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Constitutional Amendment E: Legislative Sessions and Interim Committee

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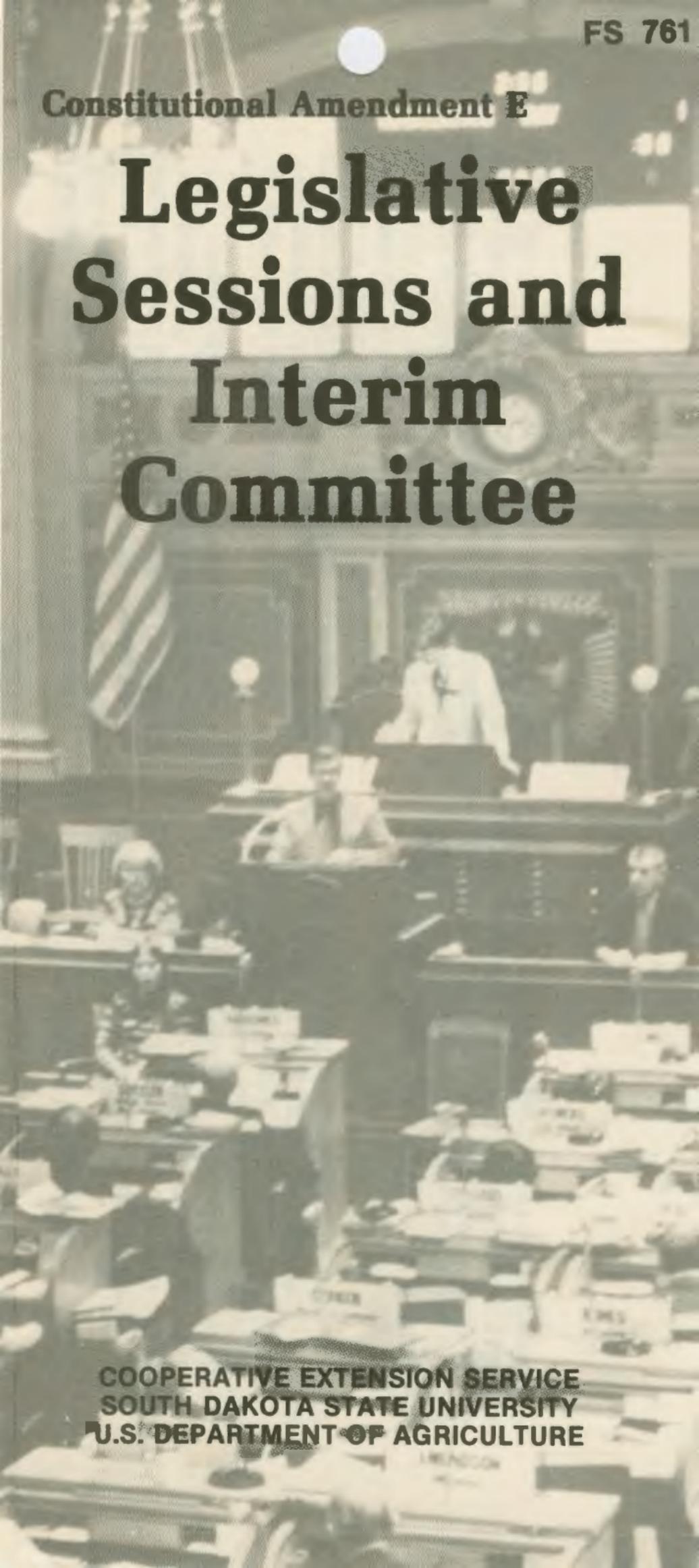
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Constitutional Amendment E

Legislative Sessions and Interim Committee



COOPERATIVE EXTENSION SERVICE
SOUTH DAKOTA STATE UNIVERSITY
U.S. DEPARTMENT OF AGRICULTURE

Constitutional Amendment E

Legislative Sessions and Interim Committee

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The amendment proposes to make three changes in sections 6 and 7 of Article III of the present South Dakota Constitution as it relates to the two legislative sessions.

It also proposes to add a paragraph to Section 7 bestowing powers upon an interim oversight committee.

Voters in 1978 rejected amendments to sections 6 and 7 of Article III but **with different provisions**. The 1978 amendment proposed to make the sessions of equal length by adding 5 legislative days to the biennial calendar. It did not propose to confer powers upon a special interim committee.

Changes proposed in the session

This amendment, proposed by joint resolution of the legislature, asks the voters to change the present long session which consists of 45 legislative days to a 40-day session. It adds the 5 days taken from the long session to the present short session which is 30 days for a total of 35 days.

It shortens the long session by 5 days and lengthens the short session 5 days. The total number of legislative days in the 2-year period (75 days) remains unchanged.

The amendment also proposes to change the convening dates. It asks that the legislature meet in regular sessions on the first Tuesday after the first Monday in January every year instead of the present first Tuesday after the first Monday in even numbered years and the third Tuesday after the first Monday in odd numbered years. No other changes pertaining to the legislative sessions are proposed.

The proposed new section

The amendment proposed by the legislature would add a new paragraph to Section 7 of Article III:

The legislature may by law empower a committee comprised of members of both houses of the Legislature, acting during recess or between sessions, to suspend rules and regulations promulgated by any administrative department or agency from going into effect until July 1 after the Legislature reconvenes.

Length of sessions

The present 30 and 45 day sessions were practical when state government operated on a biennial budget. The longer session was needed to work on the budget for the next 2-year period. Only minor adjustments in the budget were considered during the 30-day session.

Since the late 1960's state government has operated on an annual budget basis. Legislators have complained that they do not have enough time during the 30-day session to consider both the budget and the mounting number of other bills. The number of bills introduced in the 30-day session is nearly equal to those introduced in the 45-day session. It is maintained that there is no longer any justification for alternating sessions of unequal length.

