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## Constitutional Revisions 1974

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FS 623

# Constitutional Revisions 1974



Cooperative Extension Service  
South Dakota State University  
U. S. Department of Agriculture

# Constitutional Revisions 1974




By **Jacqueline Trygstad**, intern with Constitutional Revision Commission, and **Wanda M. Leonard**, Extension economist—public affairs. Reviewed by **Dr. J. P. Hendrickson**, Head, Political Science Department, SDSU

On November 5, 1974, the people of South Dakota will again have the opportunity to vote on replacement articles to the South Dakota Constitution. In 1972, South Dakota voters approved four articles: the Executive, Judicial, Local Government, and Amendments and Revisions articles. This fact sheet provides a summary of the significant features and the implementation of these four articles. It also provides information on two new proposed replacement articles: (1) the Legislative Article, and (2) Elections and Suffrage Article.

*What is a State Constitution?*

A state Constitution is similar to the national Constitution. It is a contract between the people and their government which provides guidelines by which state and local governments must operate. It sets up the basic framework for the structures and powers of state and local governments and it guarantees that the rights of the people will be protected.

*Do we need to change South Dakota's Constitution?*

The present South Dakota Constitution was written during a constitutional convention and was adopted by the voters as a prerequisite to statehood in 1889. The 1889 Constitution, written to reflect the needs and conditions of that era, is very lengthy and complicated in nature. Since its adoption 85 years ago the Constitution has been amended 84 times.

The 1889 Constitution has been criticized and requests for revision began as early as 1911.

Most of the recent governors, including Mickelson, Anderson, Foss, Herseht, Gubbrud, Farrar, and Kneip, have actively supported constitutional revision efforts.

In 1954 a research group of seven state legislators stressed the fact that the Constitution had become "overlong and confusing and was replete with duplications and inconsistencies." They identified the following as changes that should be made: (1) the amount of detail should be reduced; (2) common subject matter should be put together; (3) confusing terminology should be clarified; (4) inconsistencies and errors should be removed; and (5) omissions should be corrected.

In 1969 with the creation of the Constitutional Revision Commission a definite attempt at complete and consistent revision was begun. In 1972 the voters adopted four revised articles (Table 1).

**Table 1. Articles Adopted in 1972**

	YES	NO
1) Executive .....	182,248	96,944
2) Judicial .....	177,235	89,358
3) Local Government .....	152,474	107,296
4) Amendments and Revisions .....	173,541	84,939

South Dakota is not alone in its attempt at constitutional revision. Many other states have experienced the need for revision because of the vastly different role and responsibilities of state and local governments since the 1800's. The most recent example is Louisiana, where the voters accepted a new state Constitution in April, 1974.

### *How has the role of state and local governments changed?*

The role and responsibilities of state and local governments have changed dramatically in the last 100 years. They are not only concerned with regulatory functions as in the past, but are expected to provide more and better services. State and local governments are involved in hundreds of federal grant programs and their budgets have increased enormously. Federal revenue sharing has also increased the functions of state and local governments. With limited requirements attached to revenue sharing funds, states and localities have a great deal of control over how the funds are to be used. Therefore, state Constitutions must be flexible enough to meet the needs of the people as times and conditions change.

### *What method has South Dakota selected to revise the state Constitution?*

There are two methods that could be used in revising state Constitutions: (1) the calling of a constitutional convention by the people or the Legislature and submitting the entire revised Constitution at one time to a vote of the people; or (2) submit proposed revisions of each article separately to be voted on over a period of time. South Dakota has chosen the latter approach because it allows more time for careful study of each article as it is being prepared. It also gives the people the opportunity to become familiar with a few articles at one time rather than an entire Constitution, and allows the voters to accept or reject each article on its merits.

### *What is the Constitutional Revision Commission?*

The Constitutional Revision Commission was created by the Legislature in order to "enter into a comprehensive study of the Constitution of the State of South Dakota to determine ways and means to improve and simplify the Constitution." The Commission studies each article of the Constitution and in revising, attempts to retain the good features in the present article, to remove materials that are outdated, and to add new features deemed necessary by recent experiences. Public hearings are held on the proposed modifications of each article. The Commission's proposals are then submitted to the Legislature for modification and subsequent approval or disapproval. If the

Legislature approves the proposed changes to the Constitution, these recommendations are then placed on the ballot for the November election.

### *How are the members of the Constitutional Revision Commission chosen?*

The Commission consists of 13 members<sup>1</sup> chosen as follows:

- 1) Three members are appointed by the presiding officer of the South Dakota Senate from members thereof, no more than two of whom shall be from one political party;
- 2) Three members are appointed by the presiding officer of the South Dakota House of Representatives from members thereof, no more than two of whom shall be from one political party;
- 3) Three members are appointed by the Governor of South Dakota, no more than two of whom shall be from one political party;
- 4) Two members are appointed by the presiding judge of the Supreme Court of South Dakota from the members in good standing of the state bar of South Dakota, one of whom may be a judge of a court of record in this state; and
- 5) The chairman of the Department of Political Science at South Dakota State University and the chairman of the Department of Government at the University of South Dakota are members also.

