

# Model State Constitution<sup>1</sup>

## PREAMBLE

We, the people of the state of \_\_\_\_\_, recognizing the rights and duties of this state as a part of the federal system of government, reaffirm our adherence to the Constitution of the United States of America; and in order to assure the state government power to act for the good order of the state and the liberty, health, safety and welfare of the people, we do ordain and establish this constitution.

## ARTICLE I

### Bill of Rights

Section 1.01. *Freedom of Religion, Speech, Press, Assembly and Petition.* No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Section 1.02. *Due Process and Equal Protection.* No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, national origin, religion or ancestry.

Section 1.03. *Searches and Seizures and Interceptions.*

(a) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

(b) The right of the people to be secure against unreasonable interception of telephone, telegraph and other electronic means of communication, and against unreasonable interception of oral and other communications by electric or electronic methods, shall not be violated, and no orders and warrants for such interceptions shall issue but upon probable cause supported by oath or affirmation that evidence of crime may be thus obtained, and particularly identifying the means of communication and the person or persons whose communications are to be intercepted.

(c) Evidence obtained in violation of this section shall not be admissible in any court against any person.

Section 1.04. *Self-Incrimination.* No person shall be compelled to give testimony which might tend to incriminate him.

Section 1.05. *Writ of Habeas Corpus.* The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.

Section 1.06. *Rights of Accused Persons.*

(a) In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to have the assistance of counsel for his defense, and to the assignment of counsel to represent him at every stage of the proceedings unless he elects to proceed without counsel or is able to obtain counsel. In prosecutions for felony, the accused shall also enjoy the right of trial by an impartial jury of the county [or other appropriate political subdivision of the state] wherein the crime shall have been committed, or of another county, if a change of venue has been granted.

(b) All persons shall, before conviction, be bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

(c) No person shall be twice put in jeopardy for the same offense.

Section 1.07. *Political Tests for Public Office.* No oath, declaration or political test shall be required for any public office or employment other than the following oath or affirmation: "I do solemnly swear [or affirm] that I will support and defend the Constitution of the United States and the constitution of the state of \_\_\_\_\_ and that I will faithfully discharge the duties of the office of \_\_\_\_\_ to the best of my ability."

## **ARTICLE II**

### **Powers of the State**

Section 2.01. *Powers of Government.* The enumeration in this constitution of specified powers and functions shall be construed neither as a grant nor as a limitation of the powers of state government but the state government shall have all of the powers not denied by this constitution or by or under the Constitution of the United States.

## **ARTICLE III**

### **Suffrage and Elections**

Section 3.01. *Qualifications for Voting.* Every citizen of the age of \_\_\_\_\_ years and a resident of the state for three months shall have the right to vote in the election of all officers that may be elected by the people and upon all questions that may be submitted to the voters; but the legislature may by law establish: (1) Minimum periods of local residence not exceeding three months, (2) reasonable requirements to determine literacy in English or in another language predominantly used in the classrooms of any public or private school accredited by any state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and (3) disqualifications for voting for mental incompetency or conviction of felony.

Section 3.02. *Legislature to Prescribe for Exercise of Suffrage.* The legislature shall by law define residence for voting purposes, insure secrecy in voting and provide for the registration of voters, absentee voting, the administration of elections and the nomination of candidates.

## ARTICLE IV

### The Legislature

Section 4.01. *Legislative Power.* The legislative power of the state shall be vested in the legislature.

Section 4.02. *Composition of the Legislature.* The legislature shall be composed of a single chamber consisting of one member to represent each legislative district. The number of members shall be prescribed by law but shall not be less than \_\_\_ nor exceed . Each member of the legislature shall be a qualified voter of the state and shall be at least \_\_\_ years of age.

BICAMERAL ALTERNATIVE: Section 4.02. *Composition of the Legislature.* The legislature shall be composed of a senate and an assembly. The number of members of each house of the legislature shall be prescribed by law but the number of assemblymen shall not be less than \_\_\_ nor exceed \_\_\_, and the number of senators shall not exceed one third, as near as may be, the number of assemblymen. Each assemblyman shall represent one assembly district and each senator shall represent one senate district. Each member of the legislature shall be a qualified voter of the state and shall be at least \_\_\_\_\_years of age.

Section 4.03. *Election and Term of Members.* The members of the legislature shall be elected by the qualified voters of the state for a term of two years.

