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Cooperative Extension South Dakota State University

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Legislative Article 1974

Cooperative Extension Service
South Dakota State University
U. S. Department of Agriculture
On November 5, 1974, the voters of South Dakota will again have the opportunity to vote on replacement articles to the South Dakota Constitution. The two proposed articles would replace the present Legislative Article and the Elections and Suffrage Article. Each of the proposed articles will be voted on separately.

The text of the proposed Legislative Article, along with questions and answers about it, are presented in this fact sheet.

The Legislative Article is the result of research and public hearings conducted by the South Dakota Constitutional Revision Commission. The Commission, in revising the Legislative Article, sought advice from the public, legislators, and the Citizens Conference on State Legislatures. The Commission also used other recently revised state constitutions, the Model State Constitution written by the National Municipal League, and court interpretations in formulating the new Legislative Article.

The Commission submitted its suggested article to the Legislature, and after some revision, the Legislature gave its consent to the proposed article by a 60-7 vote in the House and a 34-0 vote in the Senate.

In 1972 the voters of South Dakota approved a new executive article and a new judicial article. The purpose of these new articles was to strengthen and modernize these departments in an attempt to render them more accountable, visible, and responsive to what the people of South Dakota need and want. One goal of the proposed legislative article is to accomplish this same purpose with respect to the legislative branch of government.

Another goal of the proposed change is to grant to the Legislature sufficient authority to act as a check on the powers exercised by the executive and judicial departments. The Commission and the Legislature consider this an important element in the balance of power among the three branches of government.

The recommended changes would also delete obsolete provisions and remove administrative details that the Commission and Legislature believe could be covered by statutes.

A goal of any revision of South Dakota's 1889 Constitution is to simplify and bring up-to-date those provisions which are still applicable. Therefore, many of the provisions in the present Legislative Article would be retained, but in a more simplified and modernized manner.

Does the proposed article still provide for two legislative houses?
Yes. The Legislature would still consist of a Senate and a House of Representatives.

Would the term of office of the legislators change?
No. The term of office of members of the Legislature would be the same as it is now. Senators and representatives would still serve 2-year terms.

Were the qualifications to serve in the Legislature changed?
Yes, they were. Our present article states that a member of the Legislature must be at least 25 years old and have been a resident of the state for 2 years. The proposed article requires only that a member of the Legislature be a qualified voter of the district which he represents.

The qualifications to serve in the Legislature were changed to ensure that any qualified voter would have an opportunity to run for a seat in the Legislature.

Who determines whether a legislator is qualified to serve?
Both the present and the proposed article state that each house of the Legislature is to determine the qualifications and be the judge of the elections of its members. The proposed article allows the Legislature to delegate to the judiciary the power to determine the elections and qualifications of its members that are contested.

How many senators and representatives would there be in the Legislature under the proposed Legislative Article? Who would decide?
The proposed article requires that the Senate shall have no more than 35 or fewer than 20 members, and the House of Representatives shall have no more than 75 or fewer than 50 members. Presently, the Senate is required to have no more than 35 or less then 25, and the House can have no more than 75 or fewer than 50.

The exact number of legislators and the area that they would represent would be determined by the Legislature every 10 years following the federal census count. In the proposed article, the Legislature is given the responsibility of dividing the state into single-member or multi-member legislative districts or combinations thereof consisting of compact, adjoining territory. A recent United States Supreme Court ruling established the "one person, one vote" principle for both houses of the Legislature. This means that all votes are to be equally weighed.
Presently, the Legislature is required to redistrict after each federal census, and if it fails to do so, a group composed of the Governor, Superintendent of Public Instruction, presiding judge of the Supreme Court, the Attorney General and the Secretary of State is empowered to do so. The proposed article states that if the Legislature fails to redistrict, the Supreme Court shall determine the legislative districts.

Our state is presently divided into 28 legislative districts of approximately equal population with the exception of our three largest population centers: (1) part of Pennington County (Rapid City), (2) Brown County (Sioux Falls), and (3) Minnehaha County (Aberdeen). Twenty-five of the legislative districts are each represented by one senator and two representatives. Because of the greater population in the three areas listed above, a portion of Pennington County has three senators and six representatives, Brown County has two senators and four representatives and Minnehaha County has five senators and ten representatives. All legislative districts in South Dakota are multi-member.

Would the length and/or time of the legislative session be changed?

It could be. Presently, the Legislature is required to meet 45 days one year and 30 days the next year. The proposed legislative article permits the legislature to meet for up to 45 days each year. Presently, the Legislature is bound by the Constitution to begin each session on a specific day. The replacement article allows the legislature to decide for itself when to begin, when to recess, and when to end.

