THE JOURNAL OF THE
WASHINGTON STATE
CONSTITUTIONAL CONVENTION
1889

with Analytical Index

by

Quentin Shipley Smith

Edited by
Beverly Paulik Rosenow

Analytical Index, Articles XVI-XXII (pp. 793-842)
lib.law.washington.edu/waconst/

William S. Hein & Co., Inc.
Buffalo, New York
1999
ARTICLE XVI SCHOOL AND GRANTED LANDS

Passage of this article as first reported by the committee was precluded by a section on tidelands. Sent back to the committee, the article was split into school lands (this article) and tidelands (Article XVII).

Two and a half million acres were provided by the Enabling Act for the support of schools. Some delegates believed enough money could be obtained from timber sales and the leasing or rental of the land to make sale of it unnecessary. However, the majority approved of sale with provisions limiting the amount sold in a certain time.

The Committee for State, School, and Granted Lands was appointed July 9, 11. (pp. 20, 48)

Members: Dunbar, chairman; Browne, Warner, Dickey, Minor, Henry, Shoudy, Schooley, Eldridge, Suksdorf, Travis, Cosgrove, Eshelman, Joy, Kellogg, Stiles, and Bowen.

Section 1

Present Language of the Constitution:

DISPOSITION OF. All the public lands granted to the state are held in trust for all the people and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States.

Original language same as present.¹

Proposition submitted to Convention by Tacoma Typographical Union No. 170, July 10:

That all school lands and lands ceded to the state by the United

¹ Shall Not Be Sold at Less Than Market Value: Hill, Prop. Wash. Const., Art. 12, sec. 1. [Identical.]
States be reserved forever, and that they be treated so as to secure the highest perpetual income to the schools. (p. 39)

Proposition submitted to Convention by Griffitts, July 10:

That there be no sale or transfer of land owned by the state at the time it becomes a state except those granted for scientific schools, normal schools, public buildings, and state charitable, educational, penal, and reformatory institutions. (p. 41)

Proposition submitted to Convention by Knights of Labor No. 115, July 25:

That school lands and all lands ceded to the state by the United States be reserved forever and treated so as to insure the highest possible perpetual income to the state and schools. (p. 149)

Text as given in report of committee, August 1:

Same as final except in the first line it has all the public lands "of the state" instead of "granted to the state." (p. 204)

Consideration by committee of the whole, August 14:

Motion: Cosgrove moved to insert after "state" in the fourth line: "Provided that the Legislature may donate to the United States such tracts of shore or other lands as may be needed by the government of the United States for establishing and maintaining defense works, arsenals, magazines and light houses."

Motion: Jones moved to amend the amendment to insert "forts."

Action: Motion carried.

Motion: Turner moved to amend the amendment to state that whenever such works, forts, arsenals, magazines, or lighthouses are abandoned, lands so granted shall revert to the state.

Action: Motion carried, and then Cosgrove's motion as amended carried 31 to 18.

Motion: Griffitts moved a substitute for the section. "No

land owned by the State of Washington, either by grant or otherwise at the time it becomes a state, for the establishment or maintenance of scientific schools, normal schools, public buildings, and state charitable, education, penal, and reformatory institutions, shall ever be sold or in any manner transferred but the title thereof shall remain forever in the state.

**Action:** Motion lost.

**Discussion as follows:**

**Against:** Dunbar said that under the Enabling Act the land could be leased for only five years, which would prevent the building of fine structures on that land. He believed that rented lands always depreciated. Cosgrove said that past experience with leasing had proved bad, since lands were exploited and left in poor shape. Turner thought the lands should be sold as soon as possible as leasing was too slow in bringing in money to the school fund. Browne said the Enabling Act contemplated selling the land and that the provisions for the short-term lease were to enable the land to sell better.

**Motion:** Browne moved to amend by adding that lands may be leased, under legislative regulation, for not more than five years, except as provided in this Constitution and in quantities not exceeding one section to any one person or company.

**Action:** Motion lost.

Action by Convention, August 17:

Decision of committee of the whole accepted. (p. 377)

**Motion:** Griffitts moved to substitute that there be no sale of state owned lands except that for public institutions, normal schools, and scientific schools.

**Action:** Motion lost 53 to 16. (p. 384)

**Voting for:** Berry, Blalock, Comegys, Crowley, Eldridge, Glascock, Gray, Griffitts, Hicks, Mires, J. Z. Moore, Prosser, J. M. Reed, Sharpstein, E. H. Sullivan, and Warner. **Not voting:** Durie, Godman, Manly, and McDonald. **Absent on leave:** Hungate and Neace.
Motion: Jones moved to extend the donation of land to the United States to include "docks and dockyards".

Action: Motion carried.

Action by Convention, August 19:

Article failed at third reading. (p. 401)

Motion: Turner moved that the article be sent back to the committee for separate articles on tidelands and state and school lands.

Action: Motion carried. (p. 405)

Text as given in second report of committee, August 20:

Same as final except that in the first line it has all the public lands "of the state" instead of "granted to the state." (p. 415)

Final action by Convention, August 20:

Motion: Stiles moved to insert "granted to the state" after "lands" in the first sentence.

Action: Motion carried. (p. 427)

Section 2

Present Language of the Constitution:

MANNER AND TERMS OF SALE. None of the lands granted to the state for educational purposes shall be sold otherwise than at public auction to the highest bidder, the value thereof, less the improvements shall, before any sale, be appraised by a board of appraisers to be provided by law, the terms of payment also to be prescribed by law, and no sale shall be valid unless the sum bid be equal to the appraised value of said land. In estimating the value of such lands for disposal, the value of the improvements thereon shall be excluded: Provided, That the sale of all school and university land heretofore made by the commissioners of any county or the university commissioners when the purchase price has been paid in good faith, may be confirmed by the legislature.

Original language same as present. 4

3. Tacoma Morning Globe, August 18, 1889.
4. Educational Lands Sold to Highest Bidder: Wash., Enabling Act, Sec. 11; Hill, Prop. Wash. Const., Art. 11, sec. 10; Minn., Const. (1857), Art. 8, sec. 2. [Similar in substance.]
Proposition submitted to Convention by Prosser, July 12:

That the school lands are never to be sold or donated for any purpose and the timber and other perishable property may be sold on terms set by the Legislature. Lands may be leased and the money from this and the sale of timber is to go in the common school fund. (p. 69)

Proposition submitted to Convention by Hicks, July 12:

That school lands may be sold and the proceeds shall go in a permanent fund, only the interest of which is to be used for schools. (p. 71)

Text as given in report of committee, August 1:

"None of the lands granted to the state shall be sold otherwise than at public auction to the highest bidder after the value thereof, less the improvements, shall be appraised by a board of appraisers to be provided by law, the terms of payment also to be prescribed by law, and no sale shall be valid unless the sum bid be equal to the appraised value of said land." (Section 3, p. 204)

Text as given in minority report submitted by Cosgrove, August 2:

Provided for sale at public auction with appraisal of lands before sale less improvements and if the purchaser is the owner of the improvements he may deduct them from the purchase price as low as the assessed valuation. (p. 216)

Text as given in minority report submitted by Browne, Schooley, Travis, and Suksdorf, August 6:

Provided for sale by auction at a price no lower than that set by appraisers, excluding improvements on the land at February 22, 1889. Ten dollars an acre to be set as the minimum price and lease to be for a maximum of five years. Not over one section to be sold to one person or corporation. (Sections 1 and 2, p. 249)

Consideration by committee of the whole, August 15:

Motion: Cosgrove offered his minority report as a substitute.

