

**Constitutional Revision Commission**

**Public Hearing  
on  
Proposed Recommendations to 2007 Legislature**

**November 20, 2006  
Holiday Inn City Centre  
Sioux Falls, South Dakota**

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

AMENDMENT #1

437N0035

HOUSE JOINT RESOLUTION NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 A JOINT RESOLUTION, To revise certain constitutional provisions regarding initiatives and  
2 referendums.

3 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH  
4 DAKOTA, THE SENATE CONCURRING THEREIN:

5 Section 1. That at the next general election held in the state, the following amendment to  
6 Article III, section 1 of the Constitution of the State of South Dakota, as set forth in section 2  
7 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state  
8 for approval.

9 Section 2. That Article III, section 1 of the Constitution of the State of South Dakota, be  
10 amended to read as follows:

11 § 1. The legislative power of the state shall be vested in a Legislature which shall consist of  
12 a senate and house of representatives. However, the people expressly reserve to themselves the  
13 right to propose measures, which shall be submitted to a vote of the electors of the state, and  
14 also the right to require that any laws which the Legislature may have enacted shall be submitted  
15 to a vote of the electors of the state before going into effect, except such laws as may be  
16 necessary for the immediate preservation of the public peace, health or safety, support of the



1 state government and its existing public institutions. ~~Not more than five percent of the qualified~~  
2 ~~electors of the state shall be required to invoke either the initiative or the referendum~~ An  
3 initiative or a referendum shall require a petition signed by qualified voters equal in number to  
4 at least five percent of the total votes cast for Governor in the last gubernatorial election.

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

## **A Summary of Constitutional Amendment #1**

A Constitutional Amendment to revise certain provisions regarding initiatives and referendums.

This recommendation would change the number of voters required to sign a petition for an initiative or referendum from “not more than five percent of the qualified electors of the state” to “equal in number to at least five percent of the total votes cast for Governor in the last gubernatorial election.” This would make the language in Article III, section 1, read similar to the language in Article XXIII, section 1, regarding initiated constitutional amendments.

Although there is a change in the Constitution, in practice there is no change. SDCL 2-1-1, 2-1-3 and 2-1-5 are the laws which implement the current Article III, section 1. SDCL 2-1-1 and 2-1-3 require petitions for initiatives and referendums to be “signed by not less than five percent of the qualified electors of the state.” SDCL 2-1-5 provides: “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.”

# State of South Dakota

**EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007**

**AMENDMENT #2**

347N0037

HOUSE JOINT RESOLUTION NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 A JOINT RESOLUTION, Revising certain constitutional provisions regarding the  
2 apportionment of seats in the Legislature.

3 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH  
4 DAKOTA, THE SENATE CONCURRING THEREIN:

5 Section 1. That at the next general election held in the state, the following amendment to  
6 Article III, section 5 of the Constitution of the State of South Dakota, as set forth in section 2  
7 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state  
8 for approval.

9 Section 2. That Article III, section 5 of the Constitution of the State of South Dakota, be  
10 amended to read as follows:

11 § 5. The Legislature shall apportion its membership by dividing the state into as many  
12 single-member, legislative districts as there are state senators. ~~House districts shall be~~  
13 ~~established wholly within senatorial districts and shall be either single-member or dual-member~~  
14 ~~districts as the Legislature shall determine. Each senate district shall contain two single-member~~  
15 house districts. Legislative districts shall consist of compact, contiguous territory and shall have  
16 population as nearly equal as is practicable, based on the last preceding federal census. ~~An~~ This



1 apportionment shall be made by the Legislature in ~~1983 and in 1991~~, 2011 and every ten years  
2 ~~after 1991~~ thereafter. Such apportionment shall be accomplished by December first of the year  
3 in which the apportionment is required. If any Legislature whose duty it is to make an  
4 apportionment shall fail to make the same as herein provided, it shall be the duty of the Supreme  
5 Court within ninety days to make such apportionment.

## **A Summary of Constitutional Amendment #2**

A Constitutional Amendment to require single-member house districts.

Currently the Constitution provides in Article III, section 5, that districts for the House of Representatives shall be wholly within a senatorial district and may be either single-member or dual-member districts. This recommendation would require each senatorial district to contain two single-member house districts.

This recommendation would create head to head competition for house seats.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

AMENDMENT #3

770N0012

HOUSE JOINT RESOLUTION NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 A JOINT RESOLUTION, To revise certain provisions of the Constitution regarding the  
2 expulsion of legislators.

3 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH  
4 DAKOTA, THE SENATE CONCURRING THEREIN:

5 Section 1. That at the next general election held in the state, the following amendment to  
6 Article III, section 9 of the Constitution of the State of South Dakota, as set forth in section 2  
7 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state  
8 for approval.

