



First Meeting
2004 Interim
August 12, 2004

LCR 1 & 2
State Capitol Building
Pierre, South Dakota

Thursday, August 12, 2004

The first meeting of the Constitutional Revision Commission was called to order by Mr. David L. Ortbahn, Principal Research Analyst, Legislative Research Council, at 9:00 a.m. (CT), August 12, 2004, in LCR 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Mr. Mark Barnett, Dr. Robert Burns, Mr. Steve Cutler, Dr. Donald Dahlin, Lieutenant Governor Dennis Daugaard, Mr. Robert Drake, Dr. Sean Flynn, Mr. Gene Lebrun, Mr. Larry Lucas, Ms. Mary McClure Bibby, Retired Supreme Court Chief Justice Robert A. Miller, Mr. Robert Roe, Mr. Brent Wilbur, and Supreme Court Justice Steven Zinter. Mr. James Abbott, Mr. Jim Hutmacher, and Mr. Ronald Olinger were excused.

Staff members present included David L. Ortbahn, Principal Research Analyst; Reed Holwegner, Chief Fiscal Analyst; and Teri Retrum, Senior Legislative Secretary.

(**NOTE:** For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Minutes.)

Election of Chair and Vice Chair

MR. LEBRUN MOVED, SECONDED BY MS. MC CLURE BIBBY, THAT RETIRED SUPREME COURT CHIEF JUSTICE ROBERT A. MILLER BE NOMINATED FOR CHAIR OF THE CONSTITUTIONAL REVISION COMMISSION.

Nominations ceased, and Retired Supreme Court Chief Justice Robert A. Miller was unanimously elected chair of the commission on a voice vote.

Ms. Mary McClure Bibby suggested that the commission give Chair Miller the latitude to choose the vice chair.

Stating his agreement with Ms. McClure Bibby's suggestion, MR. WILBUR MOVED, SECONDED BY DR. FLYNN, THAT THE COMMISSION GIVE CHAIR MILLER THE LATITUDE TO CHOOSE THE VICE CHAIR. The motion prevailed unanimously on a voice vote.

Chair Miller thanked the commission and said that he would apprise them of his vice chair decision later in the day.

Review of Background Information

Mr. David Ortbahn, LRC, briefly discussed the three-ring binder distributed to commission members (**Document #1**).

For this meeting, Mr. Ortbahn said that he included copies of South Dakota Constitution Article III, previous Constitutional Commission Reports, and previous Issue Memoranda concerning Article III. (**Note:** The binder will be an on-going informational tool for the commission with materials periodically added.)

Mr. Gene Lebrun said that he would like to review past attempts to change the constitution and the outcome—approved or rejected by the voters.

Dr. Donald Dahlin said that it would be helpful to have information from other states regarding the organization of their Legislatures.

Mr. Ortbahn said that the LRC has access to a lot of information and comparable data from the National Conference of State Legislatures (NCSL), the Council of State Governments (CSG), and the LRC Library.

Mr. Ortbahn informed the commission that the Executive Board of the Legislative Research Council will be requesting via letter that the commission review the procedures for style and form vetoes and line item vetoes and perhaps even compare those types of vetoes with the same in other states and make recommendations.

Mr. Lebrun distributed copies of the "National Conference of Commissioners on Uniform State Laws Procedural and Drafting Manual 1997 Edition" (**Document #2**).

Remarks from Representative Bill Peterson Prime Sponsor of Legislation Establishing the Commission

Representative Bill Peterson said that the legislation establishing the commission received bipartisan support in the 2004 Legislature. He commented that his intent was to convene a commission to review the legislative article and corresponding statutes. Representative Peterson said he hopes that the commission will have a serious discussion on how to maintain an efficient and effective citizen Legislature for the 21st Century. He said that he is concerned about losing the concept of three separate branches of government. Representative Peterson said that the strengths of the executive and judicial branches of government have grown but that strengths of the legislative branch have shrunk. He noted that even though the style and form veto has raised a lot of controversy, it is an executive function, and perhaps it should be addressed in another venue because it is probably outside the purview of the commission's study.

Representative Peterson said that several suggestions have been brought forth regarding the number of days that the Legislature meets. For instance, Representative Peterson noted one suggestion that was relayed—The Legislature could meet for forty days in January and

February and return for a short five-day session in the fall. Representative Peterson said that many in the Legislature would be in conflict of interest if the provisions in Article III were strictly interpreted. Regarding term limits, Representative Peterson said that many states are reconsidering term limits and are thinking about repealing them. He said that term limits do bring some new people into the Legislature; however, experienced legislators are lost. Representative Peterson said that perhaps there could be a time limit imposed for legislative leadership. He said that the length of terms should be reviewed—certainly, change the Senate term to four years. Also, Representative Peterson said that the number of members of the Legislature should be reviewed.

