



South Dakota Legislative Research Council

Issue Memorandum 98-08

CONSTITUTIONAL REVISION COMMISSION ACTIVITIES REGARDING THE LEGISLATIVE ARTICLE

The 1969 Legislature established the South Dakota Constitutional Revision Commission to conduct a comprehensive study of the South Dakota Constitution to determine ways and means to improve and simplify the Constitution. The Constitutional Revision Commission (CRC) held its first meeting in November of 1969. The forty-third and last meeting of CRC was held in December of 1975. This issue memorandum reviews the activities of that commission regarding the legislative article of the Constitution, the commission's recommendations regarding that article, and the outcome of those recommendations.

Commission Activities

The work of the CRC was divided in April of 1970 into eleven study areas. One of the study areas established regarded Article III. Mr. Robert Hirsch, a former state legislator, and Dr. W. O. Farber, chair of the USD political science department, were assigned to research Article III and to report back to the other members of the CRC. They made their reports to the CRC in August of 1970. It was recommended at that meeting that the legislative article should be the last considered by the CRC since "it was a very difficult area."

The CRC next took up Article III in September of 1971. At that time a report prepared by a summer intern under the direction of Mr. Hirsch and Dr. Farber was reviewed. This

report included recommended changes to each section of Article III and an analysis and comments regarding each section. At that meeting initial decisions were made on the recommendations to each section of Article III.

Further research on Article III was conducted over the course of the next year. This research included a review of eight issues involving the legislative article. These issues were as follows: the unicameral/bicameral controversy, the method of redistricting, the size of the legislature, the length of the legislative session, the length of legislative terms, the constitutional creation of an ombudsman, multi-member versus single-member districts, and the power to rearrange and renumber the Constitution. A comparative analysis of Article III was also done by CRC staff. This analysis looked at the existing constitutional provisions, the revisions proposed for consideration, the pertinent sections of the National Municipal League's *Model State Constitution*, and the comparable constitutional provisions recently adopted or proposed in other states at that time.

The research reports were made public in September of 1972. The reports were considered by the commission at a meeting in April of 1973. At that time public hearings on Article III also began.

The commission continued its work and public

input on the legislative article at meetings in July, August, September, November, and December of 1973. Two different Legislatures (1970 & 1973) were also polled as to their opinions on revisions to Article III.

Commission Recommendations

In December of 1973 the draft of Article III was finalized by the commission. The commission sought and received a critical analysis of the proposed article from the Citizens Conference on State Legislatures and the Midwest Office of the Council of State Governments before making its final recommendations. The commission made its report regarding Article III to the 1974 Legislature.

The proposed new article was much shorter and simpler than the existing article with approximately 1,200 words proposed to replace more than 3,000 words of existing constitutional language. The principal changes to Article III that were recommended by the CRC to the Legislature in 1974 were:

- Provided for the election of every legislator from a single member district;
- Established four year terms for senators;
- Provided for annual sessions with the length to be determined by the Legislature;
- Added new sections designed to strengthen legislative control over budgetary and fiscal matters;
- Restricted the initiative to proposals not embracing appropriations;
- Provided that the failure to redistrict requires Supreme Court determination of legislative districts;

- Required all legislative meetings to be open to the public;
- Eliminated certain eligibility requirements for legislators;
- Legislature was given disciplinary power over its members and power to enact laws for filling legislative vacancies;
- Sovereign immunity abolished, but under such limitations as the Legislature may reasonably provide;
- Impeachment process simplified and included in Article III, procedure and causes for impeachment to be determined legislatively;
- The enumeration of prohibited special laws was deleted in favor of a general prohibition against all special laws where a general law can be made applicable;
- Provided for the delegation of constitutional provisions relative to legislative salaries and allowances;
- Article XVI (Militia) was repealed and provisions simplified in Article III;
- Empowered the Legislature to appoint a committee with power to temporarily suspend proposed administrative rules.

Legislative Changes to Recommendations

The 1974 Legislature approved the proposed amendment to Article III but not until it had

made some significant changes to the amendment.

- The Legislature changed the number of petition signatures required for initiated measures. The CRC recommended five percent of the total votes cast for Governor in the last gubernatorial election and the Legislature changed it to ten percent;
- The Legislature added language which would also allow multi-member legislative districts to be established;
- The Legislature changed the proposed terms of legislative office to two-year terms for both senators and representatives;
- The Legislature added a language which limited an annual session to a maximum of forty-five days;
- The Legislature added a provision to allow the Legislature to call themselves into a special session upon the written request of two-thirds of the members of each house;
- The Legislature revised the amendment to remove the Lieutenant Governor as the presiding officer of the Senate and to require the Senate to choose its presiding officer from its own membership;
- The Legislature added language which would allow a carry-over of bills and resolutions from the annual session in an odd-numbered year to the annual session in an even-numbered year;
- The Legislature repealed constitutional requirements for salaries of constitutional officers and oaths.

Recommendations Rejected

The proposal was rejected by the voters on November 5, 1974, with a vote of 86,293 for and 138,590 against. Among the reasons cited by commission members and others as to why the amendment failed was opposition to the fact that the Legislature could extend its 30-day session to 45 days, a misunderstanding that the amendment would significantly increase the number of signatures necessary to initiate a measure, and the overall complexity of the amendment.

The commission's approach had been to strengthen the Legislature and the commission felt that approach may have worked negatively among the people as they were hesitant to give the Legislature too much power.

Subsequent Proposal and Outcome

The CRC made no further recommendations regarding Article III. In the 1975 Legislature, some of the legislators serving on the commission reintroduced the proposed amendment for consideration by the Legislature. The 1975 Legislature adopted this new proposal to amend Article III. This proposed amendment was further amended by the 1976 Legislature and submitted to the voters in the 1976 general election. The proposal included a few changes from the 1974 proposal.

The proposal submitted to the voters in 1976, as described by the explanatory statement of the Attorney General which appeared on the ballot, would have done the following:

- Initiative and referendum of laws would be basically unchanged except that the right to initiate an appropriation

measure was expressly prohibited;

- Maximum length of annual legislative sessions would be forty days rather than forty-five and thirty day sessions;
- The minimum age for legislators would be reduced from twenty-five to eighteen years of age;
- The Legislature would be authorized to call itself into a special session by request of two-thirds of the membership;
- The Legislature, not the Governor, would fill vacancies in the Legislature between elections;
- The Lieutenant Governor would no longer preside over the Senate;
- The sovereign immunity of the state from suit would be negated except the Legislature could limit such liability;
- Special legislation would be allowed, even in presently prohibited areas, if general laws could not apply;

- 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.

In 1976, the Executive Board of the Legislative Research Council appointed a five-member subcommittee to carry on a Voter Information Program. Three members of the former CRC served as advisory members of the subcommittee. The program was not aimed at influencing voters to cast either a yes or a no vote but to try to generate interest in making an informed decision on the six proposed amendments which faced the voters in 1976. The program distributed a voter information pamphlet which supplied background information on the proposed amendments, a detailed explanation of each amendment, and arguments for and against each amendment.

The proposed change to Article III was rejected November 2, 1976, with a vote of 56,538 for and 198,447 against.

This issue memorandum was written by David L. Ortbahn, 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.
