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CONSTITUTIONAL CHANGE

The Executive Article

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

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On November 7, 1972, the people of South Dakota will have the opportunity to vote on four amendments to the South Dakota Constitution. These amendments are revised articles intended to replace the current Executive, Judicial, Local Government, and Amendments and Revisions articles. Each amendment will be voted on separately. This fact sheet is concerned with the proposed Executive Article. Other articles are discussed in separate fact sheets listed at the end of this one.

The proposed Executive Article—as well as the others—is the result of the work of the Constitutional Revision Commission. The Commission was formed in 1969 by an act of the State Legislature and charged with the task of modernizing the State Constitution.

The Commission's approach has been to retain those parts of the Articles that are still useful, remove those that are outdated, and add new features considered desirable on the basis of experience and need. Recommendations of the Citizens Commission on Executive Reorganization were considered in the development of this particular replacement article. This commission was formed in June 1971 for the purpose of studying the structure of the Executive branch of State Government.

Legislative action to place the proposed Executive article on the ballot received a House vote of 60 in favor and 11 against and a Senate vote unanimously in favor.

Questions About the Proposed Executive Article

Why does the proposal increase the Governor’s term to four years? (Section 2)

The Constitutional Revision Commission listed the following reasons for increasing the term from two to four years:

• A newly elected governor needs more time to fully develop and implement policy programs.
• With the current two-year term, a newly elected governor is scarcely able to become fully oriented to the job before energies must be devoted to re-election.
• The responsibilities and workload of the governor have tremendously increased since the adoption of the original Constitution in 1889. This increased workload contributes to the problem of becoming oriented to the job in a relatively short time. (The commission observed that the governors in the 1890's did not have a sufficient workload to even require them to be in full time residence at the State Capitol.)
• The governor would still be held accountable to the people by the pressure of public opinion through improved communications and transportation media. This is in addition to the continuing "checks and balances" imposed by the legislative and judicial branches.
• Forty-two states now have four-year terms for their governors.

How many terms may the governor serve? (Section 2)

The replacement article limits the Governor to two consecutive terms. The present executive article does not contain this limitation. The current restriction of two consecutive terms is provided by law.

Why does the proposed replacement article limit the number of principal departments in the executive branch to 25? (Section 8)

The replacement article requires that all of the subdivisions of the executive branch, except for elected constitutional offices, be grouped into 25 or fewer departments by no later than July 1, 1974. There are currently about 160 subdivisions that would be affected by this requirement. The intent of the Commission in recommending this requirement is to provide a means whereby subdivisions concerned with similar subject matter could be grouped together. The Commission sought to improve cooperation and policy coordination and decrease unnecessary duplication. Examples of subject matter might be agriculture, economic development, and consumer protection.

The Commission was guided by certain principles of management in its recommendation. One of these is that an administrator (in this case, the governor) can effectively supervise only a limited number of subdivisions. The Commission believes that this number should be 25 or less. Another principle is that responsibility and accountability for specific tasks should be clearly understood and capable of being fixed in one place. The Commission felt that this was not the case under our current executive branch with its large number of subdivisions with overlapping responsibilities.

At the present time, eleven states—including Montana—have limited constitutionally the number of departments in their executive branches. The limits vary from 14 to 25.
Would limiting the number of principal departments require the elimination of the citizen boards and commissions that currently provide guidance for several of the existing subdivisions?

The Commission noted that the replacement article would not require elimination of the several citizen boards and commissions. These would be assigned to appropriate departments in order to continue their tasks. The Commission believes that this would retain widespread citizen involvement.

Are there other provisions aimed at encouraging Executive reorganization?

The amendment would allow the Governor to reorganize executive branch agencies by executive order, subject to legislative veto. The Commission believes that the Governor is in the best position to know what changes should be made. The replacement article, therefore, gives the Governor major responsibility in initiating Executive reorganization. Each house of the Legislature (by majority vote) would retain the power to veto the executive orders proposed by the Governor. This provision is aimed at providing continued flexibility in the organization of the executive branch as economic and social conditions change.

How would the office of Lieutenant Governor be affected by the proposal? (Sections 2, 5, and 6)

The Lieutenant Governor would be jointly elected with the Governor. He would, like the Governor, serve for a four-year term with a limit of two consecutive terms. The election of a Governor and Lieutenant Governor would occur in non-presidential election years.

The proposal retains the present provision requiring the Lieutenant Governor to serve as President of the Senate. It also grants him the right to perform duties that might be delegated to him by the Governor. The Commission believes that if the two candidates were elected as a team, the Governor would be more willing to delegate routine ceremonial and administrative tasks to the Lieutenant Governor. This would allow the Governor to spend more time on important problems facing the state.

