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RESTRUCTURING THE LEGISLATURE: A PROPOSAL FOR UNICAMERALISM IN WASHINGTON

The last decade has witnessed a dramatic increase in the demands on members of the Washington State Legislature. As this problem has evolved, various institutional modifications have been introduced to maintain a part-time "citizens' legislature" which can adequately deal with the legislative matters confronting it. These changes include an increase in the number of extraordinary sessions;¹ creation of parallel committees in the senate and house, and increased use of joint committees;² institution of the "continuing session" concept, whereby the entire legislature is called into session when standing committees promulgate sufficient proposed legislation for consideration;³ and change in the appointment of legislative staffs.⁴ These changes, however, have neither decreased the amount of time demanded of state legislators, nor maintained the "citizen" nature of the legislature. On the contrary, institution of these changes has ameliorated none of the problems they were designed to solve.

One institutional alteration which should now be seriously con-

1. See note 43 *infra*.

2. See Mardesich & Sawyer, *Introduction to Symposium: Recent Washington Legislation*, 49 WASH. L. REV. 287 (1974).

3. *Id.* The continuing session was designed by former House of Representatives Speaker Leonard Sawyer and former Senate Majority Leader August Mardesich, both Democrats, in 1971 to enable the legislature to meet throughout the biennium. The optimal goals of the concept were described by Senator Mardesich as follows:

The continuing session concept is designed to provide needed legislative efficiency, quality and flexibility. Essentially, the standing committees continue to meet during the year and the entire Legislature is called back into session only when there are enough bills for its consideration. This procedure achieves several purposes. Most significantly, it should forestall the demise of the citizen Legislature. As demands for legislative action increase, so does the tendency to create a full-time professional legislature. The result of this tendency is that the legislative body can become insulated from the people and can take on the negative characteristics of a bureaucracy. The continuing session concept not only allows a legislator meaningful time in his district in direct contact with its problems, but also provides a forum for those problems to be analyzed. In addition, this year has marked a significant increase in public hearings. . . . [T]he continuing session is not a step toward a full-time professional legislature, but rather it is a means of maintaining and strengthening the citizen Legislature.

Id. at 288. As indicated by the results of the authors' poll, some legislators are not satisfied with the continuing session concept, see Appendix A *infra*, and it has not been entirely successful in preventing the installation of at least a de facto full-time legislature.

4. Mardesich & Sawyer, *supra* note 2, at 289.

sidered is that proposed by a number of authors and political organizations:⁵ creation of a unicameral legislature. Although such a system cannot be considered a panacea to the multitude of problems facing the state legislature, it can provide an institutional framework within which the legislature can function more effectively.

The efficacy of a proposed unicameral legislature depends upon the specific structural arrangements enacted. As a basis of comparison and as a suggested model, this comment suggests a unicameral legislature comprised of 49 members (the same size as the existing state senate). These legislators would serve in a full-time capacity and be paid a full-time salary. They would be assisted by a permanent staff of a size commensurate with that of the existing legislature, but part-time assistance would be curtailed. This comment seeks to demonstrate that the adoption of a unicameral system will lead to enhanced legislative efficiency at a reduced cost to taxpayers.

The tenability of such a unicameral legislature in Washington will be analyzed by examining: 1) the background and history of unicameralism; 2) the effect of the reapportionment cases on the need for a bicameral legislature; 3) the "efficiency" of a unicameral as opposed to a bicameral legislature; and 4) means of implementing a change from bicameralism to unicameralism. In addition, results of the authors' poll of state legislators and a sample constitutional amendment are presented.

I. THE BACKGROUND OF UNICAMERALISM IN WASHINGTON

The traditional American sentiment toward state legislative organi-

5. The unicameral concept has received the endorsement of a number of state and national groups that deal with the needs of state legislatures. The National Municipal League has endorsed a unicameral legislature in each edition of its Model State Constitution, and asserts that a one-house legislature is more representative, more efficient, and more responsible than a bicameral body. See D'Alemberte & Fishburne, *The Unicameral Legislature*, 17 U. FLA. L. REV. 355, 363 (1964). The American Political Science Association's Committee on American Legislatures has convincingly set forth the arguments in favor of unicameralism. See A. STURM, MAJOR CONSTITUTIONAL ISSUES IN WEST VIRGINIA 49-50 (1961), citing AM. POL. SCI. ASS'N, AMERICAN STATE LEGISLATURE 57-78 (B. Zeller ed. 1954). Newspapers have also adopted such positions in editorializing for unicameralism in state legislatures. See D'Alemberte & Fishburne, *supra* at 355 nn.4-5; Note, *Unicameralism and Bicameralism: History and Tradition*, 45 BOSTON U.L. REV. 250, 251 n.11 (1965).

In Washington, a number of newspapers have urged consideration of unicameralism in editorials. See, e.g., Bellingham Herald, Jan. 16, 1974, at 12, col. 4; Seattle Post-Intelligencer, Feb. 19, 1974, § A, at 11, col. 2.

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zation has been that a bicameral legislature is essential to the protection of the liberties of the people, and that two legislative bodies more accurately reflect the interests of the governed.⁶ As a result, American legislative bodies, both federal and state, have been predominately bicameral, although unicameral bodies have been either considered or utilized on a number of occasions.⁷ Nebraska is currently the only state to utilize a unicameral legislature.⁸

6. Bicameralism in America can be traced to British antecedents. The bicameral British Parliament has traditionally been composed of an hereditary upper house (House of Lords) and an elected lower house (House of Commons). See generally S. CHRIMES, *ENGLISH CONSTITUTIONAL HISTORY* 43–51 (1948). Such an arrangement, in theory, protected civil liberties by according power to various elements of society. No one social group could dominate the social order and deprive the people represented of their liberties.

Colonial legislatures were similarly comprised: "By the early eighteenth century English constitutional theory was commonly applied to American institutions as the lower houses of the colonial legislatures came more definitely to stand for local, popular interests and the upper houses, the colonial Councils, appeared to approximate the classical upper chambers, prototypically the House of Lords." B. BAILYN, *THE ORIGINS OF AMERICAN POLITICS* 61 (1968); *CONGRESSIONAL QUARTERLY SERVICE, REPRESENTATION AND APPORTIONMENT* 9 (1966). See also A. JOHNSON, *UNICAMERAL LEGISLATURE* 3–11 (1938). In these early bicameral legislatures, members of the upper house were required to have higher qualifications than members of the lower house. In New Jersey, for example, candidates for the lower house were required to have a freehold of 500 pounds, while candidates for the upper house were required to have a freehold of 1,000 pounds. Other states, including Massachusetts and Maryland, placed more stringent financial, residency, and age requirements on candidates for the upper house than they did on candidates for the lower house. See B. LONG, *GENESIS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA* 174 (1926). South Carolina's constitution of 1778 required senators to possess 2,000 pounds in land. North Carolina's 1776 constitution restricted the right to vote for members of the senate to owners of not less than 50 acres. Similarly, the electorate for the upper house in New York was restricted so that senatorial electors were only about one-fourth as numerous as electors for members of the lower house. See H. SUMMERS, *UNICAMERAL LEGISLATURES* 49–51 (1936); Note, *Unicameralism and Bicameralism: History and Tradition*, *supra* note 5, at 255–59. Similarly, until its amendment in 1913, the United States Constitution provided that the upper house (Senate) members be elected by the state legislatures, while the lower house (House of Representatives) members be popularly elected. U.S. CONST. art. I, §§ 2, 3; U.S. CONST. amend. XVII. See generally S. MORRISON, *THE OXFORD HISTORY OF THE AMERICAN PEOPLE* 306–08 (1965). In all of these bicameral legislatures, each house provided a fresh "second look" at the other's legislation because of differences in the election process or candidate qualifications between the upper and lower house. These differences meant that each house represented the interests of a different portion of society. The "second look" provided by the second house was therefore not mere repetition, but represented the ratification of a different portion of the population from that represented in the first house. The response to the reapportionment cases and their demand that both houses in the legislature be based on population has substantially undermined this "second look" rationale for retaining a bicameral legislature. See text accompanying notes 28–30 *infra*.

7. State governments in the United States have been patterned to a striking degree upon the federal model, although a few states have utilized the unicameral form briefly. For example, Pennsylvania, in part because of the great influence of Benjamin Franklin as president of its constitutional convention, utilized unicameralism for about four years in the 1790's. Georgia had a unicameral legislature for 12 years

On a number of occasions the State of Washington has considered proposals for a unicameral legislature. As early as 1915, the governor suggested in a message to the legislature that a unicameral legislature would be advisable.⁹ Since that time 23 bills have been introduced in the Washington legislature to establish a unicameral legislature.¹⁰ A

after the Revolution and Vermont employed the unicameral form for 60 years (1777 to 1836). See A. JOHNSON, *supra* note 6, at 32-44.

The Progressive Era of the early twentieth century, with its examples of legislative corruption and governmental insensitivity to socio-economic changes associated with industrialization, did lead to a brief questioning of existing patterns of legislative organization. See generally R. HOFSTADTER, *THE AGE OF REFORM* (1955); R. HOFSTADTER, *THE AMERICAN POLITICAL TRADITION 164-85* (1948); L. WHITE, *THE REPUBLICAN ERA* (1958). Oregon in 1912 and 1914, Oklahoma in 1914, and Arizona in 1916 unsuccessfully sought to achieve unicameral legislatures through constitutional amendments. See H. SUMMERS, *supra* note 6, at 45-47, 172. Ohio, New York, and California also considered the unicameral form during this period. See A. JOHNSON, *supra* note 6, at 95-128; Comment, *A Unicameral Legislature in New York: A Review and A Proposal*, 36 *FORDHAM L. REV.* 307 (1967).

In more recent years, the unicameral concept was considered and rejected in Montana and North Dakota in 1972. In North Dakota the voters rejected unicameralism by a vote of 108,378 to 47,938. 61 *NAT'L CIVIC REV.* 355 (1972). In Montana the voters decided to retain bicameralism, but 44% of the people voted for a unicameral legislature. *Id.* In both states, unicameralism was presented as part of a comprehensive constitutional revision. In both states, only limited campaigns were mounted in favor of the amendments and proponents of unicameralism were unable to educate the people as to the merits of unicameralism, in part because of limited campaign funds. Omdahl, *Drive for Unicameralism Needs National Support*, 63 *CIVIC REV.* 526, 529-30 (1974).

8. Nebraska changed from a bicameral to a unicameral legislature in 1934, when nearly 60% of the voters amended the constitution to substitute a body of 43 members for the bicameral legislature originally adopted at the time of statehood. See H. SUMMERS, *supra* note 6, at 46-47.

9. Governor Ernest Lister stated:

I do not believe that a form of state government should be adopted that would place in the hands of the same officials legislative and administrative powers. I do believe, however, that better results would be obtained if we had one legislative body in the state consisting of say not to exceed twenty-five members, five elected from each congressional district . . . and by fixing the time of each regular session of the legislature at ninety instead of sixty days.

S. JOUR., 14th [Wash. State] Legis., Reg. Sess. 79 (1915).

10. In the Washington State House of Representatives the following bills were introduced: H.R. 112, 14th [Wash. State] Legis., Reg. Sess. (1915); H.R.J. Res. 5, 23d [Wash. State] Legis., Reg. Sess. (1933); H.R. 675, 24th [Wash. State] Legis., Reg. Sess. (1935); H.R.J. Res. 10, 21, 28, 32, & H.R. 375, 25th [Wash. State] Legis., Reg. Sess. (1937); H.R.J. Res. 5, 9, 26th [Wash. State] Legis., Reg. Sess. (1939); H.R.J. Res. 8, 20, 27th [Wash. State] Legis., Reg. Sess. (1941); H.R.J. Res. 49, 41st [Wash. State] Legis., 1st Ex. Sess. (1969); H.R. 276, 43d [Wash. State] Legis., Reg. Sess. (1973); H.R.J. Res. 54, 44th [Wash. State] Legis., 1st Ex. Sess. (1975). All died in committee except H.R. 112 and H.R.J. Res. 28. H.R. 112 was given a "do pass" recommendation by the Committee on Constitutional Revision, but the House took no further action. H.R. Jour., 14th [Wash. State] Legis., Reg. Sess. 1006 (1915). H.R.J. Res. 28 was passed by the House but died in the Senate. S. JOUR. 25th [Wash. State] Legis., Reg. Sess. 970 (1937).

In the Washington State Senate, the following were proposed: S. 207, 25th [Wash. State] Legis., Reg. Sess. (1937); S.J. Res. 11, 25th [Wash. State] Legis., Reg. Sess.

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1937 bill to establish unicameralism passed the House of Representatives by a vote of 67–30 but failed to secure a third reading in the Senate despite a “do pass” recommendation from the Senate Committee on Constitutional Revision.¹¹ A more recent resolution, introduced in the House by seven representatives, proposed a comprehensive revision of the legislative article of the Washington constitution.¹² The resolution died in committee.¹³ Despite its questionable constitutionality,¹⁴ four attempts have been made to bring about a unicameral legislature in Washington via the initiative process.¹⁵ None of these

(1937); S.J. Res. 3, 26th [Wash. State] Legis., Reg. Sess. (1939); S.J. Res. 20, 35th [Wash. State] Legis., Reg. Sess. (1957); S.J. Res. 118, 43d [Wash. State] Legis., Reg. Sess. (1973). All of the measures failed to be reported out of committee except S.J. Res. 11, which was given a “do pass” recommendation by the Committee on Constitutional Revision. S. Jour., 25th [Wash. State] Legis., Reg. Sess. 834 (1937).

11. H.R.J. Res. 28 provided for a unicameral legislature of between 95 and 110 members elected from the then-existing districts for the Washington State House of Representatives for two-year terms. H.R.J. Res. 28, art. II, §§ 2, 4, 25th [Wash. State] Legis., Reg. Sess. (1937). The resolution called for retention of the lieutenant governor as presiding officer, *id.*, § 9, and compensation for members of ten dollars per day while the legislature was in session, and five cents per mile traveling to and from the session. *Id.*, § 21. Biennial legislative sessions were mandated. *Id.*, § 11.

The Senate, however, proposed to amend the measure by limiting the body to between 46 and 60 members elected for staggered four-year terms from then-existing senatorial districts. *Id.*, art. I–A, § 1. Annual sessions were required, and compensation for members of \$1,500 per annum plus traveling expenses was provided. *Id.*, §§ 4–5. The substantial differences in the Senate and House versions of H.R.J. Res. 28 may account for its failure to pass in the Senate.

12. H.R.J. Res. 54, 44th [Wash. State] Legis. 1st Ex. Sess. 683 (1975). The bill, first read on March 25, 1975, was sponsored by Representatives Charnley (D), Eikenberry (R), Eng (D), Erickson (D), Hawkins (D), Nelson (R), and Patterson (R). It was referred to the House Committee on State Government.

13. *Id.*

14. See Part IV–A *infra*.

15. A unicameral legislature was proposed by the following initiative measures: No. 144, February 23, 1940; No. 147, April 9, 1940; and No. 268, February 8, 1972, on file with the Secretary of State for the State of Washington. No. 144 was withdrawn, No. 147 failed to obtain the requisite number of signatures to be certified for the ballot, and No. 268 was refused a ballot title by the Attorney General on his opinion that the initiative mechanism may not be used to amend the constitution. See Part IV–A *infra*. Initiative to the Legislature No. 10, May 23, 1940, on file with the Secretary of State for the State of Washington, failed because no signatures were submitted for consideration.

