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AMENDING THE NEBRASKA CONSTITUTION IN THE 1971 LEGISLATURE

The eighty-second Nebraska Legislative Session proved to be a busy time for the drafters of constitutional amendments. In the course of the 1971 Legislative Session, sixty-five bills to amend Nebraska's Constitution were submitted for the consideration of the Unicameral. Eighteen of these proposed amendments will face the state's voters in the November 1972 general election. Most of the proposed amendments were submitted to effectuate the recommendations of the Nebraska Constitutional Revision Commission.¹

THE COMMISSION

Pursuant to legislative mandate,² the Nebraska Constitutional Revision Commission was formed and first met on November 1, 1969. The commission consisted of twelve members, six appointed by the legislature and six by the governor. Robert E. Barnett served as the commission's executive director. The task the commission faced is best stated in the language of the bill creating it:

The Commission shall make a complete study of the Constitution of Nebraska to determine what changes, if any, should be made therein, . . . and report its findings and recommendations for changes in the Constitution to the legislature . . . within one year after adjournment of the 1969 session of the Legislature.³

As the commission acknowledged, the one year deadline proved to be a very real limitation on the thoroughness with which the job could be done.⁴ However, the commission members felt that their efforts were quite successful within the time and budget limitations.⁵ The commission indeed put in a full year of work, meeting in subcommittee twenty-six times and in full session twenty-three times.⁶ The culmination of more than a year of work was a 163 page report, submitted to the people of Nebraska on September 27, 1970.

¹ The Appendix shows the amendments submitted, their disposition, and the section of the constitution to which they were addressed.

² Legislative Bill 244, 80th Neb. Leg. Sess. (1969).

³ *Id.*

⁴ REPORT OF THE NEBRASKA CONSTITUTIONAL REVISION COMMISSION X (1970) [hereinafter cited as COMMISSION REPORT].

⁵ *Id.*

⁶ *Id.*

A. THE COMMISSION RECOMMENDATIONS

In its report, the commission recommended fifty-eight significant changes in the seventeen articles of the Nebraska Constitution, in addition to drafting changes. These recommendations ranged from rewording to substantive revision of entire articles.⁷

It should be noted at the outset that it is not the purpose of this comment to provide a comprehensive review of the proposed changes. Rather, it will merely set forth the recommendations of the commission, align them with the amendments submitted to the legislature in 1971, and briefly assess the results.⁸ For simplicity, each constitutional article will be examined separately.

Three members of the legislature served on the revision commission.⁹ The vast majority of legislative bills which sought to implement the recommendations of the commission were submitted to the 1971 Legislature by these three men, either singly or in combination.¹⁰

B. THE LEGISLATIVE RESPONSE TO THE RECOMMENDATIONS OF THE COMMISSION

Article I. There were three changes recommended by the commission in Article I, the Bill of Rights of the Nebraska Constitution:

1. Eliminate the possibility of imprisonment for fraudulently contracted debts;
2. Eliminate the writ of error as a method for reviewing trial court decisions;
3. Guarantee the right to lawfully bear arms.¹¹

Each of the three proposed revisions was submitted to the 1971 Legislature.¹² None of the three was passed, although two of the proposed amendments remain on general file for consideration by

⁷ For example, Article VII, the Education Article, was totally redrafted.

⁸ This is done with full awareness that the 1972 Legislature will also be presented with an opportunity to effectuate commission recommendations.

⁹ They were Senators Ramey C. Whitney, William H. Hasebroock and George Syas. Senator Whitney served as chairman of the commission.

¹⁰ Forty-seven of the 65 amendments submitted in 1971 were from at least one of the three commission members.

¹¹ COMMISSION REPORT 1 (1970).

¹² Legislative Bills 123, 196 and 197, 82d Neb. Leg. Sess. (1971).

the 1972 Legislature.¹³ Legislative Bill 123, guaranteeing the right to lawfully bear arms, and L.B. 196, guaranteeing the right of appeal in all felony cases, will, if approved by the legislature and the governor during the eighty-third session, be presented to the voters in November of 1972.

