years and ninety consecutive days in even-numbered years. This was carried forward unchanged by the 64th Legislature.

The ability to call special sessions of the legislature by a petition of its membership was recognized as necessary in the separate statements of the CRC members. Their recommendation would have allowed such a session on petition of two-thirds of the members of each house. The minority members felt that this provision would allow the legislature to respond to crisis situations when the Governor failed to act. This concept was carried forward by the Convention's Committee on the Legislature, which stated as an additional rationale the necessity for permitting the legislature to complete action on important matters not finished during a regular session. On the floor of the Convention, an amendment was adopted allowing for only a veto session on a petition of a majority of the membership of each house. The majority was later changed to three-fifths and the provision then remained unchanged through the action of the 64th Legislature.

B. Legislative Compensation

Article III, section 6 of the proposed constitution provides for the compensation of members of the legislature. A salary commission recommends the amount of compensation, and that recommendation sets the maximum figure which may be voted by the legislature. The present constitution provides for this.
in article III, section 24 that members of the legislature receive $600 per month ($7,200 per year) and $30 per diem during regular and special sessions. Legislative compensation has been the subject of constitutional amendment in ten proposed amendments, of which four have been adopted. Nine amendments contained a set dollar figure for compensation or per diem and one embodied a proposal for a salary commission, which was rejected in 1970. In April of this year the voters adopted an amendment which increased the annual salary from the $4,800 set in 1960 to $7,200.

The provision of the proposed constitution is almost identical to that recommended by the CRC; however, the question engendered much debate and many alternate proposals were considered by the Constitutional Convention. The recommendation of the CRC differs from that of the proposed constitution only insofar as the makeup of the commission is concerned. The CRC recommendation provided that the nine-member commission be appointed by the Governor and approved by the Senate. The proposed constitution provides for the appointment by the Governor, Lieutenant Governor, Speaker of the House of Representatives, Attorney General, and Chief Justice of Texas, acting collegiately. The CRC provided that the commission recommend rates of compensation not only for the members of the legislature but also for the judges of the unified judicial system and officers of the executive branch. The CRC specifically rejected permitting members from the three branches of government to appoint the members of the salary commission who would recommend their salary levels. The CRC felt that by keeping those directly affected by the commission’s work out of the member-selection process, it would negate the effects of public opinion which accompany legislators’ attempts to raise their own salaries.

The Committee on the Legislature recommended that the compensation be set in the constitution at $8,750 annually plus per diem and travel as provided by law and suggested that a separate submission be put to the voters embodying the recommendations of the Constitutional Revision Commission. The Committee had considered and rejected three other alternatives—the CRC recommendation, a statement that the legislature could set the compensation of its members, and omission from the constitution of any mention of legislative compensation, thereby allowing the legislature to act as it wished. The Committee’s recommendation was quite simply based on what its members thought would be most acceptable to the voters in light of past attempts to raise legislators’ salaries. The recommendation of submitting the CRC’s salary commission as an alternative proposal was based on respect for the CRC’s belief that it was a viable option.

\[(d)\) No member while serving on the commission may hold any other public office, be an employee of the state, or hold an office in a political party.

\[(e)\) The commission shall review legislative compensation and allowances annually and at that time may recommend changes.

29. Id.
30. Id.
31. COMM. ON LEGISLATURE 16, 27.
32. 16 CONVENTION MINUTES, Apr. 4, 1974, at 2-4.
All of the Committee's proposals were considered and debated on the floor of the Constitutional Convention as were others, such as a base salary of $4,800 with a five-and-one-half percent per year cost of living increase, a statement that the legislature could not set its salary (thereby allowing the legislature to establish a commission by statute), and attempts to change the dollar figure. None succeeded. Throughout the debate of April 4 and upon readjournment on May 7 repeated attempts to place the salary commission in the constitution and to provide for the stated dollar salary as an alternate submission were frustrated. On May 8, however, the Committee's recommendation was rejected by a vote of ninety-three to forty-two in favor of the salary commission.

The controversy over whether legislators should receive an increase in salary has been a continual subject of constitutional amendment. The 64th Texas Legislature decided that the only realistic way to approach legislative salaries was to provide for the salary commission and to avoid setting a dollar figure in the constitution which would require continual amendment through the years. Approval of a legislative salary increase, it was reasoned, can be exercised through the ballot since an increase in compensation will not take effect until the next succeeding general election and may result in a defeat of those members voting for such an increase.

II. ARTICLE IV—EXECUTIVE

A. Governor's Removal of Appointed State Officials

Article IV, section 2, subsection (d) of the proposed constitution provides that officers appointed by a Governor may be removed by the Governor for stated reasons. The Governor must submit his reasons to the senate and unless those reasons are rejected by the senate, the officer is removed. Since no specific provision regarding removal of appointed officers is in the present constitution, article XV, section 7 which requires that the legislature provide by law for trial and removal of officers, has controlled.

33. Id. at 10-18, 59-61.
34. Id. at 52-54.
35. Id. at 18-22.
36. Id. at 131-41.
37. 18 CONVENTION MINUTES, MAY 8, 1974. Two other members were present, but not voting, and forty-three others were not voting.
38. It should be noted that the 64th Legislature adopted the salary commission approach prior to the passage of the salary increase contained in the constitutional amendment of April 23, 1975.
39. TEX. CONST. ART. IV, § 2(d) (proposed) reads as follows:

In addition to other procedures provided by law for the removal of appointed officers, officers appointed by a governor with the advice and consent of the senate and not serving at the pleasure of the governor may be removed by the governor only for stated reasons. Prior to removal and not less than 45 days prior to the required adjournment of a regular session or not more than two days after the convening of a special session, the governor shall advise the senate in writing of the reasons for the proposed removal. If within 45 days after receipt of the governor's statement of reasons the senate by majority vote of the membership rejects the governor's proposed removal, the governor may not remove the officer for those stated reasons.

40. The particular characteristics of such trials have not been constitutionally established. See Tex. Const. art. XV, § 7.
Pursuant to other provisions of the present Texas Constitution, members of boards of state agencies are appointed to terms of two years each or staggered six-year terms.\textsuperscript{41} Since gubernatorial terms prior to that commencing in 1975 were constitutionally limited to two years,\textsuperscript{42} two-thirds of the membership of the governing boards of the over 200 agencies were not appointed by the Governor presently in office. Criticism has often been levied against this system on the grounds that neither the members of the agencies nor the Governor are responsive or responsible to the needs of the people as dealt with by a particular agency. The proposed constitution remedies this in two ways. First, the length of terms for members of appointed agencies is not dictated except for those specifically set out in the constitution.\textsuperscript{43} Second, section 2 of article IV allows removal of these appointed officers by the Governor, a power which is not provided for in the present constitution.

In recommending such a proposal, the CRC reasoned that having appointed officers serve at the pleasure of the Governor would justify holding the Governor accountable for the actions of such appointed members of the executive branch.\textsuperscript{44} The recommendation of the CRC was carried forward by the Committee on the Executive of the Constitutional Convention. However, to prevent abuse of the removal power, the Committee recommended that a two-thirds vote of the Texas Senate taken within thirty days after submission of the name of the person to be removed be required to reject that removal.\textsuperscript{45}

Floor debate on this provision extended over three days—March 8, 11 and 12. A main concern was the lack of definition of the grounds for removal and the requirement of “cause” only. It was feared that gubernatorial removal for political or even unknown reasons could occur constitutionally under that language. This fear was resolved on the floor by the addition of a provision requiring the Governor to provide the senate with a proposal for removal containing the cause for the action.\textsuperscript{46} That resolution was altered by the Convention’s Committee on Style and Drafting to the present authorization of removal for “stated reasons.”\textsuperscript{47} The Style-Drafting Committee eliminated the word “cause” in order to make clear that an officeholder has no redress in the courts.\textsuperscript{48}

A second concern was the vote required in the senate to reject the proposed removal. Amendments were offered to lower the required vote to one-third or to require affirmative action to approve the Governor’s proposed removal. Both of these amendments failed initially. The debate here cen-

\textsuperscript{41} Id. art. XVI, §§ 30, 30a.
\textsuperscript{42} Id. art. IV, § 4 (1876) (this section amended on Nov. 7, 1972).
\textsuperscript{43} See id. art. III, § 5 (proposed) (salary commission); id. art. IV, § 22 (proposed) (railroad commission).
\textsuperscript{44} CRC: TEXT 94.
\textsuperscript{45} TEX. CONST. CONVENTION, REPORT OF THE COMM. ON THE EXECUTIVE 18 (1974) [hereinafter cited to as COMM. ON EXECUTIVE]. Procedures for removal of executive department members remain the same.
\textsuperscript{48} Id.
tered on whether it should take the same vote to remove an appointed officer as it does to confirm him initially. Ultimately, the belief that removal should not be able to be blocked by only eleven senators prevailed and a majority vote was required to reject the Governor's proposed removal.\(^{49}\)

A move to have the house of representatives rather than the senate act in removal proceedings was defeated.\(^{50}\) A final change expanding the time for senate action from thirty to forty-five days was made,\(^{51}\) but the substance of the subsection remained unchanged through the actions of the 64th Legislature.

