



**Sixth Meeting  
November 16 & 17, 2005**

**LCR 1 & 2  
State Capitol Building  
Pierre, South Dakota**

The sixth meeting of the Constitutional Revision Commission was called to order by Chair Robert A. Miller at 1:15 p.m. (CT), November 16, in LCR 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Mr. Mark Barnett, Vice Chair Robert Burns, Mr. Steve Cutler, Vice Chair Donald Dahlin, Lieutenant Governor Dennis Daugaard, Mr. Robert Drake, Mr. Gene Lebrun, Mr. Larry Lucas, Ms. Mary McClure Bibby, Chair Robert A. Miller, Mr. Ronald Olinger, Mr. Brent Wilbur, and Supreme Court Justice Steven Zinter. Mr. James Abbott, Dr. Sean Flynn, Mr. Jim Hutmacher, and Mr. Robert Roe were excused.

Staff members present included David L. Ortbahn, Principal Research Analyst; Reed Holwegner, Chief Fiscal Analyst; and Teri Retrum, Senior Legislative Secretary.

**(NOTE:** For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Minutes.)

**Wednesday, November 16, 2005**

The following subcommittees met on the morning of November 16, 2005.

- Subcommittee on Legislative Conflicts of Interest—Dr. Donald Dahlin, Chair, Mr. Mark Barnett, Mr. Gene Lebrun, and Mr. Robert Roe (excused).
- Subcommittee on Legislative Reapportionment—Ms. Mary McClure Bibby, Chair, Dr. Robert Burns, Dr. Donald Dahlin, Mr. Ronald Olinger, and Mr. Jim Hutmacher (excused).

**Approval of Minutes**

**MS. MC CLURE BIBBY MOVED, SECONDED BY DR. DAHLIN, THAT THE MINUTES OF THE FIFTH MEETING (SEPTEMBER 14 AND 15, 2005) BE APPROVED.** The motion prevailed on a voice vote.

**Commission Correspondence**

**Mr. David Ortbahn**, LRC, distributed to the Commission a letter from **Mr. Thomas C. Adam**, Law Offices of May, Adam, Gerdes & Thompson LLP, Pierre, South Dakota, conveying his

comments on the proposed amendments to Article III of the South Dakota Constitution, including a marked-up copy of the draft resolution (**Document #1**).

### **Information Requests from Last Meeting**

Mr. Ortbahn reviewed the following information requests from the last meeting:

- A draft house joint resolution to amend the percentage of the qualified electors of the state required to invoke either an initiative or referendum (**Document #2**);
- A draft house bill to require persons circulating initiative and referendum petitions to be registered voters in the state (**Document #3**);
- A draft house bill to increase the compensation of legislators and the lieutenant governor (**Document #4**);
- Information outlining how state legislators' compensation is determined in other states—constitutionally, statutorily, or by a compensation commission (**Document #5**);
- Background history on SDCL 2-12-10 (**Document #6**);
- Information concerning Article III, § 29, which outlines continuity of government in periods of emergency resulting from disasters caused by enemy attack; (**Document #7**);

The following were distributed as one document and labeled **Document #8**:

- A copy of Article VII, § 2;
- A copy of SDCL 12-1-3 (definition of elector in state statute);
- A copy of the court decision *Bjornson et al v. City of Aberdeen et al*.

**Mr. Reed Holwegner**, LRC, distributed copies of maps showing how specified funds in the general bill are handled in other states (**Document #9**) and states in which legislative intent is not included in the general bill (**Document #10**).

Mr. Holwegner also distributed copies of a draft house joint resolution to require appropriations to be made from specific funds (**Document #11**).

**Mr. Chad Heinrich**, Deputy Secretary of State, addressed *Bjornson et al v. City of Aberdeen et al*, particularly the holding regarding "qualified elector." Mr. Heinrich read the holding as stated in the 296 North Western Reporter, 2d Series, page 902, S.D.:

[10] We hold therefore, that in order to be a "qualified elector" as denominated in S.D. Const. art. III, § 1, the signer must be an elector who has registered to vote in some precinct within the municipality, and that any apparent conflict between the terms "elector" as used in the constitution and "voter" as used in SDCL 9-20-8 is only a matter of semantics.

Mr. Heinrich said that the Secretary of State's Office has determined that an "elector" is a person who is qualified to register as a voter, whether or not the person is registered; a "qualified elector" is a person who is registered to vote.