### *What were the results of the Constitutional Revision Commission's recommendations?*

In 1972 the Constitutional Revision Commission presented to the Legislature recommendations on four articles: Executive, Judicial, Local Government, and Amendments and Revisions. The Legislature passed all four articles by wide margins and with few changes. They were then placed on the ballot for the November election and each one separately was approved by the people. In the

<sup>1</sup>The present members of the Commission include Senators: Don Bierle, Yankton, Grace Mickelson, Rapid City and Harvey Wollman, Hitchcock; Representatives: Charles E. Clay, Hot Springs, Bertrum Ellingson, Sisseton and Linda Lea Miller, Sioux Falls; Gubernatorial Appointees: Mrs. Isabel Sattler, Yankton, Dr. Lawrence Stavig, Sioux Falls and Dr. I. D. Weeks, Vermillion; Supreme Court Appointees: Judge Jon Fosheim, Huron and Charles Kornmann, Aberdeen and Ex Officio Members: Dr. W. O. Farber, Vermillion and Dr. J. P. Hendrickson, Brookings.

Former members of the Commission include Kermit Howley, Brandt, Robert Hirsch, Yankton, Arthur Jones, Rapid City, Governor Richard Kneip, Pierre, Charles Lacey, Sioux Falls, Wallace McCullen, Rapid City, General Neil Van Sickel, Rapid City and Franklin Wallahan, Rapid City.

section below, the significant features of these four articles and the subsequent implementation of their provisions in the past 2 years are summarized.

### **Executive Article**

The Executive Article, commencing in 1974, provides for the joint election of the Governor and Lieutenant Governor for a 4-year term in a non-presidential year with a two-term limitation. The Attorney General, Secretary of State, Auditor, Treasurer, and Commissioner of School and Public Lands will continue to be elected to their offices by a vote of the people for 4-year terms. The Superintendent of Public Instruction is no longer elected.

The article allows the Governor to propose reorganization of the Executive Branch by executive order. Such proposals become effective unless disapproved by a majority vote of either house of the Legislature. The article provides that the executive department, with the exception of the Governor, Lieutenant Governor and constitutional offices, shall be grouped in no more than 25 principal departments. Citizen and professional boards and commissions are assigned to appropriate departments.

### **Judicial Article**

The Judicial Article created a unified court system. The unified court system consists of a Supreme Court, circuit courts of general jurisdiction and courts of limited jurisdiction. The legislature may create courts of limited jurisdiction which could replace the justice of the peace and police magistrate courts. The chief justice of the Supreme Court is the administrative head of the entire court system. The Supreme Court is granted administrative powers over all levels of courts and can determine the number of circuit courts and judges needed in the state.

Supreme Court and circuit court judges will be elected on a non-partisan ballot for terms of 8 years.

A judicial qualifications commission was created to investigate complaints against justices and judges. A judge or justice can be retired, removed, or censured by the Supreme Court for disability or willful misconduct in office.

### **Local Government Article**

The Local Government Article creates a self-executing provision that authorizes cities and

counties to have home rule charters. Home rule allows local units of government to decide for themselves what form of government they want to have as long as the legislative body established is popularly elected. A chartered home rule governmental unit may exercise legislative power and perform any functions not denied by its charter, the Constitution or general laws of the state.

Every local governmental unit is permitted to perform or transfer any of its powers, including financing, jointly or in cooperation with any other governmental entities either within or outside the state except as the Legislature may provide otherwise by law.

The article guarantees that county and township boundaries can be changed only if a majority of the electorate voting in each of the counties and townships involved approve of the change.

### **Amendments and Revisions Article**

The Amendments and Revisions Article allows the people to initiate the calling of a constitutional convention or the submission of a constitutional amendment for a vote of the general electorate. The initiated proposal requires a petition signed by 10 percent of those voting in the last gubernatorial election.

Another provision authorizes the Legislature by a three-fourths vote of each house to call a constitutional convention directly without submitting the proposal to a popular vote.

### *Why should you be concerned about constitutional revision?*

The Constitution is a document written by and for the people. It sets up the basic framework by which the people intend to govern themselves. The goal of a state Constitution should be to permit the most efficient, responsible, and responsive state and local governments possible. Many South Dakotans feel the present Constitution no longer serves that goal. It was written 85 years ago by people concerned with problems very different from those facing people today.

Whether you are a farmer, housewife, businessman, or rancher, you are affected by government; and the Constitution very directly affects government. Ultimately, it is up to you to decide whether or not South Dakota needs to revise its Constitution.

*What did the Constitutional Revision Commission recommend to the Legislature in 1974?*

The Constitutional Revision Commission submitted recommendations for the revision of (1) the Legislative Article and (2) Elections and Suffrage Article to the 1974 legislative session.

