



# South Dakota Legislative Research Council

## Issue Memorandum 98-01

---

### A SUMMARY ANALYSIS OF ARTICLE III OF THE SOUTH DAKOTA CONSTITUTION

In February of 1889, Congress passed an enabling act to provide for the division of Dakota Territory into two states and directing the people of the Dakotas, Montana, and Washington to adopt constitutions and state governments for purposes of being admitted to the union "on equal footing with the original states." The enabling act instructed the two Dakotas to hold constitutional conventions in Bismarck and Sioux Falls. In accordance with those instructions, South Dakota adopted its constitution on October 1, 1889, and was granted statehood in November of that year. The enabling act also required that the new state constitutions be republican in form and not be "repugnant to the principles of the Constitution of the United States and the Declaration of Independence." Article III of the new South Dakota Constitution created the Legislative Department, a fundamental element in the establishment of a republican form of government.

A brief synopsis of Article III of the South Dakota Constitution, the Legislative Article, in its current form, is presented below.

#### SECTION REVIEW OF ARTICLE III - SOUTH DAKOTA CONSTITUTION

##### § 1. Legislative power - Initiative and referendum.

*The legislative power of the state shall be vested in a Legislature which shall consist of a senate and house of representatives. However, the people expressly reserve to*

*themselves the right to propose measures, which shall be submitted 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. Not more than five percent 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 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.*

Explanation:

The state's legislative power lies with a bicameral legislature, which consists of the Senate and the House of Representatives. However, the people by petition may initiate laws or submit legislative acts to referendum. This section specifies that initiative and referendum powers also apply to municipal actions. Emergency measures that affect the immediate public peace, health, or safety or the support of state government are not subject to referendum. Procedures for conducting initiated measures or referenda are set forth in statute in SDCL Chapter 2-1, although the Constitution provides that the minimum number of signatures needed in order to invoke an initiated measure or referendum cannot exceed five percent of the state's qualified (registered) voters. Measures that were referred to a vote of the people may not be vetoed by the Governor. Finally, section 1 directs the Legislature to enact laws to establish procedures for implementing the section.

**§ 2. Number of legislators - Regular sessions.**

*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 nor more than seventy-five and the number of members of the senate shall not be less than twenty-five nor more than thirty-five.*

*The sessions of the Legislature shall be biennial except as otherwise provided in this Constitution.*

**Explanation:**

Section 2 establishes the number of representatives as at least 50 and no more than 75 and the number of senators as at least 25 and no more than 35. The current number of Senators (35) and Representatives (70) is set out in statute (SDCL 2-2-24 and 2-2-26). Section 2 still states that legislative sessions will be

biennial, but this provision was superseded by an amendment to Section 6, Article III in 1962, which provides for annual sessions.

**§ 3. Qualifications for legislative office - Officers ineligible.**

*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 next 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.*

Explanation:

To be eligible for office, legislators must be qualified electors (registered voters) in the district they represent, they must be at least 25 years old, and they must have been a resident of the state for at least two years. Legislators may not hold certain other public offices or positions.

**§ 4. Disqualification for conviction of crime - Defaults on public money.**

*No person who has been, or 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.*

Explanation:

Persons are not eligible to serve in the Legislature or in any legislative office if they have been convicted of serious crimes or have not accounted for and repaid any public funds for which they are responsible.