Mr. Heinrich distributed copies of a table outlining the numbers of registered active voters versus voter turnout in the Governor's race starting in 1986 through 2002 (**Document # 12**).

For informational purposes, SDCL 2-1-1, 2-1-3, and 2-1-5 read as follows:

**2-1-1. Initiative petitions—Number of signatures required.** All measures proposed by initiative shall be presented by petition. The petition shall be signed by not less than five percent of the qualified electors of the state.

**2-1-3. Referendum—Laws subject to petition—Form.** Any law which the Legislature may have enacted, except one which may be necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, shall, upon the filing of a petition as hereinafter provided, be submitted to a vote of the electors of the state at the next general election. Such petition shall be signed by not less than five percent of the qualified electors of the state. The form of the petition shall be prescribed by the State Board of Elections.

**2-1-5. Total vote used to determine number of signers required in petitions.** The total number of votes cast for Governor at the last preceding gubernatorial election, shall for the purposes of this chapter, be the basis for determining the number of petitioners required.

**Chair Robert A. Miller** commented that the question about whether the conflict in SDCL 2-1-1 and SDCL 2-1-5 regarding the percentage of qualified electors or qualified voters required to sign initiatives and referendums could be addressed by the Legislature and is really not a constitutional issue.

Mr. Heinrich said that a person must be a registered active voter to sign a petition. An inactive voter is a person who has not voted or updated his or her registration within four years.

**Mr. Gene Lebrun** said that SDCL 2-1-5 is clearly inconsistent with SDCL 2-1-1 and 2-1-3. He felt that SDCL 2-1-1 and 2-1-3 are consistent with the Constitution and that SDCL 2-1-5 is not.

**Mr. Ronald Olinger** said that he believes this is something that the Commission needs to pursue. He said that the intent of SDCL 2-1-1 is for qualified electors and that would be registered voters.

**MR. OLINGER MOVED, SECONDED BY MR. LEBRUN, THAT THE COMMISSION KEEP THIS ISSUE, THE DEFINITION OF QUALIFIED ELECTOR, ON ITS AGENDA AND THAT STAFF PROVIDE ADDITIONAL INFORMATION AFTER CONSULTING WITH THE SECRETARY OF STATE'S OFFICE AND THE ATTORNEY GENERAL'S OFFICE**

**CONCERNING WHAT CONSTITUTES A "QUALIFIED ELECTOR." The motion prevailed on a voice vote.**

**Responding to Dr. Donald Dahlin**, Mr. Heinrich reviewed the process that the Secretary of State's Office uses when checking the validity of signatures on petitions.

**Mr. Reuben Bezpaletz**, LRC, distributed copies of Attorney General's Opinion No. 75-72 regarding the basis for determining the number of petitioners required to sign petitions invoking the initiative (**Document #13**).

Dr. Dahlin said that he would be interested in seeing how other states verify signatures on petitions initiating ballot measures.

Chair Miller directed staff to work with the Secretary of State's Office to gather some information regarding Dr. Dahlin's request.

Mr. Lebrun said he thought that the United States Supreme Court ruled that the mere fact that a signature on a petition was by an inactive voter, the voter is still considered a registered voter. He requested more information regarding this ruling.

The Commission reviewed and discussed Document #2.

**MR. LEBRUN MOVED, SECONDED BY MS. MC CLURE BIBBY THAT THE COMMISSION DEFER ACTION ON THE DRAFT JOINT RESOLUTION TO REVISE CERTAIN PROVISIONS REGARDING INITIATIVES AND REFERENDUMS. The motion prevailed on a voice vote.**

The Commission reviewed and discussed Document #3.

Mr. Lebrun commented about a recent New York court case in which the court ruled that a requirement that petition circulators be residents was unconstitutional. He felt the changes proposed in Document #3 could be unconstitutional. In response to a question, Mr. Bezpaletz stated that years ago he had done research which would indicate that a residency requirement for petition circulators would be unconstitutional.

Dr. Dahlin asked if a requirement for geographic representation of petition signers would be constitutional. Mr. Bezpaletz stated that it was his opinion that reasonable requirements would be constitutional and could be done statutorily.

Stating that he would like to have Mr. Bezpaletz's past research on the subject before final discussion, **JUSTICE ZINTER MOVED, SECONDED BY DR. DAHLIN, THAT THE COMMISSION DEFER ACTION ON THE DRAFT JOINT RESOLUTION TO REQUIRE PERSONS CIRCULATING INITIATIVE AND REFERENDUM PETITIONS TO BE REGISTERED VOTERS IN THE STATE. The motion prevailed on a voice vote.**

The Commission reviewed and discussed Document #4.

