

Office of the Secretary of State
Vermont State Archives

AMENDING THE VERMONT CONSTITUTION

The amending process for the Vermont Constitution can be found in Chapter II, Sec. 72. Proposals of amendment can be initiated every four years by the senate. A proposal must be approved by two-thirds of the senate (20 votes) before being sent to the house, where a majority vote is required for passage. Successful proposals are taken up by the succeeding legislature, the intervening election allowing voters an opportunity to instruct their legislators on whether to support any amendments. The proposal must then survive majority votes of the senate and house, before being placed before the voters for ratification.

The amending process has itself been amended three times. From 1777 until 1870 amendments could be proposed every seven years by a 13-member body, elected statewide, known as the Council of Censors. From 1870 to 1974 proposals had to go through the legislative/popular ratification process outlined above, though proposals could only be made every ten years. In 1974 the ten-year "time lock" was reduced to the current four-year period, beginning in 1975.

The four-year time lock opens in 2007. Any proposals of amendment must be made, and receive the required senate and house support, during the upcoming biennium.

What follows:

- Amending the Constitution, A History
 - The Council of Censors, 1777-1870
 - The Ten Year Time Lock, 1870-1974
- Proposals of Amendment, An Overview
- Proposals of Amendment, 1970-2002
- Senate Rules Relating to Constitutional Amendments
- Can the House Amend Proposals?

- Four Year Term Proposals of Amendment, Previous Discussions
 - 2003 proposal to address term lengths
 - Senate Government Operations Committee, 1983: Testimony for
 - Senate Government Operations Committee, 1991-1992: Reasons to keep two-year term
 - Senate Government Operations Committee, 1991-1992: "Thoughts on a Four-Year Term"
 - Senate Government Operations Committee, 1991-1992: Testimony by former Gov Kunin

Amending the Constitution, A History

In May 1776 the Continental Congress advised its member states to reorganize their governments on the basis of “the authority of the people,” rather than on the existing colonial charters. Not only did most of the original thirteen states respond by adopting new constitutions, so did Vermont, which created itself by adopting a constitution on July 8, 1777.

These early state constitutions gave form to new principles of government. One was that constitutions articulate the fundamental, or organic, laws of a state. Constitutional law was distinguished from, and gave guidance to, statutory laws governing the social, economic, and political realities of the moment.

While fundamental principles were stable, even permanent, constitutions could be altered to meet changing realities. The question was who should have the authority to amend constitutions and how should they do it?

While in 1776 the idea of a direct vote of the people on constitutions was not fully developed, there was an effort to put constitutions beyond the reach of legislatures. The Delaware Constitution declared that its Declaration of Rights (Bill of Rights) was unalterable and set high legislative thresholds for amending other sections (amendments had to be approved by five/sevenths of the general assembly). The Maryland Constitution could only be amended if proposals were adopted by two successive separately elected legislatures. In Virginia, Thomas Jefferson supported ratification of amendments by special county conventions, rather than by the general assembly.

In Pennsylvania the separation of the constitution from the legislative body was accomplished through a Council of Censors, elected every seven years to consider, among other duties, possible amendments. Proposed amendments would then be placed before a constitutional convention for ratification. The 1776 Pennsylvania Constitution was the first to institutionalize an amending process. The 1777 Vermont Constitution adopted, with modifications, the Council of Censors system. Pennsylvania abandoned the Council of Censors before it was fully implemented and in 1786 Vermont became the first state to amend its constitutional through a constitutionally described process.

THE COUNCIL OF CENSORS, 1777-1870

Vermont, unlike the original thirteen states, did not have its own colonial government to adapt to independence. Therefore its constitution was not created by an existing legislative body, but by a specially convened convention. Vermont kept its constitution distinct from the legislature by giving the sole power to propose amendments to a Council of Censors (Chapter II, Sec. 44 of the 1777 Constitution).

The Council of Censors was a body of thirteen men, elected on a statewide basis to one-year terms, every seven years. Sitting members of the executive and legislative branches were ineligible for election as Censors. The Council's powers included determining whether government had conformed to constitutional limits in the preceding seven years and proposing, if there was an "absolute necessity," constitutional amendments to a constitutional convention.

While the Council was elected on a statewide basis, constitutional conventions were, with one exception, elected on the basis of town representation; that is, each town elected one delegate. The different constituent bases for the Council and the conventions were a source of tension throughout the Council's history. Councils regularly proposed schemes for apportioning the general assembly on the basis of population, rather than town, representation. The town delegates to the constitutional conventions with equal regularity defeated these proposals except in 1836 when the Council's proposal to create a state senate, with partial recognition of population-based apportionment, was approved.

This tension contributed to the abandonment of the Council system. The 1855-56 Council, taking advantage of the constitutional silence on how to apportion a convention, not only proposed replacing town representation with a 150 member house apportioned on population, but also called for a population-based convention. That convention rejected the reapportionment proposal and the public outcry was such that the 1862 Council made no proposals of amendment. In 1869 the Republican Party, whose strength lay in its town level organization, sought to abolish the Council in order to remove the threat to its political base.