BICAMERAL ALTERNATIVE: Section 4.03. Election and Terms of Members. Assemblymen shall be elected by the qualified voters of the state for a term of two years and senators for a term of six years. One third of the senators shall be elected every two years.

Section 4.04. *Legislative Districts.*

(a) For the purpose of electing members of the legislature, the state shall be divided into as many districts as there shall be members of the legislature. Each district shall consist of compact and contiguous territory. All districts shall be so nearly equal in population that the population of the largest district shall not exceed that of the smallest district by more than \_\_\_ percent. In determining the population of each district, inmates of such public or private institutions as prisons or other places of correction, hospitals for the insane or other institutions housing persons who are disqualified from voting by law shall not be counted.

(b) Immediately following each decennial census, the governor shall appoint a board of \_\_\_ qualified voters to make recommendations within ninety days of their appointment concerning the redistricting of the state. The governor shall publish the recommendations of the board when received. The governor shall promulgate a redistricting plan within ninety to one hundred and twenty days after appointment of the board, whether or not it has made its recommendations. The governor shall accompany his plan with a message explaining his reasons for any changes from the recommendations of the board. The governor's redistricting plan shall be published in the manner provided for acts of the legislature and shall have the force of law

upon such publication. Upon the application of any qualified voter, the supreme court, in the exercise of original, exclusive and final jurisdiction, shall review the governor's redistricting plan and shall have jurisdiction to make orders to amend the plan to comply with the requirements of this constitution or, if the governor has failed to promulgate a redistricting plan within the time provided, to make one or more orders establishing such a plan.

BICAMERAL ALTERNATIVE: Section 4.04. *Legislative Districts.*

(a) For the purpose of electing members of the assembly, the state shall be divided into as many districts as there shall be members of the assembly. Each district shall consist of compact and contiguous territory. All districts shall be so nearly equal in population that the district with the greatest population shall not exceed the district with the least population by more than \_\_ percent. In determining the population of each district, inmates of such public or private institutions as prisons or other places of correction, hospitals for the insane or other institutions housing persons who are disqualified from voting by law shall not be counted.

(b) For the purpose of electing members of the senate, the state shall be divided into as many districts as there shall be members of the senate. Each senate district shall consist of a compact and contiguous territory. All districts shall be so nearly equal in population that the district with the greatest population shall not exceed the district with the least population by more than \_\_\_\_\_ percent. In determining the population of each district, inmates of such public or private institutions as prisons or other places of correction, hospitals for the insane or other institutions housing persons who are disqualified from voting by law shall not be counted.

(c) Immediately following each decennial census, the governor shall appoint a board of \_\_\_\_\_ qualified voters to make recommendations within ninety days of their appointment concerning the redistricting of the state. The governor shall publish the recommendations of the board when received. The governor shall promulgate a redistricting plan within ninety to one hundred and twenty days after appointment of the board, whether or not it has made its recommendations. The governor shall accompany his plan with a message explaining his reasons for any changes from the recommendations of the board. The governor's redistricting plan shall be published in the manner provided for acts of the legislature and shall have the force of law upon such publication. Upon the application of any qualified voter, the supreme court, in the exercise of original, exclusive and final jurisdiction, shall review the governor's redistricting plan and shall have jurisdiction to make orders to amend the plan to comply with the requirements of this constitution or, if the governor has failed to promulgate a redistricting plan within the time provided, to make one or more orders establishing such a plan.

Section 4.05. *Time of Election.* Members of the legislature shall be elected at the regular election in each odd numbered year.

Section 4.06. *Vacancies.* When a vacancy occurs in the legislature it shall be filled as provided by law.

Section 4.07. *Compensation of Members.* The members of the legislature shall receive an annual salary and such allowances as may be prescribed by law but any increase or decrease in the amount thereof shall not apply to the legislature which enacted the same.

Section 4.08. *Sessions.* The legislature shall be a continuous body during the term for which its members are elected. It shall meet in regular sessions annually as provided by law. It may be convened at other times by the governor or, at the written request of a majority of the members, by the presiding officer of the legislature.

BICAMERAL ALTERNATIVE: Section 4.08. *Sessions.* The legislature shall be a continuous body during the term for which members of the assembly are elected. The legislature shall meet in regular sessions annually as provided by law. It may be convened at other times by the governor or, at the written request of a majority of the members of each house, by the presiding officers of both houses.

