

PROPOSED CONSTITUTIONAL REVISION OF 1944.

Chart showing the principal changes proposed in the 1942 Report of the Hendrickson Commission, and the action taken upon them by the Legislature, indicating where the changes were adopted or rejected in the preliminary draft adopted by the Legislature prior to the public hearings, and where such action was changed in the final draft which was submitted to the people at the November 1944 election.

Compiled by LESLIE H. JAMOINEAU.

Principal Changes Proposed by the Hendrickson Commission, 1942. Action by Legislature, 1944

ARTICLE I: RIGHTS AND PRIVILEGES

Added: "Any citizen may restrain violations of the Constitution by a suit with leave of court." Rejected in preliminary draft.

ARTICLE II: POWERS OF GOVERNMENT

Added: "All powers not vested in the Executive and Judiciary, nor in conflict with the rights reserved to the people, or specifically proscribed to the Legislature, shall vest in the Legislature." Retained in the preliminary draft, but rejected in final draft, after public hearings.

Added: "Exercise of legislative and executive powers by administrative agencies limited to effectuation of standards or principles as set by law, and to be uniform in character as far as practicable." Rejected in preliminary draft.

ARTICLE III: LEGISLATIVE

Biennial sessions instead of annual. Rejected in preliminary draft.

Regular sessions limited to 90 days. Adopted in preliminary draft.

Term of Assemblymen increased to two years; Senators to four years, one-half retiring biennially. Adopted in preliminary draft.

Special sessions limited to specific purposes, callable by Governor in his discretion, and upon the petition of two-thirds of the members of each house, such sessions limited to a duration of 15 days. (At present Governor has sole initiative, and may call sessions of the Legislature or of the Senate alone, without restriction.) Adopted in preliminary draft, amended to require only a simple majority of members to join in petition.

Created a new "Legislative Council" composed of Gov., Atty.-Gen., Pres. of Senate, Speaker of House, and majority and minority leaders of both houses, with additional salary of \$1500 (except Gov. and Atty.-Gen.) to plan legislation, manage research and consultant services, etc., advising and reporting to Legislature. Rejected in preliminary draft. (A provision is added elsewhere for legislative committees to continue with all their delegated powers after adjournment of Legislature.)

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Principal Changes Proposed by the
Hendrickson Commission, 1942.

Action by Legislature, 1944

ARTICLE III: LEGISLATIVE (Cont'd)

Salaries of legislators increased from \$500 to \$1500 per annum. Further increased to \$2000 in preliminary draft.

Salaries of President of Senate and Speaker of House increased from \$666.66 to \$2000 per annum. Further increased to \$3000 in preliminary draft.

Present prohibition against legislative members taking any office or position created while they were members, or of which the emoluments were increased, extended to include one year beyond the legislator's term. Rejected in preliminary draft. (A provision is added that no legislator may "qualify into" any State position during any "regular session" of the Legislature.)

Senate required to vote in public on confirmation of Governor's nominations to office. Rejected in preliminary draft.

Persons or associations engaged in "influencing legislative action" required to register with Sec. of State, disclosing principals and interests for whom they act, compensation received, the measures upon which they will act, and all their expenditures, all of which to form public record, under pain of penalties to be fixed by law. Rejected in preliminary draft

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Members of legislature may be appointed to commissions, boards, etc., for quasi-legislative functions, etc., without extra pay. (Not proposed by Commission, adopted by Legislature in preliminary draft.)

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Constitutionality of laws not to be questioned after two years, notwithstanding their enactment in violation of constitutional requirement that every law shall embrace but a single purpose which shall be expressed in its title. (Not proposed by Commission, but added by Legislature in preliminary draft. After the hearings, where the proposal was attacked, it was stricken from the final draft.)

Federal laws and regulations may be incorporated in state laws by reference, notwithstanding the general prohibition of the Constitution against this practice. Rejected in preliminary draft.

Right of Labor to organize and bargain collectively shall not be impaired. Rejected in preliminary draft.

ARTICLE III: LEGISLATIVE (Cont'd.)

Statutory law to be continuously revised by such permanent agency as may be designated by law. Revisions to be enacted from time to time to the end that all the law shall be completely revised at least once every 10 years.

Adopted as amended, revisions to be such that all the law shall be completely revised where needed at least once every 20 years.

Legislature may not elect or appoint any State officer except the Treasurer and Comptroller. (A drastic reduction of the broad appointive powers now possible to the Legislature.)

