HAWAII CONSTITUTIONAL CONVENTION STUDIES 1978

Article IV: The Executive

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Legislative Reference Bureau
State Capitol
Honolulu, Hawaii 96813

Price $2.00
May 1978

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Article IV
THE EXECUTIVE

ESTABLISHMENT OF THE EXECUTIVE

Section 1. The executive power of the State shall be vested in a governor.

The governor shall be elected by the qualified voters of this State at a general election. The person receiving the highest number of votes shall be the governor. In case of a tie vote, the selection of the governor shall be determined in accordance with law.

The term of office of the governor shall begin at noon on the first Monday in December next following his election and end at noon on the first Monday in December, four years thereafter.

No person shall be eligible for the office of governor unless he shall be a qualified voter, have attained the age of thirty years, and have been a resident of this State for five years immediately preceding his election.

The governor shall not hold any other office or employment of profit under the State or the United States during his term of office. [Am Const Con 1968 and election Nov 5, 1968]

LIEUTENANT GOVERNOR

Section 2. There shall be a lieutenant governor, who shall have the same qualifications as the governor. He shall be elected at the same time, for the same term, and in the same manner, as the governor; provided that the votes cast in the general election for the nominee for governor shall be deemed cast for the nominee for lieutenant governor of the same political party. He shall perform such duties as may be prescribed by law. [Am HB 19 (1964) and election Nov. 3, 1964]

COMPENSATION: GOVERNOR, LIEUTENANT GOVERNOR

Section 3. The compensation of the governor and of the lieutenant governor shall be prescribed by law, but shall not be less than thirty-three thousand five hundred dollars, and twenty-seven thousand five hundred dollars, respectively, a year. Such compensation shall not be increased or decreased for their respective terms, unless by general law applying to all salaried officers of the State. When the lieutenant governor succeeds to the office of governor, he shall receive the compensation for that office. [Am Const Con 1968 and election Nov 5, 1968]

SUCCESSION TO GOVERNORSHIP; ABSENCE OR DISABILITY OF GOVERNOR

Section 4. When the office of governor is vacant, the lieutenant governor shall become governor. In the event of the absence of the governor from the State, or his inability to exercise and discharge the powers and duties of his office, such powers and duties shall devolve upon the lieutenant governor during such absence or disability.

When the office of lieutenant governor is vacant, or in the event of the absence of the lieutenant governor from the State, or his inability to exercise and discharge the powers and duties of his office, such powers and duties shall devolve upon such officers in such order of succession as may be provided by law.

In the event of the impeachment of the governor or of the lieutenant governor, he shall not exercise the powers of his office until acquitted.

EXECUTIVE POWERS

Section 5. The governor shall be responsible for the faithful execution of the laws. He shall be commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion. He shall, at the beginning of each session, and may, at other times, give to the legislature information concerning the affairs of the State and recommend to its consideration such measures as he shall deem expedient.

The governor may grant reprieves, commutations and pardons, after conviction, for all offenses, subject to regulation by law as to the manner of applying for the same. The legislature may, by general law, authorize the governor to grant pardons before conviction, to grant pardons for impeachment and to restore civil rights denied by reason of conviction of offenses by tribunals other than those of this State.

The governor shall appoint an administrative director to serve at his pleasure.

EXECUTIVE AND ADMINISTRATIVE OFFICES AND DEPARTMENTS

Section 6. All executive and administrative offices, departments and instrumentalities of the state government and their respective functions, powers and duties shall be allocated by law among and within not more than twenty principal departments in such manner as to group the same according to major purposes so far as practicable. Temporary commissions or agencies for special purposes may be established by law and need not be allocated within a principal department.

Each principal department shall be under the supervision of the governor and, unless otherwise provided in this constitution or by law, shall be headed by a single executive. Such single executive shall be nominated and, by and with the advice and consent of the senate appointed by the governor and he shall hold office for a term to expire at the end of the term for which the governor was elected, unless sooner removed by the governor; except that the removal of the chief legal officer of the State shall be subject to the advice and consent of the senate.

Except as otherwise provided in this constitution, whenever a board, commission or other body shall be the head of a principal department of the state government, the members thereof shall be nominated and, by and with the advice and consent of the senate, appointed by the governor. The term of office and removal of such members shall be as prescribed by law. Such board, commission or other body may appoint a principal executive officer, who, when authorized by law, may be ex officio a voting member thereof, and who may be removed by a majority vote of the members appointed by the governor.

The governor shall nominate and, by and with the advice and consent of the senate, appoint all officers for whose election or appointment provision is not otherwise made by this constitution or by law. If the manner of removal of an officer is not prescribed in this constitution, his removal shall be in a manner prescribed by law.

When the senate is not in session and a vacancy occurs in any office, appointment to which requires the confirmation of the senate, the governor may fill the office by granting a commission which shall, unless such appointment is confirmed, expire at the end of the next session of the senate; but the person so appointed shall not be eligible for another interim appointment to such office if the appointment shall have failed of confirmation by the senate.

No person who has been nominated for appointment to any office and whose appointment has not received the consent of the senate shall be eligible to an interim appointment thereafter to such office.

Every officer appointed under the provisions of this section shall be a citizen of the United States and shall have been a resident of this State for at least one year immediately preceding his appointment; except that this residence requirement shall not apply to the president of the University of Hawaii. [Am Const Con 1968 and election Nov 5, 1968]

Chapter 1
INTRODUCTION

Current discussions in the literature and recent state constitutional revision indicate that the major issue relating to the executive branch is the increasing executive power and centralizing of authority in the office of the governor. Markedly different historical experiences have produced a difference in perspective on this issue between Hawaii and most mainland states.

From the early 1800's when Kamehameha I unified the Hawaiian Islands to 1840, the kings possessed virtually all powers of government. There was no separation of powers: the kings exercised legislative and judicial, as well as executive, power. In 1840 a constitutional government embodying the separation of powers doctrine was established in the Islands. The king, however, still retained the power to veto legislation, command the army and navy, convene the legislature, grant pardons, make treaties, and appoint and remove heads of departments.[1]

A strong and highly centralized executive branch was maintained under the Hawaii Organic Act of 1900. The Act made the governor probably more powerful than any other state governor of this time. He was appointed to a 4-year term by the president with no restrictions on reappointment; he was not impeachable; he made a large number of appointments with senate approval; he and the senate could remove appointed officials; he had extensive fiscal powers; he could veto items in appropriation bills and extend legislative sessions.[2] Little change in the executive branch was made by the 1950 Constitution which essentially incorporated the provisions of the Organic Act.

Historical development in Hawaii reflected a continuing acceptance of a strong, highly centralized executive branch.[3] The chief executive in Hawaii has consistently occupied an important place in the governmental system as a whole, as well as within the executive branch itself. The position of the chief executive vis-a-vis the administrative departments and the legislature conforms to the contemporary concept of the expanded role of the governor.

In contrast to Hawaii, the mainland historical development produced an executive branch in which authority was diminished and decentralized. Three factors significantly contributed to this development: the adverse colonial experience with royal governors, the influence of Jacksonian democracy, and the emphasis upon neutral competence in administration.

The colonial governments were highly centralized around the royal governors who were appointed by the English king. Among the powers usually assigned to the royal governors were those which gave them authority to appoint the chief civil officers, supervise law enforcement, serve as head of the highest court in the colony, adjourn or dissolve the assembly, recommend laws, and veto legislation.[4] The colonial experience with royal governors resulted in a Revolutionary War which was fought primarily to free the colonies from the arbitrary rule of appointed governors and an absentee king. Generally speaking, the first state governors were elected by the legislature (except in Massachusetts and New York), were limited to a term of one year, did not have any veto power, had little power to initiate and execute policy, were required to consult executive councils in the performance of their duties, and had to compete with other executive officials who were appointed by the legislature and who often operated independently of the governor.[5]

The second factor, Jacksonian democracy, embodied 2 principles which affected the governor's control over the executive branch. First, the concept held that all individuals were equally capable of holding public office, no matter how specialized. Second, the only proper control over politicians was to elect them so that, if they proved unsatisfactory, they might be removed from office. The constitutional consequence has been a subjection of a wide assortment of offices, essentially administrative and often technical in character, to popular election, with the incumbents responsible to the electorate rather than to the governor.[6]

Reaction to the abuses of the spoils system resulted in a quest for neutral competence in administration in the years following the Civil War. The objective of neutral competence was the ability to do the work of government expertly and according to explicit, objective standards. The essence of this doctrine was the

separation of politics and administration. Concern with methods of scientific management was emphasized, resulting in a diminishing concern for values which were considered to be more political than administrative in nature. The number of independent single executive department heads and boards and commissions were increased supposedly to insulate them from political pressures such as the governor's control.[7]

By the twentieth century, it was evident that a weak executive could not administer the laws, that long ballots did not increase responsiveness, and that primary emphasis upon methods of scientific management did not necessarily result in an effective responsible government. In fact, they produced a fragmented government which bred chaos and conflict as agencies formulated different policies in related fields and competed to establish individual spheres of control. Fragmentation left gaps in governmental regulations and services to the public and made it extremely difficult for citizens to deal with the sprawling bureaucratic structure. Numerous agencies and department heads obscured responsibility and led to increasingly costly government.[8]

While governmental fragmentation has perhaps been the principal stimulus for executive reform, this process has also been influenced by changing attitudes toward the legislature and the role of the governor. The legislature has lost its early nineteenth century position as the dominant political agent in the society.[9] It occupies a much less exalted place in the eyes of the public. In contrast, the functions of the modern governor have expanded as the governor has come to assume roles as the chief of the state (e.g., symbolic and ceremonial head of the state), political head of a party, policy and administrative leader, chief of public safety (e.g., in emergencies), and chief negotiator with other governments (e.g., coordination of highway development, pollution control, resource conservation, tax laws).[10]

Despite this growing imbalance of the powers of the legislative and executive branches in favor of the latter, it is suggested that the executive power in most states has continued to be weak. The governor, in effect, continues to be the agent of the legislature and is frequently hindered in executing the duties of office.[11]

Specific reforms, therefore, are continually attempted, focusing on the consolidation of agencies in an administrative hierarchy under major departments controlled by the governor; reduction of the number of independent agencies and administrative boards and commissions; expansion of gubernatorial policy-making powers (e.g., the executive budget); expansion of gubernatorial administrative authority by providing power to appoint and remove administrative heads and by providing more management controls such as strengthening control over both budgeting and the initiation of reorganization plans; and provision for longer terms and greater staff aids.[12]

The review of the functions performed by the governor will be discussed primarily in terms of constitutional authority, but it should be kept in mind that the functions performed are also conditioned by the statutory basis for gubernatorial power; the governor's position in the party; the customs and traditions which have set the tone of state government; the view of the governor's role held by preceding governors; the governor's own view of the proper functions of the office; the governor's ability to persuade and lead the administration, the bureaucracy in general, the legislature and the public; and political pressures.[13]

Furthermore, it should be kept in mind that in spite of many similarities between the principles of scientific management used by the private sector and the principles of administration in the public sector, the organization that the governor must manage is not the same as an organization in private industry. Governors must often: (1) accept goals that are set by organizations other than their own, (2) operate institutions designed by people other than themselves, and (3) work with individuals whose careers are in many ways outside their control.[14]

One must therefore be cautious in attempting to strictly apply scientific theory used in the private sector to an executive branch of government. It has been observed that "...democratic government hardly lends itself to the precision of science. It must of necessity be a messy process where the most sophisticated techniques of analysis can only complement but never supplant, political judgment."[15]

In summary then, the difference in perspective on the issue of increasing the powers of the executive branch and centralizing control in the hands of a responsible chief executive is that, in other states, the question is whether or not to adopt such a policy; while in Hawaii, the primary emphasis is upon evaluating the existing operation of such a policy. The ensuing discussion will present the following major topics concerned with this issue.

The first and second topics deal with the governor's role as administrator and how the effectiveness of the governor is a measure of the authority to supervise, organize, and structure the executive branch. Responsibility for the direction and supervision of the government's increased regulatory and service functions has led to much controversy between those who advocate a centralized government and those who advocate a decentralized government. The two basic questions manifested in this controversy are:

(1) Is the structure of the executive department designed effectively to permit the implementation of public policy? and

(2) Does the structure of the executive department permit sufficient accountability and responsiveness to the electorate?

The more specific issues which have resulted from this controversy concern the number of executive departments, single executives vs. boards and commissions, appointed vs. elected executive officials, and gubernatorial management techniques, such as the power to initiate reorganization and the use of the budget as a control device.

The third topic is concerned with the relationship between the executive and the legislature. More specifically, it is concerned with the governor's role as a policy maker. The powers, functions, and responsibilities which influence the policy-making role of the governor are discussed under 6 broad areas: annual address, fiscal authority, sessions, appointments to fill the unexpired terms of legislators, the veto power, and sunset laws.

The fourth topic discusses the office of the governor. It involves issues concerning the governor's qualifications, employment for profit under other

offices, selection, term, succession, salary, and vacancy. The final topic considers the governor's powers over the continuity of government and judicial appointments.

Chapter 2
GUBERNATORIAL SUPERVISION OF THE EXECUTIVE BRANCH

At the head of the executive branch of a state government is the governor whose full range of powers are typically expressed in such formulary constitutional langugage as, "The executive power of the State shall be vested in a governor"[1] and "The governor shall be responsible for the faithful execution of the laws."[2] With some variation in terminology, each of the 50 state constitutions carries one or both of these phrases to delineate the prime powers and functions of the executive. This constitutional phraseology grew out of colonial and British practices and became set in the original states' constitutions, to be adopted in the United States Constitution and later in the subsequent state constitutions. The constitutional language is the subject of constant interpretation by political scientists and other scholars and through the actuality of government practices. The general trend toward enhancement of the power, influence, and importance of the executive office has been a keynote in the development of constitutional state government.[3] This trend poses the question of how much power to give to the office of governor.

The records of the 1950 and 1968 Constitutional Conventions of Hawaii reveal that those responsible for shaping the executive article were committed to the proposition of concentration of executive power in the governor:

> Its advantages may be summed up in the statement that, in concentrating executive power, it fixes responsibility for the efficient conduct of governmental affairs and enables the electorate to judge the merits of the administration.[4]
>
> Public officials at the level of department heads are not only administrators but also policy-makers and should be directly and personally responsible to the governor.[5]

The voice of those who would have detracted from the concentrated executive power under the Hawaii Constitution was also heard, particularly in the committee of the whole debates in 1950:[6]

> ...I feel again we are concentrating power in the hands of the executive to such an extent that he will build such a political machine in this territory that it is going to be difficult for the people to uproot it.... of the most powerful machines that I know in the history of the 48 states.... We are going to give to this executive of our State of Hawaii the supreme power in everything that is going to be done in the territory....

and again in 1968:[7]

> [it] would lead to perhaps a stronger governor or a strong governor being made stronger. I think it would again weigh the scales a little heavier in favor of the governor and those of us in the legislative area know that he certainly doesn't need help in this area.

The crux of the issue of concentrating authority and responsibility in the governor as chief administrator has been aptly focused upon in the following statement:[8]

> Proposals for the reorganization of the executive branch have had two main objectives: First, that the executive branch should perform with maximum effectiveness and efficiency the tasks laid upon it. Second, it should be politically responsible in practice as well as theory. This has given rise to a basic problem. How can we achieve an administration responsive to the requirements of a democratic government and at the same time capable of providing public services with the greatest degree of efficiency and economy?

Any discussion concerned with developing responsibility and efficiency in the executive branch usually begins with the observations made by 2 well-known authorities. First, Number 70 of the Federalist Papers, in advocating a "vigorous Executive", gives the following recipe:

> The ingredients which constitute energy in the Executive are, unity; duration; an adequate provision for its support; competent powers.

The same paper also declares that the "weightiest objection" to diversification of the executive is that "it tends to conceal faults and destroy responsibility".

Second, the acknowledged spokesman of the government reorganization movement, A. E. Buck, enumerated 6 standards for the organization and integration of state administration:[9]

(1) Concentration of authority and responsibility;

(2) Departmentalization or functional integration;

(3) Undesirability of boards for purely administrative work;

(4) Coordination of the staff services of administration;

(5) Provision for an independent audit; and

(6) Recognition of a governor's cabinet.

These principles have been widely endorsed and theoretically interpreted as calling for "strengthening the office of the governor, reducing the independent agencies and administrative boards and commissions and grouping them into major departments, extending the gubernatorial power of appointment and removal of department heads, and strengthening executive controls over budgeting, accounting, purchasing, state property, etc."[10] Buck's 6-point program for modernization of state administrations has been, and continues to be, a subject of considerable controversy. Even when incorporated in the 1949 federal Commission on Reorganization of the Executive Branch Report (the Hoover Commission) and other reorganization studies and programs in the states, it has succeeded in gaining the approval of political scientists and other scholars without making much progress within the state governments themselves at the constitutional level.

The problems raised in achieving responsibility and efficiency in the executive branch will be discussed in this and the following chapter. Here the focus of attention is obtaining gubernatorial accountability through control over executive personnel and through the executive budget system. The next chapter will deal with the effects of organization upon the efficiency of administrative operations.

GUBERNATORIAL CONTROL OVER EXECUTIVE PERSONNEL

To obtain gubernatorial responsibility and accountability for the executive branch, it is necessary to provide the governor with authority to direct the actions taken by administrative officers. This authority is affected by 6 types of constitutional provisions: (1) the extent to which executive officials are appointed or elected; (2) restrictions upon appointment and removal powers; (3) tenure specifications; (4) the ability to enforce compliance with constitutional and statutory law; (5) civil service coverage; and (6) the transition between governorships.

The Short Ballot

An obvious bench mark to rate gubernatorial responsibility for the executive branch is a count of the number of independently elected department heads and executive officials whose spheres of authority and whose political ambitions compete and conflict with the governor. On the one hand are the short ballot states--Alaska, which elects only a governor and lieutenant governor; Hawaii, which elects a governor, lieutenant governor, and state school board; Tennessee, which elects a governor and the public service commission; New Hampshire, which elects a governor and executive council; Virginia, which elects the governor, lieutenant governor, and the attorney general; and New Jersey and Maine, which elect only the governor. On the other hand are the remaining 43 states which have 2 or more major department heads elected by the people (see Appendix A).

Executive offices that are elective in a majority of the states, in addition to the governor and lieutenant governor, are the secretary of state, the attorney general, the treasurer, and the auditor or comptroller. See Appendix A for a listing by state of elective offices, including department heads, in the executive branch of government. The "long ballot" record goes to the 13 elective offices in Oklahoma, 12 in Mississippi and North Dakota, 11 in Louisiana, and 10 in North Carolina. The measurement of these "long ballot" states is not fully realized by a mere listing, for many of the offices are comprised of

multimember boards, commissions, and councils, thereby further contributing to ballot elongation.

The prevailing attitude on this issue during the 1950 Hawaii Constitutional Convention was expressed as follows:[11]

> The fundamental principle upon which your committee proposal was drafted is that of concentration of executive power in the governor, which would give the best government. Consistent with this principle, your committee proposal provides for the election of only the governor and lieutenant governor and for the appointment of principal department heads to serve at the pleasure of the governor. There shall then be a very short ballot.

The Hawaii Constitution originally provided for election to fill only the offices of governor and lieutenant governor. Inclusion of the office of lieutenant governor was based on the notion "that a man who is to succeed the governor elected by the people should be an officer elected by the people".[12]

In order to make an informed evaluation of the merits and demerits of the short vs. long ballot controversy, it is first necessary to understand the duties and functions of the offices concerned. The following survey describes some of the most frequently occurring elective offices and briefly summarizes the arguments for appointment or election.

The office of the lieutenant governor,[13] patterned to a large degree after the vice presidency, serves generally 2 basic functions. Lieutenant governors are in direct line of succession to their governors and in 30 states, not including Hawaii, are presiding officers of their state senates. Some states, in attempts to inflate the status of the office, have assigned to the lieutenant governor additional responsibilities and membership on various boards and commissions. For instance, in Indiana, the lieutenant governor is the director of the department of commerce and the state planning services agency and is the commissioner of agriculture; in Florida, the secretary of the department of administration; and in California, a member of the board of regents of the University of California and the board of trustees of the California State Colleges. In Hawaii, additional powers and duties for the lieutenant governor can be legislatively defined.[14]

In states where the lieutenant governor is the presiding officer of the senate, the more important legislative responsibilities include performance of the parliamentary tasks which control the order of senate business; referral of bills; in some cases, the appointment of committees and designation of their chairpersons; and, usually, the authority to cast the deciding vote in the senate in case of a tie.

In 1968, the committee on the executive considered the issue of whether the lieutenant governor should be the president of the senate, but felt that a system, where the senate selects its presiding officer from its membership, better fits the concept of separation of powers. It felt that each branch should maintain its internal independence.

The executive responsibilities of the lieutenant governor include succeeding to the governorship in the case of a vacancy in that office, acting in the place of the governor during the governor's temporary incapacity or absence from the state, and serving on such boards and commissions as may be prescribed. In a few states, Hawaii included, the lieutenant governor performs the functions generally belonging to the secretary of state.

A feature critical to a balanced analysis of the office of lieutenant governor is whether or not there is an election scheme to assure that the governor and the lieutenant governor will be of the same political party. Twenty states now provide for the joint election of governor and lieutenant governor.

The significance of the joint or team election feature is primarily that since the lieutenant governor would be elected on the same party ticket as the governor--and since department heads are appointed by the chief executive, the successor would presumably have a political philosophy harmonious with that of the governor. Similar reasoning is found in a committee report on the bill proposing the Hawaii constitutional amendment, approved in 1964, to provide for the election of the governor and the lieutenant governor of the same political party:[15]

> This is to preclude the difficulties which might arise from the election of a governor and a lieutenant governor from opposite political parties.

Opposition to the joint election of the governor and the lieutenant governor is set forth in a minority report on the same measure:[16]

> I prefer the present Constitutional provision guaranteeing the right to vote for Governor and a separate vote for Lt. Gov. Under the Constitution the Lt. Gov. may take the place of the Governor the day following an election and serve for four years. No new election is held. The selection of the most competent person is important and the voters should be permitted to vote directly on the Lt. Gov. and not forced to accept some "party faithful" regardless of qualification. Presently parties are encouraged, even required to run men of ability with real qualifications for office. Why permit some person to be "washed" onto the office of Lt. Gov. through a vote for Governor regardless of how unqualified the citizens of Hawaii may consider him.
>
> The people of Hawaii are qualified to judge party affiliation and qualification for the office of Lt. Gov. and should continue to have the right of choice by vote.

One authority in the field of state government has concluded that "even belonging to the same party does not and cannot guarantee that a lieutenant governor with ambitions of his own will self-effacingly stay in the background and submerge political individuality for the greater glory of the governor and the success of the administration". This same authority observes that "the plain truth of the matter is that the lieutenant governor has not become the assistant governor and in most instances not even an assistant to the governor; this despite the fact that state government and governors are increasingly vexed by the need to coordinate the sprawling executive establishment and by the need for administrative supervision. What is done along these lines of management control is done by executive assistants or administrative directors appointed by and responsible to the governor. They compose the executive office, but the lieutenant governor is not included.[17]

However, even the severest critics of the office of lieutenant governor recognize the great concrete service rendered by the office when a vacancy suddenly occurs in the governorship, and the element of stability to government is vital.

The issue of whether provision should be made at all for the office of a spare governor in the person of a lieutenant governor has often been seriously raised since the position is said to carry neither power nor prestige, except for the possibility of elevation through succession to the governorship. In supporting the office and suggesting a theoretical scope of the duties of the office, one writer stated that:[18]

> There is a noteworthy trend toward giving...the lieutenant governor official duties in the executive branch. There is need for careful reconsideration of the place these officers should have in the governmental scheme. Since a...lieutenant governor may at any time be called upon to fill the post of chief executive, he should be elected along with the chief executive as a member of his administrative team. He should be shorn of his traditional ex officio function of serving as the presiding officer of the Senate--a post carrying with it comparatively little power...and freed to participate in the executive councils and to accept such administrative and representational duties as the chief executive might choose to assign him.... The character of his duties should be kept flexible. He should become a sort of "minister without portfolio".... This would not only insure that he would function in a subordinate administrative capacity to the...governor...and not be tempted to become a rival. It would also make possible an adjustment of his duties to his particular talents. A series of different assignments over a period of time would enable him to acquire a wider knowledge of the operations of the government as a whole. In this way he could be given a better opportunity than at present to prepare himself for the responsibility of serving as chief executive in case fate should thrust that role upon him.

Also in opposition to the school that disparages the office of lieutenant governor and emphasizes its uselessness, is another frequently quoted authority who believes that the disparagement is keyed to the executive aspects of the office while overlooking the influential policy-making powers of the legislative function. The same writer, however, concedes that "as an executive office, in most states this one pays a poor return on the money invested, until the time arrives when the 'spare tire' which has been carried along is needed". He suggests some ways in which more effective utilization of the office could be institutionalized within the executive branch, such as making the lieutenant governor head of a major executive department, an experiment which has been tried in Indiana and apparently worked satisfactorily only as long as both officials were elected from the same political party; developing the lieutenant

governor into an assistant governor to handle routine duties, a proposition that was considered but rejected by the New Jersey state constitutional convention in 1947 as disruptive of gubernatorial responsibility; or following the Alaska or Hawaii constitutional provisions whereby the decisions as to the powers and duties of the office are left to the governor and the legislature in Alaska and to the legislature alone in Hawaii.[19]

Three state constitutional conventions have dealt with the office of lieutenant governor as follows:

> Maryland proposed the creation of a popularly elected "assistant governor" having only those duties delegated to him by the governor. No power specifically vested in the governor by the constitution could be delegated to the lieutenant governor. The proposed office would provide a successor to the governorship, be the only elective office other than governor, and be filled by election on a joint ballot with the governor.[20]

> In New York, the constitution provides for the office both as potential successor to the governorship and as president of the senate with a deciding vote in case of a tie. It also continues the provision for filling the office by election on a joint ballot with the governor.[21]

> The Michigan constitution provides that the lieutenant governor shall succeed to the governorship; perform duties requested by the governor, except that no power vested in the governor may be delegated; and serve as president of the senate with a deciding vote in case of a tie. It also provides for filling the office by election on a joint ballot with the governor.[22]

Thus, it is seen that the deliberations in these 3 states have produced 3 variations on the office of lieutenant governor--in Maryland, the "assistant governor" prototype; in New York, the vice-president prototype; and in Michigan, a combination of these. The common feature is the requirement that the governor and lieutenant governor be members of the same political party.

The office of the lieutenant governor of Hawaii is described in the following sections of the state constitution:

> Article IV, Section 2. There shall be a lieutenant governor, who shall have the same qualifications as the governor. He shall be elected at the same time, for the same term, and in the same manner, as the governor; provided that the votes cast in the general election for the nominee for governor shall be deemed cast for the nominee for lieutenant governor of the same political party. He shall perform such duties as may be prescribed by law.[23]
>
> Article IV, Section 4. When the office of governor is vacant, the lieutenant governor shall become governor. In the event of the absence of the governor from the State, or his inability to exercise and discharge the powers and duties of his office, such powers and duties shall devolve upon the lieutenant governor during such absence or disability....

Though not issues at the 1968 Convention, at the 1950 Constitutional Convention of Hawaii, 2 of the most controversial features of the office of lieutenant governor, as recorded in the committee of the whole debates[24] were the matters of electing the governor and lieutenant governor from the same political party; and authorizing the delegation of gubernatorial powers and duties to the lieutenant governor as well as legislative prescription of the duties of that office.[25]

On the matter of requiring the election of the governor and the lieutenant governor from the same political party, a proposition that was not approved by the 1950 Constitutional Convention but later adopted in principle in 1964, the following arguments were made in favor of the requirement: (1) it would prevent a situation of chaos and confusion that would result from succession by a lieutenant governor of a political party different from the governor's; (2) it would follow the pattern for the election of President and Vice President of the United States; (3) it would allow people to vote for a political theory as much as for individual candidates; (4) it would prevent disputes and internal dissension in the executive branch, as evidenced in states where the governor and lieutenant governor represent different political parties.

In opposition to the requirement: (1) it would detract from the concept of a popularly elected executive branch, particularly when so few offices are to be elective; (2) it does not make any provision for nonpartisan candidates for governor or lieutenant governor; (3) it would encourage weak candidates for

lieutenant governorship; (4) chaos would not occur in the case of succession by a lieutenant governor of a political party different from the governor's because administrative appointments must be approved by the senate; and (5) the same problems of lack of harmony in the executive branch can exist between a governor and lieutenant governor who both represent the same party but different factions of the party.[26]

On the matter of authorizing the delegation of gubernatorial powers and duties as opposed to a legislative prescription of the duties of the lieutenant governor, another proposition that was not approved by the 1950 Constitutional Convention, the following arguments were made in favor of gubernatorial delegation: (1) it would empower the lieutenant governor to be more effective by exercising functions that normally would not be delegated to him by the legislature; (2) it would add to the efficiency of the executive branch by authorizing the governor to delegate ministerial and routine duties to the lieutenant governor, such as when the governor is away from the seat of government; (3) although it would not lessen the governor's ultimate responsibility, it would ease the administration of the executive branch; and (4) it is intended to enhance the concept of the governor and lieutenant governor as a working team under which imprudent delegation would be unlikely, particularly if it would increase the political stature of the lieutenant governor at the expense of the public image of the governor.

In opposition to the gubernatorial delegation: (1) it would create indirectly a 2-headed executive; (2) it would relieve the governor of responsibilities and basic rights with respect to the execution of gubernatorial duties; (3) it would constitute a temptation and induce the governor to shirk "messy" jobs or "hot potato" emergencies or crises by delegating them to the lieutenant governor; and (4) the governor, as a matter of law, has ample authority to delegate purely ministerial duties.[27]

Hawaii's lieutenant governor, as that office is now constituted, is elected on a joint ballot with the governor; is a purely executive branch office; is in direct line of succession to fill a vacancy in the governorship;[28] and is responsible for all the functions and duties of a secretary of state.

Supporters of the office, in general, point out that only one state, Maryland, has abolished the office in the past 100 years, and in that state the office was reconstituted in 1970. Alaska, Arkansas, Florida, and Georgia have subsequently added the office.[29] Furthermore, the Committee on Suggested State Legislation of the Council of State Governments includes the office of lieutenant governor in their model executive article. The lieutenant governor would succeed to the governorship when the governor died, resigned, or was disqualified.

Supporters also argue that people wish to retain elective positions; that the office, in most states, provides a permanent presiding officer for the senate without depriving the people of any senatorial district of their representative; and that the lieutenant governorship has existed in all the larger and more influential states. The principal argument for retention of the office is that it provides a successor to the governorship who is elected by all the people.

Critics of the lieutenant governorship declare that this office seldom bears a significant share of state administrative responsibilities, that its incumbent is not truly an executive officer, that the office tends to attract mediocre persons who are usually poorly compensated, and that on the whole it is an unnecessary "fifth wheel". Furthermore, they point out, regardless of party affiliation, there may be a lack of comity between the governor and lieutenant governor.[30] The Model State Constitution contains no provision for the office, and this is the case in almost a fifth of the states.

A concise evaluation of the office of lieutenant governor states:[31]

> Aside then from their constitutional role as governors-potential and from their role as the Senate's presiding officer, whatever influence a lieutenant governor may have will have to depend largely on his personal relationships with governmental and political leaders in general and with the governor in particular.

The office of secretary of state is found in every state except Alaska and Hawaii which consolidate that office with the office of lieutenant governor. Although the secretary of state was originally a gubernatorially appointive

office, it became a statewide elective office under the impact of Jacksonianism. At present, secretaries of state are elected in 38 states; appointed by the governor in the 7 states of Delaware, Maryland, New Jersey, New York, Pennsylvania, Texas, and Virginia; and elected by the legislature in the 3 states of Maine, New Hampshire, and Tennessee.