B. Pre-inaugural Appropriation for the Governor

Article IV, section 4, subsection (b) of the proposed constitution provides that the legislature appropriate financial assistance to a Governor-elect prior to his inauguration.\(^{52}\) There is no such comparable provision in the present constitution. An overriding problem facing each new Governor-elect is that of familiarizing himself with his office, with his responsibilities, and with state government in general. In the past, the legislature has come into session on the second Tuesday in January of odd-numbered years. As a result, one of the most demanding times during a Governor's term commences within a few short days of his own inauguration. The Governor's ability to present a budget and to propose and execute his duties as chief executive officer of the state have been greatly hindered in the past. This was recognized by all groups involved in the revision process. The CRC recommended this pre-inaugural appropriation for those very reasons.\(^{53}\) The Committee on the Executive followed the CRC's recommendation but eliminated the CRC's limitation on the use of such funds "for a staff and office space"\(^{54}\) so as to allow more flexibility to the Governor-elect in the use of these funds.\(^{55}\) The amount of the appropriation will be determined by the legislature. There was no floor debate by the Convention on this proposal and the 64th Legislature carried forth the proposal of the CRC as modified by the Committee on the Executive into the proposed constitution.

C. Budget Execution Powers of the Governor

Article IV, section 15 of the proposed constitution provides that the legislature may authorize or direct the Governor to exercise fiscal control and that

\(^{49}\) 9 \textit{CONVENTION MINUTES}, Mar. 11, 1974, at 25-60; \textit{id.}, Mar. 12, 1974, at 63-68.

\(^{50}\) \textit{id.}, Mar. 12, 1974, at 32.

\(^{51}\) \textit{id.} at 62-68.

\(^{52}\) \textit{TEX. CONST.} art. IV, § 4(b) (proposed) reads: "The legislature shall provide an appropriation for assistance to a governor-elect prior to inauguration. A governor-elect is entitled to receive any information and reports that the incumbent governor is entitled to require from officers and state agencies."

\(^{53}\) CRC: \textsc{Text} 95.

\(^{54}\) \textit{id.} at 94.

\(^{55}\) \textsc{COMM. ON EXECUTIVE} 21.
he must insure that certain appropriations for the executive branch are spent in accordance with the appropriations.56 As the chief executive officer, the Governor should have some responsibility for overseeing the efficient operation of state agencies and should have the power to implement his responsibility. Additionally, with the constitutionally limited biennial session, the legislature itself has been unable to monitor effectively the expenditure of the funds which it has appropriated. Consequently, the legislature has at various times attempted to give the Governor certain authority over budget execution of appropriated money. These attempts have failed because of constitutional impediments.57

The CRC recommended that the question be settled by giving the legislature the authority to grant budget execution power to the Governor. The CRC did not recommend making this grant directly to the Governor, as it wished to leave the legislature with the flexibility to spell out the type of budget execution power it felt necessary to grant to the Governor.58

The Committee on the Executive generally agreed with the CRC but recommended that certain specific powers be contained in the constitution. In the version of the Committee on the Executive, the Governor was given the right and responsibility to insure that items of appropriation for the executive branch be expended as directed by the legislature, with the caveat that the legislature must determine whether the power extends to items for the other elected officers of the executive department.59 On the floor of the Convention, after a discussion with the Governor's office, certain technical changes were made to clarify the intent of the Committee on the Executive.60 An attempt to remove the automatic exclusion of elected officers of the executive department was defeated.61 The provision appears unchanged in the final draft of the proposed constitution by the 64th Legislature except for rewording by the Style and Drafting Committee62 which spelled out the exemption for elected officers.

D. Ten-Year Life of Certain State Agencies

Article IV, section 24 of the proposed constitution provides that certain statutory state agencies, except institutions related to higher education, will have a life of not more than ten years unless renewed by law for not more

56. Tex. Const. art. IV, § 15 (proposed) reads:
   "Section 15. BUDGET EXECUTION. (a) The legislature by law may authorize or direct the governor to exercise fiscal control over the expenditure of appropriated money.
   "(b) The governor shall ensure that items of appropriation for the executive branch, except items for the other elective offices of the executive department, are expended only as directed by the legislature. The legislature by law may remove the exception.
58. CRC: Text 101.
59. Comm. on Executive 33-34.
60. 10 Convention Minutes, Mar. 15, 1974, at 38.
61. Id. at 39.
than ten years at a time. There is no comparable provision in the present constitution, and it was not contained in the CRC's recommendations.

The Convention's Committee on the Executive devised section 24 and gave as its rationale the advantage of periodic review and renewal of statutory agencies which would give impetus to action on reorganization by the Governor and the legislature. It may be surmised that a general feeling existed to the effect that the proliferation of state agencies is neither required nor economical. Some of those agencies, possibly effective and necessary at the time of their creation, no longer serve a real purpose in state government, and constitutionally required review might bring expenditures for these agencies to an end.

On the floor of the Convention, the Chairman of the Committee on the Executive cited this section as probably the most significant provision in the article. Apparently, the delegates agreed, for only one amendment, seeking to strike the ten-year life provision, was offered to this section and that amendment was defeated by a vote of 108 to forty-nine. The language of the section proposed by the Committee on the Executive and approved by the Constitutional Convention was carried forward by the 64th Legislature with only one significant change. The change provided that consideration on the floor of the legislature of an agency renewal bill is mandatory only when the agency would expire in less than two years from the beginning of the session in which the bill was introduced. The Convention language, which required floor consideration of all agency renewal bills during the session in which they are introduced, could have resulted in a frustrating delay in consideration of other bills then pending before the legislature.

III. Article V—Judiciary

A. Unified Judicial System

Article V, section 1, subsection (a) of the proposed constitution establishes

63. Tex. Const. art IV, § 24 (proposed) reads:
'Section 24. STATE AGENCIES. (a) State agencies include all boards, commissions, departments, institutions, and other executive or administrative agencies of state government. State agencies are a part of the executive or administrative agencies of state government. State agencies are a part of the executive branch unless otherwise provided by law.
'(b) Statutory state agencies with statewide jurisdiction having appointed officers, except institutions related to higher education, have a life of not more than 10 years unless renewed by law for not more than 10 years at a time. Unless otherwise provided by law, appointed officers serving on the effective date of a renewal continue to hold office for the terms for which they were appointed. A bill to renew an agency or agencies, the life of any one of which expires in less than two years from the beginning of the session in which the bill was introduced, must be reported from committee in the house and senate and brought to a vote in each house not less than 20 days before adjournment.
'(c) Subsection (b) of this section does not end the life of a state agency with outstanding bonds unless the legislature by law first provides for the administration of property under the control of the agency and makes adequate provision for servicing the outstanding debt to ensure that the bond obligations are not impaired.

64. Comm. on Executive 41.
65. 9 Convention Minutes, Mar. 8, 1974, at 5.
66. 10 Convention Minutes, Mar. 18, 1974, at 36.
a unified judicial system. Initially, Texas had such a system, but in 1891 amendments were adopted to relieve the supreme court docket by creating the intermediate courts of appeal with civil jurisdiction only and by creating the specialized criminal appeals court. The present constitution also allows the creation of other courts, resulting in the creation of approximately ten criminal district courts, six juvenile courts, twenty-six courts of domestic relations, six special probate courts, and sixty-two county courts at law. These statutory courts often have overlapped jurisdiction with the constitutional courts and have "burgeoned into an inefficient and cumbersome arrangement."70

The concept of the unified judicial system for this state was proposed at each level of consideration of this article. The underlying premise of this type of system is to expedite the fair administration of justice in both the civil and criminal areas. By providing an intermediate level of appeal for criminal cases, the CRC anticipated that the existence of more judges to hear these cases would expedite appeals.71

The CRC proposal for a unified judicial system remained generally the same through the Constitutional Convention and the 64th Legislature, with a few minor differences. The CRC recommended two county judges, one for the county court and one for the county commission.72 The effect of this recommendation would be to remove judicial functions from the administrator of the county commission. The Committee on the Judiciary, however, felt that in the unified judicial system the term "circuit court" should be substituted for the term "county court" so as to eliminate confusion between judges of county courts and county commissions.73 Under all proposals, the circuit court (or county court as recommended by the CRC) may encompass more than one county, so as to assure that rural areas with few lawyers will have a licensed attorney as judge, and to balance the division of counties with little litigation.74 For more populous urban centers with a

67. Tex. Const. art. V, § 1(a) (proposed) reads:

Section 1. JUDICIAL POWER. (a) The judicial power of the state is vested in the judicial branch. The state unified judicial system is composed of a supreme court, courts of appeals, district courts, and circuit courts. All courts have jurisdiction as provided by law, but jurisdiction of courts of the same level within the unified judicial system must be uniform throughout the state. No courts may be created except those authorized by this article.

Tex. Const. art. V, § 6 (proposed) provides that other courts may exist as part of the judicial branch but not as part of the unified judicial system. Unlike unified judicial system judges, § 6 court judges need not be licensed attorneys and their compensation is not controlled by constitutional provision. See Tex. Const. art. V, §§ 8, 17 (proposed).


69. Id. at 11.

70. CRC: Text 109.

71. The CRC version also provided means for assisting any court overburdened by its new jurisdiction. See id. at 109, 112-13, 119-20.

