

2024 Statewide Ballot Measures

Underscores indicate new language.

~~Overstrikes~~ indicate deleted language.

Constitutional Amendment E

Title: An Amendment to the South Dakota Constitution Updating Gender References for Certain Officeholders and Persons.

Attorney General Explanation: The South Dakota Constitution became effective upon the State joining the United States in 1889. The generic male pronouns he, his, and him are used in the text of the State Constitution to reference certain officeholders or individuals.

This amendment changes the text of the State Constitution to remove the use of generic male pronouns when referencing certain officeholders or individuals. For example, when referencing the Governor, instead of saying “he shall be commander-in-chief of the armed forces of the state,” the text will be changed to read “the Governor shall be commander-in-chief of the armed forces of the state.” The amendment makes similar changes to other references to the Governor, as well as to references to other officeholders including Lieutenant Governor, Supreme Court Justices, and Circuit Court Judges. The amendment also makes similar changes to references in the Constitution to general classes of people such as persons, electors, and public officers.

Vote "Yes" to adopt the amendment.

Vote "No" to leave the Constitution as it is.

Full Text of Constitutional Amendment E:

A JOINT RESOLUTION, Proposing and submitting to the electors at the next general election an amendment to the Constitution of the State of South Dakota, updating references to certain officeholders and persons.

BE IT RESOLVED BY THE SENATE OF THE STATE OF SOUTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

Section 1. That at the next general election held in the state, the following amendments to the Constitution of the State of South Dakota, as set forth in sections 2 through 25 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state for approval.

Section 2. That Article IV, § 3 of the Constitution of the State of South Dakota, be AMENDED:

§ 3. The Governor shall be responsible for the faithful execution of the law. ~~He~~ The Governor may, by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty or right by any officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceedings against the Legislature.

~~He~~ The Governor shall be commander-in-chief of the armed forces of the state, except when they shall be called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion.

The Governor shall commission all officers of the state. ~~He~~ The Governor may at any time require information, in writing or otherwise, from the officers of any administrative department, office or agency upon any subject relating to the respective offices.

The Governor shall at the beginning of each session, and may at other times, give the Legislature information concerning the affairs of the state and recommend the measures ~~he~~ the Governor considers necessary.

The Governor may convene the Legislature or either house thereof alone in special session by a proclamation stating the purposes of the session, and only business encompassed by such purposes shall be transacted.

Whenever a vacancy occurs in any office and no provision is made by the Constitution or laws for filling such vacancy, the Governor shall have the power to fill such vacancy by appointment.

The Governor may, except as to convictions on impeachment, grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures.

Section 3. That Article IV, § 5 of the Constitution of the State of South Dakota, be AMENDED:

§ 5. The lieutenant governor shall be president of the senate but shall have no vote unless the senators be equally divided. The lieutenant governor shall perform the duties and exercise the powers that may be delegated to ~~him~~ the lieutenant governor by the Governor.

Section 4. That Article IV, § 8 of the Constitution of the State of South Dakota, be AMENDED:

§ 8. All executive and administrative offices, boards, agencies, commissions and instrumentalities of the state government and their respective functions, powers and duties, except for the office of Governor, lieutenant governor, attorney general, secretary of state, auditor, treasurer, and commissioner of school and public lands, shall be allocated by law among and within not more than twenty-five principal departments, organized as far as practicable according to major purposes, by no later than July 1, 1974. Subsequently, all new powers or functions shall be assigned to administrative offices, agencies and instrumentalities in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department.

Except as to elected constitutional officers, the Governor may make such changes in the organization of offices, boards, commissions, agencies and instrumentalities, and in allocation of their functions, powers and duties, as ~~he~~ the Governor considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the Legislature within five legislative days after it convenes, and shall become effective, and shall have the force of law, within ninety days after submission, unless disapproved by a resolution concurred in by a majority of all the members of either house.

Section 5. That Article V, § 5 of the Constitution of the State of South Dakota, be AMENDED:

§ 5. The Supreme Court shall have such appellate jurisdiction as may be provided by the Legislature, and the Supreme Court or any justice thereof may issue any original or remedial writ which shall then be heard and determined by that court. The Governor has authority to require opinions of the Supreme Court upon important questions of law involved in the exercise of ~~his~~ the Governor's executive power and upon solemn occasions.

The circuit courts have original jurisdiction in all cases except as to any limited original jurisdiction granted to other courts by the Legislature. The circuit courts and judges thereof have the power to issue, hear and determine all original and remedial writs. The circuit courts have such appellate jurisdiction as may be provided by law.

Imposition or execution of a sentence may be suspended by the court empowered to impose the sentence unless otherwise provided by law.

