

Our Constitutions: An Historical Perspective

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Constitution of 1776

Drafted and promulgated by the Fifth Provincial Congress in December, 1776, without submission to the people, the Constitution of 1776 and its separate, but accompanying, Declaration of Rights sketched the main outlines of the new state government and secured the rights of the citizen from government interference. While the principle of separation of powers was explicitly affirmed and the familiar three branches of government were provided for, the true center of power lay in the General Assembly. That body not only exercised full legislative power; it also chose all the state executive and judicial officers, the former for short terms and the judges for life.

Profound distrust of the executive power is evident throughout the document. The governor was chosen by the legislature for a one-year term and was eligible for only three terms in six years. The little power granted him was hedged in many instances by requiring the concurrence of a seven-member Council of State, chosen by the legislature, for its exercise.

Judicial offices were established, but the court system itself was left to legislative design. No system of local government was prescribed by the constitution, although the offices of justice of the peace, sheriff, coroner and constable were created.

The system of legislative representation was based on units of local government. The voters of each county elected one senator and two members of the House of Commons, while six (later seven) towns each elected one member of the lower house. It was distinctly a property owner's government, for only landowners could vote for senators until 1857 and progressive property qualifications were required of members of the house, senators and the governor until 1868. Legislators were the only state officers elected by the people until 1836.

The Convention of 1835

Dissatisfaction with the legislative representation system, which gave no direct recognition to population, resulted in the Convention of 1835. Extensive constitutional amendments adopted by that convention were ratified by a vote of the people — 26,771 to 21,606 — on November 9, 1835. The 1835 amendments fixed the membership of the Senate and House of Commons at their present levels, 50 and 120. The new house apportionment formula gave one seat to each county and distributed the remainder of the seats — nearly half of them at that time — according to a mathematical formula favoring the more populous counties. From 1836 until 1868, senators were elected from districts laid out according to the amount of taxes paid to the state from the respective counties, thus distributing senatorial representation in direct proportion to property values.

The Amendments of 1835 also instituted popular election of the governor for a two-year term, greatly strengthening that office; relaxed the religious qualifications for office holding; abolished suffrage for free black residents; equalized the capitation tax on slaves and free white males; prohibited the General Assembly from granting divorces, legitimating persons or changing personal names by private act; specified procedures for the impeachment of state officers and the removal of judges for disability; made legislative sessions biennial instead of annual; and provided methods of amending the constitution. Following the precedent established in amending the United States Constitution, the 1835 amendments were appended to the Constitution of 1776, not incorporated in it as is the modern practice.

In 1857, voters approved the only amendment submitted to them between 1836 and 1868. The amendment — approved by a 50,095 to 19,382 vote — abolished the 50-acre land ownership requirement for voters to cast ballots in state senate races. The constitutional change opened that ballot to all white male taxpayers, greatly increasing the number of North Carolinians eligible to vote for senators.

The Convention of 1861-62

The Convention of 1861-62, called by act of the General Assembly, took the State out of the Union and into the Confederacy and adopted a dozen constitutional amendments. These changes were promulgated by the convention without submitting them for voter approval, a procedure permitted by the state constitution until 1971.

The Convention of 1865-66

The Convention of 1865-66, called by the provisional governor on orders of the President of the United States, nullified secession and abolished slavery, with voter approval, in 1865. It also drafted a revised state constitution in 1866. That document was largely a restatement of the Constitution of 1776 and the 1835 amendments, plus several new features. It was rejected by a vote of 21,770 to 19,880 on August 2, 1866.

The Convention of 1868

The Convention of 1868, called upon the initiative of Congress, but with a popular vote of approval, wrote a new state constitution which the people ratified in April, 1868, by a vote of 93,086 to 74,016. Drafted and put through the convention by a combination of native Republicans and a few carpetbaggers, the constitution was highly unpopular with the more conservative elements of the state. For its time, it was a progressive and democratic instrument of government. In this respect it differed markedly from the proposed Constitution of 1866.

The Constitution of 1868 was an amalgam of provisions copied or adapted from the Declaration of Rights of 1776, the Constitution of 1776 and its amendments, the proposed Constitution of 1866 and the constitutions of other states, together with some new and original provisions. Although often amended, a majority of the provisions in the 1868 constitution remained intact until 1971. The Constitution of 1971 brought forward much of the 1868 language with little or no change.

The Constitution of 1868 incorporated the 1776 Declaration of Rights into the Constitution as Article I and added several important guarantees. The people were given the power to elect all significant state executive officers, all judges and all county officials, as well as state legislators. All property qualifications for voting and office holding were abolished. The plan of representation in the Senate was changed from a property to a popular basis, while the 1835 house apportionment plan was retained. Annual legislative sessions were restored.