Representative Peterson commented that legislative pay probably should be addressed so that legislators at least would be held harmless regarding time spent away from their employment.

In closing, Representative Peterson encouraged the commission to become advocates for the Legislature in changing with the times and helping to keep a citizen's Legislature.

Discussion of Commission Work Plan

Mr. Larry Lucas expressed agreement with Representative Peterson's comments. He said that the Legislature needs to do a better job of educating citizens and explaining in-depth any proposed amendments.

Representative Peterson agreed and said that education will not end when the commission is done with its work but will need to continue throughout the process.

Justice Steven Zinter said that the legislation makes it very clear that the commission not go beyond Article III. He said that the commission should decide on the Executive Board's request regarding style and form vetoes. Justice Zinter asked Representative Peterson for his recommendation on how the commission might respond to the Board.

Representative Peterson suggested that one way might be to respectfully write a letter to the Board that the commission believes that its request is beyond the venue of the commission's charge, if that is the determination of the commission.

Mr. Lebrun said that there is nothing to preclude the Legislature from giving the commission the charge next year.

Dr. Dahlin said that the commission should maintain steady communication with both political parties and informally solicit on-going legislative input. He said that the commission also should keep in contact with the Executive Board.

Dr. Burns said that maybe the South Dakota media outlets would be interested in providing some public service announcements. He also said that perhaps purchasing some media time would be appropriate.

Representative Peterson said that the Legislature could utilize advocacy groups, even invite those people to the Legislature for discussion.

Mr. Lebrun said that nationwide foundations that are interested in the political process might be able to provide grant money for educational purposes.

Ms. McClure Bibby questioned how recommendations should be brought forward.

Representative Peterson suggested that a legislative package focusing on two, three, or four key points might have more success. He also suggested that the package be brought forth in a non-election year.

Ms. McClure Bibby asked if the commission will have the latitude to go beyond the two years outlined in the legislation.

Representative Peterson said that the Legislature might give the commission more time.

The commission recessed at 10:30 a.m. and reconvened at 10:40 a.m.

Discussion of Commission Work Plan (Continued)

Public Testimony Regarding Work Plan

Senator John Koskan said that he used to believe that the Legislature has all the authority it needs by its vote; however, after attending the NCSL Annual Meeting, he has changed his mind. Senator Koskan said that he became aware that South Dakota might not have a balanced separation of powers. He suggested that perhaps the commission would like to receive some of the information that he heard at the conference regarding separation of powers.

Mr. Lebrun said that he is a member of the E-Commerce Committee, and the chair of that committee polled members to provide names of groups and people who would like to provide testimony to the committee. The chair then would select a spokesperson to provide a written statement or proposal to the committee. Mr. Lebrun said that this might work for the commission.

Mr. Wilbur said that many groups have a registered lobbyist and suggested that the commission send a letter to all lobbyists to invite them to address the committee with input from those groups.

Dr. Burns said that the commission could proceed as in 1996 and 1997 when meetings were held for the purpose of public testimony, including meetings out of town; however, the commission would continue to formulate proposals throughout the course of the commission's work.

Based on comments from Representative Peterson, **Mr. Mark Barnett** suggested that the commission could select the following as a course of study for the commission:

1. Number of days and length of session;
2. Legislative pay;
3. Conflict of Interest; and
4. Term limits.

Dr. Dahlin said that he supports inviting input from the interest groups for the commission's next meeting. He also suggested a meeting early next session with the legislators to go through the materials.

Mr. Lebrun said that there are thirty-two sections to Article III and that maybe the commission would want to divide into subcommittees to address those sections and then to report to the commission as a whole.

Mr. Lucas said that when the interest groups are contacted perhaps they should be told the reason that the commission is asking for their input—separation of powers, maintain citizen legislature, reapportionment, etc.; then the representatives can come prepared with remarks targeted to those areas.

Upon a suggestion from Ms. McClure Bibby, Chair Miller directed that the commission review each section of South Dakota Constitution Article III to determine its status regarding further study.

The determination of the commission regarding each section is as follows:

§ 1. Legislative power—Initiative and referendum

Mr. Lucas recommended no changes to section 1. He, however, felt that the commission needs to determine if the current process is working well.

