South Dakota Constitutional Amendments 1976

Wanda M. Leonard

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Constitutional Amendments—1976

by Wanda M. Leonard, assistant professor of economics & Extension specialist—public policy. Reviewed by John P. Hendrickson, head, political science department, SDSU

The present South Dakota Constitution is the result of earlier efforts of the citizens of Dakota Territory and many dedicated persons of South Dakota since it gained statehood. The Constitution in its original form was the result of the 1889 Constitutional Convention, which met on July 4, as required by the Enabling Act. The Constitution was approved by the people on October 1, 1889. South Dakota officially became a state on November 2, 1889, when President Benjamin Harrison signed the statehood document. The Constitution of 1889 is the only one ever enacted for the state of South Dakota.

Prior to the voters' approval in 1889, a great deal of effort had been put forth by our pioneers to discuss the matters that would eventually culminate in the constitution. Seven years earlier, in 1882, a citizens' constitutional association called nearly two hundred delegates together in Canton to discuss matters such as municipal indebtedness, disposal of school lands, prohibition and corporations.

On June 19, 1883, a large number of prominent citizens met in Huron without legislative sanction to discuss further plans for attaining statehood. At this meeting a decision was made to hold a formal convention in Sioux Falls in September. At this 1883 convention, the people of Dakota Territory first petitioned Congress for admission to statehood. The convention lasted for fifteen days, and a constitution was drafted consisting of nineteen articles and an additional section on the procedure for putting the constitution into effect. The voters approved the document by a 2 to 1 margin in a relatively light poll. This document served as a basis for subsequent constitution making.

From September 8-25, 1885, another constitutional convention met in Sioux Falls. The constitution developed at this convention was very similar to the one in 1883, except that the 1885 constitution contained twenty-six articles, two of which were to be voted on separately: (1) the prohibition of the manufacture and sale of intoxicating liquors, and (2) the provision for the election of the House of Representatives on a basis of three-member districts with each voter having three votes which could be given to one candidate or divided between two or three candidates, (this was to allow for minority representation). Again this constitution was overwhelmingly approved by the voters, indicating the great strength of the statehood movement.
In February 1889, Congress passed the Enabling Act, which set forth the procedure whereby South Dakota might become a state. Since the act allowed for admission of three other states, the legislation was commonly called the Omnibus Bill. Although the Constitution of 1885 had been approved by the people, Congress directed that the voters should again have the opportunity to indicate their wishes with respect to that document now that statehood was at hand. In an election held in May of 1889, the voters reaffirmed their approval of the 1885 constitution. This simplified the work of the 1889 Convention, which met on July 4, as required by the Enabling Act. Only a few subjects were left to be decided and these were issues put forth by the Enabling Act such as reapportionment, boundary adjustment and division of territorial property. With these additions and modifications the Constitution was again submitted to the voters and again approved.

The Constitution in its final form allowed for revision of the document either through a constitutional convention or by amendments. As early as 1911 Governor Vessey requested the legislature to call a constitutional convention. In both 1914 and 1924, the people rejected legislative proposals to call a convention. As a result, the amendment process has been used for all revision. Since 1889, there have been 163 proposed amendments, of which 85 have been approved.

All recent governors have supported efforts for constitutional revision. In 1954, the Little Hoover Committee, a supervisory, research group consisting of seven legislators, reviewed a report of Griffenhagen and Associates and stressed the fact that the Constitution has grown "overlong and confusing and was replete with duplications and inconsistencies." The committee summarized their findings and suggestions as follows:

1. The amount of detail contained should be reduced.
2. Common subject matter should be put together.
3. Confusing terminology needs clarification.
4. Inconsistencies and errors should be removed.
5. Omissions should be corrected.

Fifteen years later, in 1969, the legislature created the Constitutional Revision Commission, whose stated purpose was 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 of thirteen members was required to examine the Constitution and report to the legislature its views as to the modifications that should be made. The commission's reports showed that to meet their stated objective, two articles should remain unchanged, five should be deleted, 15 should be amended, and 4 should be incorporated into other articles. (Note: There are 29 articles in South Dakota's Constitution, 3 had previously been repealed.) The commission was given five years to complete its work. The work was not completed on schedule and they were permitted an additional 6 months in which to complete their study and recommendations. While the Commission rests with its
position, the legislature has not as yet acted on all of their findings, and consequently, not all of the proposals have been brought before the voter.

Voters have been, to date, primarily concerned with revision and incorporation. Of the 19 articles that have been forwarded to the legislature in these categories, only 6 have been presented to you. This year, you will have the opportunity to vote on 4 articles plus the preamble.

In 1972, the people passed by a substantial margin 4 proposed replacement articles—the Executive, the Judicial, the Local Government and the Amendments and Revisions Articles. In 1974, the Legislative Article and the Election and Suffrage Article were presented to you. You, the voter, passed the Elections and Suffrage Article and defeated the proposed Legislative Article.

Now in 1976, you will have presented to you the proposed Preamble, proposed Bill of Rights Article, the revised proposal of the Legislative Article, the proposed School Lands and Funds Article, the provision for reordering the Constitution and the special question on section 26 of the Legislative Article. Of these six amendments, five are the direct result of the work of the commission. All six amendment proposals will be presented in the pages that follow.

This publication is provided to you so that you may become an informed voter. The intent is neither to encourage a "yes" vote or a "no" vote from you. The sole intent and purpose of this publication is to provide you with the information needed to make a rational decision.

The format of the pages to follow is set up so that you may study each amendment individually. Presented for you is the Article as it is proposed side-by-side with the current article. A brief explanation follows each article to assist you in your studies.

The amendments are presented in the order that they will appear on the ballot.

Amendment A -- Preamble
Amendment B -- Bill of Rights Article
Amendment C -- Legislative Article
Amendment D -- Special Question on Legislative Article, Section 26
Amendment E -- School Lands and Funds Article
Amendment F -- Reordering Article
We, the people of South Dakota, grateful to Almighty God for our civil, political and religious liberties, and recognizing the rights and duties of the state as a part of the federal system of government, reaffirm our adherence to the Constitution of the United States of America. In order to provide for the health, safety and welfare of the people, maintain a representative and orderly government, eliminate poverty and inequality, assure legal, social and economic justice, afford opportunity for the fullest development of the individual, insure domestic tranquility, secure the common defense, and preserve to ourselves and our posterity the blessings of liberty, we do ordain and establish this Constitution for the State of South Dakota.

Analysis of the Proposed Preamble

The preamble to a constitution sets forth the overall goals and principles of government. The provisions contained within the preamble generally are not legally enforceable. The preamble serves as an introduction to the articles that follow. The articles, then, should be written with the intent of fulfilling these general goals, aspirations and acknowledgements of the people.

The proposed preamble retains the substance of the current preamble and in addition recognizes additional goals and principles that were not paramount in the thoughts of the original drafters.

As you read and compare the proposed preamble with the current, you will notice changes in wording and more specification in the goals and acknowledgements. The proposal recognizes the citizens' gratitude for political as well as civil and religious liberties. The proposal also recognizes that South Dakota is a part of the federal system of government, and that we as a people reaffirm our allegiance to the United States Constitution. The proposal continues by saying that not only do we as a people want to promote the general welfare of the citizens, but that we also want to provide health and safety, that we want to eliminate poverty and provide equality among our citizens. The proposed document also states that we want to encourage each individual to develop to his or her fullest potential.
Amendment B - Bill of Rights

Proposed

Section 1. INHERENT AND INALIENABLE RIGHTS
All persons are born equally free and independent, and have certain inherent and inalienable rights among which are life, liberty, the pursuit of happiness, and the acquisition and protection of property by lawful means. To secure these rights governments are instituted, deriving their just powers from the consent of the governed.

Section 2. The right of persons to work shall not be denied, or abridged on account of membership or non-membership in any labor union, or labor organization. (As adopted November 1946, pursuant to Ch. 315, Laws of 1945.)

Section 3. FREEDOM OF RELIGION
The right to worship God according to the dictates of conscience shall not be infringed, but the right hereby secured shall not be construed to justify practices inconsistent with peace, safety or security. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution.

Current

Section 1. All men are born equally free and independent, and have certain inherent rights among which are those of enjoying and defending life and liberty, of acquiring and protecting property and the pursuit of happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

Section 2. No person shall be deprived of life, liberty or property without due process of law. The right of persons to work shall not be denied, or abridged on account of membership or non-membership in any labor union, or labor organization. (As adopted November 1946, pursuant to Ch. 315, Laws of 1945.)

Section 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege or position on account of his religious opinions, but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the state.

No person shall be compelled to attend or support any ministry or place of worship against his consent nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution.
Section 4. FREEDOM OF SPEECH, PRESS, ASSEMBLY AND PETITION

No law shall be enacted abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government.

Section 5. DUE PROCESS AND EQUAL PROTECTION

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws.

Section 6. SEARCHES, SEIZURES AND INTERCEPTIONS

The right of the people to privacy and to be secure in their persons, houses, papers, communications and effects against unreasonable searches and seizures and interceptions shall not be violated. No warrant shall issue but upon probable cause, supported by oath or affirmation reduced to writing, particularly describing the place to be searched, the person or thing to be seized and the length of time the warrant is valid.