Action: Motion lost.

5. Globe, August 16, 1889.
Motion: Gowey moved to amend by adding, “And land so sold shall be advertised for a period of at least thirty days prior to the date of sale, in some paper of general circulation in the county where such lands are located.”

Action: The motion was left pending when the committee rose to report progress to the convention, but on a vote the next day it was lost.

Further consideration by committee of the whole, August 16:

Motion: Bowen moved to strike out “less the improvements” and add: “And the Legislature shall provide that an amount be paid to all parties who have made bona fide improvements upon said lands, equal to the increased valuation of said lands on account of said improvements.”

Motion: Browne offered a substitute for the amendment: “In estimating the value of such lands for disposal, the value of the improvements thereon on the 22nd day of February, A.D. 1889, shall be excluded and said improvements shall not be deemed the property of the state.”

Action: Browne’s motion carried and this substitute for Bowen’s amendment was adopted.

Motion: Crowley moved to amend by adding: “Provided, that the sale of all school and university lands heretofore made by the commissioners of any county or the university commissioners when the purchase price has been paid in good faith, is hereby ratified and confirmed.”

Motion: After discussion began on Crowley’s amendment, Sharpstein offered an addition to the amendment which was accepted by Crowley. “Provided, that the sale of all school and university lands heretofore made by the commissioners where the purchase price has been paid in good faith, may be confirmed by the Legislature.”

Action: Motion carried.

Discussion as follows:

For: Sharpstein said the proceeds from the sale of these university lands had been squandered, but the people who

ARTICLE XVI § 2

... purchased the lands in good faith should be protected. The state should instead punish the men who misappropriated the funds, he said, but since he did favor leaving the matter in the hands of the Legislature, his motion was made to that effect. Crowley said the state had taken the money of the purchasers and used it and should do justice to those who had acted in good faith. Stiles thought that without an amendment, no equitable claim could later be presented to the Legislature.

Against: Turner said the Convention was making a mistake by confirming titles. J. Z. Moore spoke in opposition to the Convention turning into a court of chancery to settle land titles. J. M. Reed did not see how the Convention could confirm the titles since the Enabling Act provided that the state should receive ten dollars an acre for the lands. E. H. Sullivan did not think the Convention should further consider private interests. Browne thought the matter should be left entirely to the Legislature. He said the Convention did not have enough information about these sales. Warner said that he did not know how the state could overcome the provision in the Enabling Act that it must receive ten dollars per acre. He feared that if the provisions of that Act were disregarded, the titles would be void whether they were confirmed by the Convention or not. Turner agreed. He said the Convention had no right to direct the Legislature to validate an invalid act.

The substitutes and the amendments thereto were adopted by a vote of 27 to 21.

Motion: Prosser offered the following as a substitute for the entire section. "Sections numbered 16 and 36 in each township of the State of Washington have been received from the government of the United States for the purpose of being applied to the support of the common schools in the State of Washington, and the lands within the sections aforesaid shall never be sold, but shall remain the property of the state forever. Timber, stone or perishable property thereon, after due appraisement, may be sold under such terms and conditions as may be prescribed by law. The school lands of the state shall be appraised and leased in such manner and under such terms..."
and conditions as may be prescribed by the Legislature, which shall also provide by law for the protection of the school lands from trespass or unlawful appropriation, and for their defense against all unauthorized claims or efforts to divert them, or the income therefrom, from the school fund of the state."

**Action:** Motion lost.

**Discussion as follows:**

**For:** Prosser spoke for over half an hour in favor of his substitute. Reviewing the history of school lands from 1785 to the present, he argued that wherever lands had been sold the income had been diverted or misappropriated. He said the sale of school lands had been a continual source of corruption and fraud, and he opposed leaving the matter to the Legislature. He suggested selling the timber from these lands to raise an immediate fund. Griffitts and J. Z. Moore favored this leasing proposition.

**Against:** Cosgrove, Bowen, and Dunbar favored the sale of lands.

**Action by Convention, August 17:**

Decision of committee of the whole accepted. (p. 378)

**Motion:** Prosser again offered his section providing for the leasing of school lands, but declared the title to be in the state forever.

**Action:** Motion lost 43 to 22.


---

7. Globe, August 18, 1889.
Action by Convention, August 19:

Article failed at third reading. (p. 401)

**Motion:** Turned moved that the article be sent back to committee for separate articles on tidelands and state and school lands.

**Action:** Motion carried. (p. 405)

Text as given in second report of committee, August 20:

Same as final except that it did not include the provision concerning the previous sales of school and university lands and required that improvements on the 22nd of February, 1889, be excluded. (p. 416)

Final action by Convention, August 20:

**Motion:** Dunbar moved to strike out “on the 22nd day of February, 1889.”

**Action:** Motion carried. (p. 426)

**Motion:** Crowley moved to add that previous sales of school and university lands in good faith be confirmed.

**Action:** Motion carried. (p. 427) The vote is given as 29 to 21 in the Globe.  

Section 3

Present language of the Constitution:

**LIMITATIONS ON SALES.** No more than one-fourth of the land granted to the state for educational purposes shall be sold prior to January 1, 1895, and not more than one-half prior to January 1, 1905: provided, that nothing herein shall be so construed as to prevent the state from selling the timber or stone off of any of the state lands in such manner and on such terms as may be prescribed by law: and provided, further, that no sale of timber lands shall be valid unless the full value of such lands is paid or secured to the state.

Original language same as present.

Proposition submitted to Convention by Hicks, July 12:

That only one-fourth of any section be sold in five years, one-half in ten years, and three-fourths in fifteen years. (p. 71)

Text as given in majority report of committee, August 1, signed by Bowen, Dunbar, Kellogg, Dickey, Shoudy, Eshelman, Stiles, Henry, Joy, Eldridge, and Minor:

Same as final except that it provided a sale limit of one-third before 1895, and two-thirds before 1900, and it omits "stone" after "timber." (Section 4, p. 205)

Text as given in minority report submitted by Warner, August 5:

Provided for sale by county commissioners, one-fifth cash and the rest mortgaged for thirty years, with the interest determined by law. Provided not to sell the timber land, but timber and coal land to be leased at a royalty fixed by law. (p. 233)

Consideration by committee of the whole, August 16:9

Motion: Browne moved a substitute. "Not more than one-fourth of each section of land granted to the state for educational purposes shall be sold prior to January 1, 1895, and not more than one-half prior to January 1, 1900, and not more than three-fourths prior to January 1, 1905."

Action: Motion lost by a large majority.

Discussion as follows:

For: Browne said he believed in the gradual sale of the lands so that the state could realize the full benefit as the lands increased in value.

Against: Power did not consider it proper for the state to speculate with property held in trust. Cosgrove thought the substitute dangerous. He favored selling all the lands that would bring ten dollars or more at once to make an immediate fund. Dunbar thought the proposal an impractical scheme since the land would have to be sold for what it would bring at periods fixed by law. Stiles thought the Convention should confine itself to placing certain restrictions on the Legislature on this subject. T. M. Reed favored the committee report.