**§ 5. Legislative reapportionment.**

*The Legislature shall apportion its membership by dividing the state into as many single-member, legislative districts as there are state senators. House districts shall be established wholly within senatorial districts and shall be either single-member or dual-member*

*districts as the Legislature shall determine. Legislative districts shall consist of compact, contiguous territory and shall have population as nearly equal as is practicable, based on the last preceding federal census. An apportionment shall be made by the Legislature in 1983 and in 1991, and every ten years after 1991. Such apportionment shall be accomplished by December first of the year in which the apportionment is required. If any Legislature whose duty it is to make an apportionment shall fail to make the same as herein provided, it shall be the duty of the Supreme Court within ninety days to make such apportionment.*

Explanation:

Section 5 directs the Legislature to apportion its membership by dividing the state into single-member districts, with each district having one senator (SDCL 2-2-25). House district boundaries must coincide with senate district boundaries, but may include either one or two House of Representatives members, as determined by the Legislature. South Dakota's House districts have two members each (SDCL 2-2-6 and 2-2-28). Legislative districts according to federal law must be "compact and contiguous" to avoid gerrymandering and discrimination, and they must be as nearly equal in population as possible. The Legislature found the ideal district population, based on the 1990 federal census, to be 19, 886 (SDCL 2-2-29). Reapportionment is to occur every ten years; if the Legislature fails to reapportion it-self, the Supreme Court is to conduct the reapportionment.

**§ 6. Legislative terms of office - Compensation - Regular sessions.**

*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 § 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.*

*No person may serve more than four consecutive terms or a total of eight consecutive years in the senate and more than four consecutive terms or a total of eight consecutive years in the house of representatives. However, this restriction does not apply to partial terms to which a legislator may be appointed or to legislative service before January 1, 1993.*

*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 of the Legislature shall receive no other pay or perquisites except salary and mileage.*

*A regular session of the Legislature shall be held in each even-numbered year beginning with the year 1964 and shall not exceed thirty-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.*

Explanation:

Legislators serve two-year terms. They are paid salaries set by two-thirds vote of the Legislature as directed in Article XXI, Section 2 and travel expenses at the rate of five cents per mile. SDCL 2-4-2 provides additional expense allowances for legislators. For full terms beginning after January 1, 1993, no legislator may serve more than eight consecutive years in one house. Section 6 also limits the legislative session to thirty-five legislative days during even-numbered years and forty legislative days during odd-numbered years.

### **§ 7. Convening of annual sessions.**

*The Legislature shall meet at the seat of government on the second Tuesday of January at 12 o'clock m. and at no other time except as provided by this Constitution.*

Explanation:

Annual legislative sessions begin at 12 noon at the Capitol on the second Tuesday of January.

### **§ 8. Oath required of legislators and officers - Forfeiture of office for false swearing.**

*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 con-*

*tributed 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.*

Explanation:

This section provides the language, procedures, and requirements for the legislative oath of office.

**§ 9. Each house as judge of qualifications - Quorum - Rules of proceedings - Officers and employees.**

*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 officers and employees and fix the pay thereof, except as otherwise provided in this Constitution.*

Explanation:

Each house judges contested election returns and qualifications of its own members. Each house also determines its own rules and chooses and pays its officers and employees. A majority of members is required for a quorum, although a smaller number may adjourn and may compel absent members to attend.

**§ 10. Filling legislative vacancies.**

*The Governor shall make appointments to fill such vacancies as may occur in either house of the Legislature.*

Explanation:

Legislative vacancies are to be filled by the Governor.

**§ 11. Legislators' privilege from arrest - Freedom of debate.**

*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.*

Explanation:

This section provides protection from arrest for legislators for certain crimes and immunity for statements made in the course of legislation. The courts have interpreted the arrest provisions narrowly, so that legislators remain liable for prosecution for most offenses. The purpose of the protections offered in this section is to prevent the detainment of legislators as a way of preventing them from being present and voting in the Legislature; this section does not provide immunity for crimes they might commit. The courts have interpreted the provisions protecting speech and debate broadly, so that statements made in committee and in resolutions and reports are protected as well as statements made in debate on the floor.

**§ 12. Legislators ineligible for other office - Contracts with state or county.**

*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.*

Explanation:

This section prohibits legislators from accepting other state office and from having any financial interest in state or county contracts during their term of office. The 1997 Legislature in House Joint Resolution 1004 proposed an amendment to this section, which will be submitted to the voters on November 3, 1998. The proposed amendment would delete the reference to an increase in the emoluments of an elected or appointed office and would delete the restriction on legislator interest in county contracts. The amendment would also clarify existing language in this section.