The executive branch of government was strengthened by popular election of most department heads for four-year terms of office and the governor's powers were increased significantly. A simple and uniform court system was established with the jurisdiction of each court specified in the constitution. The distinctions between actions at law and suits in equity were abolished.

For the first time, detailed constitutional provision was made for a system of taxation and the powers of the General Assembly to levy taxes and to borrow money were limited. Homestead and personal property exemptions were granted. Free public schools were called for and the maintenance of penal and charitable institutions by the state was commanded. A uniform scheme of county and township government was prescribed.

The declared objective of the Conservative Party (under whose banner the older, native political leaders grouped themselves) was to repeal the Constitution of 1868 at the earliest opportunity. When the Conservative Party gained control of the General Assembly in 1870, a proposal to call a convention of the people to revise the constitution was submitted by the General Assembly to the voters and rejected in 1871 by a vote of 95,252 to 86,007.

The General Assembly thereupon resorted to legislative initiative to amend the constitution. That procedure called for legislative approval of each proposed amendment at two successive sessions, followed by a vote of the people on the amendment. The 1871-72 legislative session adopted an act calling for about three dozen amendments to the constitution, all of which were intended to restore to the General Assembly the bulk of the power over local government, the courts, and the public schools and the University of North Carolina that had been taken from it by the Constitution of 1868.

The 1872-73 session of the General Assembly approved eight of those amendments for the second time and submitted them to a popular referendum. Voters approved all eight in 1873 by wide margins. These amendments restored biennial sessions of the General Assembly, transferred control of the University of North Carolina from the State Board of Education to the General Assembly, abolished various new state offices, altered the prohibition against double office-holding and repealed the prohibition against repudiation of the state debt.

The Convention of 1875

In 1875, the General Assembly called a convention of the people to consider constitutional revision. This action was not confirmed by popular referendum and none was constitutionally required at the time. The Convention of 1875 (the most recent in the state's history) sat for five weeks in the fall of that year. It was a limited convention that had been specifically forbidden to attempt certain actions, such as reinstatement of property qualifications for office-holding or voting.

The Convention of 1875 adopted — and the voters on November 7, 1876, approved by a vote of 120,159 to 106,554 — a set of 30 amendments affecting 36 sections of the state constitution. These amendments (which took effect on January 1, 1877):

Prohibited secret political societies.

Moved the legislative convening date from November of even-numbered years to January of odd-numbered years.

Fixed in the constitution for the first time the rate of legislative compensation.

Called for legislation establishing a state Department of Agriculture.

Abandoned the simplicity and uniformity of the 1868 court system by giving the General Assembly the power to determine the jurisdiction of all courts below the Supreme Court and establish such courts inferior to the Supreme Court as it might see fit.

Reduced the Supreme Court from five to three members.

Required Superior Court judges to rotate among all judicial districts of the state.

Disqualified for voting persons guilty of certain crimes.

Established a one-year residency requirement for voting.

Required non-discriminatory racial segregation in the public schools.

Gave the General Assembly full power to revise or abolish the form and powers of county and township governments.

Simplified the procedure for constitutional amendment by providing that the General Assembly might, by act adopted by three-fifths of each house at one legislative session, submit an amendment to the voters of the state (thus eliminating the former requirement of enactment by two successive sessions of the General Assembly).

The principal effect of the amendments of 1873 and 1875 was to restore in considerable measure the pre-1868 power of the General Assembly, particularly over the state's courts and local governments. Documents from the late 19th and early 20th centuries occasionally refer to "the Constitution of 1876." There was no such constitution. The 1875 amendments were simply inserted at the appropriate places in the 1868 constitution, which continued in this amended form until 1971. The designation "Constitution of 1876" may have been intended to relieve the 1868 constitution of the unpopularity heaped on it earlier by Conservative critics.

The amendments framed by the Convention of 1875 seem to have satisfied most of the need for constitutional change for a generation. Only four amendments were submitted by the General Assembly to the voters throughout the remainder of the nineteenth century. Three of them were ratified; one failed.