Section 4.09. *Organization and Procedure.* The legislature shall be the final judge of the election and qualifications of its members and may by law vest in the courts the trial and determination of contested elections of members. It shall choose its presiding officer from among its members and it shall employ a secretary to serve for an indefinite term. It shall determine its rules of procedure; it may compel the attendance of absent members, discipline its members and, with the concurrence of two thirds of all the members, expel a member, and it shall have power to compel the attendance and testimony of witnesses and the production of books and papers either before the legislature as a whole or before any committee thereof. The secretary of the legislature shall be its chief fiscal, administrative and personnel officer and shall perform such duties as the legislature may prescribe.

BICAMERAL ALTERNATIVE: Section 4.09. *Organization and Procedure.* Each house of the legislature shall be the final judge of the election and qualifications of its members and the legislature may by law vest in the courts the trial and determination of contested elections of members. Each house of the legislature shall choose its presiding officer from among its members and it shall employ a secretary to serve for an indefinite term, and each house shall determine its rules of procedure; it may compel the attendance of absent members, discipline its members and, with the concurrence of two thirds of all the members, expel a member, and it shall have power to compel the attendance and testimony of witnesses and the production of books and papers either before such house of the legislature as a whole or before any committee thereof. The secretary of each house of the legislature shall be its chief fiscal, administrative and personnel officer and shall perform such duties as each such house of the legislature may prescribe.

Section 4.10. *Legislative Immunity.* For any speech or debate in the legislature, the members shall not be questioned in any other place.

Section 4.11. *Special Legislation.* The legislature shall pass no special or local act when a general act is or can be made applicable, and whether a general act is or can be made applicable shall be a matter for judicial determination.

Section 4.12. *Transaction of Business*. A majority of all the members of the legislature shall constitute a quorum to do business but a smaller number may adjourn from day to day and compel the attendance of absent members. The legislature shall keep a journal of its proceedings which shall be published from day to day. The legislature shall prescribe the methods of voting on legislative matters but a record vote, with the yeas and nays entered in the journal, shall be taken on any question on the demand of one fifth of the members present.

BICAMERAL ALTERNATIVE: Section 4.12. *Transaction of Business*. Refer to "each house of the legislature" instead of "the legislature" wherever appropriate.

Section 4.13. *Committees*. The legislature may establish such committees as it may deem necessary for the conduct of its business. When a committee to which a bill has been assigned has not reported on it, one third of all the members of the legislature shall have power to relieve it of further consideration. Adequate public notice of all committee hearings, with a clear statement of all subjects to be considered at each hearing, shall be published in advance.

BICAMERAL ALTERNATIVE: Section 4.13. *Committees*. Refer to "each house of the legislature" instead of "the legislature," wherever appropriate.

Section 4.14. *Bills; Single Subject*. The legislature shall enact no law except by bill and every bill except bills for appropriations and bills for the codification, revision or rearrangement of existing laws shall be confined to one subject. All appropriation bills shall be limited to the subject of appropriations. Legislative compliance with the requirements of this section is a constitutional responsibility not subject to judicial review.

Section 4.15. *Passage of Bills*. No bill shall become a law unless it has been printed and upon the desks of the members in final form at least three days prior to final passage and the majority of all the members has assented to it. The yeas and nays on final passage shall be entered in the journal. The legislature shall provide for the publication of all acts and no act shall become effective until published as provided by law.

BICAMERAL ALTERNATIVE: Section 4.15. *Passage of Bills*. Refer to "each house of the legislature" instead of "the legislature" wherever appropriate.

Section 4.16. *Action by the Governor*.

(a) When a bill has passed the legislature, it shall be presented to the governor and, if the legislature is in session, it shall become law if the governor either signs or fails to veto it within fifteen days of presentation. If the legislature is in recess or, if the session of the legislature has expired during such fifteen day period, it shall become law if he signs it within thirty days after such adjournment or expiration. If the governor does not approve a bill, he shall veto it and return it to the legislature either within fifteen days of presentation if the legislature is in session or upon the reconvening of the legislature from its recess. Any bill so returned by the governor shall be reconsidered by the legislature and, if upon reconsideration two thirds of all the members shall agree to pass the bill, it shall become law.

(b) The governor may strike out or reduce items in appropriation bills passed by the legislature and the procedure in such cases shall be the same as in case of the disapproval of an entire bill by the governor.

BICAMERAL ALTERNATIVE: Section 4.16. *Action by the Governor*. Refer to "each house of the legislature" instead of "the legislature" wherever appropriate.

