

The North Carolina Constitutional Provisions for Education:  
Textual Comparisons of North Carolina's Constitutions and Amendments

Ann McColl

*Purpose of this Document*

North Carolina has had three constitutions, commonly known as the Constitutions of 1776, 1868, and 1971. Education has been addressed in each of these with many of the current provisions having roots in the 1868 Constitution. These constitutions also have been amended over time so that the full evolution of the education provisions is found through reviewing the three constitutions as well as the amendments.

This document uses the 1971 Constitution, as amended, as the starting point. It then traces the education-related provisions through earlier constitutions and amendments. Annotations provided at the beginning of each section are limited to explaining the differences in the text. This document is part of a larger project, *Constitutional Tales*, which analyzes the changes by taking into account court interpretations, evidence of the intent of the framers, statutory developments, and the social, educational, and political context.

The constitution has been altered sometimes by wording changes or additions or deletions to the text. Other times, the earlier text has been entirely replaced. Either way, if an earlier text relates to the subject matter of the current constitution, it is provided verbatim in that section.

Over time, the education provisions have been reorganized, with topics moving from one section to another and grouped with different related subjects. Some earlier texts are included more than once if they relate to more than one topic.

All capitalization, punctuation, and spelling are retained in their original form. There are different published copies of the constitutions and amendments and some have errors. A list of sources used is provided at the end of this document.

There are several dates associated with changes in the constitution: the dates of a constitutional convention, if held, or alternatively, the dates when the proposed constitution or amendments were approved by the General Assembly; the date when approved by voters; and the effective date. Common references to the North Carolina Constitution have not followed one set of dates consistently. This report uses the date proposals were approved by voters with a few exceptions. The Constitution of 1971 is widely referenced by its effective date (instead of the voter approval date of 1970); the amendments proposed at the Constitutional Convention of 1875 are known by the convention date (rather than the voter approval date of 1876); and the 1776 Constitution, which was never submitted to a vote of the people, by the dates approved by the Fifth Provincial Congress. The voting record for the constitutions and amendments are provided in a section so labeled.

## *Part I: Declaration of Rights Related to Education*

The North Carolina Constitution begins with a bill of rights, titled Article I, Declaration of Rights. One right relates directly to education. Other relevant provisions are addressed in Part III of this document.

### *Right To Education/State Duty*

The current right to education and the duty of the state to guard and maintain that right are the same as provided in the 1868 Constitution.

#### *Current text.*

1971 Constitution, Art. I, Sec. 15. *Education.* The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

#### *Historical development.*

1868 Constitution, Art. I, Sec. 27. The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

## *Part II: Article IX. Education*

Other than the provision mentioned above from the Declaration of Rights, all other education provisions are found in the current constitution in Article IX. This follows the framework established in the 1868 Constitution.

### *Education Encouraged*

The current provision originated in the 1868 Constitution. The only change in the 1971 Constitution was to add libraries to “schools, libraries, and the means of education shall forever be encouraged.”

#### *Current text.*

1971 Constitution, Art. IX, Sec. 1. *Education encouraged.* Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

*Historical development.*

1868 Constitution, Art. IX, Sec. 1. Religion, morality, and knowledge being necessary to good government and happiness of mankind, schools and the means of education shall forever be encouraged.

*General and Uniform System of Free Public Schools*

The “free public schools” requirement reflects changes since the 1776 Constitution. The 1776 Constitution provided for the convenient instruction of youth at “low prices.” This was replaced in the 1868 Constitution by requiring tuition “free of charge” and this was altered to “free public schools” in the 1971 Constitution.

The requirement for the General Assembly to “provide by taxation and otherwise for a general and uniform system” is first found in the 1868 Constitution. Amendments from the 1875 Constitutional Convention required segregated schools. In 1956, voters approved an amendment commonly referred to as the Pearsall Plan, which allowed a local option to suspend the operation of public schools. It also would have allowed expense grants to pay for a private education in order to avoid attending school with a child of another race. Both the 1875 and 1956 amendments were omitted in the 1971 Constitution.