Section 7. OPEN COURT AND RIGHT TO REMEDY AND JUSTICE

All courts shall be open, and every person shall have a remedy in the law for injuries and wrong to person, privacy, property or reputation. Justice by law, administered without denial or delay, shall be available to all.

Section 4. The right of petition and of the people peaceably to assemble to consult for the common good and make known their opinions, shall never be abridged.

Section 5. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right. In all trials for libel both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense. The jury shall have the right to determine the fact and the law under the direction of the court.

Section 2. No person shall be deprived of life, liberty or property without due process of law. The rights of persons to work shall not be denied, or abridged on account of membership or non-membership in any labor union, or labor organization. (As adopted November 1946, pursuant to Ch. 315, Laws of 1945.)

Section 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by affidavit, particularly describing the place to be searched and the person or thing to be seized.

Section 20. All courts shall be open, and every man for an injury done him in his property, person or reputation, shall have remedy by due course of law, and right and justice, administered without denial or delay.
Section 8. INDICTMENT OR INFORMATION

No person shall be prosecuted for a felony other than by indictment or information. When prosecution is by information the person shall be entitled to a prompt preliminary hearing to establish probable cause. In misdemeanor cases, offenses may be prosecuted by indictment, information or complaint. The legislature, however, may modify or abolish the grand jury system.

Section 9. RIGHTS OF THE ACCUSED

In criminal prosecutions the accused shall have the right to defend in person and by counsel, and if the accused is indigent, to have counsel appointed; to be informed of the charges against him and to have a copy thereof; to meet the witnesses face to face and question them; to have compulsory process served for obtaining witnesses; and to a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

Section 10. SELF-INCRIMINATION AND DOUBLE JEOPARDY

No person shall be compelled in any criminal case to give evidence against himself. No person shall twice be put in jeopardy for the same offense, whether the prior prosecution was under the laws of this state, another state or of the United States.

Section 11. BAIL AND HABEAS CORPUS

All persons shall be bailable by sufficient sureties, except for capital offenses when proof is evident or presumption great. The privilege of the writ of habeas corpus shall not be suspended unless, in case of rebellion or invasion the public safety may require it.
Section 12. TRIAL BY JURY
The right of trial by jury shall remain inviolate and shall extend to all cases at law without regard to the amount in controversy, but the Legislature may provide for a jury of less than twelve in any court not a court of record and for the decision of civil cases by three-fourths of the jury in any court.

Section 13. EX POST FACTO LAWS AND IMPAIRMENT OF CONTRACTS
No ex post facto law, or law impairing the obligation of contracts or making any irrevocable grant of privilege, franchise or immunity, shall be passed.

Section 14. RIGHT TO BEAR ARMS
The right of citizens to bear arms in defense of themselves and the state shall not be denied.

Section 15. CIVIL-MILITARY RELATIONS
The military shall be in strict subordination to the civil power. No soldier in time of peace shall be quartered in any dwelling without consent of the owners and occupants, nor in time of war except as prescribed by law.

Section 16. EMINENT DOMAIN
Private property shall not be taken for public use, or damaged, without just compensation. Every person is entitled to a determination of compensation by a jury.

The state, counties, municipal corporations, school districts, and combinations thereof shall be entitled to possession before final adjudication and payment of just compensation under procedural safeguards established by the Legislature. The fee of the land acquired for railroad or highway rights of way shall remain in the owners of such land, subject to the use for which it is taken. (Adopted November 1962, pursuant to Ch. 297, Laws of 1961.)
Section 17. No change from present Section 17.

Section 18. RIGHTS OF DEBTORS
No person shall be imprisoned for debt. The right of the debtor to enjoy the comforts and necessities of life shall be recognized by law exempting homesteads and a reasonable amount of personal property from forced sale.

Section 19. PROHIBITION OF DISCRIMINATION
Equality of rights and of treatment of all persons shall not be denied or abridged by the state or its political subdivisions on account of race, color, creed, sex, ancestry, religion or national origin.
In employment and in the sale or rental of property, equality of rights and of treatment of all persons shall not be denied or abridged by any person, corporation or association on account of race, color, creed, sex, ancestry, religion, or national origin. The legislature may establish by law additional prohibitions and reasonable exemptions.

Section 20. PRIVILEGES AND IMMUNITIES
(No change from present Section 18)

Section 21. UNENUMERATED RIGHTS
The enumeration of rights and privileges contained in this Constitution shall not be construed to impair or deny all other rights retained by the people.

Section 17. No tax or duty shall be imposed without the consent of the people or their representatives in the legislature, and all taxation shall be equal and uniform.

Section 15. No person shall be imprisoned for debt arising out of or founded upon a contract. Article XXI, Section 4. Exemptions. The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws exempting from forced sale a home- stead, the value of which shall be limited and defined by law, to all heads of families, and a reasonable amount of personal property, the kind and value of which to be fixed by general law.

(None. A section dealing with prohibition of discrimination does not exist in the present Constitution)

Section 18. No law shall be passed granting to any citizen, class of citizens or corporation, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.

(None. No section in the present Constitution provides for unenumerated rights)
Section 14. No distinction shall ever be made by law between resident aliens and citizens, in reference to the possession, enjoyment or descent of property.

Section 19. Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers in time of war may vote at their post of duty in or out of the state, under regulations to be prescribed by the legislature.

Section 21. No power of suspending laws shall be exercised, unless by the legislature or its authority.

Section 22. No person shall be attainted of treason or felony by the legislature.

Section 25. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or confession in open court.

Section 26. All political power is inherent in the people, and all free government is founded on their authority and is instituted for their equal protection and benefit, and they have the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper. And the state of South Dakota is an inseparable part of the American Union and the Constitution of the United States is the supreme law of the land.
Section 27. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue and by frequent recurrence of fundamental principles.

Article XXI, Section 5. The real and personal property of any woman in this state, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property, and shall not be liable for the debts of her husband.

Analysis of the Bill of Rights by Proposed Section

Section 1 of the proposed revision sets forth the inherent and inalienable rights of South Dakotas' citizens. The major change in this section is the replacement of the word "men" with the word "persons," thereby making these inherent and inalienable rights applicable to all persons regardless of sex. The Constitutional Revision Commission proposed that the rights to health and a wholesome environment be included among the stated rights; however, the legislature deleted these proposed rights in the final drafting.

Section 2 of the proposed revision retains the right to work provision of current Section 2. The due process clause is shifted to a different section in the proposal, but does remain a part of our Constitution. (See proposed Section 5).

Section 3 of the proposed revision replaces current Section 3. In substance the provisions are similar. There is, however, a limitation placed upon the right to worship in that freedom of religion cannot be used as a basis to justify practices "inconsistent with peace, safety or security." Specific references pertaining to the protection of civil and political rights from abuse on religious grounds are deleted.

The Commission and Legislature chose to delete the specific provisions which forbid compelling support of any ministry or place of worship or the granting of preferences on religious grounds. These provisions are however retained by the broader establishment clause as provided in the United States Constitution—the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This means that people living in the United States should not be
forced to attend or support any establishment of religion, through laws passed by the federal legislature. The states are therefore prohibited from enacting laws that respect a religion through the due process clause (Article 14) of the Federal Constitution.

The proposed article retains the current provision that "No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution."

Section 4 of the proposed revision encompasses the former Sections 4 and 5 and is modeled after the United States Constitution. All states are subject to the First Amendment guarantees of the Federal Constitution and the proposed article conforms thereto. The provisions pertaining to libel in current Section 5 were deleted, as the Commission believed that laws pertaining to libel were statutory in nature and did not warrant a position in the State Constitution. The legislature concurred in this decision.

Proposed Section 5 retains the due process clause as it currently exists in our state constitution and also adds the equal protection of laws clause. Note: the second portion (right to work) of the current Section 2 is retained in replacement Section 2.

Section 6 of the proposed revision is modeled after the Fourth Amendment provisions of the United States on unreasonable searches and seizures. The Commission and Legislature chose to include communications as an item to be protected by the search and seizure provision. Present protections preventing abuse of the use of search warrants are retained. In addition, the revision requires that the reasons or testimony for issuing the warrant be in written form, and also that the search warrant state the length of time that said warrant shall be valid.

Section 7 of the proposed article pertains to the current open court and right to remedy and justice process that we currently have available to us and in addition recognizes that a person should have a remedy for injuries to his privacy.

Section 8 of the proposed article basically retains our current provisions as found in Section 10, allowing for prosecution of felonies by indictment of a grand jury or on information by a public prosecutor. The exceptions contained in the current article are deleted. The Commission could find no reason to deviate from a standard form of prosecution in these particular areas.

An added protection insures that when the prosecution proceeds by information rather than indictment that a preliminary hearing prior to trial will be available to ensure that the allegations have some merit.

The proposed Section 8 allows an additional method to prosecute misdemeanors. The method is by a complaint signed by a citizen. It is presumed that minor cases can be handled in this manner.
The section retains our present provision allowing the Legislature to modify or abolish the grand jury system.

Section 9 is basically modeled after our current section pertaining to the rights of the accused and retains all of the present substantive provisions. The proposed section in keeping with federal case law also states that indigent persons shall have appointed counsel.

Section 10 of the proposed article retains the self-incrimination and double jeopardy provisions as presently provided, and in addition prohibits prosecution in South Dakota if the accused has been tried in another state or by the federal government.