72. Id. at 158-59.

73. Comm. on Judiciary 22. County commission judges may have judicial duties provided by law.

74. Id. at 21-22; CRC: Text 113.
greater volume of litigation, both the Committee on the Judiciary and the
CRC proposals allowed for more than one judge per county.\textsuperscript{75}

Four members of the CRC disagreed with the composition of the unified
judiciary, preferring elimination of the county or circuit courts and abolition
of the justice and municipal courts.\textsuperscript{76} The result would have been a one-tier
trial court system. The reasons cited for this position were criticism of
justice and municipal courts as criminal courts; limited jurisdiction of these
courts which suggested "an hierarchical rank among judges and other person-
nel"; and "the impression that a lesser quality of justice is administered" from
these lower courts.\textsuperscript{77}

Debate on the report of the Committee on the Judiciary extended from
May 13 through May 23, and was postponed to June 12 for passage to third
reading. Attempts to preserve the present bifurcated system in various
forms, such as by creating an intermediate tier of criminal appellate courts,
failed. The suggestion of the four members of the CRC to eliminate circuit
courts also failed.\textsuperscript{78}

Provisions for the creation of the circuit courts were altered by the Conven-
tion. The creation of circuit courts, while mandatory in the Committee's rec-
ommendation, became permissive as a result of extensive Convention deliber-
ation.\textsuperscript{79} The floor debate showed the delegates' concern about requiring the
creation of circuit courts in rural areas where they may not be needed. While
this factor was only briefly alluded to on the floor, evidently a number of
county judges were not in favor of mandatory circuit courts and perhaps this
opinion by those directly concerned influenced the outcome. The cost factor
was also considered, with the result that the provision became permissive and
remained so through the action of the 64th Legislature. The Convention
also provided for continuation of constitutional courts unless otherwise pro-
vided by law. Further, until such time as the legislature creates circuit courts,
the offices and jurisdiction of the various statutory county courts are re-
tained. Once the legislature acts, the judges holding those offices in a county
to be served by a circuit court become judges of the circuit court.\textsuperscript{80}

The municipal courts and justice courts were continued under all the CRC,
Committee on the Judiciary, and Convention proposals but not as part of the
unified judiciary system. To eliminate the past experience of proliferation
of various kinds of courts with specialized jurisdiction, the CRC recom-
manded that the court system be limited to that authorized by article V.\textsuperscript{81} The Committee on the Judiciary eliminated language which would
prohibit the legislature from creating other courts on a vote of ten-to-nine,
with one not voting.\textsuperscript{82} Nevertheless, the prohibition against the creation of
other courts was reinserted by the Convention.\textsuperscript{83}

\textsuperscript{75} Id.
\textsuperscript{76} CRC: \textit{STATEMENTS} 17-18.
\textsuperscript{77} Id.
\textsuperscript{78} 19 \textit{CONVENTION MINUTES}, May 13, 1974, at 22-57; 21 \textit{CONVENTION MINUTES},
May 16, 1974, at 53-71.
\textsuperscript{79} 21 \textit{CONVENTION MINUTES}, May 16, 1974, at 73-144.
\textsuperscript{81} CRC: \textit{TEXT} 109.
\textsuperscript{82} COMM. ON JUDICIARY 12-13.
\textsuperscript{83} 32 \textit{CONVENTION MINUTES}, June 27, 1974, at 25-28.
B. Appeal by the State

Article V, section 14 of the proposed constitution grants the state the right to appeal in criminal cases when the trial court rules a law unconstitutional or, at the discretion of the supreme court, from a court of appeals decision to the supreme court. Article V, section 26 of the present constitution prohibits any appeal by the state in criminal cases. The CRC recommended continuation of the present constitutional provision on the grounds that granting the right may prove an economic hardship to the defendant and furthermore might be used as an instrument of oppression. The same provision and rationale appeared in the report of the Committee on the Judiciary.

The delegates to the Convention, however, disagreed with the CRC and the Committee report. Extensive debate occurred on this provision. Proponents of granting the right cited the creation of intermediate criminal appellate courts with the probability that inconsistent rulings would emanate which would require resolution by the supreme court. Some of the debate centered around the circumstances under which appeals should be granted. The following proposals were offered and defeated: (1) a ruling suppressing evidence or quashing an indictment or information or count thereof; (2) a ruling granting a new trial; (3) a ruling arresting judgment; (4) the assessment of a sentence on the grounds that it is illegal; (5) on questions of law; (6) as provided by law.

In a complete substitute for article V offered on June 12, the state's right of appeal was limited to a ruling that a law is unconstitutional and to cases in which there is a conflict between courts of appeals decisions. This provision, acknowledged as a compromise, ultimately prevailed and remained the same through the action of the 64th Legislature, despite attempts on the floor of the senate and the house to alter the provision.

IV. Article VII—Education:
Equitable Support of Free Public Schools

Article VII, section 1 of the proposed constitution establishes a state policy and duty to maintain free public schools through high schools which furnish an equal educational opportunity. Local school districts may provide enrich-

84. Tex. Const. art. V, § 14 (proposed) reads:
   'Section 14. APPEAL BY STATE. Subject to the guarantees of the
   Bill of Rights of this constitution, the state may appeal in a criminal case
   only (1) from a trial court ruling that a law is unconstitutional or (2)
   from a court of appeals decision to the supreme court, which appeal is at
   the discretion of the supreme court unless otherwise provided by law.
85. CRC: Text 121.
86. Comm. on Judiciary 37-38.
87. 20 Convention Minutes, May 15, 1974, at 153-79; 21 Convention Minutes,
    May 16, 1974, at 28-50.
88. 29 Convention Minutes, June 12, 1974, at 6.
89. Id. at 98.
ment of educational programs. Article VII, section 1 of the present constitution does not mention equal educational opportunity or local enrichment.

Debate over this section stemmed principally from the attempt to comply with the Supreme Court ruling in *San Antonio Independent School District v. Rodriguez.* The CRC recommended adding the phrase "equal educational opportunity for each person in the State" as well as a statement that state support of education shall be based on the wealth of the state as a whole. The CRC saw the greatest inequities in public school financing as disparity in local spending per pupil due to the difference in the wealth of school districts and the failure of the Minimum School Foundation Fund to compensate for this difference. Though it did not set out a specific formula, the CRC felt that its suggested language established the basic principles to guide the legislature in achieving equitable support of public schools.

The Committee on Education of the Convention generally followed the CRC recommendations and reasoning but dropped the language which required the state educational programs to recognize variations in the backgrounds, needs, and abilities of all students. The Committee feared that this language would lock the legislature into a specific school finance plan. Finally, the Committee deleted the CRC language which allowed the legislature to make variations in the local tax burden to support other governmental services into account. The Committee believed that this phrase would result in penalizing those tax districts which are frugal in their governmental services. The Committee also specifically disclaimed any intent to prohibit local enrichment by individual school districts.

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90. *Tex. Const.* art. VII, § 1 (proposed) reads:

"Section 1. EQUITABLE SUPPORT OF FREE PUBLIC SCHOOLS. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, the legislature has the duty to establish and provide by law for the equitable support and maintenance of an efficient system of free public schools below the college level. The system must furnish each individual an equal educational opportunity, but a school district may provide local enrichment of educational programs exceeding the level provided by the state consistent with general law."


92. The CRC proposed wording was as follows:

"Section 1. EQUITABLE SUPPORT OF FREE PUBLIC SCHOOLS. 
(a) A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature to establish and make suitable provision for the equitable support and maintenance of an efficient system of free public schools and to provide equal educational opportunity for each person in this State.
(b) In distributing State resources in support of the free public schools, the Legislature shall ensure that the quality of education made available shall not be based on wealth other than the wealth of the State as a whole and that State supported educational programs shall recognize variations in the backgrounds, needs, and abilities of all students. In distributing State resources, the Legislature may take into account the variations in local tax burden to support other local government services.

93. *Id.* at 129-30.

94. The Committee on Education's version was as follows:

"Sec. 1. SUPPORT OF FREE PUBLIC SCHOOLS. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, the legislature shall provide for a system of free
The specific wording of the introductory paragraph to this section was carefully scrutinized. Committee consideration was given to the substitution of "equitable" for "equal educational opportunity." There was some concern that the latter phrase would require equal dollars and identical programs, but this belief did not prevail. Further, fear was expressed that the use of the word "individual" in relation to the requirement of equal educational opportunity might require the elimination of programs such as continuing adult education. The Committee concluded, however, that read in context with the requirement of providing schools through the high school level, the use of "individual" would not exclude adult elementary and secondary instruction.\(^95\)

This provision generated extensive debate on the floor of the Convention. Initial discussion lasted for two full days during which time the practical and legal effects of such phrases as "equitable support," "equal educational opportunity," "wealth," and "quality education" were extensively debated. A major controversy stemmed over whether local enrichment by school districts would be allowed or eliminated by implication from the requirement of measuring the wealth of the state as a whole in funding equal educational opportunities. Compromises were sought, but failed until a provision mandating equal educational opportunity but allowing for local enrichment of educational programs "as provided by general law" was adopted.\(^96\) The actual language allowing for local enrichment was grafted onto this section by the Style and Drafting Committee as a result of a floor amendment to section 5, which governs school and community junior college districts. The Style and Drafting Committee felt that the concept of local enrichment related to policy rather than structure and therefore more appropriately should be placed in section 1.\(^97\) On third reading amendments were again offered to this section but the Report of the Style and Drafting Committee on section 1 was adopted without significant change.\(^98\) Further attempts to alter the wording of this section in the 64th Legislature were defeated and the section was carried into the proposed constitution.

V. Article VIII—Finance

Few parts of the proposed constitution will make changes as potentially far-reaching as those envisioned by article VIII, the amendment revising the finance provisions of the constitution. The amendment will drastically reduce the length of the constitution, set the stage for statewide reform of the property tax, impose new restrictions on the ability of state agencies to create public schools through the secondary level that will furnish each individual equal educational opportunity.