*Current text.*

1971 Constitution, Art. IX, Sec. 2. *Uniform system of schools.* (1) *General and uniform system; term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

*Historical development.*

1776 Constitution, Sec. 41. That a School or Schools shall be established by the Legislature, for the convenient Instruction of Youth, with such Salaries to the Masters, paid by the Public, as may enable them to instruct at low Prices; and, all useful Learning shall be duly encouraged and promoted in one or more Universities.

1868 Constitution, Art. IX, Sec. 2. The General Assembly at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of Public Schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years.

1868 Constitution (amended 1876), Art. IX, Sec. 2. The General Assembly at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of Public Schools, wherein tuition shall be free of

charge to all the children of the State between the ages of six and twenty-one years. And the children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination made in favor of, or to the prejudice of, either race. (Convention of 1875, Ch. 26.)

1868 Constitution (amended 1956), Art. IX, Sec. 12. Education expense grants and local option. Notwithstanding any other provision of this Constitution, the General Assembly may provide for payment of education expense grants from any State or local public funds for the private education of any child for whom no public school is available or for the private education of a child who is assigned against the wishes of his parents, or the person having control of such child, to a public school attended by a child of another race. A grant shall be available only for education in a nonsectarian school, and in the case of a child assigned to a public school attended by a child of another race, a grant shall, in addition, be available only when it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race.

Notwithstanding any other provision of this Constitution, the General Assembly may provide for a uniform system of local option whereby any local option unit, as defined by the General Assembly, may choose by a majority vote of the qualified voters in the unit who vote on the question to suspend or to authorize the suspension of the operation of one or more or all of the public schools in that unit.

No action taken pursuant to the authority of this Section shall in any manner affect the obligation of the State or any political subdivision or agency thereof with respect to any indebtedness heretofore or hereafter created. (Sess. Laws 1956 (Ex. Sess.), ch. 1.)

### *Term*

The current constitution requires the General Assembly to provide a general and uniform system of free schools for at least nine months in every year. Term was first specified in the 1868 Constitution, requiring at least four months. This was increased to at least six months by the 1918 amendment.

### *Current text.*

1971 Constitution, Art. IX, Sec. 2. *Uniform system of schools.* (1) *General and uniform system; term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

*Historical development.*

1868 Constitution, Art. IX, Sec. 3. Each County of the State shall be divided into a convenient number of Districts, in which one or more Public Schools shall be maintained, at least four months in every year; and if the Commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment.

1868 Constitution (amended 1918), Art. IX, Sec. 3. Each County of the State shall be divided into a convenient number of Districts, in which one or more Public Schools shall be maintained, at least six months in every year; and if the Commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment. (Pub. Laws 1917, ch. 192.)

*Equal Opportunities*

The equal opportunities clause first appeared in the 1971 Constitution. It adds to the General Assembly's responsibility for providing for a general and uniform system of free schools. The amendments related to race regarding the general and uniform system (noted above) also provides some historical context for the equal opportunities requirement.

The requirement for equal opportunities "for all students" includes students with disabilities. In the 1868 Constitution, care for children with disabilities was addressed in Article XI, Punishments, Penal Institutions and Public Charities. While the 1868 Constitution mandated the care of those who were deaf or blind, an 1880 amendment made such care permissive and only for the indigent. These provisions were eliminated from Article XI in the 1971 Constitution so that the education of all children is now clearly addressed in Article IX, with an equal opportunity for all.

*Current text.*

1971 Constitution, Art. IX, Sec. 2. *Uniform system of schools.* (1) *General and uniform system; term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

*Historical development.*

1868 Constitution, Art. XI, Sec. 9. It shall be the duty of the Legislature, as soon as practicable, to devise means for the education of idiots and inebriates.

