Oath of Office

"I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected (or appointed), and that I will to the best of my ability, discharge the duties thereof, and preserve, protect, and defend the Constitution of this State and of the United States. So Help me God."—Const., Art. III, Sec. 26. [Provisions of state constitution barring persons who deny existence of "Supreme Being" from holding public office determined to violate the First Amendment religion clauses and Religious Test Clause of federal constitution. Silverman v. Campbell, 326 S.C. 208, 486 S.E.2d 1 (1997).]

THE LEGISLATIVE POWER OF THE STATE OF SOUTH CAROLINA

is vested (under the Constitution of 1895) in two distinct branches, the one styled the "Senate" and the other the "House of Representatives," and both together the "General Assembly of the State of South Carolina." Art. III, Sec. 1.

Constitutional, statutory, and other provisions of interest

AMENDMENTS TO CONSTITUTION—Must be agreed to by two-thirds of the members elected to each House and same shall be submitted to the qualified electors of the State; and if a majority shall vote in favor of such amendments, the next General Assembly may ratify amendments, and same shall become part of the Constitution. Art. XVI, Sec. 1.

ANNUAL SESSIONS—In Columbia beginning on the second Tuesday in January and no limitation as to length of session. Art. III, Sec. 9.

Section 2-1-180 of the 1976 Code provides, however, that the General Assembly shall adjourn *sine die* not later than 5 P.M. on the second Thursday in May except when an extension is voted by a two-thirds vote of both Houses or as otherwise provided.

ARRESTS OF ELECTORS—"Electors shall in all cases, except treason, felony, or a breach of the peace, be privileged from arrest on the days of election, during their attendance at the polls for voting and going to and returning therefrom." Art. II, Sec. 11.

BILLS AND ACTS—"Bills for raising revenue shall originate in the House of Representatives," but may be altered, amended, or rejected by the Senate; "all other Bills may originate in either House and may be amended, altered, or rejected by the other." Art. III, Sec. 15.

"Bills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made and appropriate to them, respectively, their several amounts in distinct items and sections." Art. IV, Sec. 21.

"Every Act or Resolution having the force of law shall relate to but one subject, and that shall be expressed in the title." Art. III, Sec. 17.

Bills shall not have the force of law until read three times and on three separate days in each House, the great seal of the State affixed, and signed by the President of the Senate and the Speaker of the House. Legislative rules may (and they do) provide for the first and third readings by the title only. Art. III, Sec. 18.

The 20th day after the day of the Act's approval by the Governor it shall become effective unless some other day be specially named in the Act. (Construction by Courts: exclude the first day, include the last.) Sec. 2-7-10.

BOARDS AND COMMISSIONS—"A member of the General Assembly may not serve in any capacity as a member of a state board or commission, except for the State Budget & Control Board, the Advisory Commission on Intergovernmental Relations, the Legislative Audit Council, the Legislative Council, the Legislative Services Agency, the Judicial Council, the Commission on Prosecution Coordination, the South Carolina Tobacco Community Development Board, the Tobacco Settlement Revenue Management Authority, the South Carolina Transportation Infrastructure Bank, the Commission on Indigent Defense, the South Carolina Research Authority, and the joint legislative committees." Sec. 8-13-770.

COMPENSATION—"Members shall not receive any compensation for more than 40 days of any one session." Art. III, Sec. 9.

Compensation $10,400 annually; subsistence expenses per day for session, except days when local uncontested matters are considered; travel expense for distance traveled going to and returning from Columbia on weekend adjournments.

General Assembly not permitted to increase the per diem of its own Members. Art. III, Sec. 19. Mileage—Allowance for Members of General Assembly during sessions provided by statute.

SUPREME COURT DECISION—Members in "extra session shall receive same compensation as is fixed by law for regular session." Art. III, Sec. 19. Supreme Court Decision: In case of Godfrey v. Hunter, *et al.*, 176 S.C. 442, (1935), the Supreme Court of S.C. held that the salary for an extra session should be based on the per diem rate and not as annual salary.

