

**THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH**

**for the**

**NEW JERSEY CONSTITUTIONAL CONVENTION**

**THE LEGISLATURE: QUALIFICATIONS, TERM, AND COMPENSATION  
OF LEGISLATORS; SESSIONS, ORGANIZATION AND PROCEDURE**

by

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**State of New Jersey  
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May, 1947**

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Introduction

American state legislatures and legislative processes have been intensively studied by scholars and by legislative bodies themselves, but there is little agreement as to what specific constitutional provisions can either make or discourage good legislatures.<sup>1</sup> There are several preliminary considerations, however, upon which current study of the New Jersey Constitution must necessarily be premised:

1) Nature of constitutional specifications: American state constitutions generally set up legislative bodies with what are known as parliamentary powers. By this is meant that the legislature, in the absence of any specific restriction in the constitution by which it is established, has all powers of government which are not precluded by the Federal Constitution. In practical effect, this means that when a question of a power of the legislature arises, it is unnecessary to find a specific grant of the power in question in the constitution; if there is no prohibition, then the power exists. It is this characteristic of legislative power which has lead to description of state constitutions as documents of limitation and not of grant. This concept is succinctly stated by Chancellor Walker in Hudspeth v. Swayze:<sup>2</sup>

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1. A concise review of the various aspects of the problem may be found in The Annals, Vol. 195, "Our State Legislators" (Jan., 1938)

2. 85 N. J. L. 592, 601 (1913)

"The only restraints upon the exercise of the legislative prerogative are those expressly or impliedly contained in the Federal and State Constitutions and those immutable principles which lie at the very foundation of sovereignty."

In the same case, Chancellor Walker goes on to quote one of Justice Holmes' distinguished dissenting opinions, then as a justice of the highest court of Massachusetts, on the matter of legislative power under state constitutions:<sup>3</sup>

"I admit that the constitution establishes a representative government, not a pure democracy. It establishes a general court (the legislature) which is to be the law-making power. But the question is whether it puts a limit upon the power of that body to make laws. In my opinion the legislature has the whole law-making power except so far as the words of the constitution expressly or impliedly withhold it, and I think that in construing the constitution we should remember that it is a frame of government for men of opposite opinions and for the future, and therefore not hastily import into it our own views, or unexpressed limitations derived merely from the practice of the past. \*\*\* I agree that the discretion of the legislature is intended to be exercised. I agree that confidence is put in it as an agent. But I think that so much confidence is put in it that it is allowed to exercise its discretion by taking the opinion of its principal if it thinks that course to be wise. It has been asked whether the legislature could pass an act subject to the approval of a single man. I am not clear that it could not. The objection, if sound, would seem to have equal force against all forms of local option. But I will consider the question when it arises. The difference is plain between that case and one where the approval required is that of the sovereign body. The contrary view seems to me an echo of Hobbes's theory that the surrender of sovereignty of the people was final. I notice that the case from which most of the reasoning against the power of the legislature has been taken by later decisions states that theory in language which almost is borrowed from the Leviathan. Rice v. Foster, 4 Harr. (Del.) 479, 488. Hobbes urged his notion in the interest of the absolute power of King Charles I, and one of the objects of the Constitution of Massachusetts was to deny it. \*\*\* I may add, that, while the tendency of judicial decision seems to be in the other direction, such able judges as Chief Justice Parker of Massachusetts, Dixon of Wisconsin, Redfield of Vermont, and Cooley of Michigan, have expressed opinions like mine." [underscoring added]

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3. Opinions of the Justices, 160 Mass. 586, 36 N. E. 488 (1894).

2) Subjects precluded by the referendum: From the viewpoint of possible changes in the Legislative Article, there are, of course, certain subjects which are precluded from consideration by virtue of the express instructions of the people contained in the referendum setting up the Constitutional Convention. The more common of these that come to mind, and there may be others, are questions of unicameralism versus bicameralism, questions of the urban versus rural representation, of the size of the constituency which is to be the basis of representation, of countywide versus assembly district selection of members of the House of Assembly. While these subjects are treated extensively in the literature of constitution-making, they are deemed to be outside the scope of the present study.

3) Functional requirements: In the Legislative Article, as in other parts of the Constitution, there is a difficult problem of selection of matter appropriate for treatment in a state constitution. For those who would hold that the American state legislature has not fully attained a proper status in our representative form of government, it is necessary to keep in mind that much of the criticism of legislators and of legislatures arises from factors which cannot be treated by constitutional provision. Nor is it apparent that any existing constitutional provision is in itself responsible for the favorable aspects of state legislatures. An examination of the various state constitutions shows that they have, by and large, imposed a minimum of rigid limitations or restrictions on legislative organization and procedure.

State	Age		Residence in				U. S. Citizen	Other
	House	Senate	State		District			
			House	Senate	House	Senate		
Alabama	21	25	3 yr.	3 yr.	1 yr.	1 yr.	.....	The ability to understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter.
Arizona	25	25	3 yr.	3 yr.	1 yr.	1 yr.	yes	
Arkansas	21	25	2 yr.	2 yr.	1 yr.	1 yr.	yes	Each house shall judge qualifications of its members.
California	Citizen		3 yr.	3 yr.	1 yr.	1 yr.	.....	
Colorado	25	25	1 yr.*	1 yr.*	1 yr.	1 yr.	yes.	
Connecticut	21*	21*	1 yr.*		6 mo.*		.....	5 yr. U. S. citizen
Delaware	24	27	3 yr.	3 yr.	1 yr.	1 yr.	1.....	
Florida	21*	21*	1 yr.	1 yr.	6 mo.*	6 mo.*	yes*	
Georgia	21	25	2 yr.	4 yr.	1 yr.	1 yr.	yes	
Idaho	21*	21*	1 yr.	1 yr.*	1 yr.	1 yr.	yes	
Illinois	21	25	5 yr.	5 yr.	2 yr.	2 yr.	yes	
Indiana	21	25	2 yr.	2 yr.	1 yr.	1 yr.	yes	
Iowa	21	25	1 yr.	1 yr.	60 days	60 days	.....	
Kansas	21*	21*	6 mo.*	6 mo.	30 days*	30 days*	yes*	
Kentucky	24	30	2 yr.	6 yr.	1 yr.	1 yr.	.....	
Louisiana	21	25	5 yr.	5 yr.	2 yr.	2 yr.	.....	
Maine	21	25	1 yr.	1 yr.	3 mo.	3 mo.	yes	
Maryland	21	25	3 yr.	3 yr.	1 yr.	1 yr.	.....	
Massachusetts	21*	21*	1 yr.*	5 yr.*	1 yr.	5 yr.	.....	
Michigan	21*	21*	6 mo.*	6 mo.*	20 days*	20 days*	yes	
Minnesota	21*	21*	1 yr.	1 yr.	6 mo.	6 mo.	.....	
Mississippi	21	25	4yr.	4 yr.	2 yr.	2 yr.	.....	
Missouri	24	30	2 yr.	3 yr.	1 yr.	1 yr.	.....	
Montana	21	24	1 yr.	1 yr.	1 yr.	1 yr.	yes	