Section 4.17. *Post Audit*. The legislature shall appoint an auditor to serve at its pleasure. The auditor shall conduct post audits as prescribed by law and shall report to the legislature and to the governor.

BICAMERAL ALTERNATIVE: Section 4.17. Post Audit. The legislature shall, by joint resolution, appoint ....

Section 4.18. *Impeachment*. The legislature may impeach the governor, the heads of principal departments, judicial officers and such other officers of the state as may be made subject to impeachment by law, by a two thirds vote of all the members, and shall provide by law procedures for the trial and removal from office, after conviction, of officers so impeached. No officer shall be convicted on impeachment by a vote of less than two thirds of the members of the tribunal hearing the charges.

BICAMERAL ALTERNATIVE: Section 4.18. *Impeachment*. Refer to "by a two thirds vote of all the members of each house."

## ARTICLE V

### The Executive

Section 5.01. *Executive Power*. The executive power of the state shall be vested in a governor.

Section 5.02. *Election and Qualifications of Governor*. The governor shall be elected, at the regular election every other odd numbered year, by the direct vote of the people, for a term of four years beginning on the first day of [December] [January] next following his election. Any qualified voter of the state who is at least \_\_\_\_\_ years of age shall be eligible to the office of governor.

Section 5.03. *Governor's Messages to the Legislature*. The governor shall, at the beginning of each session, and may, at other times, give to the legislature information as to the affairs of the state and recommend measures lie considers necessary or desirable.

Section 5.04. *Executive and Administrative Powers*.

(a) The governor shall be responsible for the faithful execution of the laws. He may, by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty or right by an officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceeding against the legislature.

(b) The governor shall commission all officers of the state. He may at any time require information, in writing or otherwise, from the officers of any administrative department, office or agency upon any subject relating to the respective offices. He shall be commander in chief of the armed forces of the state, except when they shall be called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion.

Section 5.05. *Executive Clemency.* The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses and may delegate such powers, subject to such procedures as may be prescribed by law.

Section 5.06. *Administrative Departments.* All executive and administrative offices, agencies and instrumentalities of the state government, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial and temporary agencies established by law may, but need not, be allocated within a principal department. The legislature shall by law prescribe the functions, powers and duties of the principal departments and of all other agencies of the state and may from time to time reallocate offices, agencies and instrumentalities among the principal departments, may increase, modify, diminish or change their functions, powers and duties and may assign new functions, powers and duties to them; but the governor may make such changes in the allocation of offices, agencies and instrumentalities, and in the allocation of such functions, powers and duties, as he considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the legislature while it is in session, and shall become effective, and shall have the force of law, sixty days after submission, or at the close of the session, whichever is sooner, unless specifically modified or disapproved by a resolution concurred in by a majority of all the members.

BICAMERAL ALTERNATIVE: Section 5.06. *Administrative Departments.* Change the last phrase to read "majority of all the members of each house."

Section 5.07. *Executive Officers; Appointment.* The governor shall appoint and may remove the heads of all administrative departments. All others officers in the administrative service of the state shall be appointed and may be removed as provided by law.

Section 5.08. *Succession to Governorship.*

(a) If the governor elect fails to assume office for any reason, the presiding officer of the legislature shall serve as acting governor until the governor elect qualifies and assumes office or, if the governor elect does not assume office within six months, until the unexpired term has been filled by special election and the newly elected governor has qualified. If, at the time the presiding officer of the legislature is to assume the acting governorship, the legislature has not yet organized and elected a presiding officer, the outgoing governor shall hold over until the presiding officer of the legislature is elected.

(b) When the governor is unable to discharge the duties of his office by reason of impeachment or other disability, including but not limited to physical or mental disability, or when the duties of the office are not being discharged by reason of his continuous absence, the

presiding officer of the legislature shall serve as acting governor until the governor's disability or absence terminates. If the governor's disability or absence does not terminate within six months, the office of the governor shall be vacant.

(c) When, for any reason, a vacancy occurs in the office of the governor, the unexpired term shall be filled by special election except 'when such unexpired term is less than one year, in which event the presiding officer of the legislature shall succeed to the office for the remainder of the term. When a vacancy in the office of the governor is filled by special election, the presiding officer of the legislature shall serve as acting governor from the occurrence of the vacancy until the newly elected governor has qualified. When the presiding officer of the legislature succeeds to the office of governor, he shall have the title, powers, duties and emoluments of that office and, when he serves as acting governor, he shall have the powers and duties thereof and shall receive such compensation as the legislature shall provide by law.