CONSTRUING THE CONSTITUTION—Its provisions shall be construed as mandatory and prohibitory, unless expressly made, by its own terms, directory or permissory. Art. I, Sec. 23.

COUNTIES AND MUNICIPALITIES—Sections 4-9-55 and 5-7-310 of the 1976 Code, added by Act 157 of 1993, provide limitations on the General Assembly, by general law, of imposing unfunded mandates on counties and municipalities.

COUNTIES, FORMATION OF—Governor shall order election upon petition of one-third of qualified electors in area of the section of old county proposed to be cut off, question of name and county seat also being submitted. General Assembly may establish such new county on two-thirds vote of electors for it. County shall not contain less than one-124th of population of State or less than $1,500,000 assessed taxable property or less than 400 square mile area. Art. VII, Secs. 1, 2 & 3.

No county shall be reduced below 500 square miles, $2,000,000 of assessed taxable property, or less than 15,000 inhabitants. No old county shall be cut within eight miles of courthouse building. Art. VII, Secs. 4 & 5. However, not more than 46 counties shall exist at any time. Art. VIII, Sec. 3.

DEPARTMENTS SEPARATE—"Legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." Art. I, Sec. 8.

DIVORCES—"Shall be allowed on grounds of adultery, desertion, physical cruelty, continuous separation for a period of at least one year, or habitual drunkenness." Art. XVII, Sec. 3. (Under the Constitution of 1863, divorces were not "allowed but by Judgment of a Court, as shall be prescribed by law."

The Constitution of 1895 permitted no divorces on any grounds until the present amendment became effective on April 1, 1949. Subsequently Act No. 137 of 1949 was passed, 1976 Code, Sec. 20-3-10 providing for and regulating the granting of divorces in the State.)

In 1979 an amendment to Sec. 3 of Art. XVII was ratified by the General Assembly reducing the time period for divorce because of continuous separation from three years to one year. Also by Act 10 of 1979 Sec. 20-3-80 of the 1976 Code was amended to permit hearings to be held and decrees granted in divorces based on desertion or separation for one year as soon as final pleadings have been filed or the defendant is in default.

ELECTION BY GENERAL ASSEMBLY OR EITHER HOUSE—"Members shall vote *viva voce* except by unanimous consent and their votes shall be entered upon the Journal." Art. III, Sec. 20.

ELECTION RETURNS, QUALIFICATION—"Each House shall judge the election returns and qualifications of its own members." Art. III, Sec. 11.

EXPULSION OF MEMBERS—"Each House shall punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause." Art. III, Sec. 12.

EXTRA SESSIONS—The Governor "may on extraordinary occasions convene the General Assembly in extra session." Art. IV, Sec. 19.

Should either House remain without a quorum for five days, or should the two Houses disagree as to the time of adjournment, the Governor may adjourn them to such time as he shall think proper. Art. IV, Sec. 19.

GENERAL ASSEMBLY, MEETING OF—"The General Assembly ought frequently to assemble for the redress of grievances and for making new laws, as the common good may require." Art. III, Sec. 1A.

GENERAL ASSEMBLY, HOUSES MAY RECEDE—During a legislative session, the Senate or House of Representatives, or both, by majority vote of the members of the body, may recede for not more than thirty consecutive calendar days; with a two-thirds vote of the members of the body, the Senate or House of Representatives, or both, may recede for more than thirty consecutive days. Art. III, Sec. 9.

GOVERNOR, ROLE IN RECOMMENDING STATE BUDGET—Sec. 11-11-15 provides that the Governor submits the proposed annual state budget to the General Assembly.

GOVERNOR, TERM OF OFFICE—In 1982 an amendment to Sec. 3 of Art. IV was ratified allowing the Governor to serve for two successive terms.

LIMITATIONS ON STATE GOVERNMENT GROWTH

— Appropriations —

CONSTITUTIONAL—The General Assembly is required to "provide by law for a budget process to insure that annual expenditures of state government may not exceed annual state revenues." Art. X, Sec. 7, subsection (a).