\* Implied in qualification of citizenship or elector

Nebraska	21*	21*	1 yr.	1 yr.	1 yr.	1 yr.	.....	Must have right of suffrage.
Nevada	21*	21*	6 mo.*	6 mo.*	30 days*	30 days*	yes*	
New Hampshire	21*	30	2 yr.	7 yr.	Inhabitants		.....	
New Jersey	21	30	2 yr.	4 yr.	1 yr.	1 yr.	.....	
New Mexico	21	25	3 yr.	3 yr.	90 days <sup>1</sup>	90 days <sup>1</sup>	.....	
					30 days <sup>2</sup>	30 days <sup>2</sup>	.....	
New York	..	..	5 yr.	5 yr.	1 yr.	1 yr.	yes	
North Carolina	21*	25	1 yr.	2 yr.	1 yr.	1 yr. <sup>3</sup>	.....	
North Dakota	21	25	2 yr.	2 yr.	90 days <sup>1</sup>	90 days <sup>1</sup>	.....	
					30 days <sup>2</sup>	30 days <sup>2</sup>	yes*	
Ohio	..	..	1 yr.*	1 yr.*	1 yr.	1 yr.	.....	No specification
Oklahoma	21	25	1 yr.*	1 yr.*	6 mo. <sup>1</sup>	6 mo. <sup>1</sup>	.....	
					30 days <sup>2</sup>	30 days <sup>2</sup>	yes*	
Oregon	21	21	1 yr.*	1 yr.*	1 yr.	1 yr.	yes	
Pennsylvania	21	25	4 yr.	4 yr.	1 yr.	1 yr.	.....	
Rhode Island	..	..	.....	.....	.....	.....	.....	
South Carolina	21	25	2 yr.*	2 yr.*	1 yr. <sup>1</sup>	1 yr. <sup>1</sup>	.....	
					4 mo. <sup>2</sup>	4 mo. <sup>2</sup>	yes*	
South Dakota	25	25	2 yr.	2 yr.	90 days <sup>1</sup>	90 days <sup>1</sup>	.....	
					30 days <sup>2</sup>	30 days <sup>2</sup>	yes	
Tennessee	21	30	3 yr.	3 yr.	1 yr.	1 yr.	yes	Persons most noted for wisdom and virtue
Texas	21	26	2 yr.	5 yr.	1 yr.	1 yr.	yes	
Utah	25	25	3 yr.	3 yr.	1 yr.	1 yr.	yes	
Vermont	..	30	2 yr.	.....	1 yr.	.....	.....	
Virginia	21*	21*	1 yr.	1 yr.	6 mo. <sup>1</sup>	6 mo. <sup>1</sup>	.....	
					90 days <sup>2</sup>	90 days <sup>2</sup>	yes*	
Washington	21*	21*	1 yr.	1 yr.	90 days <sup>1</sup>	90 days <sup>1</sup>	.....	
					30 days <sup>2</sup>	30 days <sup>2</sup>	yes	
West Virginia	21*	25*	1 yr.	5 yr.	60 days*	60 days*	.....	
Wisconsin	21*	21*	1 yr.	1 yr.	30 days*	30 days*	yes*	
Wyoming	21	25	1 yr.*	1 yr.*	1 yr.	1 yr.	yes	

\* Implied in qualification of citizenship or elector

1 County

2 Precinct

3 Usually 1 yr.

Source: Constitution Revision Project, Louisiana State Univ., Constitutional Problems: No. 1C, "The Legislature" (La. State Univ., Mar. 1947) pp. 21-22

### Qualifications

There has been little quarrel with the constitutional provision dealing with the qualifications of the members of the Legislature. The New Jersey constitutional requirements are substantially similar to those of other states. The lack of criticism of the present constitutional provisions probably stems from the belief that, aside from a few fundamental qualifications such as age, residence, citizenship, and the barring of dual office holding and incompatible offices, the only significant qualifications of legislators are those which the voters apply at the polls. Table I indicates the principal qualifying requirements in the various states.

### Dual Office Holding

The subject of dual office holding can be most clearly understood as consisting of two parts: forbidden offices and incompatible offices. The Constitution may, and does, set forth certain offices for which a member of the legislature may not qualify--these are forbidden offices, described as follows: (Art. IV, Sec. 4)

"1. No member of the senate or general assembly shall, during the time for which he was elected, be nominated or appointed by the governor or by the legislature in joint meeting, to any civil office under the authority of this state, which shall have been created, or the emoluments whereof shall have been increased, during such time."

Incompatible offices are of two kinds--those incompatible at common law, and those declared to be incompatible by constitution or statute. In either event, there is no prohibition or disqualification against acceptance of a second office, but the act of acceptance

vacates the office first held. The present constitution contains two clauses dealing with incompatible offices (Art. IV, Sec. 4):

"2. If any member of the senate or general assembly shall be elected to represent this state in the senate or house of representatives of the United States, and shall accept thereof, or shall accept of any office or appointment under the government of the United States, his seat in the legislature of this state shall thereby be vacated."

"3. No justice of the supreme court, nor judge of any other court, sheriff, justice of the peace, nor any person or persons possessed of any office of profit under the government of this state, shall be entitled to a seat either in the senate or in the general assembly; but on being elected and taking his seat, his office shall be considered vacant; and no person holding any office of profit under the government of the United States shall be entitled to a seat in either house."

It may be noted that the last clause of Paragraph 3, dealing with federal office holders, can operate only as a qualification to hold the office of legislator for the reason that no state constitutional provision could cause a federal office to be vacated.

