



South Dakota Legislative Research Council

Issue Memorandum 98-16

Constitutional Amendment D – Intergovernmental Cooperation

Introduction

Constitutional Amendment D is a proposed change brought to the people by the 1997 Legislature. Passage of the Amendment would add a new section to the local government section of the South Dakota Constitution (Article IX). If approved by the voters in November 1998, the new law would give citizens the right to initiate proposals that could force cities, counties and other local governments to cooperate on services and programs. The existing statutes allow for initiative and referendum measures at the local level but do not allow one proposal to affect two or more governments.

House Joint Resolution 1009

House Joint Resolution 1009 was introduced by the House State Affairs Committee at the request of Governor Janklow in February 1997. The original text of the resolution focused on initiating measures to combine, consolidate, or eliminate elective county offices. It also added a section to allow cooperation between political subdivisions, state, and federal governments.

In its first hearing before the House State Affairs Committee, HJR 1009 was amended to clearly define the process if the electors of two counties decided to merge. The amended version detailed the number of signatures needed on the petition, the role of the county commissioners in the election process, the number of votes needed to pass such a measure, and even the method of selection of a new county name and seat of government. This version cleared the House by a vote of 57 to 12 and was referred to the Senate State Affairs Committee, where it passed unanimously. The resolution was amended again on the Senate floor and the House concurred with the Senate amendments.

The final version of HJR 1009 gives voters of local governments “the right to initiate proposals

for cooperation within or between governmental units...” The proposals may include “combining, eliminating, and joint financing of offices, functions, and governmental units.” At least ten percent of those voting in the last preceding gubernatorial election, from each affected governmental unit, must sign the petition to initiate the question.

Existing Law

South Dakota Constitution Article III, § 1 allows for the initiative and referendum process at all levels of government. The initiative and referendum process was extended to counties in SDCL ch. 7-18A, to school districts via SDCL §§ 13-6-41 to 13-6-49, to conservation districts per SDCL 38-8A-12, and to municipalities in Article III §1 of the Constitution. The number of signatures needed on the petition is five percent of the total number of votes cast for Governor at the last gubernatorial election, as described in SDCL 2-1-5.¹

The powers of the initiative and referendum at the state level are directed at laws and measures; that is, legislative policy decisions. On the municipal and county level the governing body in many cases functions not only as a legislative body, but also as an executive and in some cases as a quasi-judicial tribunal.² In most states, the courts have held that the initiative and referendum measures may begin on the local level only when the proposed measure is legislative and not administrative; the difference between the two being whether the proposition will make a new law, or execute an existing law.

In South Dakota, however, there is no distinction and an initiative can be proposed to change either legislative or administrative acts.

¹ Attorney General Official Opinion No. 75-72 clarified the many different formulas used to determine the required number of signatures (registered voters, qualified voters, qualified electors).

² South Dakota Law Review, Vol. 28, Winter 1982 pages 77-78.

This interpretation of the law allows for a wide variety of initiated measures. Voters could initiate measures to do everything from determining the city's curfew time to consolidating the highway departments in two counties. The initiative and referral process can even be used to determine salaries as was the case in *Martin v. Eastcott*, 53 S.D. 191, 220 N.W. 613 (1928). In the 1929 case, the court held that the citizens could refer the ordinance that increased the city employee salaries.

The Proposed Change

There are many constitutional articles and codified laws that clearly allow for the initiative process at all levels of government. The current initiative process, however, does not provide for an individual in one governmental unit to offer a measure that may affect the operations of another unit. Constitutional Amendment D would allow individuals to propose measures affecting two or more units of government. The primary rules apply to the proposed new initiated measure process, with one notable exception -- the required number of petition signatures increases to ten percent of those voting in the preceding gubernatorial election in each affected governmental entity.

In addition to the existing laws referred to earlier, Constitutional Article IX, § 3 also provides for some of the privileges allowed in the proposed constitutional change. Article IX, §3 (Intergovernmental Co-operation) allows every local government to exercise, perform or transfer any of its powers or functions, including financing the same, jointly or in cooperation

with any other governmental entities, either within or outside the state, except as the Legislature shall provide otherwise by law.

This may appear to be the same as Amendment D; however, it does not allow for the population as a whole to make changes. The current laws allow only the elected officials of the governmental units to propose cooperative agreements with other governments.

Joint Powers Difference

At first reading, Constitutional Amendment D appears similar to the Joint Powers agreement laws in SDCL 1-24. This chapter allows any powers, privileges, or authority enjoyed by one governmental body to be exercised and enjoyed jointly with another public agency.

Constitutional Amendment D is much like a joint powers agreement; however, the electorate can decide what power, privilege, or authority they want shared with another governmental body. Currently, the joint powers agreement allows elected policy makers, not the electorate, to decide on the areas of cooperation.

Summary

Many laws exist in South Dakota to allow for cooperation at all levels of government. None of these laws, however, provide an avenue for a citizen to take the first step in proposing cooperative measures between two governmental units. The initiative process has been a political term that defines the ultimate in democracy to some people and the obstruction of our representative system of government to others. Constitutional Amendment D simply broadens the scope of the initiative process.

This issue memorandum was written by Ann Mertz, Senior Fiscal 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.