Section 6. That Article V, § 6 of the Constitution of the State of South Dakota, be AMENDED:

§ 6. Justices of the Supreme Court, judges of the circuit courts and persons presiding over courts of limited jurisdiction must be citizens of the United States, residents of the state of South Dakota and voting residents within the district, circuit or jurisdiction from which they are elected or appointed. No Supreme Court justice shall ~~be deemed to have lost his~~ lose voting residence in a district ~~by reason of his removal because the justice moved~~ to the seat of government in the discharge of ~~his~~ the justice's official duties. Justices of the Supreme Court and judges of circuit courts must be licensed to practice law in the state of South Dakota.

Section 7. That Article V, § 7 of the Constitution of the State of South Dakota, be AMENDED:

§ 7. Circuit court judges shall be elected in a nonpolitical election by the electorate of the circuit each represents for an eight-year term.

A vacancy, as defined by law, in the office of a Supreme Court justice or circuit court judge, shall be filled by appointment of the Governor from one of two or more persons nominated by the judicial qualifications commission. The appointment to fill a vacancy of a circuit court judge shall be for the balance of the unexpired term; and the appointment to fill a vacancy of a Supreme Court justice shall be subject to approval or rejection as hereinafter set forth.

Retention of each Supreme Court justice shall, in the manner provided by law, be subject to approval or rejection on a nonpolitical ballot at the first general election following the expiration of three years from the date of ~~his~~ the appointment. Thereafter, each Supreme Court justice shall be subject to approval or rejection in like manner every eighth year. All incumbent Supreme Court justices at the time of the effective date of this amendment shall be subject to a retention election in the general election in the year in which their respective existing terms expire.

Section 8. That Article V, § 8 of the Constitution of the State of South Dakota, be AMENDED:

§ 8. ~~The~~ chief justice shall be selected from among the justices of the Supreme Court for a term and in a manner to be provided by law. The chief justice may resign ~~his office~~ the office of chief justice without resigning from the Supreme Court.

Section 9. That Article V, § 9 of the Constitution of the State of South Dakota, be AMENDED:

§ 9. The Legislature shall provide by law for the establishment of a judicial qualifications commission which have such powers as the Legislature may provide, including the power to investigate complaints against any justice or judge and to conduct confidential hearings concerning the removal or involuntary retirement of a justice or judge. The Supreme Court shall prescribe by rule the means to implement and enforce the powers of the commission. On recommendation of the judicial qualifications commission the Supreme Court, after hearing, may censure, remove or retire a justice or judge for action which constitutes willful misconduct in office, willful and persistent failure to perform ~~his~~ official duties, habitual intemperance, disability that seriously interferes with the performance of the duties or conduct prejudicial to the administration of justice which brings a judicial office into disrepute. No justice or judge shall sit in judgment in any hearing involving ~~his~~ the justice's or judge's own removal or retirement.

Section 10. That Article V, § 10 of the Constitution of the State of South Dakota, be AMENDED:

§ 10. ~~During his term of office~~ While in office, no Supreme Court justice or circuit court judge shall engage in the practice of law. Any Supreme Court justice or circuit court judge who becomes a candidate for an elective nonjudicial office shall thereby forfeit ~~his~~ the justice's or judge's judicial office.

Section 11. That Article V, § 11 of the Constitution of the State of South Dakota, be AMENDED:

§ 11. The chief justice is the administrative head of the unified judicial system. The chief justice shall submit an annual consolidated budget for the entire unified judicial system, and the total cost of the system shall be paid by the state. The Legislature may provide by law for the reimbursement to the state of appropriate portions of such cost by governmental subdivisions. The Supreme Court shall appoint such court personnel as it deems necessary to serve at its pleasure.

The chief justice shall appoint a presiding circuit judge for each judicial circuit to serve at the pleasure of the chief justice. Each presiding circuit judge shall have such administrative power as the Supreme Court designates by rule and may, unless it be otherwise provided by law, appoint judicial personnel to courts of limited jurisdiction to serve at ~~his~~ the pleasure of the presiding circuit judge. Each presiding circuit judge shall appoint clerks and other court personnel for the counties in ~~his~~ the presiding judge's circuit who shall serve at ~~his~~ the pleasure of the presiding judge at a compensation fixed by law. Duties of clerks shall be defined by Supreme Court rule.

The chief justice shall have power to assign any circuit judge to sit on another circuit court, or on the Supreme Court in case of a vacancy or in place of a justice who is disqualified or unable to act. The chief justice may authorize a justice to sit as a judge in any circuit court.

The chief justice may authorize retired justices and judges to perform any judicial duties to the extent provided by law and as directed by the Supreme Court.

Section 12. That Article VI, § 3 of the Constitution of the State of South Dakota, be AMENDED:

§ 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege or position on account of ~~his~~ the person's religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the state.

No person shall be compelled to attend or support any ministry or place of worship against ~~his~~ the person's consent nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution.