In 1900, the suffrage article was revised to add a literacy test and poll tax requirement for voting (the latter provision was repealed in 1920). A slate of ten amendments prepared by a constitutional commission and proposed

by the General Assembly in 1913 was rejected by voters in 1914. With the passage of time and amendments, the attitude towards the Constitution of 1868 had changed from resentment to a reverence so great that, until the second third of the 20th Century, amendments were very difficult to obtain. Between 1900 and 1933, voters ratified 15 constitutional amendments and rejected 20 others. During the first third of this century, nevertheless, amendments were adopted that lengthened the school term from four to six months, prohibited legislative charters to private corporations, authorized special Superior Court judges, further limited the General Assembly's powers to levy taxes and incur debt, abolished the poll tax requirement for voting and reduced the residence qualification for voters. Amendments designed to restrict the legislature's power to enact local, private and special legislation were adopted, but subsequently rendered partly ineffective by judicial interpretation.

The Proposed Constitution of 1933

A significant effort at general revision of the state constitution was made in 1931-33. A constitutional commission created by the General Assembly of 1931 drafted — and the General Assembly of 1933 approved — a revised constitution. Blocked by a technicality raised in an advisory opinion of the N.C. Supreme Court, the proposed Constitution of 1933 never reached the voters for approval. It would have:

Given the governor veto power.

Given the power to make all rules of practice and procedure in the courts inferior to the Supreme Court to a judicial council composed of all the judges of the Supreme and Superior Courts.

Required the creation of inferior courts by general laws only.

Removed most of the limitations on the taxing powers of the General Assembly.

Required the General Assembly to provide for the organization and powers of local governments by general law only.

Established an appointive state Board of Education with general supervision over the public school system.

Established an enlightened policy of state responsibility for the maintenance of educational, charitable and reformatory institutions and programs.

Several provisions of the proposed Constitution of 1933 were later incorporated into the constitution by individual amendments. To a limited extent, the proposed Constitution of 1933 served as a model for the work of the 1957-59 Constitutional Commission.

Between the mid-1930s and the late 1960s, greater receptiveness to constitutional change resulted in amendments:

Authorizing the classification of property for taxation.

Strengthening the limitations upon public debt.

Authorizing the General Assembly to enlarge the Supreme Court, divide the State into judicial divisions, increase the number of Superior Court judges and create a Department of Justice under the Attorney General.

Enlarging the Council of State by three members.

Creating a new, appointive State Board of Education with general supervision of the schools.

Permitting women to serve as jurors.

Transferring the governor's power to assign judges to the Chief Justice of the Supreme Court and his parole power to a Board of Paroles.

Permitting the waiver of indictment in non-capital cases.

Raising the compensation of General Assembly members and authorizing legislative expense allowances.

Increasing the general purpose property tax levy limitation and the maximum income tax rate.

Authorizing the closing of public schools on a local option basis and the payment of educational expense grants in certain cases.

The increased legislative and public willingness to accept constitutional change between 1934 and 1960 resulted in 32 constitutional amendments being ratified by the voters, while only six were rejected.

The Constitutional Commission of 1957-58

At the request of Governor Luther H. Hodges, the General Assembly of 1957 authorized the governor to appoint a fifteen-member Constitutional Commission to study the need for changes in the state constitution and to make recommendations pursuant to its findings to the governor and the 1959 session of the General Assembly.

The commission recommended rewriting the entire constitution and submitting it to the voters for approval or disapproval as a unit, since the suggested changes were too numerous to be easily effected by individual amendments. The proposed constitution drafted by the commission represented in large part a careful job of editorial pruning, rearrangement, clarification and modernization. It also incorporated several significant, substantive changes. The Senate would have been increased from 50 to 60 members and the initiative (but not the sole authority) for decennial redistricting of the Senate would have been shifted from the General Assembly to an ex-officio committee of three legislative officers. Decennial reapportionment of the House of Representatives would have been made a duty of the speaker of the House, rather than of the General Assembly as a whole. Problems of succession to constitutional state executive offices and how to settle questions of officers' disability would have been either resolved in the constitution or had their resolution assigned to the General Assembly. The authority to classify property for taxation and to exempt property from taxation would have been required to be exercised only by the General Assembly and only on a uniform, statewide basis. The requirement that the public schools constitute a "general and uniform system" would have been eliminated and the constitutional authority of the State Board of Education reduced.

Fairly extensive changes were recommended in the judicial article of the constitution as well, including the establishment of a General Court of Justice with an Appellate Division, a Superior Court Division and a Local Trial Court Division. A uniform system of district courts and trial commissioners would have replaced the existing multitude of inferior courts and justices of the peace. The creation of an intermediate Court of Appeals would have been provided for and uniformity of jurisdiction of the courts within each division would have been required. Aside from these changes, the General Assembly would have essentially retained its pre-existing power over the courts, including jurisdiction and procedures.