Motion: T. M. Reed moved that “stone” be included in the property that could be sold off school lands.

Action: Motion carried.

Action by Convention, August 17:

Decision of committee of the whole not accepted. (p. 378)

Motion: Browne moved to add “of each section” after “two-thirds.”

Action: Motion carried 35 to 31. (pp. 383-4)


Motion: Prosser moved to change 1895 to 1900 and 1900 to 1920.

Action: Motion lost 38 to 29. (p. 385)


Action by Convention, August 19:

Article failed at third reading. (p. 401)

Motion: Turner moved that the article be sent back to the committee for separate articles on tidelands and state and school lands.

Action: Motion carried. (p. 405)

Text as given in second report of committee, August 20:

Same as final. (p. 416)
Final action by Convention, August 20:

**Motion:** Browne moved to strike out all the first sentence down to, and including 1905, and substitute “Not more than one section in each township shall be sold prior to January 1, 1900.”

**Action:** Motion lost 38 to 19. (p. 427)


**Section 4**

Present Language of the Constitution:

**HOW MUCH MAY BE OFFERED IN CERTAIN CASES—PLATTING OF.** No more than one hundred and sixty (160) acres of any granted lands of the state shall be offered for sale in one parcel, and all lands within the limits of any incorporated city or within two miles of the boundary of any incorporated city where the valuation of such land shall be found by appraisement to exceed one hundred dollars ($100) per acre shall, before the same be sold, be platted into lots and blocks of not more than five acres in a block, and not more than one block shall be offered for sale in one parcel.

Original language same as present.10

Proposition submitted to Convention by Hicks, July 12:

That the lands be subdivided to get the highest price. (p. 71)

Text as given in report of committee, August 1:

“Not more than one quarter of a section of any lands of the state shall be offered for sale in one parcel and all lands within the limits of any incorporated city or within one mile of the boundary of any incorporated city where the valuation of such land shall be found by appraisement to exceed two hundred

---

10. Subdivision of: [Probably original.]
dollars per acre shall before the same be sold be platted into lots and blocks of not more than four acres in a block and not more than one block shall be offered for sale in one parcel.”

(Section 5, p. 205)

Text as given in minority report submitted by Browne, Schooley, Travis, and Suksdorf, August 6:

Provides for plots of five acres per block if in a city where valuation is one hundred dollars per acre. (p. 249)

Consideration by committee of the whole, August 16:

Motion: Joy moved to amend so as to include the entire section, any portion of which is within a mile of a city.

Action: Motion lost.

Motion: Stiles moved to strike out “parcel”.

Action: Motion withdrawn.

Motion: Browne moved to substitute for the section: “Not more than one-quarter section of any lands belonging to the state shall be offered for sale in one parcel, and all lands within the limits of any incorporated city or town where the valuation of such lands shall be found by appraisement to exceed one hundred dollars per acre, shall before the same is sold, be platted in lots and blocks of not more than five acres in a block and not more than one block shall be offered for sale in one parcel.”

Action: Motion lost.

Motion: Stiles moved to strike “four” acres and change it to read “five” acres.

Action: Motion carried 30 to 19.

Action by Convention, August 17:

Decision of committee of the whole accepted. (p. 379)

Motion: Griffitts moved to strike out “one” in the first sentence and substitute “two.”

Action: Motion carried. (p. 384)

Motion: Stiles moved to strike out "lots and blocks" after "platted" and "lots" after "acres."

Action: Motion lost. (p. 384)

Action by Convention, August 19:

Article failed at third reading. (p. 401)

Motion: Turner moved that the article be sent back to the committee for separate articles on tidelands and state and school lands.

Action: Motion carried. (p. 405)

Text as given in second report of committee, August 20:

Same as final except that it did not use "granted" in the first line and had a two hundred dollar valuation. (p. 416)

Final action by the Convention, August 20:

Motion: Berry moved to change two hundred dollars to one hundred dollars.

Action: Motion carried. (p. 428)

Motion: Shoudy moved to add that not more than one-half of the said lots and blocks be sold prior to January 1, 1890.

Action: Motion lost. (p. 428)

Motion: P. C. Sullivan moved to insert the word "granted" after "any" in line one.

Action: Motion carried 34 to 29. (pp. 427-8)


Section 5

Present Language of the Constitution:

INVESTMENT OF SCHOOL FUND. None of the per-
manent school fund of this state shall ever be loaned to private persons or corporations, but it may be invested in national, state, county, municipal or school district bonds. [1893 p 9 § 1. Adopted November, 1894.]

Original language:12

None of the permanent school fund shall ever be loaned to private persons or corporations, but it may be invested in national, state, county, or municipal bonds.

Proposition presented to Convention by Sohns, July 12:

That the proceeds from the sale of school lands may be loaned to the state and to municipal corporations, the bonds to run fifteen to twenty-five years at no less than four per cent interest. (p. 86)

Text as given in report of committee did not suggest this section for the article.

Action by Convention, August 19:

Motion: Crowley moved to suspend the rules and consider for an additional section the provision that money from school lands is not to be loaned to private persons or corporations, only to national, state, county, or municipal corporations.

Action: Motion lost. (p. 400)

Action by Convention, August 20:13

Motion: T. M. Reed offered the following additional section: “None of the permanent common school fund shall ever be loaned to private persons or corporations, but may be invested in national, state, county or municipal bonds.”

Action: Motion carried.

Passage of Article

Article on School and Granted Lands approved by Convention, August 21, by a vote of 48 to 23. (pp. 435-6)

Voting against: Burk, Coey, Eldridge, Glascock, Gowey, Griffitts, Henry, Hicks, Jamieson, Jones, McDonald, McReavey, J.

12. Investment of Funds: Minn., Const. (1857), Art. 8, secs. 2, 6; Mo., Const. (1875), Art. 11, sec. 9; Tex., Const. (1878), Art. 7, secs. 4, 11. [Similar.]

Protest against the sale of school lands was filed by Prosser, Jones, Griffitts, and Blalock, August 22:

Reasons given: It is unnecessary as enough money can be had from lease, rental, and sale of timber. Competing in a market with national and Northern Pacific Railway lands, school lands could not be sold for their real value. There is too much pressure on legislatures by interested groups, as shown by experiences in other states, to leave the sale of these lands in legislative hands. (p. 457)
ARTICLE XVII

This article caused more argument and divergence of opinion than any other. A strong lobby favored unlimited sale of tidelands. Many delegates wanted no constitutional reference to tidelands, thus enabling the Legislature to dispose of them.

This desire to leave the question to the Legislature was labeled by the Seattle Post Intelligencer as a scheme of "corporations and land grabbers" to buy the land at a low appraised valuation.¹

A group of "old settlers," among whom were Edward Eldridge and Thomas Burke, signed a petition asking for the protection of clams. The petition wanted all rights of early settlers recognized and suggested tearing down improvements on tidelands and reseeding to clams.² The Anacortes Progress called it nothing short of a "gross injustice" to declare state ownership of these lands because of the years of toil which the settlers had expended upon them.³

The Tacoma Daily Ledger reported that many people wondered about Durie, who owned tidelands on Elliott Bay, being chairman of the committee on Harbors, Tidewaters, and Navigable Streams.⁴ President Hoyt explained that the question of tidelands would be handled by the Committee on State, School, and Granted Lands, which was headed by Dunbar, an inland man.