Initiative measures Nos. 144 and 147, and Initiative to the Legislature No. 10 were approximately the same plan, with some minor deviations. The measures provided for a unicameral legislature elected from legislative districts corresponding to then-existing congressional districts for two-year terms. Sessions of the legislature were to be annual. The measures also provided for a Legislative Council consisting of two members appointed by the legislature from each of the six legislative districts and presided over by the Lieutenant Governor. The responsibility of the Council was to investigate and conduct hearings upon the behavior of all levels of government and give consideration to legislation to make recommendations to the legislature and establish an agenda for the legislative sessions. The governor and the heads of the executive departments were to participate in an *ex officio* capacity in the investigations and deliberations of

attempts, however, has resulted in the placement of a unicameral proposal on the ballot.¹⁶

II. THE REAPPORTIONMENT CASES

Prior to 1962 a traditional reason for retaining a bicameral state legislature was a desire to model a state government as closely as possible after Congress. By differentiating between the constituencies represented by each house of the legislature, it was theorized that the two houses would represent different interests while providing a "second look" at one another's legislative actions.¹⁷ The Supreme Court decisions in *Baker v. Carr*¹⁸ and *Reynolds v. Sims*,¹⁹ however, eliminated the possibility of states following the federal model, by requiring both houses of a state legislature to be apportioned on the basis of population.²⁰

Prior to *Baker*²¹ the Court had repeatedly held that the issue of legislative apportionment was not a matter for judicial determination because of its political nature;²² the Court viewed the matter as consti-

the Council.

Initiative 144 differed somewhat from the other two proposals in that it provided for non-partisan elections and four-year terms and compensation of \$4,000 per annum for legislative services.

16. See note 15 *supra*.

17. See note 6 *supra*.

18. 369 U.S. 186 (1962).

19. 377 U.S. 533 (1964).

20. Prior to the Court's decision in *Reynolds*, but after *Baker*, adoption of the federal analogy was believed by some states to be a convenient method of circumventing the requirement that both houses of a legislature be apportioned on the basis of population. In the two years between the cases at least 13 states attempted to adopt the "federal plan" in their state constitutions. See Everson & Hamilton, *Current Bases of Representation and the "Federal Plan,"* in LEGISLATIVE APPORTIONMENT KEY TO POWER 97, 101 (H. Hamilton ed. 1964).

Modern authorities in considering the appropriateness of the "federal analogy" in state legislatures, usually conclude that it is inapposite at the state level. See generally R. MCKAY, REAPPORTIONMENT AND THE FEDERAL ANALOGY (1962); H. WALKER, THE LEGISLATIVE PROCESS 172 *et seq.* (1948); Rhyne, *The Progeny of Baker v. Carr*, in LEGISLATIVE APPORTIONMENT, *supra* at 64, 68; McKay, *The Federal Analogy and State Apportionment Standards*, 38 NOTRE DAME LAWYER 487 (1963).

21. 369 U.S. 186 (1962).

22. The seminal case holding that reapportionment was a political rather than constitutional issue was *Colegrove v. Green*, 328 U.S. 549 (1946). Justice Frankfurter, writing a plurality opinion for three members of the Court, stated that reapportionment was a "political thicket" into which the courts should not venture. *Id.* at 556. Three dissenters, represented by Justice Black, maintained that a constitutional rather than a political issue was involved, and argued that the Illinois apportionment statute in question constituted a denial of equal protection, because unequal weight was given to each vote. Justice Rutledge, the swing vote in *Colegrove*, agreed with the dissenters that the reapportionment issue was in fact a justiciable matter, but

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tionally within the exclusive ambit of the legislative branch of government.²³ These rulings applied to both federal and state legislative apportionment.²⁴

Although *Baker* did not explicitly provide for judicial legislative reapportionment, it effectively swept away justiciability barriers that had formerly barred judicial involvement in the apportionment issue.²⁵ By ruling that federal district courts have jurisdiction over such

voted to dismiss for an unrelated reason. Although *Colegrove* was only a plurality opinion, it became a precedent relied upon for the proposition that the reapportionment question was a political rather than a constitutional issue. See, e.g., *Kidd v. McCannless*, 352 U.S. 920 (1956) (per curiam); *Anderson v. Jordan*, 343 U.S. 912 (1952) (per curiam); *South v. Peters*, 339 U.S. 276 (1950) (per curiam); *MacDougall v. Green*, 335 U.S. 281 (1948) (per curiam). The *Colegrove* rationale has been applied to both state legislative and congressional districting. Compare, e.g., *MacDougall v. Green*, *supra* (state legislative districts) with *Kidd v. McCannless*, *supra* (congressional districts).

The failure to reapportion legislative districts, coupled with the increased migration of Americans from rural to urban areas, resulted in continued overrepresentation of rural areas and underrepresentation of urban regions. See generally P. DAVID & R. EISENBERG, *DEVALUATION OF THE URBAN & SUBURBAN VOTE* (1961). *Colegrove* and its progeny prevented resort to the judiciary for relief from malapportionment, and state legislatures balked at altering legislative districts because such change would deprive some legislators of their seats. As a result, the disparity in population between legislative districts in some states was astounding. By 1961, for example, the largest state senatorial district in California contained 6,038,771 people, while the smallest contained 14,294. Theoretically 10.7% of the population of the state could have elected a majority of the state senate. Similarly, the largest house district in Vermont contained 33,155 people, while the smallest contained 38; theoretically 11.6% of the voters of Vermont could have elected a majority of the Vermont house. NATIONAL MUNICIPAL LEAGUE, *COMPENDIUM ON LEGISLATIVE APPORTIONMENT* (1962). See also *Colegrove v. Green*, *supra* at 557 (app. 1).

23. As the *Colegrove* plurality stated:

The short of it is that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility. If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people. Whether Congress faithfully discharges its duty or not, the subject has been committed to the exclusive control of Congress. An aspect of government from which the judiciary . . . has been excluded by the clear intention of the Constitution cannot be entered by the federal courts because Congress may have been in default in exacting from States obedience to its mandate.

328 U.S. at 554.

24. See note 22 *supra*.

25. Plaintiffs in *Baker* challenged a 1901 Tennessee statute, apportioning the state General Assembly, on the basis of the fourteenth amendment's equal protection clause. The complaint alleged that it was "difficult or impossible" to alter the present apportionment, either by enacting another statute or a state constitutional amendment, because of the composition of the legislature, which was based on the apportionment statute in issue. *Id.* at 186. The district court dismissed the action for lack of jurisdiction and because no claim was stated upon which relief could be granted.

Reversal of the district court dismissal did not embroil the Supreme Court in the substantive equal protection claim. The *Baker* Court only removed any questions of justiciability from the controversy by resolving the standing, jurisdictional, and

matters, and that the reapportionment question is not such a political issue as to preclude judicial intervention, the Court laid a foundation for attacks on legislative apportionment based on the equal protection clause.²⁶ The tenor of this judicial involvement was delineated two years later in 1964.

Reynolds was one of six apportionment cases decided simultaneously in 1964.²⁷ In each case the state legislative apportionment was struck down as contrary to the fourteenth amendment's equal protection clause. *Reynolds*, the most definitive of the six opinions, established two key propositions. First, the Court articulated the "one man, one vote" principle:²⁸

[W]e conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment

. . . .
 . . . A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. . . .

Second, the Court held that both houses of a bicameral state legisla-

"political question" issues in favor of the plaintiffs. See McKay, *Reapportionment: Success Story of the Warren Court*, 67 MICH. L. REV. 223 (1968).

26. After distinguishing the jurisdictional from the justiciability issue, the Court noted that *Colegrove* and the per curiam opinions based on it were not dismissed for lack of jurisdiction. 369 U.S. at 202-03.

The more pressing issue before the Court was circumventing the long-established "political question" doctrine. The Court rejected the nonjusticiable political question conclusion by distinguishing a claim based on the guaranty clause, U.S. CONST., art. IV, § 4, and one based on the fourteenth amendment's equal protection clause. The Court admitted that the guaranty clause "is not a repository of judicially manageable standards which a court could utilize independently in order to identify a State's lawful government." 369 U.S. at 223. The Court then noted, however, that "[j]udicial standards under the Equal Protection Clause are well developed and familiar." *Id.* at 226. Because the appellants' claim was based on the equal protection clause rather than the guaranty clause, the Court determined that the "political question" doctrine which precluded judicial intervention in a guaranty clause cause of action had no application to a claim based on the equal protection clause.

27. *Reynolds* involved a challenge to both the existing and a legislatively proposed substitute apportionment of legislative districts in Alabama. The existing legislative apportionment was based on a 1901 statute. The comparison cases were: *Lucas v. Forty-Fourth Gen. Assem. of Colo.*, 377 U.S. 713 (1964) (Colorado); *Roman v. Sincock*, 377 U.S. 695 (1964) (Delaware); *Davis v. Mann*, 377 U.S. 678 (1964) (Virginia); *Maryland Comm. for Fair Rep. v. Tawes*, 377 U.S. 656 (1964) (Maryland); *WMCA, Inc. v. Lomenzo*, 377 U.S. 633 (1964) (New York). The *Reynolds* requirement of apportionment was imposed on federal congressional districts in *Wesberry v. Sanders*, 376 U.S. 1 (1964).

28. 377 U.S. at 566-68.

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ture must be apportioned according to population. It explicitly found any analogy of a state to the federal legislature “inapposite and irrelevant to state legislative districting schemes,” and “little more than an after-the-fact rationalization offered in defense of maladjusted state apportionment arrangements. . . .”²⁹ The Court, however, suggested in dictum that bicameral legislatures remained desirable. According to Chief Justice Warren, bicameralism would continue to provide useful functions because the size and composition of the legislative bodies could be sufficiently different to provide enhanced deliberation and differing perspectives.³⁰

There were two important reactions among the states to the *Reynolds* decision. First, for at least fifteen states whose legislatures were based on the federal model, *Reynolds* required a reorganization of one house of the state legislature.³¹ For the majority of states (including Washington),³² however, population had been the original basis for apportioning representation in both houses of the legislature.³³ Thus, the second and most far-reaching consequence of the case was the sudden and widespread legislative reapportionments it engendered. By 1966 virtually every state in the Union had been reappor-

29. *Id.* at 573.

30. Chief Justice Warren stated:

We do not believe that the concept of bicameralism is rendered anachronistic and meaningless when the predominant basis of representation in the two state legislative bodies is required to be the same—population. A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures. Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies. Different constituencies can be represented in the two houses. One body could be composed of single-member districts while the other could have at least some multimember districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. . . . In summary, these and other factors could be, and are presently in many States, utilized to engender differing complexions and collective attitudes in the two bodies of a state legislature, although both are apportioned substantially on a population basis.

Id. at 576–77 (dictum).

31. Prior to *Reynolds*, in Arizona, Arkansas, Colorado, Hawaii, Idaho, Illinois, Maryland, Mississippi, Montana, Nevada, New Jersey, New Mexico, North Dakota, and South Dakota, one house of the state legislature was based on population and the other on fixed districts. In Delaware both houses of the legislature were based on fixed districts. See Everson & Hamilton, *Current Bases of Representation and the “Federal Plan,”* in LEGISLATIVE APPORTIONMENT, *supra* note 20, at 97.

32. See WASH. CONST. art. II, § 3.

33. Everson & Hamilton, *Current Bases of Representation and the “Federal Plan,”* in LEGISLATIVE APPORTIONMENT, *supra* note 20, at 97.

tioned, by the legislature, by court decision, or by other means.³⁴ In Washington, the state constitution mandates the legislature to reapportion its districts every 10 years.³⁵ Nonetheless, the legislature has repeatedly failed to carry out its constitutional mandate as it has twice been directed by a federal district court to reapportion itself in conformity with the principles of *Reynolds*.³⁶ In the most recent case the state legislature was unable to fulfill its constitutional duty and instead relied on the federal courts to draw up a legislative redistricting plan.³⁷ Thus, although the Washington legislative district plan currently conforms with the *Reynolds* requirements, this result was achieved despite, rather than because of, positive action on the part of the state legislature.

Because both houses of the Washington legislature have always been based upon population, the *Reynolds'* rejection of the federal analogy has little direct effect on it. The impact of *Baker* and *Reynolds* is important in the State of Washington, however, for several reasons. First, the Supreme Court's reasoning in *Reynolds* reveals that the governmental institutions and the structural policies appropriate on the federal level may not be so on the state level where different considerations apply. Second, the Washington legislature's manner of dealing with reapportionment reveals the degree to which self-interest comes into play when substantial structural alteration of the legisla-

34. See generally W. BOYD, CHANGING PATTERNS OF APPORTIONMENT (1965); CONGRESSIONAL QUARTERLY SERVICE, REPRESENTATION AND APPORTIONMENT 65-85 (1966) (state-by-state analysis as of 1966); W. CRANE & M. WATTS, STATE LEGISLATIVE SYSTEMS 28-31 (1968) (delineates principal means of state reapportionment); NATIONAL MUNICIPAL LEAGUE, LEGISLATIVE REDISTRICTING BY NON-LEGISLATIVE AGENCIES (1967). Other means include reapportionment by initiative as occurred in Washington in 1930 and 1956. See note 36 *infra*.

35. WASH. CONST. art. II, § 3.

36. Since statehood in 1889 the legislature has succeeded in reapportioning itself without the aid of an initiative or court suit only once, in 1901. INSTITUTE OF GOVERNMENTAL RESEARCH, THE LEGISLATURE AND THE LEGISLATIVE PROCESS IN THE STATE OF WASHINGTON 11 (1974). Despite legislative attempts to alter it, a 1930 initiative (Initiative No. 57) reapportioned the legislature. *Id.* at 11-12. The initiative process was again utilized in 1956 in an attempt to reapportion the legislature. A 1952 amendment to the Washington Constitution, however, empowered the legislature to amend any initiative passed by the people. WASH. CONST. art. II, § 41. Utilizing this amendment, the Washington legislature emasculated the intent of the reapportionment initiative by substantially revising the 1956 measure.

For a more extended discussion see G. BAKER, THE POLITICS OF REAPPORTIONMENT IN WASHINGTON STATE (1960); INSTITUTE OF GOVERNMENTAL RESEARCH, *supra*, at 10-12; McDermott, *Judicial Sanctions and Legislative Redistricting in Washington State*, 45 WASH. L. REV. 681 (1970). For a discussion of these cases and the role of self-interest in reapportionment see notes 120-28 and accompanying text *infra*.

37. See text accompanying notes 127-28 *infra*.

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ture is potentially involved. Third, and most importantly, the reapportionment cases challenge the need for a bicameral legislature. When both legislative houses are based on population, it may be questionable whether they can be sufficiently different to provide a fresh "second look" at legislation. As suggested below³⁸ the diminution of this "second look" function makes the added confusion, time, and expense which the second house entails more difficult to justify.

III. SPECIFIC ADVANTAGES OF UNICAMERALISM IN WASHINGTON³⁹

Although it is difficult to treat each desirable aspect of unicameralism independently of the other favorable factors,⁴⁰ the following reasons for adopting a unicameral system in Washington can be advanced.

38. See notes 87-92 and accompanying text *infra*.

39. As a background to the discussion of advantages of a unicameral legislature in Washington, it is useful to describe briefly the present structure of the Washington bicameral legislature. The house of representatives currently consists of 98 members—two representatives elected from each of the 49 legislative districts for two-year terms. WASH. CONST. art. II, § 5 (as apportioned by *Prince v. Kramer*, Civil No. 9668 (W.D. Wash., April 21, 1972), *aff'd sub nom.*, *AFL-CIO v. Prince*, 409 U.S. 808 (1972)). The senate consists of 49 members—one senator elected from each district for a four-year term; half of the senators stand for election every two years. WASH. CONST. art. II, § 6.