The General Assembly of 1959 also had before it a recommendation for a constitutional reformation of the court system that had originated with a Court Study Committee of the North Carolina Bar Association. In general, the recommendations of that committee called for more fundamental changes in the courts than those proposed by the Constitutional Commission. The extent of the proposed authority of the General Assembly over the courts was the principal difference between the two recommendations. The Constitutional Commission generally favored legislative control of the courts and proposed only moderate curtailment of the General Assembly's authority. The Court Study Committee, however, accepted a more literal interpretation of the concept of an independent judiciary. Its proposals, therefore, would have minimized the authority of the General Assembly over the state's courts, although structurally its system would have closely resembled that recommended by the Constitutional Commission.

The proposed constitution received extensive attention from the General Assembly of 1959. The Senate modified and passed the bill to submit the proposal to the voters, but it failed to pass the House of Representatives, chiefly due to disagreement over the issue of court revision.

As had been true of the proposed Constitution of 1933, the proposed Constitution of 1959, though not adopted as a whole, subsequently provided material for several amendment proposals which were submitted individually to the voters and approved by them during the next decade.

In the General Assembly of 1961, the proponents of court reform were successful in obtaining enactment of a constitutional amendment, approved by the voters in 1962, that created a unified and uniform General Court of Justice for the state. Other amendments submitted by the same session and approved by the voters:

Provided for the automatic decennial reapportionment of the House of Representatives.

Clarified the provisions for succession to elective state executive offices and disability determination.

Authorized a reduction in the in-state residence period for voters for President.

Allowed increases in the compensation of elected state executive officers during their terms.

Required that the power of the General Assembly to classify and exempt property for taxation be exercised by it alone and only on a uniform, statewide basis.

The session of 1963 submitted two amendments. The first, to enlarge the rights of married women to deal with their own property, was approved by the voters. The second, to enlarge the Senate from 50 to 70 members and allocate one member of the House of Representative to each county, was rejected by the voters. The General Assembly of 1965 submitted, and the voters approved, an amendment authorizing the legislative creation of a Court of Appeals.

The 1967 General Assembly proposed, and the voters approved, amendments authorizing the General Assembly to fix its own compensation and revising the legislative apportionment scheme to conform to the judicially-established requirement of representation in proportion to population in both houses.

Constitution of 1971

From 1869 through 1968, a total of 97 propositions for amending the state constitution were submitted to the voters. All but one of these proposals originated in the General Assembly. Of those 97 amendment proposals, 69 were ratified by the voters and 28 were rejected. The changing attitude of the voters toward constitutional amendments is well illustrated by the fact that from 1869 to 1933, 21 of the 48 amendment propositions were rejected by the voters — a failure rate of nearly 43%. Between 1933 and 1968, only seven of 49 proposed amendments were rejected by the voters — a failure rate of only 14.3%.

After the amendments of the early 1960s, the pressure for constitutional change subsided. Yet, while the frequent use of the amendment process had relieved many of the pressures that otherwise would have strengthened the case for constitutional reform, it had not kept the constitution current in all respects. Constitutional amendments usually were drafted in response to particular problems experienced or anticipated. They were generally limited in scope so as to achieve the essential goal, while arousing minimum unnecessary opposition. This strategy meant amendments sometimes were not as comprehensive as they should have been to avoid inconsistency in result. Obsolete and invalid provisions cluttered the constitution and misled unwary readers. Moreover, in the absence of a comprehensive reappraisal, there had been no recent occasion to reconsider constitutional provisions that, while obsolete, were not frustrating or unpopular enough to provoke curative amendments.

The Constitutional Study Commission of 1968

It was perhaps for these reasons that when Governor Dan K. Moore recommended to the North Carolina State Bar in the fall of 1967 that it take the lead in making a study of the need for revision of the state constitution, the bar's response was prompt and affirmative. The North Carolina State Bar and the North Carolina Bar Association joined to create the North Carolina State Constitution Study Commission, a joint agency of the two organizations. The commission's 25 members (fifteen attorneys and ten laymen) were chosen by a steering committee representative of the sponsoring organizations. The chairman of the study commission was former state Chief Justice Emery B. Denny.

The State Constitution Study Commission worked throughout most of 1968. It became clear early in the course of its proceedings that the amendments the commission wished to propose were too numerous to be submitted to the voters as independent propositions. On the other hand, the commission did not wish to embody all of its proposed changes in a single document, to be approved or disapproved by the voters on a single vote. The

compromise procedure developed by the commission and approved by the General Assembly was a blend of the two approaches. The commission combined, in a revised text of the constitution, all of the extensive editorial changes that it thought should be made in the constitution, together with substantive changes that the commission judged would not be controversial or fundamental in nature. These were embodied in the document that came to be known as the Constitution of 1971.