That effort initially failed when a majority of Censors on the sub-committee on changing the amendment process refused to support abolishing the Council. Finally, in order to break a logjam on all proposals, the Council submitted a proposal to the 1870 constitutional convention calling for a new amending process.

Under the proposal the Council of Censors would be abolished and the state senate would be given the sole authority to propose amendments, and then only every ten years. A proposal would have to receive a two-thirds vote of the senate and a majority vote of the house. Following legislative elections, any surviving proposal would need majority approval by the senate and house and then be put before the voters for ratification.

The subcommittee reports for and against the Council system revisited the fundamental arguments on the relationship of the constitution to the legislature and to the people at large. Those Censors who wanted to replace the Council dismissed it as a “relic” of Federalist distrust of the people. The Council removed the amending process from the people’s elected representatives (the general assembly) and, through the constitutional convention, deprived Vermonters the opportunity to vote directly on amendments. “The people of Vermont are at the present time, vastly more intelligent, better informed, better educated than formerly, and no good reason exists in the opinion of the minority [of the subcommittee] for not trusting them directly in the final amendments to their Constitution... We propose to let them judge for themselves once in ten years, whether their fundamental law needs revising, and the privilege to do it by their own legislature, and by their own vote at the ballot-box.”

Supporters of the Council system argued that the “Constitution was framed for the *whole* people. It is the organic law which governs not municipalities, but *the people* of municipalities...”. Putting the power to propose amendment into the hands of the legislature, which was based on municipal representation, would allow a “small town with one hundred voters” to “neutralize the voice of a town with ten thousand inhabitants...”. The Council, elected statewide, was a better expression of the popular will Council supporters agreed that the town-based constitutional conventions should be replaced by popular ratification of proposals.

Supporters also articulated their greater concern over narrowing the distance between constitutional and statutory law by giving the legislature the power to propose amendments. “The very *soul* of an organic law—of a constitution for a commonwealth, is *permanency*. The people demand some permanent law so that legislatures of partisan bias shall not trample upon the rights of minorities.... We are of the opinion if the Legislature once in ten years have power to reach the Constitution that a large portion of their time will be occupied in “tinkering” it. No member will think he can subserve the interests of his constituents unless he strikes some blow at the Constitution which his fancy may dictate...”

The town delegates to the 1870 constitutional convention voted, by 123 to 85, to abolish the Council and give the general assembly the power to propose amendments every ten years, beginning in 1880.

For more on the Council of Censors see Paul S. Gillies and D. Gregory Sanford, Records of the Council of Censors. (Copies are available for \$20 at the State Archives.)

THE TEN YEAR TIME LOCK

In 1870 the Vermont Constitution was amended to allow the general assembly to propose amendments every ten years. Proposals originated in the senate and, if they received a two-thirds vote, they would be presented to the house where majority approval was required. In the next legislative session, following new elections, the surviving proposals had to be approved by senate and house majorities and then put before the voters for ratification. This system lasted from 1880 until 1970.

There were various attempts to shorten the ten-year time lock over the years, beginning in 1880. In 1965 the ten-year time lock came under renewed scrutiny when the federal courts ordered Vermont to reapportion the house on the basis of one person/one vote. The general assembly complied with the court order, ending town representation. Vermont's Constitution, however, still mandated town representation and could not be changed until the time lock opened in 1970. Consequently the new 150 member Vermont House was in technical violation of the Vermont Constitution until an amendment reflecting the new apportionment scheme was approved by the voters on March 5, 1974 (5,435 to 2,105).

On the same day voters made it easier to amend the Constitution by reducing the ten-year time lock to four years by a 5,110 to 2,656 vote.

January, 2003

Office of the Secretary of State
Vermont State Archives

PROPOSALS OF AMENDMENTS, OVERVIEW

From 1880 to 2002 there were 174 proposals of amendment. Seventy of those proposals (40%) were made since the four-year time lock went into effect in 1975 (from 1880 to 1974 a ten-year time lock was in effect). Twenty-eight of the 174 proposals (16%) were put before the voters and twenty-six were ratified. Six of the seventy proposals (8%) made under the four-year time lock were submitted to the voters and five were ratified.

The two proposals rejected by the voters were:

A 1971 proposal to make the attorney general a constitutional officer, create four-year terms for constitutional officers, and allow for run-off elections if no candidate received a majority was rejected by the voters on March 4, 1974. The vote was 42,724 to 38,413 against ratification.

Voters rejected an equal rights proposal on November 4, 1986. The vote was 95,547 to 89,426 against ratification.

Numerous proposals have addressed the judiciary, including at least ten governing the administration or organization of the courts. In addition there have been five proposals relating to juries (1995, 1991, 1979, 1921, and 1880); four proposals relating to the retirement age of justices and judges (1999, 1991, 1987 and 1983); and four relating to bail (two in 1991 and one each in 1983 and 1979).