The first recommendation of the commission was to revise Article I, section 20. This recommendation would be implemented by L.B. 197, offered to the legislature but not enacted. The present provision states that "[n]o person shall be imprisoned for debt in any civil action on mesne of final process unless in cases of fraud." An examination of the case law on this section reveals no instance of imprisonment for a fraudulently contracted debt, so the failure to enact the bill is likely to have little effect. Generally, the section has been interpreted to make the nonpayment of a limited class of financial obligations a criminal offense and to provide for prosecution and imprisonment of violators.¹⁴

Legislative Bill 763 was also submitted as an amendment to Article I. This bill is a restatement of L.B. 925 of the 1969 Legislative Session.¹⁵ Enough has been written about this ill-conceived piece of legislation to make it unnecessary to go into much detail here.¹⁶ The introduction of L.B. 763 is an attempt to legislatively overrule the decision of the Nebraska Supreme Court in *State v. Goodseal*,¹⁷ which declared section 29-114 unconstitutional. One of the major objections to the original section 29-114 has been eliminated by insertion of the word "reasonable" to qualify the means available to a person acting in defense of life or property.

Article II. No changes were recommended in Article II, which sets forth the distribution of powers in Nebraska and no bills which would amend Article II were submitted to the 1971 Legislature.

Article III. Extensive changes were recommended in Article III, the legislative article. Thirteen changes were proposed by the commission, the first four of which deal with referendum and initiative, and would:

¹³ Final Work Sheet, State of Nebraska, 82d Legislature, First Session (June 2, 1971) [hereinafter cited as Work Sheet].

¹⁴ *Fussel v. State*, 102 Neb. 117, 166 N.W. 197 (1918); *White v. State*, 135 Neb. 154, 280 N.W. 433 (1938).

¹⁵ NEB. REV. STAT. § 29-114 (Supp. 1969).

¹⁶ See Comment, *L.B. 925: Nebraska's New Self-Defense Statute and Its Implications*, 49 NEB. L. REV. 637 (1970).

¹⁷ 186 Neb. 359, 183 N.W.2d 258 (1971).

1. Prohibit the initiative from applying to revenue and appropriation measures and the referendum from applying to revenue measures;

2. Permit only registered voters to sign initiative and referendum petitions;

3. Eliminate the requirement that initiative and referendum petition signers be distributed throughout two-fifths of the counties of the state;

4. Eliminate the requirement that measures initiated or referred must receive affirmative votes totaling thirty-five percent of the vote for governor in the previous gubernatorial election before they pass.

The next eight recommendations deal generally with the functioning of the legislature and would, if implemented:

5. Increase the maximum number of senators to sixty;

6. Permit annual legislative sessions;¹⁸

7. Establish a commission for legislative compensation;

8. Eliminate the lieutenant governor as presiding officer of the legislature;

9. Require the vote of each member of every legislative committee to be recorded and published on every vote in committee to advance or indefinitely postpone a bill;

10. Permit five-day special sessions;

11. Prohibit conflicts of interest in contracts;

12. Permit grants of extra compensation to state officers and employees after their services have been rendered.

The final recommended change is one of some significance. It would:

13. Require the legislature to protect the wholesome environment in which Nebraskans live.

A total of eighteen bills were submitted which would have amended Article III. Four of the submitted bills would simply delete obsolete references to the pre-1937 two house legislature.¹⁹

¹⁸ This amendment was presented to, and passed by, the voters in the 1970 general election.

¹⁹ Legislative Bills 124, 126, 132 and 139, 82d Neb. Leg. Sess. (1971).

One of these four has been retained on general file for consideration by the 1972 Legislature,²⁰ the other three will be submitted to Nebraska voters in the November 1972 general election.²¹ A fifth bill would delete the listing of prohibited types of special legislation;²² it was killed in the legislature.

Six bills were introduced which related to the next eight recommendations,²³ but the six bills refer to only four of the recommendations. Legislative Bill 280 would implement recommendation number five, but was killed by the legislature. Two bills were submitted to partially implement recommendation number seven, though neither would do so in the manner suggested by the commission.²⁴ The commission recommended the creation of a body empowered to fix legislative salaries. The two bills grant the legislators the power to fix their own salaries. The only difference between L.B. 889 and L.B. 311 is that 311 limits the compensation of a senator to one-half that of the governor, while 889 imposes no limitations as to amount. L.B. 889 passed the legislature and will be submitted to the voters; L.B. 311 has, oddly, been retained on general file for consideration by the 1972 Legislature.