Mr. Drake agreed and said that it is confusing to address so many concerns on the ballot and that maybe the process should be tightened.

Mr. Wilbur said that perhaps raising the number of signatures required to start an initiative should be carefully considered.

Mr. Lebrun said that the signature process needs to be addressed—maybe require a geographic distribution for those signatures.

Justice Zinter said that philosophically he agreed that the signature process should be tightened; however, he said that realistically there would be emotional obstacles to such an attempt.

Dr. Sean Flynn said that statistical data regarding initiated measures from other states would be helpful.

Mr. Lebrun indicated that the question of whether the Legislature has authority to refer its own laws should also be addressed.

The commission agreed to review this section.

§ 2. Number of Legislators--Regular sessions

Mr. Lucas said that he does not know how the issue of demographics can be resolved. Justice Zinter said that paragraph two of § 2 should be deleted. The paragraph reads: "The sessions of the Legislature shall be biennial except as otherwise provided in this Constitution."

Mr. Ortbahn said that the second paragraph of § 2 is superseded by the provisions in § 6.

The commission agreed to review this section.

§ 3. Qualifications for legislative office—Officers ineligible

Mr. Barnett said that the commission should review this section for possible redrafting because prohibiting any person who holds lucrative office from running for the legislature just about excludes everyone.

The commission agreed to review this section.

§ 4. Disqualification for conviction of crime—Defaults on public money

Mr. Wilbur said that a felony conviction should bar a person from running for the Legislature.

The commission agreed to review this section.

§ 5. Legislative reapportionment

Dr. Dahlin stated that the commission needs to look at what happens if a court overturns a reapportionment plan. In such a case, does the Legislature have a right to react?

The commission talked about getting some expert testimony from the attorney general regarding federal court decisions affecting this section.

Justice Zinter said that there is a recent U.S. Supreme Court decision on this matter and asked staff to obtain a copy.

The commission agreed to review this section.

§ 6. Legislative terms of office—Compensation—Regular sessions

The commission agreed to review this section.

§ 7. Convening of annual sessions

The commission agreed to review this section.

§ 8. Oath required of legislators and officers—Forfeiture of office for false swearing

The commission agreed to review this section for clean-up.

§ 9. Each house as judge of qualifications—Quorum—Rules of proceedings—Officers and employees

There was no indication from the members that this section needed to be reviewed at this time.

§ 10. Filling Legislative Vacancies

There was no indication from the members that this section needed to be reviewed at this time.

§ 11. Legislators' privilege from arrest—Freedom of debate

There was no indication from the members that this section needed to be reviewed at this time.

§ 12. Legislators ineligible for other office—Contracts with state or county

Mr. Lebrun said that the topic of ineligibility for other office has come up in the Uniform Laws Commission. He said that the Constitutional Revision Commission should review this section to make sure that legislative service is not precluded.

The commission agreed to review this section.

§ 13. Legislative journals—Recording of yeas and nays

Mr. Lebrun said that with the technology available, this section at least should be flexible enough to allow for electronic voting.

The commission agreed to review this section.

§ 14. Elections viva voce

Mr. Lebrun said that the House of Representatives records electronic votes already and that both § 13 and § 14 should be updated for modernization.

The commission agreed to review this section.

§ 15. Open legislative sessions--Exceptions

Mr. Wilbur said that both § 13 and § 15 contain a secrecy exception for some proceedings and meetings.

The commission agreed to review this section.

§ 16. Adjournment of legislative houses

There was no indication from the members that this section needed to be reviewed at this time.

§ 17. Reading of bills

Mr. Drake indicated that this is a formality that should be reviewed.

Mr. Lebrun indicated that procedures provided in §§ 17, 18, and 19 should all be reviewed.

§ 18. Enacting clause—Assent by majority—Recording of votes

The commission agreed to review this section.

§ 19. Signing of bills and resolutions

The commission agreed to review this section.

§ 20. Origin of bills—Amendment in other house

The commission agreed to review this section.

§ 21. One subject expressed in title

The commission agreed to review this section.

§ 22. Effective date of acts—Emergency clause

There was no indication from the members that this section needed to be reviewed at this time.

§ 23. Private and special laws prohibited

Dr. Flynn said that there should be clarification of "private and special laws."

Chair Miller agreed and said that it should be reviewed. He said that he would like to know if there is something similar in other states.

§ 24. Release of debt to state or municipality

Dr. Dahlin said that this is an antiquated section and that he is not sure that it is needed.