The view of the Committee on Tidelands was said by the Ledger to be changing from an original desire for no sale of tidelands by the state, to an approval of sale with protection for previous owners. This change was attributed to the activities of a large lobby in Olympia.⁵

Those Convention members who wanted the state to keep the title to tidelands made determined efforts to prohibit their sale. They failed to get such a statement in the articles on School and Granted Lands, Harbors and Tidewaters, and Schedule.

It was not until the final session that a separate article was approved declaring ownership of tidelands to be in the state. Mires,

1. Seattle Post Intelligencer, August 5, 1889.
3. Anacortes Progress, August 3, 1889.
5. Ledger, July 19, 1889.
who introduced the article, later wrote of meeting with the opposition and effecting a compromise the night before the adjournment of the Convention. He indicates a strong lobby with intention to steal the tidelands. He also mentioned the presence of Stiles who had “consistently opposed every move for a constitutional provision on the subject of tidelands.”

In an editorial on the finished Constitution, the Post Intelligencer criticized the Convention for its failure to define the policy of the state more definitely in the matter of its tideland property.

The Committee for Tidelands was appointed July 9 and July 11. It was the same as the Committee for State, School, and Granted Lands. (pp. 20, 48)

Members: Dunbar, chairman; Browne, Warner, Dickey, Minor, Henry, Shoudy, Schooley, Eldridge, Suksdorf, Travis, Cosgrove, Eshelman, Joy, Kellogg, Stiles, and Bowen.

Section 1

Present Language of the Constitution:

DECLARATION OF STATE OWNERSHIP. The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided, that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state.

Original language same as present.

Petition presented to Convention by Tacoma Typographical Union No. 170, July 10:

That the tidelands be forever reserved to the state. (p. 39)

Proposition submitted to Convention by Prosser, July 10:

That the tidelands are the property of the state by the right

7. Post Intelligencer, August 23, 1889.
8. Claim of State: Plea of Hill in connection with his proposed article 9 is probably responsible for this article. See decision in case of Hinman v. Warren, 6 Ore. 408.
of eminent domain and are not to be sold or donated, but the Legislature may prescribe terms of lease for not over twenty-one years. (p. 42)

Proposition submitted to Convention by Griffitts, July 10:

That there be no sale of any lands owned by the state at the time it becomes a state except some granted for educational purposes. (p. 41)

Proposition submitted to Convention by Durie, July 12:

Not to validate the act of the Territorial Legislature of 1873 in confirming a grant of tidelands by Seattle to the Seattle and Walla Walla Railway. (p. 75)

Proposition submitted to Convention by Hicks, July 12:

That the Legislature be forbidden to sell or dispose of the tidelands to any individual or corporation other than municipal to which they may be leased for not over fifty years and not over one hundred forty acres to the same municipality. (p. 85)

Text as given in report of Committee for Article on School and Granted Lands, August 1:

“No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in the state shall be permitted to exclude the right of way to such waters whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such waters, and the Legislature shall enact such laws as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof.” (Section 2, p. 204)

Text as given in minority report submitted by Dickey, Bowen, Eldridge, Kellogg, Joy, and Shoudy, August 1:

“All persons occupying shore lands and having thereon valuable improvements in actual use and necessity for commerce, trade, or business (such lands being other than the extension of any street, alley or public highway) shall have the prior right to purchase as much of said shore lands as may be necessary for the purpose for which such improvements were made, at the valuation fixed by a board of appraisers, which board
shall fix such valuation irrespective of the improvements thereon." (Section 7, p. 206)

Consideration by committee of the whole, August 14:9

Motion: Turner moved a substitute to the section. "The State of Washington by virtue of its inherent sovereignty is the owner of the beds and shores of all navigable waters in the state up to and including the line of high water in all rivers, lakes and no act of the Territory of Washington or any of its officers or agents, and no act of any individual or corporation in pursuance of a claim of private right, shall be permitted to prejudice the state in the assertion and maintenance of such ownership."

Action: Further discussion was postponed until the next day. The substitute then carried 36 to 33.

Discussion as follows:

For: Turner insisted that title to the lands up to ordinary high tide were vested in the state, that he was sustained by the United States Supreme Court in this belief, and that the United States patents could not extend below ordinary high tide even if the meander line did so extend. McElroy and Dunbar supported him.

Against: Hoyt admitted the legal status of the matter but he thought it was a great wrong to parties who had purchased these lands in good faith and had received United States patents. He believed that the state should relinquish its right to lands covered by United States patents. E. H. Sullivan and J. Z. Moore maintained that the equities of this matter should be left to the Legislature and the courts.

Consideration by committee of the whole, August 15:10

Motion: Stiles moved to strike all of Turner's substitute after "lakes."

Action: Motion lost.

10. Seattle Times, August 15; Ledger, Tacoma Morning Globe, Standard, August 16, 1889.
Discussion as follows:

For: Stiles spoke in defense of the riparian rights of those persons whose lands abutted upon the tidelands. He thought these property owners should have the right to attempt to establish their rights in court. He quoted a court decision [Barney v. City of Keokuk, 94 U. S. 324 (1877)] to show that title to lands under rivers was in the state. Weir supported Stiles. T. M. Reed said that the state had no sovereignty until it became a state, and therefore it could not declare its sovereign power. He wanted to substitute “meander line” for “high water mark” to protect the vested rights of riparian owners. Blalock feared that if Turner’s substitute were adopted without amendment it would confiscate valuable farms on the Columbia which were flooded.

Against: Turner cited the law of 1873 which granted certain tidelands to the Seattle and Walla Walla Railway and said that the law was not valid but that a constitutional statement was needed to so declare it. He refuted Stiles’ construction of the case the latter had cited. Turner said the United States Supreme Court had therein held that the ownership of tide or shore lands was in the state by its inherent right, and he declared that the state had the power to protect that right. Kinnear considered the railway grant illegal and thought the Constitution should so declare. He believed that the United States Constitution would protect its rights so Stiles’ substitute would not be valid. Dunbar said that the United States never had any title to such lands but only held them in trust for the state. He concluded that the federal government had no right to survey below ordinary high water mark.

Motion: At Godman’s suggestion, Turner amended his substitute so that it fixed the limit in rivers at ordinary high waters.

Action: Turner’s substitute as amended carried 36 to 33.

Action by Convention, August 17:

Decision of committee of the whole accepted 43 to 26.

(p. 378)
Motion: Stiles moved to add “Provided that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state.”

Action: Motion carried 44 to 19. (pp. 382-3)

Motion: Weir moved to adopt a new section which gave prior purchase right to shore lands to those who owned land abutting on them and had put on improvements necessary for business.

Action: Motion carried 44 to 25. (pp.381-2)

Article (including these two sections on tidelands) passed to its third reading 46 to 22. (pp.385-6)

Motion: Weisenburger moved to suspend the rules and put the article on its final passage.