Legislative Bill 686 amends sections nine and sixteen of Article III to provide standards for determining conflicts of interest. This would implement recommendation number seven of the commission, but failed to clear the legislative hurdles and will not be presented to the voters unless it should come up for reconsideration in 1972.

Two bills would implement recommendation twelve.²⁵ The two take different approaches, with L.B. 605 merely deleting the limitation on extra compensation to public officers, agents or servants. The purpose of this deletion would be to allow increases in retirement benefits to offset increased costs of living.²⁶ Legislative Bill 531 leaves the original language of section nineteen intact but provides that retirement benefits may be increased. Neither alternative passed the 1971 Legislature, but should the matter come up for

²⁰ Legislative Bill 124, 82d Neb. Leg. Sess. (1971).

²¹ Work Sheet, June 2, 1971.

²² Legislative Bill 125, 82d Neb. Leg. Sess. (1971).

²³ Legislative Bills 280, 311, 531, 605, 686 and 889, 82d Neb. Leg. Sess. (1971).

²⁴ Legislative Bills 311 and 889, 82d Neb. Leg. Sess. (1971).

²⁵ Legislative Bills 531 and 605, 82d Neb. Leg. Sess. (1971).

²⁶ COMMISSION REPORT 33.

reconsideration in the next session, the approach taken by L.B. 605 would appear to be the preferable one.

Five amendments to Article III were considered by the legislature that were not among changes recommended by the commission. These bills would provide for a partisan legislature,²⁷ permit dog races,²⁸ restrain the state from alienating mineral resources,²⁹ provide for apportionment on the basis of the number of registered voters,³⁰ and eliminate the requirement of a final bill reading.³¹ Of these, only the final bill reading question has been retained on general file for consideration by the Unicameral next year.³²

Legislative Bill 247 would have submitted to the voters an amendment to Article III which would add sections 30 and 31, requiring the legislature to protect the people in the enjoyment of a wholesome environment. This is similar to a provision recently proposed in the state of New York.³³ The effect of such an amendment would be difficult to predict, but it does reflect an increasing awareness of environmental problems.

Article IV. The revision commission also proposed extensive revision of the executive article, with a total of nine recommended substantive changes.³⁴ These would:

1. Eliminate the auditor of public accounts and the treasurer as elected state officers;
2. Require the attorney general to be a lawyer;
3. Require the governor to present a budget bill as well as a budget message;
4. Permit the legislature to increase the recommendations of the governor's budget by a three-fifths vote, but permit such excess to be vetoed by the governor, and such veto to be overridden by the legislature;

²⁷ Legislative Bill 584, 82d Neb. Leg. Sess. (1971).

²⁸ Legislative Bill 915, 82d Neb. Leg. Sess. (1971).

²⁹ Legislative Bill 198, 82d Neb. Leg. Sess. (1971). This bill was in accordance with a recommended drafting change.

³⁰ Legislative Bill 533, 82d Neb. Leg. Sess. (1971).

³¹ Legislative Bill 141, 82d Neb. Leg. Sess. (1971). This amendment was submitted to the voters in 1970 but was defeated.

³² Work Sheet, June 2, 1971.

³³ The Amendment has not been enacted. However, Article 14 of the New York Constitution relates to environmental protection.

³⁴ COMMISSION REPORT 35 (1970).

5. Permit the governor to reduce any item or items of appropriation;

6. Eliminate the railway commission as an elected body;

7. Eliminate the state board of equalization and assessment and have the state tax commissioner perform its functions;

8. Rearrange and clarify the sections on appointment, removal, and filling of vacancies;

9. Require the candidates for governor and lieutenant governor to run as a team, in both primary and general elections.³⁵

Eight bills were submitted that would amend Article IV,³⁶ but only four of these were addressed to recommendations of the commission. Recommendation one would be partially effectuated by L.B. 622, making the office of state treasurer appointive rather than elective while retaining the office of auditor of public accounts as elective. This bill did not clear the 1971 Legislature. Legislative Bill 332 would amend section two of Article IV to require the attorney general to be a lawyer, but it was not passed by the 1971 session. Recommendation three was covered by L.B. 301, and will be submitted to the voters in the 1972 general election. Legislative Bill 302 was submitted to implement recommended change number eight. It would transfer the responsibility for filling vacancies created by removal from office from the legislative to the executive article of the Nebraska Constitution, giving the governor "power to remove, for cause and after a public hearing, any person whom he may appoint for a term except offices provided for in Article V . . . declare his office vacant, and fill the same as herein provided as in other cases of vacancy."³⁷ This bill, too, failed to final passage.