There have been at least five proposals on term limits (three in 1995 and two in 1991); four proposals for direct initiatives by voters (1995, two in 1991, and 1975); and four proposals for a gubernatorial line item veto (1991, 1931, 1921 and 1880).

In 1913 and 1994 the voters approved amendments authorizing the Vermont Supreme Court to revise the Constitution (instead of the voters casting ballots for specific constitutional language). The 1913 amendment (Article 36 of the Amendments now found as Section 75 of Chapter II) authorized the Justices to incorporate into Chapter II “all amendments of the Constitution that are now or may be then in force and excluding therefrom all sections, clauses and words not in force.” The sections of Chapter II would then be rearranged and renumbered under

appropriate titles. In 1974, after adoption of an amendment revising the judicial branch, the Justices used this section to revise the Constitution again.

In 1994 the voters adopted Article 52 of the Amendments (found as Section 76 of Chapter II) authorizing the Justices to revise Chapters I and II “in gender inclusive language.”

Among issues most frequently addressed by proposals are:

Extending Terms of Office

Amendment Process

Apportionment

Plurality Election

Private Property/Public Use

Extending terms of office. Since 1880 there have been seventeen attempts to extend the terms of office for constitutional officers and/or legislators (10% of all proposals). Every time the time lock has opened since 1961 there has been at least one proposal to extend terms. Only one of the seventeen proposals made it to a popular vote and that was defeated in 1974.

The last time terms of office were expanded was in 1870 when one of the last proposals by the Council of Censors was adopted, moving Vermont from annual to biennial elections. An effort in 1880 to return to annual elections died in the senate.

Proposals have varied in their scope. In 1890 a proposal would have extended legislative, but not executive, terms to four years, with staggered terms so that half the legislators would be up for election every two years. In 1921 one proposal called for six-year terms for state senators, another for four-year terms for state officers, and a third for staggered four-year terms for state senators.

Representatives would have been given four-year terms under a 1931 proposal. A 1971 proposal called for four-year terms for senators. Proposals to make the attorney general a constitutional officer and all constitutional offices four-year terms were made in 1971, 1983, and 1987. On several occasions extending terms of office was coupled with term limits. In 1991, for example, a proposal for four-year terms included a three-term limit. A 1995 proposal for four-year terms limited officers to three consecutive terms.

Amendment Process. Since 1880 there have been fourteen proposals to change the amending process (8% of all proposals). All but one called for shortening the

time lock through which proposals could be made. The exception was a 1941 proposal that would have allowed the general assembly, by a two-thirds vote, to call a constitutional convention during any session or special session. Any proposals adopted by a convention would then be put to a vote of the people. Of the remaining twelve proposals, nine would have allowed amendments to be proposed every two years; two called for a four-year time lock; and one called for six years (in 1880 under the ten-year time lock); one proposal's text has been lost. The voters adopted the 1971 proposal for a four-year time lock in 1974.

Apportionment. The Council of Censors was abolished, in part, because of its consistent support for population (as opposed to town) apportionment of the general assembly. The growing disparity among town populations continued to generate proposals for establishing population-based apportionment. Since 1880 there have been fourteen proposals relating to apportionment (8% of all proposals). In 1965 the house was apportioned on the basis of population under federal court order (reducing the house from 246 to 150 members). A 1974 amendment brought Vermont's constitutional language into line with the new apportionment scheme and called for reapportionment after every second presidential election (Article 48 of the amendments). A 1983 amendment (Article 50) called for reapportionment following every decennial census.

Passage of those two amendments quieted apportionment proposals, though in 1995 there were two proposals to change the make up of the general assembly. One would have created a unicameral legislature and the other would have reduced the number of representatives and senators.

Plurality Election. There have been eight attempts to replace the requirement for majority election of governor, lieutenant governor and treasurer (5% of all proposals). There were such proposals in 1999, 1991, 1987, and 1979, and two such proposals in 1975 and 1971. Some simply provided for plurality election, others (such as 1987) set a 40% requirement. That is, if no candidate received at least 40% of the vote there would be a runoff election between the two candidates who received the highest number of votes.

Private Property/Public Use. There have been six attempts to amend Art. II of Chapter I of the Constitution relating to the taking of private property for public use and compensating the property owner (1991, 1987, 1975, 1931 and 1910). In 1910 there were two proposals to introduce the idea of public benefit rather than public use. In 1931 a proposal sought to clarify the State's right to regulate outdoor advertising (billboards) vis a vis the private property/public use article.