The fundamental principles of these paragraphs were recognized in the first Constitution of New Jersey, adopted in 1776, and have never been seriously challenged. The principal effort has been toward clarifying, and in some cases broadening, their application. Article 20 of the 1776 document declared:

"That the legislative department of this colony may, as much as possible, be preserved from all suspicion of corruption, none of the judges of the supreme or other court, sheriffs, or any other person or persons possessed of any post of profit under the government, other than justice of the peace, shall be entitled to a seat in the assembly;

but that, on his being elected and taking his seat, his office or post shall be considered as vacant."

To make absolutely sure that the legislative department would be "preserved from all suspicion of corruption", the court in the case of State v. Parkhurst<sup>4</sup> held that under Article 20 (quoted above) a legislator who during his legislative term was appointed to and accepted an office of profit, vacated his seat in the Legislature. In that case, Parkhurst was a member of the General Assembly at the time he accepted an appointment "as clerk of the Court of Common Pleas, and Quarter Sessions of the Peace, of the County of Essex". Parkhurst was held eligible to accept the appointment as clerk, but by his acceptance he was also held to have vacated his seat in the Legislature.

Limitations on dual office holding were enlarged by constitutional provision in 1844, which nevertheless failed to spell out the rule of the Parkhurst case. In the 1944 revision, Article III, Section 3, Paragraph 4 incorporated the rule of State v. Parkhurst.

Most of the state constitutions contain provisions against dual office holding, and many also disqualify legislators from appointment to other public office "during the term for which he shall have been elected." The provisions are reported to vary considerably among the states.<sup>5</sup> Arizona, in 1938, adopted what is said to be the strictest disqualification for other offices, as follows:

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4. 9 N. J. L. 427 (Appendix) (1802)

5. "Dual Public Employment of Legislators", The Book of the States: 1943-1944, pp. 156-160, reprinted in Martin L. Faust, Manual on Legislative Article for the Missouri Constitutional Convention of 1943, Selection No. 12.

"No member of the Legislature during the term for which he shall have been elected or appointed, shall be eligible to hold any other office, or be otherwise employed by the state of Arizona, or any county or incorporated city or town thereof."<sup>6</sup>

The principal issues have been raised in New Jersey in connection with the prohibitions against dual office holding. The first relates to the manner of statement of Art. IV, Sec. 5, Par. 1, which apparently restricts the disqualification of legislators to

"be nominated or appointed by the Governor or by the legislature in joint meeting."

This language has been understood to impose no bar to appointment of a legislator by a board to an office "created during the time for which" the legislator was elected. The 1944 revision used the phrase "nominated, elected, or appointed", apparently intending to make the prohibition all inclusive.

The second issue has been raised in connection with the legal definition of the term "office" as used in the three quoted paragraphs of the present constitution. The courts have held that it differs from an "employment" and from a "position".<sup>7</sup> This affects the provision of paragraph 1 forbidding the legislators to be nominated or appointed to certain "civil offices", that of paragraph 2 providing for the vacation of a seat upon acceptance of any "office" under the government of the United States, and that of paragraph 3 declaring that persons possessed of an "office of

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6. Based on a study made in 1938 by Mulford Winsor, Director, State Legislative Bureau, Arizona Department of Library and Archives.

7. Wilentz ex rel Golat v. Stanger, 129 N. J. L. 294, 29 Atl. (2d) 413, 129 N. J. L. 606, 30 Atl. (2d) 885 (1943)

profit" under the government of this state are ineligible to sit in the Senate or General Assembly.

Various arguments are advanced for strengthening the prohibitions against dual office holding but these are all variations of the philosophy of strictly applying the doctrine of the separation of powers, which in Article 3 is spelled out to prohibit any person "belonging to, or constituting" one of the three branches from exercising "any of the powers properly belonging to either of the others,..." Beyond this, the protection of legislation against improper motives of legislators and prevention of executive dominance of the legislature through manipulation of the appointing power have long<sup>been</sup> advanced as justifying an absolute prohibition of appointment of legislators to positions of profit.<sup>8</sup> Various other exclusions, such as those forbidding a seat in the Legislature to any person interested in a government contract, and barring particular individuals on the ground that their occupation incapacitates them for effective legislative service, have long since become outmoded.<sup>9</sup>

The arguments in favor of relaxing the prohibitions against dual office holding by legislators are not infrequently confused with supposed personal interest of those who make them. There is substantial opinion, however, which supports a view of the state legislature as a good training ground for further public

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8. See R. P. Luce, Legislative Assemblies, (Boston, 1924) Ch. XIX

9. Ibid, Chap. XII

service, and which recognizes that often the most competent administrator will be a person with legislative experience. The proper extent of the prohibition can be determined only as a matter of weighing these advantages against the positive undermining influence on the legislative process of any suspicion of motives of personal gain by legislators.

#### Terms of Office

New Jersey is the only state in which the members of the lower house are elected for a one-year term. Our Senators are elected for a three-year term. In forty-two of the states, members of the lower house serve for two years, and in thirty-one, the senators serve for four years. (See Table II)

As early as 1909, and again in 1927, amendments to the New Jersey Constitution were submitted to the people to increase the terms of the legislators of both houses to four years. The amendments were not approved. In 1942, the Hendrickson Commission recommended a two-year term for Assemblymen and a four-year term for Senators along with a four-year term for the Governor, with elections in odd-numbered years in order to remove the influence of presidential and congressional elections. The Commission's recommendations concerning the length of the legislative terms were written into the Constitution submitted to the people in 1944.