The General Assembly shall prescribe by law a limitation on appropriations. Annual increases in state appropriations may not exceed the "average growth rate of the economy of the State." Art. X, Sec. 7, item (c).

STATUTORY—In Sec. 11-11-410 a statutory spending limitation was enacted which limits increases in state spending over the previous year to the average percentage increase in total state personal income for the previous three years or nine and one-half percent of total state personal income for the calendar year ending before the fiscal year, whichever is greater. The General Assembly may suspend the limit for a fiscal year for a specific amount by a special vote.

STATUTORY—In Sec. 11-11-140 the Governor is prohibited from recommending in the annual budget recommendation the appropriation of surplus general fund revenues in excess of surplus recognized by the Board of Economic Advisors. Further, the General Assembly is prohibited from appropriating surplus general fund revenues in excess of officially recognized surplus.

— Employees —

CONSTITUTIONAL—The General Assembly shall prescribe by law a limitation on the number of state employees. The limitation must provide that the annual increase in the number does not "exceed the average growth rate in the population in the State." Art. X, Sec. 7, item (d).

STATUTORY—Sec. 11-11-420 restricts increases in the number of state employees.

— Debt Service —

CONSTITUTIONAL—The General Assembly must limit the annual maximum debt service on general obligation bonds to five percent of the general revenues of the State with an authorization by the General Assembly to adjust it up or down within certain limits upon approval of two-thirds of the total membership. Art. X, Sec. 13, subsection (6), item (c). The current limit on total debt service on general obligation bonds is six percent of general revenues.

STATUTORY—Sec. 11-11-430, Sec. 11-41-50, and Sec. 11-51-50 restrict the percentage of state revenue used to retire bonded debt.

DUAL OFFICE HOLDING PROHIBITION—"No person shall be eligible to a seat in the General Assembly while he holds any office or position of profit or trust under this State, the United States of America, or any of them, or under any other power, except officers in the militia, members of lawfully and regularly organized fire departments, constables, and notaries public. If any member accepts or exercises any of the disqualifying offices or positions, he shall vacate his seat." Art. III, Sec. 24.

MEMBERS EX OFFICIO—Every chairman of a committee of either House who is ex officio member of any commission or board shall remain a member after each general election and until successor is appointed chairman thereof; in case of vacancy or disability between sessions, the Speaker of the House or the President of the Senate shall designate some member of such committee to serve on board until next meeting or disability is removed. 1976 Code, Sec. 2-1-80.

All legislative members of state boards and commissions shall serve in their respective capacities as members of such boards and commissions until their successors shall have been elected or appointed, and qualify. 1976 Code, Sec. 2-1-85.

MEMBERS PROTECTED—"Members shall be protected in their persons and estates during their attendance on, going to, and returning from the General Assembly, and ten days previous to the sitting and ten days after the 'adjournment,' except where a member is charged with treason, felony, or breach of the peace." Art. III, Sec. 14.

MEMBERS, TERMS OF OFFICE—"The terms of office of members chosen at a general election shall begin on the Monday following such election." Art. III, Sec. 10.

OFFICES OF GENERAL ASSEMBLY—"Each House shall choose its own officers, determine its rules of procedure . . ." Art. III, Sec. 12.

OATH OF OFFICE—All members and all officers, before they enter upon their duties, shall subscribe to the following oath: (See page 4 for oath). Art. III, Sec. 26.

ORGANIZATIONAL SESSION—The Senate or the House of Representatives, or both, may meet on the first Tuesday following the certification of the election of its members for not more than three days following the general election in even-numbered years for the purpose of organizing. Art. III, Sec. 9.

PROTEST MAY BE ENTERED ON JOURNAL—Any member may dissent or protest against any Act or Resolution that he may think injurious to the public or an individual and have his reasons entered on the Journal. Art. III, Sec. 22.