Office of the Secretary of State
Vermont State Archives
Proposals of Amendment to the Constitution 1970 - 1999

1999: The Senate considered seven proposals:

1. Providing that the terms for Governor, Lieutenant-Governor, Treasurer, Secretary of State, Auditor of Accounts and High Bailiffs be four years, beginning with the term commencing after the general election in November 2006. (Sent to Senate Committee on Government Operations January 12, 1999, never emerged.)
2. Providing for the election of the Governor, Lieutenant Governor and Treasurer by plurality vote. (Sent to Senate Committee on Government Operations January 21, 1999, never emerged.)
3. Providing for staggered terms for justices of the Supreme Court and judges of subordinate courts. (Sent to Senate Committee on Government Operations February 4, 1999; passed the Senate, request concurrence of House (26-1), March 26, 1999; referred to House Committee on Judiciary March 31, 1999, never emerged.)
4. **Elimination of mandatory retirement provision for justices of the Supreme Court and judges of all subordinate courts.** (Adopted as **Article 53** by the electorate, November 5, 2002.)
5. Establishing health care as a right of citizenship and obligating the state to protect this right. (Referred to Senate Committee on Health & Welfare January 11, 2000; never emerged.)
6. Clarifying the definition of marriage. (Referred to Senate Committee on Judiciary January 28, 2000; rejected by Senate April 18, 2000.)
7. Permitting proposals of amendment to the Constitution to be initiated during the first year of any biennial session of the General Assembly, and to require passage in the Senate in the first biennium by a majority vote. (Sent to Senate Committee on Government Operations March 21, 2000; never emerged.)

1995: The Senate considered thirteen proposals:

1. Providing for the authorization of direct initiatives for the enactment of legislation by petition of 25% of the voters casting ballots in the preceding gubernatorial election. (Sent to Senate Committee on Government Operations, January 10, 1995; never emerged.)
2. Providing for an early organizational session of the General Assembly in December held exclusively for the swearing in of members and selection of officers. (Sent to Senate Committee on Government Operations, January 17, 1995; passed the Senate (29-0), April 17, 1995; referred to House Committee on Government Operations, April 17, 1995; never emerged.)

3. Providing for the removal of the four-year time lock on proposals to amend the Vermont Constitution; would allow amendments to be proposed in any biennial session. (Adopted by Senate (21-9) February 14, 1995).
4. Providing term limits for the election of senators and representatives to not more than six consecutive terms (12 years). (Sent to Senate Committee on Government Operations February 8, 1995; never emerged).
5. Authorizing the formation of a unicameral legislature comprised of fifty members for the State of Vermont. (Sent to Senate Committee on Government Operations, February 14, 1995; never emerged).
6. Providing for a deadline date for adjournment of not later than April 30 for any legislative session of the General Assembly. (Sent to Senate Committee on Government Operations, February 15, 1995; never emerged).
7. Providing for a fair and equal education for all of the children of the state, regardless of their place of residence within the state. (Sent to Senate Committee on Education, February 22, 1995; reported favorably by Education, April 17, 1996; sent to Senate Committee on Judiciary, April 24, 1996; never emerged).
8. Providing that the terms for state officers shall be for four years and limited to three consecutive terms each. (Sent to Senate Committee on Government Operations March 10, 1995; passed Senate (21-9) March 29, 1996; sent to House Committee on Government Operations, April 1, 1996; never emerged).
9. Establishing term limits for the Justices of the Supreme Court and all other judges (except for probate and assistant judges) of not more than two six-year terms (12 years) on the same court. (These terms can be either consecutive or separated by a time interval.) (Sent to Senate Committee on Judiciary January 3, 1996; never emerged).
10. Reduces the size of the Senate from thirty (30) to twenty-five (25) members, reduces the size of the House of Representatives from one hundred fifty (150) members to seventy-five (75) members, establishes four-year terms of office for members of the General Assembly, and provides for annual (instead of biennial) sessions of the General Assembly. (Sent to Senate Committee on Government Operations, January 3, 1996; never emerged).
11. Allows the Voter's Oath to be self-administered and removes the requirement that the Voter's Oath be administered by a notary public. (Sent to Senate Committee on Government Operations, January 3, 1996; passed Senate (28-1), April 4, 1996; sent to House Committee on Local Government, April 5, 1996; adopted by House, April 11, 1996.) Note: from 1997 Senate Journal: "The passage of S.189 (the "motor-voter" registration law) in 1997 vitiates the necessity of proceeding further with this proposal." S.189 became Act #47, Laws of 1997.

12. Mandates six-person juries for civil trials. (Sent to Senate Committee on Judiciary, January 5, 1996; never emerged).
13. Provides that the total amount of appropriations authorized to meet general budget expenditures for any fiscal year shall not exceed the estimated total of revenue for such fiscal year, except for emergencies declared by the Governor. (Sent to Senate Committee on Government Operations, April 3, 1996; never emerged).