A typical textbook description of the office is:[32]

> The secretary of state is generally the official custodian of state records and archives. He is keeper of the state seal, by use of which he is required to authenticate gubernatorial proclamations, commissions of appointment, and certain other public documents. He is charged with the publication and distribution of the state session laws. He usually has important duties in connection with election administration; issues certificates of incorporation; and registers trademarks. In many states he is charged with the compilation and publication of a state manual or register, and of election statistics. In some states he issues automobile licenses and administers state laws regulating the issuance and sale of corporate securities. Other duties of a miscellaneous nature are imposed upon him in different states.

Another political scientist has said of the office:[33]

> Aside from the keeping of state records and the countersigning of proclamations and petitions, there is no general agreement among the states as to what his duties should be. Usually these duties are prescribed by statute rather than by the constitution, and in recent years they have increased rapidly. Some states, whenever faced with the necessity of undertaking new activities, assign most of the routine work connected with these activities to the secretary of state.
>
> As a result, this officer is now charged with a wide variety of duties, few of which bear any logical relationship to one another. He may be the custodian of certain state buildings and grounds, responsible for their maintenance and repair. He may be charged with the administration of the state's election system. He may be the official who issues charters to cities and to private corporations, and he may be responsible for the enforcement of laws controlling the sale of securities. He may supervise the issue of automobile licenses. Almost certainly his office will involve ex officio membership on numerous boards and commissions. In every state he performs some of these functions; in many states he performs them all.

It is apparent that legislatures have an attitude of "when in doubt let the secretary of state do it". To the extent that there is an overall pattern for the state office of secretary of state, Hawaii and Alaska constitute special cases. Hawaii and Alaska have consolidated the office into the lieutenant governorship by providing that the lieutenant governor shall exercise and discharge the powers and duties of the secretary of state. In Hawaii, these statutory powers and duties include election administration;[34] sale and distribution of session laws and supplements of the revised laws;[35] depository for administrative rules;[36] secretary of state for intergovernmental relations, recordation of legislative and gubernatorial acts, certification of state documents;[37] depository for attorney general opinions;[38] office for service of certain unfair labor practice complaints;[39] contracts for motor vehicle number plates;[40] administrator for the Agreement on Detainers;[41] legal changes of name;[42] and administrator for the interstate compact on youth.[43]

It should be noted that in connection with the Hawaii State Government Reorganization Act,[44] certain powers and duties of the secretary of the Territory did not devolve upon the lieutenant governor but were assigned to appropriate principal departments, e.g., public archives matters to the department of accounting and general services and procedures for service of certain legal processes to the department of regulatory agencies. It should also be noted that the Commission on Organization of Government in 1977 did not recommend reestablishing an office of secretary of state.

Within the "long ballot" vs. "short ballot" controversy, it is the office of secretary of state, of all executive offices, over which exists the widest consensus to make it appointive rather than elective. The underlying rationale rests on what is agreed to be the unwisdom of asking people to vote for officials whose duties are mostly nonpolicy making and whose discretion is relatively minimal.[45]

Those who favor an elective secretary of state rely on these arguments: (1) it is in keeping with the elective tradition which supports direct expression by the ballot of the popular will; (2) it reflects public antagonism to an overcentralized executive branch of government; and (3) if there is party

division between the governor and the secretary of state, the voters want an elective secretary of state as a watchdog over such operations as election administration or records.

Those who favor an appointive secretary of state rely on these arguments: (1) the position, being essentially ministerial and having so little discretion of a policy-making nature, there is little on which voters can acquaint themselves for purposes of casting an informed ballot; and (2) since the task of the office is to execute and implement state policy, the secretary of state should be directly responsible to the governor as head of the state administration.

The office of attorney general exists in each of the 50 states but with powers and duties as diverse as the states served by the office. The office came to America as part of colonial government, in most cases as an appointive office with considerable administrative power in addition to legal functions.[46] The attorney general is a constitutional office in all states, except Alaska, Hawaii, Indiana, and Wyoming where it is established by statute. Attorneys general are popularly elected in 42 states; appointed by the governor in Alaska with the approval of the legislature, in New Hampshire with the approval of the governor's council, and in Hawaii, New Jersey, Pennsylvania, and Wyoming with the approval of the senate; elected by the legislature in Maine, and appointed by the supreme court in Tennessee.[47]

The functions of a state attorney general can be generally described as follows:[48]

> The functions of the attorney general fall into three principal categories. In the first place, he is the legal adviser, with respect to their official powers and duties, of the governor, of other administrative officers, boards, and commissions, and of the state legislature. Frequently, it is his duty to give advice also to certain local officials, especially prosecuting attorneys. If, for instance, the governor wishes advice as to the constitutionality of a bill which is awaiting his signature, or if the state tax commission desires assistance in interpreting a provision in the tax laws, the question may be submitted to the attorney general. The latter official, either personally or through a designated member of his staff, studies the matter concerned and prepares a formal opinion which is transmitted to the official requesting it. These opinions

> of the attorney general are published from time to time in book form; but it is to be noted that they do not, like judicial decisions, have the force of law. They are, in fact, as in name, opinions only, and may, if litigation subsequently arises, be overturned by the courts. In practice, however, the great majority of the questions upon which opinions are given are never raised in actual litigation; and, where they are so raised, if the opinions have been competently prepared, the courts are likely in most instances to arrive at the same conclusion as has the attorney general. In any event, the attorney general's interpretation of a law stands as authoritative unless overturned by judicial decision.
>
> Secondly, it is the duty of the attorney general, in cases to which the state is a party or in which some state officer or agency sues or is sued in an official capacity, to appear in court as the representative of the state or its officer or agency. And, finally, as the principal law-enforcement officer of the state below the governor, the attorney general is charged with certain powers and duties relative to the prosecution of persons accused of crime. In that connection, he is generally authorized to advise and assist local prosecuting attorneys; and in some states he may, under certain circumstances, supersede the local prosecutor....

Although there has been a tendency to transfer some power to local prosecutors and to otherwise delegate responsibility, most offices of attorneys general have continued to grow. Attorneys general have acquired and will probably continue to acquire powers and responsibilities as new conditions arise.[49]

In Hawaii, these powers and duties are defined entirely in the statutes--the Constitution does not even contain the term "attorney general" (see Appendix B). But a reading of the duties assigned to the attorney general alone does not reveal the essential nature of the office in Hawaii. Many of the statutes are repetitive, and in practice most duties with respect to criminal prosecutions are handled by county prosecuting attorneys.[50] Furthermore, although the attorney general is charged with duties provided in the common law,[51] many of these duties are not specifically set forth in the statutes. Thus, under the common law doctrine of parens patriae by which the attorney general is protector of the commonwealth and public interest, the attorney general is responsible for such matters as representing the state before federal boards and commissions and reviewing operations of charitable trusts.

Typically, an attorney general's roles are: (1) legal adviser to the governor, legislature, and other state offices; (2) representative of the state in civil actions in which the state or an agency of the state is a party; and (3) criminal prosecutor. In Hawaii, the office of attorney general has traditionally been confined largely to the exercise of the first 2 of these categories.

The manner in which the office of attorney general was to be established was debated at length at the 1950 Constitutional Convention of Hawaii. The final decision--not to make it a constitutional office and to leave the office within the gubernatorial appointment power--was reached after the following arguments were made:

In favor of a constitutional, elective office: (1) the great majority of states provide for election of the attorney general; (2) as interpreter of the laws of the state, the attorney general should be independent of the executive and of the legislature so as not to be influenced in its interpretation of the laws by either; (3) though the function of the attorney general with respect to the executive is merely advisory and ministerial, other functions, such as serving as chief law enforcement officer, bill drafting for the legislature, overseer of public charities, supervision of equitable proceedings for the abatement of nuisances, and others, are not pertinent to the executive and entail discretionary powers that should not be subservient to the executive; (4) the county attorneys of Hawaii, Maui, and Kauai are elective offices (in 1950); (5) the attorney general should be independent, and as a watchdog, should be free to report to the people of any wrongdoing by any part of the government; and (6) additional elective offices attract young and aggressive candidates and enlarge popular interest and participation in government.

In favor of an appointive office as now constituted: (1) the governor is ultimately responsible for execution of the laws; so the governor should be able to appoint, as an agent, the attorney general to carry out the technical functions necessary to the execution of the law; (2) experience in Hawaii of an appointed attorney general has produced an office with great prestige and one in which the attorney general is not prevented from giving the governor the best informed legal advice; (3) an elected attorney general would face more

conflicts of interest than an appointive office because of obligations to those who contributed to such election and obligations to campaign for reelection; (4) an appointive office contributes to the fixing of responsibility and prevents "buck-passing" by the governor; (5) the legal offices in the federal government, the city and county of Honolulu (in 1950), the Model State Constitution, and in some newer state constitutions are appointive; and (6) experience in other states shows that an elective office of attorney general is used as a springboard to run against the governor and sometimes operates to frustrate important state programs.[52]

In 1968, the committee on the executive for the Hawaii Constitutional Convention rejected proposals for an independently elected attorney general and recommended that the present practice of an appointive attorney general be retained. It noted the possibility of political conflict and hostility between the governor and attorney general, and the monetary hinderances for many who would seek such an elective attorney general position.[53]

The committee did attempt, however, to maintain some independence of the attorney general. Although it recommended that the governor has the power to remove all department heads without the advice and consent of the senate, it retained the requirement of senate approval for removal of the attorney general. The committee reasoned that since the attorney general's "basic responsibility is to the people", and since "he is also the legal advisor, not only to the governor and to the various agencies and instrumentalities of the State, but also to the legislature", senate approval should be a requisite for the removal of the attorney general.[54]

The practice of an appointive attorney general is in line with theories of administrative integration and executive unity. Governor Alfred E. Smith of New York articulated in 1930:[55]

> I am satisfied that the attorney general should be appointed by the governor, and I state that from experience. We are still electing the attorney general in New York State and it is a mistake. The attorney general is the state's lawyer, and the governor should select the lawyer. He is responsible.

However, even the most ardent supporters of administrative integration and executive unity concede that there is a great difference of opinion concerning the position of state attorney general.[56] One scholar has effectively stated the controversy between the traditionalists who support an independent, elected attorney general and the innovators (the Alaska, Hawaii, and Model State Constitutions and students and writers on public administration and political science) who support an appointed attorney general responsible to, and removable by, the governor in the same manner as the heads of other administrative departments. This scholarly analysis was made some 10 years after the 1950 Constitutional Convention of Hawaii and was based partly on the replies to a survey made on attitudes of governors and attorneys general of all the states on the issue; therefore, it is interesting to note how comprehensively the pertinent elements of the issue were discerned by the delegates to Hawaii's 1950 Constitutional Convention.

The case for the traditionalists includes these points: (1) there is no evidence of any pronounced trend to modify the position of the attorney general as an official largely independent of the governor and under no compulsion to see eye-to-eye with the governor in matters of administration policy; (2) under an appointive office, gubernatorial control is apt to be influenced by political considerations; (3) the office of attorney general is not solely a ministerial post in the state governmental structure but includes responsibilities that are quasi-judicial and quasi-representative as attorney for the people and for the state as well as for the governor and for the administration; (4) an important aspect of the attorney general's responsibility is the duty to check on the governor's administration to prevent violation of the law and to expose official wrongdoing in the state government wherever it is found--a watchdog function that an appointive attorney general subject to removal by the governor cannot discharge; (5) only an elected attorney general is free in the exercise of duties to maintain true impartiality, detachment, and faithfulness to the law in contrast to an attorney general appointed, and subject to removal, by the governor who would tend to compromise impartiality and objectivity in straining to reach an opinion approved by the governor; (6) the separation of powers doctrine demands that the attorney general be independent of the executive; (7) popular election gives the attorney general a mandate from the people which increases

the respect and prestige of the office; and (8) the office should remain elective as a training office for higher electoral responsibilities.

The case for the innovators includes these points: (1) for purposes of administrative efficiency and public responsibility, the attorney general should be appointed by, removable by, and responsible to, the governor as the person responsible for the faithful execution of all state laws; (2) an appointed attorney general is freer to act on controversial issues than an elective attorney general who must consider the cost of any act in terms of votes; (3) an elected attorney general may be in complete disagreement with the governor on important policy questions and may be an outspoken political rival to the governor with the result that the office of attorney general may be used to obstruct the workings of government; (4) the attorney general's function as a legal adviser to the governor and other state officers, and the duties to aid in the enforcement of state laws, are essentially part of the executive power and should be performed by one in agreement with the chief executive; (5) since the attorney general is the legal adviser of the governor, the latter should have the privilege of selecting as a legal adviser such a person as is in the governor's judgment the most competent, one whose views are similar, and one in whom there is has complete confidence; (6) gubernatorial selection of the attorney general brings into the public service attorneys of marked ability and high reputation who might not be available if forced to submit to an election to obtain the office; (7) making the attorney general appointive by the governor, fully and directly responsible to the governor, and subject to removal by the governor is consistent with the basic theory of centralized administration and a strong, responsible governor; (8) the ultimate "watchdog" responsibility lies with the people, a responsibility much easier to discharge if only the governor is responsible for the operation of the state government; and (9) the task of the administration of justice is a professional one, not a political one, and the attorney general should be interested first in the administration of justice as a professional function, not in personal political ambition.[57]

The admittedly powerful nature of the office of attorney general seems to have resulted in the use of the same focal point for arguments on behalf of an appointive office and on behalf of an elective office--to make the attorney

general independent and free of political considerations in reaching legal decisions and opinions, and in enforcing the law.

It has been suggested that these arguments are based only upon experiences reported by advocates for election or appointment. No empirical data showing the efficiency, the partisan political activity, or the personal quality of state attorneys general have been advanced to support either position.[58] No data have been given which shows any correlation between the selection process and the attorney general's actual powers either. It has been noted that either a strong or weak attorney general can be developed under both systems of selection. For example, the attorney general is elected in Delaware and appointed in Alaska, but in both jurisdictions has control over all legal and prosecutorial functions.[59]

A middle road in the elective-appointive attorney general split has been devised in New Jersey where the Constitution:[60]

> ...provides for the appointment of the attorney general by the governor...but nevertheless makes special provision to assure a degree of independence of the governor not enjoyed by other department heads except the secretary of state, by making his appointment for the governor's term of office. The attorney general and secretary of state in New Jersey do not serve at the governor's pleasure as do other heads of departments. They were specifically excluded from those officials who should serve at the governor's pleasure because they were held by the constitutional convention to be "in a different category from the heads of other departments who are not specifically named in the Constitution", and because they "have additional state-wide functions".

A variation on this arrangement has been suggested by an elected attorney general after 6 years in office:[61]

> ...the Attorney General is or should be primarily interested in the administration of justice and not in political accomplishment. It is a rare case, indeed, that should have the decision based upon the number of votes involved. As a matter of fact, I can recall no circumstance when it should be done in this office. I do not believe, however, the Governor should have the removal power over the Attorney General, but I believe the power to remove should be lodged in either the Legislature or in the Supreme Court of the state

> because I do not feel that a Governor is in any better position than large blocks of voters so far as the decision is concerned pertaining to what is right or wrong in a law office. I think the decision in opinion writing and in handling of cases for the State should be entirely free from political pressures.

It has also been suggested that to the extent the office of attorney general is given primarily judicial functions, those functions should be separated and assigned to an appropriate official or body within the judiciary[62] and that in the case of an elective attorney general, there should be a personal legal adviser to the governor.[63]

The office of treasurer exists in every state except Georgia and, as a distinct executive office, in every state except Alaska, Hawaii, and New York where the typical duties of a treasurer are carried on by the department of administration, the director of finance, and the controller, respectively. The treasurer's primary duties involve the actual receipt and custody of state funds and payment of warrants drawn on the state. The position is filled by statewide election in 40 states; election by the legislature in Maine, Maryland, New Hampshire, and Tennessee; appointment by the governor in Hawaii, Michigan, and New Jersey with the approval of the senate and in Alaska with the approval of the legislature; and appointment by the governor in Virginia.

There is considerable variation in the nature of the duties assigned to state treasurers in addition to their responsibilities for receipt, custody, and disbursement of state funds; sale of state bonds; investment and management of state moneys; and public debt management. The treasurer participates in the preparation and execution of the state budget in some states. In Hawaii, the director of finance is required to "conduct a systematic and continuous review of the finances, organization and methods of each department in achieving the most effective expenditure of all public funds and to determine that such expenditures are in accordance with the budget laws and controls in force".[64] The Commission on Organization of Government recommended splitting the finance director's functions among 2 proposed departments, the department of planning, budget and management and a department of finance and revenue. The treasury and finance functions would be part of the department of finance

and revenue, and the budget and auditing functions would be in the department of planning, budget and management. These 2 new departments were viewed as support units for the governor's office. Given this framework, there was no recommendation to make an elective position of treasurer.[65]

Other functions, which nearly all states require of their treasurers, include serving on a wide variety of boards and commissions. Hawaii's director of finance, head of the department of budget and finance, for instance, serves the employees' retirement system,[66] the Hawaii public employees health fund,[67] the federal programs coordinator,[68] United Student Aid Funds, Inc.,[69] the board for exceptions to purchases of prison-made goods,[70] and the area redevelopment council.[71]

The election of a designated treasurer as official custodian of state funds with duties that are largely formal and ministerial in nature, rather than discretionary, is still the rule in a majority of the states. However, the fact that both Alaska and Hawaii have entirely eliminated the elective position of treasurer and the fact that several reorganization proposals along such lines have been made in states across the nation are said to be indicative of some sort of state department of revenue becoming the accepted model.[72] In addition to the need for a more rational and sophisticated organization for fiscal and budgetary operations, the rationale for shortening the ballot by omitting the position of treasurer also dictates that if the governor is to exercise a reasonable measure of control over state administration, the governor must certainly be the dominant figure in the field of state finance, for administrative control without some degree of financial control is a contradiction.

The offices of auditor and comptroller, one or the other but not both, are commonly elective executive positions. Of the states which provide for an office for post-auditing (auditor), 17 make it a constitutional, popularly elective office. Of the 36 states which provide for an office for pre-auditing (comptroller), 12 make it a constitutional, popularly elective office. None of the 33 states which provide for both an auditor and a comptroller fills both offices by the same method of selection.[73]

Of 5 significant elements in state financial organization, Hawaii provides for the comptroller (head of the department of accounting and general services) to discharge the functions of determining the nature of the accounting system, budgetary and related accounting controls, voucher approval and pre-audit, and warrant issuance; and for the legislative auditor to discharge the function of post-audit. The Commission on Organization of Government did not suggest a constitutional revision. It only suggested placing the comptroller's functions in a proposed department of planning, budget and management. In other states the distribution of the comptroller's and auditor's functions among officers and agencies does not fit any readily discernible pattern.

A customary description of the principal functions of the "auditor", whatever the office is titled, includes authorizing disbursements from the state treasury and making periodic audits of the accounts of the treasurer and other officers who handle state funds. In performing these functions, the auditor acts as a check upon the treasurer as well as the various governmental agencies to which appropriations are made. When the legislature has passed an appropriation act, the auditor sets up an account for each individual appropriation. Before any expenditure can actually be made pursuant to an appropriation, the auditor must be convinced that the purpose of the expenditure is the one for which the appropriation was made, and that there is an unexpended balance sufficient to cover the proposed payment. When satisfied that these requirements have been met, the auditor signs an order or warrant upon the treasury, and only then can the treasurer make the necessary disbursement. This process is called the pre-audit because it occurs before expenditure.[74]

A second phase of auditing is the process of post-audit of expenditures after disbursement to determine if the governmental agencies have expended public funds in accordance with the legislative appropriations. The analyses seem to agree that a sound case can be made for drawing a basic distinction between the character of pre-audits which essentially represent executive functions and that of post-audits which most fundamentally represent an assurance to the legislature that expenditures and investments have been made in accordance with law. In view of the distinction between the administrative

pre-audit and the independent, legislative-directed post-audit, it is acknowledged that popular election of the auditor at least removes the auditor formally from responsibility to the administration, but it is also widely agreed that a better method of selection is appointment by the legislature since the auditor serves as a watchdog for the legislature. The greatest danger is to have the same officer, regardless of what the officer is called or how chosen, charged with both pre-audit and post-audit and thus placed in the position, at the latter stage, of examining the officer's own accounts.[75]

The overall and detailed issues of the comptroller's office were investigated at length in connection with the 1967 New York Constitutional Convention since the elective office in that state has more varied functions and greater fiscal powers than any comparable official in any other state. In one of the convention publications, current practices as to pre- and post-auditing were reviewed:[76]

> In the federal government, pre-audit is done by the several departments and agencies and post-auditing is done by the Comptroller General. In nearly all states, pre- and post-(sic)auditing is assigned to an agency other than the one which conducts the pre-audit....
>
> Recent reorganization studies in other states have devoted much attention to auditing, particularly to methods of separating the pre-audit from post-audit function. In most states, the pre-audit function is viewed as a management tool of the chief executive. At the same time, state legislatures have taken steps to provide a post-audit of departmental expenditures for the purpose of appropriations.

The same publication summarized the arguments offered for and against change in the New York system as follows:[77]

> Arguments for retaining the existing system:
>
> --The office is considered one which operates efficiently and effectively. The state's fiscal integrity and efficiency might be jeopardized if the present system were replaced. It might take years to develop a suitable alternative which would obtain comparable results.

--An independently elected Comptroller is essential to carry out the important functions assigned to his office. The stature of the office--chief fiscal agent and auditor for New York--requires an elected official supported by a large and competent staff.

--The independent Comptroller serves as a check on the Legislature, which appropriates the monies, and the Executive.

--New York's Comptrollers have been leading officials of the state and have been elected since 1846.

--The functions of bookkeeping, accounting, pre-auditing, post-auditing, custody and supervision of funds and the investment of state money are all related activities requiring common knowledge and experience and are most efficiently and effectively performed by the same office. Centralization of responsibility results in less duplication of work and consequent economies of administration.

--The department is well organized and has an extensive internal control system which safeguards against the possibility of misuses of state funds.

Arguments against retaining the existing system:

--The present system of fiscal administration in New York, it is contended, does not provide for a separation of auditing functions from other fiscal activities, as is accepted practice in other states, the federal government and most business organizations.

--The Comptroller has a variety of functions many of which are not related and should be directed by other officials. The distribution of tasks among the Comptroller's office, the Department of Taxation and Finance and other agencies reflects the lack of a defined system for the allocation of fiscal responsibility. The present state system is not the result of a coherent plan of fiscal organization, but rather of dealing with fiscal problems separately and divorced from any basic plan. One result of this lack of clear-cut responsibility is that some state funds are held by the Comptroller, some by the Department of Taxation and Finance and some by both.

--The Department of Audit and Control performs both pre-audit and post-audit; therefore, the audits are not independent and objective since the department is in effect auditing itself.

--Pre-auditing is really part of the duties of the executive branch and the chief executive and therefore should be placed under his direction.

--The Legislature lacks adequate control over state expenditures once appropriations are made.

--The centralization of accounting records in the department results in excessive duplication, since each department and agency maintains certain basic accounting records, such as available appropriations, amounts committed and expended and balances remaining.

--The nature of the Comptroller's office and the skills required of the officeholder make it better suited for appointment than election.

--The delegation of numerous administrative functions to the Comptroller violates the spirit and intent of Article V, Section 1, which prohibits delegating administrative duties to the Comptroller.

--The fact that New York has been fortunate in electing responsible Comptrollers is not sufficient argument against changing a system which has inherent weaknesses.

Another, more particular, set of arguments from the New York publication dealt with whether the office of comptroller should remain an elective office or become appointive, and if the office is made appointive, whether the governor or the legislature should be the appointing authority.

Those favoring the continued election of a comptroller argued that:

--The long and successful tradition of having a state-wide elected Comptroller with a strong and independent office warrants its continuity. New York State's long tradition of having men of competence and integrity as Comptroller places pressure on the political parties of the state to nominate men of high caliber for the office.

--The functions of the Comptroller's office are so diverse and important that they demand an elected official responsible to a state-wide electorate.

--The elected Comptroller provides for balance between the Governor, on the one hand, with his authority over the budget, and on the other, the Legislature, with its control over appropriations.

The arguments against the position as an elective office were:

--The trend is to have as few elected officials as possible in order to centralize political accountability. It is argued that an elected Comptroller diffuses central accountability.

--As an elected official, the Comptroller must be concerned with receiving political support for future elections. Consequently, it is maintained that he may be reluctant to call public attention to instances of mismanagement or improprieties resulting from the acts of members of his own party, whether on the state or local level.

--The accepted practice is for the chief executive to be responsible for pre-audit, so that he should be in a position to appoint his own pre-auditor. The Legislature, which requires a review, verification and evaluation of its appropriation, should be responsible for designating the post-auditor. Having an elected official meets neither the requirements of the Governor nor those of the Legislature.

An alternative suggestion was considered whereby the governor would appoint the official responsible for the internal pre-audit of all state agencies and the legislature would appoint an independent post-auditor to review state operations from the viewpoint of carrying out legislative intent. The opposing arguments are as follows:[78]

Arguments in favor of the proposed alternative were:

--The Governor's ability to carry out his administrative responsibilities, which require internal financial controls, would be strengthened by giving responsibility for pre-audit to a designated official of the administration.

--Legislative review would be strengthened by having an independent post-audit made by a person responsible to the Legislature. The Legislature would be in a better position to evaluate how well the legislative intent was being carried out.

--The problems previously noted with respect to an elected Comptroller would be eliminated.

Arguments against the proposed alternative were:

--The present system has worked well. There is no assurance that providing for appointment would make it work better.

--Providing for an appointed auditor and the separation of pre-audit, financial management and post-audit could lead to an undue strengthening of the Executive and Legislature.

> --The strong office of an independent, elected Comptroller would be eliminated under this proposal, thereby doing away with the institution that has stood as a vital focus of responsibility to the public and has been widely regarded as an important watchdog of the public purse.

Additional concepts and technical aspects of government finance are presented in Hawaii Constitutional Convention Studies 1978, Article VI: Taxation and Finance.

From the foregoing survey of 5 state executive offices which are frequently elective, it can be concluded that, apart from reasons related to specific functions and traditions associated with each office in a particular state, the underlying reason for making the lieutenant governor, secretary of state, attorney general, treasurer, and auditor or comptroller elective offices is the fear of an overpowerful single executive coupled with a desire for a representative bureaucracy achieved by direct election; and, the underlying reason for making the offices appointive is the fixing of responsibility in the chief executive by eliminating diffusion of command, division of authority, and frustration of executive power.

In addition to the election of these executive offices, the heads of operating departments of state government are elected in many states. Appendix A includes in the listing of elective offices of the executive branches of the states, mine inspector, commissioner of elections, the adjutant and inspector general, highway commission, insurance commissioner, board of education, board of state university, superintendent of education, and the heads of such departments as agriculture, taxation, public lands, and labor. For a detailed discussion of the issues involved in choosing between an appointive and elective head of education and higher education programs, see the Hawaii Constitutional Convention Studies 1978, Article IX: Education.

The ineffectiveness of the "long ballot" in keeping state government "close to the people" is demonstrated by a frequently cited study which noted:[79]

> Even when the questions were limited to the one elective office with which the voter said he was most familiar, 73% could not name the incumbent secretary of state, 75% could not name the highway commissioner, 77% could not name the superintendent of public instruction, 81% could not name the attorney general, and 96% could not name the treasurer, who had been in office longer than any other official on the list.

Governor Sanford summed up his case as follows:[80]

> ...It probably makes little difference how the secretary of state is elected or selected. The selection of the secretary of state is a matter of concern, however, in those states where he is granted some executive authority. The problem lies not in his selection, but in giving an officer executive duties that properly belong to the chief executive.... The head of a corporation could not run his firm if the vice president in charge of sales were elected by the board, the superintendent of production selected by the vice presidents with the approval of the president, the transportation chief by the union members, and the personnel director by a visiting committee.
>
> If the citizens want the governor to govern, they cannot afford to distribute his duties among other elected officials, and among boards and commissions chosen in an assortment of ways, accountable to nobody knows whom.

To return finally to the crucial issue of reconciling the twin considerations of optimum efficiency and maximum democracy, both those who oppose the centralization of power in the governorship and those who advocate such centralization use the argument of citizen participation through election to support their case. On the one hand, the elected officials argue that the fact that they were elected made their offices subject to popular control and, hence, a desirable counterbalance against the governor. On the other hand, those who argue for a strong governor feel that popular election of the governor is a primary device for democratic control, since the citizens exercise a control through their vote in the governor's election and can express their disapproval in the same manner at a subsequent election.

Appointment and Removal Powers

Provisions for appointment and removal of executive and administrative officers are among the most important constitutional criteria for measuring the strength of the governor's role as chief of administration under an integrated state administrative structure. An analysis of the appointment powers of state governors is shown in Appendix C, indicating that in almost half the states the governor plays a part in the appointment of only 70 per cent or less of the major state officials.

Broad constitutional power to remove executive officers is illustrated by the constitutions of Missouri, New Jersey, and Alaska. The Missouri Constitution is most liberal in providing that "All appointive officers may be removed by the governor...."[81] The New Jersey Constitution authorizes the governor to appoint and remove at pleasure individual department heads, except the secretary of state and the attorney general who are appointed for the term of the governor, but provides that plural department heads "may be removed in the manner provided by law".[82] The Alaska provisions are similar to those of New Jersey, with single department heads serving at the pleasure of the governor and plural department heads removable as provided by law.[83] In many of the other states, the governor must "show cause" which is said to add little to the governor's real authority over appointees since such causes as administrative incompetence and obstructionism are difficult charges to prove.[84]

Section 5.07 of the Model State Constitution provides "The governor shall appoint and may remove the heads of all administrative departments." The comment on this provision explains:[85]

> The governor as responsible head of the administration should have the unencumbered power to select and, when necessary, remove the heads of all administrative departments. Public officials at the level of department heads are not only administrators but also policy makers and should be directly and personally responsible to the governor.

A similar proposal was considered by the Maryland Constitutional Convention with the following comment:[86]

> The Commission recommends this...because it believes that the executive power of the State, with all its authority and responsibility, must be concentrated in the governor if there is to be efficient administration and if policy is to be controlled by the electorate. If the executive branch is to have direction, the governor must be able to influence those officials within the executive branch who are responsible to him for executing the administration's programs and policies. The Commission, therefore, recommends that the governor be empowered to appoint and remove at pleasure each executive or administrative head of a principal department within the executive branch.... The Commission considered the danger of the governor using his broad power of removal for partisan purposes and concluded that to some degree a governor is entitled, under the party system, to appoint persons of his own party as chief lieutenants, but that there are also sufficient safeguards against an abuse of his power....

The preceding material covers many of the issues affecting the power of the governor to appoint principal assistants. Whatever the range of gubernatorial appointing authority, it is restricted in most states by various types of statutory limitations respecting qualifications and eligibility status of appointees. A restriction may also be imposed on the gubernatorial power to appoint by a constitutional requirement of confirmation, usually by the senate, but in some cases by both houses of the legislature or by some other body. Of some 700 major state administrative positions that are filled by gubernatorial appointment, almost two-thirds, or 459 positions require such confirmation.[87] At one extreme are the states of Indiana, Kentucky, Massachusetts, and Tennessee, with 18, 15, 19, and 19 of these posts, respectively, filled by the governor without any requirement of confirmation. At the other extreme are Illinois and Pennsylvania where confirmation is required for appointments to 20 of these positions respectively. The significance of legislative confirmation as a check on the governor's freedom of choice varies, of course, with the office and with the political relationship existing between the executive and legislative branches. Apart from appointments of major department heads, the governor's appointing power has been materially increased in recent years due to the growth of new governmental activities requiring appropriate administrative offices, boards, and commissions. Any restriction on the appointment of any officer tends to introduce extraneous considerations into the selection process although appointments should be made on the basis of integrity and ability to the extent possible.