1868 Constitution, Art. XI, Sec. 10. The General Assembly shall provide that all the deaf mutes, the blind, and the insane of the State, shall be cared for at the charge of the State.

1868 Constitution (amended 1880), Art. XI, Sec. 10. The general assembly may provide that the indigent deaf mutes, blind and insane of the state shall be cared for at the charge of the state. (Pub. Laws 1879, ch. 314, amended by ch. 254.)

### *Local Funding Responsibilities*

The 1971 Constitution rewrites the relationship between the General Assembly and local government. The current language provides that “[t]he General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate.” This replaces the 1868 Constitution’s requirement that “[e]ach County of the State shall be divided into a convenient number of Districts, in which one or more Public Schools shall be maintained, at least four months in every year; and if the Commissioners of any County shall fail to comply with the aforesaid requirement of this section they shall be liable to indictment.” This was the only indictable requirement in the 1868 Constitution.

The rewritten constitution also adds new permissive language: “The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.”

#### *Current text.*

1971 Constitution, Art. IX, Sec. 2.(2) *Local responsibility.* The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

#### *Historical development.*

1868 Constitution, Art. IX, Sec. 3. Each County of the State shall be divided into a convenient number of Districts, in which one or more Public Schools shall be maintained, at least four months in every year; and if the Commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment.

### *Compulsory Attendance in Public Schools*

The current compulsory attendance requirement has its origin in the 1868 Constitution, but with substantive changes. Attendance was not made compulsory by the constitution until the 1971 Constitution. The 1971 mandate that the “General Assembly shall provide that every child ... shall attend” replaces the 1868 enabling provision that the “General Assembly is hereby empowered to enact that every child ... shall attend.”

The current constitution allows the General Assembly to determine appropriate age for compulsory attendance rather than specify the age range as it was done in the 1868 Constitution. The current constitution also omits the now obsolete reference to a minimum attendance of sixteen months.

Attendance in the public schools is not required if “educated by other means,” a provision that dates from the 1868 Constitution. The requirement is also limited to those “of sufficient mental and physical ability.” This language remains unchanged from the 1868 Constitution.

*Current text.*

1971 Constitution, Art. IX, Sec. 3. *School attendance.* The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

*Historical development.*

1868 Constitution, Art. IX, Sec. 17. The General Assembly is hereby empowered to enact that every child of sufficient mental and physical ability, shall attend the Public Schools during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means.

*State Board Composition and Term on Board*

The State Board of Education was created by the 1868 Constitution, as the successor of the powers of the Directors of the Literary Fund. The composition of the Board has changed three times since the 1868 Constitution, making it, along with the role of the State Superintendent of Public Instruction, the most often changed provision in Article IX. In the 1868 Constitution, the State Board was comprised of all the state elected officials: the Governor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Works, Superintendent of Public Instruction and Attorney General. (*See also* the Constitution of 1868, Art. III, Sec. 1.)

Voters approved an amendment in 1942 to reduce the number of elected officers to the Lieutenant Governor, State Treasurer, and Superintendent of Public Instruction. Other elected officials – the Governor, Auditor, Superintendent of Public Works and Attorney General – were removed from the Board, and instead, the Governor was to appoint one member from each Congressional District. The amended constitution further stipulated that “[a] majority of the members of said board shall be persons of training and experience in business and finance, who shall not be connected with the teaching profession or any educational administration of the State.”

The Board’s composition was revised again two years later, in 1944, keeping the three elected officials and changing the Governor’s appointments from congressional districts to eight from newly designated educational districts, and two appointments at

large. The other qualifications for experience were removed. The 1971 Constitution removes the State Superintendent as a board member and adds an additional at large member.

The term length was not addressed in the 1868 Constitution since all positions were held by officials elected to four-year terms. The 1942 amendment provided for four-year terms for the appointees. The 1944 amendment increased it to 8 years, which is retained in the current constitution. The Governor's appointments to the Board (which began with the 1942 amendment) have always been subject to confirmation by the General Assembly, except to fill vacancies for unexpired terms.