1991: The Senate considered twenty-one proposals:

1. Providing for state funding and reimbursement to local political subdivisions for any mandated state programs. (Sent to Senate Committee on Government Operations, January 15, 1991; never emerged).
2. Restriction of bail for criminal offenses under certain circumstances to ensure that the interests and safety of the public are protected. (Sent to Senate Judiciary Committee, January 15, 1991; never emerged).
3. Authorizing direct initiatives to be originated by the voting public. (Sent to Senate Committee on Government Operations, January 15, 1991; never emerged).
4. Providing that no person may be elected to the House of Representatives or to the Senate for more than six (6) consecutive terms. (Sent to Senate Committee on Government Operations, January 15, 1991; never emerged).
5. Providing that the terms for state officers be for four (4) years. (Sent to Senate Committee on Government Operations, January 15, 1991; passed the Senate March 19, 1991; referred to the House Committee on Government Operations, March 21, 1991; never emerged).
6. Providing the Governor with the authority to veto line appropriation items. (Sent to Senate Committee on Government Operations, January 15, 1991; never emerged).
7. **Restriction of bail for criminal offenses under certain circumstances to ensure that the interests and safety of the public are protected.** (Adopted as **Article 51** by the electorate, November 8, 1994).
8. Providing for the election of statewide officers by a plurality vote (rather than by a majority). (Sent to Senate Committee on Government Operations, January 25, 1991; never emerged).
9. Providing for the right of privacy. (Sent to Senate Judiciary Committee, January 30, 1991; never emerged).
10. Providing for a deadline date for adjournment of no later than April 30 for any legislative session. (Sent to Senate Committee on Government Operations, February 8, 1991; never emerged).

11. **Providing for the utilization of gender inclusive (or neutral) language in Chapters I and II of the Vermont Constitution.** (Adopted as **Article 52** by the electorate, November 8, 1994).
12. Allowing amendments to the Vermont Constitution to be proposed in any biennial session (every 2 years). (Sent to Senate Committee on Government Operations, February 22, 1991; never emerged).
13. Providing for a thorough and equitable system of free public education, affording equal opportunities of each child. (Sent to Senate Education Committee, March 1, 1991; never emerged).
14. Private property subject to public use; owner to be paid. (Sent to Senate Judiciary Committee January 7, 1992; never emerged).
15. Providing for funding of retirement systems. (Sent to Senate Education Committee January 7, 1992; never emerged).
16. To abolish the office of Lieutenant-Governor. (Sent to Senate Government Operations Committee January 7, 1992; never emerged).
17. Providing for method of filling vacancy in office of Governor, Lieutenant-Governor and Treasurer. (Sent to Senate Government Operations Committee January 14, 1992; never emerged).
18. Providing for a direct initiative by the voters. (Sent to Senate Government Operations Committee January 15, 1992; never emerged).
19. Providing for trials by jury and number of jurors. (Sent to Senate Judiciary Committee January 16, 1992; sent to Senate Government Operations Committee February 20, 1992; recommitted to Senate Judiciary Committee February 25, 1992; never emerged).
20. Providing for the filling of vacancies in the office of Governor. (Sent to Senate Government Operations Committee January 16, 1992; never emerged).
21. Providing for the filling of vacancies on the death or resignation of Governor and Lieutenant Governor. (Sent to Senate Government Operations Committee February 16, 1992; passed the Senate February 27, 1992; referred to the House Committee on Government Operations March 4, 1992; never emerged).

1987: The Senate considered six proposals:

1. That the people have a right of privacy, which is essential to their freedom and shall be preserved. (Sent to Judiciary Committee, January 13, 1987; never emerged).

2. Establishes four year terms for Governor, Lieutenant-governor, Treasurer, Secretary of State, Auditor of Accounts, Attorney General, Assistant Judges, Sheriffs, State's Attorneys, and Judges of Probate. Authorizes legislature to consider certificates of votes, rather than ballots. Makes Attorney General a constitutional officer. (Rejected by the Senate, January 26, 1988).
3. Establishes municipal home rule, authorizing the legislature to grant a charter of incorporation but prohibiting the legislature from amending any. "Amendment of a municipal charter shall be the sole right of the voters of the municipality charter shall be the sole right of the voters of the municipality except that the General Assembly may, by special law, repeal a charter amendment enacted by the voters." (Sent to Senate Government Operations Committee, January 8, 1988; never emerged).
4. Amends the section on mandatory retirement of judges to eliminate the mandate and clarifies retirement to include the failure to file notice of a desire to continue in office. (Sent to Judiciary Committee, February 4, 1988; never emerged).
5. Provides for plurality to elect Governor, Lieutenant-Governor, Treasurer, Secretary of State, and Auditor of Accounts, a special run-off election if no candidate receives at least forty percent of the popular votes, and legislative canvassing of certificates of votes rather than ballots. (Passes the Senate; referred to House Government Operations Committee, March 8, 1988; never emerged).
6. Provides for the payment of fair compensation to owners of private property when the value of their property is reduced significantly as a result of governmental regulations or restrictions. (Sent to Senate Judiciary Committee, February 2, 1988; never emerged).