\(^{96}\) Id. at 16.
\(^{97}\) 3 Convention Minutes, Feb. 18, 1974, at 7-128; 4 Convention Minutes, Feb. 19, 1974, at 9-117.
\(^{98}\) 30 Convention Minutes, June 18, 1974, at 104-200.
debt without approval of state voters, and eliminate the need for constitutional amendment to clarify authority to use public funds for public purposes.

If proposed article VIII is adopted, the finance provisions of the constitution, other than those relating to local government authority to tax or to incur indebtedness, will appear in a single revised article. The article will provide the basic structure for state and local property taxation, limitations on state appropriations and the creation of state debt, standards for the use of public money and credit, and miscellaneous limitations affecting taxes other than the ad valorem tax. Provisions on these same subjects are scattered haphazardly throughout the present constitution. The new article consists of thirteen sections totaling 1,886 words, in contrast to the fifty-five sections of approximately 13,837 words that will be repealed if the amendment is adopted.99

A. Taxation

The state's power to tax is plenary. No constitutional grant of authority is necessary. Rather than allowing taxation, constitutional provisions limit the scope or manner of taxation or the distribution of tax revenues. The present state constitution places few limitations on taxes other than the ad valorem tax on property.100 Thus, currently, the legislature possesses virtually complete authority over the levy and structure of taxes such as the sales tax, inheritance tax, severance tax, etc. The present constitution even specifically authorizes an income tax,101 although the legislature has never acted to levy one.

The proposed constitution makes numerous changes to address problems which have been identified in the last century, but it also preserves a number of provisions of the present constitution. For example, the present constitution limits the purposes for which motor vehicle registration fees and the revenue from taxes on motor fuels and lubricants may be used.102 This dedication of revenue is carried forward in article VIII, section 7 of the proposed constitution. Registration fees are divided between use by the counties and use on state public roadways. Motor fuel tax revenues are divided between use on state public roadways (three-fourths) and deposit in the Available School Fund (one-fourth). One new exception to this dedication of tax revenue is made in section 7(b) of the proposed constitution.103 If a "petroleum
products manufacturing tax” is levied under the proposed constitution, revenue from the tax may be used for purposes other than public roadways and the school fund. Before and during the Constitutional Convention, bitter battles were fought over whether to retain the dedication of the motor fuel tax and whether to dedicate these or other revenues to mass transit. Since the Convention, the controversy has centered on the provision for a “petroleum products manufacturing tax.” Those in favor of its inclusion in the constitution argue that because Texas produces and refines more oil than it consumes, a “petroleum products manufacturing tax” could produce significant state revenue at little expense to Texas taxpayers. Several major oil companies have expressed opposition to such a tax. The opposition carries over to the constitutional provision because of concern that mention of the tax in a newly adopted constitution and elimination of any restrictions on the use of revenue from the tax may indirectly encourage passage of such a tax by a future legislature. Three ironies exist in the controversy over the provision for a petroleum products manufacturing tax. First, mention of the tax is no indication that it will necessarily be enacted. Second, it may be possible to levy a “refinery tax” under the present constitution without dedicating the revenues for public roadways and to the Available School Fund. Third, the provision itself was adopted as a floor amendment during the Constitutional Convention and some persons now opposing the provision may have favored it at the time over one that would have set a ceiling on the motor fuel tax and would have directed revenues from any increase in the tax to general revenue.

Section 7 of proposed article VIII also continues to dedicate one-fourth of the net revenue from state occupation taxes to the Available School Fund. Retention of this provision directly resulted in one of the strangest sections in the proposed charter. Section 13 of article VIII provides that a refundable assessment voted by marine food or agricultural producers is “not a tax.” This section was added by the 64th Legislature in response to a Texas Supreme Court decision, rendered after the Constitutional Convention, which held that such assessments voted by sorghum producers, even though refundable, were occupation taxes on an agricultural pursuit and hence were prohibited by the present constitution. The assessments would not have been prohibited under the proposed constitution, but, if occupation taxes, would have had to have been partially deposited to the Available

105. See PROCEEDINGS 2337-47 (June 25, 1974).
106. Article VIII, §1 of the present constitution has authorized an income tax since 1876 but no such tax has ever been levied.
110. See Tex. Const. art. VIII, §1.
School Fund. Section 13 was added to avoid this possibility by establishing that these refundable assessments are not taxes.\textsuperscript{113}

A significant new provision relates to the sales tax, an important source of state revenue about which the present constitution is entirely silent.\textsuperscript{114} Section 12 of the proposed charter specifically prohibits a retail sales tax on (1) agricultural machinery or parts, fertilizer, feed or seeds, (2) prescription drugs or medicine, or (3) food except food sold by restaurants or comparable establishments for immediate consumption. Although discussed as early as the meetings of the 1973 Constitutional Revision Commission,\textsuperscript{115} the provision limiting the sales tax first appeared in a proposed document during the last hours of the Constitutional Convention as part of an ill-fated effort to win sufficient additional votes for successful passage of the final Convention product.\textsuperscript{116} It was considered again during the regular session of the 64th Legislature and finally added to the proposed constitution.\textsuperscript{117} Although section 12 may be criticized because it forecloses a possible source of revenue, it effectively ends the once-heated controversy over whether the retail sales tax should be extended to food and other items not currently taxed. This effect has generated some serious opposition to the section from persons who are concerned that the constitutional exemption of these particular items will cause future legislatures to look to taxes other than the sales tax, such as a refinery tax, corporate profits tax, or income tax, to meet new revenue needs. Except for the provisions discussed above and one prohibiting taxes from being levied by special or local laws,\textsuperscript{118} proposed article VIII is silent on taxes other than the ad valorem tax.

B. State Ad Valorem Taxation

The proposed constitution follows the approach taken by the present constitution in prescribing the structure of state and local ad valorem taxation in complete detail.\textsuperscript{119} Beginning in 1978, the present constitution will prohibit state ad valorem taxation for state purposes,\textsuperscript{120} except for a ten-cent
per $100 valuation tax levied for certain institutions of higher education.121 Other state ad valorem taxes have been phased out gradually since 1968 and only a two-cent tax will be levied in 1976 in addition to the aforementioned ten-cent one.122 Article VIII, section 1 of the proposed constitution continues to impose a quantitative limit on state taxes, but makes three significant changes. First, the limitation applies only to state taxes on real and tangible personal property, not to state taxes on intangible personal property. Although intangibles, such as cash, stock, bonds, etc., largely escape taxation today at both the state and local levels, some persons suggest that an ad valorem tax on intangibles could be successfully administered from the state level. This possibility resulted in the exclusion of a tax on intangibles from the limit in section 1. Second, the two-cent tax, scheduled to end before 1977, is continued in the proposed constitution. Third, both the two-cent tax and the ten-cent tax123 are made reducible by law.124 State ad valorem taxes levied in the present constitution may be reduced or ended only by constitutional amendment.

C. Ad Valorem Tax Reform

The provisions of article VIII of the present constitution are largely devoted to the specifics of the ad valorem tax on property. The key provision of the present constitution is article VIII, section 1, which requires that taxation be equal and uniform and that all property in the state be taxed in proportion to value. Many of the succeeding sections of article VIII and other sections elsewhere in the present constitution specifically make exceptions for certain types or amounts of property. For example, the constitution exempts from all ad valorem taxes public property used for public purposes125 and $250 of household furniture,126 and exempts from state taxes $3,000 of the value of residential homesteads.127 The constitution also authorizes the exemption of other property, such as certain property used for religious or charitable purposes.128 Together, these provisions define the constitutional tax base for state and local ad valorem taxes. To comply with the law, a taxing authority should tax all property within that base, and should tax all of it at the same tax rate and at market value or the same percentage (ratio) of market value.

When first included in the Texas Constitution in 1845 and subsequently carried forward in 1876, the basic ad valorem tax provisions of the present

121. Id. art. VII, § 17.
122. Id. art. VIII, § 1-e.
123. Id. art. VII, § 9 (proposed), the education article, continues the ten-cent tax.
124. In art. VII, § 9 of the proposed constitution the tax is made "changeable" by law. But the intended effect of both art. VIII, § 1 and art. VII, § 9 of the proposed constitution is to permit the legislature to reduce or increase the taxes within the ten-cent and two-cent limits. The use of the term "changeable" in art. VII, § 9 as compared to "reducible" in art. VIII, § 1 occurred because art. VII, § 9 was amended by the 64th Legislature.
126. Id. art. VIII, § 1.
127. Id. § 1-b.
128. Id. § 2.
constitution were intended to assure an equitable tax system by which each person paid according to his wealth.\textsuperscript{129} Instead, at least over the past century, the provisions have contributed to the development of a property tax system that is not only confused but also inequitable. Much has been written recently on the problems of the existing system,\textsuperscript{130} but in summary it may be said that the constitutional mandate and the numerous laws in existence to implement the constitutional requirements are generally ignored. Instead, solutions to practical and political problems are sought at the local level through extra-legal classifications and exemptions of property. Many tax offices try to administer fairly a system that repeatedly has been labeled "unadministrable," but interjurisdictional and intrajurisdictional disparities in property valuation and assessment ratios have become the rule rather than the exception in Texas. The individual taxpayer is often unaware and unable to determine if he is being treated fairly. Because of the gap between constitutional principles and local taxing practice, inconsistencies in legal doctrine also are commonplace, and the individual taxpayer has been handicapped in effectively challenging violations of the property tax laws.\textsuperscript{131}

The ad valorem tax provisions of the proposed constitution are written to provide the basis for reform of the tax in Texas. They must be read together to understand properly their separate but dependent purposes. Specifically, the proposed constitution is intended: (1) to change the constitutional tax base so as to make the ad valorem tax administrable; (2) to require that the legislature establish and enforce uniform standards and procedures for the appraisal of property; (3) to provide the basis for an efficient and manageable local system of property appraisal; and (4) to allow the individual


\textsuperscript{130} Much information was available to the committees of the Constitutional Revision Commission and Constitutional Convention concerning the practical and legal aspects of the property tax in Texas. The Finance Committee of the Constitutional Convention placed particular emphasis on the testimony of several persons recognized by the Committee as authorities on the subject of ad valorem taxation. The persons first appeared among numerous other witnesses, then were asked to review and comment on the tentative recommendations of the Committee, and finally were invited back to serve as panelists to discuss the decisions of the Committee. See \textit{Proceedings} 741 (Mar. 20, 1974). The Committee also relied in part on the conclusions of the Constitutional Revision Commission. See \textit{CRC: Text} 141-46. A record of the materials utilized by the Finance Committee of the CRC may be found in a three-volume collection of materials entitled \textit{Resource Document: Constitutional Revision Committee on State Finances}, which may be found in the Legislative Reference Library, Austin, Texas.