(d) The legislature shall provide by law for special elections to fill vacancies in the office of the governor.

(e) The supreme court shall have original, exclusive and final jurisdiction to determine absence and disability of the governor or governor elect and to determine the existence of a vacancy in the office of governor and all questions concerning succession to the office or to its powers and duties.

BICAMERAL ALTERNATIVE: Section 5.08. *Succession to Governorship*. For "presiding officer of the legislature" substitute "presiding officer of the senate."

## ARTICLE VI

### The Judiciary

Section 6.01. *Judicial Power*. The judicial power of the state shall be vested in a unified judicial system, which shall include a supreme court, an appellate court and a general court, and which shall also include such inferior courts of limited jurisdiction as may from time to time be established by law. All courts except the supreme court may be divided into geographical departments or districts as provided by law and into functional divisions and subdivisions as provided by law or by judicial rules not inconsistent with law.

Section 6.02. *Supreme Court*. The supreme court shall be the highest court of the state and shall consist of a chief judge and \_\_\_\_\_ associate judges.

Section 6.03. *Jurisdiction of Courts*. The supreme court shall have appellate jurisdiction in all cases arising under this constitution and the Constitution of the United States and in all other cases as provided by law. It shall also have original jurisdiction in cases arising under subsections 4.04(b) and 5.08(e) of this constitution and in all other cases as provided by law. All other courts of the state shall have original and appellate jurisdiction as provided by law, which jurisdiction shall be uniform in all geographical departments or districts of the same court. The jurisdiction of functional divisions and subdivisions shall be as provided by law or by judicial rules not inconsistent with law.

Section 6.04. *Appointment of Judges; Qualifications; Tenure; Retirement; Removal.*

(a) The governor, with the advice and consent of the legislature, shall appoint the chief judges and associate judges of the supreme, appellate and general courts. The governor shall give ten days' public notice before sending a judicial nomination to the legislature or before making an interim appointment when the legislature is not in session.

ALTERNATIVE: Subsection 6.04(a). *Nomination by Nominating Commission.* The governor shall fill a vacancy in the offices of the chief judges and associate judges of the supreme, appellate and general courts from a list of nominees presented to him by the appropriate judicial nominating commission. If the governor fails to make an appointment within sixty days from the day the list is presented, the appointment shall be made by the chief judge or by the acting chief judge from the same list. There shall be a judicial nominating commission for the supreme court and one commission for the nomination of judges for the court sitting in each geographical department or district of the appellate court. Each judicial nominating commission shall consist of seven members, one of whom shall be the chief judge of the supreme court, who shall act as chairman. The members of the bar of the state in the geographical area for which the court or the department or district of the court sits shall elect three of their number to be members of such a commission, and the governor shall appoint three citizens, not members of the bar, from among the residents of the same geographical area. The terms of office and the compensation for members of a judicial nominating commission shall be as provided by law. No member of a judicial nominating commission except the chief judge shall hold any other public office or office in any political party or organization, and no member of such a commission shall be eligible for appointment to a state judicial office so long as he is a member of such a commission and for [five] [three] [two] years thereafter.

(b) No person shall be eligible for judicial office in the supreme court, appellate court and general court unless he has been admitted to practice law before the supreme court for at least \_\_\_\_ years. No person who holds judicial office in the supreme court, appellate court or general court shall hold any other paid office, position of profit or employment under the state, its civil divisions or the United States. Any judge of the supreme court, appellate court or general court who becomes a candidate for an elective office shall thereby forfeit his judicial office.

(c) The judges of the supreme court, appellate court and general court shall hold their offices for initial terms of seven years and upon reappointment shall hold their offices during good behavior. They shall be retired upon attaining the age of seventy years and may, be pensioned as may be provided by law. The chief judge of the supreme court may from time to time appoint retired judges to such special assignments as may be provided by the rules of the supreme court.

(d) The judges of the supreme court, appellate court and general court shall be subject to impeachment and any such judge impeached shall not exercise his office until acquitted. The supreme court may also remove judges of the appellate and general courts for such cause and in such manner as may be provided by law.

(e) The legislature shall provide by law for the appointment of judges of the inferior courts and for their qualifications, tenure, retirement and removal.

(f) The judges of the courts of this state shall receive such salaries as may be provided by law, which shall not be diminished during their term of office.