**§ 13. Legislative journals - Recording of yeas and nays.**

*Each house shall keep a journal of its proceedings and publish the same from time to time, except such parts as require secrecy, and the yeas and nays of members on any question shall be taken at the desire of one-sixth of those present and entered upon the journal.*

Explanation:

Section 13 requires the Legislature to keep and publish a journal of its proceedings, including a record of members' votes. One-sixth of the members present of either house may require that votes on a particular question be recorded.

**§ 14. Elections viva voce.**

*In all elections to be made by the Legislature the members thereof shall vote viva voce and their votes shall be entered in the journal.*

Explanation:

Elections in the Legislature are to be by voice vote and are to be entered in the journal.

*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.*

Explanation:

The number and title of each bill shall be read once when introduced and once on final passage. The entire bill is to be read if demanded by a legislator.

**§ 15. Open legislative sessions - Exception.**

*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.*

Explanation:

Section 15 requires that legislative sessions be conducted in public, although exceptions are allowed.

**§ 18. Enacting clause - Assent by majority - Recording of votes.**

*The enacting clause of a law shall be: "Be it enacted by the Legislature of the State of South Dakota" and no law shall be passed unless by assent of a majority of all the members elected to each house of the Legislature. And the question upon the final passage shall be taken upon its last reading, and the yeas and nays shall be entered upon the journal.*

Explanation:

Section 18 specifies the language of the enacting clause and provides that final passage of a bill requires a majority of all members of each house. Votes are to be recorded in the journals.

**§ 16. Adjournment of legislative houses.**

*Neither house shall without the consent of the other adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.*

Explanation:

Any adjournment for a period longer than three days requires consent of both houses.

**§ 19. Signing of bills and resolutions.**

*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.*

Explanation:

All bills and joint resolutions passed by the Legislature must be signed by the presiding officers.

**§ 20. Origin of bills - Amendment in other house.**

*Any bill may originate in either house of the Legislature, and a bill passed by one house may be amended in the other.*

Explanation:

Any bill may originate in either house, and a bill passed in one house may be amended in the other.

**§ 21. One subject expressed in title.**

*No law shall embrace more than one subject, which shall be expressed in its title.*

Explanation:

Each bill may only address one subject, and the title must reflect the content of the bill. Controversy has arisen in the past over interpretations of the scope of a particular subject and over "hoghouse" amendments in which the subject of a bill is completely changed and the title amended accordingly.

**§ 22. Effective date of acts - Emergency clause.**

*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.*

Explanation:

Legislative Acts may not take effect until ninety days after the legislative session has adjourned. SDCL 2-14-16 directs that bills will take effect on July 1 after the close of the regular session or on the ninety-first day after a special session. Section 22 provides that emergency measures may take effect earlier if directed by the Legislature. Emergency measures require a two-thirds vote and the bill title or text must specify that the bill is an emergency measure.

**§ 23. Private and special laws prohibited.**

*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 for 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.*

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.*

Explanation:

Section 23 lists eleven categories of special or private legislation that are prohibited. The section also prohibits special legislation in all cases in which general law could be applicable.

**§ 24. Release of debt to state or municipality.**

*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.*

Explanation:

The Legislature is not allowed to release or forgive any debt or obligation that is owed to the state or any municipality by any person or corporation.