\textsuperscript{131} See Yudof, supra note 130.
taxpayer to seek relief in court for unfairly or illegally levied ad valorem taxes. With the major exception of the change in the constitutional tax base, all of these objectives could have been accomplished under the proposed constitution without specific mention in that document. The decision to include the provisions may be attributed to the feeling of at least some of the delegates to the Constitutional Convention that no real reform of the ad valorem tax would be forthcoming in the near future unless mandated by the new constitution. Some of these delegates were concerned that unless Texas undertook prompt revision of its own system, Congress or the federal courts would become involved.\textsuperscript{132}

By requiring that \textit{all} property be taxed in an equal and uniform manner, the present constitution prescribes a tax base that has proven impossible to administer.\textsuperscript{188} The experience in Texas, like in other states, has been that not all property is readily locatable. Nor is all property sufficiently alike to fairly or effectively allow treatment at the same tax rate or ratio of market value. The proposed constitution addresses this problem by exempting certain property and by providing new flexibility with regard to other property. Two examples are (1) household goods and personal effects, and (2) intangible personal property, such as is evidenced by stocks, bonds, cash, etc. The present Texas Constitution exempts household furniture in the amount of $250.\textsuperscript{184} All other household furniture and all personal effects are supposed to be located, appraised, and taxed. Obviously all are not. Instead, some tax assessors add amounts to the value of residential real property to reflect personal property that has not been seen or appraised but is anticipated to be present in the house. These additions are arbitrary and are often made without the knowledge of the property owner. As late as 1968, one school district tax officer acknowledged that a flat $300 was assessed in his district to each black resident for personal property ownership.\textsuperscript{136} On the theory that household goods and personal effects not used for the production of income may not be properly located and appraised, article VIII, sections 4(a)(4) and (5) of the proposed constitution simply exempt them from all ad valorem taxation. It is important to note that members of the Constitutional Convention determined that the category of "personal effects" does not include automobiles, boats, or other personal property not intimately related to the taxpayer.\textsuperscript{136}

Estimates of intangible wealth in Texas are as high as $150 billion, but virtually all of it has escaped ad valorem taxation because it is highly mobile, easily concealed, and subject to manipulation. Also, a tax levied on certain intangibles at the same rate and ratio as that levied on other property in Texas could be confiscatory or could cause the intangibles to be moved outside the state.\textsuperscript{137} Other states have addressed this problem by treating at least some intangibles in a manner different from other property, such as by

\textsuperscript{133} CRC: Text 141-44.
\textsuperscript{134}\textsuperscript{134} TEx. Const. art. VIII, § 1.
\textsuperscript{135} See C. Bartlett, supra note 130, at 10.
\textsuperscript{136} See COMM. ON FINANCE 22.
\textsuperscript{137} See PROCEEDINGS 748-49 (Mar. 20, 1974).
exempting them from the general ad valorem tax and substituting an in-lieu or low millage tax. This alternative is not possible under the present Texas Constitution. The proposed constitution is silent with regard to the taxation of intangibles.\textsuperscript{188} This change allows the legislature to treat intangibles in any reasonable manner, perhaps by taxing some on an ad valorem basis, others in a different manner, and others not at all. Passage of the proposed constitution would not automatically remove intangibles from the tax base. Until and unless a law is passed changing the existing system, intangible property would remain part of the ad valorem tax base by virtue of existing statutory law.\textsuperscript{139}

Article VIII, section 2(b) of the proposed constitution requires that the legislature by general law provide for the establishment and enforcement of standards and procedures for appraisal of property for ad valorem tax purposes. Once established, these standards and procedures must be applied uniformly throughout the state. It is important to note that the duty in 2(b) extends only to "appraisals"—the method for determining the value of property—and not to assessment ratios, assessed values, or tax rates, which are also factors in determining the final tax levy. The following example will indicate the differences. A residence with a market value of $30,000 located in a city using an assessment ratio of forty percent for residential property and a tax rate of $1.75 per $100 of valuation would yield a tax as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appraised value of the property</td>
<td>$30,000</td>
</tr>
<tr>
<td>Assessment ratio</td>
<td>x .40</td>
</tr>
<tr>
<td>Assessed value</td>
<td>$12,000</td>
</tr>
<tr>
<td>Tax rate</td>
<td>x .0175</td>
</tr>
<tr>
<td>Tax levy</td>
<td>$210</td>
</tr>
</tbody>
</table>

All of these factors currently vary between taxing jurisdictions and even between classes of property within the same jurisdiction. But the requirement in section 2(b) for state action and for uniformity throughout the state is only applicable to the manner of determining the \textit{appraised value} of property. Under both section 2(a), which requires that all real and tangible personal property be taxed equally and uniformly in proportion to market value, and section 2(b), assessment ratios and tax rates legally could continue to vary between taxing jurisdictions.\textsuperscript{140} However, section 2(a) would require that the same tax rate and assessment ratio be applied to all taxable real and tangible personal property \textit{within} a taxing jurisdiction. This same requirement now exists under article VIII, section 1 of the present constitution, but is largely unenforced.

Currently in Texas there are more than 3,000 separate tax offices. Theoretically each has an independent duty to appraise and assess property.

\textsuperscript{188} The "silence" occurs because art. VIII, § 1 of the proposed constitution requires only that all real and tangible personal property be taxed.


\textsuperscript{140} COMM. ON FINANCE 13-14.
Some make no effort to appraise or assess property, choosing to depend on valuations determined by other taxing jurisdictions. However, enough taxing jurisdictions maintain their own value figures so that the individual taxpayer often finds the same property valued differently on several tax rolls. Article VIII, section 2(c) of the proposed constitution requires that each county provide for the appraisal of all taxable property within its boundaries in the manner provided by law. Each taxing authority imposing a tax on property within the county must tax in proportion to that appraisal. The cost of the appraisal would be allocated among the taxing authorities.

Obviously section 2(c) was intended to eliminate multiple appraisals and to provide a single market value figure for the use of taxpayers and all taxing authorities. Several particular aspects of 2(c) as established by the record during the Constitutional Convention or 64th Legislature should nevertheless be noted. First, the term “the county shall provide for appraisal . . . in the manner prescribed by law” not only permits contracts between taxing authorities or with private companies to determine who will actually appraise a particular piece of property, but also permits the creation of a board or other unit of county-wide government to administer the appraisal process or to equalize property valuations. Second, the appraisal in 2(c) must be made in conformance with the standards and procedures established by law under section 2(b). Third, each taxing authority remains free to establish its own assessment ratio and tax rate, thus continuing to control its own tax revenues. Each taxing authority also is granted the right under section 2(b) to seek countywide enforcement of the standards and procedures of appraisal if such becomes necessary because of the failure of those responsible for administering the appraisal function.

Together, sections 2(b) and (c) are intended to bring about property tax reform through a division of responsibilities between the state and local governments. Under section 2(b) the state establishes the standards and procedures of appraisal and, in conjunction with other taxing authorities, sees that they are properly enforced. Under section 2(c), the actual appraising of property remains a local function and local governments are assured control over the amount of their own tax revenues. This division reflects four conclusions by delegates to the Constitutional Convention: first, that property tax reform is impossible without guidance and enforcement from the state level; second, that the actual appraisal function should remain at the local level; third, that individual political subdivisions should retain control over revenues from the property tax through control of their own assessment ratios and tax rates; and fourth, that uniformity in appraisals is the most essential element in property tax reform and one which has an importance and utility beyond the ad valorem tax itself. Once the value of a particular piece of property has been accurately determined and is made known to the property owner, that person may easily determine the assessment ratios being ap-

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141. Id. at 16. See generally Proceedings 747-78 (Mar. 20, 1974).
142. See Comm. on Finance 13. But see Proceedings 768 (Mar. 20, 1974). The issue was finally resolved during the 64th Legislature when art. VIII, § 2(c) of the proposed constitution was amended to add the words “in the manner prescribed by law.”
plied by various taxing authorities and compare effective tax rates. If ade-
quate publication of market and assessed values occur, unequal assessment
ratios and extra-legal classifications of property become apparent and subject
to correction. In other areas, such as the funding of public education, the
market value figures should be useable in determining the equitable distribu-
tion of state funds. Sections 2(b) and (c) are intended to permit this result
without interfering with the ability of local governments to tax to meet their
own revenue needs.