Section 11 of the proposed article basically retains the protections for reasonable bail and habeas corpus. The reasons for denying bail are changed somewhat. Now, bail can be denied "when proof is evident or presumption great" with respect to capital offenses. The proposal would deny bail to persons "charged with capital offenses or offenses punishable by life imprisonment." Further the Commission and the Legislature could find no reason which would require the suspension of the writ of habeas corpus and therefore proposed that the writ be an absolute protection.

Section 12 through 14 retains our current jury rights, our current ex post facto laws and impairment of contracts rights, and our current right to bear arms. The only change is the location of the sections within the article.

Section 15 retains the current provisions maintaining that the military power is subordinate to the civil power. The current provision prohibits the quartering of troops in homes without consent of the owner, the proposed sections extends this prohibition to occupants in addition to owners.

Section 16 deals with eminent domain and basically retains the current provisions. There is a change, however, that allows the state, counties, municipalities, school districts and combination thereof to take possession of property prior to the determination of damages. The courts would determine monetary compensation. The Commission believed that public works, such as construction of urban renewal projects, highways, schools, and other facilities, should not be delayed for years while condemnation suits are pending. The legislature concurred in this belief.

Section 18 extends the current provision to outlaw imprisonment for debt regardless of the basis of the debt. The proposed section continues our current provision of allowing the Legislature to provide for homestead exemptions and to exempt a reasonable amount of personal property from creditors' seizure and sale.

Section 19 proposes a new provision to our Constitution. The current South Dakota Constitution does not contain an anti-discrimination provision. The first paragraph of the section prohibits discrimination by government. The second paragraph prohibits private discrimination in the areas of employment
and the sale or rental of property. The section allows the Legislature to establish "additional prohibitions and reasonable exemptions."

Section 20 contains the exact provision as now exists in the current Section 18.

Section 21 concludes the Article and was added by the Commission to insure that the Bill of Rights Amendment would not be interpreted to repeal any common law rights not in conflict with the proposal.

Sections To Be Deleted

Section 14, which provides that there shall not be laws passed which would make resident aliens subject to laws other than those applied to our citizens with respect to possession, enjoyment and descent of property, will be deleted if the proposed Bill of Rights is accepted. Potential laws which would be forbidden under this section, would still be forbidden by proposed section 5 which provides due process and equal protection of the laws.

Section 19, which refers to our elections would be deleted if the proposal is accepted. The reason this section is being deleted from the Bill of Rights is that the same provisions can be found in Article VII--Elections and Suffrage, which was approved by the voters in 1974.

Section 21, which provides that only the legislature on its authority has the power to suspend laws would be deleted if the proposal is accepted.

Section 22 and 25 would be deleted if the proposed Bill of Rights is accepted. The sections pertain to treason against the state, by specifying the definition of treason and the elements necessary for conviction. The laws governing treason are in the Federal Constitution and state statutes.

Section 26 and 27 would be deleted if the proposal is accepted. These sections are much like the preamble, that is, they are general statements of philosophy and acknowledgements. Section 26 states the government is by the people for the people and continues to state that South Dakota is a part of the federal system of government and that the United States Constitution is the supreme law of the land. Section 27 makes a general statement reminding the reader that a free government requires justice, moderation, temperance, frugality and virtue.

Article XXI, Section 5, Rights of Married Women, would also be deleted if the proposed Bill of Rights is accepted. The Commission made this recommendation and the Legislature agreed. The Commission suggested that section 5 of the Miscellaneous Article be deleted because it gives preferential treatment to women and because a court case had never been based on this section. The section to be deleted provides that all real and personal property of a woman acquired before or after marriage can not be used to satisfy the debts of her husband.
Amendment C-Legislative

Proposed

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 five percent of the qualified electors of the state 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 people may approve or reject by referendum any act of the Legislature except such laws as may be necessary for the immediate preservation of the public peace, health or safety, the support of the state government, and its existing public institutions: Provided, that not more than five per centum of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

This section shall not be construed so as to deprive the legislature or any member thereof of the right to propose any measure. The veto power of the executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by the vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The legislature shall make suitable provisions for carrying into effect the provisions of this section.

Current

Section 1. The legislative power of the state shall be vested in a legislature which shall consist of a senate and house of representatives, except that the people expressly reserve to themselves the right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the state, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions: Provided, that not more than five per centum of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

This section shall not be construed so as to deprive the legislature or any member thereof of the right to propose any measure. The veto power of the executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by the vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The legislature shall make suitable provisions for carrying into effect the provisions of this section.
Section 3. MEMBERSHIP AND QUALIFICATIONS

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

Section 2. After the legislature elected for the years 1937 and 1938 the number of members of the House of Representatives shall not be less than fifty (50) nor more than seventy-five (75) and the number of members of the Senate shall not be less than twenty-five (25) nor more than thirty-five (35).

The sessions of the legislature shall be biennial except as otherwise provided in this constitution.

Section 3. No person shall be eligible to the office of senator who is not a qualified elector in the district from which he may be chosen, and a citizen of the United States, and who shall not have attained the age of twenty-five years, and who shall not have been a resident of the state or territory for two years preceding his election.

No person shall be eligible to the office of representative who is not a qualified elector in the district from which he may be chosen and a citizen of the United States, and who shall not have been a resident of the state or territory for two years next preceding his election, and who shall not have attained the age of twenty-five years.

No judge or clerk of any court, secretary of state, attorney general, state's attorney, recorder, sheriff or collector of public moneys, member of either house of congress, or person holding any lucrative office under the United States, or this state, or any foreign government, shall be a member of the legislature: Provided, that appointments in the militia, the offices of notary public and justice of the peace shall not be considered lucrative; nor shall any person holding any office of honor or profit under any foreign government or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of three hundred dollars, hold any office in either branch of the legislature or become a member thereof.

Section 4. No person who has been, or
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 term 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 legislative days each. Each annual session shall commence on the first Tuesday after the second Monday of January of each year. Sessions, joint sessions, committee meetings and legislative commission meetings shall be open to the public. The Legislature hereafter shall be, convicted of bribery, perjury, or other infamous crime, nor any person who has been or may be collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the legislature or to any office in either branch thereof.

Section 5. The Legislature shall apportion its membership in accordance with the last federal census prior to the Legislative Session at which such apportionment shall be made. Such apportionment shall be made by the regular session of the Legislature in 1951 and every ten years thereafter and at no other time. If any legislature whose duty it is to make an apportionment shall fail to make the same as herein provided that it shall be the duty of the Governor, Superintendent of Public Instruction, Presiding Judge of the Supreme Court, Attorney General and Secretary of State within thirty (30) days after the adjournment of the legislature to make such apportionment and when so made a proclamation is issued by the Governor announcing such apportionment the same shall have the same force and effect as though made by the Legislature. (As adopted November 1948, pursuant to Ch. 250, Laws of 1947).

Section 6. The terms of office of the members of the legislature shall be two years; they shall receive for their services the salary fixed by law under the provisions of section 2 of article XXI of this Constitution, and five cents for every mile of necessary travel in going to and returning from the place of meeting of the legislature on the most usual route.

A regular session of the legislature shall be held in each odd-numbered year and shall not exceed forty-five legislative days, excluding Sundays, holidays and legislative recess, except in cases of impeachment and members of the legislature shall receive no other pay or perquisites except salary and mileage.
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.

A regular session of the legislature shall be held in each even-numbered year beginning with the year 1964 and shall not exceed thirty legislative days, excluding Sundays, holidays and legislative recess, except in cases of impeachment, and members of the legislative shall receive no other pay or perquisites except salary and mileage. (As adopted November, 1962, pursuant to Ch. 296, Laws of 1961.)

Section 7. The legislature shall meet at the seat of government on the first Tuesday after the first Monday of January at 12 o'clock m. in the year 1963 and in the year 1964 and each even-numbered year thereafter, and on the first Tuesday after the third Monday of January at 12 o'clock m. in the year 1965 and each odd-numbered year thereafter, and at no other time, except as provided by this constitution. (As adopted November, 1962, pursuant to Ch. 296, Laws of 1961.)

Section 10. The governor shall make appointments to fill such vacancies as may occur in either house of the legislature. (As adopted November 1948, pursuant to Ch. 251, Laws of 1947.)

Section 15. The sessions of each house and of the committee of the whole shall be open, unless when the business is such as ought to be kept secret.

Section 9. Each house shall be the judge of the election returns and qualifications of its own members.

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 in such a manner and under such penalty as each house may provide.

Each house shall determine the rules of its proceedings, shall choose its own
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 re-arrangement of laws, shall be confined to one subject, to be expressed in the title.

Section 10. JUDICIARY DEPARTMENT

No special salary or emolument shall be attached to any office under the State.
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 22. No act shall take effect until ninety days after the adjournment of the session at which it passed unless in case of emergency, (to be expressed in the preamble or body of the act,) the legislature shall by a vote of two-thirds of all the members elected of each house, otherwise direct.

Section 11. Senators and representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during the session of the legislature and in going to and returning from the same; and for words used in any speech or debate in either house, they shall not be questioned in any other place.