The merits of the requirement of confirmation are advanced by those who consider it a healthy check on the executive. Those opposed to the requirement believe that the legislature has ample checks in other controls; that the device of confirmation is used by legislators to force their appointments upon the executive; that it hampers the governor in attracting able personnel to administer programs and policies; and that a governor cannot afford to appoint incompetent party "hacks" to critical positions responsible for important and complicated government functions.[88] Recess, or interim, appointments do not carry significant importance in most states, as is the case at the federal level, since state legislatures are not in session for as much time as Congress. A device used in Michigan, designed to prevent rejection by inaction and to minimize instances of stalemate between the governor and the confirming body, provides that a gubernatorial nomination, if not rejected by the senate within 60 days after submission, will be deemed confirmed. The next section specifies that an individual rejected by the senate for a post shall be ineligible for a recess appointment to the same post, thus redressing the balance in the other direction.[89]

The case for an extensive constitutional removal power for the governor has been stated as follows:[90]

> The limited removal power of the governor is one of the chief causes of his inability to control state administration. Lacking any effective means of getting rid of inefficient or disloyal subordinates, he must necessarily accept their half-hearted service.

Although the power to remove is the logical complement to the power to appoint if the governor is to be held responsible and accountable for an administration, "the prevailing constitutional rule in states is that the governor has no inherent power to remove agents of the executive power, even where he has the authority to appoint them in the first instance, and that he can do so only if the state constitution or state law expressly says that he may, or where the appointment is not for a fixed term".[91]

The requirement of senate advice and consent to remove a single executive head of a principal department was included in the 1950 Hawaii

Constitution with the intent of supplying a check against excessive concentration of power in a highly centralized state administration and to bolster the independence of major department heads.[92] The 1968 Constitutional Convention in Hawaii, however, following the recommendations of the Model State Constitution, recommended the abolishment of the requirement of senate confirmation for the removal of all department heads by the governor, except for the attorney general. The committee on executive of the convention reasoned that the department heads "are not only administrators, but also policy-makers and should be directly and personally responsible to the governor. The confirmation requirement often invites political maneuvering outside the public arena. This makes recruiting of good executive talent more difficult. Moreover, the legislature has ample power, such as budgetary control, to maintain a sufficient check on the executive branch."[93]

Tenure Specifications

The term of executive and administrative officers is still another element in the structure of the executive branch. It is stated that:[94]

> In the absence of broad powers of appointment and removal, it has been suggested that the terms of state officers ought at least to coincide with that of the governor. Where state officers are elective, this would mean that they are elected at the same time as the governor and are apt to be of the same political party. Appointive officers, it is contended, also should have terms ending at the same time as that of the governor so that the latter can appoint a set of officials who will reflect the policies for which he is responsible.
>
> However, practice usually is not in accordance with this theory. Ordinarily, the terms of single officials, both elective and appointive, coincide with the governor's term. But boards and commissions often have been set up on the theory that their activities could be "taken out of politics" by having their members serve for long or overlapping terms so that a change of administration has little immediate effect on the board.

Compliance Provisions

Gubernatorial supervision over principal departments is given additional authority in the Alaska and New Jersey Constitutions[95] by empowering the governor to enforce compliance with law as suggested by section 5.04 of the Model State Constitution which states:

> ...He may, by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty or right by an officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceeding against the legislature.

The explanatory material indicates that this provision would "enable the governor to initiate proceedings or to intervene in proceedings on behalf of the people of the state or on behalf of any individual, even in situations where the interest of the state is not directly involved" and would, in essence, give the governor "standing to sue".[96]

The chief argument for inclusion of such a provision is that it would enhance the executive power of the governor, even extend it into general law enforcement areas.

Those opposed to inclusion of this type of provision find no need for this device to help the governor enforce executive policy; find that the governor's existing powers are ample basis for leadership; and doubt the necessity or wisdom of granting the governor additional powers.[97] The committee on the executive at the 1968 Constitutional Convention felt that the attorney general of Hawaii already had the power and authority to enforce compliance with Hawaii's statutes and Constitution.[98]

Civil Service Coverage

Civil service, or personnel management, is widely recognized as one of the significant tools of management:[99]

> A good personnel agency furnishes the governor with valuable advice and assistance in program planning and is one of the principal "arms of management" by which the chief executive is enabled to control the administrative machinery.

Several factors relating to a constitutional guarantee concerning the merit system are discussed in Hawaii Constitutional Convention Studies 1978, Article XIV: General and Miscellaneous Provisions; however, one factor is noted here, namely, the difficult question of the scope of civil service coverage. Where should the line be drawn between policy-making officials who should be exempt from civil service requirements and career officials who can and should serve regardless of which party wins the election and captures the key administrative and executive positions?

The objectives of ideal civil service coverage have been described by Governor Sanford:[100]

> We need a twofold system enabling a governor to appoint and remove those officials who have the power to formulate and administer his policies, but maintaining the security of the career employee. Better government is not served when personnel policy and law permit the civil servant to be badgered and harassed by politicians. On the other side, the career employee must not be entirely isolated from political influences; for government must be responsive and always open to the possibility of change. This is a delicate balance and a fine line to draw.

THE EXECUTIVE BUDGET

The executive budget, formulated and administered under the governor's authority, is intended not only to encourage sound financial policy but also to force the governor to consider long-term policies and to think in terms of the whole. A description of the executive budget principle and processes and presentation of the issues involved is found in Hawaii Constitutional Convention Studies 1978, Article VI: Taxation and Finance. It is widely agreed that the executive budget, more than any other single factor, has strengthened the governor's executive authority and control over the operations of all governmental agencies.[101] Budget-making authority is vested in the governor in

all states except the 3 states of Mississippi, South Carolina, and Texas.[102] One spokesman for gubernatorial leadership has recommended that the governor should be given the dominant authority in the budget process, preferably as budget director. He has commented:[103]

> There is no way the governor can effectively plan and coordinate unless he makes up and controls the budget. Money is the principal source of strength in action of any kind. The budget direction allows him to avoid duplication. More important, it makes all agency and department heads unusually responsive. No executive can be very effective unless he has control of the budget....

A constitutionally established executive budget,[104] as well as other structured functions of the executive branch of government are frequently referred to as "tools of management".

Gubernatorial Transition

Since 1968, 7 states have changed from a 2 to a 4-year gubernatorial term, leaving only Arkansas, New Hampshire, Rhode Island, and Vermont with 2-year gubernatorial terms. Longer terms reduce the number of gubernatorial transitions but do not alleviate the difficulties of transition. Whether serving 2 or 4 years, the governor-elect is confronted between election and inauguration with herculean tasks. To a considerable degree, the tone and tempo of the incoming administration are set during this period in which the governor-elect may have to make major appointments, write a State-of-the-State message, formulate a budget, build an adequate factual basis for policy determination, establish contacts with the centers of political power, and develop a legislative program--frequently all of this before assuming office. Any one of these tasks would be regarded as a major undertaking by an incumbent governor.

Although some states have constitutionally provided for gubernatorial transition by extending the time between the governor's inauguration and legislative session or extending the time for budget submission, there has been a substantial increase in the number of states having gubernatorial transition legislation. In 1973, 20 of 40 states responding to a Council of State

Governments' questionnaire had statutory provisions for gubernatorial transition.[105]

Generally, the transition statutes cover one or more of these subjects: budget preparation and review, staff and use of state personnel, office space, supplies, equipment, furnishings, telephone service, transfer of records and files, and cooperation of officials and employees of the executive branch. Provisions and procedures for gubernatorial transition in Hawaii are given in chapter 30 of the Hawaii Revised Statutes. It follows model legislation written by the Council of State Governments.[106]

Chapter 3
ORGANIZATION AND STRUCTURE OF THE EXECUTIVE BRANCH

The framework for the structure of the Hawaii executive branch, aimed at the objectives of integration and consolidation of administrative operations, required implementation under constitutional authority. The transitional provisions, as set forth in Article XVI, section 8, of the 1950 Hawaii Constitution closed the hiatus between the pre-Constitution structure and the reorganized state government:

> ...The legislature shall within three years from said date allocate and group the executive and administrative offices, departments and instrumentalities of the state government and their respective functions, powers and duties among and within the principal departments pursuant to said section.[1]
>
> If such allocation and grouping shall not have been completed within such period, the governor, within one year thereafter, by executive order, shall make such allocation and grouping.

Although Hawaii is in the forefront of the nationwide movement to simplify the structure of the executive branch, the territorial government had operated under poor structural organization. Prior to the Hawaii State Government Reorganization Act of 1959, for example, there were 76 boards and commissions independent of the principal departments.[2] A fragmentation of governmental activities and responsibilities through proliferation, a situation brought about by the "long ballot" as a device to achieve representativeness in government and by the mushrooming of independent boards and commissions in attempts to institutionalize the separation of politics and administration, presented this picture:[3]

> It bred chaos; agencies pursued contradictory policies in related fields. It fomented conflict; agencies engaged in bitter bureaucratic warfare to establish their spheres of jurisdiction. It opened gaps in the provision of service or of regulation; clienteles were sometimes denied benefits or escaped supervision because they fell between agencies. It was costly; many agencies maintained overhead organizations that could have been replaced more cheaply and effectively by a common organization, and citizens had to make

> their own way through bureaucratic labyrinths. And, most important of all, it led to irresponsibility; no one quite knew how the pattern of organization and program came into existence or what could be done to alter it, each segment of the fragmented governments became a self-directing unit, the impact of elections on the conduct of government was minimized, and special interest groups often succeeded in virtually capturing control of individual agencies. No one seemed to be steering the governmental machinery, though everyone had a hand in it.... These were among the forces that persuaded many students of government that chief executives had to be built up to take charge of the machinery.

The structure of government in Hawaii is highly praised by many commentators. This, however, does not mean that further reorganization may not or should not occur. No one can know what problems will occur in the future, and governmental organization must reflect the priorities of the times. In Hawaii, the 1975 legislature created the Commission on Organization of Government to study this concern. Its report was submitted in February, 1977.

The commission focused on 4 major goals:[4]

(1) Achieving control over the costs of state and county governments;

(2) *Making government responsive to the people;*

(3) Improving efficiency, effectiveness, and economy;

(4) Improving the quality of life in Hawaii.

Toward these goals the commission felt that there was a need to pinpoint accountability and to provide authority commensurate with responsibility within the structure of Hawaii's state executive branch. "The best organizational structure in the world--if indeed there were such a thing--would be no guarantee of performance. But the wrong structure assures nonperformance. It also can provide friction and frustration and often tends to focus management attention on trivia rather than on key issues."[5]

Analysis of the existing constitutional provisions that structure Hawaii's executive branch yields the following components, each of which is considered sequentially below: legislative allocation of governmental units; ceiling of 20

principal departments; legislative authorization for the establishment of temporary nonallocated agencies; gubernatorial supervision over principal departments, headed in most instances by a single executive but with provision for multimember department heads of some principal departments; and provisions for appointment, tenure, and removal of executive and administrative officers.

Allocation of Governmental Units

Legislative allocation of governmental units suggests the counterproposal of gubernatorial allocation of governmental units. The suggestion has been considered in the form of granting the governor constitutional power to initiate plans for administrative reorganization subject to rejection by the legislature. The comment on this provision in the Model State Constitution is:[6]

> In keeping with the concept of the governor as leader of state administration, however, the chief executive is also granted broad powers which permit him to take the initiative in administrative reorganization. He has broad powers to order changes in the organization of government but, when reorganization desired by the governor requires changes in law, the participation of the legislature is required to effectuate them--the changes may be set forth in executive orders to become effective 60 days after submission to the legislature unless they are specifically modified or disapproved by resolution concurred in by a majority of all the members.

An identical provision is suggested by the Council of State Governments in their "Model Executive Article".[7]

Alaska is one state with a comparable provision in its constitution. Article III, section 23, of the Alaska Constitution provides:

> The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have 60 days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution, concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

At the federal level, the Reorganization Act of 1977[8] gives the President the authority to reorganize all of the agencies of the executive except the cabinet-level departments, subject only to a veto by either house of Congress. The Reorganization Act of 1977 gives the President 3 years in which to transmit to Congress plans for reorganization of the executive branch. A few states have followed this practice, in lieu of taking the constitutional route, by providing for statutory delegation of reorganization powers to the governor. In this respect, it is interesting to note some of the language of section 1 of the Hawaii State Government Reorganization Act of 1959:

> ...It is the purpose of this Act to accomplish...allocation within an integrated and comprehensive plan of organization for the exercise of state functions...but not to form divisions, bureaus or other subdivisions within any department or office.
>
> Furthermore, this Act provides for the participation of the executive and the legislature in implementing the reorganization.... The governor is to prepare supplemental legislative bills...and to formally establish the various divisions, bureaus, and agencies within the various departments...in the realization...that reorganization of the government of Hawaii is a joint responsibility of the executive and legislative branches.

Arguments in favor of a constitutional provision that vests substantially all powers of reorganization in the legislature are: (1) since the structure of government is properly a legislative responsibility, the legislature should have the principal role in framing departmental structure to assure that the policies of government are being executed and that the desired results are obtained; (2) existing provisions have achieved the objective of preventing proliferation of governmental units; (3) experience shows that the executive and legislative branches can work cooperatively to reorganize when the constitutional power is vested in the legislature; (4) delegation of power to the governor does not allow the public to scrutinize the proposal as carefully as if the power is in the legislature; (5) since the establishment of the structure of the executive branch is largely a matter of statutory law, its reorganization should also be a matter of statutory law; and (6) even the reorganization powers given to the President of the United States do not allow such major reorganizations as creating, abolishing, or altering executive, cabinet-level departments.

Arguments in favor of giving the governor constitutional power to initiate reorganization subject to legislative veto are: (1) the governor is better equipped than the legislature to oversee administration and since the governor is primarily accountable for it, the governor should have the authority, subject to legislative veto, to reorganize the administrative units under the executive's direction; (2) the legislature would retain effective power over reorganization since no reorganization could be made without its consent; and (3) the power would assist the executive branch in carrying out efficiently the administrative functions assigned to it; (4) requiring affirmative action on each plan submitted to the legislature could reduce chances for meaningful reorganization to take place at an acceptable pace; (5) subject matter committees may jealously guard their jurisdictional assignments; and (6) similar reorganization powers have been given to the President of the United States since 1949.

Ceiling on Departments

A ceiling of 20 principal departments immediately suggests the questions: Why 20? Why any constitutional limit by number? The administrative integration and consolidation structure advocated by experts in public administration is based on "principles", the first of which is concentration of authority and responsibility in the governor. To buttress and implement this first principle is the second principle of functional integration of state agencies. The reasoning underlying these principles is that the executive branch should be organized for the 2 objectives of administrative efficiency and political responsibility, which cannot be obtained if the executive branch consists of a sprawling mass of uncoordinated agencies.

The Model State Constitution in section 5.06 restricts to 20 the number of departments the legislature may create although the accompanying comment states that 20 is merely a suggested maximum, "not necessarily the number that may be desirable for a particular state".[9] As a formula, the limitation of 20 departments is based upon the theory of "span of control" which limits the number of subordinates and departments reporting to an executive in order to permit administrative responsibility and control. The constitutions of Alaska,

Colorado, Hawaii, Massachusetts, Michigan, Montana, New Jersey, and New York all establish the maximum number at 20; the Missouri constitutional limitation is 14; and Florida and North Carolina have limitations of 25.

It has been stated that the basic reason for fixing any number as a maximum constitutionally is:[10]

> ...to thwart what appears to be almost a natural tendency among state legislatures, to create new agencies for carrying into effect new policies... such a limitation in the constitution would seem not only to prompt the legislature to the exercise of greater care in the establishment of new agencies, but also to force the legislature to consider more seriously where each new function belongs in the state's administrative organization, resulting in a more careful assignment of functions...the inclusion of such a limitation in the constitution is proper from the point of view of drafting a good constitution. This is fundamental material dealing with the basic structure of government, establishing the general framework of government within which the representative body will legislate the details.

Arguments to reject a limitation on the number of principal departments in the Maryland Constitution were stated as follows:[11]

> ...Although the Commission recognizes the need for functional integration of the State's administrative activities into as few units as practicable, it does not believe that a constitutional limitation on the number of departments would accomplish this objective. If the maximum number of administrative units is presently limited to a reasonable number, the limitation may prove too restrictive in the future; and if the maximum number of administrative units is set at a figure which is sufficiently high for future expansion, no purpose is served.

In New York, when the question of whether the constitution should prescribe a maximum number of administrative departments was considered, those in favor of retention of the constitutional limit of 20 departments argued that: (1) the provision insures that the legislature cannot create executive branch departments at will, thus protecting the power of the governor to administer the state government; (2) the provision protects the legislature from undue pressure to create new departments; (3) the provision insures that the governor has a manageable span of control over departments and limits the

number of departments and units reporting directly to the governor, thereby increasing government efficiency and accountability of officials; and (4) a maximum of 20 civil departments is recommended by the Model State Constitution (and the Model Executive Article), and also appears to be the trend in other states in their attempts to prevent proliferation of departments of state government and bring sound management principles to the operation of government.

Those in favor of removal of the constitutional limit of 20 departments stated that: (1) the limit of the number of departments may result in an inefficient grouping of unrelated activities and interfere with efforts to achieve flexibility in administration; (2) the existence of a limit on departments has contributed to a proliferation of divisions, special agencies, boards, commissions, and offices; (3) the limitation to 20 departments is wholly arbitrary; and (4) a specific limit should not be in the constitution; the objectives could be achieved by statute which would have the advantage of greater flexibility.[12]

Although the 1968 Constitutional Convention discussed the matter of the total number of executive departments, no change was made. The committee on the executive at the 1968 Constitutional Convention felt that the constitutional maximum of 20 departments was flexible and manageable, and had previously worked well.[13] In fact, Hawaii's executive branch is currently only grouped into 17 principal departments, while the Commission on Organization of Government recommended further reducing the total number of departments to 12.[14]

Temporary Agencies

Legislative authorization for the establishment of temporary nonallocated agencies is provided for to allow a measure of flexibility in recognition of the need for short-term public programs of a limited duration. The Hawaii State Government Reorganization Act of 1959 implemented the constitutional provision in this manner:

Temporary Boards and Commissions. The governor may establish such temporary boards and commissions as deemed necessary to gather information or furnish advice for the executive branch. The governor may prescribe their organization, functions, and authority. A temporary board or commission shall not remain in existence for a term extending beyond the last day of the second regular session of the legislature after the date of its establishment or beyond the period required to receive federal grants-in-aid, whichever occurs later, unless extended by concurrent resolution of the legislature.

All members of temporary boards and commissions shall serve without pay, but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of duties and responsibilities. Such reimbursement for expenses shall be made from the governor's contingent fund.[15]

Another approach to provide flexibility in a system with a constitutional limit on the number of principal administrative departments is suggested by the Alaska Constitution, which follows the Model State Constitution provision on the matter. Alaska provides in Article III, section 22, of its Constitution, "Regulatory, quasi-Judicial, and temporary agencies may be established by law and need not be allocated within a principal department." Comment on similar language to have been included in the Maryland Constitution of 1968 was:[16]

> Recognizing that the assignment of regulatory and quasi-judicial agencies to principal departments may raise jurisdictional conflicts, the Commission recommends that these agencies at least be assigned to either the legislative or executive branch by law.

The Alaska-type expansion of categories of agencies which need not be allocated to a principal department to include regulatory and quasi-judicial agencies as well as temporary agencies seems to reflect a doctrinal concern for the theory of separation of powers. The basic idea that executive, legislative, and judicial power should be separated from each other still prevails in theoretical thinking, but, as an authority on administrative law has said, "Since a typical administrative agency exercises many types of power, including executive, legislative, and judicial power, a strict application of the theory of

separation of powers would make the very existence of such an agency unconstitutional."[17] He goes on to say, on the danger of concentration of power in the hands of any officer or group of officers, "[w]e have learned that danger of tyranny or injustice lurks in unchecked power, not in blended power."[18]

In Hawaii and New Jersey, on the other hand, existing constitutional authorization for the establishment of temporary agencies plus implementation by statutory delegation of limited discretion to the governor seem to be realistic resolutions of the system of separated powers into a system of shared powers.

Single vs. Multimember Department Heads

For the purposes of considering the issues involved on the matter of single-member vs. multimember department heads, it is noted that of the 17 principal departments in Hawaii, 12 are headed by a single executive, namely the departments of accounting and general services, the attorney general, budget and finance, defense, health, labor and industrial relations, personnel services, planning and economic development, regulatory agencies, social services and housing, taxation, and transportation; 4 are headed by a board, namely the departments of agriculture, education, land and natural resources, and the University of Hawaii;[19] and one, the department of Hawaiian home lands, is headed by a commission.[20]

Of the 5 departments headed by a board or a commission, 4 are created constitutionally. They are: (1) the board of regents of the University of Hawaii, (2) the board of education of Hawaii, (3) the board of land and natural resources, and (4) the Hawaiian homes commission. The Commission on Organization of Government in 1977 did not propose eliminating any of the boards and commissions.

The modern government reorganization movement, originally systematized by 6 standards,[21] included as one standard the undesirability of boards for purely administrative work. Commenting on the rationale for this standard, Buck explained:[22]

> Because of division of authority and general lack of initiative and responsibility, boards are usually considered undesirable for purely administrative work.

Buck also cites, to support his position, the statements of United States Senator James F. Byrnes as follows:[23]

> I assert whenever there are executive functions to perform, if there are three men performing them, the bigger the men the more certain it is that functions will never be performed.... The only way to have executive functions performed by such a commission is to have one Bergen and two Charlie McCarthys. The Bergen will dominate.... If a commission is to function efficiently, it is necessary to have one dominating character on the commission, with the others agreeing.

The single-member executive standard was adopted in general by the Council of State Governments but modified by some tolerance for multimember executives, particularly for agencies with significant quasi-legislative or quasi-judicial powers. The council's position is:[24]

> So far as possible, eliminate the use of boards and commissions for administrative work. Plural-headed agencies tend toward lethargy, indecision, and an undesirable diffusion of responsibility. Where a variety of experience and opinion needs to be brought to bear on problems at the administrative level, it can be supplied in most cases by an advisory board which will counsel but not detract from the authority and responsibility of a single administrator. In cases where an agency has significant quasi-legislative or quasi-judicial functions, a board can be justified, but the operating affairs of the agency should be administered through a single executive. On the operating level the affairs of plural-headed agencies should be integrated as far as possible with the rest of the executive branch.

This position on single executives to head principal departments seems to have earned general endorsement. The position of the Western Governors' Conference was:[25]

> ...the extensive utilization of boards and commissions for administrative purposes hinders proper coordination and unity of action...state commissions on reorganization have been inclined to place purely administrative duties under single officials responsible to the chief executive...results in greater speed and flexibility of decision-making, clearer lines of responsibility and accountability and increased facility of policy coordination.

> On the other hand, problems of adjudication and advice have been regarded as a responsibility of more than one person. Accordingly, there appears to be wide agreement that boards or commissions should be used for advisory, quasi-legislative, or quasi-judicial purposes either within departments or as advisory bodies outside the regular departments.

Comparable positions have been taken by the Constitutional Convention Commission in Maryland.[26] the committee for economic development,[27] and the committee on the executive at the 1968 Constitutional Convention in Hawaii. The committee at the 1968 Constitutional Convention believed that the establishment of an executive with responsibility, accountability, and authority was best provided by placing the principal departments under single executives. They felt that the Hawaiian homes commission, the University of Hawaii, and the department of education were exceptions to this rule. Notwithstanding the committee's recommendation, neither the board of land and natural resources nor the board of agriculture was abolished. The board of agriculture is established by law.

At the 1950 Hawaii Constitutional Convention, the following proposal was made but not approved for inclusion in the executive article:[28]

> Each principal department shall be under the supervision of the governor. The head of each principal department shall be a single executive who shall be appointed by the governor, subject to the confirmation of the Senate, and who shall serve at the pleasure of the governor. For each principal department, there shall be an advisory board consisting of such members as may be provided by law. Whenever the law provides for the adjudication of private rights, duties, or privileges by any principal department, there shall be established by law an administrative adjudication board to determine such rights, duties and privileges.

This proposal reflects a long recognized attitude that distinguishes between kinds of administrative activities:[29]

> Whenever there are quasi-legislative, quasi-judicial, or advisory functions in connection with an administrative department, it has been found that a board may with advantage be attached to the department to perform any one of these functions. For quasi-legislative and quasi-judicial functions quick action and clear-cut

> responsibility are less necessary than is mature group judgment. Boards are often helpful to department heads in an advisory capacity, because they bring to the department the layman's point of view and elicit citizen interest in the work of the department. The main problem raised by the use of boards and commissions for these purposes is the relationship they should have to the administrative officers of the department.

The choices available for constituting the quasi-legislative and quasi-judicial boards are to make them separate entities, to make them entities but components of the departments they serve for clerical and financial purposes, or to integrate them within a department. The third choice is economical and expeditious but has the disadvantages of combining both the judicial and administrative points of view, with the result that the findings of such a board would usually be what the departmental officers deem feasible.

For discussions of the existing exceptions to the Hawaii general rule of single executives, see the Hawaii Constitutional Convention Studies 1978, Article IX: Public Education as to the board of education; Article IX: Higher Education as to the board of regents; Article X: Conservation and Development of Resources as to the board of land and natural resources and the board of agriculture; and Article XI: Hawaiian Home Lands as to the Hawaiian homes commission.

The Administrative Director

Although the governor is charged by the Hawaii Constitution with responsibility "for the faithful execution of the laws",[30] the governor obviously cannot personally supervise the carrying out of every law. One authority on the office of chief executive in the United States has said:[31]

> Constitutional theory calls for a concentration of responsibility upon one man; expediency requires that in practice this responsibility be diffused in considerable degree among those upon whom the chief executive must rely for assistance in discharging his manifold duties. No...governor can be expected to attend personally to every matter which is placed in his hands by constitutional directive, by statute, or by usage. He must be able to delegate

> authority and permit others to perform acts in his name. He must have at his command the services of a staff to assist him in discharging his duties. He must have at his disposal information and advice of experts and specialists in particular phases of governmental policy and operation to enable him to reach informed and intelligent decisions thereon.

It appears that Hawaii is the only state to provide for the governor's own staff constitutionally--"The governor shall appoint an administrative director to serve at his pleasure."[32] The discussion on this provision at the 1950 Constitutional Convention included arguments in favor of the constitutional office of administrative director which emphasized: (1) the obvious need for assistance in the governor's office; (2) the analogy to the administrative director in the judiciary branch; (3) the governor's need for assistance in coordination of administrative units; and (4) the fact that the lieutenant governor's duties, including those of a secretary of state, precludes that officer from assuming additional responsibilities.

Arguments opposed to the constitutional office of administrative director emphasized: (1) the availability of the lieutenant governor to provide assistance; (2) the inadvisability of cluttering the constitution with statutory matters; (3) the danger of controversial persons in the office of administrative director; and (4) the false analogy to the judiciary administrative director where the qualifications for a chief justice are likely to exist in a person without any administrative ability who would need to be left free from administrative duties to fulfill judicial duties.[33] There was no discussion concerning the governor's administrative director at the 1968 Constitutional Convention.

The Governor's Cabinet

One description of the cabinet device is as follows: "One of the devices which has been tried in a number of states in an attempt to secure policy coordination and control is the use by the governor of cabinet meetings of department heads. This was one of the recommendations in the early state reorganizations, and it remains as a part of the standard recommendations of many bodies which study the organization of the executive branch. The central

idea is that the governor is to call together the heads of the major departments of state government either weekly or monthly to discuss current problems and to secure their advice on policy matters. These discussions are also to be used to inform the department heads of the governor's policies and to coordinate the programs of the various departments."[34]

The long established federal example which was begun by President Washington's conversion of department heads into a collective political advisory body--the Cabinet--has been considered by students of state government even though the federal concept has developed through usage and executive convenience rather than through constitutional or statutory direction. The potential value of a cabinet in state government is thought to be as a briefing device, to acquaint department heads with the work of their colleagues and in promoting mutual acquaintance among the department heads themselves. On the other hand, it is thought not to be so useful as a device for policy formation on the reasoning that:[35]

> ...it is too much to ask that a department head be able to run his own department effectively and at the same time serve as one of the governor's advisors on policy matters. Certainly, some department heads are both able administrators and able politicians, but the combination of a technically competent administrator with the kind of individual to whom the governor will turn for broad policy decisions is relatively rare. The average department head is involved in running a fairly complex operation of his own and tends to be immersed in the problems of his own department. He also tends to be the defender of the department against all comers, whether they be other department heads, the legislature, or the governor. Hence, most department heads are not equipped to take the broad view of the whole operation of state government necessary for an individual who will serve as an adviser to the governor on policy matters. Similarly, they are not as likely to see the political repercussions of suggested programs, particularly if their own departments are involved.

In a reversal of the usual sequence whereby government takes a lesson from business administration, a "bold new concept" to improve management direction of business firms through the integration of staff services under a vice president of administration followed a well-defined pattern of state government reorganization. The consolidation of staff services into a central

administrative agency to carry out more effectively the responsibilities of the executive branch is a developing trend in state government organization. This trend has been contrasted with other approaches in the following manner:[36]

> On the other hand, in those states where the structure is moving in the direction of a cabinet type of organization, with larger agencies headed by a single individual appointed by and serving at the pleasure of the Governor, the department of administration is likely to diminish in importance as a tool in bringing overall direction of state programs.
>
> The latter approach, however, is just now beginning to appear. The constitutions of the new states of Hawaii and Alaska both place limitations on the number of principal agencies which may be created in state government. In these cases, the Governor is able to deal effectively with his department heads in much the same manner as the President with his cabinet.
>
> A similar approach has been taken in California with its new "agency" plan. Under this system, existing departments are to be grouped together under a cabinet type of officer, called the agency administrator, who serves as the Governor's chief advisor in a broad functional area.

California's agency plan, devised to facilitate the governor's role as overseer of the entire administration, has developed a kind of "superdepartment". The plan originated with recommendations of an advisory committee appointed by Governor Brown soon after his inauguration in 1959. It organizes the executive branch into 4 agencies: agriculture and services, business and transportation, health and welfare, and resources. The head of each agency is known as secretary and serves in the governor's cabinet. Although most departments report to these agency secretaries, several report directly to the governor. These include the constitutional officers, the regents and trustees of the state university and colleges, and the department of finance.[37]

Gubernatorial Access to Information

Essential to effective administrative supervision and faithful execution of the laws by the governor is the matter of access to information, for full

knowledge of the facts relative to an administrative officer's conduct of the affairs in the officer's charge is required in making decisions on how that officer should function and in holding the officer to account for the officer's conduct. In order to strengthen the governor's ability in these respects, the Model State Constitution in section 5.04 provides that the governor "may at any time require information, in writing or otherwise, from the officers of any administrative department, office or agency upon any subject relating to their respective offices". Apparently, no state has seen fit to incorporate this provision in its constitution, although a similar provision was included in the proposed Maryland Constitution.

Governor Sanford, in his work on revitalization of the states, makes 10 recommendations to achieve adequate and effective state government; most of the recommendations are pertinent to constitutional deliberations:[38]

(1) Make the chief executive of the state the chief executive in fact.

(2) State constitutions, for so long the drag anchor of state progress, and permanent cloak for the protection of special interests and points of view, should be revised or rewritten into more concise statements of principle.

(3) The 2-year term for governors should be replaced with a 4-year term, and a governor should be allowed to seek to succeed at least once. Maybe, if succession is not favored in some states, a 6-year single term might be considered.

(4) The governor should be given the dominant authority in the budget process, preferably as budget director.