Action: Motion lost 35 to 35. (p. 383)

Action by Convention, August 19:

Motion: Kinenar moved to amend the section concerned with prior rights of purchase to include those who had in good faith made valuable improvements on shore lands.

Action: Motion lost. (p. 400)

Article failed to get the necessary majority for final agreement with 35 for and 34 against. (p. 401)


Article referred to the Committee for Separate Articles on Tidelands and School Lands. (p. 405)

Text as given in report of Committee for Separate Articles, August 20:

"The State of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided, that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state." (p. 414)

Action by Convention, August 20:

Motion: Sohns moved to amend by striking out all that related to navigable rivers and streams.

Action: Motion carried 38 to 30. (pp. 422-3)

Voting against: Allen, Berry, Buchanan, Coey, Cosgrove,

Motion: Turner moved a substitute which provided that nothing was to prejudice the ownership of the state to tidelands except those reserved by the Constitution for harbors.

Action: Motion lost 48 to 20. (pp. 421-2)


Motion: Browne moved a substitute which provided for the right of the state to sell tidelands at public auction following appraisal for value and giving prior purchase rights to any owner with improvements on this land. The sale would be limited to one forty acre tract to each purchaser with the proceeds going into the permanent school fund.

Action: Motion lost 42 to 27. (pp. 424-5)


Article was passed to the third reading. (p. 426)

Motion: Dickey moved to suspend the rules and place the article on its final passage. (p. 426)

Action: Motion lost for lack of the necessary two-thirds with 42 for and 27 against.

Action by Convention, August 21:

Final agreement to the section was lost 40 to 32. (p. 435)

Action by Convention, August 17 (Attempt to get into article on Harbors):

Motion: Griffitts moved a substitute for Section 1 that the state was not to sell any land except that granted for higher schools and institutions.

Action: Motion lost 53 to 16. (p. 384)


Motion: Browne moved an additional section which would allow the Legislature to divide the tidelands into small lots for sale or lease to the public.

Action: Motion lost. (p. 385)

Action by Convention, August 21 (Attempts to get into article on Schedule):

Motion: Turner moved an additional section. "The State of Washington hereby asserts its ownership of the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide in waters where the tide ebbs and flows and up to and including the line of ordinary high water within the banks in all rivers and lakes. Provided that nothing herein shall be construed to debar any person or corporation from asserting vested rights in the courts and provided further, that the state hereby disclaims title to any tide, swamp, or overflow lands to which patent had issued under the laws of the United States to persons acquiring the same in good faith and without fraud unless said lands are included within the reservation for harbor purposes by this Constitution and in which case the title of the state to the same shall be maintained." (p. 438)
**Motion:** E. H. Sullivan moved an amendment to Turner’s section which would allow the Legislature to adjust claims of those having necessary improvements and owning abutting land to purchase a limited amount for a limited time but not without appraisal and confirmation by the Governor, Secretary of State, and the Attorney General.

**Action:** Motion lost 48 to 25. (pp. 439-40)


**Motion:** Lillis moved a substitute for Turner’s section which was the same except that it left out the second proviso.

**Action:** Motion lost. (p. 441)

**Action:** A vote was then taken on Turner’s section and it was lost 46 to 27. (p. 442)

**Voting for:** Blalock, Clothier, Dallam, Dunbar, Durie, Dyer, Fairweather, Glascock, Gowey, Hayton, Hicks, Kinnear, Lindsley, Manly, McElroy, Minor, Mires, R. S. More, Prosser, T. M. Reed, Schooley, Shoudy, Stiles, Tibbetts, Turner, Weisenburger, and Hoyt. Absent: Hungate and Neace.

**Motion:** Joy moved an additional section “The State of Washington by virtue of its sovereignty is the owner of the beds and shores of all the navigable waters of the state and all of the tidelands lying along the shores of the Pacific Ocean below high water mark and the beds and banks of all streams that are navigable up to the ordinary high water mark within the bank thereof.”

**Action:** Motion lost 42 to 27. (pp. 442-3)

Motion: Dyer moved an additional section the same as Section 1 in final article on tidelands.

Action: Motion lost 34 to 32. (p. 444)


Motion: McElroy moved to add as a separate section "The title in fee and absolute right of disposition of all shores below ordinary high tide, within the limits of this state is hereby declared to be in this commonwealth and the property of the state."

Action: Motion carried 48 to 28. (p. 447)


Article sent to Judicial Committee to be made congruous. (p. 448)

Judicial Committee report, August 22:

Recommended that the tideland and patent sections be voted on as separate articles. (p. 452)

Final action by Convention, August 22:

Motion to pass tideland section (see McElroy's section above) to a third reading lost 36 to 35. (p. 453)

Voting for: Berry, Blalock, Browne, Buchanan, Clothier, Coey, Comegys, Dallam, Durie, Dyer, Eshelman, Godman, Gowey, Gray, Griffitts, Hicks, Jeffs, McCroskey, McDonald, McElroy, Mires, J. Z. Moore, R. S. More, Newton, J

Motion: Mires moved a section the same as final.

Action: Motion carried 56 to 15. (p. 456)


Section 2

Present Language of the Constitution:

DISCLAIMER OF CERTAIN LANDS. The state of Washington disclaims all title in and claim to all tide, swamp and overflowed lands, patented by the United States: Provided the same is not impeached for fraud.

Original language same as present.\(^\text{11}\)

Proposition submitted to Convention by Power, July 10:

That the state shall confirm all patents and grants of land made by the United States to settlers and purchasers of tide marsh lands. (p. 44)

Text as given in report of Committee for Article on School and Granted Lands, August 1:

"The State of Washington disclaims any right in or claim to any lands covered by patents of the United States lying beneath the navigable waters of the state; provided the same is never impeached for fraud." (Section 6, p. 205)

Consideration by committee of the whole, August 15:\(^\text{12}\)

Two additional sections not given in the committee report, but relating to this subject, were proposed and concurred in.

First Additional Section

Motion: Hoyt offered the following section which was desig-

---

\(^{11}\) Ownership Disclaimed to Certain Lands: Wash., Enabling Act, Sec. 17. [Enabling Act substitutes other lands in lieu of "Swamp and overflowed lands." ] Wash., Const. (1878), Art. 15, sec. 10. [This section disclaims the effect of above (see sec. 1) decision of Hinman v. Warren.]

\(^{12}\) Ledger, Globe, August 16; Standard, August 23, 1889.
nated Section 3 by the committee and Section 3 of the original report became Section 5 in the order of consideration.

“All patents of the United States purporting to grant to individuals lands between high tide and the meander line of the United States survey shall have the same force and effect as though such lands were above high water.”

Motion: Crowley offered this amendment to the section. “The State of Washington disclaims title to all school lands heretofore sold by the commissioners of any county pursuant to territorial statutes where the purchase price has been paid in good faith.”

Action: Crowley withdrew his amendment after discussion on Hoyt’s section began.

Motion: Turner offered a substitute for the substitute and the amendment.

Action: Ruled out of order.

Motion: Turner offered a substitute for the section which provided that the Legislature could make laws to confirm and validate title to the tide and shore lands under patents from the United States, or by means of a conveyance from the patentees of the United States provided that the state should not part with the title to lands necessary for harbor purposes.

Action: Motion lost 39 to 26.