**MS. MC CLURE BIBBY MOVED, SECONDED BY MR. BARNETT, THAT THE COMMISSION ADOPT THE DRAFT RESOLUTION TO INCREASE THE COMPENSATION OF LEGISLATORS AND THE LIEUTENANT GOVERNOR.**

**Dr. Robert Burns** said that an endorsement of the draft legislation to increase the compensation of legislators expresses support of the Legislature. Dr. Burns said that he is in favor of this draft legislation; then, the Legislature can decide what it wants to do regarding compensation.

**Lieutenant Governor Dennis Daugaard** said that, because the draft legislation also included language to increase the per diem of the Lieutenant Governor, he excused himself from the discussion and action on this draft legislation.

**The motion was approved on a voice vote.**

The Commission reviewed and discussed Document #5.

Mr. Ortbahn referred the task force to information from National Conference of State Legislatures concerning state legislators' compensation. He said that provisions used in West Virginia where an independent commission makes recommendations regarding legislator compensation to the Legislature might work with our constitutional provisions.

Dr. Dahlin asked if such a change would have to be done by a constitutional amendment or by statute. Mr. Ortbahn responded that a procedure used by West Virginia could be implemented in South Dakota by either method.

**DR. DAHLIN MOVED, SECONDED BY MR. LEBRUN, THAT THE CHAIR APPOINT A SUBCOMMITTEE TO INVESTIGATE THE USE OF AN INDEPENDENT MECHANISM TO REVIEW AND MAKE RECOMMENDATIONS REGARDING LEGISLATOR SALARIES ON AN ON-GOING BASIS AND REPORT BACK TO THE NEXT COMMISSION MEETING. The motion prevailed on a voice vote.**

Mr. Lebrun stated he would be interested to see in those states that have commissions regarding legislator salaries how those salaries compared with legislator salaries in other states that do not have such commissions.

**JUSTICE ZINTER MOVED, SECONDED BY MR. OLINGER, TO RECONSIDER THE VOTE ON THE MOTION PREVIOUSLY APPROVED BY THE COMMISSION REGARDING INCREASED COMPENSATION FOR LEGISLATORS AND THE LIEUTENANT GOVERNOR AND THAT INSTEAD THE GENERAL ISSUE OF LEGISLATOR SALARIES BE STUDIED BY THE SUBCOMMITTEE JUST APPROVED. The motion prevailed on a show of hands.**

Chair Miller appointed Mr. Lebrun (Chair), Dr. Burns, Mr. Drake, and Mr. Olinger as such subcommittee.

The Commission recessed at 2:30 p.m. and reconvened at 2:45 p.m. Lieutenant Governor Daugaard was again present.

Mr. Ortbahn reviewed Document #6 regarding the background history on SDCL 2-12-10 requested at the Commission's last meeting.

**LIEUTENANT GOVERNOR DAUGAARD MOVED, SECONDED BY MR. BARNETT, THAT THE COMMISSION DEFER ACTION ON SDCL 2-12-10 UNTIL THE NEXT MEETING. The motion prevailed on a voice vote.**

The Commission reviewed and discussed Document #7. Mr. Ortbahn commented that the Commission inquired at its last meeting as to whether any other state constitutions went beyond enemy attacks. He stated his research found that 22 states had constitutional provisions similar to ours. Three states also provided for natural disasters or other emergencies—Utah, Louisiana, and New York.

After some discussion on what constitutes an emergency, **MR. LEBRUN MOVED, SECONDED BY DR. DAHLIN, THAT THE COMMISSION AMEND SECTION 29 OF ARTICLE III, BY ADDING ON THE THIRD LINE "A NATURAL OR MAN-MADE DISASTER."** The motion prevailed on a voice vote

**MR. LEBRUN MOVED, SECONDED BY MR. OLINGER, THAT THIS AMENDMENT BE INCLUDED IN THE CLEANUP RESOLUTION TO BE PRESENTED TO THE 2006 LEGISLATURE. The motion prevailed on a voice vote.**

Mr. Ortbahn distributed copies of Pennsylvania, Utah, and California constitutional provisions which are similar to South Dakota's Article III, section 26 (**Document #14**). The question had come up at the Commission's last meeting if any other states with similar provisions to Article III, section 26, applied those provisions to counties. Only California does.