(5) The governor, as chief planner for the state, must conduct the administration to enable the state to look beyond the governor's term of office to the future.

(6) Like the President of the United States, each governor should have the authority to reorganize and regroup executive agencies, subject to legislative veto within a specified period of time.

(7) The executive committees, state councils, and separately elected executive officers and independent boards and commissions should be eliminated, in authority if not in fact.

(8) Merit systems and civil service, a strength for government when properly structured, must be disentangled from an overzealous past, and liberated from an overprotective philosophy that smothers the best talent, prevents rapid promotions, and often penalizes assertive leadership.

(9) The governor must have adequate staff to represent adequately the public interest.

(10) The governor's office should be organized to be receptive to new ideas and should use the experience of other states in seeking fresh solutions to problems.

The National Governor's Conference in 1974 focused on 2 goals:[39]

(1) Strengthening the office of the governor by lengthening the term, permitting succession and giving reorganization authority as well as central planning and budgeting powers;

(2) Streamlining the executive branch as a whole by shortening the ballot, overhauling the departments and agencies to eliminate overlapping and administrative anarchy, and producing clearer lines of authority.

Critics of these recommendations and of the reorganization movement principles which would establish a clear administrative hierarchy headed by a popularly elected governor from whom all administrative authority flows focus on 3 points: (1) overconcentration of authority in one person; (2) overemphasis of formalities at the expense of operating realities; (3) disbelief that the "principles" will insure continuity of policy and reliable popular control.

Working against the establishment of a strong, centralized authority are the following pressures against concentration of administrative and executive powers in the governor:[40]

(1) The "normal" drive for agency autonomy or an almost innate characteristic of administrative agencies to desire independence.

(2) A historical background of separate responsibility to the electorate which may have had its origin in a "reform" movement for a special function or as a popular repugnance against a scandal in an established service. The appeal of "direct responsibility to the people" is difficult to overcome.

(3) The attitude of clientele and interest groups and the often closely related and mutually reinforcing factor of *professionalism. Each interest group, identifying the public* interest with its own, feels that its affairs are properly considered by keeping the agency and funds involved "independent"--meaning independent of everyone but the particular interest concerned. The politics of the ballot-box are substituted by the politics of special influence, often but not always with the highest motives. Professionalization, as a force for fragmentation of state services, is often closely linked to the pressures of special clientele groups.

(4) Functional links to the national government, or the tendency of a lower level of government to adjust its organization to mirror the larger political unit. This tendency is probably most strongly felt at the state level as the result of federal grant-in-aid programs and requirements.

(5) The desire to insulate special types of programs or the belief that certain kinds of programs should be in some measure removed from political policy and processes. Regulatory, *experimental, and trade promotional agencies have often* been provided with insulation or exemption from central controls and policies.

(6) Political division between the governor and the legislature has frequently expressed itself in the establishment of administrative agencies which were placed under legislative control or, as a minimum, beyond any effective control of the governor.

Chapter 4
EXECUTIVE-LEGISLATIVE RELATIONS

One of the most striking features of modern state government has been the emergence of the governor as a legislative leader. This feature is not unlike certain characteristics of parliamentary government as practiced in the British Commonwealth. For a discussion of parliamentary government, see the Hawaii Constitutional Convention Studies 1978, Article III: The Legislature.

None of the states presently use a parliamentary form of government. Numerous scholarly studies, none of which has dealt with Hawaii, indicate that in most states, the majority of important legislative policies embodied in the major pieces of legislation emanate from the governor's office or from the offices of the governor's department heads.[1] Although much of this development has taken place extra-constitutionally, the governor's constitutional prerogatives to propose the budget, veto bills, and convene special legislative sessions have played a significant part. The governor's relationship with the legislature encompasses other functions such as the provision of information and the maintenance of continuity through filling legislative vacancies and designating the site for sessions when the capital is unsafe. Finally, the governor participates in securing constitutional government by acting as a check upon legislative authority. Whether or not the present system provides the proper check and balance relationship between the legislature and the chief executive has been an issue of principal concern among students of government. The following discussion will explore various constitutional aspects of executive-legislative relations in six areas: the annual address, budget procedures, the veto power, legislative sessions, legislative vacancies, and the "sunset laws".

ANNUAL ADDRESS

Many state constitutions presently require the governor to deliver an address at each regular legislative session on the affairs of state and to make recommendations on measures which the governor deems appropriate. The

pertinent Hawaii provision is found in Article IV, section 5. The purposes served by the governor's address are threefold. First, it provides a source of information for the legislature and the public on the entire state. Second, since the governor speaks on behalf of the entire state, the address may initiate state policies which are impliedly supported by widespread, popular approval. Third, it serves to relate the governor's policies to administration bills.

On its face, this type of provision merely specifies a gubernatorial duty to convey information to the legislature. To observers of state government, however, the annual address is of interest because it most clearly reveals the modern chief executive's relationship to the legislature. Rather than the legislature, it is the governor who is able to present a well-developed, coherent program for state action. This situation has been attributed to the governor's superior access to expert and continuous information from an extensive and sophisticated bureaucracy, as well as to the growing expectation on the part of the public that the governor exert vigorous leadership in the formulation of state policy.

BUDGET PROCEDURES

The budget translates the state's work program into estimated revenues and proposed expenditures. The basic task in formulating the budget is to allocate limited state resources among competing programs. Decisions must be made on which new programs to launch and which old ones to expand, contract, or eliminate. Thus, in a very direct way the budget reflects the public policy goals of the state.

The budgetary process has been described as "a bridge between the legislative and executive branches...because it provides a method of reaching decisions of policy and administration in an orderly, informed way".[2] The governor's constitutional role in this process is generally spelled out in 2 areas: responsibility for preparing the initial budget document and control over the final budget product. Before discussing either of these areas it should be noted that both legislative and executive activities in drawing up the budget are

limited by the total amount of funds available for expenditure. States with generous resources may engage in imaginative, wide-ranging programs while those with limited funds must more narrowly define state activities. The major constitutional restrictions on revenues are found in provisions which set debt limitations on the amount of funds the state can borrow and in provisions which establish special funds earmarking tax revenues or other government receipts for particular projects. For further discussion of fiscal restrictions and other aspects of the budget, see Hawaii Constitutional Convention Studies 1978, Article VI: Taxation and Finance.

Budget Preparation

Three types of constitutional provisions touch upon executive relations with the legislature in compiling the initial budget. These provide for the designation of the agent responsible for drawing up the original budget, the frequency with which the budget must be presented, and the time span for preparing the first budget available to an incoming governor.

Initiation. Originally, initial responsibility for developing the state's budget lay with the legislature. However, deficiencies in the legislature's budget preparation process resulted in a fragmented budget with no orderly presentation or review of departmental appropriations and expenditures. Each department submitted its own appropriations bills and bargained individually with the legislature. This procedure led to public and legislative confusion in determining the total costs of government operations and hindered the development of a systematic plan clearly identifying the priorities in public spending.

To correct these problems, the states, with the federal Budget and Accounting Act of 1921 as a guide, shifted to lodging the formulation of the budget with the governors. Presently, this procedure is specified in the statutes or constitutions of 47 states, including Hawaii.[3] In 3 of the remaining states, the governor shares this power with some other agency (see Appendix D). The Hawaii Constitution states that the governor shall submit to the

legislature a "...plan of proposed fund expenditures and anticipated receipts of the State for the ensuing fiscal biennium...."[4]

Executive budget preparation offers the governor an opportunity to present a comprehensive overview of the state's needs and the resources by which the needs may be met. It promotes administrative cohesion by requiring separate legislative and executive budget hearings thereby discouraging coalitions between legislators and administrators. Moreover, by utilizing uniform standards in public administration and finance, the executive budget promotes integrity and efficiency in public service.

Although executive responsibility for preparing the initial budget document is widely accepted and does not appear to present a serious constitutional issue, the question has been raised as to whether legislative representatives should be permitted to attend the governor's budget hearings. The merits of this plan, as practiced in New York, were presented in the preparatory material for that state's constitutional convention.[5] Those who favored retaining the system pointed to its successful functioning and argued that the presence of legislative representatives facilitated consideration of the budget after its submission to the legislature. Opponents maintained that the system weakened gubernatorial control by encouraging departments to deal directly with the legislature and hindered an effective, independent legislative review of the governor's budget proposals.

Annual vs. Biennial Budget Systems. The frequency in budgeting controversy revolves around the merits of annual or biennial budget systems. The annual budget entails developing and enacting a budget for each fiscal year. The biennial system requires preparing a budget once every 2 years for a 2-year fiscal period. Twenty-one states use the biennial budget system (see Appendix E). Since the end of World War II, there has been a marked trend toward annual fiscal periods. Whereas in 1941 only 4 states used an annual budget system, today 29 have adopted this method. The type of budget system a state uses is related to the frequency of legislative sessions. With few exceptions, it can be said of the 50 states that annual and biennial legislative sessions mean respectively, annual and biennial budgets.

As a Territory, Hawaii had a biennial budgeting system. The delegates to the 1950 Hawaii Constitutional Convention, however, explicitly rejected carrying this practice over in the new constitution because of the difficulties in accurately estimating revenues and expenditures for a 2-year period.[6] This was changed again by the 1968 Hawaii Constitutional Convention back to a biennial budget. The delegates to the 1968 Convention believed that biennial budgeting would: (1) improve planning by enforcing a longer range view of government programs; (2) alleviate the administrative burden of almost perpetual involvement in the existing annual budgeting process; and (3) permit more intensive analysis of selected areas or programs by the legislature in alternate years.[7]

The delegates to the 1968 Hawaii Convention, however, did not adopt a straight-forward biennial budget. Instead, they adopted a variation allowing the governor to submit a supplemental budget bill in nonbudget years. Other variations that have been proposed have been to (1) make the biennial budget subject to annual review upon the governor's request; and (2) require the governor to submit a budget covering a 2-year fiscal period but restricting the legislature to appropriating funds for one fiscal year at a time.

The frequency with which the budget should be prepared appears to depend upon 2 considerations: the contest for supremacy between the legislature and the executive, and the effect upon the efficiency of government operations. These points are expressed in the following arguments for annual and biennial budget systems.

Favoring the Annual Budget

(1) The annual budget adds to the effectiveness of legislative policy-making by increasing the frequency with which the legislature may exercise its power to approve, modify, or deny proposals made by the governor.

(2) Annual review of revenues and expenditures broadens the opportunities for the legislature to examine the operations of state government and thus results in greater legislative scrutiny of the executive.

(3) A yearly budget-making process facilitates a close liaison between the executive and legislative branches, and consequently promotes harmony and efficiency in the overall functioning of state government.

(4) The annual budget more accurately reflects the actual needs of the departments since a biennial system requires estimates to be made up to 30 months prior to expenditure. This accuracy leads to greater flexibility in meeting needs and increased governmental savings in the long run.

Favoring the Biennial Budget

(1) Executive initiative in financial policy-making is enhanced by reducing the frequency with which the executive must submit its activities and proposals for legislative approval or rejection.

(2) Legislative scrutiny can be acquired in off-budget years through requests for departmental reports, and investigations and post audits by the legislative auditor.

(3) A 2-year fiscal period reduces the time and labor consumed in preparing the budget. This permits departmental personnel to expend more effort on their routine functions which results in increased efficiency and governmental savings.

(4) This system encourages long-term planning because the level of funding is assured.

Time Limitations. The usefulness of the budget as a policy-making tool for a newly elected governor is related to the governor's ability adequately to prepare the initial budget. This task is significantly affected by the time span between the governor's inauguration and the date at which the budget must be submitted to the legislature. The information available in the pertinent literature does not refer to specific recommended time periods nor suggest relevant criteria for establishing adequate periods for budget preparation. Consequently, the Hawaii provision can only be evaluated in terms of the following considerations:

(1) The time period provisions should allow the governor sufficient time to analyze and identify the state's major problems and prepare a budget responsive to those needs.

(2) The Hawaii Constitution provides that the term of office of the governor begins on the first Monday in December. The governor's budget is then submitted to the legislature no later than 20 days prior to the start of the session.[8] This permits a newly elected governor approximately 4 weeks from taking office to prepare a budget. The Gubernatorial Transition Act, however, allows the governor-elect to start on the budget and to make revisions as soon after the general election as the governor is able.[9] This provision then allows approximately an additional 4 weeks to work on the budget. For a comparison to other states, see Appendix E.

Executive Controls

Once the governor has prepared a budget and submitted it to the legislature, the principal constitutional power available for protecting the budget is the ability to strike and reduce items from appropriations measures. In addition, provisions on the preparation of the budget appropriation bill and its priority in legislative action add support to the executive budget system.

Preparation and Action on Budget Bills. The Hawaii Constitution, as a concomitant to proposed budgetary expenditures, requires the governor to "...submit bills to provide for such proposed expenditures and for any recommended additional revenues or borrowings by which the proposed expenditures are to be met".[10] It is argued that this kind of provision, which gives the governor responsibility not only for drafting the original budget appropriation bills but also for the financing thereof, is vital in maintaining the executive budget system. If the legislature initiated bills for the funding of budget appropriations, then many of the deficiencies in the legislative budget system, such as direct dealing between administrative agencies and legislative committees and inaccurate or incomplete appropriations measures, would reappear.

In Hawaii, there is a constitutional provision prohibiting action on legislatively originated appropriation bills, other than the legislative budget bill, prior to passage of the budget. It reads:[11]

> ...no appropriation bill, except bills recommended by the governor for immediate passage, or to cover the expenses of the legislature, shall be passed on final reading until the bill authorizing operating expenditures for the ensuing fiscal biennium, to be known as the general appropriations bill, shall have been transmitted to the governor.

The important effect of this statement is that it gives the governor's budget first call on state revenues. Moreover, it encourages the legislature to act promptly on requests. Finally, this procedure contributes to an integrated financial structure because, in disposing of the governor's budget first, the legislature is required to review the state's fiscal condition as a whole before turning to specific interests.

Those who favor legislative initiative in budgeting oppose this provision because it tends to prevent the legislature from having a meaningful role. The legislature's long-recognized power of the purse cannot be effectively exercised under an arrangement which permits it only to react to the governor's decisions and to make minor changes.

Strike and Reduce Powers. The legislature may disallow, reduce, increase, or add items to the governor's general appropriation bills. Moreover, individual legislators may introduce at each session as many special appropriation bills as they choose. Therefore, the power to strike selectively (item veto) certain expenditures from appropriations bills is a useful tool which the governor may apply in efforts to keep the state's budget in harmony with fiscal policy as well as the state's prospective income. The power to strike appropriations items is a widely recognized gubernatorial budget control device and is found in 44 state constitutions, including Hawaii,[12] though in Hawaii, the governor can only item-veto measures pertaining to the executive branch. The item-veto constitutes substantial protection because, generally, legislatures as in Hawaii must assemble a two-thirds majority in order to override an item veto. The item veto is strongest in Alaska where the legislature is required to muster a three-fourths majority to override the item veto.

A less commonly found control mechanism is the power to reduce items in appropriations bills. The primary purpose in granting this authority to the governor is to provide greater flexibility in structuring the state's fiscal program. Thus, where the governor supports an item, but considers the appropriations excessive, the governor is able to reduce rather than entirely eliminate the designated funds. There are 8 states which made provision for the reducing power--Alaska, California, Hawaii, Massachusetts, Missouri, New Jersey, Pennsylvania, and Tennessee.

Those who oppose gubernatorial authority to reduce appropriations contend that it leads to legislative irresponsibility because the legislature is encouraged to appropriate extravagant amounts to favored programs with the knowledge that the governor will reduce the amount if necessary. Furthermore, this power enables the governor effectively to eliminate or retard certain programs by reducing funds below specified operational levels without assuming the responsibility for such actions.

In Hawaii, the delegates to the 1950 Hawaii Constitutional Convention, concerned about possible abuse of this power, explicitly stated that the reducing power could not be used to impair the effective administration of the affected programs.[13] It was not debated in the 1968 Constitutional Convention.

THE VETO POWER

The veto power, in the first instance, is a manifestation of the American political philosophy that constitutional government can only be achieved where power is checked. Thus, the gubernatorial veto is an important element in the checks and balances system operating between the 3 branches of government. The veto serves a second, more politically expedient purpose, as an instrument whereby the governor can influence the outcome of particular pieces of legislation. In some cases, where the legislative majority required to override a veto is high, legislation to which the governor is opposed can be effectively killed. In addition, the governor may modify the scope and purpose of legislation by publicly or informally threatening to veto a bill unless it is amended to conform to the governor's policies.

Little current research is available to indicate the effectiveness of the gubernatorial veto as a legislative tool. It is worth noting that North Carolina, alone among the states, does not provide the executive veto and yet this has not, apparently, reduced the governor's leadership capacity. On the other hand, the wide constitutional recognition given the veto power indicates that it is commonly accepted as an imposing gubernatorial weapon. In Texas, for instance, of 936 bills vetoed by the governor since 1876, only 25 have been overridden,[14] and in Illinois, of over 3,600 bills vetoed since 1870, only 4 have been overridden.[15] Similar findings hold true for Hawaii, where, since statehood, the veto has never been overridden by the legislature.[16]

Four types of constitutional provisions pertain to the traditional veto power: (1) time allowed for executive consideration of bills, (2) pocket veto, (3) legislative majority necessary to override a veto, and (4) post-adjournment sessions to consider vetoed bills. In addition, several states have expanded the governor's veto power by adopting either or both the partial veto and the conditional veto.

Time

The time available to the governor for reviewing legislation affects the governor's ability to take informed action on each measure passed. The Hawaii governor presently has 10 days to consider bills presented 10 or more days before the adjournment of the legislature sine die, and 45 days for bills presented less than 10 days before such adjournment or presented after adjournment.[17] Bills which are neither signed nor returned by the governor within these periods automatically become law. The longer period provided for bills received in the closing days of the session and after adjournment is made in recognition that the vast bulk of legislative measures are usually passed at the end of session. Only 4 states--Alaska, 15 days; California, 12 days; Illinois, 60 days; and Michigan, 14 days--permit more time for in-session review, and only Illinois with 90 days grants more time after adjournment (see Appendix F).

Some observers of state affairs suggest that the period for gubernatorial consideration should be increased. The time available for review is particularly important in states like Hawaii, where bills not acted upon become law. As the complexity and volume of legislation grow, extended periods are needed, it is argued, to enable the governor to consult with administrative departments or to seek legal research and opinions from the attorney general. Furthermore, members of the public would have additional opportunity to express their opinions.

Pocket Veto

When the governor neither signs nor vetoes a bill and the bill dies, then it has been pocket vetoed. In Hawaii, the governor can exercise the pocket veto only when the legislature reconvenes in special session to consider post-adjournment vetoes. At this time, if the legislature chooses not to override the veto and instead alters the bill, then the bill dies if the governor fails to sign it within the required time.[18]

Use of the pocket veto appears to be on the decline. Only 12 states presently provide for the pocket veto.[19] The principal objection to this practice is that it does not require the governor to state objections and therefore obscures gubernatorial responsibility for killing legislation.

Legislative Majorities to Override

The number of votes required to override the veto is one measure of the governor's legislative influence. Where the number is approximately a simple majority, the governor's veto becomes merely an advisory opinion and does not constitute a substantial check on legislative discretion. As more rigid extraordinary majority requirements are imposed, the veto takes on a more persuasive and, in some cases, controlling effect.

All states, except North Carolina which does not provide for the executive veto, have constitutional provisions which specify the requirements for overriding the veto (see Appendix F). Twenty-two states, including Hawaii, require a two-thirds vote of the elected membership to override, while 14 others stipulate two-thirds of the legislators present. In the remaining states, the veto may be overridden by a three-fifths or simple majority of the elected members or by three-fifths of the legislative quorum present.

Some commentators, concerned by the small number of vetoes that have been overridden, suggest relaxing the requirements in order to obtain a better balance in the executive-legislative relationship. Professor Bennet M. Rich has said: "The trend toward a strong veto may now be overreaching the bounds of reasonableness.... The veto is now uncomfortably close to being absolute in some states, hardly a democratic development."[20] The committee for economic development recommends two-thirds of those present and voting or a three-fifths majority of the elected membership to override.[21] This is less stringent than the standard currently employed in Hawaii.

Those who favor rigid requirements contend that the governor is in the best position to assess the merits of a bill and its relationship to overall state policies and thus, the veto should carry great weight. If requirements were changed from those elected to those present, then a minority of the legislators could control legislative decisions in this procedure. The infrequency of the use of the veto and the failure of the legislature to reconvene to consider post-adjournment vetoes in Hawaii are factors which merit consideration in evaluating the rigidity of Hawaii's majority requirements.

Post-Adjournment Veto Sessions

If the legislature meets for a limited period and is unable to reconvene itself in special session, then post-adjournment veto decisions become final. The desirability of this practice has been questioned as giving an unfair advantage to the governor. Three proposals have been suggested to alleviate this situation.

The Model State Constitution solves the problem by providing for continuous legislative sessions interrupted by recesses. Since a recessed legislature can be recalled by its leaders, there is ample opportunity to reconsider disapproved out-of-session bills at the legislature's discretion. A second method is to provide limited session legislatures with the general power to reconvene in special session. The third approach, taken by Connecticut, Hawaii, Louisiana, Missouri, and Washington, is to authorize the legislature to reconvene itself in special session for the sole purpose of considering post-adjournment vetoes. The Hawaii Constitution enables the legislature, at its option, to convene on the forty-fifth day after adjournment to consider bills to which the governor has objected.[22] The legislature utilized this provision in 1974, meeting in special session to amend a vetoed bill to meet the governor's objections.

Conditional Veto (Executive Amendment)

The conditional veto permits the return of a bill unsigned to the house of origin with suggestions for changes which would make the bill acceptable to the governor. The legislature has the choice of amending the bill in the manner proposed by the governor or forcing the original bill into law by some extra-ordinary majority. Proponents of the conditional veto maintain that use of the executive veto is often based on the governor's objection only to a part or parts of the bill and that through some formal means of communication, such objections may be resolved. Furthermore, they claim that this procedure promotes a closer working relationship between the governor and the legislature but retains clear accountability for the actions of each branch.

At least 2 states--Illinois and Massachusetts--have provisions concerning the conditional veto, and some states use it on an informal basis. One report has given the following evaluation of the conditional veto:[23]

> Experience with this device in the few states which utilize it has been generally favorable. In states with the executive amendment, governors tend to use it considerably more often than the regular veto.

Opponents to the conditional veto argue that its effect is just as likely to be achieved through the informal give and take between the governor and the legislature. The end result of this provision would be to enlarge the governor's authority in an area where already very strong.

Partial Veto

The partial veto consists of an item veto over nonappropriation bills. Washington's provision is illustrative:[24]

> ...If any bill presented to the Governor contains several sections or items, he may object to one or more section or items, while approving other portions of the bill.

Usually, the partial veto is final unless overridden by the legislature in the same manner as a veto of a complete bill.

The partial veto is recommended as increasing the alternatives available to the governor in acting upon legislation which the governor only partially favors and as making it possible to proceed with activities generally approved of by the governor. Those who oppose the procedure argue that it leads to a violation of the separation of powers by diffusing responsibility between the executive and legislative branches. Presently, at least 2 states, Oregon and Washington, employ some form of the partial veto.

LEGISLATIVE SESSIONS

The governor exercises 3 principal powers which affect legislative sessions. They are: (1) the convening of the legislature in special session, (2) determining the agenda of a special session, and (3) extending the duration of regular and special sessions. The major controversy in this area is whether these powers should be shared with the legislature or exercised by the governor alone.

State constitutions make provision for special sessions in order to meet emergencies, to allow for senate confirmation of appointments and removals, to initiate impeachment proceedings, and to finish legislative business not completed or dealt with during the regular legislative session. In the majority of states, the practice is to vest in the governor alone the power to convene the legislature in special session (see Appendix G). However, in 12 states, the governor must call a special session upon petition by a constitutionally specified number of legislators, and in another 14 states, including Hawaii, the legislature may convene in special session under its own authority.

Customarily, in the call for a special session, the governor designates particular matters to be considered by the legislature. The special session is restricted to these concerns in 17 of the states; in the remainder, the legislature may initiate and consider additional business (see Appendix G). The Hawaii Constitution is silent on this issue, but in practice both the legislature and the governor share in determining the agenda for special sessions.

The power to extend the length of either a regular or special session is uncommon among the states. Only 9 states provide for the extension of a regular session and 2 for the special session.[25] In some states, the legislature alone may extend the session. In others, the power is shared with the governor.

Before 1968, the power of convening the legislature in special session and extending the duration of regular and special sessions was exercised by the governor alone. In the 1968 Constitutional Convention, however, this was changed to allow both the governor and the presiding officers of both houses, upon the request of two-thirds of the members, this power.

For each of the 3 powers, the arguments for and against sharing them between the legislature and the governor or depositing them solely with the governor are similar. Briefly stated, they are as follows:[26]

Vesting in the Governor Alone

(1) Since the governor functions in office on a year-round basis and is supported by a large, well-staffed bureaucracy, the governor is in the best position to determine when and what problems require a special session and if the state's business warrants the extension of any session.

(2) By authorizing only the governor to exercise the powers, the legislature is compelled to complete its work promptly and efficiently during the regular session.

(3) With these powers, the governor's role as legislative leader is enhanced by offering the governor significant discretion in determining if and when certain policy questions will be dealt with.

Sharing with the Legislature

(1) Constitutionally, the legislature is the policy-making branch of government and as such should be able to decide when certain problems require legislative attention.

(2) The increased responsibility exhibited by state legislatures in the last several decades has largely removed any basis for fears that these powers will be abused.

(3) Many prominent organizations in the field of state government such as the National Municipal League recommend sharing the 3 powers between the 2 branches.

Finally, it should be noted that constitutional specifications on the length and frequency of regular legislative sessions have important implications for the legislative leadership role of the governor. The numerous and complex problems presented by mid-twentieth century society require protracted examination by expert personnel for resolution. Where the legislature meets infrequently for brief periods of time, considerable policy-making responsibility is passed, by default, to the executive branch. On the other hand, a legislature which meets in lengthy or year-round session is in a better position to develop staff and expertise of its own and thus retain major policy-making authority. For a further discussion on legislative sessions, see the Hawaii Constitutional Convention Studies 1978, Article III: The Legislature.

LEGISLATIVE VACANCIES

The Model State Constitution recommends that the procedure for filling legislative vacancies be provided by statute. Hawaii follows this procedure by requiring the governor to fill unexpired terms of house members and stipulates that the appointees must be from the same political party as their predecessors.[27] In the case of senate members, vacancies are filled either by the governor or by election depending upon when the vacancy occurs.[28]

Gubernatorial appointment enhances the governor's influence in the legislature by enabling the governor to alter the composition of voting blocks. This is particularly important where party or factional division is narrow. Moreover, this method is less costly and time consuming than special elections. The primary objection to appointment by the governor is that it violates the principle of separation of powers.

SUNSET LAW

Sunset laws are a response, in part, to the proliferation of government agencies and their tendency to escape oversight by elected officials in the legislative and executive branches of government. Once established, these government agencies and their charters often have tended to acquire a "permanent" status, without regard for the conditions that originally gave rise to their establishment. Their membership is often beyond the effective control of elected officials, and efforts to force their modernization, or even to review their performance and impact have typically proven to be difficult. Too often, regulatory agencies require a combination of autonomy and authority inconsistent with democratic principles as well as a capacity for self-perpetuation incompatible with principles of accountability. The function of sunset laws is to break this cycle by terminating the agency unless the legislature takes affirmative action to reauthorize it.

In Colorado, where sunset legislation was initiated, all of the state's regulatory agencies are subject to the sunset act. The Colorado sunset law

automatically terminates each regulatory agency every 6 years. Automatic termination involves a legislative performance audit, which, in turn, is followed by public hearings.

Based on the information assembled from both the performance audit and the public hearings, the legislature is then required to take one of 3 actions concerning the specific agency:

(1) It may allow the agency to continue in its existing form until the next "termination" is scheduled. This decision is accomplished by re-enactment of the original enabling legislation.

(2) It may allow the agency to continue, but with significant changes. This decision is accomplished with new enabling legislation that reflects the desired modifications in the agency's structure, procedures, mandate, or bureaucratic location.

(3) It may choose to let the agency, in fact, terminate. Termination automatically occurs when the legislature initiates no action at all on the agency.

When the legislature allows an agency to terminate, the sunset law provides a one-year "grace" period after the scheduled "termination" date. This procedure is designed to eliminate all questions regarding the legitimacy of agency activities during that year, to facilitate an orderly shut-down of operations, and to permit a transfer of responsibilities when it is appropriate. The "grace" period also provides a full year for the legislature to reconsider its decision to allow the agency to expire and to minimize the danger of arbitrary termination of a politically vulnerable agency, such as a civil rights commission or a commission on the status of women.

The sunset system puts the burden of proof on the agency to demonstrate its worth, rather than on those who question the agency's value. The typical pattern--where many government agencies perpetuate themselves by virtue of their existence and not by demonstrated need--is reversed.

Sunset laws need not be limited to governmental agencies, however. The concept of the sunset law can be applied to statutes, administrative rules and regulations, and tax programs and exemptions. Although no state has enacted a sunset law to include statutes, rules and regulations, or taxes, it is a suggestion that may be considered in the future.

While the sunset law has enjoyed support such as in Colorado where it is in effect, it has also met some opposition. Opponents point to these potential problems in the sunset law.

(1) Well-organized and well-financed lobbying efforts by the agencies may continue to dominate the regulatory process if sufficient public input is not secured. The countervailing power of public input is required to permit the legislature to reach objective and balanced decisions.[29]

(2) Some agencies might find themselves politically vulnerable if they have "stepped on toes" or have aggressively pursued their charters in the public interest.[30]

(3) Because sunset laws are statutory laws rather than constitutional, it is possible that an agency could be re-established for more than 6 years since new enabling legislation could be written in such a way as to circumvent the "old" sunset provision.[31]

(4) If substantive legislative committees are assigned review responsibilities, the committee may find it difficult to allow termination since close relationships often are established between committee members and staff and the agency.[32]

(5) Agency time and cost spent on review may be increased.[33]

(6) Legislative workload may be increased.[34]

To date, 11 states including Hawaii have enacted sunset laws, and similar proposals are pending in nearly all states. Also, Congress is considering sunset legislation, the proposed Government Economy and Spending Reform Act of 1976.

In Hawaii, the proposal passed by the 1977 legislature provides for the review of the regulatory boards and commissions only.[35] For further discussion of sunset laws, see the Hawaii Constitutional Convention Studies 1978, Article III: The Legislature.

Chapter 5
THE OFFICE OF GOVERNOR

Several specific qualifications and conditions for becoming governor and remaining in office are set forth in Article IV of Hawaii's Constitution. These also apply in the same way and manner to the lieutenant governor and include such matters as time of election, length of term, age, residence, compensation, and removal from office. A number of these specifications have been matters of contention in the past, and some remain so even today. These specifications presently are not generally considered as involving issues of very great magnitude, at least not in Hawaii. Nevertheless, there are possible differences of opinions as to what the proper or most appropriate specifications should be, and many states have different arrangements. The more significant differences in arrangements are identified and the basic issues of greater general concern are discussed in the sections which follow to provide a basis for comparison and evaluation of Hawaii's requirements with those of the other 49 states.