Those proposals for change deemed to be sufficiently fundamental or potentially controversial in character were set out as independent amendment propositions, to be considered by the General Assembly and by the voters of the state on their independent merits. Thus, the opposition to the latter proposals would not be cumulated. The separate proposals framed by the commission were ten in number, including one extensive revision of the finance article of the constitution which was largely the work of the Local Government Study Commission, a legislatively-established group then at work on the revision of constitutional and statutory provisions pertaining to local government. The amendments were so drafted that any number or combination of them might be ratified by the voters and still produce a consistent result.

The General Assembly of 1969, which received the recommendations of the State Constitution Study Commission, reviewed a total of 28 proposals for constitutional amendments. Constitutional revision was an active topic of interest throughout the session. The proposed Constitution of 1971, in the course of seven roll-call votes (four in the House of Representatives and three in the Senate), received only one negative vote. The independent amendments fared variously; six were ultimately approved by the General Assembly and submitted to the voters. These included the executive reorganization amendment, the finance amendment, an amendment to the income tax provision of the constitution, a reassignment of the benefits of escheats, authorization for calling extra legislative sessions on the petition of members of the General Assembly and abolition of the literacy test for voting. All but the last two of these amendments had been recommended by the State Constitution Study Commission. At the election held on November 3, 1970, the proposed Constitution of 1971 was approved by a vote of 393,759 to 251,132. Five of the six separate amendments were also approved by the voters; the literacy test repeal was rejected.

The Constitution of 1971 took effect under its own terms on July 1, 1971. So did the executive reorganization amendment, the income tax amendment, the escheats amendment and the amendment with respect to extra legislative sessions, all of which amended the Constitution of 1971 at the instant it took effect. The finance amendment, which made extensive revisions in the Constitution of 1971 with respect to debt and local taxation, took effect on July 1, 1973. The two-year delay in its effective date was required in order for the General Assembly of 1973 to conform state statutes on local government finance to the terms of the amendment.

The Constitution of 1971, the State Constitution Study Commission stated in its report recommending its adoption:

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

The new constitution retained the old fourteen-article organization of its predecessor, but the contents of several articles — notably Articles I, II, III, V, IX, and X — were rearranged into a more logical sequence. Sections were shifted from one article to another to arrange the subject matter more appropriately. Clearly obsolete and erroneous text was deleted, as were provisions essentially legislative in character. The new constitution sought uniformity of expression where uniformity of meaning was important. Directness and currency of language were also sought, together with standardization in spelling, punctuation, capitalization and other essentially editorial matters. Greater brevity of the constitution as a whole was a by-product of the revision, though not itself a primary objective.

The Declaration of Rights (Article I), which dates from 1776 (with some 1868 additions), was retained with a few additions. The organization of the article was improved and the frequently used subjunctive mood was replaced by the imperative in order to make clear that the provisions of that article are commands and not mere admonitions.

(For example, “All elections ought to be free” became “All elections shall be free.”) Guarantees of freedom of speech and equal protection of the laws and a prohibition against exclusion from jury service or other discrimination by the state on the basis of race or religion were added to the article. Since all of the rights newly expressed in the Constitution of 1971 were already guaranteed by the United States Constitution, their inclusion simply constituted an explicit recognition by the state of their importance.

In the course of reorganizing and abbreviating Article III (the Executive), the governor’s role as chief executive was brought into clear focus. The scattered statements of the governor’s duties were collected in one section to which was added a brief statement of his budget powers, formerly merely statutory in origin. No change was made in the governor’s eligibility or term or in the list of state executives then elected by the people. The governor, lieutenant governor and attorney general were added to the Council of State (formerly seven elected executives with the governor only serving as presiding officer) as ex-officio members.

Having been entirely rewritten in 1962, the judicial article (Article IV) was the subject of little editorial alteration and of no substantive change.

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

The revision of Article VI (voting and elections) added out-of-state and federal felonies to felonies committed against the State of North Carolina as grounds for denial of voting and office-holding rights in this state. The General Assembly was directed to enact general laws governing voter registration.

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

The Constitution of 1971 prohibits the concurrent holding of two or more elective state offices or of a federal office and an elective state office. It expressly prohibits the concurrent holding of any two or more appointive offices or places of trust or profit, or of any combination of elective and appointive offices or places of trust or profit, except as the General Assembly may allow by general law.

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

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

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

The Superintendent of Public Instruction was eliminated as a voting member of the State Board of Education but retained as the board’s secretary. He was replaced with an additional at-large appointee. A potential conflict of authority between the superintendent and the board, both of which previously had constitutional authority to administer the public schools, was eliminated by making the superintendent the chief administrative officer of the board, which was charged with supervising and administering the schools.