Regular sessions of the legislature are held biannually in odd-numbered years for a period not to exceed 60 days. *Id.*, § 12; WASH. REV. CODE § 44.04.010 (1974). An extraordinary session beyond the 60-day regular session must be called by the governor. WASH. CONST. art. III, § 7. Such extraordinary sessions have become the rule rather than the exception: since 1951, every regular session except that of 1957 has been followed by at least one extraordinary session; in every even-numbered year since 1970 an extraordinary session has been necessary. See note 43 *infra*.

Seventeen standing committees exist in each house of the Washington legislature. INSTITUTE OF GOVERNMENTAL RESEARCH, *supra* note 36, at 27-28. Under the "continuing session" concept, each standing committee continues to meet once a month while the legislature is not in session as an interim committee. Engrossed S.C. Res. 125, Rule 36-41, 43d [Wash. State] Legis., 1st Ex. Sess. (1973); S.C. Res. 134, Rule 28, 43d [Wash. State] Legis., 1st Ex. Sess. (1973). These committees conduct hearings and submit legislation for consideration in the following legislative session. See note 3 *supra*. See also LEAGUE OF WOMEN VOTERS OF WASHINGTON, *THE WASHINGTON STATE LEGISLATURE: CONTINUING STUDY AND A LOOK AT THE UNICAMERAL LEGISLATURE* 1-5 (1975).

40. The Nebraska experience provides the best analytical basis to the advantages of unicameralism as a whole. As an oddity in the United States, it has been the subject of considerable research. See generally A. BRECKINRIDGE, *ONE HOUSE FOR TWO* 62-64 (1957); A. JOHNSON, *supra* note 6, at 178-87; Riley, *NonPartisan Unicameral—Benefits, Defects Re-examined*, 52 NEB. L. REV. 377 (1973); Srb, *The Unicameral Legislature—A Successful Innovation*, 40 NEB. L. REV. 626 (1961).

Nebraska's present legislature has 49 members elected for staggered four-year terms on a nonpartisan basis. Its procedural rules are relatively simple: there is no time limitation upon sessions, there is a limited time period in which bills may be intro-

1. The part-time bicameral legislature is no longer a reasonable mechanism for performing the legislative function in Washington. By adopting a unicameral legislature, Washington could recognize that a legislative seat is a full-time position, to which a legislator should devote the majority of his or her time, and for which a legislator should be paid an adequate salary.

2. A unicameral legislature would be less expensive for the taxpayers and would be more efficient and effective in its consideration of legislation. For the same level of current expenditure for the bicameral legislature, Washington could adopt a unicameral legislature and facilitate legislative performance by concentrating responsibility in one house.⁴¹ Interhouse rivalry and deadlocks would be eliminated

duced, and a certain period must intervene before the passage of a bill into law. The committee structure is clear, and research facilities are generally available to members. See *Srb. supra* at 627-633. The Citizens Conference on State Legislatures ranked Nebraska ninth overall and gave it the following ratings in particular legislative areas: Accountability (1); Informed (16); Representative (18); Independent (30); and Functional (35). CITIZENS CONFERENCE ON STATE LEGISLATURES, *THE SOMETIMES GOVERNMENTS* 251-53 (1971).

It should be noted that the Nebraska system does not represent the only, or even the ideal, unicameral legislative body. The unicameral legislature proposed herein differs in a number of aspects from that of Nebraska, most notably in the preservation of the partisan system.

41. In the present context, the terms "effectiveness" and "efficiency" are difficult to define because they are such value-laden concepts. In the authors' view, however, legislative effectiveness or efficiency comprehends an ability to produce well-considered legislation, reflective of the constituency's desires and needs, in a reasonable amount of time. Thus, an effective legislature should produce the following results:

- 1) promulgation of needed legislation;
- 2) budget control;
- 3) supervision of administration of legislative programs;
- 4) investigatory powers;
- 5) planning for future needs and contingencies.

The Citizens Conference on State Legislatures addressed the issues of legislative effectiveness and efficiency as follows:

If it is going to represent its people and make authoritative decisions on their behalf, a legislature must carry on a number of basic activities: it must put programs together, evaluate ongoing programs, deliberate on various problems and proposals, reach accommodations among contending views, educate the public and itself on important questions, and, by doing all these things, make public policy. No legislature can do these things unless it has:

- enough time and the means to make good use of its time;
- staff aides for leaders and individual members beyond the more specialized staff of clerk's or research offices;
- adequate facilities, including chambers, committee rooms, and offices;
- manageable size, in terms of the total number of members, the number of committees, and the number of committee assignments per member;
- an organizational structure and a set of procedures that speed, rather than impede, the flow of work;
- some method for ensuring continuity between legislative sessions and coordination between the houses of the legislature; and
- an orderly atmosphere, a sense of decorum and dignity of office that enables

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and parallel efforts in drafting, debate, and committee investigation would no longer be required.

3. For the same amount of money currently spent on the bicameral legislature, the staff serving a unicameral legislature could be larger and more comprehensive.⁴²

4. A unicameral body would be more accountable and would inhibit the influence of "special interests" by concentrating public attention upon one body. Responsibility could not be shifted to the other house and popular awareness of legislative progress would be enhanced because media coverage would be aided. Conference committees, too often acting as impediments to the enactment of legislation, would no longer exist.

A. *The Time and Financial Limitations of the Bicameral Legislature*

An analysis of the current Washington bicameral legislature reveals that it has become increasingly time consuming and decreasingly feasible in a financial sense for its members. For the decades beginning in 1927, 1937, and 1947, for example, the legislative sessions averaged 68, 61, and 69 days, respectively.⁴³ For the decade beginning in 1957

the legislature to conduct its business without undue delay or disruption, and with a sense of competency and authority.

CITIZENS CONFERENCE ON STATE LEGISLATURES, *supra* note 40, at 57.

42. *Id.* at 62-64, 113-116, 164-65.

43. Length of legislative sessions since 1927 have been as follows:

<u>Session</u>	<u>Regular</u>	<u>Extra</u>	<u>Total Days in Session</u>
1927	60		60
1929	60		60
1931	60		60
1933-34	60	40	100
1935	60		60
1937	60		60
1939	60		60
1941	60		60
1943-44	60	6	66
1945	60		60
1947	60		60
1949	60	5	65
1951	60	10, 9	79
1953	60	9	69
1955	60	14	74
1957	60		60
1959	60	15	75
1961	60	22	82
1963	60	23	83

the average was 83 days.⁴⁴ From 1967 to the present, however, sessions have averaged 161 days.⁴⁵ The 44th legislature set a new record for longevity, lasting 231 days.⁴⁶

Compounding the problem of time consumption are the demands required by interim committee assignments.⁴⁷ Committees, directed to meet once a month while the legislature is not in session, require approximately 48 days per biennium for each legislator, in addition to the time demands made by the regular and extraordinary sessions of the legislature.⁴⁸

The fact that the regular session of the legislature ordinarily meets only every other year, further exaggerates the problem of time consumption. Because of this requirement the time demands made upon legislators are not split evenly from year to year. Rather, the legislator must be prepared to spend a disproportionate amount of time in the legislature every odd-numbered year. In the 1975-77 biennium, for example, the legislature spent 231 days in session to date.⁴⁹ Of this time, 155 days occurred in 1975, and only 76 days in 1976.⁵⁰

These figures suggest that prior to 1965, serving as a legislator was indeed a part-time task: legislative sessions occupied 60-80 days per

1965	60	54	114
1967	60	52	112
1969-70	60	60. 32	152
1971-72	60	60. 44	164
1973-74	60	38. 8. 41	147
1975-76	60	88. 7. 76	231

All figures, except those for the Second and Third Extraordinary Sessions 1975-76, are taken from [Wash. State] H. Jour. 1927-76; figures for the Second Extraordinary Session are taken from the Seattle Times, Mar. 21, 1976, § A, at 11, col. 1; and figures for the Third Extraordinary Session are taken from the Seattle Post-Intelligencer, Mar. 27, 1976, § A, at 1, col. 5.

44. See note 43 *supra*.

45. *Id.*

46. *Id.*

47. See note 39 *supra*.

48. Chief Clerk of the House of Representatives Dean R. Foster estimates that an average legislator attended committee meetings or "closely related legislative matters" three to five times per month between 1973 and 1975. Letter from Dean R. Foster to co-author, Dec. 8, 1975, on file with the *Washington Law Review*. The figure utilized in the text is derived from an average of four days per month per legislator.

Interim committees meet when the legislature is not in session. No legislature has met more often than the 44th Legislature which has been in session 231 days in this biennium so far. There are, therefore, approximately twelve months during a biennium in which the legislature is not in session and interim meetings are required.

If the interim committees meet four days per month and such monthly meetings occur twelve times during a biennium, 48 days would appear to be a proper and conservative estimate.

49. See note 43 *supra*.

50. *Id.*

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biennium;⁵¹ few extraordinary sessions were called;⁵² fewer interim committees existed to occupy the legislator's time between sessions;⁵³ and the largest state budget with which the legislature worked totaled less than \$1.8 billion.⁵⁴ Since 1967, however, legislative sessions have averaged twice their prior length per biennium;⁵⁵ three to five days per month are required by interim committee meetings;⁵⁶ the state budget has ballooned to \$6.8 billion per biennium;⁵⁷ and the legislators are faced with increasingly complex issues.⁵⁸ These demands together with the irregular schedules leave the legislator little time for outside business. In short, acting as a legislator is no longer a part-time avocation; it is rapidly becoming a full-time position.

While the time demands placed on legislators have greatly increased, their compensation has remained minimal: \$3,800 per year in salary, plus \$40 per day spent in session or on legislative business.⁵⁹

51. *Id.*

52. *Id.*

53. Interim committees did not come into existence until 1973. See note 39 *supra*. Certain statutory committees have existed, however, during the period between the regular sessions of the legislature in the past. These statutory committees still exist. See WASH. REV. CODE ch. 44.28 (1974) (Legislative Budget Committee); *id.* ch. 44.30 (Joint Committee on Higher Education); *id.* ch. 44.33 (Joint Committee on Education); *id.* ch. 44.36 (Joint Committee on Urban Area Government); *id.* ch. 44.39 (Joint Committee on Nuclear Energy); *id.* ch. 44.40 (Legislative Transportation Committee).

54. In the 1963-65 biennium the state budget totaled \$1,795,615,612. STATE OF WASHINGTON, BUDGET FOR THE 1967-1969 FISCAL BIENNIUM PART I: BUDGET MESSAGE OF GOVERNOR DANIEL J. EVANS TO THE FORTIETH LEGISLATURE 41 (Submitted by Gov. D. Evans 1967).

55. See note 43 *supra*.

56. See note 48 *supra*.

57. The estimated budget for the 1975-77 biennium is \$6,783,300,000. STATE OF WASHINGTON, BUDGET MESSAGE 12 (Submitted by Gov. D. Evans 1974).

58. See Part III-B *infra*.

59. The compensation structure for members of the Washington legislature is complex and reflects the desire of the members to achieve adequate compensation by whatever means possible. WASH. REV. CODE § 43.03.010 (1974) is the basic compensation statute for legislators. It provides for salaries of \$3,800 annually and ten cents per mile for travel to and from legislative sessions. Salaries had been \$1,200 per year until 1965 when they were raised to \$3,600 per annum. In 1973, the legislature sought to increase salaries from \$3,600 per year to \$10,560 annually. Ch. 137, § 110 [1973] Wash. Laws 1st Ex. Sess. 937. The people, by Initiative 282, Ch. 149, § 1 [1974] Wash. Laws, 3d Ex. Sess. 513, succeeded in rolling back the increase to \$3,800 per year. The courts upheld that result.

In *State ex rel. Helm v. Kramer*, 82 Wn. 2d 307, 510 P.2d 1110 (1973), the court held that the salary increase statute was exempt from the referendum process as it was "necessary for the support of state government," one of two exceptions to the popular referendum authority. *Id.* at 312, 510 P.2d at 1718. In *Yelle v. Kramer*, 83 Wn. 2d 464, 520 P.2d 927 (1974), however, the court, consisting of nine justices pro tem because the sitting justices had disqualified themselves due to personal interest, held 7-2 that Initiative 282 was effective to roll back salary increases, that the legisla-

Based on salary and allowances, the average annual income from official legislative activity per legislator is estimated as follows: \$8,087 in 1973, \$6,753 in 1974, and \$11,493 in 1975.⁶⁰

A comparison of estimated average income of legislators with that of staff members highlights the inadequacy of their compensation. Salaries for permanent staff members average \$13,200,⁶¹ 15 percent higher than the compensation paid to legislators in 1975. Moreover, a staff attorney serving in the 155 day 1975 session at an estimated \$75

ture did not have the sole power to alter compensation for its members, and that the initiative was not a referendum in disguise that fell within *Helm*.

The 44th legislature, in its 1976 extraordinary session, again raised legislative salaries, this time from \$3,800 to \$7,200 per annum. Ch. 113, § 1 [1975-76] Wash. Laws 2d Ex. Sess. 326. Referendum 38 sought to roll back this increase also, but was unsuccessful in obtaining the requisite number of signatures to be placed on the ballot.

In addition, WASH. REV. CODE § 44.04.080 (1974) allows members a per diem allowance of \$40 per day "in lieu of subsistence and lodging during and while attending any legislative session." *Id.* Per diem allowances are paid every day during the session even when the legislature is adjourned (such as on Sundays). Prior to 1941, legislators had to submit expense documentation before receiving a per diem allowance, but *id.* § 44.04.090 provides that legislators need not itemize expenses incurred to receive the \$40 per diem. A change in the per diem rate in 1969 was subjected to court challenge on the grounds that it violated the provision of WASH. CONST. art. 28, § 1, which prohibited increases in compensation during the term of office of legislators and other state officers. In *Hoppe v. State*, 78 Wn. 2d 164, 469 P.2d 909 (1970), however, the Washington Supreme Court held that the increase in per diem allowance from \$25 to \$40 was valid as per diem allowances and was not "compensation" within the meaning of WASH. CONST. art. 28, § 1, and was necessary given the increasing responsibility and efforts of legislators.

WASH. REV. CODE § 44.04.120 (1970) also provides that members of the legislature receive a per diem of \$40 while serving on official legislative business during the time period between sessions and that members receive mileage expenses of 13 cents per mile as provided in *id.* § 43.03.060 for travel to such business meetings.

60. Average legislative yearly income for members of the Washington State House of Representatives is estimated as follows:

	<u>1973</u>	<u>1974</u>	<u>1975</u>
Salary	\$3,600	\$3,600	\$3,600
Per diem sessions	3,440	1,640	6,200
Per diem interim	722	1,090	903
Travel	193	331	485
Air fare and cars paid directly	132	92	305
Total	\$8,087	\$6,753	\$11,493

Letter from Dean R. Foster to co-author, April 27, 1976, on file with the *Washington Law Review*. Because salary and allowances are similar, Senate incomes should be comparable.

There is some problem with the reliability of any figures for average legislative compensation. Any figures suggested must be considered estimates at best. For example, for 1973 the League of Women Voters estimated that the average legislative compensation was approximately \$8,700. LEAGUE OF WOMEN VOTERS OF WASHINGTON, *supra* note 39, at 6.