Time of Election

Fourteen states elect their governors in even-numbered years which coincide with presidential elections. These include all 4 of the states which elect their governors for 2-year terms[1] and 10 of the states which elect their governors for 4-year terms.[2] Four states--Kentucky, Mississippi, New Jersey, and Virginia--elect their governors for 4-year terms in odd years while 32 states, including Hawaii, elect their governors for 4-year terms in even, nonpresidential year elections.[3]

The fact that Hawaii elects its governor in an even year which does not coincide with presidential elections may be attributed more to chance than to design. The constitutional determination of the time for election of the governor is not derived from a single provision but from the application of several provisions, none of which specifically provides for the holding of gubernatorial elections in an even, nonpresidential year. Article IV, section 1, provides that

the governor shall be elected at a general election while Article II, section 5, requires that general elections be held in even years. However, upon obtaining statehood, Hawaii elected its first state governor in 1959 for a term beginning with his election and ending in December following the second general election pursuant to the requirements of sections 10, 11, 12, and 13 of Article XVI relating to transitional provisions. Since another general election was held in 1960, the term of the first governor expired in December, 1962. This required the holding of an election for governor in November, 1962, an even year which did not coincide with the presidential elections. Since the term of governor is also set at 4 years by Article IV, section 1, this meant that gubernatorial elections would be required every 4 years thereafter and thus by pure chance the elections for governor fall in those even years which do not coincide with presidential elections.

The basic issues concerning the time when gubernatorial elections should be held revolve around the questions of whether gubernatorial elections should be separated from presidential elections and similarly, whether local elections should be separated from gubernatorial elections. There are 2 primary methods whereby either may be accomplished. One method is to provide for gubernatorial, or statewide, elections in even years which do not coincide with presidential elections. The other method is to provide for gubernatorial elections in odd-numbered years. Local elections may then be held at any time which does not coincide with either national or statewide elections if such arrangements are thought to be desirable.

Even, Nonpresidential Year Elections. Arguments for even, nonpresidential year gubernatorial elections stress the need to keep state and national issues separate, to ensure that the governor will be elected on the basis of a personal stand on state issues rather than by "riding into office on presidential coat tails" and that state issues will not become obscured by national issues.[4] Such separation, it is claimed, will permit state issues to be weighed more strongly in the voters' minds. Thus, the governor's election is less likely to be influenced by the glamour of a presidential candidate or by objections to the national administration.[5] Another argument sometimes advanced for even, nonpresidential year elections is that they also keep political parties alive between presidential elections.[6]

The primary argument against even, nonpresidential year gubernatorial elections is that voter turnout is smaller for state elections than it is for presidential elections.[7] Another argument points out that national influences are not entirely absent because elections for Congressional offices are held concurrently with gubernatorial elections in such years. For a further discussion of voter turnout in Hawaii and the rest of the states, see Hawaii Constitutional Convention Studies 1978, Article II: Suffrage and Elections.

Odd-Numbered Year Elections. The arguments presented above for and against even, nonpresidential year gubernatorial elections are primarily concerned with the exertion of national influences on gubernatorial elections. Another consideration as to the governor's time of election relates to state-local relations in which arguments for and against odd-year gubernatorial elections are advanced.

The arguments for odd-year gubernatorial elections cite not only the need for separation of gubernatorial elections from presidential or national elections but also the need for separation of statewide elections from local elections. Those who feel that state and local elections should be separated claim that the governor's election too heavily obscures local and personal considerations just as presidential elections tend to overshadow gubernatorial elections. Thus, if the election of the governor is shifted to a sequence of odd-numbered years and local elections are held in alternate odd-numbered years, this would emphasize the separate weighing of state and local considerations and the relative competence of each candidate by voters.[8]

Arguments against odd-year gubernatorial elections cite the additional expenses incurred in holding off-year elections and the tendency for voter turnout to be smaller in off-year elections.[9] Furthermore, it is claimed that the holding of gubernatorial and statewide elections in a sequence of odd-numbered years, local elections in alternate odd-numbered years, and national elections in even-numbered years would impose a tremendous burden on government, political parties, and the voting public with regard to their respective roles in the election process due to the sheer frequency of elections.

Term of Office

The determination of the ultimate length of time that the governor holds office involves 2 political and 2 mechanical considerations. The political considerations would require that public officials be frequently called to account by the electorate through the electoral process but would also recognize that an official cannot render the official's best service if too much time is spent in campaigning. The mechanical considerations involve setting the length of each term and the number of terms a governor may serve.[10]

Length of Term. The current issue concerning the length of a governor's term is limited mostly to discussions of whether the governor should have a 2- or a 4-year term (see Appendix H).

Many of the early state constitutions provided for a one-year term of office for the governor. Since that time, however, there has been a trend towards increasing the length of a governor's term. At the turn of the century, 19 states provided the governor with a 4-year term. Today, 46 states, including Hawaii, provide the governor with a 4-year term, and 4 states provide for a 2-year term.[11] One authority suggests that the increase in the length of the governor's term was a result of the increasing cost, inconvenience, and burden on the community of annual elections; the excessive instability which resulted from annual rotation in office; and the influence of the U.S. Constitution which provides the President with a 4-year term.[12]

Arguments for a 4-year term include the following:

(1) It allows an incoming governor sufficient time to become familiar with the administration and the governmental process so that the governor can effectively formulate and carry out the governor's policies and programs.

(2) It permits the governor to concentrate the energies of the office on executive duties rather than on electioneering while in office.

(3) It is in harmony with the principle of consolidated elections and the use of the short ballot to simplify the task of the voter.

(4) It provides voters a longer, more adequate period in which to evaluate the qualifications, programs, and policies of the governor before considering reelection.

(5) Frequent elections (e.g., every 2 years) may result in the citizens becoming lethargic toward the office and the candidates.

(6) It reduces the waste and extravagance in time and money which is inevitable with frequent changes of administration.

Those who oppose a 4-year term cite the following:

(1) More frequent elections make the governor more responsible to the electorate by requiring the governor to answer to them at frequent intervals.

(2) Power is less likely to be concentrated in the hands of one person if more frequent elections are held.

(3) Shorter terms allow the electorate to remove poor executives at more timely intervals.

There appears to be no substantial evidence which indicates that a 2- or 4-year term is more ideal than a 3-, 4-, or 6-year term. The controversy seems to be mainly one of practicality and preferences. The 4-year term is an arbitrary period of time which publicists and students of state government advocate as being appropriate in order to provide the governor sufficient time to put legislative and administrative programs and policies into effect.[13] That this view is continuing to gain in popularity is readily evidenced by the growing number of states providing for 4-year terms.

Limitations on the Number of Terms Served. While only 2 states, Delaware and Missouri, still place a limit on the number of terms a governor may serve, 27 states now limit the number of consecutive terms a governor may serve. All of these 27 states provide for 4-year terms (see Appendix H). Hawaii and the rest of the states do not set a limit; Hawaii's Constitutional Convention rejected a limit on gubernatorial terms in 1968.

Those who advocate unlimited terms for governors state that:

(1) The people should be able to retain a governor if they feel the governor is the most qualified. To deprive the people of such a right denies them the service and experience of able public servants whom they know the most about and more importantly, denies them the right to elect a person of their own choice.[14]

(2) Knowledge of the administrative machinery is so complex that a governor should have at least a 4-year term and unlimited succession to develop and implement programs to which the governor is committed.[15]

(3) The powerful political machines built by bosses and special interests are not weakened by constitutional limitations on re-eligibility whereas the political power of the people is more easily fragmentized. If the governor has a sufficiently long term and can be reelected, there is more opportunity for the governor to organize public support so that the governor may win succession to office by the governor's own right.[16]

(4) Limiting the number of terms results in such periodically heavy turnovers of administrative executives appointed by the governor that there is no continuity in administration; being the executive of an administrative department is less attractive; and the incentive for doing a good administrative job is lessened.[17]

(5) Numerous other checks upon the governor exist in the form of legislative and judicial controls, the 2-party system, the constitution, public opinion, and desire for reelection.[18]

(6) Limited terms diminish a governor's political leadership and effectiveness near the end of the governor's allotted time because party leaders, legislators, and the public are considering who the next governor will be.[19]

Unlimited gubernatorial elections are opposed because:

(1) There is a fear that unlimited reelection provides the governor with the opportunity to build a political machine which the governor may use to perpetuate reelection. The governor's continuance in office would thus allow the governor to amass so much political power that the governor might create a dictatorship.[20]

(2) Providing a constitutional limitation on gubernatorial reelection makes the office available to new individuals with

new ideas more often, and it is more likely to keep the governor responsive to the wishes of the people.[21]

(3) The governor in fostering self-perpetuation will usually do what is necessary to win the next election rather than what is right.[22]

(4) Political experience indicates that it is often difficult to defeat an incumbent governor who is seeking reelection regardless of qualifications.[23]

The applicability of the arguments presented above by either side would appear to depend to a large extent upon the political environment existing within a given state. Hawaii's lack of historical experience with its unlimited gubernatorial term makes it difficult at best to assess such arguments in the light of the somewhat dynamic political environment which has existed since statehood.

Qualifications

The purpose of constitutionally specifying certain qualifications for the office of governor and lieutenant governor, with respect to age, citizenship, and residency is presumably to assure maturity, sufficient concern with, and interest in, the affairs of the state, and in many cases, to exclude naturalized or new citizens.[24] The more recent state constitutions all follow the traditional pattern of requiring that the governor meet certain specific minimum qualifications.

The Hawaii Constitution provides that the governor and lieutenant governor be at least 30 years old and a resident of Hawaii for 5 years prior to election.

Age. The Model State Constitution[25] suggests establishment of a minimum age for the governorship but makes no specific recommendation as to what the age should be. The most common practice, followed by 34 of the states, is to establish a minimum age of 30 years. Six states--Arizona, Illinois, Louisiana, Minnesota, Montana, and Nevada--prescribe an age limit of 25. Only one state requires more than 30 years of age--Oklahoma specifies 31 years.

No great controversy was encountered in the 1950 Constitutional Convention in the setting of the minimum age requirement for the governorship. The convention merely carried over the same age requirement, 35 years, established for the territorial governor in section 66 of the Organic Act.[26] The 1968 Constitutional Convention, however, lowered the minimum age for governorship to 30. This age qualification for governor was still much higher than that for registered voters, but the committee on executive felt, nevertheless, "recognizing that a selection of any age is arbitrary, your Committee established the age of thirty (30) as the minimum age qualification, believing that it is the most reasonable".[27]

With respect to age qualifications, one view holds that the electorate should not be precluded from the possibility of selecting a younger person who, like many great individuals of the past, achieves a higher degree of maturity and excellence at an early age. The other view holds that age strengthens experience and judgment, characteristics which are of considerable value in the governorship. An argument which is sometimes voiced is that anyone old enough to vote for governor should be given the opportunity to hold the office.[28] Changing Hawaii's requirement for governor to permit a "qualified voter" to hold the office would mean that the individual would have to be only 18 years old and a resident of the state. None of the states currently provides for this liberal a qualification.

U.S. Citizenship. Thirty-six of the 50 states require that the governor be a United States citizen while the remainder do not. Twenty-one states merely stipulate that citizenship is required without specifying any number of years. One state requires one month of United States citizenship; 5 states require 5 years; one state requires 7 years; 2 states require 10 years; one state requires 12 years; 3 states require 15 years; and 2 states require 20 years.[29] The Model State Constitution requires only that the governor be a citizen.[30]

Hawaii originally had a 20-year citizenship requirement, although it is not evident why this was established. The Proceedings of the Constitutional Convention of 1950 contain no evidence of any debate on the floor regarding it, and the committee reports merely submitted it for acceptance without discussion.

The 1968 Constitutional Convention, believing that the 20-year citizenship requirement discriminated against the naturalized citizen, deleted all citizenship requirements.[31]

State Residence. The most common residence requirement, 5 years, is stipulated by 18 states, including Hawaii. The residence requirements in other states vary from one month to 10 years. The members of the Hawaii 1950 Constitutional Convention had varying opinions as to what the residence requirement should be but after some discussion, came to agreement on a 5-year requirement primarily on the basis that it was the most common among the other states at that time.[32] The 1968 Constitutional Convention did not change the residence requirement for governor.

A possible issue involves the question of whether to retain the present residence requirement or to lower it. It can be argued that a particular state's governmental affairs are too complex in this day and age to be understood in less than 5 years. On the other hand, the argument can be made that the residence requirement should be eliminated to correspond to voter qualification. The basis for this argument is that if a person is qualified to vote, the person should be able to run for the office. Additionally, it is claimed that governmental affairs within the United States do not differ so radically that experience in one state cannot be applied to another state.[33]

Dual Employment. The Hawaii Constitution prohibits the governor from holding any other office or employment under the State or the United States while the person is in office. Almost one-half of the states have similar constitutional restrictions on dual employment. The members of the 1950 Constitutional Convention, in providing for this restriction, stated:[34]

> The provision restraining the Governor from holding any other office or employment, of profit, is found in the constitution of 16 states. The Governor should not be a member of the State Legislature, an employee of the State or Federal Government, etc., while serving as Governor and should devote his entire attention to the duties of his office.

> Under the provision set forth in the last paragraph of Section 1, a person holding any other office under the State or United States could seek election to the office of Governor but would be required to resign such other office before qualifying as Governor. Conversely, the Governor would be eligible to seek other office or employment under the State or United States but would cease to be Governor on engaging in the duties of the other office or employment.

It appears that while serving a term of office the governor may be a candidate for another state or federal office. If the governor wins, resignation from office is not necessary until the time to assume the newly elected office occurs; and, if the governor loses, the position of governor may be retained.

The 1968 Constitutional Convention did not discuss the governor being a candidate for another state, local, or federal office. Since 1968, however, there has been controversy over other elective officials who midway through their term of office, seek offices other than the one they were elected for.

In 1972, for example, a bill requiring elected officials to resign before seeking higher office was introduced in the Hawaii State Senate.[35] The House deleted the requirement because it felt the electorate would be denied the choice of many competent and experienced incumbent officials.[36] Although similar bills have been introduced since 1972, none have passed either house.

Compensation. Only 6 state constitutions, including Hawaii's, contain a provision which stipulates that the governor shall receive a specific minimum or maximum salary. This indicates some consensus with the oft-quoted statement that, "[t]he establishment of the governor's salary is properly a legislative rather than a constitutional determination." In Maryland, a constitutional provision essentially fixes the governor's salary and approximately two-fifths of the states prohibit the legislature from raising the governor's salary while the governor is in office. In Hawaii, the governor's salary cannot be increased or decreased while the governor is in office unless it is by a general law applying to all salaried officers of the State. The Constitution also stipulates that the salary of the governor and lieutenant governor shall not be less than $33,500 and $27,500, respectively.[37] These figures were raised in the 1968 Constitutional Convention from $18,000 and $12,000, respectively. The salaries

of the governor and lieutenant governor at present are $50,000 and $45,000, respectively. The salary of Hawaii's governor is presently exceeded by that of the governors of 4 other states, while the lieutenant governor's salary is exceeded only by that of New York (see Appendix I).

Generally, the discussions on constitutional provisions providing for the compensation of the governor and lieutenant governor center around the following considerations:

(1) Providing that the incumbent's salary shall not be reduced in order to protect the governor from unreasonable domination by the legislature. Conversely, also providing that the incumbent's salary shall not be increased to preclude "horse-trading" practices or the purchase of favors.

(2) Insuring the provision of an adequate salary. Because the rigidity of stipulating a specific salary in the constitution makes this practice undesirable, the more common practice is to provide a salary which may not be reduced by the legislature. Except for this restriction, the legislature is generally granted the authority to fix the salary of the governor. This has appeared to work well in Hawaii, at least, for there does not appear to be any gubernatorial problem due to the lack of an adequate salary.

Succession to the Governorship

Providing for succession to the governorship involves 2 basic considerations. One is concerned with providing for a successor, or line of succession, to the governorship in case of a vacancy; the other is concerned with providing adequate procedures for the first successor to the governorship to assume the role of chief executive without undue delay when the governor's inability to discharge the powers and duties of the office obstructs or hinders the necessary conduct of state affairs. Inherent in the latter is the consideration of when and under what conditions should a governor's temporary absence or disability be subject to inquiry and determination for the purpose of establishing gubernatorial "inability". From this is derived the need to provide for the establishment of procedures for defining and determining "absence" and "disability". Thus, the discussion which follows will deal first with issues

involved in providing for a successor to the governor in case of a vacancy, then with the issues involved in providing for the absence and the disability of the governor. The 1968 Constitutional Convention did not consider proposals regarding succession.

Succession upon Vacancy.[38] The lieutenant governor is designated as the successor to the governor in all 42 states with a lieutenant governor. In the 8 states without lieutenant governors, succession falls first to the secretary of state in Arizona, Oregon, and Wyoming and to the president of the senate in Maine, New Hampshire, New Jersey, Tennessee, and West Virginia. Nineteen states provide that the president pro tem of the senate shall succeed to the office of the lieutenant governor.[39]

The Hawaii Constitution provides that the lieutenant governor shall become governor when the office of the governor is vacant. It also provides that the line of succession thereafter shall be as provided by law.[40] Accordingly, a statute has been enacted providing for succession by the president of the senate, the speaker of the house of representatives, and cabinet officers in rank order successively.[41] Thus, Hawaii follows along the line of many states in naming as successor the lieutenant governor, followed by the president of the senate.

Arguments for succession by the lieutenant governor point to the common popularity of this arrangement among the states; the fact that the lieutenant governor is selected by popular election on the same statewide basis as the governor; and the close relationship between the lieutenant governor and the governor in being elected together. On the other hand, it has been pointed out that the main weakness of such an arrangement lies in the fact that the lieutenant governor's role often may not be an active one and that the lieutenant governor does not always run for election as a single officer,[42] e.g., in the case where the governor and lieutenant governor are elected on a joint ballot.

An alternative to succession by the lieutenant governor would be to provide for succession by the president of the senate or the speaker of the house of representatives. Those who support such an arrangement hold that it

is more likely to provide a top caliber successor than does the lieutenant governorship and that it also may reflect more recent electoral sentiment if the legislature is elected every 2 years. They further state that a legislative leader is apt to be more involved, more aware, and more knowledgeable about the affairs of the state and hence better equipped for succession.

Those who oppose such legislative succession question the desirability of having a change in the party affiliation of the governor which is possible if the senatorial majority is of a different party. They also question the advisability of having as a successor a legislator elected from a single district which represents only a small segment of the state's population rather than an official elected on a statewide basis. A related argument states that the selection of statewide and local officials by voters is often based on different requirements and that a voter electing a person to the senate would not necessarily elect the same person to the governorship. Finally, there is cited the danger of placing a higher value on factional legislative loyalties.

Gubernatorial Absence.[43] State constitutional provisions dealing with gubernatorial absence and succession continue to be embroiled in conflict because of the lack of any constitutional definition of absence, or because of antiquity or ambiguity in language defining absence. Consequently, interpretations of what constitutes "absence" in specific instances have frequently been left to the courts. It appears that the conflict to be reconciled requires the balancing, "between the citizen's right to have, at every moment, an official ready, willing and able to fulfill all duties and powers entrusted that office by the electorate...[and the] citizen's equal right to realize the unintruded policies of the individual they placed in that office".[44]

Absence vs. Presence. There are 2 opposed views which define absence. One view considers a governor to be absent when the governor physically leaves the state for any purpose or for any period of time. The other view declares a governor to be absent when such absence will injuriously affect the public interest.[45]

Supporters of the first view contend that the strict interpretation of gubernatorial "absence from the state" is required because the framers of such constitutional provisions and the people of the state who adopted the constitutions believed that in times of absence of the governor from the state, regardless of the period of time, the successor to the governor should assume the constitutional functions of the governor. In an Oklahoma case involving out-of-state absence, the court held that such an interpretation is "supported by reason, common sense, public policy, known political truths, and the contemporaneous and practical construction of the respective departments of our state government, and is conformable to the history of every state in the Union".[46]

Supporters of the latter view, however, contend that in the case of a governor's absence from the state, a doctrine of effective absence, one which bases temporary succession upon the state's immediate need for action on a particular function, should apply.[47] They attack the "strict absence" provisions on the basis that some kind of objective, as well as consistent criteria for determining when a governor is absent is needed. Furthermore, they feel that the duties of the governor's succession should be defined more clearly and be less inclusive for periods of temporary succession.[48]

Hawaii's Constitution provides that in the event of the absence of the governor from the State, the powers and duties of this office shall devolve upon the lieutenant governor during such absence. Similar provisions are included in the constitutions of most states. However, with modern transportation and communications, the desirability of such a provision has been increasingly subject to question. The Model State Constitution provides that an acting governor will serve "when the duties of the office are not being discharged by reason of [the governor's] continuous absence". It takes the view that under modern conditions, short absences should no longer require temporary succession because a governor can quite effectively control the affairs of the executive department by telegraph and telephone. Another argument against providing for temporary succession every time the governor leaves the state is the frequent opportunities provided the temporary successor for political opportunism and for mischief especially with respect to the conduct of state affairs in a manner contrary to the governor's policies.

Those who favor succession during absence from the state hold that it discourages long and frequent absences in the case of a governor who might be inclined to spend more time away from the center of state affairs if permitted to carry out gubernatorial functions from out-of-state. Further, it is argued that the presence of a chief executive is always necessary to carry out the day-to-day requirements of the office as well as to provide for immediate action in the event of an unanticipated emergency, where a few hours delay might be critical.

Gubernatorial Disability.[49] While all 50 states provide for a successor to the governor in the event a vacancy in the governorship occurs because of death, resignation, removal, absence, or disability, only 16 states actually provide constitutional procedures for determining whether a vacancy exists because of gubernatorial disability, i.e., inability to discharge the powers and duties of the office. Several reasons have been given for the inaction by the majority of the states in this area up to this time. These include hesitancy because the amendment process is long and difficult; the belief that procedures for determination of disability may be provided by statute if necessary; and the belief that if occasion demands, state supreme courts will assume jurisdiction and resolve the issue. However, federal experiences with presidential disability, together with the disconcerting experiences of several states with disabled governors, notably Illinois, Louisiana, Nebraska, New Hampshire, and North Dakota, have caused state governments and political scholars to view this area with increasing concern.[50]

Whether constitutional provisions should provide specific procedures for determining gubernatorial disability is an issue which has raised many difficult questions. It has evoked much controversy over such questions as: Who shall initiate inquiry or the necessary proceedings to determine if disability exists? Who shall determine if disability exists and, subsequently, when does disability cease? As in the case of temporary absence, can succession due to temporary disability be accomplished in such a manner as to permit the successor sufficient flexibility to exercise the powers of the office while guarding against political abuse or opportunism?

There are those who admit the difficulty and seriousness of these questions but feel that the issue cannot be acceptably resolved in advance. They state that many cases of inability will be obvious and require no clarification while at the same time, marginal cases of inability are too diverse to anticipate and must be met with as circumstances arise--without specific constitutional provision. They contend that little else can be done anyway and therefore such flexibility is needed.[51]

Others question whether such flexibility is worth the uncertainties that are bound to arise in cases of marginal or temporary disability. They feel that a number of options which have been suggested and, in some cases adopted by certain states, would help improve the situation and would avoid turmoil by at least providing for when there is to be a succession because of the governor's inability instead of leaving the question to be decided by the court after the fact or after a substantial lapse of time.

Hawaii's Constitution, like those of most states, provides merely that in the event of the governor's inability to exercise and discharge the powers and duties of the office, such powers and duties shall devolve upon the lieutenant governor during such disability.[52] It is silent as to who shall raise the question of gubernatorial disability and who shall determine if such disability does in fact exist. It neither mandates the legislature to provide statutory procedures for such determination, nor prohibits such action. Its emphasis is not on when there is to be a succession because of inability but on who is to succeed. Whether or not "inability" should be made more specific or procedures established to determine when succession is to occur because of disability are matters in which the review of the provisions of other states in this area may be of assistance in arriving at some conclusion.

Hawaii's experience with disabled governors is limited. Only once since statehood has such a situation occurred. In late 1973, Hawaii's governor became bedridden from a series of operations, and the lieutenant governor assumed many of the duties. This transition to the lieutenant governor was apparently smooth, even though there were no guidelines or procedures established by statute or by constitution.

Only 16 states have definite constitutional or statutory procedures for determining gubernatorial disability. Provisions in Alabama, California, Colorado, Florida, Indiana, Maryland, Massachusetts, Michigan, Mississippi, and New Jersey allow for the determination of gubernatorial disability by the state supreme court. North Carolina constitutionally provides for such determination to be made by the governor or by the legislature while Iowa, Nebraska, Oregon, South Carolina, and Virginia have special boards to determine gubernatorial disability.[53] Examples of gubernatorial disability are as follows.

Michigan. The disability provision of Michigan's Constitution although brief appears to be clear and all inclusive in stating:[54]

> The inability of the governor or person acting as governor shall be determined by a majority of the supreme court on joint request of the president pro tempore of the senate and the speaker of the house of representatives....

New Jersey. The New Jersey constitutional provision treats both absence and disability alike. It also appears to provide for cases of irrevocable succession rather than temporary succession in providing that:[55]

> ...whenever for a period of six months a governor in office...shall have remained continuously absent from the state, or shall have been continuously unable to discharge the duties of his office by reason of mental or physical disability, the office shall be deemed vacant. Such vacancy shall be determined by the Supreme Court upon presentment to it of a concurrent resolution declaring the ground of the vacancy, adopted by a vote of two-thirds of all the members of each house of the Legislature.... (Emphasis added)

North Carolina. The North Carolina Constitution treats physical and mental incapacity separately as follows:[56]

> The Governor may, by a written statement filed with the Secretary of State, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

> The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a Joint Session of the General Assembly before it takes final action. When the General Assembly is not in Session, the Council of State, a majority of its members concurring, may convene it in Extra Session for the purpose of proceeding under this paragraph.

Oregon. Oregon, in 1959, departed from previous procedures in other states by providing for gubernatorial disability by statute rather than by constitution and by vesting the determination authority in a special board rather than in the courts. The Oregon statute provides that:[57]

> Whenever it appears that the Governor is unable to discharge the duties of the office, the person next in line of succession to the office of Governor or the person who is Chief Justice of the Supreme Court of Oregon may call a conference consisting of the person who is Chief Justice, the person who is chief medical officer of the state hospital in Salem and the person who is dean of the University of Oregon Health Services Center.... After the examination...they shall conduct a secret ballot and by unanimous vote may find that the Governor is temporarily unable to discharge the duties of his office.

Other examples of constitutional provisions dealing with the disability of the chief executive may be found in the Model State Constitution and the United States Constitution.

Model State Constitution. The Model State Constitution suggests the following language be used to provide for gubernatorial disability and succession:[58]

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

The Model State Constitution is silent as to who should initiate action to determine gubernatorial inability. The explanation given for this is that as a matter of established law, the next in line of succession would be the proper person to initiate such action. However, since there is the possibility that the next in line may hesitate to bring such action because of political reasons, such as loyalty to the governor or fear of retaliation, there should also be allowance for other state officers to initiate disability actions. Thus, by remaining silent as to who is to initiate action, the Model deliberately leaves the question of standing, "to the discretion of the court and for the development of the law in a traditional case-to-case manner in response to real, though not wholly foreseeable, problems".[59]

The United States Constitution. On February 10, 1967, three-fourths of the states ratified an amendment to the United States Constitution whereby the President may transmit a written declaration to the President Pro Tempore of the Senate and the Speaker of the House of Representatives declaring the President's inability to discharge the duties of the office. The Vice President then becomes "acting President" until such time that the President transmits another written declaration to the same persons declaring that the individual is again capable of discharging the duties of the office. An alternative is also provided whereby the Vice President and a majority of either of the principal officers of the executive departments, or any other body which Congress may provide for by law, may similarly file a written declaration that the President is unable to discharge the duties of the office. This declaration is made to the President of the Senate and the Speaker of the House of Representatives. The Vice President immediately assumes the powers and the duties of the office as acting President. The President may transmit a written declaration to the same declaring that no inability exists and the President shall then resume the powers and duties of the office. However, if the Vice President and a majority of either of the principal officers of the executive department or any other such body as Congress may provide for by law, transmit, within 4 days, a written declaration of the President's inability to discharge the powers and duties of the office to the President of the Senate and to the Speaker of the House of Representatives, and if Congress upon a two-thirds vote of both houses determines that the President is unable to discharge the duties of the office, then the Vice President will continue to discharge the duties of that office.

The provisions of the Model State Constitution, the Model Executive Article, and the United States Constitution have been included in Appendix J since these provisions represent the thinking and efforts of political experts and concerned citizens on the subject of gubernatorial disability.

Hawaii's Constitution obviously does not provide for gubernatorial disability in the more comprehensive manner of these state constitutions discussed in this section. The examples of provisions on gubernatorial disability presented in this section may serve as models for revision if such action is deemed advisable. However, it should be kept in mind that generally, a comprehensive provision on gubernatorial disability would appear to cover at least 3 areas: (1) specification of the grounds or causes indicating that a disability exists; (2) designation of the person or persons authorized to initiate a disability challenge; and (3) designation of the person or agent responsible for rendering a determination on the disability question.

Removal

Impeachment of Governor, Lieutenant Governor, and Administrative Executives. Constitutional provisions involve controversy in 3 areas: which tribunal has the power to try impeachments; what are the causes for impeachment; and which officers are liable to impeachment?[60]

Method for Impeachment and Trial. All state constitutions, except that of Oregon, have provisions for impeachment proceedings concerning the removal of the governor. Of the 49 states, 47, including Hawaii, empower the legislature to impeach the governor, Alaska provides that the senate bring impeachment proceedings, and Nebraska provides that the unicameral legislature may impeach the governor. The Hawaii Constitution states that, "the house of representatives shall have the sole power of impeachment of the governor and lieutenant governor and the senate the sole power to try such impeachments".[61]

The court of impeachment in 45 states, including Hawaii, is the senate. In Nebraska, the state supreme court sits as the court of impeachment. The

Missouri Constitution provides that the governor shall be tried by a special commission of eminent jurists to be elected by the senate. New York requires that the senate and court of appeals jointly vote for impeachment, and in Alaska the house sits as the court of impeachment. (See Appendix K for the constitutional impeachment provisions of the above states.) The Hawaii Constitution provides that when the senate tries impeachments, the chief justice shall preside.

Most of the state constitutions, including Hawaii, specifically empower the legislature alone to impeach and try the lieutenant governor. Two states, Missouri and Nebraska, require that the state supreme court sit as the court of impeachment. New York constitutionally requires that the impeachment court consist of the senate and the court of appeals sitting together. In Hawaii, the method of impeachment and trial of the lieutenant governor is the same as it is for the governor. Eight states do not provide for a lieutenant governor.[62]

Trial by the senate rather than by some other group has been questioned because of the fear that the senate may use impeachment or the threat of impeachment for political warfare involving disputes between factions and parties. On the other hand, allowing the senate to try impeachments is generally supported by most commentators and is the practice of most states and the United States.[63]

In Hawaii, appointive officers for whose removal the consent of the senate is required may be removed from office by impeachment. The legislature may provide for the manner and procedure of removal by impeachment of such officers.[64] There are, however, no statutory provisions which cover this matter.

Causes for Impeachment. The constitutional grounds for impeachment are of significance as they relate to the governor and other members of the executive branch, depending on whether the legislature has the power to determine the causes for impeachment or whether the causes are specifically stated in the constitution. Most state constitutions have general provisions such as high crimes, misdemeanors, malfeasance, treason, or bribery stated as

the usual charges which may be levied by the lower house of the legislature against the governor, but no constitution is specific on what constitutes an impeachable offense.[65] Only a few states such as Alabama, Indiana, Missouri, Oklahoma, South Dakota, and West Virginia explicitly include incompetence or incapacity as causes for impeachment. The Hawaii Constitution states that the causes for impeachment may be provided by statute.[66] However, there are no statutory provisions concerning this matter.

It may be argued that the constitution should explicitly state what constitutes grounds for impeachment so that the legislature may not arbitrarily make such a determination. On the other hand, the inclusion of specific grounds for impeachment in the constitution decreases the flexibility of the impeachment provision and may not be necessary if the governor is protected by constitutional provisions requiring an extraordinary majority to initiate impeachment proceedings.