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

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

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

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

The procedures for constitutional revision (Article XIII) were made more explicit.

The five constitutional amendments ratified at the same time as the Constitution of 1971 deserve particular mention.

The Constitutional Amendments of 1970-71

By the end of the 1960s, North Carolina state government consisted of over 200 state administrative agencies. The State Constitutional Study Commission concluded, on the advice of witnesses who had tried it, that no governor could effectively oversee an administrative apparatus of such disjointed complexity. The commission's solution was an amendment, patterned after the Model State Constitution and the constitutions of a few other states, requiring the General Assembly to reduce the number of administrative departments to not more than 25 by 1975 and to give the governor authority to reorganize and consolidate agencies, subject to disapproval by action of either house of the legislature if the changes affected existing statutes.

The second separate constitutional amendment ratified in 1970 supplemented the existing authority of the governor to call extra sessions of the General Assembly with the advice of the Council of State. The amendment provided that, on written request of three-fifths of all the members of each house, the president of the Senate and the speaker of the House of Representatives must convene an extra session of the General Assembly. Thus the legislative branch is now able to convene itself, notwithstanding the contrary wishes of the governor.

The most significant of the separate amendments — and in some ways the most important of the constitutional changes ratified in 1970 — is the Finance Amendment. This amendment, ratified in 1970 and effective July 1, 1973, is especially important in the financing of local government. Its principal provisions:

Prohibited all forms of capitation or poll tax.

Authorized the General Assembly to enact laws empowering counties, cities and towns to establish special taxing districts less extensive in area than the entire county or city in order to finance the provision within those special districts of a higher level of governmental service than that available in the unit at large, either by supplementing existing services or providing services not otherwise available. This provision eliminated the previous necessity of creating a new, independent governmental unit to accomplish the same result.

Provided that the General Assembly, acting on a uniform, statewide basis, should make the final determination of whether voters must approve the levy of property taxes or the borrowing of money to finance particular activities of local government. For a century, the constitution had required that the levying of taxes and the borrowing of money by local government be approved by a vote of the people of the unit, unless the money was to be used for a "necessary expense." The judiciary, not the General Assembly, was the final arbiter of what was a "necessary expense," and the Supreme Court tended to take a rather restrictive view of necessity. The determination of what types of public expenditures should require voter approval and what types should be made by a governing board on its own authority was found by the General Assembly to be a legislative and not a judicial matter. The Finance Amendment hewed to this finding.

Authorized state and local government units to enter into contracts with and appropriate money to private entities for the accomplishment of public purposes only. This was designed to facilitate cooperative endeavors by government and the private sector for public purposes.

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

Retained the existing limitation that state and local governments may not, without voter approval, borrow more than the equivalent of two-thirds of the amount by which the unit's indebtedness was reduced during the last fiscal period, except for purposes listed in the constitution. This list was lengthened to include emergencies immediately threatening public health or safety.

Retained unchanged the provisions governing the classification and exemption of property for purposes of property taxation.

Omitted the limitation of 20¢ per \$100 of valuation previously imposed on the general county property tax.

The fourth independent amendment also dealt with taxation. It struck out a schedule of specified minimum exemptions from the constitutional provision on the state income tax, leaving those exemptions to be fixed by the General Assembly. This change enabled the legislature to provide for the filing of joint tax returns by husbands and wives and to adopt a "piggyback" state income tax to be computed on the same basis as the federal income tax, thus relieving the taxpayer of two sets of computations. The amendment retained the maximum tax rate of ten percent.

The final amendment ratified in 1970 assigned to a special fund the benefits of property escheating to the state in cases where no heir or other lawful claimant came forward. These benefits were henceforth to help needy North Carolina students attend public institutions of higher education in the state. Property escheating prior to July 1, 1971, continued to be held by the University of North Carolina as then constituted.

The one amendment defeated by the voters in 1970 would have repealed the state constitutional requirement that, in order to register as a voter, one must be able to read and write the English language. The requirement had already been nullified by federal legislation and the failure of repeal had no practical effect.

Constitutional Amendments, 1971-2004

The General Assembly of 1971 submitted to the voters five state constitutional amendments, all of which were ratified by referendum on November 7, 1972. These amendments:

Set the constitutionally-specified voting age at 18 years.

Required the General Assembly to set maximum age limits for service as justices and judges of the state courts.

Authorized the General Assembly to prescribe procedures for the censure and removal of state judges and justices.