*Current text.*

1971 Constitution, Art. IX, Sec. 4. *State Board of Education.* (1) *Board.* The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

*Historical development.*

1868 Constitution, Art. IX, Sec. 7. The Governor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Works, Superintendent of Public Instruction and Attorney General, shall constitute a State Board of Education.

1868 Constitution (amended 1942), Art. IX, Sec. 8. *State Board of Education.* The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall, from and after the first day of April, one thousand nine hundred and forty-three, be vested in a State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and one member from each Congressional District to be appointed by the Governor. ...[other provisions on Superintendent and comptroller] The appointive members of the State Board of Education shall be subject to confirmation by the General Assembly in joint session. A majority of the members of said board shall be persons of training and experience in business and finance, who shall not be connected with the teaching profession or any educational administration of the State. The first appointments under this section shall be members from odd numbered Congressional Districts for two years, and members from even numbered Congressional Districts for four years and, thereafter, all appointments shall be made for a term of four years. All appointments to fill vacancies shall be made by the Governor for the unexpired

term, which appointments shall not be subject to confirmation. ...[other provisions on board operations] (Pub. Laws 1941, ch. 151.)

1868 Constitution (amended 1944), Art. IX, Sec. 8. *State Board of Education.* The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, except those mentioned in Section five of this Article, shall, from and after the first day of April, one thousand nine hundred and forty-five, be vested in the State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and ten members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts, which may be altered from time to time by the General Assembly. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts, and two shall be appointed as members at large. The first appointments under this section shall be: Two members appointed from educational districts for terms of two years; two members appointed from educational districts for terms of four years; two members appointed from educational districts for terms of six years; and two members appointed from educational districts for terms of eight years. One member at large shall be appointed for a period of four years and one member at large shall be appointed for a period of eight years. All subsequent appointments shall be for terms of eight years. Any appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation... [other provisions on Superintendent and board operations] (Sess. Laws 1943, ch. 468.)

### *Superintendent of Public Instruction*

The 1868 Constitution established a constitutional office of a state-elected Superintendent of Public Instruction. Since the 1868 Constitution, the State Superintendent has had the role of secretary to the State Board of Education. Until the 1971 Constitution, the Superintendent also served as a member of the State Board. The Superintendent's administrative duties are not described in the 1868 Constitution. The 1942 amendment stipulated that the "State Superintendent of Public Instruction shall have general supervision of the public schools." This was amended in 1944 to state that "[t]he State Superintendent of Public Instruction shall be the administrative head of the public school system." The State Superintendent's role is provided in its own subsection in the 1971 Constitution, providing that the Superintendent "shall be the secretary and chief administrative officer of the State Board of Education."

### *Current text.*

1971 Constitution, Art. IX, Sec. 4. (2) *Superintendent of Public Instruction.* The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

### *Historical development.*

1868 Constitution, Art. IX, Sec. 7. The Governor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Works, Superintendent of Public Instruction and Attorney General, shall constitute a State Board of Education.

1868 Constitution, Art. IX, Sec. 8. The Governor shall be President, and the Superintendent of Public Instruction shall be Secretary of the Board of Education.

1868 Constitution (amended 1942), Art. IX, Sec. 8. State Board of Education. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall, from and after the first day of April, one thousand nine hundred and forty-three, be vested in a State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and one member from each Congressional District to be appointed by the Governor. The State Superintendent of Public Instruction shall have general supervision of the public schools and shall be secretary of the board. There shall be a comptroller appointed by the Board, subject to the approval of the Governor as director of the Budget, who shall serve at the will of the board and who, under the direction of the board, shall have supervision and management of the fiscal affairs of the board. ...[other provisions on board operations] (Pub. Laws 1941, ch. 151.)