Recommendation number seven of the commission is one which would have fairly wide impact, were it to be enacted. Legislative Bill 687, implementing this recommendation, would give the voters of Nebraska a chance to eliminate the state board of equalization and place its duties in the hands of the director of revenue. Politically, this would be most helpful to those elective officers who com-

³⁵ This recommendation was submitted to the voters in 1970. It was approved, and the governor and lieutenant governor will run as a team for the first time in 1974.

³⁶ Legislative Bills 301, 302, 332, 340, 341, 347, 622 and 687, 82d Neb. Leg. Sess. (1971).

³⁷ Legislative Bill 302, 82d Neb. Leg. Sess. (1971).

prise the board of equalization;³⁸ however, the 1971 Legislature failed to enact the bill.

There were three other proposed amendments to Article IV. Two of these will be submitted to the voters in 1972. Legislative Bill 340, which will be on the ballot, changes one word in section four.³⁹ Legislative Bill 341, also to be presented to the 1972 voters, deletes an obsolete reference to the two-house system. The third proposed amendment, L.B. 347, which has been retained on general file for consideration by the 1972 Legislature, would change the name of the state railway commission to the Nebraska Public Service Commission, but would retain the commission as an elected body.

Of the eight substantive recommendations made by the revision commission, only one will be submitted to the voters from the 1971 Legislature. Two totally non-controversial measures will be submitted, neither effecting any substantive change in Article IV. Thus the recommendations of the commission relating to Article IV showed a very poor track record with the 1971 Legislature. Hopefully the 1972 Legislature will be able to act on some of the substantive recommendations.

Article V. The recommended changes in the judicial article are examined in depth in other articles in this symposium, and will be examined only superficially here. Four changes were recommended that would:

1. Require that a majority of the Nebraska Supreme Court determine the outcome of any case before it;
2. Grant the supreme court the power and duty to administer the entire court system;
3. Eliminate justice of the peace courts and county courts as constitutional courts but provide for retaining the same jurisdiction and powers of these courts until the legislature determines otherwise;
4. Provide for periodic redistricting of supreme court judicial districts.

Recommendation one was before the legislature in the form of L.B. 304, but its fate will not be determined until the 1972 session convenes. Five bills proposing amendments not covered by com-

³⁸ See Comment, *Property Tax Equalization and Assessment: A Proposal for Reform*, 50 NEB. L. REV. 103 (1970).

³⁹ It changes the word "either" to "each" in §4, a drafting change recommended by the commission.

mission recommendations were submitted, and three of these will be before the voters in 1972 as a result of their passage in the 1971 Legislature. Legislative Bill 303 provides that a majority vote of the legislature may change the number of judges of the district courts and alter the boundaries of judicial districts. Legislative Bill 305 would allow a majority of those voting on the issue, rather than a majority of the electors, to establish or abolish a juvenile court in a juvenile court judicial district. Legislative Bill 333 would allow the supreme court to present a budget figured on an annual rather than biennial basis. This would conform with annual sessions of the legislature. Each of the foregoing three amendments will be on the 1972 ballot.

A fourth proposed amendment, L.B. 592, would provide for election rather than appointment of judges. This bill has been retained on general file for consideration by the 1972 Legislature. Finally, L.B. 306, which related to recommendation number two and would have granted the supreme court the power to make its own rules of practice, failed of final passage.

Article VI. Only one recommended substantive change was advanced in Article VI, the suffrage article. This was a recommendation that the six-month residency requirement for electors be removed. Recommended drafting changes were made which would allow military personnel stationed in Nebraska to be considered residents of the state for voting purposes. This recommendation was advanced by the legislature in the form of L.B. 339 and will be on the 1972 ballot. In view of the serious constitutional questions raised by voting residency requirements, it would seem desirable that this amendment be approved.⁴⁰

Three other proposed amendments were considered by the 1971 Legislature. Legislative Bill 392 would limit elective state office holders to two terms in office, and would allow no one to file for office who has reached, or would reach during the term of office, the age of seventy years. This bill was not advanced by the legislature. Legislative Bill 628 would add a new section seven to Article IV, and would prescribe the method for Nebraskans to vote for the President and Vice-President of the United States. Again, this bill was not advanced.