Amended to: Legislature may not elect or appoint any State officer except "as expressly provided in this Constitution." Elsewhere the Treasurer, Comptroller and Auditor are made expressly subject to election by Legislature in joint session, but there is no prohibition against further legislative appointive power, and only the "head of each principal department" and administrative "boards and commissions" are expressly subject to Governor's appointment, other appointments by Governor being only of offices "not otherwise provided for by this Constitution or by law."

Legislature may limit and restrict the uses of property adjacent to any parkway, highway or other public improvement for the protection and conservation thereof.

Rejected in preliminary draft. (Legislation is now proposed which would make such a provision desirable.)

Appointment and commissioning of militia officers in accordance with standards of U.S. army vested in Governor. Other powers vested in Legislature.

Legislature vested with all ultimate powers over militia, except those of the Governor as commander-in-chief.

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Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to owner. (Not proposed by Hendrickson Commission, and apparently redundant. See Par. 16 of the Bill of Rights, Art. I.)

ARTICLE IV: EXECUTIVE

Governor's term increased to 4 years., Adopted in preliminary draft.

Election in odd-numbered years.

Altered to even-numbered years, starting with 1946 (non-coincidental with Presidential years.)

ARTICLE IV: EXECUTIVE (CONT'D)

No person shall be eligible for more than one term.

Amended: When elected for a full term he shall be incapable of holding the office again until four years after expiration of such term.

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In case of death before assuming office, Pres. of Senate, and in case of his death, Speaker of House, to succeed. (Not in Commission proposals.)

In case of temporary or permanent vacation of office, the head of the Department of Taxation and Finance shall succeed.

Amended in preliminary draft to give succession first to Pres. of Senate, then to Speaker of House.

Such vacancies to be filled at next general election if vacancy occurs not less than 60 days prior thereto; otherwise at second succeeding general election, but not in 1946 or in any fourth year thereafter.

Substantially so provided in final draft.

Governor shall appoint, with advice and consent of Senate, all officers as provided for by Constitution, and all others whose election or appointment is not otherwise provided for by law.

Adopted in preliminary draft.

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No temporary or ad interim appointments may be made by Gov. except as provided by law. (added by Legislature to preliminary draft.)

Senate shall confirm or reject nominations within 30 days, or they shall be deemed to be confirmed.

Amended in preliminary draft to 6 weeks instead of 30 days.

Governor shall make no nominations during the last month of his term.

Amended in preliminary draft to last week instead of month.

Veto may be overridden by majority three days after return, except when appropriation items have been specifically vetoed, and supplementary appropriation bills, in which case a two-thirds vote is required to override.

Amended to require a three-fifths vote of all the members to override all vetoes. Substantially so provided in preliminary draft.

Bills become laws on 7th day following submission to Governor (excl. of Sundays) if not returned unsigned.

Amended in preliminary draft to 10th day instead of 7th.

Principal Changes Proposed by the
Hendrickson Commission, 1942.

Action by Legislature, 1944.

ARTICLE IV: EXECUTIVE (Cont'd)

If Legislature has adjourned sine die before said 7th day, bills shall not become laws unless signed by Governor within 20 days after such adjournment.

Amended: After adjournment Gov. has 35 days either to sign or return bill to a special session to be called for reconsideration, otherwise bill becomes law on said 35th day. Bills returned unsigned less than 3 days before adjournment become laws unless Gov. calls special session to meet within said 35 days for reconsideration.

Gov. may institute investigations into conduct of any state officer except Legislators, officers appointed or elected by Legislature, and judicial officers, and thereafter remove such officers, after due notice and hearing.

Substantially adopted in final draft.

Parole Commission to consist of three persons, including one lawyer, appointed by Gov. with advice and consent of Senate, with power to grant paroles, remit fines and supervise parolees, and to make recommendations to Gov. for executive clemency. Gov. to grant pardons and commute sentences, and may also suspend fines and grant reprieves for not more than 90 days after conviction, as at present.

Amended: Board of Pardons to consist of the Gov. and four others appointed by him, with advice and consent of Senate. Board by majority of all its members may remit and suspend fines, in which matters Gov. need not participate. By a majority, with Gov.'s participation, it may grant pardons, but the Board shall have no power to grant paroles except as provided by law. Reprieve power in Gov., without present limitation of 90 days after conviction.

Creates nine administrative agencies for exercise of all executive functions, designated as Departments of Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance, under control of Governor and of State Treasurer and Comptroller. Allocation and reallocation of functions to be by executive order of Gov. to be made during legislative sessions, effective after 30 days unless disapproved by Legislature within that time, in which event they are void.