1868 Constitution (amended 1944), Art. IX, Sec. 8. *State Board of Education.* The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, except those mentioned in Section five of this Article, shall, from and after the first day of April, one thousand nine hundred and forty-five, be vested in the State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and ten members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session...[other provisions on appointments] The State Superintendent of Public Instruction shall be the administrative head of the public school system and shall be secretary of the board... [other provisions on board operations] (Sess. Laws 1943, ch. 468.)

### *Powers and Duties of the State Board of Education*

The State Board's duties and its relationship to the General Assembly have been addressed since the 1868 Constitution. The relatively brief statements in the 1868 Constitution were expanded to provide more legislative detail in the amendment approved by voters in 1942. The duties returned to a more succinct statement in the rewritten 1971 Constitution. Administrative matters about the operation of the board, such as meeting dates, election of chair and vice-chair, and quorum are now found in statutes. Although the language has changed, the State Board's authority to make rules

and regulations continues in the present constitution to be subject to laws enacted by the General Assembly.

The most significant change from the 1868 Constitution is in the State Board's role with higher education. In the 1868 Constitution, the University of North Carolina was held to have an "inseparable connection" with the free public school system. The members of the State Board served as *ex officio* members of the Board of Trustees, as well as members of the Executive Committee along with three other trustee members that were appointed by the Governor. The General Assembly initiated an amendment to change this in the 1871-72 session and it was ratified by a vote of the people in 1873. The amendment removed the "inseparable connection," eliminated the State Board in its capacity with the Board of Trustees, and gave the General Assembly authority to appoint trustees and make any other needed laws.

The Constitution of 1868 provided that "The State Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina." This reference was included again in the 1942 amendment but was removed, presumably as an obsolete reference, in the 1971 Constitution.

*Current text.*

1971 Constitution, Art. IX, Sec. 5. *Powers and duties of Board.* The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

*Historical development.*

1868 Constitution, Art. IX, Sec. 9. The Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina, and shall have full power to legislate and make all needful rules and regulations in relation to Free Public Schools, and the Educational Fund of the State; but all acts, rules and regulations of said Board may be altered, amended or repealed by the General Assembly, and when so altered, amended or repealed, they shall not be re-enacted by the Board.

1868 Constitution, Art. IX., Sec. 5. The University of North-Carolina, with its lands, emoluments and franchises, is under the control of the State, and shall be held to an inseparable connection with the Free Public School system of the State.

1868 Constitution, Art. IX, Sec. 13. The Board of Education shall elect Trustees for the University, as follows: one Trustee for each County in the State, whose term of office shall be eight years... [other provisions on terms and meetings]

1868 Constitution, Art. IX, Sec. 14. The Board of Education and the President of the University, shall be *ex officio* members of the Board of Trustees of the University; and shall, with three other Trustees, to be appointed by the Board of Trustees, constitute the Executive Committee of the Trustees of the University of North-Carolina, and shall be clothed with the powers delegated to the Executive Committee under the existing organization of the Institution. The Governor shall be *ex officio* President of the Board of Trustees and Chairman of the Executive Committee of the University. The Board of Education shall provide for the more perfect organization of the Board of Trustees.

1868 Constitution (amended 1873), Art. IX, Sec. 5. The General Assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises and endowments heretofore in anywise granted to or conferred upon the trustees of said University; and the General Assembly may make such provisions, laws and regulations, from time to time, as may be necessary and expedient for the maintenance and management of said University.” (Pub. Laws 1871-72, ch. 53; Pub. Laws 1872-73, ch. 86; Pub. Laws 1872-73, ch. 153. The amendment repealed sections 5, 13, and 14 and replaced it with the new section 5. Requirements for constitutional amendments at this time required the General Assembly to enact the legislation in two sessions before being submitted to voters.)