It is the belief of the Constitutional Revision Commission and the Legislature that the flexibility provided in the replacement article would contend with (1) the increasing workloads of part-time legislators, (2) the waste of time while a bill is in committee, (3) the need of legislators to study in detail complex legislation, (4) the necessity for more time for public hearings on bills, and (5) the congestion and confusion at the end of a session when bills begin to "pile up."

Could a member be expelled from the Legislature under the new article?

Yes. A member could be expelled from the Legislature or be disciplined for cause. Each house would have the power to discipline or expel its own members. This new provision would give the Legislature more authority over the actions of its members. To prevent abuse and excessive use of this authority, it would require a 3/4's vote of the legislators in a house to expel or discipline one of its members.

How would vacancies in the Legislature be filled?

In the proposed article, the Legislature is authorized to provide by law a method to fill vacancies in the House and the Senate by appointment.

Who would be the presiding officers in the House and Senate?

The new article allows both the House and Senate to choose their presiding officer from among their members. Presently the House does this, and the presiding officer of the Senate is the Lieutenant Governor.

The Commission and the Legislature believe that since the Governor and Lieutenant Governor are chosen as a team, the new provision would provide a clearer separation of power between the executive and legislative branches of government.

If the Lieutenant Governor was no longer the presiding officer of the Senate, what would he do?

The Executive Article gives the Lieutenant Governor the responsibility of performing the duties and exercising the powers that are delegated to him or her by the Governor. For example, the Lieutenant Governor could fulfill the Governor's responsibilities when he or she is absent from the state, aid in policy and budget planning, be a spokesman for the Governor when the Governor is unable to attend functions, and be a liaison between the executive and legislative branches of government.

When would new laws passed by the Legislature go into effect?

The proposed article guarantees that all laws will have an effective date provided for by the legislature, but that no law will go into effect for at least 90 days after enactment unless the statute is of an emergency nature. The 90-day requirement was retained to ensure that people who are affected by the new law would have ample time to receive notice of the law, adjust to it, and permit the filing of referendum petitions if desired.

Both the present Legislative Article and the proposed article state that the Legislature by a 2/3's vote of all the members of each house may declare a law an emergency measure and provide an effective date other than the 90-day requirement.

Would we still have the initiative and the referendum?

Yes. The people of South Dakota would still possess the right of the initiative and the referendum in the proposed article. South Dakota was the first state to adopt the initiative and the referendum and these rights are considered historic and fundamental.

The initiative allows the people to submit legislation to a vote of all the electors of the state for their approval or disapproval. The referendum provides the people an opportunity to accept or reject a measure already passed by the Legislature.

What changes are there between the initiative and the referendum in the present article and the proposed article?

The new article retains the basic requirements of our present initiative and referendum provisions. A few modifications have been proposed, however.
Is impeachment of public officials still possible?

Yes. Presently, provisions concerning the impeachment process are included in a separate Impeachment Article (Art. XVI). In the new proposal, the impeachment process is covered in the Legislative Article since it is a legislative responsibility.

The proposal retains the main impeachment procedure provisions of the present Impeachment Article, but omits the list of impeachable offenses. Legislatures of the future would determine what would be cause for impeachment.

The new article states, as does the present one, that the House of Representatives is the only body that has the authority to impeach an official by a majority vote of all its members. To convict an impeached official, 2/3's of all the members of the Senate must concur. The 2/3's majority requirement would attempt to protect public officials from constant political pressure by the Legislature.

An executive or judicial official would be liable to prosecution according to the law for acts of misconduct either before or after he is convicted or acquitted through the impeachment process in the new article. Thus, a public official, such as the Governor, would not be immune from arrest or criminal prosecution prior to being impeached.

The impeachment proposal does not exclude the use of other methods to remove public officials from office for cause that may be provided by law or the Constitution. An example is the provision for removing judges by a judicial qualifications commission and the Supreme Court provided for in the new Judicial Article (Art. V, Sec. 9).

Are legislators privileged from arrest while serving in the Legislature?

No. The recommended proposal does not contain a provision to protect legislators from arrest while serving in the Legislature. The privilege from arrest in all cases except treason, felony, or breach of peace provided for in our current Legislative Article is practically obsolete because of various court rulings. Breach of the peace has been interpreted by the court as meaning "any crime not a felony," rather than the common law offense of breach of the peace. Thus, all criminal offenses have been excluded from the arrest privilege.

Could legislators be sued for what they said in the Legislature?

No. Although legislators are not privileged from arrest, there is a provision retained from the present article that protects legislators from being questioned in any other place for any speech or debate made in the Legislature.