Mr. Lebrun said that counties are a subdivision of the state, and municipalities are not, so, in his opinion, those two governmental entities should not be included together.

No further action was taken by the Commission regarding Article III, section 26.

Mr. Ortbahn distributed copies of e-mails from **Senator Lee Schoenbeck** and **Senator Eric Bogue** concerning the proposed clean-up amendments to the constitution (**Document #15**). Chair Miller said that Senators Schoenbeck and Bogue asked that their e-mailed comments serve as their testimony.

Mr. Ortbahn also distributed copies of **Document #16**—Legislator Compensation 2005—From NCSL.

Mr. Holwegner discussed the draft house joint resolution to require appropriations to be made from specific funds (aforementioned Document #11). He said that the draft resolution provides for an amendment to Article III of the Constitution as follows:

Section 33. No money may be appropriated from the state treasury without identifying the specific fund that is to be used for the appropriation.

Mr. Holwegner explained that South Dakota is in the minority of states in the way that it appropriates money. The Legislature provides little or no legislative intent or direction as to which funds within the state treasury are to be utilized by executive agencies when implementing an appropriation. Mr. Holwegner observed that the *Apa v. Butler* case elucidated the Legislature's power to redirect money in special funds by a simple majority vote **(Document #17)**.

Responding to Ms. McClure Bibby, Mr. Holwegner said that letters of intent do not have the force of law.

Mr. Barnett asked why the committee needs to be commanded to take money from other funds when they already can do so.

Mr. Olinger said that money is being moved around all the time. He believes that it has been an embarrassment to the appropriations process. He said that current practices give the Governor a lot of power.

**MR. OLINGER MOVED, SECONDED BY MS. MC CLURE BIBBY, THAT THE COMMISSION ADOPT DRAFT LEGISLATION TO REQUIRE APPROPRIATIONS TO BE MADE FROM SPECIFIC FUNDS.**

Mr. Lebrun said that the Legislature currently has the authority to appropriate money and that he believes that a little flexibility is good and that he is reluctant to put this language into the Constitution.

**Mr. Robert Drake** said that the Governor puts together the budget almost a year before and that this would remove flexibility. He noted that the Special Committee on Appropriations does not have the authority to make laws. Mr. Drake said that the intent might be right but that it would cause more problems than it would be worth.

Dr. Burns said that there are already safeguards against deficit spending and said that he is not sure what this draft would accomplish.

Dr. Dahlin said that he is not sure that the draft accomplishes anything.

Mr. Barnett said that he agrees with Dr. Burns and Dr. Dahlin.

**The motion failed on a voice vote.**

#### **Other Information Items**

Mr. Ortbahn distributed copies of draft legislation to add certain legislative leaders to the Executive Board of the Legislative Research Council **(Document #18)**. He explained that the draft amends SDCL 2-9-2 to add caucus leaders to the Executive Board.

Stating that he thinks this is good legislation because it is important to have leadership involved, especially with term limits, **MR. LEBRUN MOVED, SECONDED BY MS. MC CLURE**

**BIBBY, THAT THE COMMISSION ADOPT THE DRAFT RESOLUTION TO ADD CERTAIN LEGISLATIVE LEADERS TO THE EXECUTIVE BOARD OF THE LEGISLATIVE RESEARCH COUNCIL.**

Mr. Steve Cutler related a personal experience when he was in the Legislature and said that there was a time when he would have supported such a measure. Mr. Cutler said that he now believes that leaving the Executive Board as currently configured with fifteen members, absent leaders, gives more legislators a chance to belong to a decision-making body.

Mr. Lebrun said that the majority of the members will still be non-leadership legislators so this draft does not take away anything; it is only adding to the size so that the leadership will be a part of the discussion.

Ms. McClure Bibby said that the change would provide more coordination.

Lieutenant Governor Daugaard said that most leaders do not want to accept an additional assignment because of the time constraints involved in being a legislative leader. He said that the membership of the Executive Board should remain as is.

Mr. Barnett expressed support for the positions expressed by Mr. Cutler and Lieutenant Governor Daugaard.

**The motion failed on a show of hands.**

**Review of Draft Joint Resolution**

Copies of the South Dakota Constitution 2005 were distributed (**Document #19**).

The Commission reviewed the draft joint resolution to revise certain constitutional provisions regarding the Legislature (**Document #20**).