Section 6.05. *Administration.* The chief judge of the supreme court shall be the administrative head of the unified judicial system. He may assign judges from one geographical department or functional division of a court to another department or division of that court and he may assign judges for temporary service from one court to another. The chief judge shall, with the approval of the supreme court, appoint an administrative director to serve at his pleasure and to supervise the administrative operation of the judicial system.

Section 6.06. *Financing.* The chief judge shall submit an annual consolidated budget for the entire unified judicial system and the total cost of the system shall be paid by the state. The legislature may provide by law for the reimbursement to the state of appropriate portions of such cost by political subdivisions.

Section 6.07. *Rule-making Power.* The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by a two thirds vote of all the members.

## **ARTICLE VII**

### **Finance**

Section 7.01. *State Debt.* No debt shall be contracted by or in behalf of this state unless such debt shall be authorized by law for projects or objects distinctly specified therein.

Section 7.02. *The Budget.* The governor shall submit to the legislature, at a time fixed by law, a budget estimate for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments and agencies of the state, as well as a general appropriation bill to authorize the proposed expenditures and a bill or bills covering recommendations in the budget for new or additional revenues.

Section 7.03. *Expenditure of Money.*

(a) No money shall be withdrawn from the treasury except in accordance with appropriations made by law, nor shall any obligation for the payment of money be incurred except as authorized by law. The appropriation for each department, office or agency of the state, for which appropriation is made, shall be for a specific sum of money and no appropriation shall allocate to any object the proceeds of any particular tax or fund or a part or percentage thereof, except when required by the federal government for participation in federal programs.

(b) All state and local expenditures, including salaries paid by the legislative, executive and judicial branches of government, shall be matters of public record.

## **ARTICLE VIII**

### **Local Government**

Section 8.01. *Organization of Local Government.* The legislature shall provide by general law for the government of counties, cities and other civil divisions and for methods and procedures of incorporating, merging, consolidating and dissolving such civil divisions and of altering their boundaries, including provisions:

(1) For such classification of civil divisions as may be necessary, on the basis of population or on any other reasonable basis related to the purpose of the classification;

(2) For optional plans of municipal organization and government so as to enable a county, city or other civil division to adopt or abandon an authorized optional charter by a majority vote of the qualified voters voting thereon;

(3) For the adoption or amendment of charters by any county or city for its own government, by a majority vote of the qualified voters of the city or county voting thereon, for methods and procedures for the selection of charter commissions, and for framing, publishing, disseminating and adopting such charters or charter amendments and for meeting the expenses connected therewith.

ALTERNATIVE PARAGRAPH: Section 8.01(3). *Self Executing Home Rule Powers.*

For the adoption or amendment of charters by any county or city, in accordance with the provisions of section 8.02 concerning home rule for local units.

Section 8.02. *Powers of Counties and Cities.* A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties or cities of its class, and is within such limitations as the legislature may establish by general law. This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony.

ALTERNATIVE PROVISIONS FOR SELF EXECUTING HOME RULE POWERS:

Section 8.02. *Home Rule for Local Units.*

(a) Any county or city may adopt or amend a charter for its own government, subject to such regulations as are provided in this constitution and may be provided by general law. The legislature shall provide one or more optional procedures for nonpartisan election of five, seven or nine charter commissioners and for framing; publishing and adopting a charter or charter amendments.

(b) Upon resolution approved by a majority of the members of the legislative authority of the county or city or upon petition of ten per cent of the qualified voters, the officer or agency responsible for certifying public questions shall submit to the people at the next regular election not less than sixty days thereafter, or at a special election if authorized by law, the question "Shall a commission be chosen to frame a charter or charter amendments for the county [or city] of \_\_\_?" An affirmative vote of a majority of the qualified voters voting on the question shall authorize the creation of the commission.

(c) A petition to have a charter commission may include the names of five, seven or nine commissioners, to be listed at the end of the question when it is voted on, so that an affirmative vote on the question is a vote to elect the persons named in the petition. Otherwise, the petition or resolution shall designate an optional election procedure provided by law.

(d) Any proposed charter or charter amendments shall be published by the commission, distributed to the qualified voters and submitted to them at the next regular or special election not less than thirty days after publication. The procedure for publication and submission shall be as provided by law or by resolution of the charter commission not inconsistent with law. The legislative authority of the county or city shall, on request of the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution and submission of its proposals.

(e) A charter or charter amendments shall become effective if approved by a majority vote of the qualified voters voting thereon. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local legislative authority.