1983: The Senate considered ten proposals:

1. Provides that, "Equality of rights under the law shall not be denied or abridged by the State of Vermont or any of its political subdivisions on account of the sex of the individual." (Rejected by the electorate, November 4, 1986).
2. Repeals Section 35 on mandatory retirement of judges at age 70. (Passed Senate; sent to House Judiciary Committee, March 9, 1984; never emerged).
3. Providing for staggered terms for Assistant Judges. (Senate Government Operations Committee relieved of proposal; referred to Senate Judiciary Committee, February 1, 1984; never emerged).
4. Providing for equality of rights regardless of race, creed, religion, sex or national origin. (Referred to Senate Judiciary Committee, January 19, 1983; never emerged).
5. Providing for four-year terms for all state officers and members of the General Assembly, and designating the Attorney General as a constitutional officer. (Referred to Senate Government Operations Committee, January 19, 1983; never emerged).

6. Providing for the election of Governor and Lieutenant-Governor jointly on the same ballot. (Referred to Senate Government Operations Committee, January 25, 1983; never emerged).
7. Providing for reapportionment of the House of Representatives and the Senate **following each federal decennial census**. (Adopted as **Article 50** by the electorate, November 6, 1986).
8. Providing for administrative control by the Supreme Court over attorneys-at-law as well as judicial officers. (Referred to Senate Judiciary Committee, February 25, 1983; never emerged).
9. Providing for four-year term for all state officers, and designating the Attorney General as a constitutional officer. (Referred to Senate Judiciary Committee, April 22, 1983; never emerged).
10. Imposition of bail for criminal offenses; conditions for release for the protection of the public. (Defeated by Senate, March 30, 1984).

1979: The Senate considered eight proposals:

1. (Proposal A): Establishes four year terms for Governor, Lieutenant-Governor, Treasurer, Secretary of State, and Auditor of Accounts. (Rejected by Senate, April 14, 1980).
2. (Proposal B): Removes inconsistent provisions in Constitution relating to the election and terms of various county officers. (Senate rejected it in second biennium, March 26, 1981).
3. (Proposal D): Provides for the election of state officers by plurality vote with special election as run-off for the two candidates having the largest number of votes if no candidate receives at least forty percent. (Rejected by Senate, April 14, 1980).
4. (Proposal E): Authorizes the Speaker of the House and the President Pro Tem of the Senate, with the consent of three-quarters of the members of each chamber, to call a special session of the General Assembly. (Rejected by Senate, April 14, 1980).
5. (Proposal F): Authorizes legislature to adopt qualifications and election details for state's attorney. (Passed Senate; House referred to House Government Operations Committee, March 31, 1981; never emerged).
6. (Proposal G): Allows the use of six-man juries in certain jury trials. (Rejected by Senate, April 14, 1980).
7. (Proposal H): **Imposition of bail for criminal offenses**. (Adopted as **Article 49** by the electorate, March 2, 1982).
8. (Proposal J): Clarifies Section 43 (inconsistent with later amendments) on election of state and county officers and their terms. (House refuses to concur, April 22, 1980).

1975: The Senate considered five proposals:

1. Election of state officers by plurality vote. (Rejected by Senate, March 19, 1976).
2. Compensation for the taking of private property, "whether by condemnation or by other legal process depriving the owner thereof of his reasonable expectation for its use or exchange." (Rejected by Senate, March 18, 1976).
3. Special elections for offices for which no majority vote is available; canvassing of state candidates by certificate of votes, not ballots; four year terms for state officers. (Passed Senate; referred to House Judiciary Committee, March 19, 1976; never emerged).
4. Biennial terms for all state and county officers. (Referred to Senate Judiciary, March 15, 1976; never emerged).
5. Authorizes initiative and referendum, by petition signed by ten percent of the number of votes for Governor in the last gubernatorial election. (Rejected by Senate, March 19, 1976).

1971: The Senate considered ten proposals:

1. Makes the Attorney General a constitutional officer. Changes two-year terms for constitutional officers to four-year terms. Modernizes the canvassing of votes for constitutional officers, and provides for a run-off election in the event no candidate receives a majority of the votes. Authorizes the Supreme Court to incorporate, rearrange and renumber amended sections into the present constitution. Eliminates the office of Secretary of Civil and Military Affairs. (Rejected by the people, March 4, 1974).
2. Requires a special election for Governor or any other state officer when no candidate has received a majority vote in the General Election between the two candidates with the largest number of votes, in lieu of legislative election. Makes the Attorney General a constitutional officer. Makes the Auditor of Accounts a four year term elected by the General Assembly (later eliminated by amendment of the proposal). Clarifies Section 22 to ensure that all commissions are attested by the Secretary of State. (After Senate proposal, returned to custody of Senate from the House and recommitted March 10, 1971 to the Judiciary Committee, from which it never emerged).
3. **Changes the time-lock for amending the constitution from ten years to four years.** (Became **Article 45** of the Amendments).
4. Relates to allocation of highway funds. (Pending reading, committed to the Committee on Highway Traffic, February 9, 1971).¹
5. **Removes specific reference to creation of courts of chancery; provides for a unified judicial system composed of a Supreme Court, a Superior Court, and such other subordinate courts as the Legislature may establish; removes requirement of maintaining courts in every county; provides that all courts except the Supreme Court may be divided into geographical**