Number of Votes Required for Impeachment. Most state constitutions require that an extraordinary majority, e.g., three-fifths or two-thirds of the members elected to the lower house be the impeaching body and that two-thirds of the members elected to the senate sit as the court of impeachment. If an extraordinary majority is required to start impeachment proceedings, it will be extremely difficult to impeach the governor. While very few governors have ever been impeached, maintenance of the provision is advocated, nevertheless, because the power of legislative impeachment supposedly keeps the governor in check. It can be argued that the number of votes required in either house should be decreased if a stronger legislative check on the governor is desired. On the other hand, if a strong executive is favored, then an extraordinary majority should be required in order to protect the governor from legislative harassment.[67]

Although the impeachment power is rarely used, its presence in a constitution serves as a potential deterrent to flagrant abuse of office, and where extraordinary action is required, as a means whereby the governor, lieutenant governor, and administrative officers can be removed from office. In some states the governor may be recalled. In Hawaii, however, there are no

statutory procedures for carrying out the constitutional impeachment provision, nor are there any constitutional or statutory means of recalling the governor.

For a discussion on recall, see the Hawaii Constitutional Convention Studies 1978, Article II: Suffrage and Elections.

Residence Requirements for State Officials

In 1968, the committee on the executive at the Hawaii Constitutional Convention recommended that the residence requirement for a governor's appointee be reduced from 3 years to one year. The committee believed that though Hawaii should not be inhibited from drawing upon talent from throughout the nation because of the 3-year residence requirement, it was necessary that at least a one-year residence period be imposed for a person to become familiar with Hawaii and thereby use the person's talents most effectively.[68]

The committee, however, recommended that the recruitment of the president of the University of Hawaii not be limited to Hawaii. It reasoned that administration of education was generally uniform and that there was less of a need to adjust to local conditions and problems.[69]

The entire convention accepted the recommendations of the committee and the voters of Hawaii subsequently ratified the amendment.

Since 1968, considerable controversy has been raised over various durational residence requirements such as those in the Hawaii Constitution.

In 1969, the U.S. Supreme Court ruled that a durational residence requirement for public welfare benefits was unconstitutional[70] and in 1972, a durational residence requirement for voter registration was declared unconstitutional.[71] These decisions maintained that such durational residence requirements violated the Equal Protection Clause of the U.S. Constitution.

In 1972, the Hawaii Supreme Court held that Hawaii's 3-year durational residence requirement for public employment[72] was invalid.[73] The Court stated that a "durational residence requirement does not provide a rational connection for determining whether an applicant has the capacity and fitness to adequately serve as a public employee".

To conform with the decisions rendered by the Hawaii and United States Supreme Courts, the 1976 Hawaii legislature eliminated durational residence requirements for public employees, though they retained durational residence requirements for public officials.[74] In 1977, however, the legislature reinstated the durational residence requirement for public employees.[75] The legislative conference committee on the 1977 bill reasoned that it was the State's "obligation to insure the comfortable economic existence of its residents now and in the future". It sought to contain high unemployment among residents and uncontrolled growth of the State.[76] This residency requirement was voided in federal court.

The constitutionality of enactments such as this has been questioned elsewhere. In Alaska, the state supreme court held that the state could not give preference in government employment to those who had lived in Alaska for one year. It held that the state's interest in reducing unemployment among Alaska residents was not so "compelling" to justify infringement on the right to travel.[77]

Whether Hawaii's residence requirement for state officials violates the Equal Protection Clause of the U.S. Constitution would therefore depend on one of 2 tests. It may depend on the rational basis test as used by the Hawaii Supreme Court which states "classification must rest upon some ground of difference having a fair and substantial relation to the object of the legislation".[78] It may also depend on the "compelling" state interest test which states that if a constitutional right exists and if the law infringes on that right, that law is unconstitutional "unless shown to be necessary to promote a 'compelling' governmental interest".[79]

Constitutionality notwithstanding, the arguments for and against durational residence requirements for state officials are:

Pro

(1) A durational residence requirement is necessary for a person to become familiar with Hawaii's conditions and problems.

(2) A particular state's governmental affairs are too complex to be understood in less than one year.

(3) Repeal of a durational residence requirement would be inconsistent with requirements for residence of other public employees.

Con

(1) Since governmental affairs within the United States are not that different that experience in one state cannot be applied to another state, durational residence requirements would be a hinderance in recruiting the best talent from the nation.

(2) Since there is no durational residence requirement for voting, there should not be any for holding public office.

(3) Durational residence requirements for appointed public officials are not common features of most state constitutions.

Chapter 6
MISCELLANEOUS POWERS

Military Powers

Most state constitutions provide that the governor shall be the commander-in-chief of the military forces of the state. The Hawaii Constitution states that the governor "shall be commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion".[1] This power serves 2 basic purposes; first, it empowers the governor to defend the state against external threats; and second, it provides additional support in carrying out the governor's constitutional responsibility for "the faithful execution of the laws", particularly by enabling the governor to declare martial law. Moreover, designating the governor as commander-in-chief serves to subordinate the military to civil power and thus assures that the user of military force shall ultimately be accountable to the people.

Several safeguards surround the governor's use of the military and martial law. The Hawaii Bill of Rights provides that:[2]

> The power of suspending the privilege of the writ of habeas corpus, and the laws or the execution thereof, shall never be exercised except by the legislature, or by authority derived from it to be exercised in such particular cases only as the legislature shall expressly prescribe.

In addition, several court decisions have established that the legitimacy of the imposition and exercise of martial law is subject to judicial review. For a further discussion of these safeguards, see Hawaii Constitutional Convention Studies 1978, Article I: Bill of Rights.

In the past the military power of the governor has been generally regarded as minor and dormant. Governors, however, have sometimes used their states' militia in natural and manmade disasters and emergencies, and in

the 1960's and early 1970's for quelling civilian unrest. Given the unpredictable form of each of these events, it is difficult constitutionally to spell out specific procedural and functional restrictions on the governor's possible abuse of military power and still retain the full capability of such power.

Executive Clemency

Executive authority to grant clemency has its roots as a crown prerogative under Anglo-Saxon common law. In its American adaptation, it is commonly viewed as a function of the separation of powers doctrine where the executive acts as a check on mechanical jurisprudence which might work harsh results in individual cases. The Hawaii provision reads:[3]

> The governor may grant reprieves, commutations and pardons, after conviction, for all offenses, subject to regulation by law as to the manner of applying for the same.

In Hawaii, this power has been interpreted to include pardoning offenses against county ordinances as well as the laws of the State.[4]

Constitutional provisions similar to those of Hawaii are found in most of the other states. A reprieve postpones the execution of sentence while commutation permits the substitution of a lighter penalty for a heavier one. Pardons may be full where subsequent events prove a convicted person innocent, or limited where a legal disability resulting from conviction is removed.

The most common exceptions to executive clemency are cases involving impeachment and treason. In some states the legislature is authorized to restrict by law the exercise of the governor's power to pardon. The legislature is empowered to regulate the manner of applying for executive clemency in at least 29 states, including Hawaii.

A few states, in addition to the traditional powers in this area, permit the governor to remit fines and forfeitures. The Hawaii Constitution includes an

unusual provision which enables the legislature, by general law, to extend executive clemency by authorizing the governor "...to grant pardons before conviction, to grant pardons for impeachment and to restore civil rights denied by reason of conviction of offenses by tribunals other than those of this State".[5] To date, the legislature has not implemented this clause.

The principal issue raised by executive clemency is whether this power should be vested in the governor alone or shared with or delegated to other boards and agencies. The Model State Constitution finds that in addition to legal and political considerations, executive clemency involves complex judgments of a correctional and behavioral nature and for this, governors are neither trained to make such decisons nor can they be expected to have any special interest in doing so. Consequently, it provides that: "The governor...may delegate such [clemency] powers subject to such procedures as may be prescribed by law."[6] This provision, while recognizing the clemency power to be executive in nature, leaves room for legislative development in the creation of expert or professional boards to deal with these matters. Presently, in about a fourth of the states, the practice is to share gubernatorial clemency powers with a board or an executive council.

Judicial Appointments

The qualities deemed essential for a judge include such traits as professional competence, intellectual ability, integrity of character, and a knowledge of human relations.[7] Since no reliable yardsticks have been developed for measuring these qualities, the search for the best judge usually turns to a search for the method which would most likely produce the best judge. In keeping with Hawaii's tradition of an appointive judiciary, the delegates to the 1950 Constitutional Convention chose gubernatorial appointment as the method for selecting judges. The delegates to the 1968 Constitutional Convention heard considerable discussion on other methods of selecting judges, but decided instead to retain the appointive system.[8] Article V, section 3, states:

> The governor shall nominate and, by and with the advice and consent of the senate, appoint the justices of the supreme court and the judges of the circuit courts.

The system of appointment by the chief executive is presently used by 9 states, Puerto Rico and the federal judiciary.[9]

Arguments in favor of the appointive system include:

(1) The appointing officer can develop the staff and resources to obtain information and make intelligent assessments of judicial candidates.

(2) The appointing official is clearly responsible for the quality of judicial applicants, and a series of bad appointments can be politically damaging.

(3) The appointive system can produce a balanced as well as a qualified judiciary--in that the governor can appoint certain candidates with particularly good qualifications, notwithstanding that they have little political backing.

(4) The appointive system will produce qualified candidates who would not otherwise subject themselves to the rigors of a political campaign.

(5) A judge, once appointed to the bench, is not obligated to the executive or anyone else, but is responsive and obligated only to do justice according to law and conscience.

(6) The appointive system at the federal level and in Hawaii has produced judges of generally high caliber.

Some of the arguments against the appointive system are:

(1) The appointive method, far from divorcing judges from politics, increases the political considerations involved in the selection of judges since the appointing officer is a political officer subject to political pressures.

(2) Appointment by the governor and confirmation by the senate undermines the independence of the judiciary and destroys the separation of powers of the 3 branches of government.

(3) An appointive system is inherently undemocratic in that it deprives the people of direct control of the judicial branch of the government.

(4) Even where judicial appointments must receive confirmation by somebody independent of the appointing officer, there is no substantial protection against inferior selection. At best, confirming bodies have only a veto power--while they may reject one appointee, they cannot be certain that the next appointee proposed will be better qualified.

(5) Even if the governor makes a series of bad appointments the people will not necessarily reject the governor at the polls because the individual may be a good governor in all other respects.

(6) Judges who are selected by the governor may become subservient to the executive.

For further discussion of alternative methods suggested for the selection of judges, see the Hawaii Constitutional Convention Studies 1978, Article V: The Judiciary.

FOOTNOTES

Chapter 1

1. Robert M. C. Littler, *The Governance of Hawaii: A Study in Territorial Administration* (Stanford, Calif.: Stanford University Press, 1929), p. 20. Although the king exercised these powers from the beginning of constitutional government in 1840, they were not specifically stated until 1852 when a new constitution was adopted.

2. *Ibid.*, p. 55; see also, Lawrence H. Fuchs, *Hawaii Pono: A Social History* (New York: Harcourt, Brace and World, 1961), p. 154.

3. Norman Meller, "Hawaii: A Study in Centralization" (unpublished Ph.D. dissertation, Department of Political Science, University of Chicago, 1955), p. 248.

4. Leslie Lipson, *The American Governor from Figurehead to Leader* (Chicago: University of Chicago Press, 1939), pp. 9-10.

5. *Ibid.*, pp. 1, 14. See also, Joseph E. Kallenbach, *The American Chief Executive: The Presidency and the Governorship* (New York: Harper and Row, 1966), p. 15; Herbert Kaufman, "Emerging Conflicts in the Doctrines of Public Administration," *American Political Science Review*, 50(4) (December, 1956), p. 1058; Ferrel Heady, *State Constitutions: The Structure of Administration*, State Constitutional Studies Project, Series II, No. 4 (New York: National Municipal League, 1961), p. 2.

6. Lipson, pp. 11, 20. See also, Kaufman, pp. 1057-1062; Herman H. Trachsel, "The Governor and Administrative Organization," *Public Affairs*, No. 10, August 15, 1962, p. 2.

7. Kaufman, pp. 1059-1062; Duane Lockard, *The Politics of State and Local Government* (New York: Macmillan, 1963), pp. 353-354, 356.

8. Lipson, pp. 11, 29. See also, Trachsel, pp. 1-2; Kaufman, pp. 1059-1060; Heady, pp. 2-3; Albert L. Sturm and Fred S. Steingold, *The Executive and Civil Service in the Michigan Constitution*, Michigan Constitutional Convention Studies (Lansing, Mich.: Constitutional Convention Preparatory Commission, 1961), p. 1.

9. Kaufman, p. 1060; Trachsel, p. 2.

10. Charles R. Adrian, *Governing Our Fifty States and Their Communities* (New York: McGraw-Hill, 1963), pp. 37-48; Coleman B. Ransone, Jr., *The Office of Governor in the United States* (University, Ala.: University of Alabama Press, 1956), pp. 115-117, 154; G. Theodore Mitau, *State and Local Government: Politics and Process* (New York: Charles Scribner's Sons, 1966), pp. 112-140. See also, Lockard, pp. 360-363.

11. Swindler, "The Executive Power in State and Federal Constitutions," 1 *Hastings Const. L. Q.* 21 (1974).

12. Lipson, p. 15. See also, Trachsel, p. 2; Lockard, pp. 350, 357, 391; Kaufman, pp. 1060, 1065; Sturm and Steingold, pp. 1-2; Heady, pp. 3-4.

13. Ransone, pp. 118-120, 148. See also, Lockard, p. 361; Kaufman, p. 1072; Kallenbach, p. 253.

14. Joseph L. Bower, "Effective Public Management," *Harvard Business Review*, March/April, 1977, p. 134.

15. Hawaii, Commission on Organization of Government, *Report to the Ninth State Legislature, State of Hawaii, of the Commission on Organization of Government* (Honolulu: 1977), p. 13.

Chapter 2

1. *Hawaii Const.* art. IV, sec. 1.

2. *Hawaii Const.* art. IV, sec. 5. It is reported that when the United States Constitution was before the people for ratification, it was nicknamed the "Triple-Headed Monster" in allusion to this division of the federal government. Edwin V. Mitchell, *An Encyclopedia of American Politics* (Garden City, N.Y.: Doubleday, 1946), pp. 264-265.

3. See Leslie Lipson, *The American Governor from Figurehead to Leader* (Chicago: University of Chicago Press, 1939); Coleman B. Ransone, Jr., *The Office of Governor in the United States* (University, Ala.: University of Alabama Press, 1956); Joseph E. Kallenbach, *The American Chief Executive: The Presidency and the Governorship* (New York: Harper and Row, 1966); G. Theodore Mitau, *State and Local Government: Politics and Process* (New York: Charles Scribner's Sons, 1966), pp. 23-25, 112-158; Duane Lockard, *The Politics of State and Local Government* (New York: Macmillan, 1963), pp. 345-404.

4. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, Standing Committee Report No. 67, p. 215; Committee of the Whole Report No. 17, pp. 322-327.

5. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Journal and Documents, p. 321.

6. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, pp. 332-333.

7. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 322.

8. "Reorganization of State Government, Western Governors' Conference, November 23-26, 1958" (Council of State Governments, 1958). (Mimeographed).

9. A. E. Buck, *The Reorganization of State Governments in the United States* (New York: Columbia University Press for National Municipal League, 1938), pp. 14-15.

10. Quoted by York Willbern, "Administration in State Governments," *The Forty-Eight States: Their Tasks as Policy Makers and Administrators*, Final Edition, Background Papers prepared for the use of participants and the Final Report of the Eighth American Assembly (New York: American Assembly, 1955), p. 114.

11. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, p. 268.

12. *Ibid.*, p. 282.

13. In all states the lieutenant governor is an elective official. The lieutenant governor is elected by the people in 41 of the 42 states providing for a lieutenant governor. In Tennessee, the lieutenant governor is elected by the state senate from its membership. The 8 states that do not provide for a lieutenant governor are Arizona, Maine, New Hampshire, New Jersey, Oregon, Utah, West Virginia, and Wyoming.

14. Article IV, section 2, *Hawaii Constitution*, provides that the lieutenant governor "shall perform such duties as may be prescribed by law".

15. Hawaii, Legislature, Senate, Committee on Judiciary, 2nd Legislature, General Sess., 1963, Standing Committee Report 146 [on] House Bill 33.

16. *Ibid.*

17. Mitau, p. 142.

18. Kallenbach, pp. 234-235.

19. Byron R. Abernathy, *Some Persisting Questions Concerning the Constitutional State Executive*, Governmental Research Series 23 (Lawrence: University of Kansas, Governmental Research Center, 1960), pp. 17-19, 22-28.

20. Sections 4.03, 4.05 to 4.11 of the Constitution of Maryland as adopted by the Convention, 1968.

21. *New York Const.* art. IV, secs. 5 and 6.

22. *Michigan Const.* art. V, secs. 21, 25, and 26.

23. Amended (H.B. 19) and election November 3, 1964, to add the proviso clause at the end of the second sentence.

24. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, pp. 277-288, 345, 782, 822, 830-831.

25. *Hawaii Rev. Stat.*, sec. 26-1, sets forth the more important legislatively prescribed duties of the lieutenant governor.

26. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, the arguments are paraphrased and condensed from pp. 277-285.

27. *Ibid.*, the arguments are paraphrased and condensed from pp. 286-288.

28. Legislative implementation of the succession provisions is contained in *Hawaii Rev. Stat.*, sec. 26-2.

29. Council of State Governments, *The Lieutenant Governor: The Office and its Powers* (Lexington, Ky.: 1973), p. 5.

30. Most of the arguments summarized from Albert L. Sturm and Fred S. Steingold, *The Executive and Civil Service in the Michigan Constitution*, Michigan Constitutional Convention Studies (Lansing, Mich.: Constitutional Convention Preparatory Commission, 1961), pp. 14-15.

31. Mitau, p. 143.

32. Clyde F. Snider, *American State and Local Government* (2nd ed.; New York: Appleton-Century-Crofts, 1965), p. 277.

33. Austin F. Macdonald, *American State Government and Administration* (6th ed.; New York: Thomas Y. Crowell, 1960), pp. 179-180.

34. *Hawaii Rev. Stat.*, secs. 11-2 and 26-1.

35. *Hawaii Rev. Stat.*, sec. 2-8.

36. *Hawaii Rev. Stat.*, secs. 26-1 and 91-4.

37. *Hawaii Rev. Stat.*, sec. 26-1.

38. *Hawaii Rev. Stat.*, sec. 28-3.

39. *Hawaii Rev. Stat.*, sec. 377-9.

40. *Hawaii Rev. Stat.*, sec. 249-9.

41. *Hawaii Rev. Stat.*, sec. 834-6.

42. *Hawaii Rev. Stat.*, sec. 574-5.

43. *Hawaii Rev. Stat.*, sec. 582-2.

44. *Hawaii Rev. Stat.*, ch. 26.

45. Mitau, p. 141.

46. "The Office of Attorney General in Kentucky, Report of the Department of Law to the Committee on the Administration of Justice in the Commonwealth of Kentucky," *Kentucky L. J.*, 51(5) (Special issue, 1963).

47. *Book of the States, 1976-77*, p. 121.

48. Snider, pp. 277-278. It should be noted that in 1977, only the prosecuting attorneys of Hawaii and Kauai are elected.

49. National Association of Attorneys General, *The Office of the Attorney General* (Raleigh, N.C.: 1971), p. 19.

50. The Commission on the Organization of Government has recommended leaving the prosecuting attorney's functions with the counties, but having the attorney general responsible for the overall uniform enforcement of the laws of the State. Hawaii, Commission on Organization of Government, *Report to the Ninth State Legislature, State of Hawaii, of the Commission on Organization of Government* (Honolulu: 1977), p. 41.

51. *Hawaii Rev. Stat.*, sec. 26-7.

52. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, the arguments are paraphrased and condensed from pp. 320-330.

53. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 195.

54. *Ibid.* p. 341.

55. Quoted from a speech before the New Jersey State League of Municipalities, Buck, p. 23.

56. See, for instance, National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), Comment, p. 72; hereinafter cited as

Model State Constitution. "Arguments are frequently offered that the heads of certain departments should be directly responsible to the people and hence independently elected....[T]he argument is often applied to the attorney general."

57. Abernathy, pp. 32-49, the points are paraphrased and condensed.

58. William N. Thompson, "Should We Elect or Appoint State Government Executives? Some New Data Concerning State Attorneys General", *Midwest Review of Public Administration*, January 1974, p. 23.

59. National Association of Attorneys General, pp. 64-65.

60. Abernathy, p. 33.

61. *Ibid.*, p. 35.

62. *Ibid.*, pp. 48-49.

63. Ransone, pp. 332-333.

64. *Hawaii Rev. Stat.*, sec. 26-8.

65. Hawaii, Commission on Organization of Government, pp. 75-88.

66. *Hawaii Rev. Stat.*, sec. 26-8.

67. *Hawaii Rev. Stat.*, sec. 87-2.

68. *Hawaii Rev. Stat.*, sec. 29-1.

69. *Hawaii Rev. Stat.*, ch. 309.

70. *Hawaii Rev. Stat.*, sec. 354-4.

71. *Hawaii Rev. Stat.*, sec. 208-4.

72. *Book of the States, 1976-77*, pp. 114-115.

73. Data from *Book of the States, 1976-77*, p. 121.

74. Snider, p. 279.

75. *Ibid.*, pp. 280, 701-702; Mitau, p. 149; Macdonald, pp. 182-183.

76. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, No. 14 (New York: 1967), p. 172.

77. *Ibid.*, pp. 177-178.

78. *Ibid.*, pp. 182-183.

79. Michigan, Legislature, Joint Legislative Committee on Reorganization of State Government, *General Management of Michigan State Government*, Staff Report No. 30, Pt. III (Lansing, Mich.: 1951), Appendix XI, pp. 44-49, cited by Ransone, pp. 374-378.

80. Terry Sanford, *Storm Over the States* (New York: McGraw-Hill, 1967), p. 197.

81. *Missouri Const.* art. IV, sec. 17.

82. *New Jersey Const.* art. V, sec. IV(2) and (3).

83. *Alaska Const.* art. III, secs. 25 and 26.

84. Ferrel Heady, *State Constitutions: The Structure of Administration*, State Constitutional Studies Project, Series II, No. 4 (New York: National Municipal League, 1961), p. 16.

85. *Model State Constitution*, p. 72.

86. Maryland, Constitutional Convention Commission, *Interim Report* (Baltimore: 1967), pp. 98-99.

87. Council of State Governments, *The Governor: The Office and its Powers* (Lexington, Ky.: 1972), p. 18.

88. Charles R. Adrian, *Governing Our Fifty States and Their Communities* (New York: McGraw-Hill, 1963), pp. 39-40.

89. Kallenbach, p. 397; see *Hawaii Const.* art. IV, sec. 6.

90. Macdonald, pp. 156-157.

91. Abernathy, p. 51. The absolute removal power of the president extends to any executive officer the president appoints by and with the advice and consent of the senate and is part of the executive function, like the power to appoint but without extending the senate's power of checking appointments to removals, necessary for the executive obligations "to take care that the laws be faithfully executed". *Myers v. United States*, 272 U.S. 52 (1926).

92. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, pp. 320, 332-337.

93. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 195.

94. Council of State Governments, *Reorganizing State Government*, A Report on Administrative Management in the States and a Review of Recent Trends in Reorganization (Chicago: 1950), p. 27.

95. *Alaska Const.* art. III, sec. 16; *New Jersey Const.* art. V, sec. I, 11.

96. *Model State Constitution*, pp. 68-69.

97. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, pp. 73-74, 102-103.

98. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, p. 193.

99. Council of State Governments, *Reorganizing State Government*, p. 60.

100. Sanford, p. 200.

101. Lipson, p. 243.

102. *Book of the States, 1976-77*, pp. 124-127.

103. Sanford, pp. 191-192.

104. Administrative integration in fiscal matters includes "an executive budget system, an item veto power by the governor on appropriation matters, a single, consolidated general fund and the absence of earmarked revenues for specified purposes, and separation of the post-audit function from the executive branch through an

auditing official who is chosen by the legislature". Heady, p. 19.

105. Council of State Governments, *Gubernatorial Transition in the States* (Lexington, Ky.: 1974), p. 2.

106. *Suggested State Legislation - 1972* (Lexington, Ky.: Council of State Governments, 1972), pp. 41-44.

Chapter 3

1. Sess. Laws of Hawaii, 2d Spec. Sess. 1959, Act 1, effected the allocation and grouping; see *Hawaii Rev. Stat.*, ch. 26.

2. *A Summary of the Hawaii State Government Act of 1959*, University of Hawaii, Legislative Reference Bureau (Honolulu: 1959), pp. 5-11.

3. Herbert Kaufman, "Emerging Conflicts in the Doctrines of Public Administration," *American Political Science Review*, 50(4) (December, 1956), pp. 1057, 1063.

4. Hawaii, Commission on Organization of Government, *Report to the Ninth State Legislature, State of Hawaii, of the Commission on Organization of Government* (Honolulu: 1977), p. 3.

5. *Ibid.*, pp. 15-16.

6. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), Comment to section 5.06, pp. 71-72; hereinafter cited as *Model State Constitution*.

7. *Suggested State Legislation - 1970* (Lexington, Ky: Council of State Governments, 1970), p. 6.

8. Pub. L. No. 17, 95th Cong., 1st Sess. (April 6, 1977).

9. *Model State Constitution*, pp. 71-72.

10. Byron R. Abernathy, *Some Persisting Questions Concerning the Constitutional State Executive*, Government Research Series 23 (Lawrence: University of Kansas, Governmental Research Center, 1960), p. 75.

11. Maryland, Constitutional Convention Commission, *Interim Report* (Baltimore: 1967), p. 96.

12. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, No. 14 (New York: 1967), p. 132.

13. Hawaii Constitutional Convention, 1968, *Proceedings*, Vol. I, Journal and Documents, p. 194.

14. Hawaii, Commission on Organization of Government, p. 120.

15. See *Hawaii Rev. Stat.*, sec. 26-41. Some of the boards and commissions that have been established under this provision are the State Foundation on Culture and the Arts (1965 Haw. Sess. Laws, Act 269), the Special Committee on Eminent Domain (1965 Haw. Sess. Laws, Act 123), the Commission on Higher Education Facilities (1964 Haw. Sess. Laws, Act 37), and the Statuary Hall Commission (1965 Haw. Sess. Laws, Act 197).

16. Maryland, Constitutional Convention Commission, *Interim Report*, p. 96.

17. Kenneth C. Davis, *Administrative Law and Government* (St. Paul, Minn.: West, 1960), p. 52.

18. *Ibid.*, p. 54.

19. Att'y Gen. Ops. No. 61-84 (August 18, 1961) states that the university is a constitutionally independent corporation and not an administrative or executive agency.

20. *Hawaii Rev. Stat.*, ch. 26.

21. The other standards are concentration of authority and responsibility, departmentalization or functional integration, coordination of the staff services of administration, provision for an independent audit, and recognition of a governor's cabinet.

22. A. E. Buck, *The Reorganization of State Governments in the United States* (New York: Columbia University Press for National Municipal League, 1938), p. 20.

23. *Ibid.*, from the *Congressional Record*, March 14, 1938.

24. Council of State Governments, *Reorganizing State Government*, A Report on Administrative Management in the States and a Review of Recent Trends in Reorganization (Chicago: 1950), pp. 3-5, 14-20.

25. "Reorganization of State Government, Western Governors' Conference, November 23-26, 1958" (Council of State Governments, 1958), p. 6. (Mimeographed).

26. Maryland, Constitutional Convention Commission, *Interim Report*, pp. 96-97.

27. Committee for Economic Development, Research and Policy Committee, *Modernizing State Government*, A Statement on National Policy (New York: 1967), pp. 51-56.

28. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, p. 333.

29. Buck, pp. 20-21.

30. *Hawaii Const.* art. IV, sec. 5.

31. Joseph E. Kallenbach, *The American Chief Executive: The Presidency and the Governorship* (New York: Harper and Row, 1966), pp. 255-256.

32. *Hawaii Const.* art. IV, sec. 5.

33. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, pp. 345-347.

34. Coleman B. Ransone, Jr., *The Office of Governor in the United States* (University, Ala.: University of Alabama Press, 1956), p. 259.

35. *Ibid.*, pp. 273-274.

36. Joe E. Nusbaum, "State Departments of Administration: Their Role and Trends of Development," *State Government*, 35(2) (Spring, 1962), 124-129.

37. Gary L. Wilhelm, et al., *California Government and Politics 1975-76* (Sacramento: California

Center for Research and Education in Government, 1975), pp. 6-7.

38. Terry Sanford, *Storm Over the States* (New York: McGraw-Hill, 1967), pp. 188-205.

39. National Governor's Conference, *The State of the States in 1974* (Washington: 1974), p. 19.

40. York Willbern, "Administration in State Governments," *The Forty-Eight States: Their Tasks as Policy Makers and Administrators*, Final Edition, Background Papers prepared for the use of participants and the Final Report of the Eighth American Assembly (New York: American Assembly, 1955), pp. 115-118.

Chapter 4

1. Coleman B. Ransone, Jr., *The Office of Governor in the United States* (University, Ala.: University of Alabama Press, 1956), p. 148.

2. Frederick J. Lawton, "Legislative-Executive Relationships in Budgeting as Viewed by the Executive," *Public Administration Review*, 13(3) (Summer, 1953), p. 170.

3. *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), pp. 130-135.

4. *Hawaii Const.* art. VI, sec. 4.

5. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, No. 14 (New York: 1967), pp. 146-147.

6. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, p. 250.

7. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Journal and Documents, p. 223.

8. *Hawaii Rev. Stat.*, sec. 37-71.

9. *Hawaii Rev. Stat.*, sec. 30-5.

10. *Hawaii Const.* art. VI, sec. 4.

11. *Hawaii Const.* art. VI, sec. 5.

12. *Book of the States, 1976-77*, pp. 70-71. The states which do not have the item veto are: Indiana, Maine, Nevada, New Hampshire, North Carolina, Rhode Island, and Vermont.

13. Hawaii, Constitutionl Convention, 1950, *Proceedings*, Vol. I, p. 194.

14. Fred Gantt, Jr., "The Governor's Veto in Texas: An Absolute Negative?", *Public Affairs Comment*, March, 1969, p. 3.

15. William S. Hanley, "The 1970 Illinois Constitution and the Executive Veto," *Public Affairs Bulletin*, Jan.-Apr. 1972, p. 5.

16. Richard F. Kahle, Jr., *Hawaii Legislators' Handbook* (6th ed.; Honolulu: Legislative Reference Bureau, 1977), p. 92.

17. *Hawaii Const.* art. III, sec. 17.

18. *Ibid.*

19. *Book of the States, 1976-77*, pp. 70-71. The states are: Alabama, Delaware, Massachusetts, Michigan, Minnesota, New Hampshire, New Mexico, New York, Oklahoma, Vermont, Virginia, and Wisconsin.

20. Bennett M. Rich, "The Governor as Policy Leader," *Salient Issues of Constitutional Revision*, ed. by John P. Wheeler, Jr., State Constitutional Studies Project, Series I, No. 2 (New York: National Municipal League, 1961), p. 94.

21. Committee for Economic Development, Research and Policy Committee, *Modernizing State Government*, A Statement on National Policy (New York: 1967), p. 49.

22. *Hawaii Const.* art. III, sec. 17.

23. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, p. 109.

24. *Washington Const.* art. III, sec. 12.

25. *Book of the States, 1976-77*, pp. 58-59.

26. See National Municipal League, *Model State Constitution* (6th ed.; New York: 1968); Alexander Heard (ed.), *State Legislatures in American Politics* (Englewood Cliffs, N.J.: Prentice-Hall, published for American Assembly, 1966); reports from the various regional American Assemblies; and National Legislative Conference, American State Legislatures in Mid-Twentieth Century (Chicago: Council of State Governments, 1960).