This provision serves three purposes: (1) to enable our popularly elected legislators to discharge their official responsibilities without harassment from those, however powerful and influential, who may take offense, (2) to protect freedom of debate from threats of libel actions, and (3) to ensure some degree of freedom in the legislative process.

The Court has interpreted this privilege as extending to reports, resolutions, and votes as well as speeches and debates. The privilege is applicable to statements made not only in the House and Senate chambers but also to statements made before legislative committees.

Would the Legislature be able to hold a special session?

The new article would permit the Legislature to hold special sessions. Now, only the Governor can convene a special session of the Legislature.

The new article states that the presiding officer of the House and Senate can convene a special session upon the written request of 2/3's of the members of each house. A written request from 2/3's of the members from each house could be a difficult task and would normally require bipartisan support. Because the task would normally be difficult to achieve, the Legislature probably would not abuse the privilege.

Special sessions have rarely been held. But if an emergency did occur, the Legislature could convene without the formal approval of the Governor under the new article. The new provision would also allow the Legislature to reconvene in order to reconsider a vetoed bill.
Would individuals have the power to sue governmental units?
Yes. The new article provides that the state, counties, cities, towns, and all other local governmental units shall have no immunity from injury to a person or property. In the proposed changes the people will directly have the power to sue any state or local governmental units, subject only to reasonable limitations deemed necessary by the Legislature.

Presently, the Constitution states that the Legislature is to determine in what manner and in what courts suits may be brought against the state. It does not provide for suits against cities, towns or counties.

Would gambling still be prohibited?
Gambling would still be prohibited under the proposed article. Section 25 of our present State Constitution prohibits games of chance except by certain non-profit groups. This section provides that the Legislature may authorize groups such as veterans, charitable, educational, religious or fraternal organizations, civic and service clubs, volunteer fire departments or other public spirited organizations to conduct games of chance if the entire net proceeds are used for educational, charitable, patriotic, religious or other public spirited uses. The commission and the Legislature felt that public sentiment toward the prohibition of gambling provision intact.

Could the Legislature pass special laws?
The Legislature is prohibited from passing special or local laws when a general law can be made applicable. A special or local law is one which applies only to a portion of the state, whereas a general law applies universally throughout the state. Governments usually rely on general laws, but there are circumstances in which a general law cannot be made applicable to a particular city or town, an institution, or a segment of the population. In these instances local or special laws are necessary and feasible.

Because general laws are not always suitable, who is to determine whether a general law can be made applicable to a particular situation? Without specific directives in our Constitution, the courts have been divided as to which branch of government, judicial or legislative, is to determine this question. The new article solves this problem. It specifically grants to the judiciary the power to determine whether a general law is applicable.

Alaska, Kansas, Michigan, Minnesota and the Model State Constitution also provide for judicial determination of whether a general law could be made applicable.

What new control would the legislative branch have over the executive branch of government?
A new section is included in the proposed article that would give a legislative committee, acting during recesses or between sessions, the authority to temporarily suspend rules and regulations adopted by administrative agencies or departments. (The legislative committee referred to above would be made up of members of both houses. The Legislature would determine the size and partisanship of the committee.) The suspension would be in effect until 30 days after the Legislature convenes. The Legislature would then be able to re-examine the suspended rules.

The Legislature neither has the time nor the expertise to effectively prescribe all the rules and regulations necessary to properly implement its statutes. Therefore, it has delegated the responsibility of implementing the enacted statutes to the agencies and departments of the executive branch of government.

The purpose of the new section is twofold. First, this section is meant to establish a balance of power between the executive and legislative branches of government. The agencies and departments empowered to formulate rules and regulations would not be able to become separate, independent legislatures. Second, the Commission and the Legislature felt there should be some immediate supervision of administrative rules so that the intent of the Legislature in enacting the statutes would be carried out by the departments and agencies.

What if more money is needed by state departments than was appropriated during the Legislative session?
The Legislature is authorized to establish a committee, acting for the Legislature when it is not in session, which would be able to approve, alter, or reject requests for more money needed by state departments and agencies. (The legislative committee referred to above would be made up of members of both houses. The Legislature would determine the size and partisanship of the committee.)

The legislature has the responsibility of controlling all budget requests by state departments and agencies. Because the Legislature meets for a limited time each year, this new provision is meant to provide budgetary control during the entire year by representatives of the Legislature. This provision could also provide for flexibility in the budget appropriated by the Legislature. If an emergency occurred or if additional funds were needed, agencies and departments would not have to wait until the next legislative session to request them. A legislative committee could review the request and grant additional funds if necessary. The agencies and departments would be accountable to the Legislature in how they used their funds, even though the Legislature was not in session.