61. Letter from Dean R. Foster to co-author, Sept. 11, 1975, on file with the *Washington Law Review*.

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per day per diem would have received \$11,625.⁶² In this fashion, some employees of the legislature are currently receiving more pay than the legislators.⁶³

Perhaps the principal consequence of the rapid increase in length of legislative sessions, together with the lack of any proportional increase in legislative pay, has been the loss of experienced and dedicated legislators in a significant turnover in legislative membership.⁶⁴ The present structure increasingly appears to preclude candidates who have no outside sources of income, or whose employment does not allow long periods of absence, from running for office, while it encourages those candidates who are independently wealthy or in an occupation which allows long periods of absence.⁶⁵ As early as March 1976, five

62. Chief Clerk of the House Dean R. Foster estimates \$75 per diem as the average amount paid an attorney employed by the house of representatives. Letter from Dean R. Foster to co-author, Oct. 24, 1975.

63. The predicament of the typical legislator is indicated by the following comment of one Washington state senator:

The public complains about our salary and per diem. Hell! I'm in partnership with another lawyer and it costs us about \$100 a day just to open the office and pay the secretaries. In spite of this we net \$2,500 per month. While I am in Olympia my law partner must do all the work, our profit is cut in half, and I'm paid \$300 per month and \$40 per day. On top of that I have to run back and forth to my office or court at least once a week when we're in session. I figure that in a ninety day session I lose about \$1,500 to \$2,000.

Reply of anonymous legislator to authors' poll, Appendix A *infra*.

64. Membership changes appeared to coincide with two major events: the success of the initiative to roll back legislative pay increases and the enactment of the Public Disclosure Act, WASH. REV. CODE §§ 42.17.010 *et seq.* (1974). Legislative representation from groups whose business required substantial attention or confidentiality such as attorneys was significantly affected. In 1971, before the salary roll-back or the Public Disclosure Act, there were 36 lawyers in the legislature. See generally STATE OF WASHINGTON, LEGISLATIVE MANUAL 313-26, 383-400 (1971). By 1973, the number had decreased to 23, *id.* 326-41, 394-410 (1973), and the present 44th Legislature elected in 1975 contains only 14 attorneys. *Id.* 332-48, 404-22 (1975). There are significantly more legislators who identify themselves as business people, housewives, or workers in state and local government.

65. One commentator in examining salary levels in state legislatures stated: The low level of legislative salaries is—like the restrictions on length and frequency of session—a legacy from earlier eras in our history when the task of representing one's friends and neighbors in the legislature was considered a patriotic duty, comparable to serving in the army or on a jury

In all but a handful of today's legislatures, salaries and other compensation remain at nineteenth century levels. Legislative service, as a result, is closed to all but a tiny fraction of our people. Legislative salaries and compensation should be high enough to enable a broad cross-section of the citizenry—of different races, sexes, occupations, economic circumstances—to consider legislative service. Citizens Conference on State Legislatures, *supra* note 40, at 137-38 (1971).

The Citizens Conference also suggests that the "citizen legislature/professional legislature" distinction is spurious in this context: "We need both the representativeness and independence that is implied in a citizen legislature and the competency and skill implied in a professional legislature." *Id.* at 138.

state legislators had indicated that they would not seek re-election in 1976, citing poor salaries and an inability to maintain their full-time jobs as reasons for their retirement.⁶⁶ Numerous other legislators also have been forced to take time from the legislative session to take care of outside business.⁶⁷ Continuation of the present part-time system will not discourage this trend.⁶⁸

Adoption of a unicameral legislature in Washington can help to alleviate the problems of time consumption and inadequate pay. An appropriate plan should recognize that a legislative seat is becoming a full-time position to which a legislator should devote the majority of his time, and for which a legislator should be paid an adequate salary.⁶⁹ Instead of placing a legislator in the increasingly untenable position where he must attempt to hold down two jobs, the state should allow him to devote all of his time and effort to legislative tasks. Under such a plan a legislator could have an outside source of income, absent some conflict of interest, but his involvement with a

66. The five include Senator Pete Francis, and Representatives Helmut Jueling, William Paris, Robert Perry, and William Schumaker. Representative Wayne Ehlers states that he will run for reelection for one more term. *See generally* Seattle Times, Feb. 15, 1976, § A, at 14, col. 1; *id.* Mar. 7, 1976, § E, at 12, col. 3; *id.* Mar. 18, 1976, § B, at 3, col. 1.

67. These legislators among others include: Senators Pete Francis, James McDermott, August Mardesich, and Representatives John Bagnariol, William Paris, and Leonard Sawyer. *See* note 66 *supra*.

68. Some companies have reacted to the inadequate salary provided legislators. For example, members of the legislature who are employees of the Boeing Company are entitled to choose between 1) leave without pay during legislative sessions with retention of the legislative salary; or 2) retention of their Boeing salary with remittance by the legislators of their legislative salary to Boeing. This policy is under review by Boeing Company. Telephone interview with Harry F. Wood, Public Affairs Research Mgr., Boeing Co., in Seattle, Wash., Jan. 5, 1976.

Such a program has received criticism. During the 1976 extraordinary session of the legislature one Boeing employee, Representative A. N. (Bud) Shinpoch, was singled out by other legislators as responsible for unreasonable delay in ending the session. Senator August Mardesich suggested that Boeing Company reassess its policy of "encouraging its employees to run for public office and pay them the difference in their incomes between those jobs and their company salaries." Shinpoch was reported as stating, "It makes no difference to me if we stay here all summer," presumably because of Boeing's compensation plan. Seattle Post-Intelligencer, Mar. 21, 1976, § A, at 1, col. 3.

The policy of Boeing, also followed by other corporations and many local government units, is inherently the subject of questions of conflict of interest when members vote on issues of importance to their principals. It is ironic that in the context of voting by members of administrative bodies on zoning issues, courts will reverse decisions where administrative officers or their principals had the slightest connection with the subject considered on the grounds of "appearance of unfairness." *See* Flemming v. City of Tacoma, 81 Wn. 2d 292, 502 P.2d 327 (1972); Buell v. City of Bremerton, 80 Wn. 2d 518, 495 P.2d 1358 (1972); Smith v. Skagit County, 75 Wn. 2d 715, 453 P.2d 832 (1969).

69. *See* Proposed Constitutional Revision, Appendix B *infra*.

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business venture could not interfere with legislative activities.⁷⁰ Because of the smaller size of the unicameral legislature proposed herein (49 members, as opposed to the present 147 members), legislators' salaries could be set at 50 percent of the governor's salary (this would amount to \$21,075 at present pay level) to provide the members an adequate pay to devote full time to the legislature's business.⁷¹ Even with this increase in compensation, however, the state could save approximately \$670,000 in legislators' salaries in a biennium.⁷² Experience in Nebraska supports this prediction. The adoption of a unicameral legislature there resulted in an increase in the individual legislator's total pay with a decrease (by half) in total expenditures for legislators' salaries.⁷³

A smaller unicameral legislature which paid its members an adequate salary would also have the ancillary benefit of enhancing the prominence and prestige of the body.⁷⁴ Citizens with exceptional

70. *Id.*

71. *Id.*

72. This approximation can be derived by comparing projected expenses under the proposed unicameral model with those of the 1975-76 biennium to date. The legislature has met for a total of 231 days at the time of this writing. In addition, the Chief Clerk of the House estimates that members attended three to five days of meetings or hearings per month and leaders spent ten to fifteen days per month on legislative business for which they were paid a per diem allowance. See note 48 *supra*.

Assuming legislative sessions totaling 231 days per biennium (a conservative estimate given recent trends, see note 43 *supra*), per diem allowances would be paid to an average legislator on approximately 275 occasions over the biennium. At present pay scales (\$3,800 per year in salary and \$40 per day in allowances), a member of the present House or Senate would receive an average of \$18,600 in a biennium. The cost for 147 members would be approximately \$2,734,200. This figure excludes mileage and incidental expenses for members and does not take into account the increase in salaries for members from \$3,800 to \$7,200 per year. See note 39 *supra*.

The proposed unicameral system sets legislative salaries at 50% of the governor's salary (\$42,150 per WASH. REV. CODE § 43.03.010 (Supp. 1975)). The salary would be \$21,075 per annum with no per diem allowances or special expenses for mileage. For a 49-member body, the cost would be \$2,065,350 for the biennium.

Although this comparison constitutes only a rough approximation of average costs, members of a unicameral body as described in Appendix B could be paid *significantly* higher annual compensation than their bicameral counterparts at a major saving to the taxpayers each biennium.

73. The cost of the 1935 regular session of the Nebraska bicameral legislature was \$202,593 for a 110-day session while the cost of the 1937 and 1939 regular sessions of the unicameral legislature, meeting 98 and 111 days, was respectively \$103,445 and \$100,678. A. BRECKENRIDGE, *supra* note 40, at 48.

74. The experience of Nebraska is instructive in this regard. An unusually large number of candidates were attracted to run for the 43 seats in the unicameral assembly in 1937; 283 candidates filed for election, of whom 122 had served previously in the legislature. The average of 6.6 aspirants per seat compared very favorably with the 3.65 average for senatorial seats in six prior elections for the bicameral legislature. Of those elected, 75% had some college training as compared to 45% for other state legislatures at the time. 75% had prior legislative experience as opposed to the average

qualifications could afford a period of legislative service, even though their regular occupation would be temporarily set aside. Qualified individuals would not be put to the current distasteful choice of legislative service or financial difficulty.⁷⁵ Additionally, people from a wider range of occupational groups might be encouraged by an adequately compensated unicameral legislature to seek legislative office; members would not have to maintain two jobs.⁷⁶ Finally, as will be explored subsequently,⁷⁷ fuller responsibility for legislation will rest on a unicameral legislature. With fewer members and greater accountability, more time, investigation, and planning could be devoted to the legislative process resulting in a rise in the quality of legislation and the status of legislators.

B. *Legislative Costs and Efficiency*

Statistics amply demonstrate that the Washington bicameral legislature of 55% in other legislatures. *See generally*, A. BRECKENRIDGE, *supra* note 40, at 32-37; H. SUMMERS, *UNICAMERALISM IN PRACTICE* 51-58 (1937).

75. At least one Washington legislator, however, believes that increased legislative salaries would dilute the legislature's quality:

If salary, for example, is \$20,000-\$25,000, that doesn't make office-holders worth that amount. Those who now serve but earn more than that amount would not, the odds are, be candidates. So—quality of talent would be lowered.

And who would run for political office? With few exceptions, those 35 to 55 years of age with career employment would question the risk of becoming a "has been" after 2, 4, 8, or 12 years . . . qualified for little more than a hoped-for appointment (dangers here are obvious).

Political hacks would be the order of the day. Most of us today are not trying to make a living by getting re-elected. Let's keep that—and still seek improvements.

Reply of anonymous legislator to authors' poll, Appendix A *infra*.

76. Authorities in state government consider diversity within the legislature essential:

A representative legislature will reflect, to at least some degree, the important interests and groups within the state. It will display a wide rather than narrow range of ages; its members will have a variety of commercial and professional backgrounds; and they will have connections with and commitments to the various ethnic, ideological, political, and economic groups within the state. The more drastic the restrictions on who may run or serve in the legislature, the less the legislature will exhibit this kind of diversity.

Qualifications for office should reflect an "open admissions" policy toward legislative service. In a democracy, the only really valid qualification for serving in the legislature is the approval of the electorate.

CITIZENS CONFERENCE ON STATE LEGISLATURES, *supra* note 40, at 137.

Interestingly, the experience of Nebraska in 1937 reflected a larger attraction of candidates for office than under the bicameral system, greater legislative experience and educational attainment than before, but no change in occupational groups from the preceding bicameral legislature. There was no disturbance in the percentage of occupational groups represented in the unicameral, although a number of new occupational groupings achieved representation in the unicameral body. H. SUMMERS, *supra* note 74, at 53-57.

77. *See* Parts III-B-2 & III-B-4 *infra*.

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ture is becoming increasingly expensive.⁷⁸ In the ten-year period between the 1963–65 and 1973–75 bienniums, for example, the cost of maintaining the legislature increased from \$2,429,806 to \$13,039,038.⁷⁹ Although the increase may be partially attributable to in-

78. Expenditures for the Washington legislature since 1957 are as follows:

<u>Biennium</u>	<u>Annual Cost</u>	<u>Biennial Cost</u>
1955–57		\$ 1,337,604
1957–59		
1957–58	\$ 336,754	
1958–59	1,115,673	1,482,427
1959–61		
1959–60	432,597	
1960–61	1,391,149	1,823,746
1961–63		
1961–62	557,652	
1962–63	1,589,017	2,146,669
1963–65		
1963–64	365,707	
1964–65	2,064,099	2,429,806
1965–67		
1965–66	614,904	
1966–67	2,981,744	3,596,648
1967–69		
1967–68	1,196,749	
1968–69	4,608,708	5,805,457
1969–71		
1969–70	3,024,114	
1970–71	6,140,202	9,164,316
1971–73		
1971–72	3,890,253	
1972–73	6,758,792	10,649,045
1973–75		
1973–74	5,826,419	
1974–75	7,212,619*	13,039,038*
1975–77		
1975–76	7,219,198*	
1976–77	8,288,763*	15,507,961*

*Estimates

All figures taken from STATE OF WASHINGTON, BUDGETS, 1959–61 through 1975–77 biennium.

79. See note 78 *supra*.

flation,⁸⁰ it is apparent that the economy is not the principal reason for the rising cost of the legislature. Rather, as service in the legislature has become more time-consuming and complex, the cost of maintaining the legislature has increased concomitantly.

Despite the expanding costs, there is no indication that the effectiveness of the legislature has increased proportionately. Indeed the 44th legislature, for example, has been criticized for being especially ineffective. After meeting in 1975–76 for 231 days, the legislature had still failed to deal with a number of key issues. Frequent displeasure was expressed toward the legislature's failure to deal with the state budget and state school funding. Governor Evans called the 1976 legislature a "shoplifting" group whose budget was \$38 million in the red.⁸¹ Many legislators have also expressed displeasure over their inaction on the school funding issue⁸² and their general inability to deal with important issues facing the state.⁸³

Without increasing legislative expenditures, Washington could significantly increase the legislature's effectiveness and efficiency by adopting a unicameral system. A unicameral legislature would improve the process of legislation because a number of functions that are presently parallel would be limited to a single process. Fewer bills would be drafted and introduced allowing staff members more time to prepare legislation.⁸⁴ A single committee structure would prevail. Fi-

80. For the period 1965 to 1975, the Bureau of Labor Statistics reports that where 1967 equals 100, consumer prices increased from 94.5 in 1965 to 159.3 in May 1975, an increase of 68.6%, while wholesale prices increased from 96.6 in 1965 to 172.1 in April 1975, an increase of 78.2%. BUREAU OF CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1975, at 417, 422.

81. Seattle Post-Intelligencer, Apr. 7, 1976, § A, at 1, col. 5.

82. When asked why they were still in Olympia on the seventieth day of the 1976 session (that was supposed to have lasted 35 days), legislators responded as follows:

"Because we haven't solved the school-financing problem. The whole darned system is slow and deliberative."

"I guess the reason we're still here is that we're looking for an easy answer to a tough problem. Everyone is trying to find out what to do about the (school) levy problem without additional sources of revenue. And I don't think that's possible."

"I'm still here because those responsible for coming to agreement on the budget and school funding haven't been able to agree."

Seattle Times, Mar. 21, 1976, § A, at 11, col. 1.