27. *Hawaii Rev. Stat.*, sec. 17-4.

28. *Hawaii Rev. Stat.*, sec. 17-3.

29. Briefing Paper for the Governors, Series #5 (Denver: Federation of Rocky Mountain States, Inc., 1976), p. 7.

30. *Ibid.*

31. *Ibid.*

32. Mary Jo Fields, "Sunset Legislation," *University of Virginia Newsletter* (April 1977), [pp. 3-4].

33. *Ibid.*

34. *Ibid.*

35. 1977 Haw. Sess. Laws, Act 70.

Chapter 5

1. The states are: Arkansas, New Hampshire, Rhode Island, and Vermont.

2. The states are: Delaware, Illinois, Indiana, Missouri, Montana, North Carolina, North Dakota, Utah, Washington, and West Virginia.

3. Data on states extracted from *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), p. 113.

4. Byron R. Abernathy, *Some Persisting Questions Concerning the Constitutional State Executive*,

Government Research Series 23 (Lawrence: University of Kansas, Governmental Research Center, 1960), p. 88.

5. New Mexico, Constitutional Revision Commission, *Report* (Santa Fe: 1967), p. 57.

6. Albert L. Sturm and Fred S. Steingold, *The Executive and Civil Service in the Michigan Constitution*, Michigan Constitutional Convention Studies (Lansing, Mich.: Constitutional Convention Preparatory Commission, 1961), p. 8.

7. *Ibid.*

8. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, No. 14 (New York: 1967), p. 82. See also, National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), p. 66; hereinafter cited as *Model State Constitution*.

9. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, p. 82.

10. James R. Bell and Earl L. Darrah, *State Executive Reorganization*, 1961 Legislative Problems, No. 3 (Berkeley: University of California, Bureau of Public Administration, 1961), p. 18.

11. *Book of the States, 1976-77*, p. 113.

12. Abernathy, p. 79.

13. *Ibid.*, pp. 8-81.

14. Claude J. Davis and William R. Ross, *Issues of Constitutional Revision in West Virginia*, Publication No. 44 (Morgantown, W. Va.: West Virginia University, Bureau for Government Research, 1966), p. 11.

15. *Ibid.*

16. Abernathy, p. 87.

17. Stanley B. Botner, "Gubernatorial Succession - Question in Several States," *University of Missouri Business and Government Review*, 6(2) (March-April, 1965), p. 28.

18. *Ibid.*, pp. 28-29.

19. *Ibid.*, p. 27.

20. *Ibid.*

21. Abernathy, p. 85.

22. *Ibid.*, pp. 85-86.

23. Maryland, Constitutional Convention Commission, *Report* (Annapolis: 1967), p. 156.

24. Public Administration Service, "The Executive Department," *Constitutional Studies*, prepared on behalf of the Alaska Statehood Committee for the Alaska Constitutional Convention, Vol. 2, Pt. VI (Juneau, Alaska: 1955), p. 4.

25. *Model State Constitution*, Art. V, sec. 5.02, p. 9.

26. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, Standing Committee Report No. 67, Section 1, p. 216.

27. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Journal and Documents, p. 192.

28. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, p. 80.

29. *Book of the States, 1976-77*, pp. 214-215.

30. *Model State Constitution*, Art. V, sec. 5.02, p. 9.

31. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, p. 318.

32. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, pp. 275-276.

33. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, p. 81.

34. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, p. 216.

35. Senate Standing Committee Report No. 426-72 on Senate Bill 43, Sixth Legislature, 1972, State of Hawaii.

36. House Standing Committee Report No. 664-72 on Senate Bill 43, Sixth Legislature, 1972, State of Hawaii.

37. *Hawaii Const.* art. IV, sec. 3.

38. For a further discussion concerning succession, see chapter 2 of this study.

39. Council of State Governments, *The Lieutenant Governor: The Office and Its Power* (Lexington, Ky.: 1976), pp. 6, 12.

40. *Hawaii Const.* art. IV, sec. 4.

41. *Hawaii Rev. Stat.*, sec. 26-2.

42. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, p. 86.

43. The primary source for this section is Ira H. Lurvey, "Absent Officials: No Carte Blanche for Successors," *Journal of Public Law*, 15(1) (1966), p. 324.

44. 410 P.2d 750 (Nev. 1966), cited by Lurvey, pp. 346-347.

45. *In re An Act Concerning Alcoholic Beverages*, 130 N.J.L. 123, 31 A. 2d 837, 840-841 (1943). See also, *Montgomery v. Cleveland*, 134 Miss. 132, 98 So. 111 (1923); *Sawyer v. District Court*, 410 P.2d 748, 750-751 (Nev. 1966), cited by Lurvey, p. 325.

46. *Application of Crump*, 10 Okla. Crim. 133, 135 P. 428, 436 (1913), cited by Lurvey, p. 340.

47. *Montgomery v. Cleveland*, 134 Miss. 132, 98 So. 111 (1923), cited by Lurvey, p. 341.

48. Lurvey, p. 343.

49. Massachusetts, Legislative Research Council, *Determination of Gubernatorial Disability* (Proposed Constitutional Amendment), Senate No. 1145, February 1, 1967, pp. 7-31.

50. Council of State Governments, p. 11.

51. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, p. 89.

52. *Hawaii Const.* art. IV, sec. 4.

53. Council of State Governments, pp. 11-15.

54. *Michigan Const.* art. V, sec. 26.

55. *New Jersey Const.* art. V, sec. 1, para. 8.

56. *North Carolina Const.* art. 3, sec. 3.

57. *Oregon Rev. Stat.*, sec. 176.040.

58. *Model State Constitution*, Art. V, sec. 5.08(e).

59. *Model State Constitution*, pp. 76-77.

60. Charles W. Joiner and Jon F. DeWitt, "Impeachment and Removal in Michigan," *Miscellaneous Problems*, Michigan Constitutional Convention Studies (Lansing, Mich.: Constitutional Convention Preparatory Commission, 1961), p. 11.

61. *Hawaii Const.* art. III, sec. 20.

62. *Ibid.* The 12 states are: Alaska, Arizona, Florida, Maine, Maryland, New Hampshire, New Jersey, Oregon, Tennessee, Utah, West Virginia, and Wyoming. Although the Tennessee Constitution does not provide for the office of the lieutenant governor, it has been created by statute.

63. Joiner and DeWitt, p. 11.

64. *Hawaii Const.* art. III, sec. 20.

65. Public Administration Service, "The Executive Department," *Constitutional Studies*, Vol. 2, Pt. VI, p. 8; Joiner and DeWitt, p. 11; and *Model State Constitution*, p. 64.

66. *Hawaii Const.* art. III, sec. 20.

67. New York (State), Temporary State Commission on the Constitutional Convention, *State Government*, p. 83.

68. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 195.

69. *Ibid.*

70. *Shapiro v. Thompson*, 394 U.S. 618 (1969).

71. *Dunn v. Blumstein*, 405 U.S. 330 (1972).

72. *Hawaii Rev. Stat.*, sec. 78-1(a).

73. *York v. State of Hawaii*, 53 Haw. 557, 498 P.2d 644 (1972).

74. 1976 Haw. Sess. Laws, Act 162.

75. 1977 Haw. Sess. Laws, Act 211.

76. Conference Committee Report 14 on Senate Bill 1350, Ninth Legislature, 1977, State of Hawaii.

77. *Hicklin v. Orbeck*, 45 U.S.L.W. 2593 (6-21-77).

78. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1958).

79. *Shapiro v. Thompson*, 394 U.S. 618 (1969).

Chapter 6

1. *Hawaii Const.* art. IV, sec. 5.

2. *Hawaii Const.* art. V, sec. 13.

3. *Hawaii Const.* art. IV, sec. 5.

4. Att'y Gen. Ops. No. 63-38 (August 30, 1963).

5. *Hawaii Const.* art. IV, sec. 5.

6. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), Art. V. sec. 5.05.

7. Wayne K. Minami, *Article V: The Judiciary*, Hawaii Constitutional Convention Studies (Honolulu: University of Hawaii, Legislative Reference Bureau, 1968), p. 12.

8. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Journal and Documents, pp. 196-203.

9. *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), pp. 98-100.

Appendix A

CONSTITUTIONAL AND STATUTORY ELECTIVE ADMINISTRATIVE OFFICIALS*

State or other jurisdiction	Governor	Lt. Governor	Secretary of State	Attorney General	Treasurer	Controller	Education	Agriculture	Labor	Insurance	Mines	Land	University Regents	Board of Education	Public Utilities Commission	Executive Council	Miscellaneous	Total Agencies	Total Officials
Alabama	C	C	C	C	C	..	..	C(a)	..	..	..	..	..	C8	S3	..	.....	9	18
Alaska	C	C	C	C	C	..	..	..	..	..	..	..	..	..	..	..	.....	2	2
Arizona	C	C	C	C	C	C	..	..	..	..	C	..	..	..	C3	..	.....	7	9
Arkansas	C	C	C	C	C	..	..	..	..	..	..	C	..	..	..	..	.....	7	7
California	C	C	C	C	C	C	C	..	..	..	..	..	..	..	..	..	Board of Equalization—C4(b)	3	11
Colorado	C	C	C	C	C	..	..	..	..	..	..	..	C9	C5	..	..	.....	7	19
Connecticut	C	C	C	C	C	C	..	..	..	..	..	..	..	..	..	..	.....	6	6
Delaware	C	C	C	C	C	..	..	..	..	C	..	..	..	..	..	..	.....	6	6
Florida	C	C	C	C	C(c)	C	C	C	..	(c)	..	..	..	(d)	S3	..	.....	9	11
Georgia	C	C	C	C	..	C	C	C	C	(e)	..	..	..	..	C5	..	.....	9	13
Hawaii	C	C	..	..	..	..	..	..	..	..	..	..	..	C9	..	..	.....	3	11
Idaho	C	C	C	C	C	..	C	..	..	..	..	..	..	..	..	..	.....	7	7
Illinois	C	C	C	C	C	C	..	..	..	..	..	..	S9	..	..	..	.....	7	15
Indiana	C	C	C	C	C	..	C	..	..	..	..	..	..	..	..	..	.....	7	7
Iowa	C	C	C	C	C	..	..	S	..	..	..	..	..	..	..	..	.....	7	7
Kansas	C	C	C	C	S	..	..	..	..	S	..	..	..	C10	..	..	.....	7	16
Kentucky	C	C	C	C	C	..	C	C	..	C	..	..	..	..	..	..	Railroad Commission—C3	9	11
Louisiana	C	C	C	C	C	..	C	C	..	C	..	..	..	C11	C5	..	Commissioner of Elections	11	25
Maine	C	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	.....	1	1
Maryland	C	C	..	C	..	C	..	..	..	..	..	..	..	..	..	..	.....	4	4
Massachusetts	C	C	C	C	C	..	..	..	..	..	..	..	..	..	..	C8	.....	7	14
Michigan	C	C	C	C	..	..	..	..	..	..	..	..	C24(f)	C8(g)	..	..	.....	8	36
Minnesota	C	C	C	C	C	..	..	..	..	..	..	..	..	..	..	..	.....	6	6
Mississippi	C	C	C	C	C	..	C	S(h)	..	S	..	S	..	..	S3	..	Highway Commission—S3	12	16
Missouri	C	C	C	C	C	..	..	..	..	..	..	..	..	..	..	..	.....	6	6
Montana	C	C	C	C	S	..	C	..	..	..	..	..	..	..	S5	..	.....	8	12
Nebraska	C	C	C	C	C	..	..	..	..	..	..	..	C8	C8	C5	..	.....	9	27
Nevada	C	C	C	C	C	C	..	..	..	..	(f)	..	C9	S9	..	..	.....	9(1)	24(1)
New Hampshire	C	..	..	..	..	..	..	..	..	..	..	..	..	..	..	C5	.....	2	6
New Jersey	C	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	.....	1	1
New Mexico	C	C	C	C	C	..	..	..	..	..	..	C	..	C10	..	..	Corporation Commission—C3	9	20
New York	C	C	..	C	..	C	..	..	..	..	..	..	..	..	..	..	.....	4	4
North Carolina	C	C	C	C	C	..	C	C	C	C	..	..	..	..	..	..	.....	10	10
North Dakota	C	C	C	C	C	..	..	C	S	C	..	..	..	..	C3	..	Tax Commissioner—C	12	14
Ohio	C	C	C	C	C	..	..	..	..	..	..	..	..	C23	..	..	.....	7	29
Oklahoma	C	C	C	C	C	..	C	..	C	C	C	..	..	..	C3	..	Commissioner of Charities & Corrections—C Examiner & Inspector—C	13	15
Oregon	C	..	C	S	C	..	C	..	S	..	..	..	..	..	..	..	.....	6	6
Pennsylvania	C	C	C	C	C	..	..	..	..	..	..	..	..	..	..	..	.....	4	4
Rhode Island	C	C	C	C	C	..	..	..	..	..	..	..	..	..	..	..	.....	5	5
South Carolina	C	C	C	C	C	C	C	S	..	..	..	..	..	..	..	..	Adjutant & Inspector General—C	9	9
South Dakota	C	C	C	C	C	..	..	..	..	..	..	C	..	..	S3	..	.....	8	10
Tennessee	C	..	..	..	..	..	..	..	..	..	..	..	..	..	S3	..	.....	2	4
Texas	C	C	C	C	C	C	..	S	..	..	..	C	..	S24	S23	..	Railroad Commission—C3	9	57
Utah	C	S(j)	C	C	C	..	..	..	..	..	..	..	..	C11	..	..	.....	6	16
Vermont	C	C	C	S	C	..	..	..	..	..	..	..	..	..	..	..	.....	6	6
Virginia	C	C	..	C	..	..	..	..	..	..	..	..	..	..	..	..	.....	3	3
Washington	C	C	C	C	C	..	C	..	..	S	..	C	..	S14(k)	..	..	.....	10	23
West Virginia	C	C	C	C	C	..	..	C	..	..	..	..	..	..	..	..	.....	6	6
Wisconsin	C	C	C	C	C	..	C	..	..	..	..	..	..	..	..	..	.....	6	6
Wyoming	C	..	C	..	C	..	C	..	..	..	..	..	..	..	..	..	.....	5	5
American Samoa	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	.....	(l)	(l)
Guam	C	C	..	..	..	..	..	..	..	..	..	..	..	..	..	..	.....	2	2
Puerto Rico	C	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	.....	1	1
TTPI	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	.....	(l)	(l)
Virgin Islands	C	C	..	..	..	..	..	..	..	..	..	..	..	..	..	..	.....	2	2

*Includes only officials who are popularly elected. Table formerly included officials selected by Legislature.
Symbols: C—Constitutional; S—Statutory; numbers indicate number of officials.
(a) Commissioner of Agriculture and Industries.
(b) Plus Controller, ex officio.
(c) The State Treasurer also serves as Insurance Commissioner.
(d) Governor and Cabinet ex officio.
(e) Comptroller General is ex officio Insurance Commissioner.
(f) Three universities with eight regents each.
(g) Plus Governor and Superintendent of Public Instruction, ex officio, nonvoting.
(h) Commissioner of Agriculture and Commerce.
(i) Office became appointive by Industrial Commission on 1st Monday in January 1975.
(j) Secretary of State becomes Lieutenant Governor ex officio by statute.
(k) Elected by local school board in convention, plus one ex officio.
(l) No elective administrative officials.

Source: *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), pp. 114-115.

Appendix B

STATUTORY DUTIES OF THE ATTORNEY GENERAL
(All citations to *Hawaii Revised Statutes*)

Duties	Citation
Prosecution of election law violations.	Sec. 11-213
Membership on the Contested Presidential Electors Committee.	Sec. 14-22
Institution of proceedings on unauthorized disclosure of legislative testimony.	Sec. 21-15(c)
Position in the order of succession to the governor.	Sec. 26-2
Head of department to administer and render state legal services, including furnishing of written legal opinions to the governor, legislature, and state departments and officers; representing the State in civil actions in which the State is a party; approval of legal documents; approve as to legality and form, all documents relating to State for the state acquisition of real property; prosecution of cases involving violations of state laws, agreements, and uniform laws. Also administration of the commission to promote uniform legislation.	Sec. 26-7
Approval as to form of surety bonds for officials.	Sec. 26-40
Appearance for the State in all cases in which the State is a party except where the director of the office of consumer protection represents the State.	Sec. 28-1
Prosecution of offenders and enforcement of bonds and other obligations in favor of the State. Prosecution of violations on public thruways and property.	Sec. 28-2
Conduct of investigations of alleged violations of the law.	Sec. 28-2.5
Giving and filing of opinions.	Sec. 28-3
Advising, counseling, aiding, and assisting public officers.	Sec. 28-4
Counseling, aiding, and assisting the poor on request of the governor or a department head.	Sec. 28-5

Duties	Citation
Receive and review personal history statements submitted to the department of personnel services.	Sec. 28-5.1
Accountant for all fees, bills, moneys collected by department.	Sec. 28-7
Responsibility for assistant, deputies, and clerks.	Sec. 28-8
Legal services for acquisition of rights-of-way.	Sec. 28-9
Appointment and commissioning of investigators and security investigators.	Sec. 28-11
Authorization and control of security guards.	Sec. 28-11.5
Use of official seal to verify documents.	Sec. 28-12
Registration and issuance of certificates of identification.	Sec. 28-34
Administration of the bureau of crime statistics.	Sec. 28-51
Administration of the organized crime unit.	Sec. 28-71
Initiation and taking of action to secure federal aid.	Sec. 29-12
Recovery for the State of excess expenditures.	Sec. 37-42
Approval of all statements and schedules related to the issuance of state bonds.	Sec. 39-95
Approval for destruction of all records and papers kept on file with the comptroller.	Sec. 40-10
Review of department's uncollectible accounts.	Sec. 40-82
Approval of form of bonds required under the state insurance law.	Sec. 41-5
Rendering of opinions on the construction and interpretation of civil service and public employment compensation laws at the request of a county or state department head.	Sec. 76-2
Attorney for the civil service commission.	Sec. 76-47
Certification of public officers on employee's refusal to testify or appear before any hearing relating to the affairs of the State.	Sec. 78-10

Duties	Citation
Legal adviser to the board of trustees of the Hawaii public employees health fund.	Sec. 87-16
Legal adviser to the board of trustees of the employees' retirement system.	Sec. 88-29
Enforcement of the provisions regarding public agency meetings and records.	Sec. 92-12
Withholding state records from the public relating to preparation of the prosecution or defense of any proceeding which the State is involved.	Sec. 92-51
Custody of government records submitted for disposal.	Sec. 94-3
Institution of condemnation proceedings.	Sec. 101-14
Approval of governmental acquisition of real property.	Sec. 107-10
Defense of all civil or criminal actions against members of the national guard which occur during performance of service.	Sec. 121-26
Application for appointment of administrator or guardian of property taken under the Civil Defense and Emergency Act.	Sec. 128-23
Petition for claim of damages filed by the government relating to the taking of property under the Civil Defense and Emergency Act.	Sec. 128-24
Designation of form of firearm registration.	Secs. 134-2, 3
Injunction actions for violations of the law on fresh fruits and vegetables.	Sec. 147-2
Membership on the advisory committee on markets.	Sec. 147-3
Injunction actions for violations of the law on exports of fruits, vegetables, and nuts.	Sec. 147-25
Injunction actions for violations of the law on exports of flowers and foliage.	Sec. 147-37
Review of appraisal of private property to be acquired by the board of land and natural resources under the public land laws.	Sec. 171-17
Enforcement of payment under commutation proceedings.	Secs. 172-3, 10

Duties	Citation
Investigations for the board of land and natural resources on violations of the ground-water use law.	Sec. 177-9
Legal services to the department of land and natural resources in connection with soil and water conservation laws.	Sec. 180-2
Approval of "Entry or Exit Census" forms used by the department of planning and economic development.	Sec. 201-43
Prosecution for violation of laws in respect to the assessment and taxation of property.	Sec. 231-3
Supervision and direction for collection of taxes.	Sec. 231-9
Attorney for the tax collector.	Sec. 231-14
Action for the State for extra-territorial enforcement of tax claims.	Sec. 231-26
Prosecution for payment of inheritance and estate taxes.	Secs. 236-36, 40
Defend actions brought against the State under the inheritance and estate taxes law.	Sec. 236-42
Assistance in enforcement of general excise tax law.	Sec. 237-8
Collection of delinquent taxes accrued under the fuel tax law.	Sec. 243-12
Approval of expenditures from the state highway fund for legal expenditures.	Sec. 248-9
Alternate membership on the multistate tax commission.	Sec. 255-2
Attorney for the consumer advocate.	Sec. 269-
Prevention of unreasonable water rates for consumers.	Sec. 269-27
Membership on the state highway safety council.	Sec. 286-5
Assistance to the insurance commissioner.	Sec. 287-43
Advise and representation of the board of education in actions to demote or terminate contracts of teachers.	Sec. 297-12
Application for commitment of mentally retarded persons at the request of the director of health.	Sec. 333-27

Duties	Citation
Enforcement of payment for care and treatment at Waimano training school hospital.	Sec. 333-28
Pursuit of nonsupport claims as requested by the department of social services and housing.	Sec. 346-37.5
Attorney for the department of social services and housing.	Sec. 346-39
Legal advisor to the criminal injuries compensation commission.	Sec. 351-65
Legal services for the Hawaii housing authority.	Sec. 356-5
Determination of sufficiency of title to property on which the Hawaii housing authority may construct housing.	Sec. 359G-11
Select a representative to the state commission on the status of women.	Sec. 367-2
Attorney for the department of labor and industrial relations.	Sec. 371-3
Filing complaints of unlawful employment practices or discrimination.	Sec. 378-4
Reception of order by the department of labor and industrial relations to dismiss unlawful employment practice on discrimination charges.	Sec. 378-7
Enforcement of labor disputes and public utilities law.	Sec. 381-10
Actions to recover benefits under the employment security law.	Sec. 383-44
Approval of settlements over contributions under the Hawaii employment security law.	Sec. 383-75
Enforcement of provisions of the Hawaii employment security law.	Sec. 383-103
Enforcement of judgments for unemployment contributions, interests and penalties in other states or for other states.	Sec. 383-108
Prosecution of actions against employers for failure to give security under the workers' compensation law.	Sec. 386-123

Duties	Citation
Application, on behalf of the bank examiner, for appointment of a bank receiver.	Sec. 401-12
Appointment of receiver for fiduciary company.	Sec. 402-5
Conduct civil actions, suits, and proceedings begun by the director of regulatory agencies under the Hawaii Bank Act.	Sec. 403-148
Member of board of review for application for license as industrial loan company.	Sec. 408-8
Distribution of church assets upon dissolution.	Sec. 419-8
Prosecute or defend all actions brought under the Hawaii insurance law.	Sec. 431-37
Recovery of fines levied by the insurance commissioner related to insurance licenses.	Sec. 431-405
Enforcement of the Insurance Information Protection Act.	Sec. 431H-6
Appointment of receiver for mutual and fraternal benefit society.	Sec. 433-14
Action to enjoin fraternal benefit society from conducting business upon request of the insurance commissioner.	Sec. 434-27
Membership on the board of examiners of abstract makers.	Sec. 436-2
Counsel for the motor vehicle industry licensing board.	Sec. 437-31
Recovery of bonds filed with the boxing commissioner.	Sec. 440-11
Enforcement of cemetery administrator's accounts.	Sec. 441-44
Prosecution of violations of the laws of the practice of chiropractics.	Sec. 442-20
Injunction action involving outdoor advertisement or billboards.	Sec. 445-120
Injunction actions against violations of degree granting institutions law.	Sec. 446D-14
Appointment and regulation of notaries public.	Secs. 456-1 to 18

Duties	Citation
Injunction actions for violations of the laws on practice of nursing.	Sec. 457-26
Attorney for the board of examiners of dispensing opticians.	Sec. 458-10
Legal adviser to the state board of photography.	Sec. 462-11
Prosecution to revoke or suspend private investigator licenses.	Sec. 463-4
Legal services to the board of registration of professional engineers, architects and surveyors.	Sec. 464-7
Application for injunction of violation of public accountancy law.	Sec. 466-11
Approval of settlement of claims against the real estate recovery fund.	Sec. 467-21
Enforcement of antitrust laws.	Secs. 480-1 to 24
Prosecution of actions for violation of fair trade regulations.	Sec. 481-8
Institution of criminal proceedings under the franchise investment law.	Sec. 482E-8
Approval of form of surety bonds issued by the deputy director of weights and measures.	Sec. 486-7
Reception of notice of land court registration.	Sec. 501-42
Contest applications to have title to land registered.	Sec. 501-44
Reception of notice of failure to file plan for subdivision of land.	Sec. 502-24
Action on discriminatory practices in real property transactions.	Secs. 515-10, 14
Trustee of charitable trusts.	Sec. 554-8
Representation of the State in certain family court hearings and appeals.	Sec. 571-54
Defense of the interests of the department of social services and housing in petitions for termination of parental rights.	Sec. 571-62

Duties	Citation
Representing the director of social services and housing in adoption proceedings.	Sec. 578-8
Establishment of the existence of collusion in divorce proceedings.	Sec. 580-8
Represent Hansen disease sufferers in divorce proceedings.	Sec. 580-44
Application to state circuit courts for injunction of violations of the law.	Sec. 603-23
Maintenance of action to enjoin false advertising.	Sec. 603-23.5
Maintenance of action for unauthorized practice of law.	Sec. 605-15.1
Application of orders of quo warranto.	Secs. 659-2, 4, 47
Objection to imprisonment on criminal accusations.	Sec. 660-26
Institution of suit in any civil action by the State.	Sec. 661-10
Represent the State or state employees in actions under the State Tort Liability Act.	Sec. 662-7
Reception of notice of hearing on boundary disputes before the commissioner of boundaries.	Sec. 664-7
Enforcement and administration of escheat laws.	Secs. 665-1 to 21
Issuance of expungement order rescinding certain records of arrest for persons arrested but not charged or convicted of a crime.	Sec. 831-3.2
Investigations relating to the Uniform Criminal Extradition Act.	Sec. 832-4
Investigation and prosecution of violation of organized crime law.	Secs. 842-1 to 12

Appendix C

GOVERNOR'S FORMAL INFLUENCE OVER APPOINTMENTS

(Percentage of reported top administrative posts for which Governor makes or consents to appointment)

90-100%	80-89%	70-79%	60-69%	50-59%	Under 50%
Alaska	Arkansas	California	Idaho	Arizona	Alabama
Hawaii	Delaware	Connecticut	Iowa	Florida	Colorado
New Jersey	Illinois	Indiana	Kansas	Louisiana	Georgia
Pennsylvania	Maine	Kentucky	Nevada	Michigan	Mississippi
	Massachusetts	Maryland	Oregon	Montana	New Mexico
	New Hampshire	Minnesota	South Dakota	North Dakota	Oklahoma
	New York	Missouri			South Carolina
	Ohio	Nebraska			Texas
	Tennessee	North Carolina			Wisconsin
	Utah	Rhode Island			
	Vermont	Washington			
	Virginia	West Virginia			
		Wyoming			

Source: The Governor: The Office and Its Powers (Lexington, Ky.: Council of State Governments, 1972), p. 19.

Appendix D

STATE BUDGETARY PRACTICES

State	Budget-Making Authority
Mississippi	Commission of Budget and Accounting. Includes Governor as ex officio chairperson; Lieutenant Governor; Chairperson, House Ways and Means Committee; Chairperson, House Appropriations Committee; Chairperson, Senate Finance Committee; President Pro Tem of Senate; Chairperson, Senate Appropriations Committee, one member of Senate appointed by Lieutenant Governor; Speaker of the House; two House members appointed by Speaker.
South Carolina	State Budget and Control Board. Includes Governor as Chairperson; Treasurer; Comptroller General; Chairperson, Senate Finance Committee; Chairperson, House Ways and Means Committee.
Texas	Governor, Legislative Budget Board.

Budget-making authority in all other states is in the governor.

Source: Book of the States, 1976-77 (Lexington, Ky.: Council of State Governments, 1976), pp. 124-127.

Appendix E

LEGISLATIVE CALENDAR AND BUDGET SUBMISSION

State	Governor's Term Begins	Legislative Session* Year	Month	Day	# of days before(-) or after(+) gov's term begins	Budget Submission Frequency	To legislative session by	# of days before(-) or after(+) gov's term begins
Alabama	Jan. 20, 1975	A	Mar.	Last Tues.[a,b]	+57	B[m]	5th day	+61
Alaska	Dec. 2, 1974	A	Jan.	2nd Mon.[c]	+42	A	3rd day	+44
Arizona	Jan. 6, 1975	A	Jan.	2nd Mon.	+ 7	A	5th day	+12
Arkansas	Jan. 14, 1975	O[e]	Jan.	2nd Mon.	- 1	B[m]	1st day	- 1
California	Jan. 6, 1975	E[f]	Dec.	1st Mon.	-35	A	Jan. 10	+ 4
Colorado	Jan. 14, 1975	A[g]	Jan.	Wed. after 1st Tues.	- 7	A	10th day	+ 2
Connecticut	Jan. 8, 1975	A[g]	Odd-Jan. Even-Feb.	Wed. after 1st Mon.	0	A	1st day-even 1st day after 3rd of Feb.-odd, Feb. 14 if new governor	+27
Delaware	Jan. 16, 1973	A[d]	Jan.	2nd Tues.	- 7	A	5th day	- 3
Florida	Jan. 7, 1975	A	Apr.	Tues. after 1st Mon.[b]	+91	A	30 days prior to session	+61
Georgia	Jan. 14, 1975	A[d]	Jan.	2nd Mon.	- 1	A	5th day	+ 4
Hawaii	Dec. 2, 1974	A[d]	Jan.	3rd Wed.	+43	B[m,n]	1st day	+43
Idaho	Jan. 6, 1975	A	Jan.	Mon. after 1st day	0	A	5th day	+ 4
Illinois	Jan. 8, 1973	A[d]	Jan.	2nd Wed.	+ 2	A	1st Wed. in Mar.	+59
Indiana	Jan. 8, 1973	A	Jan.	2nd Mon.[b]	0	B[m]	2 weeks[o]	+14
Iowa	Jan. 16, 1975	A[d]	Jan.	2nd Mon.	- 3	B[m]	Feb. 1	+16
Kansas	Jan. 13, 1975	A[d]	Jan.	2nd Mon.	0	A	2nd day-even 3 weeks-odd	+21
Kentucky	Dec. 9, 1975	E	Jan.	Tues. after 1st Mon.	+28	B[m]	As gov. desires	-
Louisiana	May 10, 1976	A	May	2nd Mon.[b]	0	A	1st day, 5th day if new governor	0
Maine	Jan. 2, 1975	A[g]	Jan.	1st Wed. after 1st Tues.	+ 7	B[m]	2nd week, 6th week if new governor	+21
Maryland	Jan. 15, 1975	A	Jan.	2nd Wed.	- 7	A	3rd Wed. of Jan.	0
Massachusetts	Jan. 2, 1975	A	Jan.	1st Wed.	- 1	A	3 weeks	+20
Michigan	Jan. 1, 1975	A[d]	Jan.	2nd Wed.	+ 7	A	10th day	+16
Minnesota	Jan. 8, 1975	O	Jan.	Tues. after 1st Mon.	- 7	B[m]	3 weeks	+ 2
Mississippi	Jan. 20, 1976	A	Jan.	Tues. after 1st Mon.	-14	A	Dec. 15	-36
Missouri	Jan. 8, 1973	A	Jan.	Wed. after 1st Mon.	- 5	A	30th day	+24
Montana	Jan. 1, 1973	O	Jan.	1st Mon.	0	B	1st day	0
Nebraska	Jan. 9, 1975	A[d]	Jan.	1st Wed. after 1st Mon.	- 6	A	30th day	+23
Nevada	Jan. 6, 1975	O	Jan.	3rd Mon.	+14	B[m]	10th day	+23
New Hampshire	Jan. 2, 1975	O	Jan.	1st Wed. after 1st Tues.[b]	+20	B[m]	Feb. 15	+44
New Jersey	Jan. 17, 1974	A[d]	Jan.	2nd Tues.	- 9	A	3 weeks	+18
New Mexico	Jan. 1, 1975	A[g]	Jan.	3rd Tues.	+21	A	25th day	+45
New York	Jan. 1, 1975	A[d]	Jan.	Wed. after 1st Mon.	+15	A	13th day, Feb. 1 if after gubernatorial election	+27
North Carolina	Jan. 5, 1973	O[i]	Jan.	Wed. after 2nd Mon.	+ 5	B[m]	1st week	+12
North Dakota	Jan. 2, 1973	O	Jan.	Tues. after 1st Mon.[b]	0	B	Dec. 1	-32
Ohio	Jan. 13, 1975	A	Jan.	1st Mon.[j]	- 7	B[m]	3rd week in Jan., Mar. 15 if new governor	+ 9
Oklahoma	Jan. 13, 1975	A[d]	Jan.	Tues. after 1st Mon.	- 6	A	1st day, governor's inaugural if new governor	- 6
Oregon	Jan. 13, 1975	O	Jan.	2nd Mon.	0	B	Dec. 1	+44
Pennsylvania	Jan. 21, 1975	A[d]	Jan.	1st Tues.	-14	A	1st day	-14
Rhode Island	Jan. 7, 1975	A[d]	Jan.	1st Tues.	0	A	24th day	+23
South Carolina	Jan. 15, 1975	A[d]	Jan.	2nd Tues.	- 1	A	1st day	- 1
South Dakota	Jan. 7, 1975	A	Jan.	Odd-Tues. after 3rd Mon. Even-Tues. after 1st Mon.	+14	A	Dec. 1	-37
Tennessee	Jan. 18, 1975	O[i]	Jan.	1st Tues.[b]	- 4	A	During organization-odd; 15th day-even	- 4
Texas	Jan. 21, 1975	O	Jan.	2nd Tues.	- 7	B[m]	7th day	- 1
Utah	Jan. 1, 1973	A[g]	Jan.	2nd Mon.	+ 7	A	3rd day-regular 1st day-budget	+10
Vermont	Jan. 10, 1975	O[i]	Jan.	Wed. after 1st Mon.	- 2	B	3rd Tues. in Jan.	+11
Virginia	Jan. 12, 1974	A[d]	Jan.	2nd Wed.	- 3	B[m]	5th day-odd 1st day-even	- 3
Washington	Jan. 8, 1973	O	Jan.	2nd Mon.	0	B	Dec. 20	-20
West Virginia	Jan. 15, 1973	A	Jan.	2nd Wed.[k]	- 5	A	10th day	+ 4
Wisconsin	Jan. 6, 1975	A[g]	Jan.	1st Tues.[i]	+ 1	B[m]	Last Tues. in Jan.	+22
Wyoming	Jan. 6, 1975	A[g]	Odd-Jan. Even-Feb.	2nd Tues.	+ 8	B	Jan. 1	- 5

Source: *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), pp. 58-59, 113, 124-127.

