Constitutional Change: The Local Government Article

Cooperative Extension South Dakota State University
The Local Government Article

CONSTITUTIONAL CHANGE

Cooperative Extension Service
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The Local Government Article

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On November 7, 1972, the voters of South Dakota will have the opportunity to vote on four replacement articles to the South Dakota Constitution. These articles would replace the present executive, judicial, local government, and amendments and revisions articles. Each article will be voted on separately.

The text of the proposed local government article, along with explanatory material, is contained in this fact sheet. The article, which would replace Articles IX and X, is the result of research and public hearings conducted by the South Dakota 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 The Commission's approach has been to retain those parts of the articles that are still useful, remove those that are outdated, and add new features considered desirable on the basis of experience and need. Legislative action to place the proposed Local Government article on the ballot received a House vote of 52-13 and a Senate vote of 33-1.

What principles influenced the preparation of this article?

Two core principles, which experience and tradition support as basic for the proper functioning of state and local government, influenced the Commission in forming this article. One is that all units of local government exist largely for the administration of state law by local officials. In this sense, local units are administrative subdivisions of the state, and for this reason state government exercises much power over local units. Except as specifically limited in other parts of the article, the legislature would continue to have complete power in organization and classification of local government units.

The second core principle is that all units of local government are instruments of self-government. They not only administer state laws but also prepare local policies designed to solve local problems. The proposed local government article responds to this principle of self-government by expanding the opportunities people have to shape their own local government. It offers home rule, guarantees local units the right to engage in acts of intergovernmental cooperation, and protects the right of the people to determine county boundaries and township government.

What would home rule accomplish?

By adopting home rule, the people within a local government unit—city, counties or combinations thereof—could decide for themselves which form of executive, legislative, and administrative structure they want. Such a decision could not be overruled by the state legislature. Home rule is popularly elected. Administrative decisions of the local governing body would be subject to judicial review. Local governments that have home rule could also assume the powers deemed necessary for their local needs, subject to limitations in state law and in the Constitution. Thus, increased flexibility is the primary goal in this section.

What is a home rule charter?

A charter is like a Constitution for the local government. It incorporates structures and powers according to the wishes of the people.

Does South Dakota have home rule now?

Presently, the Constitution includes a long, complex provision allowing cities to adopt home rule. It has never been used. The proposal simplifies the process and allows counties and combinations to adopt it. (By combinations is meant cities/counties.)

What about those units that do not adopt home rule?

The forms of government they would be allowed to adopt and the powers they could exercise would continue to be determined by the state legislature, as they are now.

What is the purpose of the section on intergovernmental cooperation? (Section 3)

This section grants all local government units the right to jointly finance and perform functions and powers. They are also allowed to transfer any of their functions and powers to another unit if they feel better service could be achieved that way. They are not forced to do these things; this section simply grants them the right.
Joint activity is a means by which cities, counties, and other local units could seek more economical use of their tax dollars. Joint use of facilities, equipment and technical personnel are areas in which it might be tried.

Are county boundaries and townships protected by the proposal?
Section one of this proposal states that county boundaries cannot be changed unless a majority of those voting in each of the counties affected approve of the change. No township can be abolished unless the people within that township, by majority vote, decide to abolish it. These are two very explicit restrictions placed on the powers of state government over local government. County boundaries and townships are protected, but change is possible if local residents desire to change.

What restrictions on the structure of county government are omitted in this proposal?
The present South Dakota Constitution requires all counties to have multiple executives. This means each county must elect a clerk of court, sheriff, county auditor, register of deeds, treasurer, state's attorney, and coroner every two years. The Commission feels that, because of the wide variety of economic and social conditions among the counties of the state, the Constitution should not impose such a narrow restriction on the structure of county governments. Cities have never been subject to such a narrow constitutional restriction in South Dakota; in this proposal, counties are released from it, too.

This change does not mean that counties could not continue with the existing form of executive, it simply means the Constitution would no longer impose this type of structure. Some counties may desire to continue with this multiple form; others may feel they could operate more efficiently under a single executive form. The proposed change would enable local people to decide on the particular form.

What effect would this article have on local government finance and taxation?
None directly. The local government article deals only with the structures and powers of local government units. Local government finance and taxation will be considered by the Constitutional Revision Commission sometime in the future when it begins its research and public hearings on the articles dealing with finance and taxation.

What immediate changes would result if this article is adopted?
The proposed local government article does not force local governments to change at all. It provides the means whereby the people can make changes, if and when they want to.

The demands placed on local governments have increased in recent years. Local governments are asked to provide more and better services for their citizens, they are involved in federal and state grant programs, and their budgets are growing. New types of cooperative ventures are being tried around the state. The Model Rural Development Program is one example. The Commission believes that, given these circumstances, the local government article should be flexible. It should allow the people opportunities to determine their own local government as much as possible, to develop cooperative approaches to problem solving, and adapt their local governments to meet changing conditions they will face in the future. The proposed local government article is intended to achieve these ends.

Where can you get more information?
It is impossible to answer all your questions about constitutional revision in a publication of this size. If you would like more information ask your County Extension Agent for FS 566, "Constitutional Change—Questions and Answers," FS 567 on the Executive Article, FS 568 on the Judicial Article and/or FS 570 on the Amendments and Revisions 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.

The text of the local government article is included in this publication.
Constitutional Revision:
Article IX Local Government
House Joint Resolution No. 515

A JOINT RESOLUTION, Proposing and agreeing to an amendment of article IX, relating to county and township organization and article X, relating to municipal corporations and combining them in article IX, of the Constitution of the state of South Dakota, relating to the organization and function of local government generally.

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 combination and amendment of articles IX and X 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 articles IX and X of the Constitution of the state of South Dakota be combined and amended to read as follows:

Article IX
Local Government
Section 1. ORGANIZATION OF LOCAL GOVERNMENT
The Legislature shall have plenary powers to organize and classify units of local government, except that any proposed change in county boundaries shall be submitted to the voters of each affected county at an election and be approved by a majority of those voting thereon in each county. No township heretofore organized may be abolished unless the question is submitted to the voters of the township and approved by a majority of those voting thereon in each township.

Section 2. HOME RULE
Any county or city or combinations thereof may provide for the adoption or amendment of a charter. Such charter shall be adopted or amended if approved at an election by a majority of the votes cast thereon. Not less than ten percent of those voting in the last preceding gubernatorial election in the affected jurisdiction may by petition initiate the question of whether to adopt or amend a charter.

A chartered governmental unit may exercise any legislative power or perform any function not denied by its charter, the Constitution or the general laws of the state. The charter may provide for any form of executive, legislative and administrative structure which shall be of superior authority to statute, provided that the legislative body so established be chosen by popular election and that the administrative proceedings be subject to judicial review.

Powers and functions of home rule units shall be construed liberally.

Section 3. INTERGOVERNMENTAL COOPERATION
Every local government may exercise, perform or transfer any of its powers or functions, including financing the same, jointly or in cooperation with any other governmental entities, either within or without the state, except as the Legislature shall provide otherwise by law.