83. See generally The Daily Olympian, Feb. 10, 1976, § A, at 4, col. 5; Seattle Post-Intelligencer, July 21, 1975, § A, at 1, col. 1; Seattle Times, Mar. 23, 1976, § A, at 12, col. 1; *id.*, Mar. 21, 1976, § A, at 11, col. 1; *id.*, Feb. 5, 1976, § A, at 8, col. 1; *id.*, July 19, 1975, § A, at 3, col. 1.

84. The legislative staff could also devote its energy to other than purely legislative matters. The Citizens Conference on State Legislatures, for example, made the following recommendation for Washington:

A significant part of the legislature's ability to exercise oversight over executive

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nally, a larger percentage of bills would be enacted into law.⁸⁵

In addition to the elimination of needless duplication in the legislative process, efficiency should be enhanced in a unicameral system because of the greater responsibility placed on individual legislators. The greater attention to program details and consequences which ideally should result from adoption of a unicameral legislature is reflected in one commentator's description of the operation of the Nebraska system:⁸⁶

When the bill is considered in committee of the whole the assembly, being a small deliberative body, does not give rubber-stamp approval to the work of the standing committee but debates the measure and attempts to arrive at a clear-cut decision. Likewise the vote on passage

departments and administrative agencies depends upon the power and capacity to conduct audits (financial and functional) of these units of the state government. These functions and responsibilities should be removed from the duties and resources of the office of the auditor and should be established under a legislative auditor.

CITIZENS CONFERENCE ON STATE LEGISLATURES, *supra* note 40, at 167.

The Washington legislature currently has a statutory budget committee and office of the auditor. WASH. REV. CODE §§ 44.28.060-.140 (Supp. 1975). See generally INSTITUTE OF GOVERNMENTAL RESEARCH, *supra* note 46, at 37-40. The legislative auditor, however, does not have adequate authority to provide the legislature with an independent assessment of the executive budget or the auditing of expenditure effectiveness once the money has been appropriated. WASH. REV. CODE § 44.28.140 (Supp. 1975).

85. When Nebraska's legislature was changed from bicameral to unicameral in 1937, the percentage of bills passed increased significantly:

BICAMERAL REGULAR SESSIONS			
Year	Bills Introduced	Bills Passed	%
1931	872	164	18.8
1933	1082	163	15.0
1935	1056	192	18.2

UNICAMERAL REGULAR SESSIONS			
Year	Bills Introduced	Bills Passed	%
1937	581	214	36.8
1939	523	138	26.4
1955	559	354	63.3

A. BRECKENRIDGE, *supra* note 40, at 29. More recently, one of every two bills became law in the unicameral legislature. Formerly, one of four became law under the bicameral legislature. D'Alemberte & Fishburne, *The Unicameral Legislature*, *supra* note 5, at 362.

The percentage of bills passed in Washington in 1969 was just over 25% (429 bills passed of 1,682 introduced). J. BEST, THE WASHINGTON STATE LEGISLATIVE HANDBOOK 29 (1971). In the 1975 Regular and First Extraordinary Session the percentage dropped to 17.5% (416 bills passed of 2,379 introduced). STATE OF WASHINGTON, LEGISLATIVE REPORT OF THE 44TH REGULAR AND 1ST EXTRAORDINARY SESSIONS i (1975).

86. J. SENNING, THE ONE-HOUSE LEGISLATURE 82-83 (1937) [hereinafter cited as J. SENNING].

is final; it cannot be reversed by a second house or be subjected to the action of a conference committee. Each step of the enactment of a bill into law is simple, responsible and open to the scrutiny of the people of the state. Lastly the bill is sent to the governor for his signature. The measure has been carefully drawn, checked in the standing committee, debated in committee of the whole and rechecked in its entirety by an expert on statutory form. The technical defects and unconstitutional provisions which have been the subject of the majority of veto messages in the past are eliminated

Thus, the unicameral legislature can achieve substantially greater efficiency without a corresponding dilution of scrutiny.

Proponents of bicameral legislatures suggest that the benefits of their composition and size more than counterbalance any enhanced efficiency under the unicameral model. Bicameral advocates frequently assert that a second chamber in the legislature is a necessary check to hasty, ill-conceived legislation.⁸⁷ Two considerations undermine this conclusion in Washington. First, both houses of the state legislature are apportioned on the basis of population. Indeed, representatives and senators in Washington are elected from identical districts. In addition, both houses operate as independent initiators of legislation and as overseers of the legislation of the other, *i.e.*, they are functionally similar.⁸⁸ With coincidental constituencies and similar functions the houses of the Washington legislature lack the requisite creative tension to provide a meaningful second look at legislation. Studies in other states with analogous legislative arrangements suggest the lack of an effective system of checks and balances where both houses are structurally and functionally identical.⁸⁹ Thus, the bases

87. One legislator described his view of the present process in these terms: I feel it is absolutely essential to maintain two houses. I've put in 4 terms, 2 as minority, 2 as majority; I chair a sensitive and essential committee, and I'm satisfied that now and again we pass garbage (like it or not, it happens) and the Senate catches it frequently (not always)—and we catch their garbage—and lots of it.

Our committee does research in conjunction with the Senate—and independently also. The give and take of competition and the diverse approaches to a common problem that two independent committees bring far overrides the time and effort overlap.

Reply of anonymous legislator to authors' poll, Appendix A *infra*. See also text accompanying note 119 *infra* for a similar response by another legislator.

88. See Part III—A *supra*.

89. Several commentators, examining different state legislatures, have observed the lack of any checks and balances between the two houses of a bicameral legislature. In Alabama, for example, one commentator observed:

[R]elations between the two houses are rarely disturbed. The two think alike on most matters, and act in harmony. The fact that so many senators have had

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for the continued justification of bicameralism suggested by the Supreme Court in *Reynolds* does not exist in Washington.⁹⁰ There is no second look in a classical sense.⁹¹ The only demonstrable effect of bicameralism in these circumstances is the protraction of the legislative process.

Second, the state governmental structure can possess other safeguards to prevent passage of ill-conceived legislation. The veto power of the governor, the power of the people to call for referenda, the power of the judiciary to review legislation, and the legislature's own increased accountability to the electorate under the proposed system⁹² would provide adequate safeguards.

Proponents of bicameralism have also argued that a smaller unicameral body would alter the ability of the legislature to effectively employ its committee system for want of legislators.⁹³ The unicameral body proposed herein would have 49 members, which is the present size of the Senate. There should be no greater difficulty encountered under this arrangement for filling committee posts than presently exists in the Senate.⁹⁴ In Nebraska, unicameralism figured in a major

earlier service in the House doubtless has something to do with this. More important, however, is the fact that there is no real difference in background or in point of view between the Senate and House of Representatives. The bicameral system in Alabama has thus become nothing more than a tradition or, more accurately, a habit.

Hagan, *The Bicameral Principle in State Legislatures*, 11 J. PUB. L. 310, 315-16 (1962), quoting H. FARMER, *THE LEGISLATIVE PROCESS IN ALABAMA* 304-05 (1949). Similar remarks are made about New York State:

[A]ctive political parties, social relationships, similar constituencies and common interests . . . all work to reduce conflict between houses of the legislature to the point where checks and balances are more effective for reasons totally unconnected with the theoretical views on bicameralism.

Comment, *A Unicameral Legislature in New York: A Review and A Proposal*, *supra* note 7, at 320. Another observer notes that in general the party membership of legislators, the end of the session rush, and the influence of lobbyists tend to limit the validity of the second house check on legislation. J. SENNING, *supra* note 86, at 29-32.

The unicameral legislature in Nebraska was found to be at least as effective a check on hasty legislation as most bicameral systems. Bills in Nebraska are given longer consideration by the legislature and are amended more frequently than was true in the bicameral legislature. H. SUMMERS, *supra* note 74, at 93-106.

90. See note 30 *supra*.

91. See note 6 *supra*.

92. See text accompanying notes 102-08 *infra*.

93. As one legislator stated: "[W]ith only 49 members you have a very small talent pool to draw from for leadership, chairmanships and the normal expertise and work load required of a legislature." Response of a legislator to authors' poll (on file with the *Washington Law Review*).

94. In the 1975 legislature, there were 17 identical standing committees in the House and Senate: Agriculture, Commerce, Constitution and Elections, Ecology,

revision of committee jurisdictions and a limitation on the number of standing committees. The committee system in Nebraska has also functioned properly despite a legislature of only 49 members.⁹⁵

C. *The Economics of the Legislative Staff*

An additional advantage of adoption of a unicameral legislature would be that, for the same amount of money currently expended on the bicameral legislature, the staff serving the legislature could be larger and more comprehensive. The current staff of the legislature includes 110 employees in the permanent House staff and 80 full-time employees in the Senate.⁹⁶ In addition, extra staff members are hired during sessions on a pro rata basis.⁹⁷ Full-time staff members are assigned to a particular committee of each house; part-time staff members are generally assigned to particular legislators, including one secretary per legislator.⁹⁸

Education, Financial Institutions, Higher Education, Judiciary, Labor, Local Government (with subcommittees for Cities, Special Districts, and Counties), Natural Resources, Parks and Recreation, Rules, Social and Health Services, State Government, Transportation and Utilities (with subcommittees for Highways, Public Transportation and Planning, and Utilities), and Ways and Means (with subcommittees for Appropriations and Revenues). STATE OF WASHINGTON, LEGISLATIVE MANUAL 326-27 (1975).

In the 49 member Senate, committees are the following sizes: Agriculture, Commerce, and Parks and Recreation have 5 members each; Constitution and Elections has 6 members; Ecology, Education, Financial Institutions, Higher Education, Labor, and State Government have 7 members each; Local Government and Natural Resources have 9 members each; Rules and Social and Health Services have 13 members each; Transportation and Utilities has 17 members; and Ways and Means has 19 members. At present six members have four committee assignments, but the remainder of the senators have only three committee assignments.

It is possible for a legislative body of 49 members to adequately perform the necessary committee work, particularly where less time is devoted to treatment of measures from a second house, where there is no time limit on sessions, where members do not have to rush back to their outside jobs after committee meetings, and where committee jurisdiction is more fully defined.

The 1973 legislature redefined committee jurisdiction and limited the number of committees upon which a member could serve, but further restructuring is possible. For example, certain committees such as Education and Higher Education, Ecology and Natural Resources, and State Government and Elections could be combined.

95. See D'Alemberte & Fishburne, *supra* note 5, at 362.

96. Letter from Dean R. Foster, Chief Clerk of the House of Representatives, to co-author, Sept. 11, 1975, on file with the *Washington Law Review*.

97. *Id.*, Oct. 24, 1975.

98. The part-time secretary allotted each legislator is currently the only aide that most legislators have during legislative sessions. Letter from Dean R. Foster, Chief Clerk of the House of Representatives, to co-author, Sept. 11, 1975, on file with the *Washington Law Review*.

The Citizens Conference on State Legislatures considers such reliance on part-time staff for legislators inadequate. It emphasizes that a full-time professional assistant

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Adoption of a unicameral legislature would entail a substantial increase in the staff-per-legislator ratio at no additional cost to the state. In the proposed unicameral system, the 190 staff members would serve only 49 legislators instead of the present 147. Part-time staff members, currently earning up to \$95 per day,⁹⁹ could be replaced by more competent full-time staff personnel drawing more normal rates of pay.¹⁰⁰ Staff resources could be used more efficiently in a unicameral system, since staff time would not be expended on parallel House and Senate matters. Additionally, each legislator could maintain an office in his home district to increase the legislator's contact with his constituency.¹⁰¹

should be available to every legislator:

Legislative staffs are generally of two main kinds: the institutional, specialized staff that serves the legislature as a whole—the clerk's office, the fiscal review office, the auditor's office, the legislative research office—and staff aides for individual legislators, who are able to do a variety of tasks: conduct research, write reports, deal with executive agencies, help constituents. Most legislatures do not have enough of either kind of staff, and both are equally important to the ability of the legislature and of legislators to function.

Every state legislator, especially one who occupies a position of leadership, should have at least one full-time professional assistant.

CITIZENS CONFERENCE ON STATE LEGISLATURES, *supra* note 40, at 62–64 (emphasis added).

Because of the increased staff-per-legislator ratio under the proposed unicameral legislature, full-time professional assistants could be introduced into the Washington legislature.

99. In the 1975 session, an attorney for the Senate Democratic caucus earned \$95 per day. Average pay was from \$32 to \$35 per day. *Seattle Post-Intelligencer*, March 12, 1975, § A, at 9, col. 4.

100. Former Speaker of the House Leonard A. Sawyer made the following comments in 1974 following the establishment of professional research staffs in the legislature:

The staffs of previous legislatures generally were appointed on a patronage basis. Typically, staff members obtained employment because they had performed campaign work or political favors for committee chairmen or other influential legislators. As a result, legislative standing committees were staffed all too often by part-time employees with neither legislative research skills nor familiarity with the subject matters within their committees' jurisdictions. Needless to say, this kind of nonprofessional patronage staff was not capable of providing the Legislature with the research and information which it requires in order to intelligently consider legislation.

Mardesich & Sawyer, *Introduction to Symposium: Recent Washington Legislation*, 49 WASH. L. REV. 287, 289 (1974).

Sawyer's remarks are equally applicable to the part-time staff currently hired by the legislature. The danger of an ineffective and less than competent "patronage staff" is particularly high, since part-time employees hired for sessions are hired by minority and majority caucuses. Letter from Dean P. Foster, Chief Clerk of the House of Representatives, to co-author, Oct. 24, 1975.

101. One of the major recommendations of the Citizens Conference on State Legislatures pertains to district offices:

District offices are vital to the effective representation by a legislator of his

D. *Legislative Accountability*

The unicameral legislature, unlike its bicameral counterpart, would be structured to facilitate more direct legislative responsibility to the voters.¹⁰² This would result for a number of reasons. First, because of the unicameral legislature's "single focus," it would be more easily understood by the voters:¹⁰³ "Its processes are simple. The passage of a measure takes the course of introduction, reference to a standing committee, deliberation in committee of the whole, vote on passage and signature by the governor. Each step in procedure is clear cut and final." Moreover, the Nebraska experience suggests that media coverage of the legislature should also be enhanced by this "single focus" effect of a unicameral legislature.¹⁰⁴

Adoption of a unicameral legislature could also expedite public exposure of the role of lobbyists in the legislative process. The knowledgeable lobbyist can quietly manipulate the present system and avoid exposure because of the complexity of the bicameral legislative process. As one commentator observed:¹⁰⁵

Even if the lobbyist does not succeed in controlling the house of

constituency. The legislature should make some contribution to the support of district offices for its members, and the amount of this contribution should be increased over time.

CITIZENS CONFERENCE ON STATE LEGISLATURES, *supra* note 40, at 160-61.

At present, members of the Washington State Legislature are accorded \$50 per month for home district expenses: Citizens Conference on State Legislatures, Research Memorandum 18, *How Much Are State Legislators Paid?* Table 3, at 8, Sept. 1975 (copy on file with the *Washington Law Review*). This is not, however, sufficient to defray the cost of maintaining an office and a minimal staff in the district. Under the authors' proposed unicameral system, the cost of maintaining such home districts could be defrayed by the overall savings in salary associated with a smaller unicameral legislature. See note 72 *supra*.

102. By way of comparison, Nebraska was recently ranked first in accountability among the 50 state legislatures, while Washington ranked 17th. Citizens Conference on State Legislatures, *supra* note 40, at 251, 322. See also note 40 *supra*.