The proposal provides that the Lieutenant Governor shall become Governor when that office is vacant. If the Governor is temporarily disabled, the proposal allows the Lieutenant Governor to assume the powers of Governor until the disability is removed.

The procedure for filling a vacancy in the office of Lieutenant Governor is similar to the procedure under the U. S. Constitution for filling a vacancy in the vice-presidency.

What other executive officers are provided in the Executive Article? (Section 7)

The proposal calls for an attorney general, secretary of state, auditor, treasurer, and commissioner of school and public lands. These officers would be elected by the people at the same time and for the same four-year term as the Governor. Each would run independently, as now. The superintendent of public instruction would no longer be a Constitutional officer.

What are other provisions of the proposal?
Uniform Departmental Structure (Section 9)

This section is intended to provide for greater uniformity in the structure of departments and in the methods of selecting the administrators or boards to head the departments.

Veto Power (Section 4)

The time allowed the Governor to consider signing or vetoing a bill has been increased from 3 to 5 days during a session and from 10 to 15 days after the session has adjourned.

This section also allows the Governor to return bills with errors in style or form to the legislature for correction with out having to veto them. Currently, important legislation must sometimes be vetoed by the Governor because no alternative method exists to correct this type of error. With the proposed Constitutional change, the error could be corrected and the Governor could sign the bill into law, thus saving both time and expense.

Upholding the Constitution and Laws of the State (Section 3)

The Governor is given the right to bring action in the name of the state to make sure that the Constitution and laws of South Dakota are upheld. The present Constitution does not guarantee this protection.

Special Legislative Sessions (Section 3)

Under the present Constitution the Governor has the power to call special sessions of the legislature on "extraordinary occasions." The proposal allows him to call special sessions of the entire legislature or either house and it limits the business that may be conducted to the purposes for which the session was called.

Pardons and Paroles (Section 3)

The Governor is given authority to grant pardons, commutations, and reprieves. Unlike the present Constitution, the establishment of a paroles system and board would be determined by statutory law rather than by the Constitution.

Qualifications of Governor and Lt. Governor (Section 3)

The amendment requires that a Governor and Lt. Governor be citizens of the United States and residents of South Dakota for at least two years prior to their election.

Where can you get more information about constitutional change?

It is impossible to answer all of your questions about constitutional revision in a publication of this size. If you would like more information about this proposal or any of the other proposals being place on the November ballot, ask your County Extension Agent for FS 566 Constitutional Change: Questions and Answers, FS 568 The Judicial Article, FS 569 The Local Government Article, and/or FS 570 The Amendments and Revisions Article; or you may contact your local legislators, or League of Women Voters; or you may write to: Executive Secretary, Constitutional Revision Commission, c/o State Capitol, Pierre, South Dakota 57501.

The text of the Executive proposal has been included in this publication and minor provisions, not discussed because of space limitations, can be noted in a reading of the text.
A JOINT RESOLUTION, Proposing and agreeing to an amendment to article IV of the Constitution of the state of South Dakota, relating to the organization and function of the executive department of state government.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

Section 1. That at the next general election held in the state, the following amendment to article IV of the Constitution of the state of South Dakota, as set forth in section 2 of this resolution, which is hereby agreed to, shall be submitted to the electors of the state for approval.

Section 2. That article IV of the Constitution of the state of South Dakota be amended to read as follows:

Section 1. EXECUTIVE POWER

The executive power of the state is vested in the Governor.

Section 2. QUALIFICATION, ELECTION AND TERM.

The Governor and lieutenant governor must be citizens of the United States and residents of the state of South Dakota for two years preceding their election. They shall be jointly elected for a term of four years at a general election held in a non-presidential election year. The candidates having the highest number of votes cast jointly for them shall be elected. Commencing with the 1974 general election, no person shall be elected to more than two consecutive terms as Governor or as lieutenant governor. The election procedure shall be as prescribed by law.

Section 3. POWERS AND DUTIES OF THE GOVERNOR

The Governor shall be responsible for the faithful execution of the law. He may, by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty or right by an officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceedings against the Legislature.

He shall be commander-in-chief of the armed forces of the state, except when they shall be called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion.

The Governor shall commission all officers of the state. He may at any time require information, in writing or otherwise, from the officers of any administrative department, office or agency upon any subject relating to the respective offices.

The Governor shall at the beginning of each session, and may at other times, give the Legislature information concerning the affairs of the state and recommend the measures he considers necessary.

The Governor may convene the Legislature or either house thereof alone in special session by a proclamation stating the purposes of the session, and only business encompassed by such purposes shall be transacted.