Section 6 of article VIII of the proposed constitution is the last of the pro-
visions intended to bring about property tax reform in Texas. The sec-
tion is one of the most unique and potentially far-reaching of any in the pro-
posed document. The section directly grants each owner of property the
right to pay ad valorem taxes under protest and to sue in district court for
a refund. The section also imposes a duty on the district court to enter those
orders necessary to ensure equal treatment for the complaining taxpayer, in-
cluding a refund of taxes and equalization of property appraisals and assess-
ments. Additionally, subject to limitation by law, the court is under a duty
to ensure equal treatment under the law for all property owners within the
taxing authority. No similar provision exists in the present constitution or
Texas statutes. There exist at least three purposes for the new section.
Most apparent is that the section grants a new legal remedy to aggrieved ad
valorem taxpayers who, according to several recent studies, are virtually
unable to obtain effective relief under present law. A related purpose is that
the manner for obtaining relief under section 6 is intended to cause the least
possible interference with the revenue gathering activities of a taxing author-
ity that generally has an equitable tax system. The complaining taxpayer
must pay his tax before entering the courts. Also, the new scheme avoids
the problems arising under current law in which a taxpayer is required to
enjoin the collection of all taxes by the taxing authority to find a solution
to his own assessment or tax. The third purpose is to assure that the reforms
envisioned by sections 2(b) and (c) of article VIII occur. A taxing author-
ity that does not abide by state law or that maintains a generally inequitable
tax system would be vulnerable. Not only could any individual taxpayer ob-
tain a refund, but the court would be required to order equalization of prop-
erty appraisals or assessments throughout the taxing authority if necessary to
assure equal treatment for all property owners. This duty, which makes the
action under section 6 somewhat analogous to a public rather than a private
action, will not be imposed until after January 1, 1979, and will be subject
to limitation by law.

Most apparent of the arguments of those opposed to property tax reform
is that the establishment and enforcement of uniform standards and pro-
cedures for appraisal will result in higher property valuation and thus in

143. This provision originated with the 1969 Constitutional Revision Commission.
144. See Yudof, supra note 130; Tex. Comm. on State and Local Tax Policy,
supra note 130, at 27-30.
higher local ad valorem taxes. This same argument has been made concerning proposed article VIII. Four observations are in order. First, the argument is not directly applicable to the proposed constitution, but rather to the particular legislation effecting property tax reform, whether passed under the present or proposed charter. The specifics of appraisal procedures and the use of market value figures will be determined by legislation, not by the election of November 4, 1975. Second, higher valuations, even if they occur because of more uniformly applied or effective appraisal procedures, do not necessarily mean an increase in the total dollar amount of property taxes. The actual effective rate of the tax may be controlled, as it is today, through the adjustment of tax rates or assessment ratios. If necessary, implementing legislation providing new standards and procedures may address the use of new values and proscribe increased taxes. Responsible implementation of article VIII may avoid unnecessary tax increases. The third observation is that the intended effect of property tax reform is not to increase taxes generally, but to equalize the burden among those paying taxes. Some persons who currently pay their taxes without protest, scarcely aware of whether they are being treated fairly or not in relation to other taxpayers, may be surprised to find that their taxes are actually reduced once accurate appraisal figures are available. A fourth, and related observation, is that the failure to have appraisals uniform statewide will not affect whether future taxes may increase because of new property valuations. Most property is not undervalued on tax rolls. A taxing authority may selectively increase the value of property within its jurisdiction without concern that the result will invalidate its tax roles or be challengeable by the affected property owner. Such spot changes in values are less visible than decisions to increase tax rates or assessment ratios. Not only may the affected property owner be unaware of the increase but he may, at least temporarily, be paying taxes at a higher effective rate than those whose property continues to be undervalued. If article VIII's requirement for uniform standards and procedures of appraisal results in more frequent and comprehensive reappraisals, periods of unequal taxation due to spot reappraisals may be shortened and the decisions of appraisal made less political and more visible to the taxpayers.

D. Appraisal of Land Devoted to Agricultural Purposes or Timber Production

Because both the present and proposed constitutions require that real property be taxed uniformly in proportion to value, any exceptions to that policy

146. COMPTROLLER OF PUBLIC ACCOUNTS, FISCAL IMPLICATIONS OF THE PROPOSED TEXAS CONSTITUTION, item 5 under Article VIII (May 23, 1975) (pages unnumbered).

147. See, e.g., H.R. No. 1463, 64th Tex. Legis., Reg. Sess. (1975), which would have provided for a centralization of the appraisal function if it had passed, required that the tax rate and assessment ratio which "would impose the same total dollar amount of property taxes as were imposed in the previous year" must be reported, making the decision to increase taxes a conscious and publicly recognizable one. Other, more restrictive provisions are possible if necessary.

148. Although actual beneficiaries of such figures likely will vary between taxing authorities, more than one study has indicated that residential property is consistently among that taxed at the highest ratio to true market value, thus also among that most
must be provided by the constitution itself. The use of an assessment ratio different from one used for other property or a valuation of land on the basis of productivity rather than comparable sales is considered an exception to the constitutional requirement of uniformity. Article VIII, section 1-d of the present constitution directly grants a right of appraisal on the basis of productivity for land owned by natural persons and designated for agricultural use, but only if agriculture is the "primary occupation and source of income of the owner." Under section 3(a) of the proposed constitution the legislature is required to provide separate appraisal formulas for open-space land devoted to farm or ranch purposes and may provide such formulas for forest land devoted to timber production. The transition schedule of the proposed constitution carries forward article VIII, section 1-d of the present constitution as a statute, thus implementing section 3(a) of the new constitution at least with regard to farm and ranch land. The 64th Legislature enacted a new and more far-reaching program of separate formulas for both farm and ranchland, and timberland.

Section 3(a) places an important responsibility on future legislators. The problem it addresses is a very real one. Approximately thirty-five states have constitutional provisions or laws providing some ad valorem tax relief to owners of ranch, farm, or timberland who otherwise would face higher taxes resulting from land values inflated by nearby urban or resort growth. Without such relief, agricultural or timber production from the land may be insufficient to meet the additional tax burden and the owner may be forced to sell the land or convert it to more intensive uses. However, there is a narrow line separating bona fide farmers, ranchers, or timber owners who need such relief from land speculators or large businesses who have purchased the land because of its probable increase in value or who are not likely to be compelled to convert the land merely because of higher taxes. The issue is whether this line between deserving and undeserving landowners should be set in the constitution or by law. Section 3(a) reflects the view that it should be set by law. To assure that the legislature has complete authority to make classifications as necessary to prevent abuse of the appraisal policy, section 3(a) specifically authorizes limitations and sanctions to be imposed by general law. Examples of possible limitations are excluding land owned by corporations, requiring the land to be the owner's residence, or requiring that the land have been in the owner's possession for a number of

likely to benefit from uniform appraisals. The most recent such study is Texas Legislative Property Tax Comm., Market Value Study Pilot Project, Phase II, Summary Report 68-70 (1975).


150. Tex. Const. art. VIII, § 3 (proposed) provides in part:

'section 3. AD VALOREM TAX EXCEPTIONS. (a) The legislature by general law shall establish separate formulas for appraising land to promote the preservation of open-space land devoted to farm or ranch purposes and by general law may establish separate formulas for appraising land to promote the preservation of forest land devoted to timber production. The legislature by general law may provide limitations and impose sanctions in furtherance of the appraisal policy of this subsection.

years. Some states impose long-term restrictions on the use of the land, preventing conversion without state or local government approval. Section 3(a) makes all of these and other alternatives available. The legislature must effectively utilize such authority or the appraisal formulas provided under section 3(a) will not serve the purpose for which they were intended.

E. Ad Valorem Tax Exemptions

Because the present and proposed constitutions require that certain property be taxed, any legal exemption of such property must occur because of an express grant in the constitution itself. Both constitutions contain such grants. Some are direct, requiring no action by the legislature or local government; others are merely authorizations for an exemption, requiring further action before the exemption is actually available. As discussed previously, the major difference between the two constitutions is that the present one requires that all property be taxed, whereas the proposed constitution requires only that all real and tangible personal property be taxed.

Generally, the ad valorem tax exemptions provided in section 4 of the proposed constitution are the same as or similar to ones available under the present constitution. The most significant change is the increased direct exemption of household furniture and personal effects from a total amount of $250 of such property to the exemption of all such property not used for the production of income. As discussed previously, this change was made to conform the constitutional tax base to current assessment practice and to permit better administration of the tax. Other changes in the exemptions include: (1) new authority by law to increase the residential homestead exemption from state taxes to an amount above the present $3,000 limit; (2) conversion of the permissive residential homestead exemption of at least $3,000 for persons sixty-five and older that appears in the present constitution to a mandatory one, with authority in the political subdivision to increase the exemption; and (3) new authority to exempt property owned by a nonprofit water corporation if the property is not held for profit and is reasonably necessary for and is used in the acquisition, storage, transportation, or distribution of water or in providing sewage or waste water treatment service.