103. J. SENNING, *supra* note 86, at 79.

104. One newspaper reporter described the Nebraska unicameral legislature as follows:

The unicameral legislature is the newspaper man's paradise. As a legislative reporter his mission is to keep the public informed as to the nature, purpose, and progress of legislation. The unicameral simplifies this task. Everything is open and above board. There are no secret meetings from which he is barred, and every facility is afforded for keeping track of the work of the lawmakers. Having observed the old way and the new, I unequivocally say that the new way is immeasurably the better.

D'Alemberte & Fishburne, *supra* note 5, at 361. The Nebraska press had originally opposed the unicameral concept, but its dealing with the unicameral body altered that view. See also H. SUMMERS, *supra* note 74, at 141-45.

105. J. SENNING, *supra* note 86, at 36.

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origin, he has the second house upon which to work. If the second house cannot be persuaded to accept his plans, he may have the bill amended and at the same time urge the first house not to concur in the amendments, thereby forcing the bill into the conference committee. If the lobbyist can dictate the vote of the majority of the members of either house in the conference committee his measure is reported to the two houses in the form he wishes. . . . In the intricacies of legislative procedure in a bicameral legislature, a clever lobbyist has many opportunities to promote or defeat legislation. . . . The unscrupulous lobby is . . . dependent for success on the complexities of the legislative procedure under the bicameral system.

Thus, the simplification of the legislative process under a unicameral system should reduce the opportunity for manipulation and subject lobbyists to greater public scrutiny.

Perhaps most importantly, unicameralism in Washington would eliminate the current shifting of responsibilities among legislators. Under the current bicameral legislature, members of one house frequently shift responsibility for inadequate legislation or the failure to enact needed legislation to members of the other.¹⁰⁶ Legislators thereby evade responsibility for positions they in fact assumed. Similarly, legislators take positions on bills with the knowledge that the other chamber will not act on the bill, or will amend or defeat it.¹⁰⁷ Such actions shift responsibility for legislation, or the lack of it, from legislative body to legislative body, impede the accountability of the legislators to their constituency, and prevent public knowledge of legislators' positions on particular pieces of legislation. These drawbacks could be eliminated by adoption of a unicameral legislature.¹⁰⁸

106. *See id.* at 79–80, 88.

107. This appears to be a common occurrence, as the following story from New York reveals:

The second house is sometimes used as an excuse for the failure of a popular, but in the eyes of the legislators, bad measure. The story is told of the time the Speaker of the Assembly phoned the Senate majority leader about the flood of bad bills the Senate was approving that year, confident that the Assembly would knock them down. He told the majority leader that if the Senate passed and continued to send over that kind of legislation—he used a shorter and more descriptive term—he would have the Assembly pass it too, and how would the Senate like that? The flood of bad bills slowed down. Obviously, this is not the sort of use which proponents of the bicameral system intend to be made of the second chamber when they speak of independent review. In its worst form, it permits the shirking of legislative responsibility by providing a sort of ritual to keep constituents or interests satisfied.

Comment, *A Unicameral Legislature in New York: A Review and a Proposal*, *supra* note 89, at 318.

108. An added benefit of creation of a unicameral legislature would be elimina-

IV. POTENTIAL MEANS OF ADOPTING A UNICAMERAL LEGISLATURE IN WASHINGTON

Regardless of the attractiveness of a unicameral legislature, some viable means of implementing the change from bicameralism to unicameralism must be discovered. Because constitutional reform is necessary to create a unicameral legislature, there are presently three theoretical means of implementing this change: 1) initiative; 2) constitutional amendment by the legislature; and 3) constitutional amendment by constitutional convention. Unfortunately none of the three offers an expeditious means of amending the state constitution to provide for a unicameral legislature.

A. Initiative

According to the Washington constitution,¹⁰⁹ the initiative process reserves to the people the power to submit bills for enactment. Such initiatives may be addressed either to the people themselves, or to the legislature. Briefly stated, the process consists of the following steps:

tion of the current conference committee. As described by one commentator:

[A conference committee] is composed of representatives from the two chambers who meet and seek to eliminate the differences between bills that have passed the houses with different content. Each house selects its conferees; usually this selection will be made by the leadership. Each set of conferees represents its house and may refuse to agree with the conferees from the other house. The range of discretion in the hands of the conferees fluctuates, but the critics of the device assert that the conference committee becomes in fact a third chamber of the legislature and an irresponsible one. The proceedings are secret unless revealed by a member, and if an agreement is reached, the two houses are usually faced with the choices of acceptance of the compromise or no legislation. In proportion to the number of important bills going to conference and being settled there, the bicameral legislature becomes substantially different from the legislative assembly that its proponents admire.

Hogan, *The Bicameral Principle in State Legislatures*, 11 J. PUB. L. 310, 321 (1962).

Senator George Norris, one of the strongest proponents of unicameralism in Nebraska, believed that the elimination of conference committees was a major virtue of the unicameral mode:

It is more powerful in all matters referred to it than either house, or than both houses combined. Moreover, it transacts its business in an un-American and undemocratic manner. Its meetings are held in secret; there is no such thing as a roll-call vote, and there is no record of its proceedings. A bill once referred to a conference committee cannot become law unless it is agreed to by a majority of the conferees representing each house. Thus, it is within the power of the conference committee, in secret and without a record vote, and without any public record whatever, to absolutely prevent legislation, and to kill or to modify, at its pleasure, any proposed legislation within its jurisdiction.

J. SENNING, *supra* note 86, at 34, quoting *The Progressive*, Dec. 29, 1934.

¹⁰⁹. WASH. CONST. amends. 7, 26, 30, 36. See generally INSTITUTE OF GOVERNMENTAL RESEARCH, *supra* note 36, at 92-102.

proposal of an initiative measure, acceptance of the measure by the Secretary of State and preparation of a ballot title by the Attorney General, circulation and signing of initiative petitions, and, in the case of an initiative to the people, approval by a majority of the electorate.¹¹⁰ If the initiative is addressed to the legislature, the legislature may enact it into law, refuse to act on or reject it (in which case the measure is resubmitted to the people for approval), or propose an alternative measure to the people.¹¹¹ Additionally, any initiative which becomes law may be repealed or amended by the legislature within two years of its enactment.¹¹²

Despite the seeming attractiveness of the initiative process to adopt a unicameral legislature in Washington, its utilization appears unlikely because of limitations applied by the Attorney General and the state supreme court. In 1970 an initiative was introduced which proposed an amendment to the constitution. The Attorney General, however, refused to prepare a ballot title for the measure, effectively foreclosing any possibility of the initiative appearing on the ballot without a court battle. The Attorney General reasoned that, although amendment 7 to the Washington constitution *reserved* to the people the right to propose laws through the initiative process, amendment 37 *granted* to the legislature the exclusive power to propose *constitutional amendments*.¹¹³ Because this power of constitutional amendment had been granted to another body rather than reserved to the people, the Attorney General refused to allow the people, through the initiative pro-

110. INSTITUTE OF GOVERNMENTAL RESEARCH, *supra* note 36, at 92–102.

111. *Id.*

112. *Id.*

113. After reviewing the Attorney General's historical position toward state constitutional amendment by initiative, he concluded:

[I]t is still our opinion that the people of our state have not been given the power, under Article II, § 1 (Amendment 7) to propose amendments to the state constitution through the initiative process. . . . [I]t follows that the proposal contained in the document you have denominated as "Initiative Measure No. 249"—which on its face proposes an amendment to the constitution and not merely an ordinary law—cannot be regarded as an initiative under the constitution and implementing statutes . . . pertaining to preparation of ballot title by this office. Accordingly, no duty is imposed upon this office by that statute to prepare a ballot title for the proposal in question

Letter from Slade Gorton, Washington State Attorney General, to A. Ludlow Kramer, Washington State Secretary of State, Feb. 20, 1970, at 9–10, copy on file with the *Washington Law Review*. More recently, the Attorney General has used the same reasoning to deny ballot access. See Letter from Phillip Austin, Washington State Deputy Attorney General, to Bruce Chapman, Secretary of State for the State of Washington, April 6, 1976, copy on file with the *Washington Law Review*.

cess, to exercise it. The Washington Supreme Court subsequently adopted this view in *Ford v. Logan*.¹¹⁴

An initiative proposing the adoption of a unicameral legislature would entail amendment of the constitution. The Attorney General opinions and *Logan* appear, therefore, to foreclose utilization of the initiative process to adopt unicameralism.

B. *Constitutional Amendment by the Legislature*

The Washington constitution provides for legislatively proposed amendments to the constitution, provided they are approved by two-thirds of the legislature, and a majority of the populace.¹¹⁵ A legislatively-proposed constitutional amendment is therefore another theoretical means of creating a unicameral legislature. It appears unlikely, however, that a unicameral legislature will be created by the legislature itself. A poll of legislators by the authors, to which 100 replied, reveals that only 19 percent of all representatives responding and 22 percent of all senators responding favor the creation of a unicameral legislature.¹¹⁶ Other institutional changes, such as joint committees, the abolition of the office of lieutenant governor, or a full-time legislature, are also opposed by the legislators.¹¹⁷

This opposition to enactment of a constitutional amendment creating a unicameral legislature may be attributed primarily to two factors.¹¹⁸ The first is a genuine philosophical opposition to any altera-

114. 79 Wn. 2d 147, 483 P.2d 1247 (1971). In *Logan* a plurality opinion involving the right of King County citizens to repeal the King County "home rule" charter by initiative, the supreme court held that the initiative process is limited to subject matter which is legislative in nature and cannot be used to amend the organic law of a governmental unit. In dictum, the court stated:

Amendment of our constitution is not a legislative act and thus is not within the initiative power reserved to the voters. It necessarily follows that that which cannot be amended by legislation cannot be abolished thereby. By its nature, then, the initiative power set forth in Const. art. 2 does not include the power to directly amend or repeal the constitution itself.

Id. at 156, 483 P.2d 1252.

115. WASH. CONST. amend. 37.

116. See Appendix A *infra*.

117. *Id.*

118. In an unpublished memorandum, another authority came to the same conclusion in analyzing the bases for opposition to unicameralism in the present legislature: "The reasons are numerous, but can be abbreviated into two major categories: (1) political motivation and desire to maintain the status quo, and; (2) sincere philosophical reluctance to take such drastic reorganizational steps." J. Daniels, *The Unicameral Legislature* 36 (undated research report available from State of Washington Senate Research Center).

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tion of the two-house legislature that traditionally has served the American nation and states. The following remark by one state legislator indicates this sentiment:¹¹⁹ "The bicameral legislature is very valuable because it allows a second look at legislation. My experience shows me it is easier for me to obtain approval of a bill in the House than in the Senate and I am sure Senators have an easier time in the Senate. I think it is healthy." The poll results suggest that this sentiment may be pervasive.

A second reason for the present legislators' reluctance to endorse the concept of a smaller unicameral legislature is self-interest and party affiliation. Because the present legislature contains 147 members, while the proposed unicameral legislature would contain only one-third that number, enactment of any constitutional amendment creating a unicameral body would eliminate two-thirds of the legislative positions available. Ninety-eight elected officials would be legislating themselves out of a position by voting in favor of a unicameral body. Past legislative treatment of similar issues suggests a reluctance to act when self-interest is involved.

The two instances since 1962 in which the legislature attempted to carry out its constitutionally-mandated duty to reapportion its own districts perhaps represent the closest illustration of the effect of self-interest on plans to structurally change the legislature. The first confrontation with reapportionment began in 1962. In *Thigpen v. Meyers*¹²⁰ the Federal District Court for the Western District of Washington held that the existing legislative apportionment was illegal and void, but continued the case until the 1963 legislature had an opportunity to redistrict itself. After 83 days, however, the legislature was unable to enact a redistricting statute, largely because "[e]ach incumbent demanded to know precisely what part of his district would be altered before he would give his support to any measure."¹²¹ Party politics also entered into the legislature's consideration.¹²² In response to this failure to act the district court declared the existent apportion-

119. Response of state legislator to authors' poll, Appendix A *infra*.

120. 211 F. Supp. 826 (W.D. Wash. 1962), *aff'd per curiam*, 378 U.S. 554 (1964). See generally INSTITUTE OF GOVERNMENTAL RESEARCH, *supra* note 36, at 13-14; McDermott, *Judicial Sanctions and Legislative Redistricting in Washington State*, 45 WASH. L. REV. 681 (1970).

121. McDermott, *supra* note 120, at 693.

122. *Id.* at 694.

ment scheme unconstitutional and null and void. On appeal the Supreme Court affirmed¹²³ on the basis of *Reynolds*.

Following the Supreme Court's decision in *Thigpen*, the district court granted the legislature an opportunity to reapportion legislative districts, and the court directed the legislature to enact a redistricting plan before passing upon any other legislation.¹²⁴ Forty-seven days passed before the two houses of the legislature could enact an apportionment statute in compliance with *Reynolds*.¹²⁵ Although the resultant statute was acceptable to the district court, it had required 130 days of consideration by the legislature and its partisan nature was obvious.¹²⁶

A similar situation faced the legislature in 1972. Following the legislature's failure to redistrict in the 1971 regular session on the basis of the 1970 federal census, suit was again brought in federal district court¹²⁷ to reapportion in accord with the principles of *Reynolds*. As it had ten years previously, the district court again allowed the legislature an opportunity to reapportion its districts. When the legislature adjourned from its 1972 extraordinary session without having enacted a new apportionment statute, the district court appointed a special master who drew up the legislative districts which serve the state today.¹²⁸

A similar reticence to modify legislative structure when the self-interest of many members is involved may account in part for the

123. 378 U.S. 554 (1964), *aff'g per curiam* 211 F. Supp. 826 (W.D. Wash. 1962).

124. See McDermott, *supra* note 120, at 701-19.

125. *Id.* The court retained jurisdiction over the case in order to review any redistricting statute that might be passed by the legislature. 211 F. Supp. 826, 832 (W.D. Wash. 1962).

126. A knowledgeable observer described the impact as follows:

In the Senate, five incumbents would be eliminated in the 1966 election. Two were Republicans, two were Democrats, and one seat would be fought over by incumbents from opposing parties. . . . [T]he possibility of maintaining Democratic control appeared favorable. In the House, [the statute] appeared to benefit the Republicans and those Democrats who supported their cause. Sixteen members . . . were threatened by the bill by being forced to compete with other incumbents in 1966. Of these sixteen, only three were Republicans and only one was a dissident Democrat It was certain that four Democrats would be eliminated. The two Republicans sacrificed in the redistricting bill were given appointments in the Evans' administration. The immediate advantage of the redistricting bill thus went to the Republicans.

McDermott, *supra* note 120, at 717-18 (footnotes omitted).

127. *Prince v. Kramer*, Civil No. 9668 (W.D. Wash. April 21, 1972). *aff'd sub nom.*, *AFL-CIO v. Prince*, 409 U.S. 808 (1972). See generally INSTITUTE OF GOVERNMENTAL RESEARCH, *supra* note 36, at 14-15.

128. See generally Morrill, *On Criteria for Redistricting*, 48 WASH. L. REV. 847 (1973) (authored by the special master appointed by the *Prince* court).

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opposition to unicameralism demonstrated in the authors' poll. This opposition, based either on philosophical belief or self-interest, is sufficiently widespread to make a constitutional amendment creating a unicameral legislature an unlikely event.