Section 23. The legislature is prohibited from enacting any private or special laws in the following cases:
1. Granting divorces.
2. Changing the names of persons or places, or constituting one person the heir at law of another.
3. Locating or changing county seats.
4. Regulating county and township affairs.
5. Incorporating cities, towns and villages or changing or amending the charter of any town, city or village, or laying out, opening, vacating or altering town plats, streets, wards, alleys and public ground.
6. Providing the sale or mortgage of real estate belonging to minors or others under disability.
7. Authorizing persons to keep ferries across streams wholly within the state.
8. Remitting fines, penalties or forfeitures.
9. Granting to an individual association or corporation any special or exclusive privilege, immunity or franchise whatever.
10. Providing for the management of common schools.
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 law or this Constitution.

The house of representatives shall have the sole power of impeachment, which shall be exercised by a majority vote of all the members. Impeachments shall be tried by the senate. The chief justice of the Supreme Court shall preside if the Governor is tried. No person shall be convicted without the concurrence of two-thirds of all the members of the senate.

Judgment shall extend only to removal from office and disqualification from holding any public office in this state. The party shall also be liable to prosecution according to law.

11. Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed.

But the legislature may repeal any existing special law relating to the foregoing subdivisions.

In all other cases where a general law can be applicable no special law shall be enacted.

Section 24. The legislature shall have no power to release or extinguish in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this state, or to any municipal corporation therein.

Section 27. The legislature shall direct by law in what manner and in what courts suits may be brought against the state.

Article XVI
IMPEACHMENT AND REMOVAL FROM OFFICE
Section 1. The house of representatives shall have the sole power of impeachment.

The concurrence of a majority of all members elected shall be necessary to an impeachment.

Section 2. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the governor or lieutenant governor is on trial the presiding judge of the supreme court shall preside.
Section 3. The governor and other state and judicial officers, except county judges, justices of the peace and police magistrates, shall be liable to impeachment for drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under the state. The person accused whether convicted or acquitted shall nevertheless be liable to indictment, trial, judgment, and punishment according to law.

Section 4. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance or crime or misdemeanor in office, or for drunkenness or gross incompetency, in such manner as may be provided by law.

Section 5. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

Section 6. On trial of an impeachment against the governor the lieutenant governor shall not act as a member of the court.

Section 7. No person shall be tried on impeachment before he shall have been served with a copy thereof at least twenty days previous to the day set for trial.

Section 8. No person shall be liable to impeachment twice for the same offense.
Section 14. 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 court-martial 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 1. The militia of the state of South Dakota shall consist of all able bodied male persons residing in the state, between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this state.

Section 2. The legislature shall provide by law for the enrollment, uniforming, equipment and discipline of the militia and the establishment of volunteer and such other organizations or both, as may be deemed necessary for the protection of the state, the preservation of order and the efficiency and good of the service.

Section 3. The legislature in providing for the organization of the militia shall conform, as nearly as practicable, to the regulations for the government of the armies of the United States.

Section 4. All militia officers shall be commissioned by the governor, and may hold their commission for such period of time as the legislature may provide, subject to removal by the governor for cause, to be first ascertained by a court-martial pursuant to law.

Section 5. The militia shall in cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at muster and elections and in going to and returning from the same.

Section 6. All military records, banners and relics of the state, except
Section 15. 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 16. 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, which fund shall not exceed one per cent of the general fund monies appropriated in the last general appropriations act, 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.

(The proposed Article would contain the anti-gambling section in its entirety. The section number will be changed, however.)

Section 25. The Legislature shall not authorize any game of chance, lottery or gift enterprise, under any pretense, or for any purpose whatever provided, however, it shall be lawful for the Legislature to authorize by law, bona fide veterans, charitable, educational, religious or fraternal organizations, when in lawful use, shall be preserved in the office of the adjutant general as an enduring memorial of the patriotism and valor of South Dakota; and it shall be the duty of the legislature to provide by law for the safe keeping of the same.

Section 7. No person having conscientious scruples against bearing arms shall be compelled to do military duty in time of peace.

(End. A section dealing with suspension of administrative rules does not exist in the present Constitution)

(End. A section dealing with special appropriations does not exist in the present Constitution)
(The proposed Article could contain the section dealing with special commissions and powers with regard to municipal governments. (This will be a separate issue on the ballot. More information is provided at the end of this section.))

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 26. The legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property, effects, whether held in trust or otherwise, or levy taxes, or to select a capital site, or to perform any municipal functions whatever.

Sections Deleted

Section 8. Members of the legislature and officers thereof, before they enter upon their official duties, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of South Dakota, and will faithfully discharge the duties of (senator, representative or officer) according to the best of my abilities, and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive directly or indirectly, any money, pass, or any other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill or resolution or appropriation, or for any other official act.

This oath shall be administered by a judge of the supreme or circuit court, or the presiding officer of either house, in the hall of the house to which the member or officer is elected, and the secretary of state shall record and file the oath subscribed by each member and officer.

Any member or officer of the legislature who shall refuse to take the oath herein prescribed shall forfeit his office.
Any member or officer of the legislature who shall be convicted of having sworn falsely to, or violated his said oath, shall forfeit his office and be disqualified thereafter from holding the office of senator or member of the house of representatives or any office within the gift of the legislature.

Section 12. No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the state which shall have been created, or the emoluments of which shall have been increased during the term for which he was elected, nor shall any member receive any civil appointment from the governor, the governor and senate, or from the legislature during the term for which he shall have been elected, and all such appointments and all votes given for any such members for any such office or appointment shall be void; nor shall any member of the legislature during the term for which he shall have been elected, or within one year thereafter, be interested, directly or indirectly, in any contract with the state or any county thereof, authorized by any law passed during the term for which he shall have been elected.

Section 17. Every bill shall be read twice, by number and title once when introduced, and once upon final passage, but one reading at length may be demanded at any time before final passage. (As adopted November 1946, pursuant to Ch. 316, Laws of 1945.)

Section 19. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature, after their titles have been publicly read immediately before signing, and the fact of signing shall be entered upon the journal.

Section 28. Any person who shall give, demand, offer, directly or indirectly, any money, testimonial, privilege, or personal advantage, thing of value to any executive or judicial officer or member of the legislature, to influence him in the performance of any of his official or public duties shall be guilty of bribery and shall be punished in such manner as shall be provided bylaw.
The offense of corrupt solicitation of members of the legislature, or of public officers of the state, or any municipal division thereof, and any effort towards solicitation of said members of the legislature, or officers to influence their official actions shall be defined by law, and shall be punishable by fine and imprisonment.

Any person may be compelled to testify in investigation or judicial proceedings against any person charged with having committed any offense of bribery or corrupt solicitation, and shall not be permitted to withhold his testimony upon the ground that it may crinate himself, but said testimony shall not afterwards be used against him in any judicial proceedings except for bribery in giving such testimony, and any person convicted of either of the offenses aforesaid shall be disqualified from holding any office or position or office of trust or profit in this state.

Section 29. Notwithstanding any general or special provisions of the Constitution, in order to insure continuity of State and local governmental operations, in periods of emergency resulting from disasters caused by enemy attack, the legislature shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatsoever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations. In the exercise of the powers hereby conferred the Legislature shall in all respects conform to the requirements of this Constitution except to the extent that in the judgment of the Legislature so to do would be impracticable or would admit of undue delay. (As adopted November 1960, pursuant to Ch. 317, Laws of 1959.)

Article IV, Section 5. The Lt. Governor shall be president of the Senate but shall have no vote unless the senators be equally divided.
Analysis of the Proposed Legislative Article

Section 1 of the proposed article vests the legislative power in the legislature which is to consist of a senate and a house of representatives.

Section 2 of the proposed article retains the provision to allow the people initiative and referendum. Initiative is the procedure used if the people want to have a new law or a change in the law decided by a vote of the people. Referendum is the procedure used if the people want to refer a recent legislative law to the people for their approval or disapproval. There are some modifications, however. Currently, the initiative is an indirect procedure, as the people, after securing the needed signatures of 5% of the total number of qualified voters, present the measure to the Legislature, who in turn enact it and then refer it to the people. The proposed procedure would allow the people to take the measure directly to the voters. The initiated measure could not pertain to appropriation matters under the proposed article, and, also the sponsors of the measure could withdraw their measure prior to its submission to the voters if the Legislature determines that to be wise. Also, the constitution would provide that an approved measure would become law 90 days after the official canvass, rather than at a time the sponsors of the piece of legislation determined appropriate.

The proposal provides that a petition to refer a measure must be filed within 90 days of enactment. A time limit for filing such a petition is not a part of our current constitution, although a limit of 90 days after adjournment of the legislature is provided by statute.

The proposal also extends the initiative and referendum to include all units of local government--cities, counties, townships, and special districts.

The current article states that the veto power of the governor shall not be exercised on measures referred to the voters. The proposed article does not contain this provision. The veto power of the governor is contained within the Executive Article.

Section 3 of the proposed article maintains the current minimum and maximum number of legislators in the Senate and reduces the maximum number in the House from 75 to 70. Currently, there are 70 Representatives in the South Dakota House and 35 members in the Senate. The qualifications of members of the legislature are reduced. The sole requirement being proposed is that the candidate be a qualified voter in the district which he wishes to represent. Currently, the Constitution requires that the candidate be at least 25 years of age, and have been a resident of the state for at least two years preceding the election. In addition, it spells out certain fields of employment in which a person cannot be engaged if the person desires a seat in the state legislature. Also, the Constitution currently provides that any person seeking a legislative position shall never have been convicted of a crime.
By proposing only that the person seeking a position in the Legislature be a qualified voter from the district to be represented, the qualifications for a legislator would be the same as the requirement for a person seeking the office of governor or any other state constitutional office.