One important aspect of article VIII, section 4(d) is that the authority to grant exemptions is prefaced with the express authority to provide limitations, classifications, or exclusions within the prescribed exemptions. Currently, legislation granting exemptions usually tracks the appropriate constitutional provision, leading to broad and occasionally ill-defined exemptions. The authority of the legislature to do otherwise under the present constitution has been questioned and certain proposed statutory exemptions have been

153. See generally TEX. CONST. art. VIII, § 2.
154. Id. art. VIII, § 4(b) (proposed).
155. Id. § 4(c).
156. Id. § 4(d)(7).
declared invalid because they varied from the constitutional provision.\textsuperscript{158} Section 4(d) affords to future legislatures the opportunity to more effectively control statutory exemptions.

Section 5 of proposed article VIII grants new authority to provide ad valorem tax relief to persons determined to be in need of relief because of economic circumstance and either age or disability, and to preserve cultural, historical, or natural history resources. Both provisions distinguish between state and local taxes. Any law granting relief to persons determined to be in need must either provide for reimbursement of the political subdivision’s revenue loss or provide that the relief is contingent on approval of the political subdivision. Similarly, the legislature may directly grant relief from state taxes by designating property as a cultural, historical, or natural history resource, but may not make the relief applicable to local taxes unless the property is designated by the affected political subdivision in the manner prescribed by general law.

The approach toward ad valorem tax exemptions in the proposed constitution is to emphasize legislative control. The legislature is granted the authority to effectively manage statutory exemptions as part of a reformed ad valorem tax system. This authority carries with it a duty for responsible management that is much the same as that now faced with regard to other taxes.

F. State Debt

A reader of the present constitution is greeted with the assurance that Texas cannot incur debt except for defense or in amounts of up to $200,000 for casual deficiencies in revenue. Article III, section 49 provides that “[n]o debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt; and the debt created to supply deficiencies in the revenue, shall never exceed in the aggregate at any one time two hundred thousand dollars.” Despite this apparently clear and absolute prohibition of significant state borrowing, the State of Texas and its agencies, by August 1973, had accumulated over two billion dollars in outstanding debt.

The apparent exceptions in section 49 to the debt prohibition—to repel invasion, suppress insurrection, etc., understandably have not proven to be of great fiscal significance. The significant exceptions have come from amendment to the constitution and the judicial demise of the prohibition itself. Although the drafters of the 1876 constitution may well have meant the term “debt” to have an inclusive meaning, the courts of Texas have narrowly construed the constitutional limitation to apply only to borrowing which “obligates the credit of the state” and not to bonds issued by an agency of the state and payable solely from the non-tax revenues of the agency.\textsuperscript{159}

\textsuperscript{159} CRC: TEXT 149-50, citing Texas Turnpike Authority v. Shepperd, 279 S.W.2d 302 (Tex. 1955); Texas Nat’l Guard Armory Bd. v. McCraw, 132 Tex. 613, 126 S.W.2d 627 (1939); Charles Scribner’s Sons v. Marrs, 114 Tex. 11, 262 S.W. 722 (1924).
Under the present constitution, bonds obligating the credit of the state are authorized by constitutional amendment. Currently, specific authorizations exist for $1,360,000,000 in debt, over $760 million of which has been issued. In addition, amendments to article VII, the education article of the present constitution, have authorized certain senior colleges and universities to issue bonds and notes to finance permanent improvements. A second method of borrowing has been through bonds issued by state agencies, including senior colleges, on the basis of statutory rather than constitutional authority. These "revenue bonds" are not considered "state debt" within the prohibition of article III, section 49 because repayment is limited to the non-tax revenue of the issuing agency or institution. Examples include bonds payable from college dormitory housing rentals, college building-use fees, traffic facility tolls, or electrical or water service charges.

Article VIII, section 8 of the proposed constitution preserves the requirement that evidences of indebtedness "secured by the general credit of

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160. The result has been the addition of sections totaling approximately 6,000 words. See Tex. Const. art. III, §§ 49-b, 49-c, 49-d, 49-d-1, 49-e, 50b, 50b-1.

161. On May 31, 1974, the breakdown was as follows:

<table>
<thead>
<tr>
<th>Article III, §§ 49-c, 49-d, 49-d-1</th>
<th>Authorized (Thousands)</th>
<th>Issued (Thousands)</th>
<th>Outstanding (Thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Development Bonds</td>
<td>$400,000</td>
<td>$165,100</td>
<td>$144,005</td>
</tr>
<tr>
<td>Water Quality Enhancement</td>
<td>100,000</td>
<td>35,000</td>
<td>33,000</td>
</tr>
<tr>
<td></td>
<td>$500,000</td>
<td>$200,100</td>
<td>$177,005</td>
</tr>
<tr>
<td>Article III, §§ 49b, Veterans' Land Board</td>
<td>$500,000</td>
<td>$400,000</td>
<td>$328,678</td>
</tr>
<tr>
<td>Article III, § 49-e, State Park Bonds</td>
<td>$75,000</td>
<td>$15,750</td>
<td>$14,900</td>
</tr>
<tr>
<td>Article III, §§ 50b, 50b-1, Coordinating Board Loan Bonds</td>
<td>$285,000</td>
<td>$145,500</td>
<td>$137,145</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>$1,360,000</strong></td>
<td><strong>$761,350</strong></td>
<td><strong>$657,728</strong></td>
</tr>
</tbody>
</table>

Two joint resolutions were passed in the 64th Legislature to increase the amount authorized for water development by an additional $400 million and water quality by an additional $100 million. They will be submitted at the general election in 1976, either as the first bond authorizations to be voted on under article VIII, section 8 of the proposed constitution if such is adopted, or as amendments to the present constitution.

162. Tex. Const. art. VIII, §§ 17, 18.


164. Tex. Const. art. VIII, § 8 (proposed) reads:

"(a) State Debt may not be incurred except as authorized by this constitution.

(b) 'State debt' means bonds or other evidences of indebtedness that are secured by the general credit of the state or are to be repaid from taxes, fees, tuition, or other charges of the state, a state senior college or university, or a state agency or institution having statewide jurisdiction. 'State debt' does not include bonds or other evidences of indebtedness issued to finance a project if the debt is authorized by law and is payable solely from revenues generated by the project to be financed.

(c) State debt may be authorized by law if approved by a record affirmative two-thirds vote of the membership of each house of the legislature and submitted to and approved by a majority of the qualified voters of the state voting on the question.

(d) State debt may be authorized by law to refund outstanding state debt."
the state" must be approved by the record affirmative vote of two-thirds of
the membership of each house of the legislature and by a majority of the
qualified voters of the state voting on the question. This is the same require-
ment as currently exists for amendments to the constitution, but under section
8, the debt approvals would not become part of the constitution. A similar
process is currently used in California.165

Section 8 extends the required debt approval process to include all bonds
or other evidences of indebtedness "to be repaid from taxes, fees, tuition, or
other charges of the state, a state senior college or university, or a state
agency or institution having statewide jurisdiction." Under the proposed con-
stitution, such bonds or evidences of indebtedness may be issued only after
approval by the vote of two-thirds of the membership of each house and by
the voters of the state. This new requirement reflects the concern of both
the members of the Constitutional Revision Commission and the Constitu-
tional Convention over the rapid rise in the amount of debt created by state
agencies under the present constitution without a vote of the electorate of
the state.166 Without including bonds issued by quasi-state agencies (e.g.,
multi-county river authorities) the amount of outstanding state agency debt
created without constitutional amendment rose from approximately $200 mil-
lion in 1963 to over $900 million in 1973.167 Much of this debt consists
of bonds issued by various colleges and universities and payable from general
building use fees or tuition. Because such bonds could not be issued under
the proposed constitution without voter approval, opposition during the con-
vention to the new debt restriction was led by colleges and universities.168

The decision to limit authority to issue state agency bonds without voter
approval resulted from several conclusions. First, the use of bonds which
depend for repayment on special funds or fees has occurred in large part to
circumvent the need for constitutional amendment to authorize other borrow-
ing. Second, although agency bonds are technically payable only from local
agency revenues, they indirectly constitute a drain on state tax revenue which
must be appropriated to the agency to replace local revenues obligated for
debt service. Third, although the state legally may not be obligated on the
agency bonds, it is unlikely that the state could allow such debt to be for-
feited and probably would find some way, directly or indirectly, to assure
that the debt is repaid. Finally, borrowing through special fee or revenue
bonds is significantly more costly than borrowing through bonds directly
backed by the credit of the state.169

Two exceptions are made in section 8 to the debt approval process. One
is made to continue to allow certain evidences of indebtedness to be "issued
to finance a project if the debt is authorized by law and is payable solely

165. CAL. CONST. art. XVI, §§ 1, 1.5, 2.
166. See CRC: TEXT 149-51; COMM. ON FINANCE 31; PROCEEDINGS 863-76 (Mar.
25, 1974).
167. CRC: TEXT 150.
168. PROCEEDINGS 863-76 (Mar. 25, 1974).
169. The difference may be as great as 1%. Assuming only a difference of .5%,
the savings on level debt service bonds with a term of 25-30 years would be approx-
imately $900,000 on a principal of $10 million.
from revenues generated by the project to be financed.” The exception was intended to be a narrow one, permitting only projects such as a dormitory or other undertaking which is entirely self-sufficient. The second exception is made for state agencies or institutions with less than statewide jurisdiction. Some governmental entities such as multi-county river authorities are considered state agencies although they have limited geographical jurisdiction. Section 8 does not include the debt of such agencies within the definition of “state debt” and as a result the prescribed debt approval process does not apply. Section 10 of proposed Article IX, Local Government contains tax and debt limitations applicable to these authorities or state agencies of less than statewide authority.