PUNISHMENT, RIGHT OF—Each House may punish by imprisonment during its sitting any non-member guilty of disrespect, disorderly or contemptuous behavior in its presence, or who shall threaten harm to any member for any thing said or done in either House, or who shall assault or arrest any person ordered to attend the House, in going or returning, or who shall rescue any person arrested by order of the House. Art. III, Sec. 13.

QUALIFICATIONS OF GOVERNOR—Belief in existence of the Supreme Being, attainment of age 30, citizenship of United States, and citizen and resident of this State for five years next preceding day of election; shall not hold any other office or commission, except in militia, at the same time. Art. IV, Sec. 2. [Provisions of state constitution barring persons who deny existence of "Supreme Being" from holding public office determined to violate the First Amendment religion clauses and Religious Test Clause of federal constitution. Silverman v. Campbell, 326 S.C. 208, 486 S.E.2d 1 (1997).]

QUALIFICATIONS OF JUDGES AND JUSTICES—Citizenship, age of at least 32 years, licensed attorney for eight years, residence in this State for five years next preceding election. Art. V, Sec. 15.

QUALIFICATIONS OF JURORS—Must be a resident of this State and those other qualifications that the General Assembly may prescribe. Art. V, Sec. 22.

QUALIFICATIONS OF LIEUTENANT GOVERNOR—Same qualifications as Governor. Art. IV, Sec. 8. Beginning with the General Election of 2018, the Office of Governor and Lieutenant Governor must be elected jointly. Art. IV, Sec. 8.

QUALIFICATIONS, MEMBERS, GENERAL ASSEMBLY—Must be duly qualified electors; Senators must be at least 25 and Representatives at least 21 yrs. of age. Art. III, Sec. 7.

— Reserve Funds —

RESERVE FUNDS—CONSTITUTIONAL—The General Assembly is required to provide annually for a General Reserve Fund that equals five percent of state general fund revenue of the latest completed fiscal year. This percentage increases in cumulative annual increments of one-half of one percent until the General Reserve Fund balance must be established annually at seven percent of state general fund revenues of the latest completed fiscal year. The revenues of the General Reserve Fund may be used only to cover an operating deficit of state government. A procedure for the restoration of funds withdrawn from the General Reserve Fund from future revenues and out of funds accumulating in excess of annual operating expenditures is established. Art. III, Sec. 36(A).

The General Assembly also is required annually to appropriate an amount equal to three percent of state general fund revenue of the latest completed fiscal year into a Capital Reserve Fund. The first use of the Capital Reserve Fund is to offset a midyear budget reduction. Thereafter, any remaining revenues of the Capital Reserve Fund may be appropriated by the General Assembly in separate legislation by an affirmative vote in each branch of the General Assembly by two-thirds of the members present and voting but not less than three-fifths of the total membership in each branch for the following purposes:

(a) finance in cash previously authorized capital improvement bond projects;
(b) retire interest or principal on bonds previously issued;
(c) capital improvements or other non-recurring purposes.

Appropriations made from the Capital Reserve Fund must be ranked in priority order and are effective on September first of the following fiscal year. If the fiscal year ends with an operating deficit, appropriations from the Capital Reserve Fund must be reduced based on rank of priority to the extent necessary and applied to the year-end operating deficit before withdrawing revenues from the General Reserve Fund. Any balance remaining in the Capital Reserve Fund lapses to the general fund of the State.

RESERVE FUNDS—STATUTORY—Secs. 11-11-310 and 11-11-320 generally parallel the language in Art. III, Sec. 36. Sec. 11-11-70 requires that the budget which is submitted by the presiding officer of each House to conform to the funding requirements contained in Art. III, Sec. 36.

The Contingency Reserve Fund in the State Treasury is credited with all surplus general fund revenues accumulated in a fiscal year and its revenues may be appropriated by the General Assembly after the Comptroller General determines the amount to be credited to this fund and the Board of Economic Advisors recognizes that amount as surplus. To the extent of any shortfall in the general reserve fund balance, Contingency Reserve Fund Revenues must first be appropriated to make up the shortfall. Sec. 11-11-220.