Section 13. That Article VI, § 7 of the Constitution of the State of South Dakota, be AMENDED:

§ 7. In all criminal prosecutions the accused shall have the right to defend in person and by counsel; to demand the nature and cause of the accusation against ~~him~~ the accused; to have a copy thereof; to meet the witnesses against ~~him~~ the accused face to face; to have compulsory process served for obtaining witnesses ~~in his~~ on the accused's behalf, and to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

Section 14. That Article VI, § 9 of the Constitution of the State of South Dakota, be AMENDED:

§ 9. No person shall be compelled in any criminal case to give evidence against ~~himself~~ the person or be twice put in jeopardy for the same offense.

Section 15. That Article VI, § 20 of the Constitution of the State of South Dakota, be AMENDED:

§ 20. All courts shall be open, and every ~~man~~ person for an injury done ~~him in his~~ to the person's property, person or reputation, shall have remedy by due course of law, and right and justice, administered without denial or delay.

Section 16. That Article VII, § 2 of the Constitution of the State of South Dakota, be AMENDED:

§ 2. Every United States citizen eighteen years of age or older who has met all residency and registration requirements shall be entitled to vote in all elections and upon all questions submitted to the voters of the state unless disqualified by law for mental incompetence or the conviction of a felony. The Legislature may by law establish reasonable requirements to ~~insure~~ ensure the integrity of the vote.

Each elector who qualified to vote within a precinct shall be entitled to vote in that precinct until ~~he~~ the elector establishes another voting residence. An elector shall never lose ~~his~~ residency for voting solely by reason of ~~his~~ the elector's absence from the state.

Section 17. That Article VIII, § 9 of the Constitution of the State of South Dakota, be AMENDED:

§ 9. The lands mentioned in this article shall be leased for pasturage, meadow, farming, the growing of crops of grain and general agricultural purposes, and at public auction after notice as hereinbefore provided in case of sale and shall be offered in tracts not greater than one section. All rents shall be payable annually in advance, and no term of lease shall exceed five years, nor shall any lease be valid until it receives the approval of the Governor.

Provided, that any lessee of school and public lands shall, at the expiration of a five-year lease, be entitled, at ~~his~~ the lessee's option, to a new lease for the land included in ~~his~~ the lessee's original lease, for a period of time not exceeding five years, without public advertising, at the current rental prevailing in the county in which such land is situated, at the time of the issuance of the new lease. The commissioner of school and public lands shall notify by registered mail each lessee or assignee on or before the first day of November first preceding the expiration of ~~his~~ the lessee's lease that such lease will expire.

Such option shall be exercised by the lessee by notifying the commissioner of school and public lands by registered mail, on or before the first day of December first preceding the expiration of ~~his~~ the lessee's lease describing the lands for which ~~he~~ the lessee desires a new lease, in the same manner as the same is described in ~~his~~ the lessee's original lease.

The Legislature may provide by appropriate legislation for the payment of local property taxes by the lessees of school and public lands.

Section 18. That Article XII, § 3 of the Constitution of the State of South Dakota, be AMENDED:

§ 3. The Legislature shall never grant any extra compensation to any public officer, employee, agent or contractor after the services shall have been rendered or the contract entered into, nor authorize the payment of any claims or part thereof created against the state, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void; nor shall the compensation of any public officer be increased or diminished during ~~his~~ the officer's term of office: provided, however, that the Legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Section 19. That Article XII, § 4 of the Constitution of the State of South Dakota, be AMENDED:

§ 4. An itemized statement of all receipts and expenditures of the public moneys shall be published annually in such manner as the Legislature shall provide, and such statement shall be submitted to the Legislature at the beginning of each regular session by the Governor with ~~his~~ the Governor's message.

Section 20. That Article XVI, § 5 of the Constitution of the State of South Dakota, be AMENDED:

§ 5. No officer shall exercise the duties of ~~his~~ the office after ~~he shall have been~~ the officer is impeached and before ~~his~~ the officer's acquittal.

Section 21. That Article XVI, § 7 of the Constitution of the State of South Dakota, be AMENDED:

§ 7. No person shall be tried on impeachment before ~~he shall have been~~ being served with a copy thereof at least twenty days previous to the day set for trial.

Section 22. That Article XVII, § 5 of the Constitution of the State of South Dakota, be AMENDED:

§ 5. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of ~~his~~ the member's or shareholder's votes for one candidate, or distribute them upon two or more candidates, ~~as he may prefer.~~

Section 23. That Article XX, § 3 of the Constitution of the State of South Dakota, be AMENDED:

§ 3. Should no place voted for at said election have a majority of all votes cast upon this question, the Governor shall issue ~~his~~ a proclamation for an election to be held in the same manner at the next general election to choose between the two places having received the highest number of votes cast at the first election on this question. This election shall be conducted in the same manner as the first election for the permanent seat of government, and the place receiving the majority of all votes cast upon this question shall be the permanent seat of government.