Motion: On motion of Kinnear, Hoyt’s section was made to read: “The State of Washington disclaims any right in, or claim to homestead, preemption or donation land claims, covered by patents of the United States lying below the high water mark in the navigable waters of the state.”

Action: Hoyt’s section as amended was finally adopted. The Globe gives the vote as 37 to 20; the Standard records it as 36 to 20.

Discussion as follows:

For: Hoyt opposed postponement of this question for the Legislature. He said until the question of high water mark was settled there would be a delay in the building projects in Seattle, and the money lenders would with-
hold their loans until these patents were confirmed. Weisenburger thought the United States grants were permanent as they were and that such laws were sovereign. He said the government claimed these lands by right of discovery and right of possession and until it parted with these lands to the state, title was firmly vested in it. Cosgrove and Godman wanted to confirm these patents. Kinnear said that the United States had the right to these lands based on discovery. He pleaded against ousting the old settlers from them.

Against: J. Z. Moore wanted to leave the question to the Legislature since he did not believe the Convention was well enough informed as to the status of these lands. E. H. Sullivan was willing to confirm old donation land claims but not all United States patents. He protested against the land speculators who had grabbed these lands in order to realize a profit. P. C. Sullivan did not think the Convention should sit as a court arbitrating matters between private individuals. Weir and Turner agreed that it was a question for the Legislature and the courts.

Second Additional Section

Motion: Glascock offered the following additional section which was designated Section 4 in the order of discussion. “The first Legislature shall provide for a commission, the duty of which shall be to make a full investigation of the facts concerning tidal or shore lands, and report such facts to the Legislature, together with such recommendations as are in their judgment advisable. The Legislature shall provide by law for the sale or leasing of tidal or shore lands, provided no such law shall go into effect until it shall have been enacted by two Legislatures, one succeeding the other, and be signed by the Governor.”

Motion: Turner moved to strike the proposed proviso and insert the following: “The Legislature shall provide by law for the leasing or sale of its tidal, or shore lands, but no law for the sale of said lands shall go into effect until it shall have been enacted by two Legislatures, one succeeding the other.”

Action: Turner’s proviso carried and then Glascock’s section as amended was adopted.
Action by Convention, August 17:13

The section known as Section 6 in the committee report was concurred in without debate or opposition.14

The additional section proposed by Hoyt was adopted 45 to 23. (p. 378)

**Voting against:** Berry, Coey, Dallam, Fairweather, Gray, Griffitts, Hicks, Manly, McCroskey, McDonald, Mires, J. Z. Moore, R. S. More, Newton, J. M. Reed, Sturdevant, Suksdorf, E. H. Sullivan, Travis, Turner, Van Name, Warner, and Willison. **Absent or not voting:** Comegys, Eldridge, Godman, Gowey, Hayton, Hungate, and Neace.

The additional section proposed by Glascock was lost 36 to 32. (pp. 378-9)


Action by Convention, August 19:

Article failed at third reading. (p. 401)

**Motion:** Turner moved that the article be sent back to committee for separate articles on tidelands and state and school lands.

**Action:** Motion carried. (p. 405)

---
13. Times, August 17; Spokane Falls Review, Globe, August 18; Standard, August 23, 1889.
§ 2    ANALYTICAL INDEX

Text as given in report of committee for separate articles, August 20:

"The State of Washington disclaims all title in and claim to all tide, swamp, and overflowed lands patented by the United States." (p. 414)

Action by Convention, August 20:

Motion: Godman moved to strike the section.

Action: Motion lost 49 to 19. (pp. 425-6)


Article was passed to the third reading. (p. 426)

Motion: Dickey moved to suspend the rules and place the article on its final passage.

Action: Motion lost for lack of the necessary two-thirds with 42 for and 27 against. (p. 426)

Action by Convention, August 21:

Final agreement to the section lost 40 to 32. (p. 435)

Action by Convention, August 21 (Attempt to get into article on Schedule):

Motion: Joy moved an additional section. "The State of Washington disclaims any right or claim to any homestead preemption or donation land claims covered by patents of the United States below high water mark."

Action: Motion lost 42 to 27. (p. 443)

Motion: Power moved an additional section same as final.

Action: Motion carried 43 to 26. (p. 443)


Motion: Suksdorf moved to strike “tide” and ·insert “salt marsh.”

Action: Motion lost. (p. 443)

Article sent to Judicial Committee to be made congruous. (p. 448)

Judicial Committee report, August 22:

Recommend that the tide and patent sections be voted on as separate articles. (p. 452)

Final action by Convention, August 22:

Motion: Power moved to consider the article on patents.

Action: Motion lost. (p. 453)

Patent article agreed to 41 to 30. (p. 455)


Deleted Section

Text as given in report of Committee for Separate Articles, August 20:

“The Legislature shall provide by general law that all persons owning land abutting upon the shore of any navigable water within the limits of the state, and having prior to February 22,
1889, valuable improvements occupying shore lands below the government meander line in front of such abutting land, such improvements being in actual use and necessity for trade, commerce, or business and the shore land so occupied being other than the extension of street, alley, or other public highway, shall have the prior right for a limited time to purchase as much of said shore land as may be necessary for the purpose for which such improvements were made, at the valuation fixed by a board of appraisers which board shall fix such valuation irrespective of the improvements on such land. Provided that nothing herein shall apply to the area covered by the reservation in front of any incorporated city as specified in the article on harbors, nor to any lands lying in front of any fort or lighthouse owned by the United States.” (pp. 414-5)

Dunbar, Cosgrove, Schooley, and Shoudy of the committee did not concur in this section.

Action by Convention, August 20:

Motion: Stiles moved a substitute the same as the original except for the beginning. “Whenever the Legislature shall by law authorize the sale of any of the tidelands of the state it shall provide also that all persons etc.”

Action: Motion carried 35 to 34. (p. 423)


Motion: Kinnear moved an amendment to the amendment of Stiles which would include those who had in good faith made valuable improvements.

Action: Motion lost 39 to 28. (p. 424)

Reed, Schooley, Shoudy, Sohns, Stevenson, Suksdorf, E. H. Sullivan, Tibbetts, Travis, Weisenburger, and Hoyt. **Not voting:** Crowley, Durie, Gowey, Hicks, Hungate, Sharpstein, and Warner. **On leave:** Neace.

**Passage of Article**

Article on Tidelands approved by Convention, August 22, by a vote of 50 to 21. (p. 456)


Protest filed by Griffitts, Godman, Berry, Warner, McDonald, Gray, Travis, E. H. Sullivan, Van Name, and J. M. Reed, August 22:

“We hereby protest against the action of the Convention in passing the article disclaiming title to patented lands and desire this protest entered on record. We look upon it as a hasty, injudicious action, more appropriately left to the Legislature.” (p. 458)
ARTICLE XVIII  STATE SEAL

Given a choice of three designs by the report of the committee, the Convention chose the simplest, modified it, and arrived at a design satisfactory to all the delegates. The work of the special committee on the seal had sparked considerable interest in the territory, and one newspaper reported that a painting on silk of the arms of George Washington had been submitted by a Port Townsend man for the consideration of the committee.¹

The Committee for State Seal was appointed August 9. (p. 294)

Members: Bowen, Hicks, and Dallam.

