



South Dakota Legislative Research Council

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AN OVERVIEW OF CONSTITUTIONAL PROVISIONS RELATING TO THE LEGISLATURE BUT LOCATED OUTSIDE OF ARTICLE III

Because of the role of the Legislature as the primary policymaking institution of state government, the South Dakota Constitution, like most other state constitutions, contains numerous references to the Legislature outside of the primary legislative provisions contained in Article III. Many of these provisions have a very direct relationship to the exercise of legislative authority and may be considered to be fundamentally legislative in character. Others relate to the interaction between the legislative and the executive and judicial branches. Many others are issue-specific and mention the Legislature only to reemphasize its role as the state's primary policymaker.

In analyzing these constitutional references, it may be helpful to group them into several classifications. As with any classification system, the one proposed here is somewhat subjective. Reasonable minds might differ as to which of the classifications certain provisions most properly belong:

Class A--Provisions in the executive article, Article IV, regulating the relationship between the legislative and executive branches, dealing primarily with the role of the Governor in the legislative process, the role of the Lieutenant Governor, and

Class E--A second miscellaneous category of

legislative oversight of gubernatorial policymaking.

Class B--Provisions regulating the relationship between the legislative and judicial branches, mostly located in Article V, the judicial article, dealing primarily with the organization, staffing, and jurisdiction of the courts.

Class C--Amendments to the Constitution in Articles XIII, XXI, XXVIII, and XXIX which, when adopted during the state's Progressive Era, substantially broadened the Legislature's authority to engage in various commercial and financial enterprises.

Class D--A miscellaneous category of scattered provisions, some in the Bill of Rights, some in later amendments, some restricting legislative authority, some detailing legislative procedure, but all having a direct relationship to the legislative branch.

scattered references to the Legislature where the

principal emphasis is not so much on the Legislature as it is on the institution or process that is being addressed.

The provisions of Class A have a direct and significant bearing on the legislative article; the provisions of Class B have an equally direct bearing but have less impact on the legislative process. The provisions of Class C constitute specific grants of legislative authority although, with the exception of the cement plant, most of these provisions are outdated. The provisions of Class D are the most problematic, and an argument could be made for relocating several of these provisions inside Article III. The provisions of Class E have only an indirect bearing on the revisions of the legislative article and are presented only for the sake of completeness.

Class A--(Executive Article)

Reference 1. (*Art. IV, ¶3*) provides that the Governor shall address the Legislature annually and may recommend legislation from time-to-time.

The Governor may also convene the Legislature in special session and prescribe the business of the special session (compare Art. III, ¶ 31).

Reference 2. (*Art. IV, ¶4*) The Governor has regular veto power as well as an item veto and a style and form veto. Substantive vetoes may be overridden by a two-thirds

Reference 6. (*Art. IV, ¶9*) The Governor is required to submit nominations for many significant positions in state

vote. (See Book of the States, pp. 141-143.)

Reference 3. (*Art. IV, ¶5*) The Lieutenant Governor is to be the presiding officer of the Senate and have a vote in the case of ties. Currently, forty-two states have a Lieutenant Governor. Of these, twenty-six preside over the Senate. Twenty-five may vote to break ties on procedural questions, but only twenty-two may vote to break ties on final passage. (See Book of the States, pp. 118-119.)

Reference 4. (*Art. IV, ¶6*) provides that a newly-appointed Lieutenant Governor must be confirmed by a majority of both houses of the Legislature.

Reference 5. (*Art. IV, ¶8*) grants the Governor broad authority to reorganize state departments, agencies, boards, and commissions by executive order. However, either house of the Legislature may, by resolution, disapprove an executive reorganization order during the first legislative session after it is filed.

government for the advise and consent of the Senate.

Class B--(Judicial Article)

Reference 1. (Art. V, ¶2) provides that the Legislature may establish the number of Supreme Court justices and provide for corresponding districts.

Reference 2. (Art. V, ¶¶4 and 5) The Legislature may create courts of limited jurisdiction and prescribe most original and appellate jurisdiction.

Reference 3. (Art. V, ¶9) The Legislature is required to establish a judicial qualifications commission to deal with certain aspects of judicial personnel and candidates for appointment.

Reference 4. (Art. V, ¶11) The Legislature may provide for the reimbursement of certain costs arising out of the unification of the judicial system.

Reference 5. (Art. V, ¶12) The Supreme Court may prescribe rules of practice and procedures that have the

Most of the provisions that have been grouped together in this section were the result of the Progressive era which swept the Midwest and other parts of the nation in the late nineteenth and early twentieth centuries.

In South Dakota, there was an initial blooming under Democrats and Populists like Andrew Lee and James Kyle at the turn of the century and then a second, more significant flowering, when Coe Crawford and Peter Norbeck wrested control of the Republican Party from the conservation

force of law, but the Legislature may amend them.

Reference 6. (Art. V, ¶13) Anticipating the adoption of the new judicial article in 1972, this section authorizes the Legislature to provide for an orderly transition to the Unified Judicial System. This transition is now complete and this section is outdated.