Rejected: Substitute provision for creation of not more than 20 administrative agencies by executive order, effective after 6 weeks unless disapproved by Legislature within that time or as of date approved. Functions may be transferred, reallocated, etc., by executive order, but Legislature may also by law direct department functions, irrespective of Governor's control of them by executive order.

Limitation on legislative session duration suspended to permit consideration of executive orders respecting departmental control.

Ad. to
Rejected in final draft.

Heads of administrative departments to serve for Gov.'s term and at his pleasure.

Amended: Removals to be made by Gov. "as shall be provided by law."

ARTICLE IV: EXECUTIVE (Cont'd)

Regulations of administrative agencies
not to become effective until filed with Secretary of State. Rejected in preliminary draft.

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Governor may form cabinet of such State officers as he may select, to serve at his pleasure. (Added in preliminary draft.)

ARTICLE V. JUDICIAL

Present Court of Errors and Appeals, Court of Chancery, Prerogative Court, Supreme Court, Circuit Courts, and the existing inferior courts replaced by a Supreme Court, sitting at the State Capitol, a Superior Court, sitting in each county, and inferior courts as may be provided by law, which courts may be integrated with the Superior Court.

Adopted, amended that appellate divisions of the Superior Court shall sit at the State Capitol or elsewhere as may be designated by the Chief Justice.

In case of conflict between law and equity, equity shall prevail.

Adopted in preliminary draft.

Supreme Court to consist of a chief justice and six associate justices. A Superior Court Justice may be added when necessary for a quorum.

Adopted in preliminary draft.
Quorum fixed at five.

Superior Court to consist of at least 25 justices, with general original jurisdiction, divided into a law section for civil, criminal and matrimonial matters, and an equity and probate section for all other matters.

Adopted, with minimum number of justices increased to 27, at least one resident in each county, and assigned by the Chief Justice to that county.

Superior Court to contain at least two appellate divisions consisting of three justices each, annually assigned by the Chief Justice.

Adopted in preliminary draft, with amendment that additional temporary appellate divisions may be provided as needed.

Judgments of Superior Court appellate divisions appealable to Supreme Court as a matter of right only in capital and Constitutional cases, in the event of a dissenting opinion, or upon certification by the appellate division or by the Supreme Court.

Adopted in preliminary draft.

Principal Changes Proposed by the
Hendrickson Commission, 1942. Action by Legislature, 1944.

ARTICLE V. JUDICIAL (Cont'd)

Appeals may be taken as a matter of right from any order, judgment or decree of the Superior Court to an appellate division. So adopted in preliminary draft, but amended in final draft to provide that only final orders, etc. may be appealed as a matter of right.

Governor to appoint, with advice and consent of Senate, justices of Supreme and Superior Courts, and the judges of inferior courts having jurisdiction in more than one municipality. Adopted with amendment that judges of inferior courts may be authorized by law to be elected in, or appointed by the governing bodies of, counties and municipalities.

Justices of Supreme Court must have been justices of Superior Court for at least one year. Rejected in preliminary draft.

Justices of Superior Court must have been counsellors for 10 years. Rejected in preliminary draft. Final draft provides that justices of both Supreme and Superior Courts need only to have been attorneys for 10 years before appointment.

Terms of Supreme Court justices to be for good behavior. Adopted in preliminary draft.

Terms of Superior Court justices to be for seven years; if reappointed then for good behavior thereafter. Issue of good behavior to be tried by Supreme Court. Adopted, amended that justices of Supreme and Superior Courts shall be removable by impeachment by Legislature; other judges as provided by law, without impeachment.

All justices and judges to retire at age of 70. Adopted in preliminary draft, amended that retired jurists may be assigned to temporary duty.

All justices and judges to vacate their offices upon becoming a candidate for elective office. Adopted in preliminary draft.

Justices of Supreme and Superior Courts may not practice law or engage in other gainful occupation during office. Adopted in preliminary draft.

Other judicial officers, as may be provided by law, shall not practice law or engage in other gainful occupation. Rejected in preliminary draft.

Chief Justice of Supreme Court to be the administrative head of all the courts, with power to appoint an executive director to serve at his pleasure. Adopted in preliminary draft.

ARTICLE V: JUDICIAL (Cont'd)

Whenever Supreme Court fails to hear an appeal within 2 months after it has been perfected, or fails to decide the same within 2 months after argument or submission, the Chief Justice shall so certify to the Gov., who may then appoint a special term from the justices of the Superior Court, to serve until the delay is cured.

Rejected in preliminary draft.