Section 24. That Article XXI, § 2 of the Constitution of the State of South Dakota, be AMENDED:

§ 2. The Legislature by two-thirds vote of each branch thereof at any regular session may fix the salary of any or all constitutional officers including members of the Legislature. In fixing any such salary the Legislature shall determine the effective date thereof and may in its discretion decrease or increase the salary of any officer during ~~his~~ the officer's term.

Section 25. That Article XXI, § 3 of the Constitution of the State of South Dakota, be AMENDED:

§ 3. Every person elected or appointed to any office in this state, except such inferior offices as may be by law exempted, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States and of this state, and faithfully to discharge the duties of ~~his~~ the office.

Constitutional Amendment F

Title: An Amendment to the South Dakota Constitution Authorizing the State to Impose a Work Requirement on Individuals Eligible for Expanded Medicaid Benefits.

Attorney General Explanation: The Medicaid program is funded by the State and the federal government to provide medical coverage for certain low-income people who qualify for the program. In 2022, the voters approved a Constitutional provision that expanded Medicaid eligibility for any person over age 18 and under 65 whose income is at or below 133% of the federal poverty level, plus 5% of the federal poverty level for the applicable family size.

This constitutional amendment authorizes the State to impose work requirements on any person eligible to receive benefits under the expanded Medicaid program, except for those persons who are physically or mentally disabled. The amendment does not identify any specific work requirement that may be imposed on those receiving expanded Medicaid benefits. Any work requirement proposed by the State must be approved by the federal government prior to implementation.

Vote "Yes" to adopt the amendment.

Vote "No" to leave the Constitution as it is.

Full Text of Constitutional Amendment F:

A JOINT RESOLUTION, Proposing and submitting to the voters at the next general election, an amendment to the Constitution of the State of South Dakota, authorizing the state to impose work requirements on certain individuals who are eligible for expanded Medicaid.

Section 1. That at the next general election held in the state, the following amendment to Article XXI, § 10 of the Constitution of the State of South Dakota, as set forth in section 2 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state for approval.

Section 2. That Article XXI, § 10 of the Constitution of the State of South Dakota, be AMENDED:

Beginning July 1, 2023, the State of South Dakota shall provide Medicaid benefits to any person over eighteen and under sixty-five whose income is at or below one hundred thirty-three percent of the federal poverty level plus five percent of the federal poverty level for the applicable family size, as authorized by federal law as of January 1, 2021. Such person shall receive coverage that meets or exceeds the benchmark or benchmark-equivalent coverage requirements, as such terms are defined by federal law as of January 1, 2021.

The State of South Dakota may not impose greater or additional burdens or restrictions on eligibility or enrollment standards, methodologies, or practices on any person eligible under this section than on any person otherwise eligible for Medicaid under South Dakota law, except that the State of South Dakota may, to the extent permitted by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, impose a work requirement on any person, eligible under this section, who has not been diagnosed as being physically or mentally disabled.

No later than March 1, 2023, the Department of Social Services shall submit all state plan amendments necessary to implement this section to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

The State of South Dakota shall take all actions necessary to maximize the federal financial medical assistance percentage in funding medical assistance pursuant to this section.

This section shall be broadly construed to accomplish its purposes and intents. If any provision in this section or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the section that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are severable.

Constitutional Amendment G

Title: An Initiated Amendment Establishing a Right to Abortion in the State Constitution.

Attorney General Explanation: This initiated amendment establishes a constitutional right to an abortion and provides a legal framework for the regulation of abortion. This framework would override existing laws and regulations concerning abortion.

The amendment establishes that during the first trimester a pregnant woman's decision to obtain an abortion may not be regulated nor may regulations be imposed on the carrying out of an abortion.

In the second trimester, the amendment allows the regulation of a pregnant woman's abortion decision, and the regulation of carrying out an abortion. Any regulation of a pregnant woman's abortion decision, or of an abortion, during the second trimester must be reasonably related to the physical health of the pregnant woman.

In the third trimester, the amendment allows the regulation or prohibition of abortion except in those cases where the abortion is necessary to preserve the life or health of the pregnant woman. Whether an abortion is necessary during the third trimester must be determined by the pregnant woman's physician according to the physician's medical judgment.

Judicial clarification of the amendment may be necessary. The Legislature cannot alter the provisions of a constitutional amendment.

Vote "Yes" to adopt the amendment.

Vote "No" to leave the Constitution as it is.

Full Text of Constitutional Amendment G:

Amendment Text: That Article VI of the Constitution of the State of South Dakota be amended by adding a NEW SECTION:

Before the end of the first trimester, the State may not regulate a pregnant woman's abortion decision and its effectuation, which must be left to the judgment of the pregnant woman.