¹The text of this proposal is not found in the Senate Journal.

and functional divisions as provided by law or by judicial rules adopted by the Supreme Court not inconsistent with law; grants to Supreme Court administrative control over all courts and disciplinary control over all judges and attorneys in the State; vests rulemaking authority in the Supreme Court subject to revision by the Legislature; provides for six year terms of office for Justice of the Supreme Court and Superior Judges; provides for a judicial nominating body for selection of nominees to fill judicial vacancies except for Assistant Judges and Probate Judges; empowers the Governor, with the advice and consent of the Senate, to fill judicial vacancies; provides for retention in office at end of their terms of Justices of the Supreme Court and Superior Judges by vote of the Legislature; requires mandatory retirement of Justices of the Supreme Court and Superior Judges at end of calendar year in which they attain 70 years of age or at the end of the term of election during which they attain 70 years of age; provides that the manner and certification of elections and filling of vacancies in the offices of the Assistant Judges, Sheriffs, State's Attorneys, Judges of Probate, and Justices of the Peace shall be as establish by law; provides for four-year terms of office for Assistant Judges, Sheriffs, State's Attorneys and Probate Judges; prohibits the exercise of judicial powers by Justices of the Peace; eliminates the High Bailiff as a constitutional officer; does away with the prohibition against waiver of trials by jury by one accused of a felony. (Became Article 46 of the Amendments).

6. Establishes a House of Representatives of not more than one hundred and fifty members, apportioned by districts. Establishes a Senate of not more than thirty Senators, apportioned by senatorial districts. Authorizes creation of a legislative apportionment board and requires reapportionment every ten years. Makes Senator's terms four years. (Senate proposes; House begins consideration; Senate requests its return, March 29, 1972).
 7. **Privileges of freeman granted to 18-year-olds in conformity with present law. Eliminates one year residency requirement which the courts have declared unconstitutional.** (Became Article 47 of the Amendments).
 8. Similar to Proposal 6, except reapportionment ordered following each second presidential election. (Proposed by Senate, concurred in by the House in 1972, but no action in succeeding legislative session). See proposal 10.
 9. Authorizes the legislature to provide for the preferential assessment of open and agricultural land or either for property tax purposes. (Senate proposes, March 24, 1972; House never votes on it).
 10. **Similar to Proposal 8, except House is made one hundred and fifty members, Senate thirty members, rather than a variable number. Eliminates age requirement of thirty years for Senators, also all references to form of election, certification, and filling of vacancies, leaving that to general law. Reapportionment ordered following every second presidential election.** (Became Article 48 of the Amendments).
-

Senate Rules Relating to Constitutional Amendments

76. A standing committee of the Senate or any member of the Senate may propose an amendment to the Constitution during any regular session when permitted by the Constitution. The proposal shall be printed in accordance with the provisions of Rule 42, introduced into the Senate, read the first time, and by the President referred to an appropriate committee of the Senate. The committee of reference shall report to the Senate its recommendations concerning the proposal. If the committee to which a proposal of amendment was referred report it favorably, recommending amendments, the question shall be first upon the amendments.

77. On being reported by the committee, whether favorably or unfavorably, or without recommendation, the proposal shall thereupon be printed in full in the calendar, including any amendments thereto recommended by the committee. On the fifth legislative day following the appearance of such proposals of amendment in the calendar, the proposal shall be read the second time in full. Thereupon the question shall be: "Shall the Senate adopt the proposal of amendment to the Constitution of Vermont as recommended by the Committee on _____ and request the concurrence of the House?" Upon any proposal of amendment to the Constitution or of amendment to such proposal, the yeas and nays shall be taken. Pending this question the proposal shall be open to amendment.

78. Amendments to any proposal of amendment to the Constitution may be recommended by the committee of reference by majority vote of such committee. Amendments recommended by any senator before second reading shall be submitted to the committee of reference, in written form, where they shall be acted upon by the committee. Any amendment may be adopted or rejected, in whole or in part, by majority vote of such committee. Upon adoption or rejection of any amendment by the committee, the same shall be printed in the calendar at least one legislative day before second reading.

79. These rules may be suspended only upon the affirmative vote of three-fourths of the members of the Senate. Upon completion of the vote upon any amendments to the proposal, the question shall be: "Shall the Senate adopt the _____ proposal of amendment to the Constitution of Vermont (as amended) as recommended by the Committee on _____, and request the concurrence of the House?"

80. The yeas and nays by roll call shall be taken upon the proposal of amendment which shall require a two-thirds vote of the Senate for adoption, and also upon any proposal of amendment thereto which shall require a majority vote for its adoption.

81. Such hearings may be held upon a proposal of amendment as are deemed necessary by the committee of reference.

82. In the event that the Senate requests the House to return any proposal of amendment to the Constitution without having acted thereon, the proposal shall be recommitted to the committee which last acted upon such proposal, whereupon it shall be in order to further amend such proposal in compliance with these rules. Upon report to the Senate by the committee of reference, the question shall first be upon any recommendation of amendment and then as stated in Rule 79.