⁴⁰ As of July 20, 1971, 10 cases were presented to the United States Supreme Court which challenged state residency requirements that were a prerequisite to voting. 39 U.S.L.W., Final Supreme Court Index at 10 (July 20, 1971). See also *Graham v. Richardson*, 39 U.S.L.W. 4732 (U.S. June 14, 1971).

Legislative Bill 221 will be presented to the voters in 1972, and its passage would lower the legal voting age to eighteen years. In view of the Twenty-sixth Amendment to the United States Constitution, it is somewhat immaterial whether this amendment is approved. Because of this development, it is not likely that this proposed amendment will generate quite the amount of interest that it has in the past.⁴¹

Article VII. The education article was the object of the most extensive revision recommendation. In essence, the commission suggested that Article VII be entirely redrafted. Though a large part of the revision is a rearrangement of prior sections, the article would come in for significant substantive revision should the recommendations be approved. The four significant recommended changes noted by the commission would:

1. Permit the legislature to determine how school funds should be managed and invested;
2. Permit the legislature to establish laws which grant damages in addition to compensatory damages for business practices or pollution that the legislature deems unlawful;
3. Expand the maximum number of regents on the University of Nebraska Board of Regents to nine and permit the legislature to gradually coordinate higher education under the board;
4. Permit the legislature to distribute federal grants in accordance with the terms of those grants.

Four bills were submitted to the 1971 Legislature which would amend section seven. Three of these were not related to commission recommendations and would take control of the University of Nebraska at Omaha from the Board of Regents and place it in the hands of the legislature,⁴² take control of the state colleges from the Normal Board and place it in the hands of the legislature,⁴³ and would provide that the salaries of all teachers, administrators and employees of public schools be paid by the state.⁴⁴ None of these three bills passed. The fourth, L.B. 696, incorporated verbatim the revised Article VII proposed by the commission. It has been retained for consideration by the 1972 Legislature.

⁴¹ This issue generated some controversy when submitted to the voters in 1968. Though an intensive effort aimed at passage was mounted by the youth of the state, it was defeated.

⁴² Legislative Bill 940, 82d Neb. Leg. Sess. (1971)

⁴³ Legislative Bill 941, 82d Neb. Leg. Sess. (1971).

⁴⁴ Legislative Bill 730, 82d Neb. Leg. Sess. (1971).

Two of the substantive changes suggested should be briefly noted, as they are quite significant. Recommended change two would, in revised section nine, overcome the difficulty imposed by the current section five of Article VII. Under section five, it is provided that all fines, penalties and license money, with limited exceptions, must go to the counties. Thus, the section has been interpreted to prohibit payment to civil litigants of other than compensatory damages.⁴⁵ Under this section, a statute allowing recovery of treble damages in a civil action was declared unconstitutional.⁴⁶ Damages other than compensatory damages are not unusual, and the limitation imposed by section five should be removed.

Recommendation number four would permit the legislature to distribute federal grants in accordance with the terms of those grants. The current section eleven of Article VII prohibits acceptance by the state of any grant, conveyance, or bequest of property to be used for sectarian purposes. In view of present federal programs designed to provide some financial aid to nonpublic education,⁴⁷ removal of this limitation would be desirable.

As noted by the commission, one of the main purposes of the extensive revision of Article VII is to provide for greater centralization of the control of higher education in the state.⁴⁸

Article VIII. The revenue article of the constitution was the object of only two significant recommended changes. If adopted, they would:

1. Eliminate county mill levy limitations;
2. Change the section which imposes "in lieu of tax payments" on public power districts.

Four bills were submitted to amend Article VIII. One of these, L.B. 685, incorporated verbatim the recommendations of the commission. The most important change, at least to the counties, would be the removal of the mill levy limitation. At the present time, many counties have reached their limitation. Thus, the only way counties can generate more revenue is to increase valuations, a move that is very unpopular with voters and one which counties are reluctant to make. Often the task of revising valuations upward

⁴⁵ *Sunderland Bros. Co. v. Chicago, B. & Q.R.R.*, 104 Neb. 319, 177 N.W. 156 (1920).