Some states use the same length of term for members of both houses, but the majority have a four-year term for the upper house and a two-year term for the lower house. It is generally believed that this gives a nice balance in the legislature by providing

Table II  
THE LEGISLATORS  
Number and Terms

(From the Book of the States, 1945-1946, Vol. VI, p. 106)

<u>State</u>	<u>-----Senate-----</u>		<u>-----House-----</u>	
	<u>Total</u>	<u>Term</u>	<u>Total</u>	<u>Term</u>
Alabama	35	4	106	4
Arizona	19	2	58	2
Arkansas	35	4	100	2
California	40	4	80	2
Colorado	35	4	65	2
Connecticut	36	2	272	2
Delaware	17	4	35	2
Florida	38	4	95	2
Georgia	52	2	205	2
Idaho	44	2	49	2
Illinois <sup>a</sup>	51	4	153	2
Indiana	50	4	100	2
Iowa	50	4	108	2
Kansas	40	4	125	2
Kentucky	38	4	100	2
Louisiana	39	4	100	4
Maine	33	2	151	2
Maryland	29	4	123	4
Massachusetts	40	2	240	2
Michigan	32	2	100	2
Minnesota	67	4	131	2
Mississippi	49	4	140	4
Missouri	34	4	150	2
Montana	56	4	90	2
Nebraska	..	2	..	..
Nevada	17	4	40	2
New Hampshire	24	2	399	2
New Jersey	21	3	60	1
New Mexico	24	4	49	2
New York	56 <sup>d</sup>	2	150	2
North Carolina	50	2	120	2
North Dakota	49	4	113	2
Ohio	33	2	136	2
Oklahoma	44	4	120	2
Oregon	30	4	60	2
Pennsylvania	50	4	208	2
Rhode Island	44	2	100	2
South Carolina	46	4	124	2
South Dakota	35	2	75	2
Tennessee	33	2	99	2
Texas	31	4	150	2
Utah	23	4	60	2
Vermont	30	2	246	2
Virginia	40	4	100	2
Washington	46	4	99	2
West Virginia	32	4	94	2
Wisconsin	33	4	100	2
Wyoming	27	4	56	2

a 1943-1944 figures.

d Reapportionment in 1944 added 5 members

for one house which, by virtue of a relatively short term, must be responsive to the ever-changing will of the people, and for another, more stable body, whose members have an opportunity to give continuity to the legislature and to become more experienced in the art of law-making. It has been pointed out that annual elections for Assemblymen prevent the lower house from being an efficient body and carry the responsibility of a member to his constituents too far. So long as a member must be constantly campaigning, his attention is diverted from his legislative duties. Moreover, the time consumed in campaigning for both primary and general elections each year, plus the expense involved could be a real item to the legislator of modest circumstance who receives only \$500 per year for his services and who may lack organized support.

Any decision of the Convention regarding the terms of office of legislators must in part depend upon the decisions which are made regarding sessions, term of the Governor and holding of elections in off-presidential years. It would obviously be impractical, for example, to retain the one-year term for Assemblymen and a three-year term for Senators if a biennial session is adopted.

#### Compensation

The New Jersey Constitution provides that members of the Senate and General Assembly shall receive \$500 per year. This provision, although perhaps adequate when written into the Constitution in 1875, was considered wholly insufficient by

everyone touching on the salary issue at the public hearings of 1942. Low salaries prevent many competent men of modest means from entering the Legislature and partly account for the large turn-over in legislative personnel. Few citizens can afford to give the kind of time and attention that effective legislative service may require without adequate compensation. The Commission on Revision of the New Jersey Constitution in 1942 recommended that the salary for Senators and Assemblymen be raised to \$1500 per year and the Constitution submitted to the people in 1944 increased the compensation to \$2000 annually.

Although almost all of the writers on the subject agree that salaries paid to the legislators are far too low--that mediocre salaries tend to beget mediocre legislators, the majority of states still fix compensation on about a par with New Jersey: 24 states provide salaries ranging from \$300 to \$500 per session or yearly; other states pay per diems ranging from \$3.00 to \$10; only five states pay substantially higher salaries--Pennsylvania, \$3,000 per session, New York, Illinois, and Massachusetts pay \$2500 per year, and Ohio pays \$2,000 a year. (See Table III) In recent years, however, there has been a trend toward increased salaries. Since 1942, Maryland, Minnesota, Indiana, South Carolina, Kentucky, New Mexico, and Georgia have voted increases for legislators. On the other hand, increases were rejected in California, Utah, and Michigan.<sup>10</sup>

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10. John A. Perkins, "State Legislative Reorganization," 40 American Political Science Rev. 510-521, 516 (June, 1946)