Section 4 of the proposed article would cause legislative districts to be either single-member or multi-member according to population. The district size could include a portion of a county, all of a county, or adjoining counties determined solely on population. The district would have to be compact and consist of contiguous counties. The legislature would be required to redistrict on the basis of the federal census every ten years, and if it failed to perform, the Supreme Court would be required to perform. Currently, in place of the Supreme Court redistricting in the event the Legislature does not, a special committee as outlined in the constitution provides for redistricting. The Commission's purpose in making this change is that they believed the committee could become partisan in its general makeup.

Section 5 of the proposed article retains the current provision of two-year terms for both members of the house and members of the senate. The essential change in this section is the provision for the legislature to provide by law a method of filling legislative vacancies. Currently vacancies are filled by direction of the governor.

Section 6 of the proposed article would allow annual legislative sessions of 40 days. Currently, the legislature is permitted to meet for 30 days in even-numbered years and 45 days in odd-numbered years.

The proposed provision would require all meetings of the legislature to be open to the public. This provides citizens the means to make their legislators accountable. Currently, the meetings are open, however, they could be closed if the members believed the material to be discussed was such that it should be kept secret.

Our current constitution allows the governor to call the legislators into special session, should he determine it to be necessary. The proposed article would also allow the Legislature to call itself into session upon the written request of 2/3's of the members of each house.

Section 7 of the proposed article retains the basic elements of current sections 9, 13, and 16. The proposal does allow some changes, however. The changes are: (1) that the legislature may, if it chooses to do so, turn a contested election over to the judiciary to decide; (2) that each house may discipline or expel one of its members by a three-fourths vote; and (3) that the presiding officer of each house shall be selected by the members. The reason the Commission and the Legislature believe that the Legislature should be given the authority to turn a contested election over to the judiciary is to alleviate the legislature from acting as a judicial
body, and further, it gives the courts jurisdictional authority to rule, since contested cases are generally brought through the courts for action. The Commission and the Legislature also believe that the legislative body would have more power over its members and proceedings if it, as a body, was permitted to discipline or expel abusive members.

Section 8 of the proposed article requires that all laws be enacted by bill. The provision retains the idea that bills shall be confined to one subject area, except the proposal allows bills pertaining to appropriations or codified revisions or rearrangement of laws to be grouped into one bill. The proposal does not require a bill to be read twice during a session. The Commission believes this to be a time consuming event and that it was not providing the protections which the required readings were intended to give.

Section 9 of the proposed article would require the legislature to provide an effective date for all laws passed. In addition, the proposal states that no law shall become effective until 90 days after enactment unless 2/3's of the members of the houses declares it to be an emergency. Currently, the provision states that no law can become effective until 90 days after adjournment unless 2/3's of the members of each house declares the law to be an emergency.

Section 10 of the proposed article retains the immunity currently granted to legislators with respect to any speech or debate in the Legislature. The court has interpreted this portion broadly by saying that the privileges of immunity extend to include reports, resolutions, and votes as well as "speeches and debates." The courts have interpreted this privilege as applicable to statements made before legislative committees, and by analogy, the immunity extends to protect both the proponents and opponents of initiated measures.

The reason for providing legislative immunity is to enable and encourage representatives of the public to speak and write freely, without fear of prosecution from someone in a more powerful position. The Commission believes that immunity is an absolute must if the legislators are to function independently.

The other protections offered legislators would be deleted from the proposal--that is, outside of their actual job performance of being a legislator and conducting the duties of the office, the legislators would be treated as any other citizen living in South Dakota.

Section 11 of the proposed article provides that whenever possible the legislature shall make general laws rather than special laws. Current section 23 specifies exactly in what areas the legislature can not enact special laws. The Commission and the Legislature believe that it is not feasible to prohibit all special laws. for without some special laws state government could not exist. Currently, the
Constitution is vague with respect to what branch of government is to determine whether a bill is general or special. The proposal clearly states that that decision "shall be a matter for judicial determination."

Section 12 of the proposed article broadens the right of individuals to sue their government. The proposal gives individuals the right to sue the state, counties, cities, towns, and all other local units of government if they have been damaged as a result of government action. The current provision provides that the Legislature shall determine in what manner and in what court suits may be brought against the state—that is, the Legislature decides whether you can or can not take the state government to court. The proposal gives you that right without waiting for legislative approval. The current section allows the Legislature to decide which cases will be allowed and the proposal maintains this provision somewhat by allowing the Legislature to "provide reasonable limitations."

The Commission and the Legislature believe that this provision is necessary because the U.S. Supreme Court has ruled that the right to sue the state is not an inherent right. That is, each state must decide for itself the manner in which it wants to provide for sovereign immunity.

Section 13 of the proposed article would incorporate current Article XVI—Impeachment. The reason the impeachment provisions are transferred to the legislative article is because impeachment is a legislative process. The proposed impeachment section is greatly simplified, yet it contains the basic provisions of the current Impeachment Article. The proposed article does not include: the listing of acts that could result in impeachment and the requirement that the person to be tried be given at least twenty days notice of the pending trial. Although, reduced in length, the section would still provide: for the Legislature to decide the causes for impeachment; for prosecution of the individual according to law following impeachment; and that 2/3's of the members of the senate agree to the conviction.

Section 14 of the proposed article would incorporate current Article XV—Militia. The reason the Militia Article is brought into the Legislative Article is because the forming of the state militia and the laws pertaining thereto are legislative functions. The basic provisions of the Militia Article are maintained with the exceptions being that sex, and age of the persons subject to enrollment and the militia paraphernalia location would not be a part of the Constitution. This would be covered by statute.

Section 15 of the proposed article would create a new provision in the Constitution. The new provision would allow the Legislature to grant power to a special committee made up of members of each house to suspend administrative rules until the full membership of each house had reconvened and could review the administrative law in question. The Legislature
delegates law making power to the administrative agencies in order that the agencies will be able to fulfill their duties. Currently, if a person, or group of persons, believes that an administrative law is wrong or beyond the power of the agency, person(s) can seek relief first from the agency and then through the court process. The courts are charged with the responsibility of determining whether the agency has or has not gone beyond the intended power. The Commission believed, and the Legislature agreed, a court process could be very lengthy, and if an administrative law was not as intended by the Legislature much damage could result. They believed it would be wiser to avoid harm rather than try to correct it. For that reason, a special group of legislators could be empowered to invalidate administrative rules until the Legislature as a whole had time to consider the administrative law.

Section 16 of the proposed article would also create a new provision in the Constitution. The new provision would allow the Legislature to establish a special committee to act between sessions with regard to gubernatorial requests for contingency funds and federal grants becoming available between sessions. The Legislature currently does this as provided by statute. The difference would be that the right would be a part of the Constitution rather than a part of the Statutes.

The gambling section (section 25) would remain a part of the Constitution--the only change would be in the section number.

Section 26 would remain exactly as it is in the current article provided the voters want to retain the section. Whether section 26 will be a part of either the proposed or current article will be determined during this election. Section 26 will appear on the ballot as Amendment D, and will be discussed as the next amendment.

Sections to Be Deleted

Section 8 which provides that the legislators take an oath of office would be deleted. The oath requirement for governmental officials would be maintained, at least for the time being, in the Miscellaneous Article, Section 3.

Section 12 which places restrictions on appointments and/or elections of members of the Legislature for positions and salaries created during their term in office would be deleted. The Commission believed this section could be covered by statute, and the Legislature concurred in that opinion.

Section 17 which provides that each bill shall be read twice would be deleted. The Commission believes this is a lengthy process and that the reading of bills should be included in legislative rules rather than in the Constitution.
Section 19 requires the presiding officer to sign each bill or joint resolution passed by the Legislature. The Supreme Court has decided that failure to sign the bill prevents passage. Therefore, it is interpreted that the presiding officer of each house has veto power, which the Commission and the Legislature do not believe was the intent of the original drafters of the Constitution. This section would be deleted if the proposed article is accepted.

Section 28 provides for the punishment and criminal procedures with regard to bribery of elected officials. The Commission suggested that these punishments and procedures be covered by statute rather than be a part of the Constitution. The Legislature agreed.

Section 29 provides for action by the Legislature in emergency situations resulting from enemy attack. This section is obsolete, as this power is currently held by the Governor.

The first sentence of Article IV, Section 5 would be deleted if the proposed legislative article is accepted. The sentence to be deleted provides that the Lt. Governor shall preside over the Senate. This would no longer be the case if the proposed article is accepted, as the proposal provides for election of the presiding officer by members of the Senate.
Amendment D—Section 26

Proposed

Section 2. That section 26 of article III of the Constitution of the state of South Dakota be repealed.

Section 26. The legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property, effects, whether held in trust or otherwise, or levy taxes, or to select a capital site, or to perform any municipal functions whatever.