Mr. Ortbahn noted that Representative O' Brien had contacted him about following areas of question:

- Page 2, lines 9 to 16, inclusive—what is a "lucrative office?"
- On page 2, lines 12 and 13—do we need "justice of the peace" included any longer?
- On page 2, line 14—what is "any office of honor or profit?"

Representative O'Brien felt these were questions that the cleanup resolution should address.

Mr. Lebrun expressed concern that lines 9 to 16 on page 2 prohibits or could prohibit people who work for the federal government or for the state's National Guard, or who are a part-time or full-time state employee from running for legislative office.

Dr. Dahlin said that the Subcommittee on Legislative Conflicts of Interest had some discussion on the issue but did not resolve the concern. He said that this language ties in with Article III,

section 12. Dr. Dahlin suggested that "justice of the peace" could be overstricken, but the definition of lucrative office is a much bigger issue.

Chair Miller said that the question that needs to be solved by the Commission is whether section 3 should even be in the cleanup resolution.

**MR. BARNETT MOVED, SECONDED BY MR. WILBUR, THAT THE COMMISSION DEFER ACTION ON ARTICLE III, SECTION 3, UNTIL THE SECOND PHASE OF THE COMMISSION'S DELIBERATIONS. The motion prevailed on a voice vote.**

Brief discussion was held on Article III, section 4, concerning whether a person convicted of a felony should be eligible to serve in the Legislature.

Lieutenant Governor Dugaard said that South Dakota law does not prohibit a felon from voting, if the person has completed the imposed sentence. Mr. Wilbur concurred.

Ms. McClure Bibby said that perhaps the Commission could delete Article III, § 4, and just require that a legislator be a qualified voter.

Mr. Lucas said that, while he agrees with the comments from Ms. McClure Bibby, he agrees with Senator Bogue and Mr. Adam that Article III, section 4, should be left as is.

Dr. Dahlin said that there should be some guidelines in regard to felonies; maybe the same felonies that would disqualify you from voting would disqualify you from being a legislator.

**MS. MC CLURE BIBBY MOVED, SECONDED BY MR. LUCAS, THAT THE COMMISSION LEAVE ARTICLE III, SECTION 4, AS IS. The motion prevailed on a voice vote.**

**DR. DAHLIN MOVED, SECONDED BY MR. OLINGER, THAT ON PAGE 3, LINE 13, "PER DIEM" BE DELETED.**

Lieutenant Dugaard said that he prefers to leave "per diem" in the proposed change. He felt it makes it clear that a per diem could be used for expenses and one is not limited to just reimbursement for actual expenses.

Dr. Dahlin agreed and withdrew his motion with the approval of the second, Mr. Olinger.

**MS. MC CLURE BIBBY MOVED, SECONDED BY MR. OLINGER, THAT ON PAGE 3, LINE 12, SUNDAYS, HOLIDAYS, AND LEGISLATIVE RECESS BE LISTED AS EXCLUSIONS FOR LEGISLATIVE DAYS.**

After some Commission discussion, **MS. MC CLURE BIBBY MADE A SUBSTITUTE MOTION, SECONDED BY MR. OLINGER, THAT STAFF BE DIRECTED TO REDRAFT THIS SECTION FOR FURTHER COMMISSION DISCUSSION. The substitute motion prevailed on a voice vote.**

Regarding Article III, § 6, Ms. McClure Bibby also expressed concern that time spent in the event of impeachment is not included as an exception to a legislative day.

Mr. Barnett commented regarding Article III, section 8, that he supports leaving this section of the Constitution alone because he thinks that it could be perceived to be a substantive change even though it is not.

There were questions whether the impeachment process contained in Article XVI applies to legislators.

After several attempts to address the Commission's concerns regarding the oath taken by legislators and officers of the Legislature, Chair Miller appointed Messrs. Barnett, Wilbur, and Lebrun to a subcommittee to work on a compromise to § 8 of Article III.

The Commission recessed at 4:35 p.m. on November 16, 2005, and reconvened at 8:07 a.m. on November 17, 2005.

### **Tuesday, November 17, 2005**

At the request of Chair Miller, Mr. Barnett told the Commission that the subcommittee appointed to work on a compromise to § 8 of Article III reached a consensus that this section of the constitution is too involved to resolve the issues in a short time period and agreed that any changes should not be part of the clean-up and perhaps even should be rewritten and included in the discussion on substantive changes.