Table III

Book of the States, 1945-1946, p. 107

SALARIES AND COMPENSATION OF THE LEGISLATORS

State	Regular Session	Salaries Special Session	Compensation Allowance for Transportation
Alabama.....	\$10 per day <sup>a</sup>	\$10 per day	10c a mile, one round trip
Arizona.....	\$8 per day, 60 days	\$8 per day, 20-day limit	20c a mile, one way
Arkansas.....	\$1,000, 2 years	\$6 per day, 15-day limit	5c a mile
California.....	\$1,200 per year <sup>b</sup>	(b)	Mileage, regular or special session <sup>c</sup>
Colorado.....	\$1,000, 2 years	(d)	Actual traveling expenses
Connecticut....	\$300, 2 years	.....	10c a mile
Delaware.....	\$10 per day, 60 days	\$10 per day, 30-day limit	10c a mile <sup>e</sup>
Florida.....	\$6 per day <sup>f</sup>	\$6 per day <sup>f</sup>	10c a mile
Georgia.....	\$6 per day	\$8 per day	10c a mile, one regular and one extra round trip
Idaho.....	\$5 per day, 60 days	\$5 per day, 20-day limit	10c a mile, one round trip
Illinois.....	\$5,000, 2 years	.....	5c a mile, one round trip per week <sup>b</sup>
Indiana.....	\$1,200 per year <sup>g</sup>	.....	(b)
Iowa.....	\$1,000, 2 years	Not over \$10 per day	10c a mile
Kansas.....	\$3 per day <sup>i</sup>	\$3 per day <sup>i</sup>	15c a mile, one round trip
Kentucky.....	\$10 per day	\$10 per day	15c a mile
Louisiana.....	\$10 per day	\$10 per day	10c a mile <sup>j</sup>
Maine.....	\$850	\$10 per day	\$2 for 10 miles, one way, once each session
Maryland.....	\$1,000 per year	.....	20c a mile <sup>k</sup>
Massachusetts..	\$2,500 per session	Determined at session	(m)
Michigan.....	\$3 per day <sup>m</sup>	.....	10c a mile, one round trip
Minnesota.....	\$2,000, 2 years	Mileage only	15c a mile, limit \$350
Mississippi.....	\$1,000 per session	\$10 per day	10c a mile, one round trip
Missouri.....	\$125 per month	\$125 per month	\$1 per 10 miles. Round trip once each session.
Montana.....	\$10 per day	\$10 per day, 60-day limit	5c a mile
Nebraska.....	\$1,744.18, 2 years	None	Actual traveling expenses, one round trip
Nevada.....	\$15 per day <sup>n</sup>	\$10 per day	10c a mile for shortest route by rail
New Hampshire..	\$200 per term	\$3 per day, 15-day limit	5c a mile, each day of attendance.
New Jersey.....	\$500 per year	None	Transportation by state railroad pass
New Mexico.....	\$10 per day	\$10 per day, 30-day limit	10c a mile
New York.....	\$2,500 per year	.....	Actual trav. exp. round trip once a week
North Carolina..	\$600 per session	\$8 per day, 20-day limit	None
North Dakota...	\$5 per day, 60 days	\$5 per day	10c a mile, one round trip
Ohio.....	\$2,000 per year	None	Mileage
Oklahoma.....	\$6 per day <sup>o</sup>	\$6 per day <sup>o</sup>	10c a mile, one round trip
Oregon.....	\$8 per day, 50 days	\$8 per day, 20-day limit	10c a mile
Pennsylvania....	\$3,000 per session	\$500 per session <sup>p</sup>	5c a mile round trip, once a week <sup>q</sup>
Rhode Island...	\$5 per day <sup>r</sup>	None	8c a mile
South Carolina..	\$1,000 per year	No statutory provision	5c a mile, round trip once a week
South Dakota...	\$5 per day, 60 days	\$5 per day	5c a mile, one round trip <sup>r</sup>
Tennessee.....	\$4 per day, 75 days with pay	\$4 per day, 20 days with pay	\$4 for 25 miles
Texas.....	\$10 per day <sup>s</sup>	\$10 per day	\$2.50 for 25 miles
Utah.....	\$300 per year	Included in annual salary	10c a mile
Vermont.....	\$600, 2 years	\$6 per day	20c a mile <sup>t</sup>
Virginia.....	\$720 each session	\$360 per session	10c a mile <sup>u</sup>
Washington.....	\$5 per day <sup>v</sup>	\$5 per day, 60-day limit <sup>v</sup>	10c a mile, one round trip, plus \$10 expenses.
West Virginia...	\$500 per year <sup>w</sup>	None	10c a mile
Wisconsin.....	\$2,400, 2 years <sup>w</sup>	None	10c a mile, one round trip
Wyoming.....	\$12 per day	\$12 per day	8c a mile, nearest practical route

<sup>a</sup> President of Senate and speaker of House of Representatives receive \$12 a day.

<sup>b</sup> Regular session years: \$12 per session day plus balance to \$1,200; nonsession years, \$100 monthly.

<sup>c</sup> Living expenses while attending session, not over \$10 per day.

<sup>d</sup> Legislators receive as compensation \$1,000 for each biennial period, payable at the rate of \$7 per day during both the regular and special sessions; the remainder, if any, is payable on the first day of the last month of each biennial period.

<sup>e</sup> \$25 for supplies regular session, \$10 special session.

<sup>f</sup> \$50 per session for postage, etc.

<sup>g</sup> The speaker of the House and the lieutenant-governor for acting as president of the Senate shall each receive during the sessions of the General Assembly an additional \$5 per day.

<sup>h</sup> Members of the General Assembly shall be paid \$5 for each 25 miles they travel from their usual place of residence to the seat of government and back; but when a special session is called to assemble on the day succeeding the expiration of any other session, no mileage shall be allowed.

<sup>i</sup> Not to exceed \$150 for regular, or \$90 for special session.

<sup>j</sup> Two round trips allowed for regular sessions; one round trip allowed for special sessions.

<sup>k</sup> In terms of fixed amounts for each member.

<sup>l</sup> Not over 50 miles—22½ cents a mile each way, each week (but not less than \$4.50 a week). Over 50 miles—4½ cents a mile each way each week and \$20 hotel and living expenses or extra travel, weekly.

<sup>m</sup> For elected term.

<sup>n</sup> \$15 per day provided total sum does not exceed \$900 at any session.

<sup>o</sup> \$2 per day after 60 days.

<sup>p</sup> \$750 if session lasts over one month.

<sup>q</sup> \$150 for postage regular session, \$50 special session.

<sup>r</sup> Speaker of the House receives \$10 per day.

<sup>s</sup> \$5 a day after 120 days.

<sup>t</sup> Regular session; 10 cents a mile special session.

<sup>u</sup> Distance computed by nearest mail route.

<sup>v</sup> \$10 a day maintenance during session.

<sup>w</sup> Speaker receives \$25 per month additional.

<sup>x</sup> Plus \$300 expense allowance per session.

<sup>y</sup> Maximum.

<sup>z</sup> President of Senate and speaker of House of Delegates \$2 per day additional during session.

The salaries of legislators are not always fixed by constitutional provision. Some states follow the federal rule which leaves the determination of legislators' salaries to statute. This is the method which is adopted in the Model State Constitution. It is also recommended in the final report of a special investigating committee in New York as the best way of preventing inflexibility and of providing additional compensation to legislators who take on added duties in connection with their office. The report further points out that experience has shown that Congress and state legislative bodies with the authority to change salary by law have been extremely conservative in determining their own compensation.<sup>11</sup>

As in the case of legislative terms of office, the decision on manner and amount of compensation must necessarily be related to the decision upon the issue of annual versus biennial sessions.

#### Sessions

The frequency and duration of regular sessions of the Legislature is a matter of pervasive importance. The decision of the Convention on this issue will have a significant effect upon the relationship between the executive and legislative branches, as well as upon the requirements for the organization of the Legislature itself.

Questions which arise in consideration of the matter of

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11. New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures and Expenditures, Final Report (Legis. Doc., 1946, No. 31) pp. 170-171

sessions fall into four general categories:

- 1) Annual vs. Biennial
- 2) Limited vs. Unlimited
- 3) Split vs. Continuous
- 4) Special Sessions

Annual vs. biennial: At present, all of the states provide for biennial sessions except California (beginning this year), Massachusetts, New York, New Jersey, Rhode Island, and South Carolina. There is strong sentiment in Connecticut for change to annual sessions but thus far it has not been adopted. The National Municipal League's Model State Constitution provides not only for annual sessions but for continuous sessions.