⁴⁶ *Abel v. Conover*, 170 Neb. 926, 104 N.W.2d 684 (1960).

⁴⁷ See *Tilton v. Richardson*, 39 U.S.L.W. 4857 (U.S. June 28, 1971); *Lemon v. Kurtzman*, 39 U.S.L.W. 4844 (U.S. June 28, 1971).

⁴⁸ COMMISSION REPORT 83.

has devolved by default onto the state board of equalization. Removal of the mill levy limitation would go far toward resolving this recurring problem.⁴⁹ Unfortunately, the 1971 Legislature failed to advance L.B. 685. It would be a desirable bill for the 1972 Legislature to reconsider.

Three other amendments to Article VIII were considered. Of the three, two have been retained on general file and will be considered next year. The first of these, L.B. 837, would provide that land actively engaged in agriculture should be valued for tax purposes without reference to its value for other purposes. In view of the experiences of the state of Florida, which has a similar provision, passage of this amendment would probably create more problems than it would solve. The second, L.B. 978, would allow cities of the metropolitan, primary and first classes to levy a payroll tax on those who live outside the city but are employed in the city.

A third proposed amendment, L.B. 990, would exempt from the property tax all property owned by a paraplegic or multiple amputee veteran, though as written it would appear that the bill would exempt paraplegic veterans and all multiple amputees. This bill was not passed by the last legislature.

Article IX. Only one change in the article governing counties was recommended. This would provide that counties could adopt a county manager form of government. Legislative Bill 761 effectuates this recommendation, and has been retained on general file for consideration in 1972. The same amendment has twice before been taken to the voters, and has been twice defeated.⁵⁰

Article X. The commission recommended that Article X be condensed into a single paragraph. The railway commission would be changed to the Nebraska Public Service Commission, and appointed rather than elected. The legislature would be allowed to determine the number of commissioners, and its powers in determining the scope of the regulatory functions of the commission would be broadened. Legislative Bill 627 was a verbatim recital of the commission recommendation, but was not advanced by the legislature. It should be noted that L.B. 627 was inconsistent with L.B. 347, which would retain the railway commission as an elected body.

Article XI. The revision commission recommended that a major portion of the material in this article, governing municipal corporations, be deleted because of its statutory nature. A major substan-

⁴⁹ See Comment, *supra* note 36, at 110-11.

⁵⁰ COMMISSION REPORT 98.

tive change would have extended the home rule charter provision to all municipalities, not just those with more than 5,000 population. No bills were submitted in 1971 which would amend Article XI.

Article XII. The commission recommended that Article XII, the miscellaneous corporations article, be consolidated into a single paragraph article. Legislative Bill 762, to be submitted to the voters in 1972, sets forth the recommended change. Adoption of this amendment would delete much material that is statutory in nature, but would make no substantive changes.⁵¹

Article XIII. Article XIII governs state, county and municipal indebtedness. The commission recommended that section sixteen of Article XV, the industrial development article, be transferred into the article, and that the legislature be given authority to pass statutes allowing cash advances to state employees for travel on official state business. Legislative Bill 688 would give effect to this recommendation, and will be considered by the voters in 1972.

Article XIV. The militia article was the subject of a recommendation that it simply be reworded for clarity. This will be accomplished if the voters approve L.B. 621, which is based on the commission recommendation.

Article XV. The commission recommended four substantive revisions in Article XV. These would:

1. Permit the legislature to provide for the investment of any state or local funds;
2. Shorten the oath of office;
3. Permit intergovernmental cooperation agreements;
4. Eliminate drunkenness as a cause of impeachment.

Six proposed amendments were submitted to the legislature in 1971. Legislative Bill 500 would change the means of relocating the state capitol. It was not passed by the legislature. Legislative Bill 501 addresses itself to recommendation one, but also was not passed by the last legislature. Legislative Bill 502 did pass the legislature and will be submitted to the voters, but its only effect is to repeal section eleven, made obsolete by the Seventeenth Amendment to the United States Constitution.

