

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

187S0631

## SENATE BILL NO. 195

Introduced by: Senator Brown and Representative Cronin

1 FOR AN ACT ENTITLED, An Act to reiterate, by means of legislative findings, the  
2 constitutional relationship of the judicial and legislative branches to the appropriation and  
3 budgeting process.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. The Legislature hereby finds that the current discussion concerning the meaning  
6 and import of the second and third sentences of the eleventh section of the fifth article of the  
7 Constitution of the State of South Dakota is being at least partially conducted in an atmosphere  
8 of miscomprehension and naivete that is immediately resolved by an understanding of the  
9 unique historical events that gave rise to that language and to the fundamental principles of  
10 American constitutionalism to which the State of South Dakota is heir. To that end, the  
11 Legislature makes the following specific findings:

12 (1) That the principal purpose of the Constitutional Revision Commission in  
13 reformulating the Judicial Article in the late 1960's was to reorganize an essentially  
14 decentralized county court system into the present centralized Unified Judicial  
15 System; and



- 1       (2)    That many counties, especially rural counties, opposed the creation of a Unified  
2           Judicial System believing that their courthouses would be stripped of local judges,  
3           municipal and police magistrates, justices of the peace, clerks of court, and other  
4           court personnel, but that the counties would nevertheless be required to continue to  
5           fund court services to the same or even a greater level than they had been responsible  
6           for prior to the proposed reorganization; and
- 7       (3)    That this vigorous opposition to constitutional revision produced a countervailing  
8           concern on the part of advocates of the Unified Judicial System that opponents would  
9           use their political influence in the Legislature to deny adequate funding to the Unified  
10          Judicial System thus keeping the prospect of possible redecentralization viable in  
11          return for acquiescence to partial local funding; and
- 12       (4)    That in the attempt to allay the worst fears of both sides, and to assure both the courts  
13           and the counties that the Legislature would assume the responsibility to ensure the  
14           Unified Judicial System adequate funding, the two sentences: "The chief justice shall  
15           submit an annual consolidated budget for the entire unified judicial system, and the  
16           total cost of the system shall be paid by the state. The Legislature may provide by law  
17           for the reimbursement to the state of appropriate portions of such cost by  
18           governmental subdivisions." were added to the revision of Article V; and
- 19       (5)    That contemporaneous understanding of the intent and purpose of the two sentences  
20           was universal and unambivalent, although with the hindsight of forty years, the  
21           choice of wording may be regarded as something less than perfectly precise and  
22           felicitous; and
- 23       (6)    That, nevertheless, it was so transparent that no revolutionary alteration in the  
24           relationship between the judicial and legislative branches was contemplated, or even

1           hypothecated, that it was approved in the 1972 general election with no debate, little  
2           discussion, and only cursory notice; and

3       (7)   That in the intervening forty years no one has seriously contended that so radical a  
4           change could have been accomplished by so trivial and so meager an instrumentality;  
5           and

6       (8)   That, moreover, the two sentences cannot be read or interpreted in isolation and that  
7           many collateral references in the Constitution, especially in Article V and Article XII,  
8           argue forcefully that no extraordinary significance appertains to the two subordinate  
9           sentences; and

10      (9)   That, even if someone were to explicate the two sentences as implying virtual  
11          independence of one of the three separate, traditional branches of American  
12          government, such a reformulation of the constitutional system of checks and balances  
13          could not be accommodated within the United States, South Dakota, nor our sister  
14          states' constitutions without destroying an essential element of the Anglo-American  
15          political system.