What if federal grants become available to the state when the Legislature is not in session?
The same legislative committee, referred to in the question immediately above, would be
empowered to review and approve federal grants that become available to state departments between legislative sessions.

This provision would guarantee legislative approval or disapproval of new federal grant programs needing additional state funding, that become available to the state when the Legislature is not in session. The legislative committee, acting for the Legislature, would be able to examine the new federal grant programs that could commit the state to increased funding in future years.

What are other provisions of the proposal?

Public Sessions, Meetings, etc. (Section 6)

Sessions, joint sessions, committee meetings and legislative commission meetings will all be open to the public. There is a provision in the present article that allows meetings to be closed when the business is such as ought to be kept secret. This is deleted in the proposed article. The requirement that sessions and meetings be open to the public is designed to assure some degree of openness and accountability in governmental functions.

Bills limited to one subject (Section 8)

The new article would retain the provision that all bills shall be confined to one subject to be expressed in the title. Bills concerned with appropriations and the codification, revision or rearrangement of laws would be excluded from this requirement. This provision is intended to prevent abuses such as the attachment of special interest amendments which are not pertinent to the main bill.

Carryover of bills (Section 8)

A new provision authorizes the Legislature to provide, by law, for the carryover of bills and resolutions from the annual session in an odd-numbered year to the annual session in an even-numbered year. This provision would eliminate the need to reprint the same bills each session and would allow the legislators to study bills between sessions.

Militia (Section 15)

A section providing for the establishment, organization, equipment, and discipline of a state militia is included in the proposed Legislative Article. This section replaces and simplifies the present Militia Article (Art. XV), but at the same time retains the major provisions of Article XV.

Recording votes on bills (Section 8)

This section requires that the vote on the final passage of all bills shall be recorded in a journal and made public by entering the name of each member voting and his vote. One-sixth of the members present in either house may require a recorded vote on any question taken, such as amendments, resolutions and parliamentary procedure questions. Both provisions are also included in the present article.

Journal (Section 7)

Each house of the Legislature is required to keep a journal of the proceedings of each session and to publish such journal.

What has been deleted from the present Article?

Some provisions were deleted from the present article because the Commission and the Legislature felt they were legislative in nature. The deletions include:

* Section providing for salary and mileage of legislators (Art. III, Sec. 6, Art. XXI, Sec. 2),
* An oath required of members and officers of the Legislature (Art. III, Sec. 8, Art. XXI, Sec. 3),
* Two readings of a bill before the Legislature prior to adoption (Section 17),
* Restrictions on appointments made of members of the Legislature (Section 12),
* Punishment and criminal procedures with regard to the bribery of elected officials (Section 28),
* Section requiring the presiding officer of each house to sign all bills passed (Section 19). The Supreme Court has ruled that the failure of the presiding officer to sign a bill prevents its passage. This gives each presiding officer a veto power even though a majority of each house has passed a bill.
* Section prohibiting the Legislature from delegating certain of its legislative powers to special commissions, private corporation or associations (Section 19). The Courts would have the responsibility of determining what is an unlawful delegation of legislative power.
* Section 29 which allows the Legislature to provide for public office succession to ensure the continuation of governmental functions in an emergency resulting from disasters caused by enemy attack. This section was adopted in 1960 because of the concern over what would happen to governmental functions if an enemy attack should occur.

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 area or county Extension home economist or your county Extension agent for FS 623 on Constitutional Revision and/or FS 624 on the Elections and Suffrage Article; or you may contact the League of Women Voters, local legislators, or write to: Executive Secretary, Constitutional Revision Commission, % State Capitol, Pierre, S.D. 57501.
Article III
Legislative Department

Section 1. LEGISLATIVE POWER
The legislative power of the state is vested in a Legislature consisting of a senate and house of representatives.

Section 2. INITIATIVE AND REFERENDUM
The people reserve to themselves the power of direct initiative on all matters, except appropriations, and referendum. A measure proposed by initiative or referred to the people shall require a petition signed by qualified voters, but not more than ten percent of the total votes cast for Governor in the last gubernatorial election shall be required.

The petition for an initiated measure shall contain the text of the proposed law, the names and addresses of its sponsors and shall be filed at least one year before the next general election at which the proposed measure is submitted to the voters. The Legislature may provide for the withdrawal of an initiated measure by its sponsors any time prior to its submission to the voters. An initiated law shall become effective ninety days after the official canvass.

The petition to refer a measure must be filed within ninety days after the measure to be referred was enacted.

This section shall apply to all units of local government.

The Legislature shall make suitable provisions for implementing this section.