9 Section 2. That Article III, section 9 of the Constitution of the State of South Dakota, be  
10 amended to read as follows:

11 § 9. Each house shall be the judge of the election returns and qualifications of its own  
12 members. With the concurrence of two-thirds of its elected members, either house may expel  
13 a member.

14 A majority of the members of each house shall constitute a quorum, but a smaller number  
15 may adjourn from day-to-day, and may compel the attendance of absent members in such a  
16 manner and under such penalty as each house may provide.





- 1 Each house shall determine the rules of its proceedings, shall choose its own officers and
- 2 employees and fix the pay thereof, except as otherwise provided in this Constitution.

## **A Summary of Constitutional Amendment #3**

A Constitutional Amendment to provide certain provisions regarding the expulsion legislators.

This recommendation would add to the Constitution that either house of the Legislature may expel a member with the concurrence of two-thirds of its elected members.

Currently there are no provisions in the Constitution that specifically provides for the expulsion of legislators. There is a rule of the Legislature – Joint Rule 1-11 – that provides “either house may punish its members for disorderly behavior and, with concurrence of two-thirds of all members elected, expel a member.” This rule was adopted under the authority of Article III, section 9, (the section being amended) which states: “Each house shall be judged of the election returns and qualifications of its own members.”

Most other state constitutions give the Legislature the power to expel members as provided in this proposed amendment. The impeachment process in those states applies only to the executive and judicial branches of government. The impeachment process in South Dakota is provided in Article XVI and applies to “state officers.” However, with the current provisions of Article III, section 9, it is questionable that the impeachment process provided in the Constitution applies to the legislative branch.

This recommendation would make it perfectly clear that both houses of the Legislature have authority to expel a member and requires two-thirds of the members-elect to do so.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

AMENDMENT #4

770N0011

HOUSE JOINT RESOLUTION NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 A JOINT RESOLUTION, To revise certain constitutional provisions regarding certain  
2 restrictions on legislators.

3 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH  
4 DAKOTA, THE SENATE CONCURRING THEREIN:

5 Section 1. That at the next general election held in the state, the following amendments to  
6 Article III of the Constitution of the State of South Dakota, as set forth in sections 2 and 3 of  
7 this Joint Resolution, which are hereby agreed to, shall be submitted to the electors of the state  
8 for approval.

9 Section 2. That Article III, section 3 of the Constitution of the State of South Dakota, be  
10 amended to read as follows:

11 ~~§ 3. No person is eligible for the office of senator who is not a qualified elector in the district~~  
12 ~~from which such person is chosen, a citizen of the United States, and who has not attained the~~  
13 ~~age of twenty-one years, and who has not been a resident of the state for two years next~~  
14 ~~preceding election.~~

15 ~~—No person is eligible for the office of representative who is not a qualified elector in the~~  
16 ~~district from which such person is chosen, and a citizen of the United States, and who has not~~



1 ~~been a resident of the state for two years next preceding election, and who has not attained the~~  
2 ~~age of twenty-one years.~~

3 To be eligible for the office of senator or representative, a person shall be at least eighteen  
4 years of age, a citizen of the United States, a resident of the state for at least two years just prior  
5 to the election, and a qualified elector in the district from which the person is chosen.

6 No judge or clerk of any court, secretary of state, attorney general, state's attorney, recorder,  
7 sheriff or collector of public moneys, member of either house of Congress, or person holding  
8 any lucrative office under ~~the United States, or this state, or~~ any office under the United States  
9 or in any foreign government, shall be a member of the Legislature: provided, that appointments  
10 ~~in the militia, the offices of notary public and justice of the peace shall not be considered~~  
11 ~~lucrative; nor shall any person holding any office of honor or profit under any foreign~~  
12 ~~government or under the government of the United States, except postmasters whose annual~~  
13 ~~compensation does not exceed the sum of three hundred dollars, hold any office in either branch~~  
14 ~~of the Legislature or become a member thereof~~ members of the South Dakota National Guard  
15 and notaries public who are otherwise eligible to serve in the Legislature may become members  
16 of either branch of the Legislature.

17 No member of the Legislature may accept any appointment or election to a state or local  
18 office during any term in the Legislature, or within six months thereafter, if the office was  
19 created or its compensation increased during that term.

20 No member may, during the term for which the member was elected or appointed, or within  
21 six months thereafter, accept paid employment directly with, or appointment to any office by,  
22 the Governor, the Governor and the Senate, or the Legislature. However, a member of the  
23 Legislature may, during the term for which the member was elected or appointed, be appointed  
24 by the Governor or the Legislature to an unsalaried position on any advisory board, commission,

1 or other such body.