Section 8.03. Powers of Local Units. Counties shall have such powers as shall be provided by general or optional law. Any city or other civil division may, by agreement, subject to a local referendum and the approval of a majority of the qualified voters voting on any such question, transfer to the county in which it is located any of its functions or powers and may revoke the transfer of any such function or power, under regulations provided by general law; and any county may, in like manner, transfer to another county or to a city within its boundaries or adjacent thereto any of its functions or powers and may revoke the transfer of any such function or power.

Section 8.04. *County Government.* Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of this state in cities and other civil divisions; it may provide for the succession by the county to the rights, properties and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. No provision of any charter or amendment vesting in the county any powers of a city or other civil division shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in any city containing more than twenty five per cent of the total population of the county, and (3) in the county outside of such city or cities.

Section 8.05. *City Government.* Except as provided in sections 8.03 and 8.04, each city is hereby granted full power and authority to pass laws and ordinances relating to its local affairs, property and government; and no enumeration of powers in this constitution shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature to enact laws of statewide concern uniformly applicable to every city.

FURTHER ALTERNATIVE: A further alternative is possible by combining parts of the basic text of this article and parts of the foregoing alternative. If the self-executing alternative section 8.02 is preferred but not the formulation of home rule powers in alternative sections 8.03, 8.04

and 8.05, the following combination of sections will combine the self executing feature and the power formulation included in the basic text:

Section 8.01. *Organization of Local Government*, with alternative paragraph (3).

Alternative Section 8.02. *Home Rule for Local Units*.

Section 8.02, renumbered 8.03. *Powers of Counties and Cities*.

## **ARTICLE IX**

### **Public Education**

Section 9.01. *Free Public Schools; Support of Higher Education*. The legislature shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public educational institutions, including public institutions of higher learning, as may be desirable.

## **ARTICLE X**

### **Civil Service**

Section 10.01. *Merit System*. The legislature shall provide for the establishment and administration of a system of personnel administration in the civil service of the state and its civil divisions. Appointments and promotions shall be based on merit and fitness, demonstrated by examination or by other evidence of competence.

## **ARTICLE XI**

### **Intergovernmental Relations**

Section 11.01. *Intergovernmental Cooperation*. Nothing in this constitution shall be construed: (1) To prohibit the cooperation of the government of this state with other governments, or (2) the cooperation of the government of any county, city or other civil division with any one or more other governments in the administration of their functions and powers, or (3) the consolidation of existing civil divisions of the state. Any county, city or other civil division may agree, except as limited by general law, to share the costs and responsibilities of functions and services with any one or more other governments.

## **ARTICLE XII**

### **Constitutional Revision**

Section 12.01. *Amending Procedure; Proposals*.

(a) Amendments to this constitution may be proposed by the legislature or by the initiative.

(b) An amendment proposed by the legislature shall be agreed to by record vote of a majority of all of the members, which shall be entered on the journal.

(c) An amendment proposed by the initiative shall be incorporated by its sponsors in an initiative petition which shall contain the full text of the amendment proposed and which shall be signed by qualified voters equal in number to at least \_ per cent of the total votes cast for governor in the last preceding gubernatorial election. Initiative petitions shall be filed with the secretary of the legislature.

(d) An amendment proposed by the initiative shall be presented to the legislature if it is in session and, if it is not in session, when it convenes or reconvenes. If the proposal is agreed to by a majority vote of all the members, such vote shall be entered on the journal and the proposed amendment shall be submitted for adoption in the same manner as amendments proposed by the legislature.

(e) The legislature may provide by law for a procedure for the withdrawal by its sponsors of an initiative petition at any time prior to its submission to the voters.

#### Section 12.02. *Amendment Procedure; Adoption.*

(a) The question of the adoption of a constitutional amendment shall be submitted to the voters at the first regular or special statewide election held no less than two months after it has been agreed to by the vote of the legislature and, in the case of amendments proposed by the initiative which have failed to receive such legislative approval, not less than two months after the end of the legislative session.

(b) Each proposed constitutional amendment shall be submitted to the voters by a ballot title which shall be descriptive but not argumentative or prejudicial, and which shall be prepared by the legal department of the state, subject to review by the courts. Any amendment submitted to the voters shall become a part of the constitution only when approved by a majority of the votes cast thereon. Each amendment so approved shall take effect thirty days after the date of the vote thereon, unless the amendment itself otherwise provides.