Legislative Bill 503, retained for consideration by the 1972 Legislature, merely clarifies language in section two of Article XV and

⁵¹ *Id.* 115.

makes no substantive changes. Legislative Bill 604 would add section eighteen to the miscellaneous article, and remove any doubts as to the constitutionality of NEB. REV. STAT. §§ 25-2201 *et seq.* (Re-issue 1964), the Interlocal Cooperation Act, by expressly authorizing intergovernmental agreements. This bill was not approved.

Legislative Bill 979 has been retained on general file for the next legislative session. This bill illustrates the major flaw in the Nebraska Constitutional Revision Commission. If adopted, it would prohibit persons from being forced to be a member of an organization to practice his profession. This question was brought before the commission, but was rejected as a recommended revision.⁵² However, one of the legislators on the commission who had voted in favor of the proposal simply introduced the measure into the 1971 session. By this device, any of the legislative members of the revision commission were able to nullify the considered judgment of the full twelve member commission, a power which the nine nonlegislative members did not have.

Article XVI. This article governs the procedure for amending the Nebraska Constitution. The commission recommended five changes that would:

1. Permit the legislature to propose revisions of part or all of the constitution;
2. Remove the requirement that thirty-five percent of the total votes cast at any election must be cast in favor of an amendment before it can carry;
3. Remove the requirement that thirty-five percent of the total votes cast at an election must be cast in favor of calling a constitutional convention before it may be called;
4. Require that a proposal for a constitutional convention be submitted to the people at least once within any ten year period;
5. Prohibit submitting to the people any measure than more once in three years.

Three of these recommendations were submitted as proposed constitutional amendments, and all have been retained on general file for consideration by the 1972 Legislature.

The bill based on the first recommendation, L.B. 610, is a bill of major importance, for the future effectiveness of the commission's efforts could hinge on its passage. This bill removes the require-

⁵² COMMISSION REPORT, Appendix C, at 154.

ment that a constitutional amendment receive thirty-five percent of the total vote cast in any election. At the same time, it deletes the final sentence of section one, which provides that “[w]hen two or more amendments are submitted at the same election, they shall be so submitted as to enable the electors to vote on each amendment separately.”⁵³

The other two bills introduced, L.B. 611 and L.B. 623, would, respectively, provide that the requirement that thirty-five percent of the total vote cast in any election must be cast in favor of calling a constitutional convention be removed and allow the issue to be decided by majority vote, and require that the question of whether a constitutional convention be called must be placed on the ballot at least once every ten years. The adoption of these provisions would be of major importance in providing for rational and orderly growth of the Nebraska Constitution in order to keep up with changing needs.

Article XVII. The only recommended change in this article would be to delete obsolete or statutory material. This would be accomplished by passage of L.B. 504, which will be before the voters in November 1972.

CONCLUSION

As noted at the outset, it was not the purpose of this comment to present an in-depth analysis of recommended changes in the Nebraska Constitution, but rather to simply set forth those recommendations and compare them with the response of the 1971 Legislature. It is readily apparent that few of these significant changes were adopted by the 1971 session. At first glance, the somewhat piecemeal fashion in which the amendments will be presented to the voters would seem to be contra to the suggestion of the commission that the “recommendations be treated in a unified manner.”⁵⁴ However, this is largely impossible until L.B. 610, which allows the voters to vote on more than one amendment at a time, is adopted. To present each of the fifty-eight recommendations to the voters of Nebraska at a single election would render the ballot unmanageable. It would be naive to think that an informed vote could be made on each of fifty-eight (or more) separate amendments. It is possible that presentation of the amendments as part of a one, two, or three part package would allow the changes to be made rationally, and if coupled with a concerted effort to inform

⁵³ NEB. CONST. art. XVI, § 1.

⁵⁴ COMMISSION REPORT X.

the voters of the nature of the proposed changes could result in the adoption of a streamlined constitution by an informed electorate. In the alternative, a constitutional convention should be called to totally rewrite the present constitution, drawing heavily on the work of the Nebraska Constitutional Revision Commission.

The 1971 Legislature has presented eighteen amendments to the voters. Assuming that the 1972 Legislature will be at least as prolific, the total on the 1972 ballot may reach thirty-six or more. Even the most sophisticated voter would have difficulty in making an informed vote on each of them, and a constitution should not be amended on the basis of random voting.