1868 Constitution (amended 1942), Art. IX, Sec. 8. State Board of Education. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall, from and after the first day of April, one thousand nine hundred and forty-three, be vested in a State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and one member from each Congressional District to be appointed by the Governor. The State Superintendent of Public Instruction shall have general supervision of the public schools and shall be secretary of the board.

1868 Constitution (amended 1942), Art. IX, Sec. 9. Powers and Duties of the Board. The State Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina and the State Board of Education as heretofore constituted. The State Board of Education shall have power to divide the State into a convenient number of school districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the text books to be used in the public schools; to apportion and equalize the public school funds over the State; and generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto. All the powers enumerated in this section shall be exercised in conformity with this Constitution and subject to such laws as may be enacted from time to time by the General Assembly. (Pub. Laws 1941, ch. 151.)

1868 Constitution (amended 1944), Art. IX, Sec. 8. *State Board of Education*. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, except those mentioned in Section five of this Article, shall...[other provisions on board composition] The State Superintendent of Public Instruction shall be the administrative head of the public school system and shall be secretary of the board... [other provisions on board operations] (Sess. Laws 1943, ch. 468.)

### *State School Fund*

The State School Fund was first established in the Constitution of 1868. The Convention of 1875 altered provisions by shifting some sources of funds to a newly created County School Fund (see below), namely the proceeds from the sales of estrays, (stray livestock or other domesticated animals), from fines, penalties and forfeitures and “money paid as an equivalent for exemptions from military duty.” The 1868 Constitution stated that all these funds “shall be securely invested, and sacredly preserved as an irreducible educational fund.” This also was removed in the Constitutional Convention of 1875. The 1868 Constitution addressed that the separate fund sources would be combined with the ordinary revenue of the State “as may be necessary”. This was changed to “as maybe by law set apart for that purpose.” Further, the 1868 Constitution spoke of “establishing and perfecting” a system of free public schools which was substituted in the amendments from the 1875 Constitutional Convention with “establishing and maintaining” the system. The amended language continues in the 1971 Constitution with the following changes: eliminating “ordinary” from “ordinary revenue of the State”; added “uniform” to the description of a “uniform system of free public schools,” and the prohibition on the use of funds was changed from “for not other purposes or uses whatsoever” to “used exclusively.”

### *Current text.*

1971 Constitution, Art. IX, Sec. 6. *State school fund*. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

### *Historical development.*

1868 Constitution, Art. IX, Sec. 4. The proceeds of all lands that have been, or hereafter may be granted by the United States to this State and not otherwise

specially appropriated by the United States or heretofore by this State; also, all moneys, stocks, bonds, and other property now belonging to any fund for purposes of education; also, the net proceeds that may accrue to the State from sales of estrays, or from fines, penalties and forfeitures; also, the proceeds of all sales of the swamp lands belonging to the State; also, all money that shall be paid as an equivalent for exemption from military duty; also, all grants, gifts or devises that may hereafter be made to this State, and not otherwise appropriated by the grant, gift or devise, shall be securely invested, and sacredly preserved as an irreducible educational fund, the annual income of which, together with so much of the ordinary revenue of the State as may be necessary, shall be faithfully appropriated for establishing and perfecting in this State a system of Free Public Schools, and for no other purposes or uses whatsoever.

1868 Constitution (amended 1876), Art. IX, Sec. 4. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all moneys, stocks, bonds and other property now belonging to any State fund for purposes of education; also the net proceeds of all sales of the swamp lands belonging to the State, and all other grants, gifts or devises that have been or hereafter may be made to this State and not otherwise appropriated by the State or by the term of the grant, gift or devise, shall be paid into the State treasury; and, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining in this State a system of free public schools, and for no other uses or purposes whatsoever. (Convention of 1875, Ch. 26. Section four is stricken and two new sections inserted. The other new section relates to county fund.)