**MR. BARNETT MOVED, SECONDED BY MR. LEBRUN, THAT FURTHER DISCUSSION ON SECTION 8 OF ARTICLE III BE DEFERRED UNTIL THE COMMISSION DISCUSSES SUBSTANTIVE CHANGES TO ARTICLE III. The motion prevailed on a voice vote.**

Chair Miller asked Mr. Barnett to work with staff and possibly get help from the Attorney General's Office to work on this section.

As requested, Mr. Ortbahn provided a revised draft of Article III, § 6 (**Document #21**).

Ms. McClure Bibby suggested that cases of impeachment be excepted from the limitation on legislative cleanup.

The Commission agreed that the new sentence in this section should read as follows: Sundays, holidays, days of legislative recess, and cases of impeachment shall not be included as legislative changes.

The Commission continued its review of the draft joint resolution.

Regarding the changes to Article III, section 13, **DR. BURNS MOVED, SECONDED BY DR. DAHLIN, THAT "PURSUANT TO LAW" BE CHANGED TO "PROVIDED BY LAW".**

Regarding Article III, section 15, Mr. Ortbahn noted that Mr. Adam in his letter to the Commission questioned the use of the words "commission meetings."

Mr. Lucas expressed concern about open meetings unless a two-thirds majority of the membership declares that the business to be discussed should be kept secret.

Mr. Olinger said that, currently, it only takes a majority to close a meeting and that, in his opinion, there needs to be a provision for closed meetings, particularly in cases of an emergency of any kind.

**LIEUTENANT GOVERNOR DAUGAARD MOVED, SECONDED BY DR. DAHLIN, THAT AN "A" BE ADDED BEFORE "TWO-THIRDS" AND THAT AN "AND" BE ADDED AFTER "JOINT SESSIONS" AND THE PHRASE ", AND COMMISSIONS MEETINGS" BE DELETED. The motion prevailed on a voice vote.**

Regarding Senator Schoenbeck's remarks concerning § 17 of the constitution, Lieutenant Governor Dugaard said that the proposed changes merely are to procedural requirements and add nothing to the legislative process.

Chair Miller noted Senator Schoenbeck's comment that section 17 would eliminate first readings.

**LIEUTENANT GOVERNOR DAUGAARD MOVED, SECONDED BY MR. DRAKE, THAT § 17 BE AMENDED TO READ AS FOLLOWS:**

**§ 17. EVERY BILL SHALL BE ~~READ TWICE~~ ENTERED UPON THE JOURNAL, BY NUMBER AND TITLE ONCE, WHEN INTRODUCED, AND ONCE UPON SHALL BE READ, BY NUMBER AND TITLE, PRIOR TO FINAL PASSAGE, BUT ONE READING AT LENGTH MAY BE DEMANDED AT ANY TIME BEFORE A FINAL PASSAGE. The motion prevailed on a voice vote.**

Mr. Ortbahn commented that Senator Bogue questioned whether the last sentence of § 23 in the draft is needed. Mr. Ortbahn said that it makes it clear that this is a determination that the court should review rather than the court saying this is a legislative function and the court is not going to get involved.

Mr. Ortbahn questioned whether the proposed changes to § 29 approved by the Commission yesterday should be included in this joint resolution. The consensus of the Commission was that it should.

**MS. MCCLURE BIBBY MOVED, SECONDED BY DR. DAHLIN, THAT THE THIRD PARAGRAPH OF ARTICLE III, SECTION 6 BE AMENDED TO READ AS FOLLOWS:**

**A REGULAR SESSION OF THE LEGISLATURE SHALL BE HELD IN EACH ODD-NUMBERED YEAR AND SHALL NOT EXCEED FORTY LEGISLATIVE DAYS, EXCLUDING SUNDAYS, HOLIDAYS, AND LEGISLATIVE RECESS, EXCEPT IN CASES OF IMPEACHMENT, AND MEMBERS NOT EXCEED FORTY LEGISLATIVE DAYS IN EACH ODD-NUMBERED YEAR AND SHALL NOT EXCEED THIRTY-FIVE LEGISLATIVE DAYS IN EACH EVEN-NUMBERED YEAR EXCEPT IN CASES OF IMPEACHMENT. SUNDAYS, HOLIDAYS, AND DAYS OF LEGISLATIVE RECESS SHALL NOT BE INCLUDED AS**

**LEGISLATIVE DAYS. MEMBERS OF THE LEGISLATURE SHALL RECEIVE NO OTHER PAY OR PERQUISITES EXCEPT SALARY, EXPENSES, PER DIEM, AND MILEAGE AS PROVIDED BY LAW.** The motion prevailed on a voice vote.