SECRECY—"The doors of each House shall be open, except on such occasions as in the opinion of the House may require secrecy." Art. III, Sec. 23. "Each House shall keep a Journal of its own proceedings, and cause same to be published immediately after its adjournment, excepting such parts as in its judgment may require secrecy." Art. III, Sec. 22.

SPECIAL LAWS PROHIBITED—Special laws are prohibited in certain listed categories and in all cases where the general law can be made applicable (Art. III, Sec. 34). Special provisions may be included in general laws.

No laws for a specific county or municipality shall be enacted. Art. VIII, Secs. 7 & 10.

SUSPENSION AND PROSECUTION OF OFFICERS ACCUSED OF CRIME—Whenever it appears to the satisfaction of the Governor that probable cause exists to charge any officer of the State or its political subdivisions who has the custody of public or trust funds with embezzlement or the appropriation

of public or trust funds to private use, then the Governor shall direct his immediate prosecution by the proper officer, and upon indictment by a grand jury or, upon the waiver of such indictment if permitted by law, the Governor shall suspend such officer and appoint one in his stead, until he shall have been acquitted. In case of conviction, the position shall be declared vacant and the vacancy filled as may be provided by law. Art. VI, Sec. 8.

VACANCY IN GENERAL ASSEMBLY MEMBERSHIP—In case of a vacancy in either House for any reason the presiding officer of that House shall issue a writ of election to fill the vacancy for the unexpired term. Art. III, Sec. 25.

VETO BY THE GOVERNOR—Every Bill or Joint Resolution which shall have passed the General Assembly, except on a question of adjournment, shall, before it becomes a law, be presented to the Governor, and if he approves, he shall sign it. This requirement does not apply to Joint Resolutions proposing Constitutional Amendments or Bills which ratify them.

Any Bill vetoed by the Governor shall be returned with his objections, to the House in which it originated, which shall enter the objection at large on its Journal and proceed to consider it. If two-thirds of that House agree to pass it, it shall be sent, together with the objection to the other House and if approved by two-thirds of that House, it shall have the same effect as if signed by the Governor; but in all such cases the vote of both Houses shall be taken by yeas and nays and the names entered on the Journals.

Only so much of any Bill appropriating money out of the Treasury as is not approved by the Governor shall be reconsidered, the approved portions becoming a law notwithstanding the objections of the Governor.

A Bill not returned by the Governor, within five days after presentation to him, Sundays excepted, shall have the same force and effect as if he had signed it, unless the General Assembly by adjournment, prevents its return, in which case it shall have such force and effect unless returned within two days after the next meeting. Art. IV, Sec. 21.

(Gov. may return Bill to the "next" House in which it originated, even though a general election has intervened and new members have been elected and seated, as the two "Houses"

are continued entities.—Supreme Court Decisions, Smith v. Jennings, 67 S.C. 324.)

(At the 1919 Session, which began Jan. 14, Gov. Cooper returned a Bill to the Clerk of the House on Jan. 16, after House had adjourned. Upon objection to its consideration on Jan. 17, Speaker Cothran ruled that the 2-day Constitutional limit had been complied with, citing Corwin v. Comp. Gen., 6 S.C. 398—see 1919 H.J., page 49.)

(At the 1946 Session Gov. Williams returned a Bill together with a veto message to the Clerk of the House on March 18. The records showed that the Bill had been delivered to the Gov. on March 13. In ruling that the 3-day Constitutional limit had expired, Speaker Blatt also ruled that the words, "three days" mean calendar days and not legislative days, also cited the case of Corwin v. The Comp. Gen., 6 S.C. 390, in which the word adjournment as used in Sec. 22, Art. III of the Constitution, is found to mean an adjournment by concurrent action of both Houses of the General Assembly—see 1946 H.J., page 1267.)

YEAS AND NAYS—Shall be entered on the Journal at the desire of ten House members or five Senators in their respective Houses. Art. III, Sec. 22.