2 No member may, during the term for which the member was elected or appointed, or within  
3 six months thereafter, contract with the state or any of its offices, departments, boards, agencies,  
4 commissions, or institutions, for the provision of supplies, equipment, services as an  
5 independent contractor, or public improvements, or to convey or lease real property, unless the  
6 contract is awarded after public notice and competitive bidding and there is a subsequent public  
7 disclosure of all proposals considered and the contract awarded.

8 All actions, including votes, appointments, or contracts, that violate this section are void.

9 Section 3. That Article III, section 12 of the Constitution of the State of South Dakota, be  
10 repealed.

11 ~~§ 12. No member of the Legislature shall, during the term for which he was elected, be~~  
12 ~~appointed or elected to any civil office in the state which shall have been created, or the~~  
13 ~~emoluments of which shall have been increased during the term for which he was elected, nor~~  
14 ~~shall any member receive any civil appointment from the Governor, the Governor and senate,~~  
15 ~~or from the Legislature during the term for which he shall have been elected, and all such~~  
16 ~~appointments and all votes given for any such members for any such office or appointment shall~~  
17 ~~be void; nor shall any member of the Legislature during the term for which he shall have been~~  
18 ~~elected, or within one year thereafter, be interested, directly or indirectly, in any contract with~~  
19 ~~the state or any county thereof, authorized by any law passed during the term for which he shall~~  
20 ~~have been elected.~~

## A Summary of Constitutional Amendment #4

A Constitutional Amendment to revise certain provisions regarding the eligibility to be a legislator and regarding the restrictions on legislators.

This recommendation would combine the provisions of Article III, section 3 and section 12, into a revised section 3.

The revised Article III, section 3 would do the following:

- Lower the age to be eligible for the office of senator or representative from twenty-one to eighteen;
- Would continue to prohibit any person holding a lucrative office under the state, the U.S. government, or a foreign government from being a legislator – the amendment would continue to prohibit any person employed by the state from being a legislator;
- Would prohibit a legislator during the legislator's term of office and for a period of six months after the term of office ends from accepting employment directly with the Governor or the Legislature;
- Would prohibit a legislator during the legislator's term of office, and for a period of six months after the term of office, from accepting an appointment to any office by the Governor, the Governor and Senate, or the Legislature unless the legislator is appointed to an unsalaried position on an advisory board, commission, or other such body;
- Would allow legislators to contract with counties – the current provisions of the Constitution prohibit a legislator from having any interest in a contract with a county;
- Would allow legislators during the legislator's term of office, and for a period of six months after the term of office, to have a contract with the state for the provisions of supplies, equipment, services as an independent contractor, public improvements, or to convey or lease property if the contract was awarded after public notice and competitive bidding and there is subsequent public disclosure of all proposals considered and the contract awarded – the current provisions of the Constitution prohibit a legislator from having any interest in a contract with the state; and
- Would clarify that all actions including votes, appointments, and contracts, that violate the provisions of this revised section are void.

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

AMENDMENT #5

707N0043

HOUSE JOINT RESOLUTION NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 A JOINT RESOLUTION, to propose a constitutional amendment regarding legislative term  
2 limits.

3 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH  
4 DAKOTA, THE SENATE CONCURRING THEREIN:

5 Section 1. That at the next general election held in the state, the following amendment to  
6 Article III, section 6 of the Constitution of the State of South Dakota, as set forth in section 2  
7 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state  
8 for approval.

9 Section 2. That Article III, section 6 of the Constitution of the State of South Dakota, be  
10 amended to read as follows:

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

15 No person may serve more than ~~four~~ six consecutive terms or a total of ~~eight~~ twelve  
16 consecutive years in the senate and more than ~~four~~ six consecutive terms or a total of ~~eight~~



1 consecutive years in the house of representatives. ~~However, this restriction does not apply to~~  
2 ~~partial terms to which a legislator may be appointed or to legislative service before January 1,~~  
3 ~~1993.~~

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

8 A regular session of the Legislature shall be held in each even-numbered year beginning  
9 with the year 1964 and shall not exceed thirty-five legislative days, excluding Sundays, holidays  
10 and legislative recess, except in cases of impeachment, and members of the Legislature shall  
11 receive no other pay or perquisites except salary and mileage.



## **A Summary of Constitutional Amendment #5**

A Constitutional Amendment to revise certain provisions regarding legislative term limits.

This recommendation would revise Article III, section 6, to increase from four consecutive terms to six consecutive terms the number of terms and from eight years to twelve years the number of consecutive years a person can serve in the Senate and in the House of Representatives.