Mr. Cutler commented that he felt the changes proposed in sections 17 and 19 of Article III give no great advantage and will result in the loss of formality that the Legislature has established over the years.

**MR. CUTLER MOVED, SECONDED BY MS. MC CLURE BIBBY, THAT SECTIONS 10 AND 11 BE REMOVED FROM THE JOINT RESOLUTION.**

Mr. Olinger asked if the question could be divided.

Chair Miller ruled that the question would be divided.

**The question being should section 10 be removed from the joint resolution. That portion of the motion failed on a show of hands.**

**The question being should section 11 be removed from the joint resolution. That portion of the motion prevailed on a show of hands.**

**MR. DRAKE MOVED, SECONDED BY DR. DAHLIN, THAT SECTION 6, THE PROPOSED CHANGE TO SECTION 8 OF ARTICLE III REGARDING THE OATH FOR LEGISLATORS, BE PLACED BACK IN THE RESOLUTION.** The motion failed on a voice vote.

The Commission recessed at 9:10 a.m. and reconvened at 9:45 a.m.

Mr. Ortbahn distributed a revised draft of the joint resolution (**Document #22**).

**DR. BURNS MOVED, SECONDED BY MR. LEBRUN THAT THE REVISED JOINT RESOLUTION BE APPROVED FOR RECOMMENDATION TO THE 2006 LEGISLATURE.**

The Commission took time to review the revised draft.

**The motion carried on a voice vote.**

**LIEUTENANT GOVERNOR DAUGAARD MOVED, SECONDED BY MR. OLINGER, THAT SECTION 10 BE REMOVED FROM THE REVISED JOINT RESOLUTION AND MAKE IT A SEPARATE JOINT RESOLUTION FOR THE UPCOMING SESSION.** The motion was approved on a voice vote.

Mr. Cutler said that he believes that there are several issues that might need to be confidential and does not think that the changes to section 15 of Article III make anything better, so **MR. CUTLER MOVED, SECONDED BY MR. DRAKE, THAT ON PAGE 3 OF THE DRAFT RESOLUTION (DOCUMENT #22) DELETE LINES 6 TO 12, INCLUSIVE.**

Mr. Lebrun expressed opposition to the motion because the current constitutional language permitted, before the 1970s, committee meetings to be held in secret, and there is nothing to say that it could not happen again. He felt minority rights should be protected. He said that it is important to retain the proposed changes in the joint resolution.

**Mr. Cutler's motion failed on a voice vote.**

## **Reports of Subcommittees**

### Subcommittee on Legislative Conflicts of Interest

Mr. Ortbahn handed out two draft resolutions amending section 12 of Article III that the Subcommittee considered (**Document #23 and Document #24**).

Dr. Dahlin reported that the subcommittee was not asking for approval of these documents but wanted to show the Commission where the subcommittee was at and wanted to solicit suggestions as to where the subcommittee should go in the future.

Dr. Dahlin said that the subcommittee was in agreement to the changes contained in Document #23. That document removes county contracts from the conflict of interest issue, shortens from one year to six months the period of time a legislator is prohibited from entering into a state contract after the legislator's term of office is completed, and makes it clear that legislators can serve on advisory boards and commissions. He feels these are not controversial changes.

Dr. Dahlin commented that the other draft (Document #24) contains these three changes and would allow legislators to get a state contract if it is awarded after public notice and competitive bidding and there is a subsequent public disclosure of all proposals considered and the contract awarded. He felt this was a modest change that the subcommittee was still in the process of pursuing. The subcommittee was going to pursue further whether or not the public disclosure of unsuccessful bids might cause a problem.

The subcommittee also discussed paragraph 3 of section 3 of Article III. The subcommittee was going to do more research on the term, lucrative office. The current language does not appear to allow any employee of state government to be a member of the Legislature. The subcommittee would like direction from the Commission whether or not they should pursue language which would allow more persons to run for the Legislature.

Dr. Dahlin stated the subcommittee would like further direction on three issues:

- In the first draft, does the Commission want to limit legislative participation in advisory boards and commissions or to allow them to participate in policymaking boards and commissions as well?
- In the second draft, allowing legislators to compete for state contracts with public disclosure, should the subcommittee continue to pursue this option?
- What changes should the subcommittee pursue to paragraph 3 of section 3?

Mr. Barnett commented that current law permits confidentiality to an unsuccessful bidder; however, perhaps there should be some public disclosure if a legislator were awarded a contract so that others would know that the legislator, indeed, submitted the lowest bid.