After the end of the first trimester and until the end of the second trimester, the State may regulate the pregnant woman's abortion decision and its effectuation only in ways that are reasonably related to the physical health of the pregnant woman.

After the end of the second trimester, the State may regulate or prohibit abortion, except when abortion is necessary, in the medical judgment of the woman's physician, to preserve the life or health of the pregnant woman.

Constitutional Amendment H

Title: An Amendment to the South Dakota Constitution Establishing Top-Two Primary Elections.

Attorney General Explanation: Currently, to appear on the general election ballot, major party candidates for the following offices must participate in a partisan primary election: Governor, State Legislature, U.S. Senate and House of Representatives, and elected county offices. Only members of the candidate's party may vote for that candidate unless that party has opened the primary to voters not affiliated with the party.

Minor party candidates may be chosen by primary or party convention.

Unaffiliated candidates (independents) are only required to file nominating petitions to appear on the general election ballot.

For the listed offices, this amendment requires one primary election wherein all candidates run against each other in their respective races, including major and minor party and unaffiliated candidates. A candidate may list any party next to their name on the ballot regardless of party affiliation or registration. All voters may vote for any candidate. The two

candidates receiving the most votes advance to the general election. If there is more than one candidate to be elected to an office, the number of candidates advancing to the general election is twice the number to be elected.

Primary elections may be held for other offices.

The amendment may be challenged on constitutional grounds.

Vote "Yes" to adopt the amendment.

Vote "No" to leave the Constitution as it is.

Fiscal Note: Open primaries would require printing additional ballots at a cost of \$0.47 per ballot. The additional cost statewide to counties would currently be approximately \$23,667 for each primary election. The share of the total cost for each county will vary. There is no expected cost to state government.

Full Text of Constitutional Amendment H:

Be it enacted by the People of South Dakota:

That Article VII of the Constitution of South Dakota be amended by adding a NEW SECTION to read:

§ 4. A primary election held for the office of governor, a legislative office, a county office, the United States Senate, or the United States House of Representatives shall be open to all candidates and all qualified voters without regard to the candidates' or voters' party registration or affiliation, or lack thereof.

In a primary election covered by this section, each candidate must be listed on a single primary ballot regardless of the candidate's political party. A voter may vote for any primary candidate regardless of the voter's party affiliation or lack thereof. The two candidates receiving the highest number of votes cast in a primary election advance to the general election. If more than one candidate is to be elected to an office at the general election, the number of candidates advancing from the primary election is twice the number to be elected in the general election.

The general election ballot may only include those candidates advancing from the primary election. The legislature may, by law, establish procedures for replacing a candidate who advanced from the primary election but will not participate in the general election due to death, withdrawal from the race, or disqualification.

A candidate may select the name of a political party to be listed next to the candidate's name on the primary ballot. The same political party designation shall appear next to the candidate's name on the general election ballot if the candidate advances to the general election. Both the primary and general election ballots must state that a candidate's indicated political party designation does not constitute or imply an endorsement of the candidate by the political party designated.

The legislature may establish any necessary procedures to implement this section.

If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity will not affect any other provision or application of the section that can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

Initiative Measure 28

Title: An Initiated Measure Prohibiting Taxes on Anything Sold for Human Consumption.

Attorney General Explanation: Currently, the State collects tax on the sale or use of certain goods, including foods and drinks. Many municipalities also collect these taxes.

This initiated measure prohibits the State from collecting sales or use tax on anything sold for human consumption. The measure eliminates these sources of revenue for the State.

Human consumption is not defined by state law. However, its common definition includes more than foods and drinks.

The measure does not prohibit the collection of sales or use tax on alcoholic beverages or prepared food. Prepared food is defined by law to include food that is sold heated or with utensils.

The measure may affect the State's obligations under the tobacco master settlement agreement and the streamlined sales tax agreement. The master settlement agreement resulted from multi-state lawsuits against cigarette manufacturers for the public health effects of smoking. South Dakota's annual share of the master settlement agreement is approximately \$20 million. The streamlined sales tax agreement is a multistate program designed to simplify the collection of sales and use tax for companies selling in multiple jurisdictions.

Judicial or legislative clarification of the measure will be necessary.

Vote "Yes" to adopt the initiated measure.

Vote "No" to leave South Dakota law as it is.

Fiscal Note: Beginning July 1, 2025, the State could see a reduction in sales tax revenues of \$123.9 million annually from no longer taxing the sale of anything sold for human consumption, except alcoholic beverages and prepared food. Municipalities could continue to tax anything sold for human consumption.