Added to the constitution a statement of policy with regard to the conservation and protection of natural resources.

Limited the authority of the General Assembly to incorporate cities and towns within close proximity of existing municipalities.

The General Assembly, at its 1973 session, submitted — and voters in 1974 approved — an amendment changing the title of solicitor to that of district attorney. The 1974 legislative session submitted an amendment authorizing the issuance by state or county governments of revenue bonds to finance industrial facilities, a measure the voters rejected.

In 1975, the General Assembly submitted two amendments authorizing legislation to permit the issuance of tax-exempt revenue bonds by state and local governments to finance health care facilities and by counties to finance industrial facilities. Both received voter approval on March 23, 1976.

The constitutional amendments of 1835 had permitted the voters to elect a governor for two successive two-year terms. The Constitution of 1868 extended the governor's term to four years, but prohibited the governor and lieutenant governor from serving successive four-year terms of the same office. The 1971 constitution retained this limitation. An amendment to empower voters to elect both the governor and lieutenant governor to two successive terms of the same office was submitted by the 1977 General Assembly and ratified by the voters on November 8, 1977. Four other amendments were approved by the voters at the same time. These amendments:

Required that the state operate on a balanced budget at all times.

Extended to widowers (as well as to widows) the benefit of the homestead exemption.

Allowed a woman (as well as a man) to insure her life for the benefit of her spouse or children free from all claims of the insured's creditors or of her (or his) estate.

Authorized municipalities owning or operating electric power facilities to do so jointly with other public or private power organizations and to issue electric system revenue bonds to finance such facilities.

Only one amendment was proposed by the General Assembly of 1979. Approved by the voters in 1980, it required that all justices and judges of the state courts be licensed lawyers as a condition of election or appointment to the bench.

The 1981 session of the General Assembly sent five amendments to the voters for decision on June 29, 1982. The two amendments ratified by the voters authorized the General Assembly to provide for the recall of retired state Supreme Court justices and Court of Appeals judges to temporary duty on either court and to empower the Supreme Court to review direct appeals from the Utilities Commission. The voters rejected amendments:

Extending the terms of all members of the General Assembly from two to four years.

Authorizing the General Assembly to empower public agencies to develop new and existing seaports and airports and to finance and refinance seaport, airport and related commercial and industrial facilities for public and private parties.

Authorizing the General Assembly to empower a state agency to issue tax-exempt bonds to finance facilities for private institutions of higher education.

At its 1982 session, the General Assembly submitted two amendments. On November 2, 1982, the electorate ratified an amendment shifting the beginning of legislative terms from the date of election to January 1 following the election. They rejected an amendment that would have permitted municipalities to issue tax-increment bonds without voter approval.

On May 8, 1984, voters ratified an amendment submitted by the General Assembly of 1983 that authorized the General Assembly to create an agency to issue tax-exempt revenue bonds to finance agricultural facilities. On November 6, 1984, voters approved an amendment requiring that the attorney general and all district attorneys be licensed lawyers as a condition of election or appointment.

An amendment to shift elections for state legislative, executive and judicial officers and for county officers from even-numbered to odd-numbered years (beginning in 1989 for legislators and 1993 for governors and other state executives) was submitted by the General Assembly of 1985 to the voters, who rejected it on May 6, 1986. An amendment to revert to the pre-1977 constitutional policy that barred the governor and lieutenant governor from election to two successive terms of the same office was proposed by the 1985 legislative session for a popular vote on November 4, 1986. The 1986 adjourned session repealed the act proposing the amendment before it could go to popular referendum.

In mid-1986, the General Assembly at its adjourned session voted to send to the voters three constitutional amendments, all three of which were approved on November 4, 1986. These amendments:

Authorized legislation enabling state and local governments to develop seaports and airports and to participate jointly with other public agencies and with private parties and issue tax-exempt bonds for that purpose.

Authorized the state to issue tax-exempt bonds to finance or refinance private college facilities.

Provided that when a vacancy occurs among the eight elected state executive officers (not including the governor and lieutenant governor) or elected judges and justices more than 60 days (it had been 30 days) before a general election, the vacancy must be filled at that election.

The legislative sessions from 1987 through 1994 sent only one proposed constitutional amendment to the voters, an unusually low number for so long a period. The 1993 session submitted a proposal to allow cities and counties to issue tax increment bonds without voter approval. The amendment was rejected by a wide margin at the polls on November 2, 1993.