C. *Constitutional Amendment by Constitutional Convention*

The Washington constitution provides that, upon a two-thirds vote of both houses of the legislature, a recommendation must be made to the electorate to convene a constitutional convention. Upon approval by a majority of the electorate the legislature must, at the next session, provide for the calling of a convention and the means of election of delegates thereto. Any revision or amendment adopted by the convention must then be approved by a majority of the electorate.¹²⁹

Several factors confuse analysis of the feasibility of enacting a unicameral legislature by means of a constitutional convention. First, although certain legislators have attempted to enact measures creating a constitutional convention, other members have successfully opposed such legislation.¹³⁰ A 1968 State Constitutional Revision Conference attributed this legislative attitude to "vested interests, public suspicion and fear and a general distrust of change."¹³¹ Regardless of its source, this legislative reluctance substantially diminishes the possibility of a constitutional convention being proposed by the legislature.

A countervailing factor which may increase the possibility of a constitutional convention is the support of Governor Evans for constitutional reform. In 1968, for example, Evans appointed a 20-member Constitutional Revision Commission which proposed a model state constitution.¹³² Perhaps because it provided the governor more power and legislators less secrecy than the existent constitution, however, the

129. WASH. CONST. art. XXIII, § 2.

130. Commenting in 1970, one authority stated: "Bills to convene a constitutional convention have been introduced in nearly every session for the past thirty years but the legislature has voted on the issue once. . . . That bill was allowed to die in the Senate." Comment, *Convening a Constitutional Convention in Washington Through the Use of the Popular Initiative*, 45 WASH. L. REV. 535, 536 (1970). No bill proposing a constitutional convention has been passed in the interim between 1970 and the present. Attempts to obtain a constitutional convention in 1975-76 also failed. S.J.R. 115, 44th [Wash. State] Legis., Reg. Sess. (1975-76); H.J.R. Res. 21, 44th [Wash. State] Legis., Reg. Sess. (1975-76).

131. Seattle Times, June 14, 1968, § A, at 3, col. 1.

132. See Seattle Times, Oct. 17, 1969, at 10, col. 1; *id.* Oct. 29, 1968, at 28-29, col. 1.

legislature failed to take any action on the proposal.¹³³ More recently, the governor has created a Commission for Constitutional Alternatives.¹³⁴ Unlike the earlier Commission, which proposed a revised state constitution, the 1975 Commission is designed to gauge public interest in a constitutional convention, educate the public on the constitutional convention process, and propose to the legislature a bill which would propose to the people a constitutional convention.¹³⁵ Some observers, however, view the likelihood of success for the convention pessimistically.¹³⁶

A final factor to be considered in determining the feasibility of a Washington constitutional convention is use of the initiative to call a constitutional convention. Such an initiative was originally proposed in 1968.¹³⁷ The Secretary of State, however, refused to accept the initiative, finding the legislature the exclusive body to call a constitutional convention. The initiative's proponents sought a writ of mandamus. In *State ex rel. O'Connell v. Kramer*,¹³⁸ the supreme court refused to pass upon the constitutionality of the initiative until the requisite number of signatures had been procured, ruling instead that the Secretary of State must perform the basically ministerial task of processing the initiative. Perhaps because of this court battle, the initiative's proponents were unable to obtain the requisite number of signatures, and the initiative was not presented to the people.¹³⁹

Although the constitutionality of calling a constitutional convention by initiative remains unsettled, a proposal for such a convention has been advanced.¹⁴⁰ If this right is found to exist, calling a convention by means of the initiative process would seem to offer the greatest potential for proposing a unicameral legislature as an amendment to the Washington constitution.

133. See Seattle Post-Intelligencer, Nov. 24, 1968, at 29, col. 1.

134. Exec. Order No. 75-08 (1975) (on file with the Office of Governor for the State of Washington). See also Seattle Post-Intelligencer, July 30, 1975, § A, at 7, col. 1.

135. See Seattle Post-Intelligencer, July 30, 1975, § A, at 7, col. 1.

136. After creation of the Constitutional Alternatives Commission one observer commented:

The effort to re-write Washington's 86-year-old Constitution got off to a reasonably good start last week. But when one lines up all the arguments for it—and there are some good ones—against the various interests that naturally will oppose it, the problem is awesome.

Seattle Post-Intelligencer, Nov. 19, 1975, § A, at 10, col. 3.

137. See Seattle Times, July 6, 1968, at A, col. 2.

138. 73 Wn. 2d 85, 436 P.2d 786 (1968).

139. See Seattle Times, July 6, 1968, at A, col. 2.

140. See generally Comment, *supra* note 130.

V. CONCLUSION

Three general conclusions may be drawn from the analysis of unicameralism offered by this comment. First, unicameralism offers a tenable means of altering the legislative structure to adequately reflect recent socio-economic and political changes which have increased the activity and importance of the Washington legislature. In turn this structural alteration offers the prospect of electing legislators who can afford to be more independent of ties to special interest groups. Although a unicameral legislature cannot and should not be considered the solution for all the ills of the current legislature, its implementation could increase the efficiency and responsibility of the Washington legislative system.

Second, the current legislature cannot be relied upon to implement any structural change in the legislative system. The legislature's reluctance to act upon constitutional amendments, constitutional conventions, and especially its own reapportionment, amply demonstrate the affect of self-interest when any structural change in the legislature is suggested. This self-interest, taken with traditional philosophical opposition to altering the bicameral legislative system affectively precludes resort to the legislature to bring about unicameralism in Washington.

A third factor to be considered in analyzing the possibility of unicameralism in Washington is the general public's traditional acceptance of bicameral legislative systems at the state level. It is somewhat anomalous that the American people accept a unicameral legislative body to govern such cities as New York, Chicago, or Los Angeles and yet appear reluctant to accept unicameral bodies to govern states of smaller size and less diversity.¹⁴¹ Until this traditional attitude is overcome, the possibility that unicameralism will become a reality in a state other than Nebraska is slim. If and when these attitudinal obsta-

141. New York City has a population of 7,647,000 and an annual budget of \$11.536 billion; Chicago a population of 3,173,000 and an annual budget of \$1.031 billion; Los Angeles a population of 2,747,000 and a budget of \$1.244 billion. BUREAU OF CENSUS, DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 23-25, 271 (1975) (all figures for 1973). Compare those figures with the following states: Montana (population 694,000, annual budget \$640 million), *id.* at 14, 262, North Dakota (population 618,000, annual budget \$515 million). *Id.* It should also be noted that Washington's population and budget figures (population 3,409,000, annual budget \$3.612 billion) *id.* are not substantially greater than Chicago's or Los Angeles', and substantially less than New York's.

cles are overcome, unicameralism will indeed be a worthwhile alternative to the current bicameral legislatures in America.

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APPENDIX A

In October of 1975 questionnaires containing the nucleus of the reform measure set forth in Appendix B were sent to the members of both houses of the Washington legislature. The questionnaire asked members to identify their party affiliation and the chamber in which they serve. Answers to five questions pertaining to the unicameral legislature and comments from the legislators also were solicited.¹⁴² Most notably, the members of the present legislature overwhelmingly expressed opposition to institutional change in the legislature. A unicameral legislature, joint committees, the abolition of the office of lieutenant governor, and the concept of a full-time legislature clearly were opposed by members. Sentiment on the continuing session concept was divided more evenly.

The following were the results of the poll conducted by the authors:

POLITICAL PARTY—NUMBER OF RESPONSES

	Total		
	Membership	Responses	Percentage
HOUSE OF REPRESENTATIVES	98	63	64.3%
Democrats	62	36	58.1%
Republicans	36	27	75.0%
SENATE	49	37	75.5%
Democrats	30	21	70.0%
Republicans	19	16	84.2%

QUESTION: If confronted with a constitutional amendment that would provide for a one-house legislature of 49 members elected for 4-year terms, whose members would meet annually and devote full-time attention to legislative business in exchange for compensation that would be no less than 60% of the Governor's official salary, I would

	Favor	Oppose	No Answer
HOUSE OF REPRESENTATIVES	12 (19.0%)	48 (76.2%)	3 (4.8%)
Democrats	7 (19.4%)	27 (75.0%)	2 (5.6%)
Republicans	5 (18.5%)	21 (77.7%)	1 (3.8%)
SENATE	8 (21.6%)	29 (78.4%)	
Democrats	6 (28.6%)	15 (71.4%)	
Republicans	2 (12.5%)	14 (87.5%)	

142. The authors also marked the response envelopes with numbers so that the district which the responding member represented would be disclosed. This was

QUESTION: If confronted with a bill to make all committees of the legislature joint committees of the two Houses, I would

	Favor	Oppose	No Answer
HOUSE OF REPRESENTATIVES	25 (39.7%)	33 (52.4%)	5 (7.9%)
Democrats	13 (36.1%)	21 (58.3%)	2 (5.6%)
Republicans	12 (44.4%)	12 (44.4%)	3 (11.2%)
SENATE	8 (21.6%)	28 (75.7%)	1 (2.7%)
Democrats	4 (19.0%)	16 (76.2%)	1 (4.8%)
Republicans	4 (25.0%)	12 (75.0%)	

QUESTION: I would _____ the abolition of the Office of Lieutenant Governor.

	Favor	Oppose	No Answer
HOUSE OF REPRESENTATIVES	11 (17.5%)	51 (80.9%)	1 (1.6%)
Democrats	6 (16.7%)	29 (80.6%)	1 (2.7%)
Republicans	5 (18.5%)	22 (81.5%)	
SENATE	2 (5.4%)	35 (94.6%)	
Democrats	0	21(100.0%)	
Republicans	2 (12.5%)	14 (87.5%)	

QUESTION: I _____ the concept of the continuing session legislature.

designed to ensure that the response accurately reflected feelings of legislators from all parts of the state. Anonymity of responding legislators was strictly preserved.

The following legislative districts were designated as urban districts because of their territorial expanse and the presence of major urban centers within their boundaries: 1, 3, 5, 11, 14, 21, 25, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 41, 43, 44, 46, 48, 49. This distinction is admittedly somewhat arbitrary given the presence of major cities within some of the districts classified rural and the presence of rural areas within the urban districts. The following table illustrates the responses received, broken down by geographical area and population:

URBAN/RURAL—EASTERN/WESTERN WASHINGTON

	Total	Responses	Percentage
Urban district	72	43	59.7
Rural district	75	54	72.0
Unknown		3	
Eastern Washington	39	28	71.8
Western Washington	108	69	63.9
Unknown		3	

It should be noted that subsequent to the polling of the members of the legislature, the authors altered their proposal for legislative compensation from 60% to 50% of the governor's salary.

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	Favor	Oppose	No Answer
HOUSE OF REPRESENTATIVES	30 (47.6%)	30 (47.6%)	3 (4.8%)
Democrats	27 (75.0%)	6 (16.7%)	3 (8.3%)
Republicans	3 (10.0%)	27 (90.0%)	
SENATE	11 (29.7%)	23 (62.2%)	3 (8.1%)
Democrats	8 (38.1%)	12 (57.1%)	1 (4.8%)
Republicans	3 (18.8%)	11 (68.7%)	2 (12.5%)

QUESTION: I _____ the concept of a full-time professional legislature.

	Favor	Oppose	No Answer
HOUSE OF REPRESENTATIVES	23 (36.5%)	37 (58.7%)	3 (4.8%)
Democrats	18 (50.0%)	16 (44.4%)	2 (5.6%)
Republicans	5 (18.5%)	21 (77.7%)	1 (3.8%)
SENATE	10 (27.0%)	27 (73.0%)	
Democrats	8 (38.1%)	13 (61.9%)	
Republicans	2 (12.5%)	14 (87.5%)	

APPENDIX B

PROPOSED CONSTITUTIONAL REVISION¹⁴³

§1. SECTIONS AFFECTED. The following sections of the Washington Constitution (1889) and the following amendments are hereby specifically repealed:

Article II;

Article III, Sections 10, 16;

Article V, Section 1;

Amendments 6, 7, 13, 26, 30, 32, 35, 36, 52, 56.

Unless specifically repealed, amendments will remain in effect.

Commentary: Section 1 repeals earlier constitutional provisions.

§2. LEGISLATIVE POWER. The legislative power of the State of Washington shall be vested in the legislature, consisting of a single house, but the people reserve to themselves the power to propose bills, laws, and constitutional amendments, and to enact or reject the same at the polls independent of the legislature. The people also reserve the power to approve or reject any act, item, section, or part of any bill, act or law, passed by the legislature, at the polls.

Commentary: Section 2 establishes a unicameral legislature, describes the legislative power in broad terms, and serves to alter in a significant fashion the initiative power of the people. Given the difficulties confronted by reformers in gaining constitutional reform through the legislature, it seems reasonable that the initiative process should be available to bring about constitutional amendments.

143. The sample unicameral constitutional amendment proposed by the authors is a comprehensive revision of the legislative article of the Washington Constitution. Other unicameral constitution models have been proposed. See NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION 43 (6th ed. 1963); Constitutional Revision in Washington; Legal Aspects 62-68, 1970 (student papers edited by R. Johnson on file in the University of Washington Law School library); J. Daniels, The Unicameral Legislature 35-43 (undated research report available from State of Washington Senate Research Center).

This constitutional revision includes reforms not discussed in the text, and many of the changes advanced are ones that may be appropriate for unicameral or bicameral legislatures. The purpose of this section is to propose a comprehensive alternative to stimulate discussion of legislative structural change. It should be emphasized, however, that the efficacy of unicameralism in general does not depend on many of the particular alterations suggested herein. Where existing constitutional language was exhaustive, the authors sought to abbreviate the language for the sake of clarity. See Appendix B, Commentary to Section 3 *infra*.

§3. INITIATIVE AND REFERENDUM. The legislature is authorized to determine the mode, manner, and procedures for enacting constitutional amendments by initiative, and for enacting legislation by initiative or referendum, and shall determine the procedures for the elections subject to the following requirements:

(a) a referendum may be ordered on any act, bill, or law passed by the legislature only by petition of the requisite number of legal voters of the state;

(b) any measure initiated by the people or referred to the people shall take effect and become the law or a part of the constitution if it is approved by a majority of the voters;

(c) the veto power of the governor shall not extend to measures enacted by initiative or referendum;

(d) no act, law, or bill, subject to referendum or initiated by the people and approved by a majority of the electors voting thereon, shall be amended by the legislature within three years following such enactment. Such enactment may be amended by the people at any time, or by the legislature three years after enactment by a vote of two-thirds of the legislature;

(e) the legislature shall provide methods of publicity for all laws and amendments to the constitution referred to the people or initiated by the people, with arguments for and against the laws and amendments. Each voter shall be apprised of such information and shall be given adequate opportunity to study such measures prior to the election.

Commentary: Section 3 simplifies the existing procedures for initiative and referendum and affirmatively requires the legislature to enact legislation dealing with these processes, subject to the qualifications enumerated. It is assumed that constitutional language should be as fundamental as possible, and that the legislature is the proper body to establish detailed requirements for the exercise of the initiative and referendum powers.

§ 4. LEGISLATION.

(A) A bill shall become law upon (1) final passage by a majority of the members of the legislature present; (2) being signed by the presiding officer of the legislature; and (3) the passage of 30 days since its enactment.

(B) The legislature shall keep a journal of its proceedings and the yeas and nays of members shall be recorded and reported on all bills in committee and before the full legislature. Committee reports must be printed in the journal.

(C) No laws shall be enacted by the legislature except by bill. The subject of a bill shall be expressed in its title. The style of the laws of the state shall be: "Be it enacted by the Legislature of the State of Washington."

(D) The legislature shall enact procedures for the introduction, revision, and amendment of bills.