Chief Justice to file annual report before December first for the year ending September first next preceding.

Adopted, amended to provide that annual reports shall be as provided by law, filed prior to legislative session.

ARTICLE VI: PUBLIC OFFICERS AND EMPLOYEES

Merit System declared.

Adopted in preliminary draft.

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Strikes by public employees declared to be against public policy. (added in preliminary draft, but stricken from final after public hearings.)

Legislature may investigate fidelity or performance of duty of any public officer or employee. No person shall be privileged not to testify, but shall be immune from criminal prosecution arising therefrom. Any public officer or employee refusing to testify or refusing to waive immunity shall be disqualified to continue in office, and shall be ineligible for future public office or employment.

Adopted in preliminary draft.

Retirement system benefits shall not be diminished or impaired.

Rejected in preliminary draft.

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Present liability of all civil officers to impeachment during term of office and for two years thereafter amended to exclude judicial officers. Elsewhere, however, the Justices of the Supreme and Superior courts are made subject to such impeachment, the other judges being subject to removal as provided by law without impeachment. (Added to preliminary draft without suggestion of Hendrickson Commission.)

Present prohibition against successive terms by sheriffs and coroners removed.

Adopted in preliminary draft.

ARTICLE VII: FINANCE

All revenues to be paid into a single General Fund, from which all appropriations for public purposes may be made, except that separate funds shall be set up for the revenues of taxes levied to maintain free schools, proceeds of bond issues, earnings of utilities, revenues restricted by federal laws, debt service, retirement funds, and for specific purposes required by private donations.

Adopted in preliminary draft.

All State appropriations to be included in a single biennial budget bill.

Altered to annual budgets.

No other appropriations to be made except by bills providing for a single purpose, by a two-thirds vote of all the members of Legislature, and within the limits of revenue available for the purpose.

Rejected in preliminary draft. As finally adopted, supplementary appropriation bills, either omnibus or for special purposes, may be enacted by a simple majority, except when appropriation balances on hand, together with revenues on hand and to be anticipated, are in excess of needs.

Property shall be assessed for taxes under general laws, by uniform rules, according to true value.

So in preliminary draft, but amended in final draft to: Property shall be assessed under general laws according to standards as may be provided, by uniform rules, but not in excess of true value. Exemption may be granted to veterans and persons in military service.

Present restrictions upon debt creation and requirements for referenda on bond issues, 35 year limitation for final payment, etc. retained. Annual amortization of all debts required. Laws creating debts not to be repealed until debt discharged or unless equally secure provision is made for payment.

Substantially so adopted in final draft, except that no discretion is given legislature to repeal or extend debt-creating laws.

ARTICLE VIII: ELECTIONS AND SUFFRAGE

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Persons convicted of crime may be deprived of suffrage by law. (Not proposed by Hendrickson Commission, which made no change in the present provision that persons convicted of crimes which at common law would disqualify them as witnesses are barred from voting.)

All public questions subject to a vote of the people shall be submitted at general elections.

Adopted in preliminary draft.

Principal Changes Proposed by the
Hendrickson Commission, 1942. Action by Legislature, 1944.

ARTICLE VIII: ELECTIONS AND SUFFRAGE (Cont'd)

Local propositions shall be submitted at regular county and municipal elections. Rejected in preliminary draft.

ARTICLE IX: AMENDMENTS

Present requirement for action by two successive legislatures removed. Proposals may be approved by a two-thirds vote of all the members of each house, and voted upon at a general election to be held not less than three, or more than four months after publication of proposals as adopted by Legislature. Present requirement of special election removed.

Amended in final draft to require only a three-fifths vote of Legislature for approval of proposals and submission to the people.

OTHER REFORMS WHICH WERE ADVOCATED, BUT WHICH WERE NOT ACTED UPON BY THE HENDRICKSON COMMISSION, OR BY THE LEGISLATURE:

Permit Governor to succeed himself.

Uniform rule for overriding veto by two-thirds majority.

Limit legislative power to increase executive budget.

Forbid legislation under suspension of rules except under emergencies certified by Governor.

Limit legislative power to exempt from taxation.

Taxpayers' suits to correct or restrain violations of government to be a matter of right instead of subject to court's discretion.

Bills passed by one house upon which the other fails to act to be submitted to the people at next general election.

Provide procedure for a constitutional convention to study revision needs, at fixed intervals, say 20 years.

All judges to be barred by constitution from practice of law.

Reform of apportionment: Assemblymen to represent separate districts. Senatorial districts to be equalized.

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