Full Text of Initiated Measure 28:

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA: That Title 10 be amended by adding a NEW SECTION to read:

Notwithstanding any other provision of law, the state may not tax the sale of anything sold for human consumption, except alcoholic beverages and prepared food. Municipalities may continue to impose such taxes.

Initiative Measure 29

Title: An Initiated Measure Legalizing the Recreational Use, Possession, and Distribution of Marijuana.

Attorney General Explanation: This initiated measure allows individuals 21 years of age or older to possess, grow, ingest, and distribute marijuana or marijuana paraphernalia. Individuals may possess up to two ounces of marijuana in a form other than marijuana concentrate or other marijuana products. Individuals may possess up to six marijuana plants with no more than twelve plants per household. The measure also places limits on the possession of other forms of marijuana and marijuana products.

Under the measure, the possession, ingestion, and distribution of marijuana and marijuana paraphernalia remains illegal for individuals under the age of 21. Driving under the influence of marijuana remains illegal.

The measure restricts where individuals may possess or consume marijuana, such as schools or where tobacco is prohibited.

The measure allows employers to restrict an employee's use of marijuana. Property owners may also regulate the use of marijuana on their property.

The measure does not affect State laws dealing with hemp. It also does not change laws concerning the State's medical marijuana program.

The measure legalizes marijuana-derived substances considered felony-controlled substances under State law. Marijuana remains illegal under federal law.

Judicial or legislative clarification of this measure may be necessary.

Vote "Yes" to adopt the initiated measure.

Vote "No" to leave South Dakota law as it is.

Fiscal Note: The state and municipalities would collect minimal additional sales tax revenue, as the measure would not decriminalize the sale of cannabis but would decriminalize the sale of cannabis accessories. Counties could see incarceration expenses reduced by \$581,556 every year.

Full Text of Initiated Measure 29:

Be it enacted by the people of South Dakota.

Section 1. That title 34 be amended by adding a NEW SECTION to read:

Terms used in this chapter mean:

(1) “Local government,” a county, municipality, town, or township;

(2) “Cannabis,” the plant of the genus Cannabis, and any part of that plant, including the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or the plant’s resin, including hash and marijuana concentrate. The term includes an altered state of marijuana absorbed into the human body. The term does not include hemp, as defined in § 38-35-1 or fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administration, food, drink, or any other product;

(3) “Cannabis accessory,” any equipment, product, or material that is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing cannabis into the human body; and

(4) “Possession limit,” the following amounts of cannabis:

(a) Two ounces of cannabis in a form other than concentrated cannabis or cannabis products;

(b) Sixteen grams of concentrated cannabis, which includes hashish and cannabis extracts; and

(c) Cannabis products, other than concentrated cannabis, containing one thousand six hundred milligrams of tetrahydrocannabinol.

Section 2. That title 34 be amended by adding a NEW SECTION to read:

Subject to the limitations in this chapter, and notwithstanding any other law, the following acts, if done by a person at least twenty-one years of age, may not be an offense under state or local law, regulation, or ordinance; be subject to a civil fine, penalty, or sanction; be a basis for detention, search, or arrest; be a basis for the denial of any right or privilege; or be a basis for asset seizure or forfeiture:

(1) Possessing, using, ingesting, inhaling, processing, or transporting not more than the possession limit of cannabis; or transferring without consideration not more than the possession limit of cannabis to a person who is twenty-one years of age or older;

(2) Possessing, planting, cultivating, harvesting, drying, processing, or manufacturing not more than six cannabis plants and possessing and processing the cannabis produced by the plants, provided that the plants and any cannabis produced by

the plants in excess of the possession limit are kept at one private residence only, are in a locked space at the private residence, are not visible by normal, unaided vision from a public place; and that the total number of plants at the private residence may not exceed twelve, even if more than two people who are twenty-one years of age or older live in the residence;

(3) Possessing, using, or manufacturing any cannabis accessory;

(4) Delivering, distributing, transferring, or selling a cannabis accessory to a person twenty-one years of age or older;

(5) Allowing the person's property to be used for any of the acts permitted by this chapter; and

(6) Any combination of the acts allowed by this section.

Section 3. That title 34 be amended by adding a NEW SECTION to read:

Nothing in this chapter affects a law prohibiting:

(1) The delivery or distribution of cannabis or a cannabis accessory, with or without consideration, to a person younger than twenty-one years of age;

(2) The purchase, possession, use, or transport of cannabis or cannabis accessories by a person younger than twenty-one years of age;

(3) The consumption of cannabis by a person younger than twenty-one years of age;

(4) The operation of or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of cannabis;

(5) The consumption of cannabis while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport, while it is being operated;

(6) The smoking of cannabis within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;

(7) The possession or consumption of cannabis or possession of cannabis accessories on the grounds of a public or private preschool, elementary school, or high school, in a school bus, or on the grounds of any correctional or juvenile detention facility;

(8) The smoking of cannabis in a location where smoking tobacco is prohibited;

(9) The smoking of cannabis in a public place;

(10) The undertaking of any task under the influence of cannabis, if doing so would constitute negligence or professional malpractice; or

(11) Performing solvent-based extractions on cannabis using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol.