Voters in 1978 disapproved a proposal to make the sessions of equal length by adding 5 days to the 2-year legislative calendar. The 1980 proposal is a compromise: it does not add any more time to the calendar but makes some allowance for the changes in the workload. It should not add to legislative costs.

Lengthening the short session by 5 days will facilitate better management of the legislative calendar. Legislators must impose deadlines upon themselves so they can move through the legislative process and adjourn on time. In the short session, the deadlines often arrive before the work can be properly finished. For example, the final day for introduction of committee bills and joint resolutions is the ninth legislative day in the 30-day session. In the 45-day session, it is the twenty-first legislative day. For some committees with a heavy workload, many bills are either hastily written or not introduced at all.

Also, in the 30-day session, all committees must have completed their work and moved the delivery of all bills (committee and individual) to the house of origin by the end of the eighteenth legislative day. Many bills are either killed or delivered to the house of origin without proper public hearing because public hearings may be too time consuming (if a public hearing is called, all interested parties should be heard).

The major reason for the later starting time is no longer valid. State law now requires that copies of the proposed budget be in the hands of the legislators for their consideration by December 1 preceding the legislative session (SDCL 4-7-9).

Even veteran legislators are sometimes confused about when the legislature is to begin each year. A uniform starting date will end the confusion for legislators and the general public.

More people might seek legislative seats if the session convenes earlier and adjourns before spring. Certainly this would be true for farmers and ranchers and may also be true for businessmen and others. The 2-week earlier starting date and 5-day shortening of the long session will allow the long session adjournment nearly 3 weeks earlier than is presently the case.

The proposed committee

The legislature in the proposed amendment is asking the voters to authorize the legislature to establish an interim committee composed of members of both houses. It would have the authority to suspend the rules and regulations which might be issued by any state department or agency of state government until the July 1 following the convening of the next legislature.

The amendment would put into the state constitution the authority which the legislature already possesses under state law. A South Dakota law passed in 1972 provides for an interim rules review committee composed of six members (three from each of the two legislative houses). The 1972

law empowered the committee only to review proposed rules and to make recommendations. The law was later amended to give the interim committee the authority to suspend proposed rules.

Executive branch departments and agencies have only that rule making authority which has been delegated to them by the legislature.

For example, the Game, Fish, and Parks Department has been given the authority to establish hunting seasons and bag limits each year. When adopted by the Game Commission, the seasons and limits are laws even though the legislature did not specifically pass them. Another example of delegated authority is eligibility requirements for certain state funded programs.

When such rules have been approved according to law and have gone into effect they cannot be suspended by the committee under current law or under the provisions of the proposed amendment.

A law passed in 1978 (SDCL 1-26B-2) sets up a schedule when all rules and regulations of all state departments and agencies will terminate, beginning with the Department of Social Services in 1981 and ending with the Department of Agriculture and the Department of Natural Resources in 1989. Thereafter the rules and regulations and the authority to make rules of all departments and agencies will terminate on the established schedule every 10 years.

This law, in effect, amounts to a suicide clause for the rule making authority delegated to the executive branch of state government by the legislature. State departments and agencies will be required to make new rules or resubmit existing rules to public scrutiny in open hearing according to a strict procedure prescribed in present state law. The interim rules review committee might, at that time, suspend any rules which may be submitted.

The interim rules review committee does not nor would it have the authority to make agency and department rules. Only the agency, under powers delegated to it by law, or the full legislature may prescribe the rules under which the executive branch departments and agencies operate.

The purpose of the suspension authority is to prevent those new rules of which the committee may be critical from becoming effective until the full legislature has had an opportunity to consider them. The legislature may approve the new rules and take no action, in which case they would become effective on the July 1 following the legislative session. The other alternative would be to pass legislation prescribing rules which would, like any other law, become effective on the

following July 1 unless passed with an emergency clause and two-thirds majority, in which case the law would be effective immediately.

If the interim rules review committee already possesses the authority to suspend proposed rules and regulations, why is it asking the people to extend to the legislature and thereby to the committee the same authority by constitutional amendment?

The constitutionality of the statutes relating to the interim rules review committee has not been tested in the courts. The 1978 law which provides for the automatic termination of all existing rules and regulations by agencies and departments according to a schedule does not become effective until 1981. If the authority to suspend executive branch rules and regulations by the review committee is provided in the Constitution, the proponents of this amendment believe there cannot be any question about the constitutionality of the action. The legislature is seeking to avoid possible litigation between the executive and legislative branches of state government.

The suspension of rules authority might leave a department or agency without guidelines for a period of time. The administering agency would be unable to administer the program until the July 1 following the meeting of the legislature.

This could occur only on the anniversary date of an agency when all rules for that particular agency terminate under the 1978 law. At any other time when a rule change is proposed and the proposed new rule is suspended, the old rule will

remain in effect. The possibility of no guidelines would be rather remote because the state department or agency would have the full knowledge that the interim rules review committee possessed the constitutional authority to suspend the proposed rules and would probably conform to the recommendations of the committee.

Summary

The constitutional changes requested by the legislature in this proposed amendment are two-fold. The first of the requested changes would allow the legislators to make more efficient use of the biennial 75 days allotted to them by the Constitution. The request for a change in starting dates is to accommodate legislators who for business or other reasons desire an earlier adjournment date. It might also make it possible for people to serve in the legislature who, under the present time constraints, do not seek legislative office.

The second requested change may be viewed as an effort by the legislature to consolidate its authority over the rule making power of administrative departments and agencies.

A yes vote is for passage of the amendment; a no vote is for rejection.

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