83. During the first year of the next biennial session following the initial adoption of any proposal of amendment, each proposal of amendment to the Constitution shall be printed in the calendar upon direction given by the Committee on Judiciary or by the Committee on Rules. Upon the 7th legislative day following the printing thereof, each proposal shall be read the third time and acted upon separately. Amendments to such proposals shall not be in order. The question shall be: "Shall the Senate concur in proposal (or the proposal), and request the concurrence of the House?" The concurrence of the Senate shall be upon the affirmative vote of a majority of the members thereof, and the yeas and nays by roll call shall be taken.

84. Upon concurrence of the House in the same proposals of amendment, or any of them, the Committee on Judiciary shall forthwith offer a joint resolution setting forth the time and manner in which such proposals of amendment so concurred in shall be submitted to a direct vote of the freemen of the state.

85. All other rules of the Senate shall be applied to proposals of amendment to the Constitution unless inconsistent herewith.

Can the House Amend Proposals?

Opinion No. 656-F, February 4, 1971;
Attorney General James Jeffords

Joint Committee on Rules, Vermont General Assembly, Montpelier:

You have asked me to advise you whether the House of Representatives may amend a proposal for amendment to the State Constitution submitted by the Senate under the provisions of Chapter II, Section 68 of the Vermont Constitution.

In my opinion the answer to your inquiry is in the negative.

What is now Chapter II, section 68 of the Constitution was adopted by the Constitutional Convention of 1870 following its proposal by the Council of Censors at their session in 1869. The Journal of the Constitutional Convention of 1870 shows that the proposal submitted by the Council of Censors of 1869 was adopted by the Convention without change. With the exception of a change in the first several words to adjust the time when proposals for amendment to the Constitution might be proposed, section 68 as it now appears in the Constitution contains the same language as that proposed by the Council of Censors of 1869 with respect to the manner in which amendments to the Constitution may be proposed.

The Journal of the Council of Censors of 1869 shows that a minority committee report was considered by the Council in its deliberation upon the proposal for amendment to the Constitution to be submitted to the Convention of 1870. The minority committee report contained language which, if it had been adopted by the Council, would have specifically authorized the House of Representatives to amend or alter a proposal for amendment to the Constitution submitted by the Senate. This language was rejected by the Council in favor of the present language which provides only for concurrence by a majority of the members of the House of Representatives.

It should be noted that the State Constitution in 1869 and 1870 contained language expressly empowering the Senate to amend revenue bills which only the House could originate. This provision had been in effect since 1836 and we may assume that the Council of Censors was aware of this provision (Chapter II, section 6) during its deliberations in 1869. The presence of this provision in the Constitution in 1869 and 1870 and the rejection of a proposal to give a similar power to the House by the Council of Censors and acceptance of the action of the Council by the Convention of 1870 lend weight to my conclusion that it was intended that the House should not have

power to amend proposals for amending the Constitution submitted by the Senate.

In view of the specific rejection by the Council of Censors of 1869 of language authorizing the House of Representatives to alter or amend a proposal for amendment to the Constitution submitted by the Senate, and the adoption by the Constitutional Convention of 1870 of the proposal submitted by the Council of Censors without alteration, I must conclude, and it is my opinion, that there was a deliberate purpose to restrict the action which the House of Representatives might take upon proposals for amendment to the Constitution submitted by the Senate to concurrence or nonconcurrence and that both the Council of Censors and the Constitutional Convention of 1870 intended that the House of Representatives should not be empowered to alter or amend a proposal for constitutional amendment submitted by the Senate.

The word "concur" means to acquiesce in, approve, or assent to or to give consent to and it is my opinion that the use of the term "* * * if concurred in by a majority of the members of the House of Representatives * * *" in Chapter II, section 68 of the Constitution expresses an intention that the House is empowered only to agree or disagree with proposals for constitutional amendment submitted by the Senate.

It may be helpful to bear in mind that, in a strict sense, the Senate and House of Representatives are not exercising an ordinary legislative power or function when considering or acting upon proposals for constitutional amendment, but rather are exercising special powers conferred by the people of the state. It is generally held that constitutional provisions with respect to proposals for amendment to a state constitution are not merely directory but are mandatory and that the provisions should be given a strict construction and be strictly complied with (16 C .J.S., Constitutional Law, §6, §9).

I am aware of the occasion in 1951 when the House of Representatives amended a proposal for constitutional amendment submitted by the Senate. The Senate later concurred in the amendment proposed by the House and resubmitted the proposal for constitutional amendment, as amended by the House, for concurrence by the House which was given. I do not regard this occasion as a precedent entitled to any weight.

It is my opinion that the House of Representatives is not empowered to amend a proposal for amendment to the State Constitution submitted by the Senate but may only concur or refuse to concur in the proposal as submitted.

JAMES M. JEFFORDS, Attorney General.