The session of 1995 submitted three proposed amendments to voters, all of which they approved by majorities of 3-1 on November 5, 1996. These amendments:

Ended North Carolina's unique status as the only state in the Union that did not allow its governor to veto legislation enacted by the state legislature. Since January 1, 1997, the governor may veto ordinary statewide legislation enacted by the General Assembly. His veto may, however, be overridden by a vote of 3/5 of the members present and voting in both houses of the legislature.

Expanded the types of punishments that state courts may impose on persons convicted of crimes without their consent. This amendment strengthens the basis for more modern forms of punishment, such as probation and community service, not previously authorized by the state constitution.

Assured victims of crime (as defined by the General Assembly) of certain rights, such as the right to be informed about and attend court proceedings held with respect to the accused.

Recent legislative sessions have considered several amendments to eliminate the popularly-elected status of the Superintendent of Public Instruction. In 1997, one of those proposals won approval in the Senate and came within two votes of passing in the House of Representatives.

Two other amendments passed the Senate and remained before the House of Representatives in the 1998 regular session. One amendment would limit legislative sessions in odd-numbered years to 135 calendar days, which could be extended by ten days. The amendment would limit regular sessions in even-numbered years to 60 days, also extendible by ten days. The amendment would also lengthen terms for state senators from two years to four years, effective in 1998.

A second pending proposal would allow counties to increase the portion of the value of an elderly or disabled taxpayer's residence (homestead) excluded from property taxation and raise the maximum income threshold for taxpayers to qualify for the homestead exemption.

Three amendments were approved by voters at the polls in November, 2004. The first amendment allows local governments to create economic development districts and to pay for infrastructure improvements in those districts through tax levies on the enhanced property value of the districts. The second amendment allows the General Assembly to place the proceeds from civil fines, forfeitures and penalties in a fund used exclusively to maintain public schools. The third amendment changes the first term of magistrates of the General Court of Justice to two years with subsequent terms lasting four years each.

Conclusion

The people of North Carolina have treated their constitution with conservatism and respect. The fact that we have adopted only three constitutions in over two centuries of existence as a state is the chief evidence of that attitude (some states have adopted as many as five or ten constitutions in a like period). The relatively small number of amendments, even in recent years, is another point of contrast to many states. It reflects the fact that North Carolina has been less disposed than have many states to write into its state constitution detailed provisions dealing with transitory or topical matters better left to legislation. The constitution has allowed the General Assembly wide

latitude for decision on public affairs. Legislators consequently have been willing to accept responsibility for and act on matters within their authority instead of passing the responsibility for difficult decisions on to the voters in the form of constitutional amendments.

Constitutional draftsmen have not been so convinced of their own exclusive hold on wisdom or so doubtful of the reliability of later generations of legislators that they found it necessary to write into the constitution the large amount of regulatory detail often found in state constitutions. Delegates to constitutional conventions and members of the General Assembly have acted consistently with the advice of the late John J. Parker, Chief Judge of the United States Court of Appeals for the Fourth Circuit (1925-58), who observed:

The purpose of a state constitution is two-fold: (1) to protect the rights of the individual from encroachment by the state; and (2) to provide a framework of government for the state and its subdivisions. It is not the function of a constitution to deal with temporary conditions, but to lay down general principles of government which must be observed amid changing conditions. It follows, then, that a constitution should not contain elaborate legislative provisions, but should lay down briefly and clearly fundamental principles upon which government shall proceed, leaving it to the people's representatives to apply these principles through legislation to conditions as they arise.
Constitutional Amendments Since 1868

This table counts each issue submitted to a vote of the people as a single proposition, regardless of whether it actually involved a single section (often the case), a whole article (such as the 1900 suffrage amendment and the 1962 court amendment) or a revision of the entire constitution (such as those in 1868 and 1970).

<i>Year of Vote</i>	<i>Ratified</i>	<i>Rejected</i>	<i>Year of Vote</i>	<i>Ratified</i>	<i>Rejected</i>
1868	1	0	1948	1	3
1873	8	0	1950	5	0
1876	1	0	1952	3	0
1880	2	0	1954	4	1
1888	1	0	1956	4	0
1892	0	1	1958	0	1
1900	1	0	1962	6	0
1914	0	10	1964	1	1
1916	4	0	1966	1	0
1918	2	0	1968	2	0
1920	2	0	1970	6	1
1922	0	1	1972	5	0
1924	3	1	1974	1	1
1926	1	0	1976	2	0
1928	1	2	1977	5	0
1930	0	3	1980	1	0
1932	1	3	1982	3	4
1936	5	0	1984	2	0
1938	2	0	1986	3	1
1942	2	0	1993	0	1
1944	5	0	1996	3	0
1946	1	1	2004	3	0
			<hr/>		
			<i>totals</i>	104	36