Commentary: Section 4 establishes generally the means by which a bill becomes law. It also requires that the votes of members in committee must be published in the legislative journal. Publication of votes in committee tends to emphasize the responsibility of the legislator to take consistent and open positions regarding legislation, and enhances the ability of constituents and the press to discover the views of the legislator.

The present "one-subject" requirement is deleted from the proposed constitutional revision because it is confusing and leads to unnecessary litigation on valuable legislation.¹⁴⁴

§ 5. SPECIAL LEGISLATION. The legislature may not enact private or special legislation.

Commentary: A detailed list of subjects constituting special legislation has been deleted. The courts can better determine what is private legislation that unduly complicates the legislative process.

§ 6. SUITS AGAINST THE STATE. The legislature shall enact procedures governing the bringing of suits against the state.

144. The one-subject requirement, which compels the legislature to restrict legislation to a single "subject," is presently imposed by WASH. CONST., art. II, § 19. Litigation on this issue is quite frequent, but the Washington court has sought to forestall the harsher effects of the constitutional provision. In *Washington State School Directors Ass'n v. Department of Labor & Indus.* the supreme court stated: The purposes of this constitutional provision are: to protect and enlighten the members of the legislature; to apprise the people generally concerning the subjects of the legislation being considered, and to prevent hodge-podge or log-rolling legislation. . . . Const. art. 2, § 19 is to be liberally construed so as not to impose awkward and hampering restrictions upon the legislature.

82 Wn. 2d 367, 371, 510 P.2d 818, 821 (1973).

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Commentary: Section 6 follows the present constitutional provision.

§ 7. SESSIONS. The legislature shall meet in open session except where the public welfare shall require secrecy. Sessions of the legislature shall be annual and shall be of a duration determined by that body. The legislature may be called into session by the governor, or by a proportion of the membership of the legislature as the legislature shall determine.

Commentary: Section 7 specifies that annual sessions shall be required and that the legislature may call itself into session. These are reforms basic to a functional modern legislature, and serve to emphasize the full-time nature of legislative service.¹⁴⁵

§ 8. MEMBERSHIP AND APPORTIONMENT. The legislature shall consist of no fewer than 45 and no more than 60 members elected for terms of four years, half of the members being elected every two years. Members of the legislature shall be called Senators. Senators shall be elected by single districts of convenient and contiguous territory and equivalent populations. To that end, the legislature shall apportion according to the enumeration of the population made every ten years under the authority of the federal government. The legislature is authorized to enact legislation providing for an expert non-partisan body to assist in the task of reapportionment and redistricting.

Commentary: Section 8, in describing the membership of the unicameral body and the redistricting procedure, is a difficult and important section. The membership of the legislature is limited to between 45 and 60 members, because, it appears that a smaller body can be more efficient, better salaried, and better staffed than the present bicameral legislature for approximately the same cost. Transition to the unicam-

145. As one authority states:

A legislature that meets only in biennial sessions faces formidable problems, most notably in fiscal planning. It is extremely difficult, even under the best of circumstances, to forecast revenues and expenditures six months or a year ahead; it is impossible to do so with any degree of accuracy two or three years ahead. Yet that is what legislatures on a strictly biennial schedule are required to do Moreover, to the degree that a legislature is in any respect restricted in length and frequency of session, it cannot perform some of its basic tasks: it cannot, for example, monitor the activities of an executive branch that operates on a year-round basis, or engage in long-range planning or study.

CITIZEN'S CONFERENCE ON STATE LEGISLATURES, *supra* note 40, at 58-59.

eral body could be facilitated by utilization of a 49-member legislature with retention of the present Senatorial districts.¹⁴⁶

Multimember districts have been rejected for a number of reasons. Multimember districts frequently preclude direct accountability and may be so large as to prevent effective legislator-constituent contact.¹⁴⁷

146. A frequent concern of the legislators polled was the representativeness of a smaller legislative body as shown by the following responses:

"When you say 'full-time professional legislature.' I would be opposed to a smaller membership in both Houses. Now people know who their legislators are—we here in the country would lose our representation to Tacoma."

* * * *

"Why so small a body? I hope not in the belief it would be cheaper. The Legislature's costs are only 3/10 of 1% of the budget."

* * * *

"Unicameral is ok, but keep it large enough to have sufficient working manpower for the 15 or so committees that are essential, and large enough to make it difficult to build a power block (sic) that controls. Remember, the legislature is controlled by a majority of the majority party—in a body of 49 it takes only 13. If you believe in *representative* government, stay with a larger group and keep it part-time."

* * * *

"Reducing the size of the legislature is a panacea proposed by those who are somehow trying to compensate the state treasury with fewer people at higher cost. This is absurd, because the converse is *not* true that a large legislature at a smaller cost is of poorer quality. There is no logic to either assumption; that small is better quality than large. I think a district benefits from multi-member districts. There is a diversity of view that results in greater representation that is highly desirable. A smaller legislature can be controlled by the majority at one caucus [and] this is bad. It can be controlled now, but it is difficult and in any case is impossible to keep hidden from the people. The smaller the elite, the easier it is to keep things from the public."

Response of various legislators to authors' poll (on file with the *Washington Law Review*). The size of a legislature and its representativeness are not necessarily closely related, as the following figures from randomly selected states indicate:

State	No. of Senators	No. of Reps.	Representativeness Rating
New York	57	150	1
California	40	80	2
New Mexico	42	70	4
Nebraska	49		18
Massachusetts	40	240	23
Pennsylvania	50	203	36
Georgia	56	195	38
Washington	49	98	39
New Hampshire	24	400	43
Vermont	30	150	47

Figures compiled from CITIZENS CONFERENCE ON STATE LEGISLATURES, *supra* note 40, at 52-53 & League of Women Voters of Seattle, Seattle Supplement to "Continuing Study of the Washington State Legislature," March 1-7, 1973 (on file with the *Washington Law Review*). For a description of the term "representativeness" see CITIZENS CONFERENCE ON STATE LEGISLATURES, *supra* note 40, at 52-53, 134-41.

147. CITIZENS CONFERENCE ON STATE LEGISLATURES, *supra* note 40, at 81-83. The study concludes that "when an elector cannot, among [a] welter of public officials, easily identify his representatives, his attention will certainly drift elsewhere." A rule of "one legislator one district" is advocated. *Id.* at 83.

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Present districts, for example, include approximately 68,000 people, and multimember districts would probably be even larger. Such a result, especially in districts which presently cover wide areas of the state, would militate against a representative and accountable state legislature.

Finally, redistricting is left to the legislature, but the legislature is authorized to appoint an expert, nonpartisan body to aid in that endeavor. Redistricting is a highly political task that should be isolated as far as possible from partisan pressures by delegating the bulk of the reapportionment process to the expert body.

§ 9. ELECTIONS AND QUALIFICATION OF MEMBERS. Elections for the legislature shall occur on the first Tuesday in November unless otherwise directed by the legislature. No person shall be eligible for election to the legislature who shall not be a citizen of the United States and a qualified voter in the district from which he or she is chosen. The legislature shall judge the elections and qualifications of its members, subject to the requirements of Section 11.

Commentary: Section 9 follows present constitutional provisions except as to the Code of Ethics Commission described in Section 11.

§ 10. OFFICERS. The office of lieutenant governor is hereby abolished and references to that office in this constitution are hereby declared null and void. The legislature shall create positions for its own presiding officers, and elect those officers.

Commentary: Section 10 provides for two major changes. First, the office of lieutenant governor is abolished. The lieutenant governor's current duties include acting as president of the Senate, and acting as governor in the absence of the governor from the state. The lieutenant governor's duties in the Senate are minimal (justifying the abolition of the office), and his duties as acting governor could be performed by some other elected executive officer.

Second, the legislature creates positions for its own presiding officers, and elects those officers. Such a course enhances legislative independence while eradicating the possibility of an executive officer unduly influencing legislative committee assignments.

§ 11. **CODE OF ETHICS.** The legislature shall adopt a Code of Ethics which:

(a) Provides that no member with a direct economic interest in a bill may vote on it;

(b) Provides conduct regulations for legislative members;

(c) Provides for the offense of corrupt solicitation or bribery of members of the legislature or public officers of the state; and

(d) Incorporates existing election campaign law.

The Code of Ethics shall be enforced by a commission consisting of five members appointed for five-year terms by the governor with the consent of the legislature, provided that no more than three members shall be of the same political party. The commission may impose sanctions including expulsion of a member following a hearing, subject to mandatory direct review by the supreme court.

Commentary: In order to remedy an increasing lack of public confidence in the governmental process, the legislature should be affirmatively required to adopt a Code of Ethics defining rules for legislative members and incorporating existing public disclosure and campaign rules. Such a Code would be enforced by an independent commission with full powers including the power to expel members. This provision is substantially stronger than the present internal ethics mechanisms of both houses.¹⁴⁸

§ 12. **COMPENSATION.** Each member of the legislature shall receive compensation for his or her services that shall be no less than one-half of the compensation set by law for the governor, and for reasonable expenses incurred in legislative work. Any changes by law in the compensation of the governor shall not take effect for purposes of determining the compensation of members of the legislature until the expiration of the term of the Senators qualified when the compen-

148. See INSTITUTE OF GOVERNMENTAL RESEARCH, *supra* note 36, at 49-51. Codes of ethics for employees of the executive branch are not uncommon. See 18 U.S.C. §§ 201-18 (1970); Buss, *The Massachusetts Conflict of Interest Statute: An Analysis*, 45 BOSTON U.L. REV. 299 (1965).

It is not likely that the case of *Powell v. McCormack*, 395 U.S. 486 (1969), will affect the validity of the proposed Code of Ethics or the accompanying commission, because the right to expel a member of the legislature will be constitutionally authorized in Washington. For a discussion of the *Powell* case see Asper, Bischoff, Dixon, Gitelman, Hobbs, Laughlin, Linde, McKay, Rice, Rosen, Sandalow, & Weckstein, *Comments on Powell v. McCormack*, 17 U.C.L.A.L. REV. 58 (1969).

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sation bill was enacted. No legislator during his or her term of office shall engage in any outside business or enterprise that shall substantially affect his or her ability to perform legislative duties.

Commentary: Section 12 reflects a belief that legislators should be adequately paid to devote full-time attention to legislative business and to relations with constituents in home districts. Pay is set at 50% of the governor's salary plus actual expenses, and per diem is abolished. Salary increases are not effective until the legislators face re-election. As a practical matter outside business activities, if not ended, would be severely curtailed.

The method of compensation contained in Section 12, when combined with a smaller unicameral legislature, would be less expensive than the present bicameral legislature, provide for greater staff services per member than present, and prevent the exodus of qualified members from the legislature for economic reasons.¹⁴⁹

§ 13. PRIVILEGES. Members of the legislature shall be subject to arrest for criminal violations, but shall not be subject to civil process during the session of the legislature, nor for fifteen days next before the commencement of each session. No member of the legislature shall

149. A number of legislators expressed the view that quality personnel, not institutional reform, is necessary to improve legislative performance. Typical of these responses were the following:

"To improve the legislature, you need to improve the people in it. This does not occur by making it fulltime, professional. The best people in the legislature are those who are qualified, capable, dedicated to their tasks, but who do not just consider themselves fulltime politicians running for office."

* * * *

"The main ingredient that is needed to improve the legislative process is active, willing, competitive participation by experienced and competent citizens. A legislature of experts *cannot* possibly do as well."

* * * *

"In our efforts to obtain 'good' government I believe we turn too often to ideas for 'reforming the system' rather than the hard, tough job of judging the ideas of people who run the system. These people will make *any* system work but the effectiveness of that system depends on what makes them tick. What is in their mind (their ideas?) and how sensitive to humanity's needs are they?"

* * * *

"The basic need and unresolved question is how do we retain the sustained interest of the public to encourage persons with ability and integrity to seek public office when there are only modest psychological and monetary rewards encouraging them to stay in it?"

Response of various legislators to authors' poll (on file with the *Washington Law Review*). While the quality of members is important, it is also necessary to note that without institutional changes high quality personnel cannot afford to surrender more lucrative private ventures for public service.

be liable in any civil or criminal action in any manner for words spoken in debate in the legislature.

Commentary: The immunity of legislators from criminal prosecution during sessions is abolished primarily because of its potential for abuse by members during legislative sessions.

§ 14. MEMBERS HOLDING CONCURRENT OFFICES. No member may simultaneously hold a seat in the legislature and serve in any other elective office under the authority of the State of Washington or the United States.

Commentary: Section 14 precludes simultaneous holding of multiple elective offices. In addition, it abolishes the present proscription of Section 13 of Article II, that prevents a member of the legislature from serving in an office whose compensation had been increased during the member's term. This change would eliminate the problem posed in the 1975 primary election for Secretary of State, wherein several qualified candidates who had filed for the office were removed from the ballot because they had been members of the legislature when the compensation for the office of Secretary of State had been increased.¹⁵⁰

§ 15. IMPEACHMENT. The legislature shall have the sole power of impeachment. The concurrence of two-thirds of all the members shall be necessary for impeachment, provided that interested members shall not be qualified to vote. Impeachments shall be tried by the legislature sitting as a judicial tribunal. No person shall be convicted and removed from office without a concurring vote of three-fourths of the members.

Commentary: This section follows existing constitutional provisions except that the unicameral legislature sits as the tribunal for impeachments. Additional requirements pertaining to impeachment are set forth in the Washington Constitution, article V.

150. See *Anderson v. Chapman*, 86 Wn. 2d 189, 543 P.2d 229 (1975); *Daly v. Chapman*, 85 Wn. 2d 780, 539 P.2d 831 (1975).

§ 16. VACANCIES IN ELECTIVE OFFICES. Vacancies in the legislature shall be filled by the governor from among a list of three candidates of the same legislative district and same political party submitted to the governor by the pertinent party caucus, until a special election to select a replacement under procedures established by the legislature can be held. Vacancies in local offices shall be filled in special elections under procedures established by the legislature.

Commentary: Section 16 provides for a simplified method of filling vacancies in legislative and local elective offices and places responsibility for special election procedure in the legislature.

§ 17. VACANCIES IN THE OFFICE OF GOVERNOR. The legislature shall prescribe the order of succession by state elected officers to the office of Governor when that office is vacant or the Governor is incapacitated.

Commentary: This section, in light of the abolition of the office of lieutenant governor in Section 10, provides that the legislature shall adopt the order of succession to the office of governor when that office is vacant, much like the power accorded to the Congress in relation to the Presidency.¹⁵¹

§ 18. GOVERNMENT CONTINUITY IN EMERGENCIES. The legislature shall enact legislation providing for the continuity of state and local government operations in the event of enemy attack or dire natural catastrophe. The legislature may provide for the temporary succession of persons to municipal and constitutional offices where the incumbents or legal successors of those offices are unavailable for carrying on the powers and duties of such offices.

Commentary: Section 18 follows the present constitutional provision.

§ 19. SINGLE HOUSE APPLICABILITY. All provisions of the constitution and the laws of the State of Washington relating to the legislature, the Senate, or the House of Representatives or members thereof, are hereby applicable to the legislature consisting of a single chamber and the members thereof.

151. See U.S. CONST. art. III, § 1 (1789); 3 U.S.C. § 19 (1970).

Commentary: This section provides that the unicameral legislative form is to be adopted in the constitution and laws in all instances where one house or the bicameral legislature are presently applicable. This is substantially similar to the measure found in the Nebraska Constitution.¹⁵²

152. NEB. CONST. art. III, § 1.