

## South Dakota Constitution

### Article III

#### **§ 1. Legislative power -- Initiative and referendum.**

The legislative power of the state shall be vested in a Legislature which shall consist of a senate and house of representatives. However, the people expressly reserve to themselves the right to propose measures, which shall be submitted to a vote of the electors of the state, and also the right to require that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health, or safety, support of the state government and its existing public institutions. Not more than five percent of the qualified electors of the state shall be required to invoke either the initiative or the referendum. This section shall not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure. The veto power of the Executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The Legislature shall make suitable provisions for carrying into effect the provisions of this section.

## South Dakota Statutes

### Chapter 1

#### **2-1-1. Initiative petitions -- Number of signatures required.**

All measures proposed by initiative shall be presented by petition. The petition shall be signed by not less than five percent of the qualified electors of the state.

#### **2-1-2. Filing and transmittal of initiative petitions -- Submission to voters at general election.**

The petition shall be filed in the Office of the Secretary of State by the first Tuesday in May of a general election year for submission to the electors at the next general election.

##### **2-1-2.1. Filing of initiated constitutional amendment - Submission to voters.**

A petition of the voters proposing an amendment to the Constitution shall be filed in the Office of the Secretary of State at least one year before the next general election and, if timely filed, shall be submitted to the voters at the next general election in the same manner as other questions and measures are submitted under the provisions of chapter 12-13.

##### **2-1-2.2. Withdrawal of initiated constitutional amendment.**

A petition of the voters proposing an amendment to the Constitution may be withdrawn within the meaning of S.D. Const., Art. XXIII, § 3 not later than one hundred twenty days prior to the next general election, if not

less than two-thirds of the named sponsors file with the secretary of state, in writing, their request for withdrawal of the question from the ballot. The secretary of state shall attach to the petitions on file the request for withdrawal and shall take no other action thereon.

**2-1-3. Referendum -- Laws subject to petition -- Form.**

Any law which the Legislature may have enacted, except one which may be necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, shall, upon the filing of a petition as hereinafter provided, be submitted to a vote of the electors of the state at the next general election. Such petition shall be signed by not less than five percent of the qualified electors of the state. The form of the petition shall be prescribed by the State Board of Elections.

**2-1-4. Time for filing of referendum petition.**

The petition shall be filed in the Office of the Secretary of State within ninety days after the adjournment of the Legislature which passed such law.

**2-1-5. Total vote used to determine number of signers required in petitions.**

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.

**2-1-6. Persons qualified to sign petitions -- False or unqualified signing as misdemeanor.**

Every person who is a qualified voter may sign a petition to propose a measure or submit a law. Whoever signs a petition for initiation or referendum of legislation, when he is not a qualified voter of the state, or signs a name other than his own, is guilty of a Class 1 misdemeanor.

**2-1-6.1. Filing of petition required prior to circulation.**

Repealed by SL 1989, ch 23, § 3.

**2-1-6.2. Filing petition prior to circulation -- Collection and filing of signatures -- Time limit --Affidavits.**

The full text of any initiative petition, referred law petition, or initiated constitutional amendment petition, the date of the general election at which the initiated law or initiated constitutional amendment is to be submitted, and the names and addresses of the petition sponsors shall be filed with the secretary of state prior to circulation for signatures. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. The form of the petitions shall be prescribed by the State Board of Elections. For any initiated constitutional amendment petition, no signatures may be obtained more than twenty-four months preceding the general election that was designated at the time of filing of the full text. For any initiative petition, no signatures may be obtained more than eighteen months preceding the general election that was designated at the time of filing of the full text. An initiative petition and an initiated constitutional

amendment petition shall be filed with the secretary of state by the date set forth in § 2-1-2 or 2-1-2.1, as applicable. All sections of any petition filed under this chapter shall be filed with the secretary of state simultaneously together with a sworn affidavit on forms promulgated by the State Board of Elections, signed by two-thirds of the sponsors stating that the documents filed constitute the entire petition and to the best of their knowledge contain a sufficient number of signatures.

**2-1-6.3. Applicability of 2000 amendments to § 2-1-6.2.**

The 2000 amendments to § 2-1-6.2 do not apply to any initiative petition or initiated constitutional amendment petition filed with the secretary of state, prior to circulation for signatures, before July 1, 2000.

**2-1-7. Petitions to describe initiated and referred measures -- Personal signature required.**

Every petition proposing a measure must contain the substance of the law desired and must be signed in person by the petitioners, and every petition to submit a law to a vote of the electors must be signed in person by the petitioners and must describe the law desired to be submitted, by setting forth its title, together with the date of its passage and approval.