Stanley M. Talcott '71

APPENDIX

<i>Leg- isla- tive Bill No.</i>	<i>Section Amended</i>	<i>Introduced By</i>	<i>Disposition</i>
123	Art. I, add § 28	Syas, Hasebroock & Whitney [hereinafter S,H, & W, respectively]	held to '72
124	Art. III, § 17	S H & W	killed
125	Art. III, § 18	S H & W	killed
126	Art. III, § 8	H & W	passed
132	Art. III, § 13	H & W	passed
139	Art. III, § 22	H & W	passed
141	Art. III, § 14	Waldron	held to '72
146	Art. III, §§ 1,2,3,4	S H W & Luedtke	held to '72
196	Art. I, § 23	Luedtke & W	held to '72
197	Art. I, § 20	Luedtke & W	killed
198	Art. III, § 20	Luedtke W & S	killed
221	Art. VI, § 1	fifteen senators	passed
247	Art. III, add §§ 30,31	S & W	killed
280	Art. III, § 6	S & W	killed
301	Art. IV, §§ 7,15	S H & W	passed
302	Art. IV, §§ 10,11,12, Art. III, § 23 Art. IV, §§ 18,20,21	S H & W	held to '72
303	Art. IV, § 11	S & W	passed
304	Art. V, § 2	S & W	held to '72
305	Art. V, § 27	S & W	passed
306	Art. V, §§ 25,26	S & W	killed
311	Art. III, § 7	Stahmer	held to '72
332	Art. IV, § 2	W & H	killed
333	Art. V, § 8	S H & W	passed
339	Art. VI, §§ 1,5,6,4	S H & W	passed
340	Art. IV, § 4	S H & W	passed
341	Art. IV, § 27	S H & W	passed
347	Art. IV, § 20	Elrod	held to '72
392	Art. VI, add § 7	Stahmer	killed
.500	Art. X, § 12	S H & W	killed
.501	Art. XV, § 17	S H & W	killed
502	Art. XV, § 11	S H & W	passed
.503	Art. XV, § 12	S H & W	held to '72
.504	Art. XVII, §§ 1,4,5 repeal §§ 2,3,6,7,8,11	S H & W	passed
.531	Art. III, § 19	Proud	killed

533	Art. III, § 5 Art. IV, § 20 Art. V, § 5 Art. VIII, §§ 10,15	Stromer & Waldron	killed
584	Art. III, § 7	DeCamp	killed
592	Art. V, § 21	Klaver & Carpenter	killed
604	Art. XV, add § 18	S H & W	passed
610	Art. XVI, § 1	H & S	held to '72
611	Art. XVI, § 2	H & S	held to '72
621	Art. XIV, § 1	S H & W	passed
622	Art. IV, §§ 1,3	S H & W	killed
623	Art. XVI, add § 3	H & S	killed
627	Art. X, § 1, repeal §§ 2-8	H & S	killed
628	Art. VI, add § 7	Stromer	killed
656	Art. VII, §§ 1-13 repeal §§ 2-8	S H & W	killed*
685	Art. VIII, §§ 11, 12	S H & W	killed
686	Art. III, §§ 9,16	H & W	killed
687	Art. IV, § 28	S H & W	killed
688	Art. XIII, § 2 repeal Art. X, § 16	H & W W	passed killed
730	Art. VII, add § 18		
761	Art. IX, § 4, repeal § 1	S H & W	held to '72
762	Art. XII, § 7, repeal §§ 2-6	S H & W	passed
763	Art. I, add § 11a	Carpenter, Savage & S	held to '72
837	Art. VIII, § 1	Warner	held to '72
889	Art. III, § 7	Waldron & Holmquist	passed
915	Art. III, § 24	Barnett & Schmit	killed
940	Art. VII, § 10	Ziebarth & Johnson	killed
941	Art. VII, § 13	Ziebarth & Johnson	killed
978	Art. VIII, add § 12	Snyder	killed
979	Art. XV, add § 18	S	held to '72
990	Art. VIII, § 2	Morgan	killed

*L.B. 1023 will be held on general file for the 1972 Legislature. It is identical to L.B. 656, and was introduced by the Committee on Constitutional Revision.