Section 3. MEMBERSHIP AND QUALIFICATIONS
The senate shall not have more than thirty-five or fewer than twenty members, and the house of representatives shall not have more than seventy or fewer than forty members. Each member must be a qualified voter of the district which he represents.

Section 4. LEGISLATIVE DISTRICTS
The state shall be divided into single-member or multi-member legislative districts or combinations thereof, according to population. Each district shall consist of compact contiguous territory.

The Legislature shall, by law, redistrict during the calendar year following each federal decennial census. If the Legislature fails to redistrict, the Supreme Court shall determine legislative districts.

Section 5. ELECTION AND TERM
The terms of office of the members of the legislature shall be two years, and the Legislature shall provide by law a method to fill vacancies.

Section 6. SESSIONS
The Legislature shall convene in annual sessions not to exceed forty-five legislative days each. The legislature shall fix the dates of commencement of the annual sessions and the dates of any legislative recess. Sessions, joint sessions, committee meetings and legislative commission meetings shall be open to the public. The Legislature shall be convened in special session by the presiding officers of both houses upon the written request of two-thirds of the members of each house.

Section 7. ORGANIZATION AND PROCEDURE
A majority of the members of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and may compel the attendance of absent members. Neither house shall recess or adjourn for more than three days without the consent of the other. Each house shall keep a journal of its proceedings and publish the same from time to time.

Each house shall be the judge of the election and qualification of its members, but may by law vest in the judiciary the determination of contested elections.

Each house shall determine the rules of its proceedings and shall choose its officers and employees. The presiding officer of each house shall be selected from its membership. Each house may for cause discipline or expel any of its members by a three-fourths vote.

Section 8. FORM AND PASSAGE OF BILLS
The Legislature shall enact laws only by bill. No bill shall become law without the concurrence of a majority of all the members of each house.

Final passage of a bill shall be recorded and made public by entering the name of each member voting and his vote, either aye or nay, in the journal. One-sixth of the members present in either house may require a recorded vote on any question.

Any bill may originate in either house, but may be amended or rejected by the other.

Bills, except for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject, to be expressed in the title. The Legislature may provide, by law, for the carry-over of bills and resolutions from the annual session in an odd-numbered year to the annual session in an even-numbered year.

Section 9. EFFECTIVE DATE OF LAWS
The Legislature shall provide, by law, for an effective date for all laws passed. No law shall become effective until ninety days after enactment unless, each house by a two-thirds vote of all its members declares the law an emergency measure and include this declaration in the title or body of the act.
Section 10. LEGISLATIVE IMMUNITY
No member shall be questioned in any other place for any speech or debate in the Legislature.

Section 11. SPECIAL LEGISLATION
The Legislature shall pass no special or local law when a general law can be made applicable. Whether a general law can be made applicable shall be a matter for judicial determination.

Section 12. SOVEREIGN IMMUNITY
The state, counties, cities, towns, and all other units of local government shall have no immunity from suit or liability for injury to a person or property, but the Legislature may provide reasonable limitations.

Section 13. IMPEACHMENT
The Legislature shall provide for the manner, procedure and causes for impeachment of executive and judicial officials. Other proceedings for removal from public office for cause may be provided by laws or this Constitution.

Section 14. GAMES OF CHANCE PROHIBITED: EXCEPTION
The Legislature shall not authorize any game of chance, lottery or gift enterprise, provided, however, it shall be lawful for the Legislature to authorize by law, bona fide veterans, charitable, educational, religious or fraternal organizations, civic and service clubs, volunteer fire departments or such other public spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, religious, or other public spirited uses.

Section 15. MILITIA
The Legislature shall provide by law for the establishment, organization, equipment and discipline of the state militia, conforming to the regulations of the United States military forces as nearly as practicable. The Legislature may provide for the qualification and tenure of officers to be commissioned by the Governor subject to removal by the Governor for cause, to be first ascertained by a courtmartial pursuant to law.

The militia shall, except for treason, felony or breach of the peace be privileged from arrest during the performance of duty.

Section 16. SUSPENSION OF ADMINISTRATIVE RULES
The Legislature may by law empower a committee comprised of members of both houses of the Legislature, acting during recesses or between sessions, to prevent proposed rules and regulations promulgated by any administrative department or agency from going into effect until thirty days after the Legislature reconvenes.

Section 17. BUDGETARY CONTROL BY THE LEGISLATURE
The Legislature is authorized to establish by law a committee comprised of members of both houses of the Legislature which may allocate, while the Legislature is not in session, to any state department additional funds out of a contingency fund that may have been established for that purpose, and may approve or reject monies coming to the state from the United States government in excess of monies appropriated in the last general appropriations act.