**2-1-8. Ditto marks to show residence of signers or date of signing.**

Repealed by SL 1990, ch 104, § 1.

**2-1-9. Separate papers constituting single petition.**

A single petition may be made up of one or more papers, each having the requisite heading and verification.

**2-1-10. Affidavit of persons circulating initiative and referendum petitions - - Witness.**

Each person who circulates and secures signatures to a petition to initiate or submit to the electors any law pursuant to S.D. Const., Art. III, § 1, shall sign a verification of circulator before filing the petition with the officer in whose office it is by law required to be filed. The State Board of Elections shall prescribe the form for the verification of circulator. The verification of circulator shall be witnessed by a notary public commissioned in South Dakota or other officer authorized to administer oaths pursuant to § 18-3-1.

**2-1-11. Petitions liberally construed.**

The petitions herein provided for shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality.

**2-1-12. Effective date of measures approved by voters.**

The constitutional amendments and initiated and referred measures that have been approved by a majority of all votes cast become effective the day after the completion of the official canvass by the State Canvassing Board.

**2-1-13. Circulators of petitions -- Qualifications -- Compensation prohibited -- Expenses.**

Repealed by SL 1989, ch 23, § 5.

**2-1-14. Signatures secured contrary to chapter not to be counted.**

All signatures secured in a manner contrary to the provisions of this chapter may not be counted.

## **Chapter 20**

### **9-20-1. Percentage of voters required to propose ordinance or resolution.**

The right to propose ordinances and resolutions for the government of any municipality shall rest with any five percent of the voters thereof, such percentage to be based upon the whole number of voters of said municipality as determined by the "precinct registration lists" or the "district registration lists" prepared by the county auditor from the master registration list in conformity to law as of the time of the filing of the petition mentioned in § 9-20-2.

### **9-20-2. Petition proposing ordinance or resolution -- Contents.**

A petition to propose an ordinance or resolution shall be filed with the finance officer, containing in proper form the proposed ordinance or resolution. It shall be signed by the required number of the resident registered voters of the municipality. The signer or circulator shall add the signer's residence address, county of voter registration, and date of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. No signature on a petition is valid if signed more than six months prior to the filing of the petitions.

### **9-20-3. Ordinance may not be initiated to nullify bond purposes.**

The right to initiate an ordinance shall not be applicable to ordinances proposed to nullify the purpose for which bonds have been sold by a municipality pursuant to statutory authority.

### **9-20-4. Presentation of initiative petition to governing body -- Enactment and submission to voters.**

When a petition to initiate is filed with the auditor or clerk, he shall present it to the governing body at its first ensuing regular or special meeting. The governing body shall enact the proposed ordinance or resolution and shall submit it to a vote of the voters in the manner prescribed for a referendum.

### **9-20-5. Majority vote at election required for initiated ordinance or resolution -- Effective date.**

No initiated ordinance or resolution shall become operative unless approved by a majority of the votes cast for and against the same. If so approved, it shall take effect upon the completion of the canvass of the election returns relating thereto.

#### **9-20-5.1. Year's waiting period required before amendment or repeal.**

No initiated ordinance or resolution may be amended or repealed by the governing body of a municipality until at least one year has passed from its effective date.

### **9-20-6 . Time for filing referendum petition.**

The required number of voters residing in any municipality may file within twenty days after the publication of any ordinance or resolution subject to referendum a petition with the auditor or clerk, requiring the submission of

any such ordinance or resolution to a vote of the voters of the municipality for its rejection or approval. If filed on the twentieth day after publication, such petitions shall be filed no later than normal closing hours of the city hall or city auditor's office on said twentieth day.

**9-20-7. Description in referendum petition of matter covered.**

If the matter intended to be covered by the referendum petition is the whole of any ordinance or resolution, the petition shall contain the title of such ordinance or the subject of such resolution, and the date of its passage, but if only a portion of such ordinance or resolution is intended to be covered by the petition, such portion shall be set out at length.

**9-20-8. Number of signers required for referendum petition -- Data concerning signers.**

The referendum petition shall be signed by at least five percent of the legal voters residing in the municipality. The percentage shall be based on the whole number of voters of the municipality as determined by the precinct registration lists or the district registration lists prepared by the county auditor from the master registration list in conformity to law as of the time of the filing of the petition. The signer or circulator shall add the signer's residence address, county of voter registration, and date of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class.