Analysis of Amendment D

Special Question on Article III, Section 26

In addition to voting on the proposed replacement Legislative Article, the South Dakota voters in 1976 will be presented with the separate issue of whether or not Section 26 of the current or proposed Legislative Article will be repealed. This is Amendment D on the Ballot. The Constitutional Revision Commission recommended that Section 26 be deleted. The 1974 Legislature approved this recommendation; however, a South Dakota Supreme Court decision of October 9, 1975, highlighted the importance of Section 26, causing the Legislature in 1976 to set it aside for individual voter action.

Section 26 prohibits the Legislature from granting powers or passing laws that would grant power to any special commission, private corporation or association that could, as a result of its formation, interfere with functions of municipal governments. This section does not prohibit the Legislature from passing laws that could interfere with municipal governments, it prohibits the Legislature from passing laws that would create a commission that could interfere with municipal government functions.

To provide you with a better understanding of the application of section 26, a summary of events leading up to the court case, and the decision of the court is presented for your information.

The 1971 Legislature passed an act providing for binding arbitration of labor disputes of full-time paid municipal firemen and policemen. This means that should a dispute occur be-
tween a city and its firemen or its policemen that both the city and the public employees would be required by law to appoint an arbitrator (a person to negotiate). These two individuals would appoint a third arbitrator. The parties to the disagreement would be bound by these negotiations.

In 1973, Sioux Falls firemen took steps to establish binding arbitration in a wage dispute. The Sioux Falls City Commission refused to appoint its arbitrator on the grounds that any such board would be unconstitutional based on Article III, Section 26.

Ultimately, the State Supreme Court agreed with the City Commission. Fixing the wages of city employees, the Court said, is a responsibility of the city governing body and cannot, because of Section 26, be given to a special commission.

The Legislature did not want the voters to make their decision to approve or disapprove the entire proposed legislative article based on the retention or deletion of section 26. For that reason, the Legislature chose to retain section 26 in the proposed article and ask you, the voter, to decide if you want section 26 to be a part of the new article if it is adopted, and if the current article is the choice of the people whether you want section 26 left as it is.

CAUTION: Unlike the other amendments presented at this election, Amendment D is written in such a way that if you want to repeal the section, that is if you do not want it to be a part of either the new or the old article, you should vote "yes." If you want to keep section 26, in either the old or the new article, you should vote "no."
Amendment E-School Lands and Funds

Proposed

(Section 1. The first section of the Article would remain exactly as it is today)

Current

Section 1. The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

Section 2. All proceeds of the sale of public lands that have been or may be given to the state by the United States for the use of public schools, all such per centum as may be granted by the United States on the sales of public lands, the proceeds of all property that shall fall to the state by escheat, and the proceeds of all gifts or donations to the state for public schools, shall be and remain the permanent school fund for the maintenance of public schools in the state. It shall be deemed a perpetual trust fund held by the state. The principal shall forever remain inviolate, and may be increased, but shall never be diminished, and the state shall make good all losses thereof which may in any manner occur.

Section 3. The interest and income of this fund together with all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the public schools of the state, and shall be for this purpose apportioned among and between all the several public school corporations of the state in proportion to the number of children in each, of school age, as may be fixed by law.
Section 3. All property received pursuant to the Enabling Act approved February 22, 1889, for any state institution and the proceeds from any sale thereof shall constitute perpetual funds. The interest and income from such property, together with the rent from all land as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund shall be guaranteed by the state against loss or diversion. However, if any institution or purpose ceases to operate or exist, its funds shall be distributed to the remaining institutions in a manner prescribed by law.

That the proceeds of all fines collected from violations of state laws shall be paid to the County Treasurer of the county in which said fine shall have been imposed, and by him remitted to the State Treasurer and apportioned by the Commissioner of School and Public Lands back to the county from which such moneys were collected to be distributed among and between all the several public schools incorporated in such county in proportion to the number of children in each, of school age, as may be fixed by law. (As amended November, 1930, pursuant to Ch. 84, 1929.)

Section 7. All lands, money, or other property donated, granted or received from the United States or any other source for a university, agricultural college, normal schools or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased, but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the state, and the state shall make good all losses therefrom that shall in any manner occur.

Section 8. All lands mentioned in the preceding section shall be appraised and sold in the same manner and by the same officers and boards under the same limitations, and subject to all the
Section 4. The Legislature shall provide for the sale or lease at public auction of property held by the state in public school or other institutional trust funds. Such property shall not be sold or leased for less than fair market value. No term of lease shall exceed five years; provided, that any lessee at the expiration of a lease, shall be entitled, at his option, to a new lease for all lands included in his original lease that have not been sold, for a period not exceeding the term of his original lease, without public advertising. The annual rental rate for all leases and options shall be as prescribed by law. All sales and leases of school and public lands shall be conducted by the commissioner of school and public lands as may be prescribed by law. The Governor may disapprove any sale or lease. No interest in trust lands may be created by adverse possession or prescription. Any trust lands may be exchanged for lands of the United States, or of the state of South Dakota or its political subdivisions as provided by law. All gas, coal, oil and mineral rights, and any other rights as may be prescribed by conditions as to price, sale and approval, provided above for the appraisal and sale of lands for the benefit of public schools, but a distinct and separate account shall be kept by the proper officers of each of such funds.

Section 13. All losses to the permanent school or other educational funds of this state which shall have been occasioned by the defalcation, negligence, mismanagement or fraud of the agents or officers controlling and managing the same shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the fund sustaining the loss upon which not less than six per centum of annual interest shall be paid. The amount of indebtedness so created shall not be counted as a part of the indebtedness mentioned in article XIII, section 2.

Section 4. After one year from the assembling of the first legislature, the lands granted to the state by the United States for the use of public schools may be sold upon the following conditions and no other: Not more than one-third of all such lands shall be sold within the first five years, and no more than two-thirds within the first fifteen years after the title thereto is vested in the state, and the legislature shall, subject to the provisions of this article, provide for the sale of the same. The commissioner of school and public lands, the state auditor and the county superintendent of schools of the counties severally, shall constitute boards of appraisal and shall appraise all school lands within the several counties which they may from time to time select and designate for sale, at their actual value under the terms of sale. They shall take care to first select and designate for sale the most valuable lands; and they shall ascertain all such lands as may be of special and peculiar value, other than agricultural, and cause the proper subdivision of the same in order that the largest
the Legislature, shall be deemed as reserved rights of the state. Leases may be executed by the state for the exploration, extraction and sale of such materials in the manner and with such conditions as the Legislature may provide.

The Legislature shall provide that an amount not to exceed fifty per cent of the annual proceeds on leases of reserved rights shall be apportioned among the public schools and the various institutions. The public schools and the various institutions shall receive an amount which bears the same ratio to the total amount apportioned as the number of acres granted for the public schools and each institution bears to the total number of acres granted in trust to the state by the Enabling Act approved February 22, 1889, as amended, to each of the public schools shall be in proportion to the number of children in each, of school age, as may be fixed by law.

Any proceeds on leases of reserved rights not apportioned among the public schools and various institutions shall be deposited in the permanent school fund and the perpetual fund of each institution. The permanent school fund and the perpetual fund of each institution shall receive an amount which bears the same ratio as the number of acres granted for the public schools and each institution bears to the total number of acres granted in trust to the state by the Enabling Act approved February 22, 1889, as amended, and the allocations authorized by section 17 of the Enabling Act.

Section 5. No land shall be sold for less than the appraised value, and in no case for less than ten dollars ($10.00) per acre. The purchaser shall pay at least one-tenth of the purchase price in cash. The legislature shall provide by general law for payment of the balance which shall be made in partial payments and must be fully paid up within thirty (30) years. Interest shall be five (5) per cent annually. All lands may be sold for cash, provided further, that the purchaser or purchasers shall have the right or option of paying the balance in whole or in part on any interest paying date, under such rules as the legislature may provide. No land shall be sold until appraised and advertised and offered for sale at public auction after sixty (60) days advertisement of the same in at least three newspapers of general circulation, two of which shall be located in the vicinity of the lands to be sold, and one at the seat of government. No land can be sold except at public sale.

Such lands as shall not have been specifically subdivided shall be offered in tracts of not more than eighty (80) acres and these subdivided into the smallest division of the lands designated for sale and not sold within two (2) years after their appraisal shall be reappraised by the board of appraisers as hereinafter provided before they are sold.

Section 6. All sales shall be conducted through the office of the commissioner of school and public lands as may be prescribed by law, and returns of all appraisals and sales shall be made to said office. No sale shall operate to convey any right or title to any lands for sixty days after the date thereof, nor until the same shall have received the approval of the governor in such form as may be provided by law.
No grant or patent for any such lands shall issue until final payment be made.

Section 9. The lands mentioned in this article shall be leased for pasturage, meadow, farming, the growing of crops of grain and general agricultural purposes, and at public auction after notice as hereinbefore provided in case of sale and shall be offered in tracts not greater than one section. All rents shall be payable annually in advance, and no term of lease shall exceed five years, nor shall any lease be valid until it receives the approval of the governor.

Provided, that any lessee of School and Public Lands shall at the expiration of a five year lease, be entitled, at his option, to a new lease for the land included in his original lease, for a period of time not exceeding five years, without public advertising, at the current rental prevailing in the county in which such land is situated, at the time of the issuance of the new lease. The Commissioner of School and Public Lands shall notify by registered mail each lessee or assignee on or before the first day of November first preceding the expiration of his lease that such lease will expire.

