



South Dakota Legislative Research Council

Issue Memorandum 94-31

CONSTITUTIONAL AMENDMENT D: AGE QUALIFICATION OF LEGISLATORS

Constitutional Amendment D would lower the age requirement to eighteen years of age for a person to hold the office of State Senator or State Representative.

Background

Article III, § 3 of the South Dakota Constitution, which reads as follows, currently requires that Senators and Representatives be twenty-five years of age or older.

"§ 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."

This is the original language of the South Dakota Constitution from the time of statehood. A constitutional amendment was proposed in 1974 which would have rewritten article III of the South Dakota Constitution. That proposal, which began as House Joint Resolution 505, would have deleted from the first two paragraphs all requirements as to citizenship, age, and duration of residence. It would have condensed the remaining substance of the first two paragraphs into a sentence appearing in new § 3 along with provisions now contained in § 2. It would have also deleted the third paragraph.

In addition, the proposal would have rewritten the other portions of the article. The proposal was rejected by the people on November 5, 1974. The number of votes in favor of the proposal was 86,293 and the number against the proposal was 138,590.

In 1975, House Joint Resolution 502 was

passed by the Legislature. The 1975 proposal was amended by House Joint Resolution 509 in 1976. The portion of the proposal pertaining to article III was the same as the 1974 proposal. The proposal was rejected on November 2, 1976, with 56,538 votes for the proposal and 198,447 votes against the proposal.

In 1972, the age requirement for the Governor and Lieutenant Governor had been deleted from the South Dakota Constitution. The age requirement for each had been thirty years of age. The deletion of the age requirement was one part of House Joint Resolution 513, which proposed to entirely change article IV of the South Dakota Constitution, the article dealing with the executive branch. The proposal was approved by the voters, 182,248 to 96,944. At the same election, the South Dakota Constitution was amended to reduce the voting age to eighteen.

Legislative History

Constitutional Amendment D derived from House Joint Resolution 1002, which was passed by both houses of the 1994 South Dakota Legislature and delivered to the Secretary of State for placement on the November ballot. HJR 1002 was introduced by Representatives Pat Haley and John Sears and Senators Paul Symens and Michael Rounds. The resolution passed the House of Representatives on a vote of 63 to 5. In the Senate, the vote was 28 to 6 in favor of passage. The text of the resolution is as follows:

"§ 1. That at the next general election held in the state, the following amendment to Article III, § 3 of the Constitution of the state of South Dakota, as set forth in § 2 of this Joint Resolution, which is hereby agreed

to, shall be submitted to the electors of the state for approval.

§ 2. That Article III, § 3 of the Constitution of the state of South Dakota be amended to read as follows:

No person is eligible to the office of senator who is not a qualified elector in the district from which such person is chosen, a citizen of the United States, and who has not been a resident of the state for two years next preceding election.

No person is eligible to the office of representative who is not a qualified elector in the district from which such person is chosen, a citizen of the United States, and who has not been a resident of the state for two years next preceding election.

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."

Discussion

With the phrase "and who shall not have attained the age of twenty-five years" removed from the section, the age of Senators and Representatives depends on the phrase which includes "qualified elector." Qualifications of electors are stated in the South Dakota Constitution in article VII, § 2 and in the South Dakota Codified Laws in § 12-3-1. The age required by these provisions is eighteen. Therefore, if Constitutional amendment D were to pass, the minimum age for Senators and Representatives would become eighteen. The following table illustrates the age qualifications for legislators in the various states.

Qualifications for Legislators: Minimum Age

State	House	Senate
Alabama	21	25
Alaska	21	25
Arizona	25	25
Arkansas	21	25
California	18	18
Colorado	25	25
Connecticut	18	18
Delaware	24	27
Florida	21	21
Georgia	21	25
Hawaii	18	18
Idaho	18	18
Illinois	21	21
Indiana	21	25
Iowa	21	25
Kansas	18	18
Kentucky	24	30
Louisiana	18	18
Maine	21	25
Maryland	21	25
Massachusetts	18	18
Michigan	21	21
Minnesota	21	21
Mississippi	21	25
Missouri	24	30

State	House	Senate
Montana	18	18
Nebraska	(A)	21
Nevada	21	21
New Hampshire	18	30
New Jersey	21	30
New Mexico	21	25
New York	18	18
North Carolina	(B)	25
North Dakota	18	18
Ohio	18	18
Oklahoma	21	25
Oregon	21	21
Pennsylvania	21	25
Rhode Island	18	18
South Carolina	21	25
South Dakota	25	25
Tennessee	21	30
Texas	21	26
Utah	25	25
Vermont	18	18
Virginia	21	21
Washington	18	18
West Virginia	18	25
Wisconsin	18	18
Wyoming	21	25

(A) Unicameral Legislature. Members are called Senators.
 (B) Constitutional conflict exists regarding age requirements.

Source: The Book of the States, The Council of State Governments, 1994-1995 edition, vol. 30.

Thirty percent of the states currently allow persons eighteen years of age to be members of the House and Senate. In addition, two other states set the minimum age for members of the House at eighteen years of age. The remaining states have age requirements ranging from twenty-one to twenty-five for House members and twenty-one to thirty for Senate members.

Pros and Cons

Proponents of this constitutional amendment argue that when persons become eighteen years old they are given certain rights and responsibilities, and allowing them to hold legislative office is a natural progression to this trend. Eighteen is considered the age of majority; for example, a person who is eighteen years of age cannot use age as a defense against being bound by a contract. A person who is eighteen years of age is qualified to vote. Proponents point out that the public ultimately decides who will hold office, but the right to seek office should be available to anyone who is old enough to vote.

Opponents of this constitutional amendment argue that persons who are between the ages of eighteen and twenty-five lack the maturity, experience, and knowledge to carry out the

duties of legislative office. Also, the proposed change may have little impact. According to the State Data Center at the Business Research Bureau at the University of South Dakota, 9.8 percent of the population in the state fall into this age category. This figure is based on statistics from the 1990 census. However, the opponents point out that it is unlikely that many persons in that age category would take advantage of the opportunity to run for legislative office.

Summary

Constitutional Amendment D proposes to lower the minimum age that is required for legislators to hold office. Currently, a legislator must be twenty-five years of age--the age that was set by the adoption of the South Dakota Constitution. This proposal would set the minimum age for Senators and Representatives at eighteen. When the South Dakota Constitution was adopted, the minimum age for the Governor and Lieutenant Governor was set at thirty. That age requirement was subsequently deleted from the Constitution when article IV was revised. The minimum age for those offices is now eighteen. It is now time for the voters to decide if the minimum age for legislators should be eighteen as well.

This issue memorandum was written by Jacquelyn Storm, Senior Legislative Attorney 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.