**9-20-9 Requirements for persons circulating petition -- Board of Elections to promulgate rules --Scope of rules.**

Any person circulating an initiative or referendum petition shall verify that each person signing the petition is a resident and qualified voter of the municipality. The State Board of Elections shall promulgate rules pursuant to chapter 1-26 prescribing the format for an initiative and referendum petition and its verification.

**9-20-10. Liberal construction of referendum petition.**

Such petition may be made up and signed and shall be liberally construed as provided by the statute governing an initiated law.

**9-20-11. Date of election on referendum petition -- No action taken pending election.**

The governing body shall, upon the presentation of a petition pursuant to § 9-20-6, submit the question to the electors at the next annual municipal election or the next general election, whichever is earlier. Pending the election, the governing body may take no action with respect to the subject matter of the petition that would alter or preempt the effect of the proposed petition. However, the governing body may expedite the date of the election by ordering, within ten days of receiving the petition, a special election to be held on a Tuesday not less than thirty days from the date of the order of the governing body.

**9-20-11.1. Submission of question prohibited after first Tuesday in August of general election year.**

No municipality may submit a question to the electors at the next general election pursuant to § 9-20-11 after the first Tuesday in August of the year of the general election.

**9-20-11.2. Date to certify ballot language to county auditor.**

If a municipality submits a question to the electors at the next general election pursuant to § 9-20-11, the municipality shall certify the ballot language to the county auditor by the third Tuesday in August of the year of the general election.

**9-20-11.3 Additional election costs paid by municipality.**

If a municipality submits a question to the electors at the next general election pursuant to § 9-20-11, the municipality shall pay the additional election cost related to the municipal question. The cost shall be agreed upon by the county auditor and the municipal finance officer.

**9-20-12. Publication of referred ordinance or resolution -- Notice of election.**

The auditor or clerk shall cause the entire referred ordinance or resolution to be published once a week for two successive weeks immediately preceding the election. Such publication shall include a notice that on the day of election therein stated such ordinance or resolution will be submitted to the voters or, if only a portion thereof is covered by the petition, then notice as to what portion will be submitted.

**9-20-13. Ballots used in referendum election -- Form and contents.**

The auditor or clerk shall have ballots printed for the vote upon such referred ordinance or resolution and cause the same to be distributed as other official ballots are distributed. Such ballots shall conform as near as may be to the law governing the submission of questions by the Legislature, except that the statement required to be printed on the ballots shall be prepared by the city attorney, or if there be no city attorney, by an attorney at law employed by the governing body for that purpose. All questions to be voted upon at the same election may be submitted upon the same ballot.

**9-20-14. General municipal election law applicable to referendum elections.**

The elections provided for in this chapter shall be governed by the provisions of chapter 9-13 except as to the form of the ballots otherwise specifically provided.

**9-20-15. Majority vote required for approval of referred measure -- Effective date.**

No referred ordinance or resolution so submitted shall become operative unless approved by a majority of the votes cast for and against the same. If so approved, it shall take effect upon completion of the canvass of the election returns relating thereto.

**9-20-16. Preservation of referendum petitions -- Open to public inspection.**

The auditor or clerk shall preserve all petitions invoking the referendum filed in his office for a period of at least two years, during which time such petitions shall be open to public inspection upon reasonable request.

**9-20-17. Waiting period for new action after referendum election.**

No referred ordinance or resolution may be again voted upon by the government of any municipality within one year from the date of the election thereon.

**9-20-18. Legislative finding -- Actions of municipal governing boards subject to referendum.**

The Legislature finds that in making past grants of decision-making authority to municipal governing authorities, its intent was to grant that authority to the governing bodies of municipalities and that such actions, unless otherwise excluded from the referendum and initiative process by other state law, are subject to the initiative and referendum process. Therefore, the contrary holding in *Baker v. Jackson*, 372 NW 2d 142 (SD, July 31, 1985) is hereby abrogated.

**9-20-19. Legislative decision of governing body subject to referendum - - Administrative decision not subject to referendum.**

Any legislative decision of a governing body is subject to the referendum process. A legislative decision is one that enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers. Any matter of a permanent or general character is a legislative decision. No administrative decision of a governing body is subject to the referendum process, unless specifically authorized by this code. An administrative decision is one that merely puts into execution a plan already adopted by the governing body itself or by the Legislature. Supervision of a program is an administrative decision. Hiring, disciplining, and setting the salaries of employees are administrative decisions.