### *County School Fund*

The County School Fund was not included in the 1868 Constitution but was addressed in the amendments of the 1875 Constitutional Convention. As noted above, some of the sources of funds were shifted from the State School Fund to the County School Fund. The 1971 Constitution retains most of the language. It removed several sources of funds: net proceeds from the sale of estrays, fines for the breach of military laws, and moneys paid by persons as an equivalent for exemption from military duty. It changed from “net proceeds” to “clear proceeds” of all penalties, fines, and forfeitures. It also eliminated the requirement in the amendment from the 1875 convention that funds collected in each county be reported annually to the Superintendent of Public Instruction.

The 2004 amendment to the 1971 Constitution made clear that the General Assembly could place civil penalties, forfeitures, and fines collected by State agencies into a State fund to be appropriated by the General Assembly, on a per pupil basis, to the counties for maintaining free public schools. This is the only amendment to date to the 1971 Constitution in Article IX.

*Current text.*

1971 Constitution (amended 2004), Art. IX, Sec. 7. *County school fund; State fund for certain moneys.* (a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools. (Sess. Laws 2003, ch. 423, sec. 1.)

#### *Historical development.*

1868 Constitution (amended 1876), Art. IX, Sec. 5. All moneys, stocks, bonds and other property belonging to a county school fund; also the net proceeds from the sale of estrays; also, the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of the State; and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of the State: *Provided*, That the amount collected in each county shall be annually reported to the Superintendent of Public Instruction. (Convention of 1875, Ch. 26.)

1971 Constitution, Art. IX, Sec. 7. *County school fund.* All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

#### *Part III: Other Provisions in Article I, Declaration of Rights*

There are numerous other constitutional requirements that can have an impact on public schools, including the governor's authority, the judiciary, and individual rights, such as to free speech and religion. Providing textual comparisons in all of these areas is beyond this project. There are two provisions in the bill of rights that date to the 1776 Constitution that will be noted here, as they are included in later analysis.

#### *Exclusive Emoluments*

The restriction on receiving privileges or emoluments (some form of compensation) first appeared in the 1776 Constitution. It was included in the 1868 Constitution and was amended in 1946 along with other provisions that referenced men to make it gender inclusive. Other than changes in punctuation, capitalization, and adding gender inclusive language, the clause appears in the 1971 Constitution as it did in the 1776 Constitution.

*Current text.*

1971 Constitution, Art. I, Sec. 32. *Exclusive emoluments.* No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

*Historical development.*

1776 Constitution, Decl. of Rts., Sec. 3. That no Man, or set of Men, are entitled to exclusive or separate Emoluments or Privileges from the Community, but in Consideration of Public Services.

1868 Constitution, Art. I, Sec. 7. No man or set of men are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

1868 Constitution (amended 1946), Art. I, Sec. 7. Exclusive emoluments, et cetera. No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services. (Sess. Laws 1945, ch. 634.)

*Recurrence to Fundamental Principles*

A recurrence to fundamental principles to preserve the blessings of liberty was first stated in the 1776 Constitution. Other than changes in punctuation and capitalization and removing “that” from the beginning of the statement in the 1776 provision, the clause was included in the 1868 Constitution and 1971 Constitution.

*Current text.*

1971 Constitution, Art. I, Sec. 35. *Recurrence to fundamental principles.* A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

*Historical development.*

1776 Constitution, Decl. of Rts., Sec. 21. That a frequent Recurrence to fundamental Principles is absolutely necessary to preserve the Blessings of Liberty.

1868 Constitution, Art. I, Sec. 29. A frequent recurrence to fundamental principles, is absolutely necessary to preserve the blessings of liberty.

## *Voting Record and Sources*

This document has used copies of the constitutions and amendments to the constitutions from the session laws when it was proposed unless otherwise noted in the chart below. The voting records are from John L. Sanders, *Amendments to the constitution of North Carolina 1776-1996: a list of constitutions and constitutional amendments submitted to the qualified voters of the state, with the vote cast on each and the statement of the issue as it appeared on the ballot* (Institute of Government, University of North Carolina at Chapel Hill, 1997). The voting record for the 2004 amendment was published on the website of the State Board of Elections, [sss.sboe.state.nc.us](http://sss.sboe.state.nc.us).