Section 4. That title 34 be amended by adding a NEW SECTION to read:

This chapter does not:

(1) Require an employer to permit or accommodate an employee to engage in conduct allowed by this chapter;

(2) Affect an employer's ability to restrict the use of cannabis by an employee;

(3) Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this chapter on or in that property; or

(4) Limit the ability of the state or a local government to prohibit or restrict any conduct otherwise permitted under this chapter within a building owned, leased, or occupied by the state or the local government.

Referred Law 21

Title: A Referred Act to Provide New Statutory Requirements for Regulating Linear Transmission Facilities, to Allow Counties to Impose a Surcharge on Certain Pipeline Companies, and to Establish a Landowner Bill of Rights.

Attorney General Explanation: The Act authorizes counties to impose, for any tax year in which the pipeline operator receives a tax credit, a \$1.00 per foot surcharge on carbon dioxide pipelines. Revenue from the surcharge must be distributed as tax relief to each property owner in the county where the pipeline is installed. Any remaining revenue can be allocated at each county's discretion. No other fee may be imposed except property taxes, or fees associated with road agreements.

The Act also imposes certain requirements on carbon dioxide pipelines: pipelines must be installed to a minimum depth; each pipeline operator is responsible for damages to drain tile, and to the surface owner, caused by the pipeline; each operator is also responsible for leaks or failures of the pipeline; and any land agent acting on behalf of the pipeline must be a pipeline employee, State resident, or State licensed real estate agent. The Act also includes requirements that carbon pipeline easements be in writing, and only enforceable for a specified period of time; pipeline operators must initiate business operations within five years of the easement; and each easement is void after five years of nonuse.

Vote "Yes" to allow the Act of the Legislature to become law.

Vote "No" to reject the Act of the Legislature.

Full Text of Referred Law 21:

An Act to provide new statutory requirements for regulating linear transmission facilities, to allow counties to impose a surcharge on certain pipeline companies, and to establish a landowner bill of rights.

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

Section 1. That a NEW SECTION be added to chapter 10-4:

Pipelines for the transmission of carbon dioxide are not subject to any discretionary formulas authorized by this title.

Section 2. That a NEW SECTION be added to chapter 10-12:

A county may impose a pipeline surcharge up to one dollar per linear foot of carbon dioxide pipeline installed in the county, during any tax year that the carbon dioxide pipeline company claims a tax credit pursuant to 26 U.S.C. § 45Q (January 1, 2024).

For each county where a carbon dioxide pipeline company has installed a pipeline, the company shall report to the county the linear footage of carbon dioxide pipeline installed in the county.

A carbon dioxide pipeline company shall remit the pipeline surcharge to each applicable county in the same manner as provided for the payment of property taxes in chapter 10-21. The revenue derived from the pipeline surcharge must be distributed as follows:

- (1) At least fifty percent as tax relief for property in the county where the carbon dioxide pipeline is located pro rata on a per foot basis to each property in the county upon which the pipeline is installed; and
- (2) The remaining revenue to be allocated as determined by the county.

Section 3. That § 10-37-3 be AMENDED:

10-37-3. Any pipeline company having lines in this state shall annually, on or before April fifteenth of each year, make out and deliver to the Department of Revenue a statement, verified by the oath of an officer or agent of such pipeline company making such statement, showing in detail for the year ended December thirty-first next preceding:

- (1) The name of the company;
- (2) The nature of the company, whether a person or persons, an association, copartnership, corporation or syndicate, and under the laws of what state organized;
- (3) The location of its principal office or place of business;
- (4) The name and post office address of the president, secretary, auditor, treasurer, and superintendent or general manager;
- (5) The name and post office address of the chief officer or managing agent in this state;
- (6) The whole number of miles of pipeline owned, operated, or leased within the state, including a classification of the size, kind, and weight thereof, separated, so as to show the mileage in each county, and each lesser taxing district;
- (7) A full and complete statement of the cost and actual present value of all buildings of every description owned by said pipeline company within the state and each lesser taxing district, not otherwise assessed;
- (8) The number, location, size, and cost of each pressure pump or station;
- (9) Any and all other property owned by said pipeline company within the state which property shall be classified and scheduled in such a manner as the secretary of revenue may by rule promulgated pursuant to chapter 1-26 require;
- (10) The gross earnings of the entire company, and the gross earnings on business done within this state;
- (11) The operating expenses of the entire company and the operating expenses within this state; ~~and~~
- (12) The net earnings of the entire company and the net earnings within this state; and
- (13) Whether or not the pipeline company that installs a pipeline for carbon sequestration claims a tax credit under 26 U.S.C. § 45Q (January 1, 2024) in that year.