Table IV indicates present constitutional provisions relating to legislative sessions in the various states. But the issue can hardly be indicated by the number of states in each category, since special sessions in the interim years are frequent in all states. One important difference is this: annual sessions mean greater independence of the legislature, since the calling of special sessions in the interim year in biennial session states is ordinarily left to the discretion of the governor. It is also well to recognize that the predominance in numbers of biennial session states is partly accounted for by the fact that most existing state constitutions were adopted during the middle part of the 19th Century when popular indignation at the then current legislative abuses was inclined to produce efforts at remedial provisions. No state has turned to the biennial session

Table IV  
 LEGISLATIVE SESSIONS: CONSTITUTIONAL PROVISIONS  
 (From the Council of State Governments: Our State Legislatures, 1946, p. 20)

State	Years in which Sessions are Held	Days on which Sessions Convene	Sessions Limit--days-----		Special Session-----	
			Regular	Special	Legislature May Call	Legislature May Determine Subject
Alabama	Odd	First Tuesday in May <sup>a</sup>	60	30	No	2/3 vote those present
Arizona	Odd	Second Monday in Jan.	60 <sup>b</sup>	20 <sup>b</sup>	No	No
Arkansas	Odd	Second Monday in January	60	15	No	No
California	Annual <sup>c</sup>	First Mon. after first day in Jan.	None <sup>d</sup>	None	No	No
Colorado	Odd	First Wednesday in January	None	None	No	No
Connecticut	Odd	Wed. after first Mon. in Jan.	(e)	None	No provision in const.	Determined by Legis. Council
Delaware	Odd	First Tuesday in January	60 <sup>f</sup>	30 <sup>f</sup>	No	Yes
Florida	Odd	First Tues. after first Mon. in April	60	20	No	2/3 vote
Georgia	Odd	Second Monday in Jan.	70	None	Petition 3/5 members	No
Idaho	Odd	First Monday after January first	60	20	No	No
Illinois	Odd	Wed. after first Mon. in Jan.	None	None	No	No
Indiana	Odd	Thur, after first Mon. in Jan.	61	40	No	Yes
Iowa	Odd	Second Monday in Jan.	None	None	No	No
Kansas	Odd	Second Tuesday in Jan.	None	None	No	Yes
Kentucky	Even	First Tues. after first Mon. in Jan.	60	None	No	No
Louisiana	Even	Second Monday in May	60	30	Petition 2/3 members	No
Maine	Odd	First Wednesday in Jan.	None	None	No	Yes
Maryland	Odd	First Wednesday in Jan.	90	30	No	No
Massachusetts	Annual <sup>g</sup>	First Wednesday in Jan.	None	None	Majority both houses	Yes
Michigan	Odd	First Wed. in Jan.	None	None	No	No
Minnesota	Odd	Tues. after first Mon. in Jan	90	None	No	Yes
Mississippi	Even	Tues. after first Mon. in Jan.	None	None	No	No
Missouri	Odd	Wednesday after Jan. first	None	None	No	No
Montana	Odd	First Monday in Jan.	60	None	No	No
Nebraska	Odd	First Tuesday in Jan.	None	None	Petition 2/3 members	No

Nevada	Odd	Third Monday in Jan.	60	20	No	No
New Hampshire	Odd	First Wednesday in Jan.	None	None	Yes	Yes
New Jersey	Annual	Second Tuesday in Jan.	None	None	No	Yes
New Mexico	Odd	Second Tuesday in Jan.	60 <sup>h</sup>	None	No	No
New York	Annual	Wed. after first Mon. in Jan.	None	None	No	No
North Carolina	Odd	Wed. After first Mon. in Jan.	None	20	No	Yes
North Dakota	Odd	Tues. after first Mon. in Jan.	60	None	No	No
Ohio	Odd	First Monday in January	None	None	No	No
Oklahoma	Odd	Tues. after first Mon. in Jan.	None	None	No	No
Oregon	Odd	Second Monday in Jan.	50	20	No	Yes
Pennsylvania	Odd	First Tuesday in January	None	None	No	No
Rhode Island	Annual	First Tuesday in January	None <sup>i</sup>	None	No	No
South Carolina	Annual	Second Tuesday in January	None	None	No	Yes
South Dakota	Odd	Tues. after first Mon. in Jan.	60	None	No	Yes
Tennessee	Odd	First Monday in Jan.	None <sup>j</sup>	None <sup>j</sup>	No	No <sup>j</sup>
Texas	Odd	Second Tuesday in Jan.	None	30	No	No <sup>j</sup>
Utah	Odd	Second Monday in Jan.	60	30	No	No
Vermont	Odd	Wed. after first Mon. in Jan.	None	None	No	Yes
Virginia	Even	Second Wednesday in Jan.	60 <sup>l</sup>	30	Petition 2/3 members	No
Washington	Odd	Second Monday in January	60	None	No	Yes
West Virginia	Odd	Second Wednesday in January	60 <sup>m</sup>	None	Petition 2/3 members	No
Wisconsin	Odd	Second Wednesday in Jan.	None	None	No	No
Wyoming	Odd	Second Tuesday in Jan.	40	None	No	Yes

a Legislature meets on second Tuesday in January after election for purpose of organizing.

b No limit on sessions without pay.

c Adopted by referendum, November 5, 1946.

d Split or bifurcated session.

e "The general assembly shall adjourn sine die not later than the first Wednesday after the first Monday in June following its organization." (Art. 35. Conn. Const.)

f If sessions continue longer, members serve without pay.

g Amendment to constitution providing for annual sessions approved at election of Nov. 1944.

h. Constitutional amendment adopted in 1940 provides for bifurcated or split session; legislature to convene for 30 days, recess for 30 days, and reconvene for 30 days.

i. Members are paid for 60 legislative days in one calendar year.

j The Tennessee Const. does not actually limit the duration of sessions specifically, but it limits the length of a session in effect by a provision that legislators may not be paid for more than 75 days of a regular session nor for more than 20 days of any extraordinary session.

k Except impeachment

l May be extended up to 30 days by 3/5 vote in each house.

m May be extended by governor until general appropriation passed.

since Georgia did it in 1880, except Massachusetts which reverted to the annual session after a brief experience of six years with the other.