Section 1

Present Language of the Constitution:

SEAL OF THE STATE. The seal of the State of Washington shall be, a seal encircled with the words: “The Seal of the State of Washington,” with the vignette of General George Washington as the central figure, and beneath the vignette the figures “1889.”

Original language same as present.²

Text as given in report of committee, August 17:

Three choices were given.

1. A vignette of General George Washington as the central figure encircled with the motto: “Our varied industries invite you,” with the date “1889” beneath.

2. Representation of a mountain, forest, ship, factory, church, school building, and a train of cars on the mountainside with the chief products of Washington lettered on the cars, a rising star, and encircling all the motto: “Westward the star of empire takes its way.”

3. The present seal of the territory with the motto “Al-ki,” changed to “Welcome” and the date “1853” changed to “1889.” (p. 377)

¹ Walla Walla Weekly Statesman, August 12; Tacoma Morning Globe, August 11, 1889.
² Design: Original.
Final action by Convention, August 19:

Motion: Sharpstein moved to adopt the first suggestion.

Motion: Turner moved as an amendment that the seal be adopted without the motto.

Motion: Joy moved as an amendment to Turner's motion that the motto be changed to "Put none but Americans on guard."

Action: Joy's motion lost; Turner's motion carried, and then Sharpstein's motion as amended was carried. (pp. 401-2)

Motion: Stiles moved to insert as a motto "We the people rule."

Action: Motion lost. (p. 402)

**Passage of Article**

Article on State Seal approved by Convention, August 19, by a vote of 64 to 0. (p. 402)

Not voting: Crowley, Hicks, Hungate, Kinnear, Morgans, Sohns, Stevenson, Sturdevant, E. H. Sullivan, and Hoyt.

On leave: Neace.
ARTICLE XIX  EXEMPTIONS

This was a routine article to protect owners of land granted by the United States before statehood.

The Committee for Homesteads and Property Exemption was appointed July 9.  (p. 20)

Members: Godman, chairman; Jeffs, Jones, Winsor, and Allen.

Section 1

Present Language of the Constitution:

EXEMPTIONS—HOMESTEADS, ETC. The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

Original language same as present.¹

Text as given in report of committee, August 7:

Same as final.  (p. 275)

Passage of Article

Article on Exemptions approved by Convention, August 10, by a vote of 59 to 0.  (pp. 325-6)

Absent and not voting: Allen, Browne, Crowley, Dallam, Dickey, Fairweather, Gowey, Hungate, Jamieson, Jeffs, McElroy, Minor, Schooley, Shoudy, Van Name, and Willison.

¹ Homestead: Cal., Const. (1879), Art. 17, sec. 1. [Identical.]
ARTICLE XX PUBLIC HEALTH AND VITAL STATISTICS

This article caused no dissention and passed without amendment.

The Committee for State Medicine and Public Health was appointed July 10. (p. 37)

Members: Willison, chairman; Manly, Blalock, Minor, and Turner.

Section 1

Present Language of the Constitution:

BOARD OF HEALTH AND BUREAU OF VITAL STATISTICS. There shall be established by law a state board of health and a bureau of vital statistics in connection therewith, with such powers as the legislature may direct.

Original language same as present.¹

Proposition submitted to Convention by Willison, July 26:

To have a State Board of Health. (p. 176)

Memorial submitted to Convention by the Pierce County Medical Association, July 31:

That a board of health be established, with a bureau of vital statistics. (p. 197)

Text as given in report of committee, August 9:

Same as final. (p. 297)

Section 2

Present Language of the Constitution:

REGULATIONS CONCERNING MEDICINE, SURGERY AND PHARMACY. The legislature shall enact laws to regulate the practice of medicine and surgery, and the sale of drugs and medicines.

Original language same as present.²

1. Board of Health: Tex., Const. (1876), Art. 16, sec. 32. [Similar.]
2. Practice of Medicine: Tex., Const. (1876), Art. 16, sec. 31. [Similar.]
Petitions submitted to Convention by Blalock, July 30:

From several individuals asking that the practice of medicine be regulated. (p. 191)

Text as given in report of committee, August 9:

Same as final. (p. 297)

Passage of Article

Article on Public Health and Vital Statistics approved by Convention, August 12, by a vote of 50 to 0. (p. 342)

Absent and not voting: Allen, Berry, Browne, Comegys, Cosgrove, Dunbar, Fay, Griffitts, Henry, Hicks, Hungate, Jones, Kellogg, Kinnear, McDonald, McReavey, Neace, Shoudy, Stiles, Sturdevant, Weir, and Willison.
ARTICLE XXI WATER AND WATER RIGHTS

The first report of the Committee of Water and Water Rights contained three sections. It declared all natural streams not already appropriated to be public property, provided a detailed system of priorities for the use of water and granted a right of way across public, private and corporate property for certain water uses.

After brief consideration the committee of the whole recommended sending the article back to committee. This action was taken.

In its second report, the committee declared the use of all state waters to be a public use for irrigation, mining, and manufacturing. In the Convention, unsuccessful attempts were made to except certain privately owned waters and regulate some water uses by a system of priorities.

The Committee for Water and Water Rights was appointed July 9. (p. 20)

Members: Mires, chairman; Manly, R. S. More, McCroskey, and E. H. Sullivan.

Deleted Section

Proposition submitted to Convention by Prosser, July 10:

That riparian proprietors have all rights in flow and use of waters of the state which pertain to riparian proprietors at common law. That the Legislature may provide for appropriation of water in irrigation sections and determine the compensation for such use. (p. 42)

The Yakima Herald, July 18, 1889, reported that Prosser was being called down by his constituents for this proposition. It was said that the suggestion would upset all of the established usages of the coast and work great injury to the farming interests.

Proposition submitted to Convention by Mires, July 12:

That the water of every natural stream not heretofore appropriated is the property of the state and dedicated to the use of the people. (p. 76)

Text as given in first report of committee, August 1:

“That the water of every natural stream not heretofore ap-
propriated within the State of Washington is hereby declared to be the property of the public and the same is dedicated to the use of the people of the state subject to appropriation as hereinafter provided.” (Section 1, p. 203)

Consideration by committee of the whole, August 5:¹

At the request of chairman Mires the section was recommended back to the committee for revision.

Action by Convention, August 5:

Decision of committee of the whole accepted. (p. 230)

Deleted Section

Proposition submitted to Convention by Mires, July 12:

“That the right to divert unappropriated water to beneficial uses shall never be denied. That priority of appropriation gives better right between two users for the same purpose. Domestic uses shall have first priority followed by agriculture and manufacturings.” (p. 76)

Text as given in first report of committee, August 1:

“The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the services of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes.” (Section 2, p. 203)

Consideration by committee of the whole, August 5:²

At the request of chairman Mires the section was recommended back to the committee for revision.

Action by Convention, August 5:

Decision of committee of the whole accepted. (p. 230)

¹ Seattle Times, August 5; Tacoma Daily Ledger, August 6, 1889.
² Ibid.
Deleted Section

Proposition submitted to Convention by Mires, July 12:

That persons and corporations have the right of way across private and corporate lands for construction of ditches, canals, and flumes upon payment of just compensation. (p. 77)

Text as given in first report of committee, August 1:

"All persons and corporations shall have the right of way across public, private, and corporate lands for the construction of ditches, canals, and flumes for the purpose of conveying water for domestic purposes, for irrigation of agricultural lands, and for mining and manufacturing purposes and for drainage upon payment of just compensation." (Section 3, p. 203)

Consideration by committee of the whole, August 5:

At the request of chairman Mires the section was recommended back to the committee for revision.