**§ 25. Games of chance prohibited - Exceptions.**

*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, 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. However, it shall be lawful for the Legislature to authorize by law a state lottery or video games of chance, or both, which are regulated by the state of South Dakota, either separately by the state or jointly with one or more states, and which are owned and operated by the state of South Dakota, either separately by the state or jointly with one or more states or persons, provided any such video games of chance shall not directly dispense coins or tokens. However, the Legislature shall not expand the statutory authority existing as of June 1, 1994, regarding any private ownership of state*

*lottery games or video games of chance, or both. The Legislature shall establish the portion of proceeds due the state from such lottery or video games of chance, or both, and the purposes for which those proceeds are to be used. SDCL 42-7A, and its amendments, regulations, and related laws, and all acts and contracts relying for authority upon such laws and regulations, beginning July 1, 1987, to the effective date of this amendment, are ratified and approved. Further, it shall be lawful for the Legislature to authorize by law, limited card games and slot machines within the city limits of Deadwood, provided that 60% of the voters of the City of Deadwood approve legislatively authorized card games and slot machines at an election called for such purpose. The entire net Municipal proceeds of such card games and slot machines shall be devoted to the Historic Restoration and Preservation of Deadwood.*

Explanation:

Gambling is prohibited except for gambling conducted by various civic and benevolent organizations for public-spirited purposes, gambling through a state lottery or video games of chance, and gambling in the city of Deadwood if approved by 60% of the Deadwood voters. The state lottery, video lottery, and Deadwood gambling were approved during the 1980s, with an additional amendment to this section in 1994 to provide a clearer definition of video games of chance.

**§ 26. Municipal powers denied to private organizations.**

*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.*

Explanation:

The Legislature may not delegate any municipal powers or functions to private corporations or associations.

**§ 27. Suits against the state.**

*The Legislature shall direct by law in what manner and in what courts suits may be brought against the state.*

Explanation:

Section 27 directs the Legislature to specify how lawsuits and claims may be brought against the state and in which courts. SDCL chapter 21-32, "Remedies Against the State," is the Legislature's response to the constitutional directive.

**§ 28. Bribery and corrupt solicitation of officers - Compelling testimony - Immunity from prosecution.**

*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 per-*

*formance of any of his official or public duties, shall be guilty of bribery and shall be punished in such manner as shall be provided by law.*

*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 criminate himself, but said testimony shall not afterwards be used against him in any judicial proceeding 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.*

**Explanation:**

Section 28 provides for criminal procedures and punishment for bribery of elected officials and specifies that a person may be compelled to testify in proceedings involving bribery or solicitation of officials. SDCL 22-12A-4 and 22-12A-5 make unlawful attempts to influence legislators or solicitation of bribes by legislators Class 4 felonies.

**§ 29. Legislative powers in emergency from enemy attack.**

*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 whatever 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.*

**Explanation:**

Section 29 authorizes the Legislature to provide for the succession of powers and duties of public offices and to adopt other measures necessary to provide continuity of governmental operations in the event of enemy attack. SDCL Chapter 2-3 provides for emergency interim legislative succession.

**§ 30. Power of committee of Legislature to suspend administrative rules and regulations.**

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

Explanation:

This section allows the Legislature to create a legislative committee with the power to review and suspend administrative rules. SDCL Chapter 1-26, South Dakota's administrative procedures act, also creates the Interim Rules Review Committee and specifies its powers.

**§ 31. Convening of special sessions upon petition.**

*In addition to the provisions of Article IV, § 3, the Legislature may 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. The petition of request shall state the purposes of the session, and only*

*business encompassed by those purposes may be transacted.*

Explanation:

This section allows the Legislature to call itself into special session by request of two-thirds of the members of each house. The request must state the purposes of the special session, and no other matters may be addressed during the special session.

**§ 32. Term limitations for United States congressman.**

*Commencing with the 1992 election, no person may be elected to more than two consecutive terms in the United States senate or more than six consecutive terms in the United States house of represent-atives.*

Explanation:

Section 32 attempts to place term limits on South Dakota's United States Senators and Representatives. Senators are limited to two consecutive terms, and Representatives are limited to six consecutive terms. Recent federal court cases have found similar provisions in other states to be unconstitutional.

---

**This issue memorandum was written by Tom Magedanz, Principal Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.**

---