<i>Constitution and Amendments</i>	<i>Source for Constitution and Amendments</i>	<i>Voting Record</i>
N.C. Const. of 1776	<i>23 State Records of North Carolina</i> 977 (Declaration of Rights), 980 (Constitution) (Goldsboro, Nash Brothers 1904).	Ratified by the Fifth Provincial Congress, December 17, 1776.
N.C. Const. of 1868	<i>Constitution of the State of North Carolina, together with the Ordinances and Resolutions of the Constitutional Convention, Assembled in the City of Raleigh, Jan. 14<sup>th</sup>, 1868</i> (Raleigh, 1868) .	Ratified April 21-23, 1868, 93,086 to 74,016.
N.C. Const. of 1868, art. IX, § 5 (amended 1873)	Pub. Laws 1871-72, ch. 53; Pub. Laws 1872-73, ch. 86; Pub. Laws 1872-73, ch. 153. <sup>1</sup>	Ratified August 7, 1873 67,839 to 30,728.
N.C. Const. of 1868, art. IX, §§ 2, 4 (amended 1876)	Convention of 1875, ch. 26, <i>Amendments to the Constitution of North Carolina, Proposed by the Constitutional Convention of 1875</i> (Raleigh, 1875).	Voters ratified a single ballot of 30 constitutional changes, November 7, 1876 by 120,159 to 106,554.

---

<sup>1</sup> The amendment repealed sections 5, 13, and 14 and replaced it with the new section 5. Requirements for constitutional amendments at this time required the General Assembly to enact the legislation in two sessions before being submitted to voters.

<i>Constitution and Amendments</i>	<i>Source for Constitution and Amendments</i>	<i>Voting Record</i>
N.C. Const. of 1868, art. XI, § 10 (amended 1880)	Pub. Laws 1879, ch. 314, amended by ch. 254.	Ratified November 2, 1880 by 87,163 to 70,459.
N.C. Const. of 1868, art. IX, § 3 (amended 1918) <sup>2</sup>	Pub. Laws 1917, ch. 192.	Ratified November 5, 1918 by 122,062 to 20,095.
N.C. Const. of 1868, art. IX, §§ 8, 9 (amended 1942)	Pub. Laws 1941, ch. 151.	Ratified November 3, 1942 by 148,517 to 109,798.
N.C. Const. of 1868, art. IX, § 8 (amended 1944)	Sess. Laws 1943, ch. 468.	Ratified November 7, 1944 by 164,723 to 107,742.
N.C. Const. of 1868, art. I, § 7 (amended 1946)	Sess. Laws 1943, ch. 468.	Ratified November 5, 1946 by 186,540 to 133,396.
N.C. Const. of 1868, art. IX, § 12 (amended 1956)	Sess. Laws 1956 (Ex. Sess.), ch. 1.	Ratified September 8, 1956 by 471,657 to 101,767.
N.C. Const. of 1971	Sess. Laws 1969, ch. 1258. <sup>3</sup>	Ratified November 3, 1970 by 393,759 to 251,132. Effective date, July 1, 1971.
N.C. Const. of 1971, art. IX, § 7 (amended 2004)	Sess. Laws 2003, ch. 423, § 1.	Ratified November 2, 2004 by 2,348,155 to 662,324.

---

<sup>2</sup> The same amendment was first rejected by voters in 1913 by a vote of 61,317 to 55,519, Pub. Laws. 913 (Ex. Sess.), ch. 81. The amendment did not write out the full provision and instead wrote that six months would replace four months.

<sup>3</sup> Six separate proposals for constitutional amendments were submitted at the same time as the rewritten constitution to voters addressing specific subjects of which five passed. None were related to public schools.