Such option shall be exercised by the lessee by notifying the Commissioner of School and Public Lands by registered mail, on or before the first day of December first preceding the expiration of his lease describing the lands for which he desires a new lease, in the same manner as the same is described in his original lease. (As adopted November 1948, pursuant to Ch. 252, Laws of 1957.)

Section 12. The governor may disapprove any sale, lease or investment other than such as are intrusted to the counties.

Section 18. Notwithstanding the provisions of sections two, three and seven of Article VIII of this Constitution,
Section 5. The money of the permanent school, other educational funds, and institutional trust funds shall be invested in a prudent manner as provided by the Legislature.

Section 11. The moneys received from the leasing of all common school, indemnity, and endowment lands for oil and gas and other mineral leasing of said lands shall be apportioned among the public schools and the various state institutions in such manner that the public schools and each of such institutions shall receive an amount which bears the same ratio to the total amount apportioned as the number of acres (including any that may have been disposed of) granted for such public schools or for such institutions bears to the total number of acres (including any that may have been disposed of) granted in trust to the state by the Enabling Act approved February 22, 1889, as amended, and allocations authorized pursuant to the provisions of section 17 of such Enabling Act; and further that not less than fifty per cent of each such amount so allocated shall be covered into the permanent fund of the public schools and each of such institutions. (As adopted November 1954, pursuant to Ch. 310, Laws of 1953.)
Article XXVIII

Section 1. The several counties of the state shall invest the moneys of the permanent school and endowment funds in bonds of school corporations, state, county and municipal bonds or in first mortgages upon good improved farm lands within their limits respectively, under such regulations as the legislature may provide, but no farm loan shall exceed one thousand dollars to any one person, firm or corporation.

Section 15. The Legislature shall make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as will secure a thorough and efficient system of common schools throughout the state. The Legislature is empowered to classify properties within school districts for purposes of school taxation, and may constitute agricultural property a separate class. Taxes shall be uniform on all property in the same class. (As adopted November 1966, pursuant to Ch. 275, Laws of 1965.)

Section 16. No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the state, or any county or municipality within the state, nor shall the state or any county or municipality within the state accept any grant, conveyance, gift or bequest of lands, money or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the state.

Section 17. No teacher, state, county, township or district school officer shall be interested in the sale, proceeds or profits of any book, apparatus or furniture used or to be used in any school in this state, under such penalties as shall be provided by law.
Section 10. No claim to any public lands by any trespasser thereon by reason of occupancy, cultivation or improvement thereof, shall ever be recognized; nor shall compensation ever be made on account of any improvements made by such trespasser.

Section 14. The legislature shall provide by law for the protection of the school lands from trespass or unlawful appropriation, and for their defense against all unauthorized claims or efforts to divert from them the school fund.

Analysis of Proposed School Lands and Funds Article

Current Article VIII of the South Dakota Constitution has the title "Education and School Lands." The proposed Article has the title "School Lands and Funds." As the difference in titles suggests, those sections in Article VIII which deal with education (Section 1, 15, 16, 17) would remain unchanged if the proposal is accepted. The voter is asked to decide whether or not to change those portions of Article VIII that deal with the public school and institutional lands, and the funds that result from the sale and leasing of those lands. The voter is not asked to make any decision with respect to the sections dealing with education.

The Constitutional Revision Commission recommended to the 1974 Legislature that Article VIII be changed in its entirety and that Article XIV on State Institutions be repealed. The Legislature acted on this proposal only to the extent of referring it to the interim State Affairs Committee. After discussion and hearings, this committee decided to recommend the division of the education and lands article into two separate amendments. The Legislature in 1975 enacted, with minor changes, the lands and funds sections. This is what is on the 1976 ballot as Amendment E. The Legislature was unable to agree on any constitutional change relating to education. Thus Article XIV is unaffected by Amendment E along with Sections 1, 15, 16, and 17 of Article VIII.

The Enabling Act of February 22, 1889, which directed the steps that were to be taken to achieve statehood, also granted certain lands to the new state and specified how the lands were to be sold and how the money was to be spent. (See the end of this explanation for land unsold and recent earnings). The Enabling Act takes precedence over the state Constitution. None of the requirements in the Enabling Act can be altered by South Dakota. However, in its Constitution, South Dakota may add provisions that are not inconsistent with...
the Enabling Act. The proposed article affirms the major points in the Act, adds additional provisions, and deletes some current elements.

Section 2 of the proposed article requires that the income from the sale of lands given to South Dakota by the United States Government for public schools, along with certain other funds designated for schools, shall be placed in a permanent and inviolate trust fund. Only the interest from this fund shall be spent and the fund is protected from loss or diversion by the state.

The section goes on to say that the interest from the permanent fund, along with the income from leases of lands still owned by the state, shall be apportioned among the public schools of the state each year according to the number of school age children in each school corporation.

The Enabling Act requires that the proceeds from the sale of school lands shall go into a permanent fund and that the income from this fund along with the lease money from unsold lands be used for school purposes. Section 2 of the proposal meets the requirements of the Enabling Act.

Section 3 of the proposal deals with the land that was granted to state institutions by the United States Government. Each institution receives its share of income from the trust fund and the rent from unsold lands. A new feature added to this section is a specific statement on what is to become of funds belonging to an institution, should that institution cease to operate or exist. Under the proposed article, the constitution would provide that the funds of this nonexistent or nonoperating institution would be distributed among the remaining institutions in a manner prescribed by law. Section 3, like Section 2, conforms to the Enabling Act and adds the provision on a closed institution.

Section 4 of the proposal provides that the sale or lease of the granted land shall be by public auction at fair market value. The Enabling Act requires this, but it is not a part of the present Constitution. The current Constitution states that leases being extended shall be at the current rental prevailing in the county, and that no land shall be sold for less than the appraised value or less than $10.00 an acre.

Another proposed item in this section states that leases may not be for longer than five years, but if the land has not been sold a lessee may have his lease extended without advertising for no longer than the term of the original lease. This provision is more generous to the renter than the present provision which allows an extension only if the original lease was for five years. The current provision that the sales and leases are conducted by the Commissioner of School and Public Lands and that any sale or lease may be disapproved by the Governor, is unchanged.
A new provision which is included in Section 4 reserves the gas, oil, coal, and mineral rights to the state when the lands are sold. This is not required by the Enabling Act, but was enacted by statute in 1919. The state now has mineral rights to about 5.2 million acres of land including 2 million acres from the rural credits system.

Section 4 goes on to allow the Legislature to put not more than half of the annual proceeds from mineral leases into the permanent fund with the remainder apportioned among the school and institutional claimants.

Section 5 of the proposal provides that the money in the trust funds will be invested "in a prudent manner as provided by the Legislature." Currently, the money may be invested only in government bonds and securities. The proposal thus allows considerable flexibility in investment in order to make possible a high rate of earnings.

Amendment E if approved would also bring about the deletion of several items in current Article VIII dealing with school lands and funds. In the judgment of the Constitutional Revision Commission and the Legislature, the provisions being left out are not appropriate for the basic law of the Constitution and should be treated by statute as the need arises. The items to be deleted include:

(1) fines collected from violations of state law paid to the County Treasurer are sent to the state and apportioned back to the school corporations.

(2) provisions about what land was to be sold first after statehood in 1889, and how fast the land could be sold.

(3) appraisal boards, which include an official, the county superintendent of schools, which we no longer have in county government.

(4) sixty days notice required before sale of public land along with provision for publication in certain newspapers.

(5) terms allowed to the purchaser in the sale of public land.

(6) lands offered for sale in tracts of not more than 80 acres and lands offered for lease in tracts of not more than 640 acres.

(7) bonds of the United States could be sold "below cost in order to secure the highest income compatible with safe investment."

(8) Legislature shall protect public land from trespass, unlawful appropriation or unauthorized claims.
(9) any losses to the funds shall be audited and shall be a burden of the state.

(10) counties shall invest their school and endowment funds in state and local bonds or "in first mortgages upon good improved farm lands." (Article XXVIII which would be repealed.)

**Information about public lands and funds**

1. Original total U.S. Government land grants to South Dakota 3,508,562.21 acres

2. Public land unsold January 1, 1976 963,681.58 acres

3. Total permanent fund, June 30, 1975 about $62.2 million of which about $52.8 million is common school fund

   - about $4,245,000.00
   - same period income from mineral leasing 125,000.00
   - same period income from grazing leasing 700,000.00
Amendment F: Rearrangement

Proposed

Section 4. ARRANGEMENT

The Legislature shall by resolution at the second legislative session after the passage of this amendment, and may every ten years thereafter, arrange the Constitution in an orderly fashion in appropriate articles and delete obsolete sections. No change in the language of any section shall be made. A two-thirds majority vote of all members of each house shall be required for passage. The resolution shall be subject to referendum in the same manner as a law. A resolution passed by both houses and not referred shall become effective when the time for referral passes.

Current

(None. A section dealing with legislative rearrangement does not exist in the present Constitution)

Analysis of Article XXIII, Section 4, as Proposed

Amendment F provides a fourth section to Article XXIII--Amendments and Revisions. If Amendment F is approved by the people, the Article would be retitled Amendments, Revisions and Arrangement of the Constitution.