Arguments directed toward the actual merits on the issue of annual versus biennial sessions may be summarized as follows:

In favor of the biennial session it is argued that continued presence of annual legislatures in Trenton has seriously hampered the administrative process by legislating on details which are better left to day-to-day administration, and has tended to "unsettle large segments of the population having vital interests, not necessarily inconsistent with the general public welfare, in the maintenance of the legislative status quo." The Commission on Revision of the New Jersey Constitution in 1942 advocated the adoption of a biennial session of limited duration, intended to put an end to the use of the continuous session of former years, to "concentrate legislative attention on important proposals, compel a short business-like and continuous session, and curtail the maximum of unnecessary laws".

Prior to the Commission's recommendation, constitutional amendments calling for biennial sessions were voted upon, and defeated, by the voters in 1909 and 1927.

Advocates of the biennial session argue that less frequent sessions result in bringing the Legislature greater public attention, that because revision or repeal of a law is delayed for two years the legislation will be given more careful consideration, that

the sense of responsibility on the part of the legislators is increased. It is also contended that the biennial session is more economical, that postponement of important legislation is less likely with the biennial session, and that undesirable legislation that comes with log-rolling would be reduced if the Legislature only met every other year.

Those who favor the limited session further point out that some of our most competent citizens who are too busy to give up a great deal of time to public service might, however, be induced to represent the people if they could dispose of their work in one short session every other year.

The above arguments which were highly successful in the last century have been sharply challenged in this one. It is impossible to show that the change from annual to biennial sessions has decreased the amount of unnecessary and undesirable legislation. It is argued that the best way to curtail the legislative product of log-rolling is to strengthen the governor's veto power.

The majority of political scientists today see little advantage in the biennial session and advocate return to the annual unlimited session. They argue that problems of state are not limited to alternate years, and that less time devoted to problems of legislation will result in poorer legislation--legislation which is hastily conceived and ill-considered. They maintain that the biennial session encourages the expansion of executive power at the expense of the legislative branch.

The most concrete arguments in favor of retaining the annual session relate to the operational requirements of state government. Most important among these is that it has been demonstrated that one of the principal reasons for the failure of the budget process in states throughout the country has been the practice of making budgets for a two-year period. This practice is obviously dictated by constitutional provision for biennial session of the Legislature.<sup>12</sup>

The budget is the principal device through which the legislature may exercise any effective control over administrative agencies. Biennial budgets obviously reduce the extent of this control. Moreover, where budget-making authorities must estimate departmental expenditure programs over a two-year period and anticipate state revenues over the same period, the tendency has been to give spending agencies "the benefit of the doubt" rather than toward economy. The issue of an annual session was closely linked in California (which adopted it by referendum on Nov. 5, 1946) with the desire, if not the practical necessity, for an annual budget.

The experience of Massachusetts is very much to the point. Largely motivated by considerations of expected economies, Massachusetts changed to the biennial session by referendum vote in 1938.<sup>13</sup>

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12. J. Wilner Sundelson, Budgetary Methods in National and State Governments, Spec. Rept. of the N. Y. State Tax Commission, No. 14 (Albany, 1938) pp. 459 et seq.

13. See Mass. Spec. Comm. to Investigate the Advisability of Amending the Constitution of the Commonwealth to Provide for Biennial Sessions of the General Court and for a Biennial Budget, Report (Senate No. 35, Boston, 1936)

Five years later a legislative commission, after reviewing all the arguments on the issue of annual versus biennial sessions, came to this strongly worded conclusion:<sup>14</sup>

"This Commission wishes to point out that the change from annual to biennial legislative sessions not only was a retrogressive step in our democracy, but signified a cataclysmic decline in the scope, value, integrity and importance of our Legislature. As a matter of fact, if biennial sessions had always been the rule in this Commonwealth, now would have been the time to change to annuals. In other years the tempo of life was slower; changes occurred less frequently; in the interest of economy, circumstances might have permitted less frequent meetings of the Legislature. Today, the rapid pace of life and communal affairs demands a Legislature that is in touch with the pulse of the Commonwealth....

"This Commission therefore strongly recommends the reconsideration of this whole question and a return to annual legislative sessions as soon as possible as the first step towards an improved legislative system."

In November, 1944, the people of Massachusetts voted to return to an annual session.

Briefly, in addition to the organization and functioning of the legislature itself, the choice between annual and biennial sessions will affect:

- 1) the influence of the executive in law-making.
- 2) the control of the legislature over administrative agencies.
- 3) the character and effectiveness of state budgeting.

\* \* \*

Limited vs. unlimited duration: It is significant that among the six states now having annual sessions, not one limits the duration of the session by constitutional provision (See Table IV).

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14. Mass. Spec. Comm. on Legislative System and Procedure, Report (Senate No. 50, Boston, 1943) pp. 102,105

The same philosophy which favors a biennial session leads to a constitutional limit on the duration of sessions. The arguments pro and con are similar, although it is quite possible to provide for an annual session of limited duration, as in the 1944 revised Constitution. While this might appear to be something of a compromise between the two schools of thought, it would in fact place a restriction on the Legislature which is not imposed on either of the other two branches of government. The principal intent of such a limit would be to force the Legislature to schedule its work, but similar provisions in other states have failed in this respect.

\* \* \*

Split vs. continuous sessions: In an effort to aid legislative planning, another type of session, the split session, has been used for a number of years in California and was adopted by New Mexico in 1940. In theory, the split session was conceived as a plan for dividing a session into three parts--for the introduction of bills during the first, consideration during the second, and passage during the third--with the hope that this method would allow ample time for the legislators and the public to study proposed legislation and would prevent the evil of last-minute introduction and passage of bills during the closing days of a session. The split session has not worked out very well in practice. The West Virginia legislature experimented with the idea for four sessions but found it unworkable. The West Virginia legislators allowed bills to be introduced after the recess, or during the

first period introduced skeleton bills--bills which contained only titles and enacting clauses and which were amended after the recess so that they became practically new bills. The jam at the end of the session was not reduced. The same faults are in evidence in California and New Mexico.