Dr. Burns commented that he thought the subcommittee was headed in the right direction.

Mr. Drake commented that subcommittee should avoid the subject of allowing state employees to be legislators.

Mr. Lucas said that if state employees are excluded from being legislators, National Guard members should also be prohibited since they are under the direction of the Governor. He questioned how far the exclusion should reach.

Dr. Dahlin also commented that Mr. Barnett was checking for the subcommittee on how well the conflict of interest laws work in other states.

Mr. Lebrun commented that the Commission should think about the fact that the current language prohibits all state and federal employees from being legislators—that covers a lot of people in South Dakota and what is the rationale for excluding all those people.

Mr. Wilbur commented that the current language would seem to prevent a legislator from running for Governor during the legislator's term if the salary of the Governor was increased during the legislator's term of office. He suggested that this is something that the Commission might want to look at.

#### Subcommittee on Legislative Reapportionment

Ms. McClure Bibby reported that the subcommittee discussed the following issues in section 5 of Article III:

- Single-member versus dual-member House districts—whether to require single-member districts or continue to allow a mixture of single-member and dual-member districts;
- Whether the phrase "as nearly as is practicable" should be eliminated from the section; and
- Whether the Commission should pursue a redistricting commission to do redistricting rather than the Legislature.

A copy of the subcommittee's recommended changes to section 5 was handed out (**Document #25**). The subcommittee is recommending a change that would require all House districts to be single-member districts. The subcommittee felt this would provide for smaller districts which would make it easier for legislators to serve their constituents. She indicated it would also create head-to-head competition for legislative seats, which dual-member districts

do not have. The subcommittee felt the change would reduce voter confusion. They felt this change would strengthen the system.

The subcommittee decided that the phrase "as nearly as is practicable" should be retained. Case law currently allows a ten percent deviation. The subcommittee decided a change was not really necessary at this time.

The subcommittee decided redistricting should continue to be done by the Legislature and not be a redistricting commission.

It was decided that the recommendation will be considered by the full Commission at its next meeting.

Lieutenant Governor Daugaard commented that he agreed with the subcommittee's recommendation not to pursue a redistricting commission. He did not think the Legislature would approve such a commission and to pursue it further would be a waste of time.

Mr. Drake questioned the advantages of single-member house districts in rural areas. He felt it might not result in better representation and did not see a problem with dual-member districts.

Mr. Olinger commented that the subcommittee's proposal would result in head-to-head competition for a legislative position. He felt this would result in better candidates running for legislative positions.

Mr. Lebrun commented that the Commission should make sure any changes to section 5 would go into effect for the next reapportionment in 2011 and not prior to that reapportionment.

Ms. McClure Bibby and Mr. Bezpaletz gave an update on recent court decisions affecting legislative redistricting.

#### Subcommittee on Deadwood Gaming Proceeds

Mr. Lebrun reported that he discussed the Deadwood gaming proceeds issue, as discussed at the Commission's last meeting, with the Mayor of Deadwood and three casino managers. He commented that none of them wants any changes to the current provisions. The subcommittee recommends that there be no changes to § 25 of Article III. A copy of an e-mail outlining the subcommittee's activities was handed out (**Document #25**).

#### **Next Meeting Date and Adjournment**

There was Commission discussion regarding future meeting dates. It was decided that staff would poll the Commission members as to the best dates for a meeting in April and a meeting in June. Staff was also directed to put together a complete list of those things the Commission has yet to do.

Lieutenant Governor Daugaard asked the Commission to reconsider the draft resolution again. He felt it might be best to take section 8—the amendment to section 23 of Article III—out of the resolution and put it in a separate resolution.

**LIEUTENANT GOVERNOR MOVED, SECONDED BY MR. OLINGER, THAT THE AMENDMENT TO SECTION 23 OF ARTICLE III BE PLACED IN A SEPARATE RESOLUTION TO BE PRESENTED TO THE 2006 LEGISLATURE. The motion prevailed on a voice vote.**

The Commission agreed to try to meet informally with legislative leadership during the 2006 Legislative Session to give them a progress report and to continue to get their input on Commission activities.

**LIEUTENANT GOVERNOR DAUGAARD MOVED, SECONDED BY MR. LUCAS, THAT THE MEETING BE ADJOURNED. The motion prevailed on a voice vote.**

The Commission adjourned at 10:50 a.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.htm>).