Whenever a vacancy occurs in any office and no provision is made by the Constitution or laws for filling such vacancy, the Governor shall have the power to fill such vacancy by appointment.

The Governor may, except as to convictions on impeachment, grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures.

Section 4. VETO POWER

Whenever the Legislature is in session, any Bill presented to the Governor for signature shall become law when the Governor signs the Bill or fails to veto the Bill within five days of presentation. A vetoed Bill shall be returned by the Governor to the Legislature together with his objections within five days of presentation if the Legislature is in session or upon the reconvening of the Legislature from a recess. Any vetoed Bill shall be reconsidered by the Legislature and, if two-thirds of all members of each House shall pass the Bill, it shall become law.

Whenever a Bill has been presented to the Governor and the Legislature has adjourned or recessed within five days from presentation, the Bill shall become law when the Governor signs the Bill or fails to veto it within fifteen days after such adjournment or recess.

The Governor may strike any items of any bill passed by the Legislature making appropriations. The procedure for reconsidering items struck by the Governor shall be the same as is prescribed for the passage of Bills over the executive veto. All items not struck shall become law as provided herein.

Bills with errors in style or form may be returned to the Legislature by the Governor with specific recommendations for change. Bills returned shall be treated in the same manner as vetoed Bills except that specific recommendations for change as to style or form maybe approved by a majority vote at all the members of each House. If the Governor certifies that the Bill conforms with his specific recommendations, the Bill shall become law. If the Governor fails to certify the Bill, it shall be returned to the Legislature as a vetoed Bill.

Section 5. POWERS AND DUTIES OF LIEUTENANT GOVERNOR

The lieutenant governor shall be president of the Senate but shall have no vote unless the senators be equally divided. The lieutenant governor shall perform the duties and exercise the powers that may be delegated to him by the Governor.

Section 6. SUCCESSION OF EXECUTIVE POWER

When the office of Governor shall become vacant through death, resignation, failure to qualify, conviction after impeachment or permanent disability of the Governor, the lieutenant governor shall succeed to the office and powers of the Governor. When the
Governor is unable to serve by reason of continuous absence from the state, or other temporary disability, the executive power shall devolve upon the lieutenant governor for the residue of the term or until the disability is removed.

Whenever there is a permanent vacancy in the office of the lieutenant governor, the Governor shall nominate a lieutenant governor who shall take office upon confirmation by a majority vote of all members of each House of the Legislature. Whenever there is a concurrent vacancy in the office of Governor and lieutenant governor, the order of succession for the office of Governor shall be as provided by law.

The Supreme Court shall have original and exclusive jurisdiction to determine when a continuous absence from the state or disability has occurred in the office of the Governor or a permanent vacancy exists in the office of lieutenant governor.

Section 7. OTHER EXECUTIVE OFFICERS: POWERS AND DUTIES

There shall be chosen by the qualified electors of the state at the general election of the Governor and every four years thereafter the following constitutional officers: attorney general, secretary of state, auditor, treasurer, and commissioner of school and public lands, who shall severally hold their offices for a term of four years.

Section 8. REORGANIZATION

All executive and administrative offices, boards, agencies, commissions and instrumentalities of the state government and their respective functions, powers and duties, except for the office of governor, lieutenant governor, attorney general, secretary of state, auditor, treasurer, and commissioner of school and public lands, shall be allocated by law among and within not more than twenty-five principal departments organized as far as practicable according to major purposes, by no later than July 1, 1974. Subsequently, all new powers or functions shall be assigned to administrative offices, agencies and instrumentalities in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department.

Except as to elected constitutional officers, the Governor may make such changes in the organization of offices, boards, commissions, agencies and instrumentalities, and in allocation of their functions, powers and duties, as he considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the Legislature within five legislative days after it convenes, and shall become effective, and shall have the force of law, within ninety days after submission, unless disapproved by a resolution concurred in by a majority of all members of either house.

Section 9. APPOINTMENT AND REMOVAL POWER

Each principal department shall be under the supervision of the Governor and, unless otherwise provided in this Constitution or by law, shall be headed by a single executive. Such single executive, unless provided otherwise by the Constitution, shall be nominated and, by and with the advice and consent of the Senate, appointed by the Governor and shall hold office for a term to expire at the end of the term for which the Governor was elected, unless sooner removed by the Governor.

Except as otherwise provided in this Constitution, whenever a board, commission or other body shall head a principal department of the state government, the members thereof shall be nominated and, by and with the advice and consent of the Senate, appointed by the Governor. The term of office and removal of such members shall be as prescribed by law.

The Governor shall have power to nominate and make interim appointments requiring Senate confirmation during recess of the Legislature except that such nominations and interim appointments shall extend only to the end of the Governor's term or until acted upon by the Legislature.