Action by Convention, August 5:

Decision by committee of the whole accepted. (p. 230)

Section 1

Present Language of the Constitution:

PUBLIC USE OF WATER. The use of the waters of this state for irrigation, mining and manufacturing purposes shall be deemed a public use.

Original language same as present.

Text as given in second report of committee, August 8:

Same as final. (p. 284)

Final action by Convention, August 10:

Motion: Griffitts moved to add a proviso that this section would not apply to non-navigable streams and lakes in private ownership.

Action: Motion lost. (p. 326)

3. Ibid.
Motion: P. C. Sullivan moved to insert “and” between “irrigation” and “mining.”

Action: Motion lost. (p. 326)

Motion: Prosser moved an additional section the text of which was the same as Section 2 of the original committee report.

Action: Motion lost. (p. 326)

Passage of Article

Article on Water and Water Rights approved by Convention, August 10, by a vote of 41 to 17. (p. 327)


Protest presented to Convention, August 10, by Griffitts, Godman, Cosgrove, Travis, Buchanan, Tibbetts, and Neace:

Against declaring the use of waters a public use. (p. 327)
ARTICLE XXII LEGISLATIVE APPORTIONMENT

This article passed with only one minor amendment. A territorial newspaper commented that it was the only article of length or importance which suffered no mutilation.\(^1\) This same paper had earlier predicted that the committee report would prove unpopular in the rural districts since it proposed to divide the state by counties, and in most counties the principal cities would have sufficient population to control representation.\(^2\)

The Committee on Apportionment and Representation was appointed July 9. (p. 19)

Members: Crowley, chairman; Allen, Dyer, Gowey, Hicks, Eshelman, Sohns, West, P. C. Sullivan, Prosser, Hungate, Van Name, Willison, Cosgrove, and Sturdevant.

Section 1

Present Language of the Constitution:

SENATORIAL APPORTIONMENT. Until otherwise provided by law, the state shall be divided into twenty-four (24) senatorial districts, and said districts shall be constituted and numbered as follows: The counties of Stevens and Spokane shall constitute the first district, and be entitled to one senator; the county of Spokane shall constitute the second district, and be entitled three senators; the county of Lincoln shall constitute the third district, and be entitled to one senator; the counties of Okanogan, Lincoln, Adams and Franklin shall constitute the fourth district, and be entitled to one senator; the county of Whitman shall constitute the fifth district, and be entitled to three senators; the counties of Garfield and Asotin shall constitute the sixth district, and be entitled to one senator; the county of Columbia shall constitute the seventh district, and be entitled to one senator; the county of Walla Walla shall constitute the eighth district, and be entitled to two senators; the counties of Yakima and Douglas shall constitute the ninth district, and be entitled to one senator; the county of Kittitas shall constitute the tenth district, and be entitled to one senator; the counties of Klickitat, and Skamania shall constitute the eleventh district, and be entitled to one senator; the

---

1. Walla Walla Weekly Statesman, August 20, 1889.
2. Statesman, August 12, 1889.
county of Clarke shall constitute the twelfth district, and be entitled to one senator; the county of Cowlitz shall constitute the thirteenth district, and be entitled to one senator; the county of Lewis shall constitute the fourteenth district, and be entitled to one senator; the counties of Pacific and Wahkiakum shall constitute the fifteenth district, and be entitled to one senator; the county of Thurston shall constitute the sixteenth district, and be entitled to one senator; the county of Chehalis shall constitute the seventeenth district, and be entitled to one senator; the county of Pierce shall constitute the eighteenth district, and be entitled to three senators; the county of King shall constitute the nineteenth district, and be entitled to five senators; the counties of Mason and Kitsap shall constitute the twentieth district, and be entitled to one senator; the counties of Jefferson, Clallam and San Juan shall constitute the twenty-first district, and be entitled to one senator; the county of Snohomish shall constitute the twenty-second district, and shall be entitled to one senator; the counties of Skagit and Island shall constitute the twenty-third district, and be entitled to one senator; the county of Whatcom shall constitute the twenty-fourth district, and be entitled to one senator.

Original language same as present.³

Text as given in report of committee, August 9:

Same as final except that it put Okanogan in a senatorial district with Stevens and Spokane instead of with Lincoln, Adams, and Franklin as in the final. (p. 295)

Final action by Convention, August 12:

Motion: Manly moved to strike “Okanogan” in the third line and then to strike “Spokane” and insert “Okanogan” in the sixth line.

Action: Motion carried. (p. 340)

Section 2

Present Language of the Constitution:

APPORTIONMENT OF REPRESENTATIVES. Until

³ First Apportionment Senatorial District: Hill, Prop. Wash. Const., Art. Schedule, sec. 16; Kan., Const. (1859), Art. 10, sec. 3; Ore., Const. (1859), Art. 18, sec. 5. [A number of state constitutions contain somewhat similar provisions.]
otherwise provided by law the representatives shall be divided among the several counties of the state in the following manner; the county of Adams shall have one representative; the county of Asotin shall have one representative; the county of Chehalis shall have two representatives; the county of Clarke shall have three representatives; the county of Clallam shall have one representative; the county of Columbia shall have two representatives; the county of Cowlitz shall have one representative; the county of Douglas shall have one representative; the county of Franklin shall have one representative; the county of Garfield shall have one representative; the county of Island shall have one representative; the county of Jefferson shall have two representatives; the county of King shall have eight representatives; the county of Klickitat shall have two representatives; the county of Kittitas shall have two representatives; the county of Kitsap shall have one representative; the county of Lewis shall have two representatives; the county of Lincoln shall have two representatives; the county of Mason shall have one representative; the county of Okanogan shall have one representative; the county of Pacific shall have one representative; the county of Pierce shall have six representatives; the county of San Juan shall have one representative; the county of Skamania shall have one representative; the county of Snohomish shall have two representatives; the county of Skagit shall have two representatives; the county of Spokane shall have six representatives; the county of Stevens shall have one representative; the county of Thurston shall have two representatives; the county of Walla Walla shall have three representatives; the county of Wahkiakum shall have one representative; the county of Whatcom shall have two representatives; the county of Whitman shall have five representatives; the county of Yakima shall have one representative.

Original language same as present. 4

Text as given in report of committee, August 9:

Same as final. (p. 296)

4. First Apportionment Representative District: Ibid. [Similar. Portion now obsolete by statute.]
Passage of Article

Article on Legislative Apportionment approved by Convention, August 12, by a vote of 48 to 6. (p. 340)

Voting against: Glascock, Godman, Griffitts, R. S. More, Sharpstein, and Hoyt. Absent and not voting: Allen, Berry, Browne, Clothier, Dallam, Durie, Fay, Henry, Hicks, Hungate, Jones, Kellogg, Kinnear, McReavey, Neace, Shody, Stiles, Suksdorf, Warner, Weir, and Willison.