Reference 7. (Art. VI, ¶6) While guaranteeing the right to a jury trial, the second part of the section permits the Legislature to authorize juries smaller in size than twelve and jury verdicts in civil cases of less than unanimity. This second provision has direct implications for both Articles III and V.

Class C--(Amendments to the Constitution)

faction. Under their leadership, Article XIII, which originally dealt briefly with territorial indebtedness, was amended several times to grant the Legislature the authority to establish various state enterprises and conduct certain financial dealings. These included rural credits and loans (¶ 1), road construction and coal supply (¶ 9), manufacture and sale of cement (¶¶ 10 and 11), generation of electrical power (¶¶ 12 and 13), mining of coal (¶¶ 14 and 15), internal improvements (¶ 16), and home

loans (§ 17). In Article XXI, sections 7 and 8 provided for state funded irrigation projects and hail insurance. Article XXVIII provided for an early farm loan program and Article XXIX, adopted in 1918, authorized the state to engage in the ownership and operation of grain elevators and warehouses, flour milling, and meat packing.

Each of these provisions may be viewed as a specific grant of legislative authority beyond the general grant in Article III, section 1, or as a specific exception to the restrictions provided for in Article III, section 23. As such, they share a strong legislative content, and an argument can be made that they might well have been amendments to Article III rather than scattered through the back pages of the Constitution.

Their relationship to Article III is further complicated in that most of these provisions have been a dead letter for fifty years or more, have no import for the foreseeable future, and could well be repealed in any comprehensive constitutional revision. However, the state cement plant has survived from the Progressive Era and raises problems in any attempt to treat these provisions as a unity.

Class D--(Legislative Authority)

The provisions grouped under the heading of Class D are the most eclectic as well as the most problematic in relationship to comprehensive revision of the legislative article. Approximately half are found in Article VI, the Bill of Rights, and generally restrict legislative authority. Many of the

Reference 5. (*Art. VI, §19*) prohibits discrimination in the right of suffrage and requires the Legislature to protect the right of soldiers to vote.

others are subsequent amendments to the Constitution which, for some reason, the drafter chose not to insert in Article III. All of the provisions cited under this heading have a very direct connection with legislative authority.

Reference 1. (*Art. VI, §12*) prohibits ex post facto laws, laws impairing contracts, and laws granting irrevocable privileges, franchises, and immunities. The kinship between this section and Article III, section 23, is readily apparent.

Reference 2. (*Art. VI, §13*) requires the Legislature to provide for the taking of property by eminent domain procedure.

Reference 3. (*Art. VI, §14*) forbids the Legislature to statutorily discriminate against the property rights of resident aliens.

Reference 4. (*Art. VI, §18*) prohibits statutes granting special privileges and immunities. This section substantially duplicates material in Article III, section 23, and Article VI, section 12.

Reference 6. (*Art. VI, §21*) reserves to the Legislature the authority to suspend laws.

Reference 7. (*Art. VI, §22*) prohibits the Legislature from

enacting bills of attainder inflicting a punishment on a person without a judicial determination of guilt.

Reference 8. (*Art. XI, ¶13*), which was approved in 1978, specifically provides for the imposition of certain taxes and the increasing of certain tax rates by the Legislature. It has a very direct relationship with Article III, section 1, and nearly supersedes Article VI, section 17.

Reference 9. (*Art. XII, ¶2*) specifies the content of the general appropriations bill, the content of special appropriations bills, and the voting requirements for passage of each. The matter is entirely legislative in nature. Of all of the Class D provisions, this may be the strongest candidate for transfer to Article III. (See Book of the States, pp. 144-145.)

Reference 10. (*Art. XII, ¶3*) restricts the Legislature's authority to increase or reduce salaries and compensation.

Reference 11. (*Art. XIX, ¶¶ 1 and 2*) This two-section ¶¶ 2 and 3), education (*Art. VII, ¶¶ 1, 15, and 20*), school and public lands (*Art. VIII, ¶¶ 4, 5, 11, 14, and 19*), local government (*Art. IX, ¶ 1*), state institutions (*Art. XIV*), the militia (*Art. XV*), impeachment (*XVI*), corporations (*XVII*), and constitutional

article provided for the original congressional and legislative apportionment. It was temporary in application and has now been superseded by statute. Since reapportionment and redistricting are inherent legislative powers, any necessary constitutional reference to reapportionment or redistricting might appropriately be relocated to Article III.

Reference 12. (*Art. XXI, ¶2*) provides for the fixing of the salaries of constitutional officers by the Legislature. Although Article XXI is entitled "Miscellaneous," the material in section 2 is entirely legislative. (See Book of the States, p. 122.)

Class E--(Legislative Oversight)

The final category of constitutional provisions to be considered in this overview are general references to legislative oversight or control in relationship to articles of the Constitution that deal with specific subject matter. A reasonably comprehensive list would include the role of the Legislature in elections (*Art. VII*,

amendments (*Art. XXIII*). Although these provisions do make reference to the Legislature, the legislative process does not constitute their main focus.

This issue memorandum was written by Reuben D. Bezpaletz, Chief of Research Analysis and Legal Services, 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.