The current Article XXIII--Amendments and Revisions was adopted by the state's voters in 1972, and contains three sections which will remain exactly as they are today. These sections provide three ways in which the constitution can be changed. One is the method that we are using in this election that is, by the Legislature submitting proposals to you, the voter, for your acceptance or rejection. A second method allows the people the right to initiate a change, also to be accepted or rejected by election of the voters. A third way to change the constitution is by a constitutional convention, with the people still being able to accept or reject the entire document.

Section 4, as proposed, would allow the legislature to move sections within the articles or to delete sections they believed to be obsolete or out-of-date. This could be done every ten years providing 2/3's of the members of each house approved of the changes. The legislature would not be allowed to change the wording in any of the sections.

The essential difference between section 4 and the other sections is that the voters would not have an opportunity to approve or disapprove rearrangement or deletions, unless the voters themselves chose to refer the changes to the people for a vote. To refer a change, the voters would need to secure a
petition with the signatures of not more than 5% of the qualified voters in the state. You will recall from our discussion of the proposed legislative article (Amendment C) that you currently have 90 days after adjournment to refer a measure and under the proposed measure you would have 90 days from enactment in which you could obtain the petition. If the voters were unable to secure the petition with the required number of the voters' signatures, the changes of the Legislature would become law after 90 days if Amendment C is accepted. If Amendment C is rejected, the change would become law 90 days after adjournment as provided by law.

CONCLUSION AND FINAL NOTE

There are six proposed amendments to South Dakota's Constitution for the electorate of South Dakota to approve or disapprove at the 1976 General Election. This pamphlet has presented both the current articles and the proposed articles and has given brief summaries of the differences. This information is presented for your information, so that you may become an informed voter. This publication is neither meant to persuade you to vote "yes" nor to persuade you to vote "no."

At the conclusion of reading this material, you probably have mixed feelings about the proposals. There are undoubtedly items in the proposals that you want, items in the current article you want, and there're probably items in the proposal you don't want, as well as, items in the current articles you don't want. You will undoubtedly want to re-examine the articles and carefully study them. You will have to weigh your likes and dislikes of the current articles, weigh your likes and dislikes of the proposed articles, and make a decision. No one else can do this for you. Your right to vote and let your preferences be known is a precious aspect of your democracy.

Because it is possible that you will probably vote some amendments "yes" and some amendments "no," a checklist is presented for you to enter your choices. Take the checklist with you to the polls. It will help speed-up the time you spend in the voting booth, as well as, make sure you vote your correct desires.

Again, the voting will be whether you do or do not want to accept the proposal as presented to you. If you wish to accept vote "yes." If you wish to reject, vote "no." Keep in mind that Amendment D is written to repeal section 26. That is, if you want section 26 taken from the Constitution vote "yes." If you want section 26 retained in the Constitution, vote "no."
If you should need further information to help you make your decision, please contact one or more of the following:

--Legislative Research Council, Capitol Bldg., Pierre, South Dakota 57501
--Your state senators and representatives
--Constitutional Revision, Econ. Dept., SDSU, Brookings, yes South Dakota 57006

CHECKLIST FOR 1976 AMENDMENTS

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APPENDIX

The amendments as they will appear on the November 1976 ballot are presented below.

AMENDMENT A--PREAMBLE

This proposal amends the present Preamble which now basically repeats the Preamble of the United States Constitution. The substance of the present Preamble is retained but the following general statements of purpose are added:

1. Recognizing that the State of South Dakota is a part of the federal system and reaffirming our adherence to the Constitution of the United States.
2. Recognizing the need to eliminate poverty and inequality and to afford an opportunity for the fullest development of each individual.

A yes vote will amend the Preamble to the South Dakota Constitution as discussed above.
A no vote will leave the Preamble to the South Dakota Constitution as it exists.

AMENDMENT B--BILL OF RIGHTS

This proposed amendment contains the Bill of Rights, the rights and privileges guaranteed to each individual. This amendment would consolidate those rights in Article VI and repeal duplicate language found elsewhere in the Constitution.

Additions to the Bill of Rights include:
1. No person shall be deprived of life, liberty or property without due process of law, nor be denied equal protection of the laws.
2. Discrimination in employment and sale or rental of property on account of race, color, creed, sex, ancestry, religion or national origin is prohibited, and equality of rights and treatment by the State of all persons is guaranteed.
These rights, among others, will continue to be guaranteed:

1. Life, liberty, pursuit of happiness and acquisition of property;
2. Freedom of religion, speech and press;
3. Privacy and security from unreasonable searches and seizures;
4. Jury trial in open court;
5. Prosecution for felonies only upon indictment or information;
6. Protection from self-incrimination, double jeopardy, and imprisonment for failure to pay debts;
7. Right to bail, except for capital offenses, and habeas corpus;
8. Right to bear arms;
9. Protection against ex post facto laws, and laws granting irrevocable franchises or special privileges to a class of people; and

A yes vote will amend Article VI of the Constitution as discussed above and will repeal Section 1, the first sentence of Section 2, Sections 3 to 16, inclusive, and Sections 18 to 27, inclusive, all of Article VI and will also repeal Sections 4 and 5 of Article XXI and Sections 4 and 18 of Article XVII.

A no vote will leave the Constitution as it exists.

AMENDMENT C--LEGISLATIVE ARTICLE

The proposed Legislative Article is an effort to modernize the Legislature so as to better enable it to respond to the wishes of the people. Under the proposed amendment:

(1) Initiative and referendum of laws would be basically unchanged except that the right to initiate an appropriation measure is expressly prohibited; (2) maximum length of annual legislative sessions would be forty days rather than forty-five and thirty day sessions; (3) the minimum age for legislators would be reduced from twenty-five to eighteen years of age; (4) the Legislature would be authorized to call itself into special session by request of two-thirds of the membership; (5) the Legislature, not the Governor, would fill vacancies in the Legislature between elections; (6) the Lt. Governor would no longer preside over the Senate; (7) the present sovereign immunity of the state from suit would be negated except the Legislature could reasonably limit such liability; (8) special legislation would be allowed, even in presently prohibited areas, if general laws could not apply; and (9) during the time the Legislature is not in session, special interim legislative committees would be authorized to suspend administrative rules of state agencies and to allocate funds to any state department from a contingency fund established for that purpose.

A vote "yes" by a majority will change the Constitution as explained above and will repeal SS 1 to 24, inclusive, of
Article III, and SS 27 to 29, inclusive, of Article III, and will also repeal Articles XV and XVI and the first sentence of S 5 of Article IV, all relating to the legislative department.

A vote "no" by a majority will leave the Constitution as it exists.

AMENDMENT D--CONSTITUTIONAL AMENDMENT
ARTICLE III, SEC. 26

That Article III, S 26 of the South Dakota Constitution be repealed.

The purpose of the proposal is to repeal Article III, S 26 of the present South Dakota Constitution and thereby remove the present constitutional restraints prohibiting the Legislature from delegating legislative power to any private group to supervise, regulate, or interfere with municipal functions, property, or improvements. The additional provisions of Article III, S 26 which prohibit the Legislature from delegating any power to a private group to levy taxes or to select a capitol site, would also be repealed. The repeal of these constitutional restrictions would allow the Legislature to pass laws allowing these practices.

A vote yes by a majority will repeal Article III, S 26, as explained above.

A no vote will leave Article III, S 26 as it exists.

AMENDMENT E--SCHOOL LAND AND FUNDS

The purpose of this proposed amendment is to modernize and make possible more flexible legislation relating to the procedures and standards for: (1) the sale and leasing of school and public lands; and (2) the investment of the funds in the permanent school fund and other educational funds.

The proposal: (1) removes the present constitutional restraints on the type of investments that can be made with monies in the permanent school and other educational funds; (2) specifically reserves to the state all gas, oil, coal, and mineral rights in school and public lands and authorizes the Legislature to reserve other rights for the state in such lands; (3) specifies that no school and public lands shall be sold or leased for less than fair market value; (4) no longer requires the sale of school and public lands to be limited to eighty acre tracts; (5) enables the Legislature to set limits by law relating to the sale or leasing of school and public lands; (6) would retain the provision allowing the Governor to reject any sale or lease of school or public lands and (7) would require that investment of permanent school and other educational funds be made in a "prudent" manner as provided by the Legislature.

A vote yes for the amendment would amend SS 2 to 5, inclusive, of Article VIII of the Constitution, as explained above, and would repeal SS 6 to 14, inclusive, and S 18 of
Article VIII, and would also repeal Article XXVIII. A no vote will leave the Constitution as it exists.

AMENDMENT F--ARRANGEMENT

This proposed amendment would add a new section to Article XXIII to permit the Legislature, upon two-thirds majority vote of the members in both houses, to adopt a resolution which would:

1. arrange Constitutional provisions in an orderly fashion in appropriate articles; and

2. delete obsolete sections of the Constitution.

This proposal would allow the Legislature to remove obsolete language from the Constitution without a vote of the people. Article XXIII presently reserves this right exclusively to the people. It will be a matter for the Legislature and the courts to determine which language is "obsolete."

The Legislature could not, however, change the language in any section of the Constitution under this procedure. Further, the Legislature would only be authorized to take such action at the second legislative session following the passage of this amendment and every ten years thereafter. Each resolution adopted would be subject to referendum in the same manner as a law.

A vote yes by a majority will change the Constitution by amending the title to Article XXIII and by adding a new section to Article XXIII.

A vote no by a majority will leave the Constitution as it exists.