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Special sessions: In addition to regular sessions, all states make provision for the calling of special sessions. The increase in the number of special sessions in recent years has been attributed to the widespread use of the biennial and limited regular sessions of the legislatures. From 1927 to 1940 there were 281 special sessions called. During that period, Texas and Illinois each held 19 special sessions, Louisiana 14, Ohio 12, Arizona and Kentucky 10, New Jersey 9, and Nevada 1. In other states, the number ranged from 2 to 8. It should be noted that New Jersey, even with its annual unlimited sessions has had to call many special sessions--9 during the period of 1927-1940, (5 of which were held in 1931), 1 each in 1942, 1944 and 1945, and two in 1946.

Usually, it is the governor who is authorized by constitution to summon the legislators in special session. Thirty states authorize him to specify the subject or subjects to be considered at the sessions and prohibit the legislators from treating any other matter. In New Jersey, the Governor has the right to convene the Legislature whenever in his opinion public necessity requires it, but now no restriction on the subject matter is effective except by party discipline.

Seven states, Connecticut, Louisiana, Massachusetts, Nebraska, New Hampshire, Virginia, and West Virginia permit the legislators to determine the necessity for special sessions, but in Louisiana and Virginia a two-thirds vote of all the members is required and in West Virginia a three-fifths vote is required before a special session can convene. In 16 states special sessions are limited to from 15 to 30 days.

\* \* \*

Any changes which the Convention agrees upon in respect to sessions will involve corresponding changes in other sections of the Constitution. The Governor is presently elected for a three-year term. If the biennial session were adopted, the term of the Governor should be changed or a Governor might take office and find he had no Legislature in session to address, hence a special session would have to be called. If a biennial session were adopted, there would be no point in continuing a one-year term for Assemblymen or the three-year term for Senators.

In addition, if the biennial or limited session is voted, the convention should consider the advisability of permitting the Legislature to determine the necessity of calling a special session, the length of the special session, and the limitation of the number of subjects which can be treated. The Constitution submitted to the people in 1944 called for annual sessions limited to ninety days and provided that "Special sessions of the legislature shall be called by the Governor upon petition of a majority of all the members of each house and may be called by the Governor at such

other times as in his opinion the public interest may require. In either event, the call for a special session shall specify the matter or matters to be considered, and no other matter shall be considered at such session which is not specified in such call or in any other message from the Governor delivered during such session."

\* \* \*

The provisions of the present Constitution respecting organization and procedure of the Legislature represent the conventional provisions found in most state constitutions. Article IV, Sec. IV still stands as it was adopted in 1844, and its very brevity has given it a lasting quality in operation which more detailed specifications might not enjoy.

The principal provisions of current interest relate to the introduction and progress of bills through the respective houses, including the operation of the committee system. Except for the styling and form of bills, all provisions of the present Constitution on legislative procedure are included in Article IV, Section IV, paragraph 6, as follows:

"6. All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each body personally present and agreeing thereto; and the yeas and nays of the members voting on such final passage shall be entered on the journal."

Bills for "raising revenue" are required to "originate in the House of Assembly; but the Senate may propose or concur with amendments, as on other bills."

Introduction: The requirement that revenue bills must originate in the lower house is a carry over from the old notion that taxation must have a basis of popular representation. It is now troublesome in that bills which have incidental revenue features are sometimes introduced in the Senate and then must contend with the constitutional rule. Some twenty states have the same rule, but twenty-two states permit introduction of bills in either house; six have no provision and none is required for the unicameral legislature of Nebraska.

\* \* \*

Readings: Upon introduction, a bill is deemed to have had its first reading. Were it not for the fact that readings are by title only, the requirement of three readings would be unworkable, and even in those states that require reading "in full" the custom is to read a few sections at most or to disregard the requirement entirely.<sup>15</sup>

The difficulty with the reading requirement is that it no longer serves any purpose as presently constituted. While it is customary when time permits to advance bills to second reading which may eventually be moved for final passage, the constitutional provision imposes no standard of legislative action in that all readings may occur on the same day. The requirement of readings is an anachronism carried over from the days when high-speed modern printing was not available.

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15. Illinois Constitutional Convention of 1919, Bulletin No. 8, "The Legislative Department," p. 556.

It is common among the states to require the three readings to be on three separate days, which turns the reading requirement into a device intended to prevent excessive haste in legislating. New York seeks the same result more directly by requiring bills to have been printed and on the desks of members, in final form, "at least three calendar legislative days" before final passage, except when the governor may certify to the need or immediate passage.<sup>16</sup> The Model State Constitution requires both readings and printing, as follows:

"Section 314. Passage of Bills. No bill shall become a law unless it has been read on three different days, has been printed and upon the desks of the members in final form at least three legislative days prior to final passage, and has received the assent of a majority of all the members of the legislature. No act shall become effective until published, as provided by law."

The present practice in New Jersey of passing legislation on occasions "under suspension of the rules", without reference and without printing, would be barred by any of these other constitutional provisions since the Legislature could not suspend rules written into the Constitution. There may be instances where such a provision might delay emergency legislation and it might for this reason be argued that the matter should preferably be left, as it is in thirteen states, to legislative rules.

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16. N. Y. Const. (1938) Art. III, Sec. 14. See N. Y. State Const. Convention Committee, "Problems Relating to Legislative Organization and Powers" (Albany, 1938) p. 66, which reports that in the nine years 1929 to 1937 inclusive, the governor of New York used this power 980 times, of which 110 were in 1933.

Committees: The committee system has been one of the least successful aspects of American state legislatures, but it is rarely recognized in state constitutional provisions. A few states, such as Alabama, Colorado, Missouri, Mississippi, and Pennsylvania provide that no bill may be considered unless it shall be referred to committee and a report made. But the committee system itself has received little attention. The main difficulty in dealing with the committee system by constitutional provision is that the formal legislative committees are in fact subordinate to the majority party caucus, in the practical operation of state legislatures. It is notable that the new constitution of Missouri merely provides:

"Section 22. Reference of Bills to Committees--Recall of Referred Bills--Records of Committees.

Every bill shall be referred to a committee of the house in which it is pending. After it has been referred to a committee, one third of the elected members of the respective houses shall have power to relieve a committee of further consideration of a bill and place it on the calendar for consideration. Each committee shall keep such record of its proceedings as is required by rule of the respective houses and this record and the recorded vote of the members of the committee shall be filed with all reports on bills."

The new constitution of New York (1938) makes no reference to legislative committees. In the last analysis, the matter of legislative procedure depends as much upon the spirit and care with which rules are followed as upon the letter of the rule itself.

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