The commission agreed to review this section.

§ 25. Games of chance prohibited—Exceptions

The commission agreed to review this section.

§ 26. Municipal powers denied to private organizations

Dr. Burns said that a review of this section would generate public interest because there is an issue of binding arbitration when a public entity is involved.

The commission agreed to review this section.

§ 27. Suits against the state

After brief discussion on whether the state can be sued, some of the deliberations of the courts, and whether the powers of the Legislature should be enumerated, the commission decided to leave this section alone at this time.

§ 28. Bribery and corrupt solicitation of officers—Compelling testimony—Immunity from prosecution

The commission agreed to review this section.

§ 29. Legislative powers in emergency from enemy attack

The commission agreed to review this section.

§ 30. Power of committee of Legislature to suspend administrative rules and regulations

Justice Zinter questioned whether the interim Appropriations Committee should also be addressed in the Constitution; if so, this might be the place to address it. Mr. Barnett said that this has been a question in the past—whether the actions of the interim Appropriations Committee are constitutional.

Mr. Reed Holwegner, Chief Fiscal Analyst, LRC, said that Article XII outlines the constitutional provisions of the appropriations process.

Mr. Lebrun said that he does not believe that the commission would be precluded from reviewing this section, or any section, because there might be sections that are not in Article III but should be. He said that the commission should be able to make recommendations along these lines also.

Chair Miller suggested that the commission not review § 30 at this time; however, it could be reviewed later.

The commission agreed not to review this section at this time.

§ 31. Convening of special sessions upon petitions

The commission agreed not to review this section at this time.

§ 32. Term limitations for United States congressmen

Dr. Burns said that this section is not enforceable.

The commission agreed to review this section.

The commission recessed at 12:10 p.m. and reconvened at 1:30 p.m.

Discussion of Commission Work Plan (Continued)

The commission agreed to wait until receipt of the letter from the Executive Board of the Legislative Research Council before making a decision regarding its request that the commission review the procedures for style and form vetoes and line item vetoes.

Mr. Lebrun said that representatives from the municipalities, counties, education groups, farm groups, commerce, political parties, news organizations, etc., could be among those invited to the commission's meetings. The presentations could be either in person, or in written testimony, or both.

Lieutenant Governor Daugaard said that the commission should continually inform organizations and others on the progress of the commission—meeting dates, agendas, etc. He also said that the commission might want to send targeted invitations to those with expertise in a certain area.

At the direction of Chair Miller, Mr. Ortbahn said that he would draft an invitation letter to interested parties for the commission's approval.

For communication purposes, Chair Miller circulated a request for each member to list an e-mail address, if available.

Justice Zinter said that it would be beneficial to have sub-tabs with annotations for Article III.

Selection of Vice Chair

Chair Miller informed the commission that he asked Dr. Donald Dahlin and Dr. Robert Burns to serve as co-vice chairs of the commission and asked for the concurrence of the commission.

MS. MC CLURE BIBBY MOVED, SECONDED BY MR. ROE, THAT THE COMMISSION ELECT DR. DONALD DAHLIN AND DR. ROBERT BURNS TO SERVE AS CO-VICE CHAIRS OF THE COMMISSION. The motion prevailed unanimously on a voice vote.

Dr. Dahlin and Dr. Burns thanked Chair Miller and the commission and said that they are pleased to serve as co-vice chairs.

Next Meeting Date

Regarding the commission's next meeting date, Mr. Drake asked staff to find out the schedule of NCSL and CSG representatives who may be asked to provide information.

Ms. McClure Bibby said that the commission needs to provide the Legislature with a progress report.

Dr. Dahlin said that the commission most likely will hold several meetings before session and will be able to let the Legislature know its progress.

Lieutenant Governor Daugaard said that the first part of session might be a good time to have a meeting because legislative members would have time to attend.

Mr. Steve Cutler agreed and said that the commission could have a couple days' meetings before session and also have a meeting after session begins.

Mr. Wilbur suggested that the commission be divided into subcommittees to discuss some of the areas and then report their deliberations to the full commission.

Chair Miller agreed that subcommittees are a good idea.

The commission agreed that the chair should establish the next meeting date after polling the commission members via e-mail.

Adjournment

MR. BARNETT MOVED, SECONDED BY LIEUTENANT GOVERNOR DAUGAARD, THAT THE COMMISSION BE ADJOURNED. The motion prevailed unanimously on a voice vote.

The commission adjourned at 2:00 p.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.cfm>).