#### Section 12.03. *Constitutional Conventions.*

(a) The legislature, by an affirmative record vote of a majority of all the members, may at any time submit the question "Shall there be a convention to amend or revise the constitution?" to the qualified voters of the state. If the question of holding a convention is not otherwise submitted to the people at some time during any period of fifteen years, it shall be submitted at the general election in the fifteenth year following the last submission.

(b) The legislature, prior to a popular vote on the holding of a convention, shall provide for a preparatory commission to assemble information on constitutional questions to assist the voters and, if a convention is authorized, the commission shall be continued for the assistance of the delegates. If a majority of the qualified voters voting on the question of holding a convention approves it, delegates shall be chosen at the next regular election not less than three months thereafter unless the legislature shall by law have provided for election of the delegates at the same time that the question is voted on or at a special election.

(c) Any qualified voter of the state shall be eligible to membership in the convention and one delegate shall be elected from each existing legislative district. The convention shall convene not later than one month after the date of the election of delegates and may recess from time to time.

(d) No proposal shall be submitted by the convention to the voters unless it has been printed and upon the desks of the delegates in final form at least three days on which the convention was in session prior to final passage therein, and has received the assent of a majority of all the delegates. The yeas and nays on any question shall, upon request of one tenth of the delegates present, be entered in the journal. Proposals of the convention shall be submitted to the qualified voters at the first regular or special statewide election not less than two months after final action thereon by the convention, either as a whole or in such parts and with such alternatives as the convention may determine. Any constitutional revision submitted to the voters in accordance with this section shall require the approval of a majority of the qualified voters voting thereon, and shall take effect thirty days after the date of the vote thereon, unless the revision itself otherwise provides.

Section 12.04. *Conflicting Amendments or Revisions*. If conflicting constitutional amendments or revisions submitted to the voters at the same election are approved, the amendment or revision receiving the highest number of affirmative votes shall prevail to the extent of such conflict.

BICAMERAL ALTERNATIVE: Appropriate changes to reflect passage by two houses must be made throughout this article.

## ARTICLE X111

### Schedule

Section 13.01. *Effective Date*. This constitution shall be in force from and including the first day of \_\_\_\_\_, 19\_\_\_\_, except as herein otherwise provided.

Section 13.02. *Existing Laws, Rights and Proceedings*. All laws not inconsistent with this constitution shall continue in force until they expire by their own limitation or are amended or repealed, and all existing writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, writs, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles and rights shall continue unaffected except as modified in accordance with the provisions of this constitution.

Section 13.03. *Officers*. All officers filling any office by election or appointment shall continue to exercise the duties thereof, according to their respective commissions or appointments, until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or the laws enacted pursuant thereto.

Section 13.04. *Choice of Officers*. The first election of governor under this constitution shall be in 19\_\_\_\_\_. The first election of members of the legislature under this constitution shall be in 19\_\_\_\_\_.

Section 13.05. *Establishment of the Legislature*. Until otherwise provided by law, members of the legislature shall be elected from the following districts: The first district shall consist of [the description of all the districts from which the first legislature will be elected should be inserted here.

BICAMERAL ALTERNATIVE: Section 13.05. *Establishment of the Legislature*. Refer to "assembly districts" and "senate districts."

Section 13.06. *Administrative Reorganization*. The governor shall submit to the legislature orders embodying a plan for reorganization of administrative departments in accordance with section 5.06 of this constitution prior to [date]. These orders shall become effective as originally issued or as they may be modified by law on [a date three months later unless any of them are made effective at earlier dates by law].

Section 13.07. *Establishment of the judiciary*.

(a) The unified judicial system shall be inaugurated on September 15, 19\_\_\_\_. Prior to that date the judges and principal ministerial agents of the judicial system shall be designated or selected and any other act needed to prepare for the operation of the system shall be done in accordance with this constitution.

(b) The judicial power vested in any court in the state shall be transferred to the unified judicial system and the justices and judges of the [here name all the courts of the state except justice of the peace courts holding office on September 15, 19\_\_\_\_], shall become judges of the unified judicial system and shall continue to serve as such for the remainder of their respective terms and until their successors shall have qualified. The justices of the [here name the highest court of the state shall become judges of the supreme court and the judges of the other courts shall be assigned by the chief judge to appropriate service in the other departments of the judicial system, due regard being had to their positions in the existing judicial structure and to the districts in which they had been serving.

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<sup>1</sup> Model State Constitution. 6th ed. 1968. New York, NY: National Municipal League.