The Legislature approved by wide margins the Elections and Suffrage Article and, with some modifications, the Legislative Article. These two replacement articles will be on the ballot for the November 1974 election.

*What are the major provisions in the proposed Elections and Suffrage Article?*

Section 1 of the proposed Elections and Suffrage Article guarantees that "elections shall be free and equal, and that no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." This section was transferred from Section 19 of the Bill of Rights of our state Constitution. The Constitutional Revision Commission and the Legislature decided that the fundamental right of the people to have a voice in government through the electoral process would be more properly found in the Elections and Suffrage Article.

Section 2 contains the voter qualification requirements. This provides the following:

- 1) Every United States citizen 18 years of age or older who has met all residency and registration requirements is entitled to vote.
- 2) A qualified voter is entitled to vote in all elections and upon all questions submitted to the voters of the state unless disqualified by law for mental incompetence or the conviction of a felony.
- 3) A voter who qualifies to vote within a precinct is entitled to vote in that precinct until he establishes another voting residence.
- 4) A qualified voter will not lose his residency for voting solely by reason of his absence from the state.

Section 3 requires that the Legislature provide for the specific details of a proper, functioning electoral system in the following areas:

- 1) definition of residence for voting purposes
- 2) insurance of secrecy in voting
- 3) registration of voters
- 4) absentee voting

- 5) administration of elections
- 6) nomination of candidates
- 7) voting rights of those serving in the armed forces.

The specific details of election administration and control will be contained in the statutes rather than in the fundamental document.

*What are the main differences between the present Legislative Article and the proposed changes that will be on the ballot in November?*

First, the present article sets a fixed date when the Legislature is to convene each year and requires that it meet 45 days one year and 30 days the next year. The replacement article will require that the Legislature convene in annual sessions not to exceed 45 legislative days, but that it may decide for itself when to begin, when to recess if necessary, and when to end. The new provision authorizes the Legislature to hold special sessions upon the written request of  $\frac{2}{3}$  of the members of both houses.

Second, the present article requires that one must be at least 25 years old to serve in the Legislature. This is deleted in the new proposal which requires only that a legislator be a qualified voter.

Third, the Lieutenant Governor is now the presiding officer of the Senate. If the new article is approved, the Senate, like the House presently does, would choose its presiding officer from among its own elected members.

Fourth, in the current article if the Legislature fails to apportion its membership as required, in accordance with the last federal census, a Commission, consisting of the Governor, Superintendent of Public Instruction, Presiding Judge of the Supreme Court, Attorney General, and Secretary of State, is authorized to do the apportioning. In the replacement article, the State Supreme Court, rather than the Commission, has the authority to apportion.

Fifth, the new article, like the current one, provides for the initiative and referendum, but clarifies the procedure for using these democratic tools.

Sixth, in the present Constitution provisions concerning the militia and impeachment are listed in separate articles (Impeachment—Art. XVI, Militia—Art. XV). In the proposed recommendations, they would be included in separate sections under the Legislative Article.

The material is simplified, but at the same time the main provisions of each would be retained.

*Is there a section on gambling in the proposed article?*

Yes, there is. Section 25 of the present state Constitution prohibits games of chance except by certain non-profit groups. The Commission and the Legislature felt that public sentiment toward the prohibition of games of chance has not changed and, therefore, did not alter this section.

*Are there any proposed sections not included in the present Legislative Article?*

Two sections, not included in the present Article, are included in the proposed, modernized Legislative Article. One section gives a legislative committee between sessions the authority to temporarily suspend rules adopted by administrative agencies. This is considered an important factor in the balance of power between the legislative and executive branches of government.

The other section authorizes the Legislature to establish a committee of its members which would be able to approve, alter or reject state departmental requests for use of contingency fund money when the whole Legislature is not in session. The committee also has the power to review, approve, or reject federal grants which have become available to state agencies between legislative sessions.

*What are some of the provisions in the new article which are similar to the current article?*

Provisions in the replacement article which

remain similar to those in the present article include the 2-year term of office for members of the Legislature, bills limited to one subject except in certain instances, the number of days required before a bill can become a law, and sections dealing with legislative immunity, special legislation, and sovereign immunity.

*What was deleted from the present Legislative Article?*

There were some provisions that were deleted from the present article because the Commission and the Legislature felt they were legislative in nature and could be taken care of in the form of statutes. These include sections providing for salary and mileage of legislators, an oath required of members and officers of the Legislature, restrictions on appointments made of members of the Legislature, the punishment and criminal procedures with regard to the bribery of elected officials and sections dealing with procedural rules of the Legislature.

*Where can you get more information?*

It is impossible to answer all of your questions about constitutional revision in a publication of this size. If you would like more information, ask your county or area Extension home economist or your county Extension agent for FS 624 on the Elections and Suffrage Article, and/or FS 625 on the Legislative Article, or you may contact the League of Women Voters, local legislators or write to: Executive Secretary, Constitutional Revision Commission, c-o State Capitol, Pierre, S. D. 57501.

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