Article VIII, section 8 is intended to impose a tighter restriction on the ability of the state to create debt without the approval of the voters of the state. This approach is contrary to the one suggested by many national authorities who argue that regardless of how restrictive a constitutional provision may appear, government officials and inventive bond attorneys will discover a method for circumventing its purpose. The approach also appears contrary to the one prevalent elsewhere in article VIII, in which the majority of problems identified under the present constitution are left to statutory solution. The difference in approach may reflect a concern that whereas a defective tax law may be repealed or amended by future legislatures, once debt has been created, it may bind future taxpayers for decades until discharged.

G. Pay-As-You-Go for State Appropriations

The so-called state “pay-as-you-go” policy is one of the least understood but most revered aspects of the present Texas Constitution. It is not, as some believe, a direct control on state borrowing such as the state debt limitation, but, rather, is a supplementary set of provisions which control the appropriation process. Article VIII, section 9 of the proposed constitution continues the pay-as-you-go policy without change.

Section 9 provides that “[n]o money may be drawn from the State Treasury except in accordance with specific appropriations made by law” and that “[n]o appropriation . . . may be made for a period longer than two years.” In relation to “pay-as-you-go,” the latter requirement means that the legislature may not authorize expenditures of the revenues of a subsequent legislature or enter into contracts which irrevocably obligate those revenues. It does not mean that appropriations must be for the full two years. Annual budgets or appropriations for even shorter periods are possible.

The heart of “pay-as-you-go,” was added to the constitution in 1942 and is carried forward in section 9(d) of the proposed constitution. Each appro

172. Id.
173. Id. art. III, § 49(a).
proposition bill is required to pass to the Comptroller of Public Accounts before going on to the Governor. The Comptroller is charged with certifying that "the amount appropriated is within the estimated revenue for the applicable fiscal year." An appropriation without the Comptroller's certification is possible only for an "imperative public necessity" and then only if approved by a four-fifths vote of the membership of each house of the legislature.

The proceedings of the Constitutional Revision Commission and Constitutional Convention indicate a public reluctance to accept any suggestion of deletion or significant modification of any part of the constitutional pay-as-you-go requirements. This reluctance may be justified by the recent success that has been encountered in keeping state appropriations near actual revenues and in avoiding the need for state borrowing to meet deficit spending. A key to the success has been the accuracy of the Comptroller's estimates of anticipated revenue. The estimates have generally been within five percent of actual revenues and have been greater than actual revenues only five times in the past thirty years.

H. Limitations on the Use of Public Money and Credit

There are three general limitations on the use of public money and credit in the proposed constitution. Two appear in article VIII, section 10, which provides that "[p]ublic funds and public credit may be used only for public purposes" and that "[n]o public funds or public credit may be used to influence the election of a public officer." The third limitation is in section 9(a), which prohibits any law from appropriating money from the state treasury for a purpose not previously authorized by law.

In response to the corruption and misuse of public funds that preceded the 1875 Constitutional Convention, the delegates to that convention included in the constitution nine separate sections prohibiting the use of public money or credit for private or local purposes. Except for one which was deleted in 1969, all of the sections remain in the present constitution. The multiplicity of sections, somewhat ambiguous and inconsistent wording of each, and the irregular legal interpretations provided by courts and Attorneys General over the past century have created uncertainty as to the nature of the rule applicable to the use of public funds. This uncertainty has been suggested as the cause, either directly or indirectly, of many amendments to the present constitution to authorize uses such as workmen's compensation, retirement and pension programs for public employees, state wel-

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174. See CRC: TEXT 151-52; COMM. ON FINANCE 32-34.
175. One section (TEX. CONST. art. III, § 48) undertook to list all of the purposes for which taxes could be levied. Others (id. art. III, §§ 50, 51, 52) generally prohibited "grants" or "loans" to "individuals" or "corporations, including municipal." "Extra compensation" was prohibited in id. art. III, §§ 44 and 53. Releases of liens on railroads were prohibited in id. art. III, § 54. Appropriations for "private purposes" were proscribed in id. art. XVI, § 6. Id. art. XVII, § 3 required that "[t]axes shall be levied and collected by general laws and for public purposes only."
176. Id. art. III, § 48 (1876).
177. CRC: TEXT 152-54.
178. TEX. CONST. art. III, §§ 59, 60, 61.
179. Id. art. XVI, § 67 (adopted Apr. 22, 1975). The amendment proposing art. XVI, § 67 repealed six sections of the constitution.
fare assistance,180 and payment for persons wrongfully imprisoned.181 The decision to discard the various limitations of the present constitution in favor of those in sections 9 and 10 of the proposed constitution resulted, at least in part, from a desire to avoid the need for future amendments.182

The provision of section 10 limiting the use of public money and public credit to public purposes originated in the recommendations of the Constitutional Revision Commission,183 where it had a history of controversy. Apparently no one argued that the provisions of the present constitution did not need revision, but considerable disagreement existed over the form which such revision would take. Some members of the Commission indicated that inclusion of only a public purpose limitation would amount to the removal of any effective constitutional limits on the use of public funds. Others protested that the constitution should remain silent or should provide that the term "public purpose" was to be defined by law. They argued that the determination of how public funds should be used was a responsibility of the legislature or local elected officials and that it was unnecessary and unwise to allow the courts to make the final determination. Several proponents of this view finally settled on the use of the word "only" as indicative of a restrictive rather than liberal interpretation of the limitation.184 During the 1974 Constitutional Convention the focus of attention was redirected toward finding a satisfactory limitation less broad than "public purposes," but none was found.

The determination of what constitutes a public purpose under the proposed constitution is likely to vary with the particular facts of each proposed project. However, some guidelines are available from cases in this state and elsewhere.185 Also, the many purposes authorized by provision in the present constitution but not mentioned in the proposed one were intended to be preserved as permissible uses of public funds.186 Statements made during the Constitutional Convention and the regular session of the 64th Legislature in

180. Id. art. III, § 51-a.
181. Id. § 51-c.
182. See CRC: TEXT 152-54.
183. Id. at 152-53.
184. CRC: STATEMENTS 35-36.
186. Both the Constitutional Revision Commission proposal and the document adopted on second reading by the Constitutional Convention provided a section which was intended to preserve existing uses of public funds. See CRC: TEXT 153-54; COMM. ON FINANCE 35-36. The Convention Committee on Style and Drafting suggested that the provision be dropped into the transition schedule. TEX. CONST. CONVENTION, REPORT OF COMM. ON STYLE AND DRAFTING, ARTICLE VIII, FINANCE 40-43 (1974). Subsequently, the Committee on Submission and Transition eliminated the proposed provision entirely on the basis that it was unnecessary and could unintentionally impose a limitation on uses of public money which could be considered public purposes in the future. Id.; see Const. Convention Submission Res. No. 1 (1974).
dicate an intent that certain other general concepts, such as public purchases of insurance from mutual companies, tax increment financing, and industrial revenue bonds, also were within the limits prescribed by section 10.\textsuperscript{187}

The limitation in section 9 that no law may appropriate money for a purpose not previously authorized by law originated in the Constitutional Convention. A similar provision exists in article III, section 44 of the present constitution. The limitation that no public funds or public credit may be used to influence the election of a public officer also originated in the Convention, but there is no comparable provision in the present constitution.

I. Overview of Article VIII

If only because of apparent ambiguities, inconsistencies, and conflicts, the finance provisions of the present Texas Constitution are in need of revision. Because of amendments over the past one hundred years, some provisions are in apparent conflict, while others are partially or wholly inoperative. Others have been present since 1876 without any definitive legal interpretation.

The most significant substantive changes in the proposed article VIII are with regard to the property tax, the ability of state agencies to create debt, and the certainty with which state and local government officials can predict permissible uses of public funds without constitutional amendment. Several of the changes concerning the property tax are self-enacting and are intended to impel property tax reform. Others grant new authority to the legislature to allow better management of the specifics of the tax.

Proposed article VIII continues certain provisions of the present constitution that the members of the Constitutional Revision Commission and delegates to the Constitutional Convention felt had maintained their usefulness, and discards others, substituting new provisions in response to lessons learned during the past one hundred years and anticipated future needs. The record of the Constitutional Revision Commission and Constitutional Convention reflects that the goals of the proposed article were ones of significant change, but that the methods adopted were moderate.

VI. Conclusion

Whatever the outcome of the November 4, 1975, vote on the proposed constitution, the significance of the effort which made the constitution's submission possible will not be diminished. This Article has merely touched upon the many provisions which were considered, reconsidered, drafted, and redrafted by the various citizens, commissions, committees, and legislators whose efforts led to the final product. These endeavors have resulted in the presentation of a document which attempts to respond to the many deficiencies of the existing constitution. It was hoped that the careful attention paid to detail would result in a document which would guide, rather than hinder. Surely this constitution, if passed, will not alleviate all problems, but at least

\textsuperscript{187} Proceedings 877-78; 885-86 (Mar. 25, 1974).
it is a step at providing Texas citizens with a flexible directive in nine essential areas. It is a tribute to the democratic system that a number of seemingly disparate groups could work together to establish necessary reforms in areas ranging from finance to the judiciary. Finally, it must be emphasized that the changes herein discussed, and many others, are truly significant, for they stress important goals of more efficient government, fairer taxation, equal education, and greater flexibility. It reflects the view of those who contributed to it that the entire document is a logical and necessary response to many of the unfortunate lessons learned under the more restrictive constitution of 1876.