Abbreviations: A = Annual; B = Biennial; E = Even; O = Odd

* *All States elect new Legislatures in November of even-numbered years except Kentucky, Louisiana, Mississippi, New Jersey, and Virginia. Alabama, Louisiana, Maryland, and Mississippi elect all legislators at the same time to four-year terms.*

a. *During the quadrennial election year, sessions convene on the 3rd Tuesday in January.*

b. *Legislature meets in organizational session. Alabama: second Tuesday in January after quadrennial election; Florida: 14th day following each general election; Georgia: second Monday in January for no longer than 12 days, reconvenes second Monday in February; Indiana: third Tuesday after first Monday in November for one day only; New Hampshire: first Wednesday of December, even-numbered years; North Dakota: December following general election, to reconvene at a time prescribed by law, but no later than January 8; Tennessee; first Tuesday in January for no more than 15 C days to organize and introduce bills, reconvenes on fourth Tuesday in February.*

c. *Except in the January immediately following the quadrennial general election, the first regular session will convene on the third Monday in January.*

d. *The Legislature meets in two annual sessions, each adjourning sine die. Bills carry over from first to second session.*

e. *Session may be extended for an indefinite period of time by vote of members in both houses. Arkansas: 2/3 vote (this extension can permit the Legislature to meet in even years); Florida: 3/5 vote; Hawaii: petition of 2/3 membership for not more than 15 days; Kansas: 2/3 vote elected members; Maryland: 3/5 vote for 30 additional days; Mississippi: 2/3 vote of those present may extend for 30 C days, no limit on extensions; Nebraska: 4/5 vote; Virginia: 2/3 vote for up to 30 days; West Virginia: 2/3 vote; Puerto Rico: joint resolution.*

f. *Regular sessions commence on the first Monday in December of each even-numbered year (following the general election) and continue until November 30 of the next even-numbered year. It may recess from time to time, and may be recalled into regular session.*

g. *Second session of Legislature is basically limited to budget and fiscal matters. Maine: in addition, legislation in the Governor's call, study committee legislation, and initiated measures. New Mexico: legislature may consider bills vetoed by the Governor at the preceding session.*

h. *Effective 1977 the 3rd Monday in April.*

i. *The Legislature may and in practice has divided the session to meet in even years also.*

j. *First Monday in January or the day after if the first Monday falls on a legal holiday.*

k. *Following each gubernatorial election, the Legislature convenes on the second Wednesday of January to organize, but recesses until the second Wednesday in February for the start of the 60-day session.*

l. *The legislature by joint resolution establishes the calendar dates of session activity for the remainder of the biennium at the beginning of the odd-numbered year. These dates may be subject to change.*

m. *The budget is adopted biennially, but appropriations are made for each year of the biennium separately. Minnesota: a few appropriations are made for the biennium; Montana: supplemental appropriations are considered by the Legislature annually; Virginia: increases or decreases may be made in the second legislative session; Wisconsin: statutes authorize an annual budget review, and the Governor may in even years recommend changes. Wisconsin does have a few appropriations which are made on a biennial basis.*

n. *Increases or decreases may be made in even-year sessions.*

o. *Convenes on 1st Thursday after 1st Monday in January in odd years.*

Appendix F

LEGISLATIVE PROCEDURE: EXECUTIVE ACTION

State or other jurisdiction	Days after which bill becomes law (before adjournment) unless vetoed*	Fate of bill after adjournment: Days after which bill becomes law unless vetoed*	Fate of bill after adjournment: Days after which bill dies unless signed*	Legislature may recall bill before Governor acts	Governor may return bill before action	Item veto on appropriation bills: Amount	Item veto on appropriation bills: Other	Votes required in House and Senate to pass bills or items over veto(a)
Alabama	6	..	10	★	★	★	★	Majority elected
Alaska	15	20	..	..	..	★(b)	..	Three-fourths elected
Arizona	5	10	..	★	..	★	..	Two-thirds elected
Arkansas	5	20(c)	..	★	..	★	..	Majority elected
California	12(c)	(d)	..	..	★	★(b)	..	Two-thirds elected
Colorado	10(c)	30(c)	..	★	..	★	★	Two-thirds elected
Connecticut	5(e,f)	15(c,f)	..	★	..	★	..	Two-thirds elected
Delaware	10	..	30(c)	★(g)	..	★	..	Three-fifths elected
Florida	7(c)	15(c)	..	★	..	★	★	Two-thirds present
Georgia (h)	5	30(i)	..	..	..	★	..	Two-thirds elected
Hawaii (h)	10(e)	45(e,j)	(e,j)	..	..	★(b)	..	Two-thirds elected
Idaho	5	10	..	..	..	★	..	Two-thirds present
Illinois	60(f)	90(k)	..	..	★(l)	★	..	Three-fifths elected
Indiana	7	7	★	..	..	..	..	Majority elected
Iowa	3	(m)	..	★	..	★	★	Two-thirds elected
Kansas	10	10	..	★	..	★	..	Two-thirds elected
Kentucky	10	10	..	..	..	★	..	Majority elected
Louisiana (h)	10(c,f)	20(c,f)	..	..	..	★	..	Two-thirds elected
Maine	5	(n)	..	★	..	..	..	Two-thirds present
Maryland (h)	6	30	..	..	★	★(o)	★	Three-fifths elected
Massachusetts	10(e)	..	10(f)	★	★(l)	★(b)	★	Two-thirds present
Michigan	14(c,f)	..	14(c,f)	★	..	★	★	Two-thirds elected and serving
Minnesota	3	..	14	★	..	★	..	Two-thirds elected
Mississippi	5	15(p)	..	..	..	★	★	Two-thirds elected
Missouri	(q)	(r)	..	..	..	★(b)	..	Two-thirds elected
Montana	5	25(c)	..	★	★	★	★	Two-thirds present
Nebraska	5	5	..	★	★	★(s)	..	Three-fifths elected
Nevada	5	10	..	★	★	..	..	Two-thirds elected
New Hampshire	5	..	5(f)	★	★	..	..	Two-thirds present
New Jersey	10(t)	45	(u)	..	..	★(b)	..	Two-thirds elected
New Mexico	3	..	20(v)	★	..	★	..	Two-thirds present
New York	10(f)	..	30(c)	★	..	★	..	Two-thirds elected
North Carolina	(w)	(w)	(w)	..	..	(w)	..	.....
North Dakota	3(c)	15(c)	..	..	..	★	★	Two-thirds elected
Ohio	10	10	..	★	★	★	..	Three-fifths elected
Oklahoma	5	..	15	★	..	★	..	Two-thirds elected(x)
Oregon	5	20	..	★	★	★	..	Two-thirds present
Pennsylvania	10(c)	30(c)	..	★	..	★(b)	..	Two-thirds elected
Rhode Island	6	10(c)	..	..	..	..	..	Three-fifths present
South Carolina	3	(n)	..	★	..	★	★	Two-thirds present
South Dakota	5	15	..	★	★	★	★	Two-thirds elected
Tennessee	5	10	..	★	..	★(b)	..	Majority elected
Texas	10	20	..	★	★	★	..	Two-thirds present
Utah	5	10	..	★	..	★	..	Two-thirds elected
Vermont	5	..	(y)	★	..	..	..	Two-thirds present
Virginia	7(c)	..	30(c)	..	★	★	★	Two-thirds present(z)
Washington	5	10	..	..	..	★	★	Two-thirds present
West Virginia	5	15(aa)	..	★	..	★	★	Majority elected(ab)
Wisconsin	6(f)	..	6(f)	★	..	★	★	Two-thirds present
Wyoming	3	15(c,ac)	..	★	★	★	..	Two-thirds elected
American Samoa	10	..	30	★	★	★	..	Two-thirds elected(ad)
Guam	10	..	30	..	..	★	..	14 members
Puerto Rico	10	10	30(c)	..	..	★	★	Two-thirds elected
TTPI	10	30	..	..	..	★	..	Three-fourths elected
Virgin Islands	10(f)	..	30(c,f)	..	★	★	★	Two-thirds elected

*Sundays excluded.
(a) Bill returned to house of origin with objections.
(b) The Governor can also reduce items in appropriations measures.
(c) Sundays included; Pennsylvania, if the last day falls on Sunday Governor has following Monday in which to act.
(d) Regular sessions: The last day which either house may pass a bill except statutes calling elections, statutes providing for tax levies or appropriations for usual current expenses of the state, and urgency statutes, is August 31 of even-numbered years. All other bills given to the Governor during the 12 days prior to August 31 of that year become law unless vetoed by September 30. Special sessions: 12 days.
(e) Except Sundays and legal holidays; Hawaii: except Saturdays, Sundays, holidays, and any days in which the Legislature is in recess prior to its adjournment.
(f) After receipt by Governor.
(g) Only by originating house.
(h) Constitution withholds right to veto constitutional amendments.
(i) Vetoed bills shall be returned to the presiding officer of the house in which they originated within 35 days from date of adjournment. Such bills may be considered at any time within the first 10 days of the next regular session for the purpose of overriding the veto.
(j) If bill is presented to Governor less than 10 days before adjournment and he indicates he will return it with objections, Legislature can convene on 45th day after adjournment to consider the objections. If, however, Legislature fails to convene, bill does not become law.
(k) From passage. If a recess or adjournment prevents the return of the vetoed bill, the bill and the Governor's objections shall be filed with the Secretary of State within 60 calendar days of receipt by Governor. The Secretary of State shall return the bill and the objections to the originating house promptly upon the next meeting of the same Legislature.
(l) Amendatory veto.
(m) Bills forwarded to Governor during the last three days of the session must be deposited by Governor with Secretary of State within 30 days after the adjournment of the General Assembly. Governor must give his approval or his objections if disapproved.
(n) Bill passed in one session becomes law if not returned within three days after the next meeting in Maine, and within two days after convening of the next session in South Carolina.
(o) Maryland: right of item veto on supplementary appropriation bills and capital construction bill, only. The general appropriation bill may not be vetoed.
(p) Governor is required to return bill to Legislature with his objections within three days after beginning of the next session.
(q) If Governor does not return bill in 15 days, a joint resolution is necessary for bill to become law.
(r) When the Legislature adjourns, or recesses for a period of 30 days or more, the Governor may return within 45 days any bill or resolution to the office of the Secretary of State with his approval or reasons for disapproval. A bill vetoed in odd years shall be returned for consideration when the Legislature reconvenes the following year. In even years Legislature to reconvene first Wednesday following first Monday in September for not more than 10 days to consider vetoed bills.
(s) Items vetoed in any appropriations bills may be restored by ⅗ vote on entire bill. No appropriations can be made in excess of the recommendations contained in the Governor's budget unless by a ⅗ vote. The excess approved by the ⅗ vote is subject to veto by the Governor.
(t) If house of origin is in temporary adjournment on 10th day, Sundays excepted, after presentation to Governor, bill becomes law on day house of origin reconvenes unless returned by Governor on that day. Governor may return bills vetoed, suggesting amendments, and bills may be passed in amended form, subject to approval by Governor in amended form within 10 days after presentation to him.
(u) Bills not signed by Governor do not become law if the 45th day after adjournment sine die comes after the legislative year.
(v) Vetoed bills of odd-year session are subject to override at the following even-year session.
(w) No veto; bill becomes law 30 days after adjournment of session unless otherwise expressly directed.
(x) ¾ in case of an emergency measure.
(y) If adjournment occurs within three days after passage of a bill and Governor refuses to sign it, the bill does not become law.
(z) Including majority elected.
(aa) Five days for appropriations bills.
(ab) Budget bill and supplementary appropriation bill require ¾ elected.
(ac) Bill becomes law if not filed with objections with the Secretary of State within 15 days after adjournment.
(ad) Requires approval by Secretary of the Interior.

Source: *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), pp. 70-71.

Appendix G

SPECIAL SESSIONS

State or other jurisdiction	Special Sessions		
	Legislature may call*	Legislature may determine subject	Limitation on length of session
Alabama	No	2/3 vote each house	12 L in 30 C
Alaska	2/3 of membership	Yes[a]	30 C
Arizona	Petition 2/3 members, each house	Yes[a]	None
Arkansas	No	[g]	None[c]
California	No	No	None
Colorado	Vote 2/3 members, each house	Yes[a]	None
Connecticut	No	No	None
Delaware	Jt. call, presiding officers, both houses	Yes	None
Florida	Jt. call, presiding officers, both houses	Yes	20 C[b]
Georgia	Petition, 3/5 members, each house	Yes[a]	[k]
Hawaii	2/3 members, each house	Yes	30 L[b]
Idaho	No	No	20 C
Illinois	Jt. call, presiding officers, both houses	Yes	None
Indiana	No	Yes	30 L in 40 C
Iowa	Petition 2/3 members, each house	Yes	None
Kansas	Petition 2/3 members, each house	Yes	None
Kentucky	No	No	None
Louisiana	Petition majority, each house	Yes[a]	30 C
Maine	Majority of each party	Yes[a]	None
Maryland	Petition majority, each house	Yes	30 C
Massachusetts	Yes	Yes	None
Michigan	No	No	None
Minnesota	No	Yes	None
Mississippi	No	No	None
Missouri	No	No	60 C
Montana	Petition majority, each house	Yes	None
Nebraska	Yes	Yes	None
Nevada	No	No	20 C[d]
New Hampshire	Yes	Yes	None[d]
New Jersey	Petition majority, each house	Yes	None
New Mexico	Petition 3/5 members, each house	Yes[a]	30 C
New York	2/3 members, each house	Yes[a]	None
North Carolina	3/5 members, each house	Yes	None
North Dakota	No	Yes	None
Ohio	Jt. call, presiding officers, both houses	Yes	None
Oklahoma	No	No	None
Oregon	No	Yes	None
Pennsylvania	Petition majority, each house	No	None
Rhode Island	No	No	None
South Carolina	No	Yes	None
South Dakota	No	No	None
Tennessee	2/3 members, each house	Yes	30[d]
Texas	No	No	30 C
Utah	No	No	30 C
Vermont	No	Yes	None
Virginia	Petition 2/3 members, each house	Yes	None
Washington	No	Yes	None
West Virginia	Petition 3/5 members, each house	No[e]	None
Wisconsin	No[f]	No	None
Wyoming	No	Yes	None
American Samoa	No	No	None
Guam	No	No	None
Puerto Rico	No	No	20
TTPI	No	No	None
Virgin Islands	No	No	None

Source: *Book of the States, 1976-77 (Lexington, Ky.: Council of State Governments, 1976), pp. 58-59.*

Abbreviations: L - Legislative days; C - Calendar days.

* *The following States provide for a special session to only consider bills vetoed after adjournment sine die: Connecticut, Hawaii, Louisiana, Missouri (even years only), and Washington.*

a. *Only if Legislature convenes itself. Special sessions called by the Legislature are unlimited in scope in Arizona, Georgia, Maine, and New Mexico.*

b. *Session may be extended for an indefinite period of time by vote of members in both houses. Arkansas: 2/3 vote (this extension can permit the Legislature to meet in even years); Florida: 3/5 vote; Hawaii: petition of 2/3 membership for not more than 15 days; Kansas: 2/3 vote elected members; Maryland: 3/5 vote for 30 additional days; Mississippi: 2/3 vote of those present may extend for 30 C days, no limit on extensions; Nebraska: 4/5 vote; Virginia: 2/3 vote for up to 30 days; West Virginia: 2/3 vote; Puerto Rico: joint resolution.*

c. *After the Legislature has disposed of the subject(s) in the Governor's call, it may by a 2/3 vote of members of both houses take up subject(s) of its own choosing in a session of up to 15 days.*

d. *Indirect restrictions only since legislators' pay, per diem, or daily allowance stops but session may continue. Nevada: no limit on allowances; New Hampshire: constitutional limit on expenses of 90 days or July 1, whichever occurs first, 15 days salary and expenses for special sessions; Tennessee: constitutional limit on per diem and travel allowance only, excluding organizational session.*

e. *No, if called by the Governor alone; questionable if called as a result of petition of members.*

f. *Only the Governor may call a special session; however, an extraordinary session may be called by petition of a majority of each house or by a majority of the members of the Committee on Organization in each house.*

Appendix H

GUBERNATORIAL TERMS

FOUR-YEAR GUBERNATORIAL TERM				TWO-YEAR GUBERNATORIAL TERM
No Limit on Succession	Cannot Succeed Self	Limited to Two Consecutive Terms	Absolute Two-Term Limitation	No Limit on Succession
Arizona	Georgia	Alabama	Delaware	Arkansas
California	Kentucky	Alaska	Missouri	New Hampshire
Colorado	Mississippi	Florida		Rhode Island
Connecticut	New Mexico	Indiana		Vermont
Hawaii	North Carolina	Kansas		
Idaho	South Carolina	Louisiana		
Illinois	Tennessee	Maine		
Iowa	Virginia	Maryland		
Massachusetts		Nebraska		
Michigan		Nevada		
Minnesota		New Jersey		
Montana		Ohio		
New York		Oklahoma		
North Dakota		Oregon		
Texas		Pennsylvania		
Utah		South Dakota		
Washington		West Virginia		
Wisconsin				
Wyoming				

Source: *Book of the States, 1976-77 (Lexington, Ky.: Council of State Governments, 1976), p. 113.*

Appendix I

COMPENSATION OF STATE GOVERNORS, LIEUTENANT GOVERNORS, SECRETARIES OF STATE

State or other jurisdiction	Governor	Lieutenant Governor	Secretary of State
Alabama	$28,955	$ 3,600	$22,960
Alaska	50,000	43,999	b-1
Arizona	40,000	...	24,000
Arkansas	10,000	2,500	5,000
California	49,100	35,000	35,000
Colorado	40,000	25,000	25,000
Connecticut	42,000	18,000	20,000
Delaware	35,000	12,000	18,720
Florida	50,000	36,000	40,000
Georgia	50,000	25,000	35,000
Hawaii	50,000	45,000	b-1
Idaho	33,000	8,000	21,500
Illinois	50,000	37,500	42,500
Indiana	37,000	23,500	23,500
Iowa	40,000	12,000	22,500
Kansas	35,000	12,275	18,500
Kentucky	35,000	22,500	22,500
Louisiana	50,000	26,500	35,000
Maine	35,000	...	20,000
Maryland	25,000	44,856	24,000
Massachusetts	40,000	25,000	25,000
Michigan	45,000	27,500	42,250
Minnesota	41,000	30,000	25,000
Mississippi	43,000	15,000	28,000
Missouri	37,500	16,000	25,000
Montana	30,000	24,000	18,000
Nebraska	25,000	25,000	25,000
Nevada	40,000	6,000	25,000
New Hampshire	34,070	...	25,476
New Jersey	60,000	...	43,000
New Mexico	35,000	15,000	24,000
New York	85,000	60,000	47,800
North Carolina	38,500	30,000	31,000
North Dakota	18,000	2,000	11,000
Ohio	50,000	30,000	38,000

State or other jurisdiction	Governor	Lieutenant Governor	Secretary of State
Oklahoma	$42,500	$24,000	$18,500
Oregon	38,500	...	31,900
Pennsylvania	60,000	45,000	35,000
Rhode Island	42,500	25,500	25,500
South Carolina	39,000	17,500	34,000
South Dakota	27,500	4,200	17,500
Tennessee	50,000	a	34,949
Texas	65,000	7,200	38,100
Utah	35,000	b-2	21,996
Vermont	36,100	15,500	19,600
Virginia	50,000	10,525	17,400
Washington	42,150	17,800	21,400
West Virginia	35,000	...	22,500
Wisconsin	44,292	28,668	22,140
Wyoming	37,500	...	23,000
American Samoa	45,000	45,000	...
Guam	35,000	30,000	...
Puerto Rico	35,000	...	28,500
TTPI	...	...	26,000

Source: *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), p. 116.

a. *The Speaker of the Senate is elected by the Senate from among its membership and, by statute, is Lieutenant Governor.*

b. *Chief administrative official or agency in charge of function:*
   (b-1) Lieutenant Governor
   (b-2) Secretary of State

Appendix J

PROVISIONS RELATING TO SUCCESSION

Model Executive Article

Section 4. Succession

If the Governor-elect dies, resigns, is disqualified, or fails to assume office, or if the Governor dies, resigns or is disqualified, the Lieutenant Governor shall become Governor and hold office until the next election. If the office of Lieutenant Governor becomes vacant, the Governor shall nominate a Lieutenant Governor who shall take office upon confirmation by a majority of both houses of the legislature. Provision shall be made by law for succession to the office of Governor if neither the Governor nor Lieutenant Governor is able to fulfill the responsibilities of the office. The Supreme Court shall have original and final jurisdiction to determine the absence or disability of the Governor or Governor-elect, to determine the existence of a vacancy in the office of Governor, and concerning succession to the office.

Source: Suggested State Legislation - 1970 (Lexington, Ky.: Council of State Governments, 1970), p. 5.

Model State Constitution
(Art. V, sec. 5.08)

Succession to Governorship.

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

(b) When the governor is unable to discharge the duties of his office by reason of impeachment or other disability, including but not limited to physical or mental disability, or when the duties of the office are not being discharged by reason of his continuous absence, the presiding officer of the legislature shall serve as acting governor until the governor's disability or absence terminates. If the governor's disability or absence does not terminate within six months, the office of the governor shall be vacant.

(c) When, for any reason, a vacancy occurs in the office of the governor, the unexpired term shall be filled by special election except when such unexpired term is less than one year, in which event the presiding officer

of the legislature shall succeed to the office for the remainder of the term. When a vacancy in the office of the governor is filled by special election, the presiding officer of the legislature shall serve as acting governor from the occurrence of the vacancy until the newly elected governor has qualified. When the presiding officer of the legislature succeeds to the office of governor, he shall have the title, powers, duties and emoluments of that office and, when he serves as acting governor, he shall have the powers and duties thereof and shall receive such compensation as the legislature shall provide by law.

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

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

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

United States Constitution

ARTICLE XXV

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office of Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declara-

tion that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both houses that the President is unable to discharge the powers and duties of his office the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Appendix K

IMPEACHMENT PROVISIONS

ALASKA STATE CONSTITUTION
(Article II, Sec. 20)

SECTION 20. All civil officers of the State are subject to impeachment by the legislature. Impeachment shall originate in the senate and must be approved by a two-thirds vote of its members. The motion for impeachment shall list fully the basis for the proceeding. Trial on impeachment shall be conducted by the house of representatives. A supreme court justice designated by the court shall preside at the trial. Concurrence of two-thirds of the members of the house is required for a judgment of impeachment. The judgment may not extend beyond removal from office, but shall not prevent proceedings in the courts on the same or related charges.

MISSOURI STATE CONSTITUTION
(Article VII, Secs. 1-3)

Section 1. Impeachment--officers liable--grounds.--All elective executive officials of the state, and judges of the supreme courts, courts of appeals and circuit courts shall be liable to impeachment for *crimes, misconduct, habitual drunkenness, wilful neglect of duty,* corruption in office, incompetency, or any offense involving moral turpitude or oppression in office.

Section 2. Power of impeachment--trial of impeachments.--The house of representatives shall have the sole power of impeachment. All impeachments shall be tried before the supreme court, except that the governor or a member of the supreme court shall be tried by a special commission of seven eminent jurists to be elected by the senate. The supreme court or special commission shall take an oath to try impartially the person impeached, and no person shall be convicted without the concurrence of five-sevenths of the court of special commission.

Section 3. Effect of judgment of impeachment.--Judgment of impeachment shall not extend beyond removal from office, but shall not prevent punishment of such officer by the courts on charges growing out of the same matter.

NEBRASKA STATE CONSTITUTION
(Article III, Sec. 17)

Sec. 17. The Legislature shall have the sole power of impeachment, but a majority of the members elected must concur therein. Upon the adoption of a resolution of impeachment a notice of an impeachment of any officer, other than a Judge of the Supreme Court, shall be forthwith served upon the Chief Justice, by the Clerk of the Legislature, who shall thereupon call a session of the Supreme Court to meet at the Capitol within ten days after such notice to try the impeachment. A notice of an impeachment of the Chief Justice or any Judge of the Supreme Court shall be served by the Clerk of the Legislature, upon any Judge of the judicial district within which the Capitol is located, and he thereupon shall notify all the Judges of the District Court in the State to meet with him within thirty days at the Capitol, to sit as a Court to try such impeachment, which Court shall organize by electing one of its number to preside. No person shall be convicted without the concurrence of two-thirds of the members of the Court of impeachment, but judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, profit, or trust, in this State, but the party impeached, whether convicted or acquitted shall nevertheless be liable to prosecution and punishment according to law. No officer shall exercise his official duties after he shall have been impeached and notified thereof, until he shall have been acquitted. (Amended, 1972.)

NEW YORK STATE CONSTITUTION
(Article VI, Sec. 24)

[Court for trial of impeachments; judgment.] § 24. The assembly shall have the power of impeachment by a vote of a majority of all the members elected thereto. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or the major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor or lieutenant-governor, neither the lieutenant-governor nor the temporary president of the senate shall act as a member of the court. No judicial officer shall exercise his office after articles of impeachment against him shall have been preferred to the senate, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any public office of honor, trust, or profit under this state; but the party impeached shall be liable to indictment and punishment according to law.

Appendix L

CONSTITUTIONAL QUALIFICATIONS FOR GOVERNOR/LT. GOVERNOR*

State	Age	U.S. citizen (years)	State citizen/ resident (years)	Other
Alabama	30	10	7[a]	...
Alaska	30	7	7	*b*
Arizona**	25	10	5[a]	...
Arkansas	30	*c*	7	...
California	*b*	5	5	*b*
Colorado	30	*c*	2	...
Connecticut	30	...	...	*b*
Delaware	30	12	6	...
Florida	30	...	7	*b*
Georgia[d]	30	15	6[a]	...
Hawaii	30	...	5	*b*
Idaho	30	*c*	2	...
Illinois	25	*c*	3	...
Indiana	30	5	5	...
Iowa	30	*c*	2	...
Kansas[e]	...	...	...	...
Kentucky	30	...	6[f]	...
Louisiana	25	5	5	...
Maine**	30	15	5	*g*
Maryland	30	...	5	*b*
Massachusetts	...	...	7	...
Michigan	30	...	...	*b*
Minnesota	25	*c*	1	...
Mississippi	30	20	5	...
Missouri	30	15	10	...
Montana	25	*c*	2	...
Nebraska	30	*c*	5[f]	...
Nevada	25	...	2	*b*
New Hampshire**	30	...	7	...
New Jersey**	30	20	7	...
New Mexico	30	*c*	5	...
New York	30	*c*	5	...
North Carolina	30	5	2	...
North Dakota	30	*c*	5	*b*
Ohio[e]	*b*	...	...	*b,h*

State	Age	U.S. citizen (years)	State citizen/ resident (years)	Other
Oklahoma.....	31	c	...	b
Oregon**.....	30	c	3	...
Pennsylvania.....	30	c	7	...
Rhode Island.....	b	1 mo.	1 mo.	b,i
South Carolina.....	30	5	5[f]	...
South Dakota.....	...	c	2	...
Tennessee[j].....	30	c	7[a]	...
Texas.....	30	c	5	...
Utah[k].....	30	...	5[f]	b
Vermont.....	...	...	4	...
Virginia.....	30	c	5	b
Washington.....	b	c	...	b
West Virginia**.....	30	...	5[a]	a,c
Wisconsin.....	b	c	...	b
Wyoming**.....	30	c	5	b

Source: *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), pp. 214-215.

* *Some States may have established statutory qualifications.*

** *The State does not provide for office of Lieutenant Governor.*

a. *Citizen of the State.*

b. *Must be a qualified voter. Maryland: 5 years; Michigan: Governor 4 years; Oklahoma: 10 years; Virginia: 5 years.*

c. *Number of years not specified.*

d. *State constitution provides for a Lieutenant Governor who shall be elected at the same time, for the same term, and in the same manner as the Governor, but no qualifications are prescribed.*

e. *Kansas and Ohio have no constitutional qualifications for the Office of Governor; however, they provide that no member of Congress or other person holding a state or federal office shall be Governor.*

f. *Resident and citizen.*

g. *Governor must be resident of the State during the term for which he is elected.*

h. *No person convicted of embezzlement of public funds shall hold any office.*

i. *No bribery convictions. South Dakota, West Virginia: no bribery, perjury, or infamous crimes.*

j. *Office of Lieutenant Governor was created by statute. He is chosen by members of the Senate of which he is a member and the office bears the title of Speaker. The Speaker must reside one year immediately preceding his election in the county or district he represents.*

k. *By statute the Secretary of State holds the office of Lieutenant Governor ex officio.*