Section 4. That § 49-41B-1 be AMENDED:

49-41B-1. The Legislature finds that energy development in South Dakota and ~~the Northern Great Plains~~ significantly surrounding states affects the welfare of the population, the environmental quality, the location and growth of industry, and the use of ~~the agricultural and~~ natural resources of the state. The Legislature also finds that by assuming permit authority, that the state must also ensure that ~~these~~ facilities are permitted and constructed in an orderly and timely manner so that the energy, commerce, and transmission requirements of the people of the state are fulfilled. Therefore, it is necessary to ensure that the location, construction, and operation of facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that the permitting or siting of a facility is determined by the commission and a facility may not be constructed or operated in this state without first obtaining a permit from the commission.

Section 5. That § 49-41B-19 be AMENDED:

49-41B-19. The Public Utilities Commission shall also hear and receive evidence presented by any state department, agency, or units of local government relative to the ~~environmental, social, and economic conditions and projected changes therein~~ elements in § 49-41B-22, and any applicable ordinance, resolution, or building code.

Section 6. That § 49-41B-28 be AMENDED:

49-41B-28. A permit for the construction of a transmission facility within a designated area ~~may supersede or preempt~~ supersedes and preempts any county, township, or municipal, or any other governmental unit land use, zoning, or building ~~rules, regulations~~ rule, regulation, or ordinance. Any local land use, zoning, or building rule, regulation, or ordinance preempted or superseded under this section is not an applicable rule or law under subdivision 49-41B-22(1). A route or transmission facility permitted by the commission under this chapter is not subject to any local land use, zoning, or building rule, regulation, or ordinance, unless the commission requires compliance with any generally applicable rule, regulation, or ordinance as a condition of the permit issued. The enforcement of any county, municipal, township, or other governmental unit rule, regulation, or ordinance for a transmission facility permitted under this chapter must be done pursuant to the order of the commission granting the permit.

~~ordinances upon a finding by the Public Utilities Commission that such rules, or regulation, or ordinances, as applied to the proposed route, are unreasonably restrictive in view of existing technology, factors of cost, or economics, or needs of parties where located in or out of the county or municipality. Without such a finding by the commission, no route shall be designated which violates local land use zoning, or building rules, or regulations, or ordinances.~~

Section 7. That a NEW SECTION be added to chapter 49-41B:

A county, municipality, township, or other governmental unit, including governmental units chartered under S.D. Const., Art. IX, § 2, may not enact or increase, in any form, a tax, fee, or charge that is related to a gas or liquid transmission line or an electric transmission line which requires or holds a permit under chapter 49-41B. The provisions of this section do not prohibit:

- (1) Real property taxes pursuant to title 10;
- (2) Road use, construction, maintenance, and improvement agreements pursuant to titles 7, 8, 9, or 31; and
- (3) The surcharge created by section 2 of this Act.

A county, municipality, township, or other governmental unit, including governmental units chartered under S.D. Const., Art. IX, § 2, may require a gas, liquid, or electrical transmission project to enter into a road use, construction, maintenance, and improvement agreement prior to construction.

Any fee or tax permitted under this section must be uniform and apply to all classes of facilities, except the surcharge listed under subdivision 3 of this section.

If after ninety days the applicant cannot come to terms with a county, municipality township, or other governmental unit, including governmental units chartered under S.D. Const., Art. IX, § 2, on a road use and maintenance agreement, the applicant may apply to the commission for an order in place of the agreement, specific to that unit of government and after notice and hearing the commission must grant an order determining the applicant's use and restoration of the units, roads, bridges, and rights of way.

Section 8. That a NEW SECTION be added to chapter 49-41B:

All pipelines carrying carbon dioxide must be installed so that the cover between the top of the pipe and the ground level, road bed, river bottom, or underwater natural bottom, as determined by recognized and generally accepted practices, must be a minimum of forty-eight inches in thickness and must be buried so that it is below the level of cultivation.

Section 9. That a NEW SECTION be added to chapter 49-41B:

An operator of a pipeline facility carrying carbon dioxide is liable for repairs of drain tile, which was installed prior to the installation of the pipeline facility, where the installation, construction, operation, maintenance, or repair of the pipeline facility is the proximate cause of the damage to the drain tile. The operator's liability pursuant to this section shall:

- (1) Continue for the life of the pipeline facility;
- (2) Cover full replacement costs including without limitation material, labor, and equipment; and
- (3) Include the reclamation and restoration of topsoil as part of any drain tile repair.

Section 10. That a NEW SECTION be added to chapter 49-41B:

An operator of a pipeline facility carrying carbon dioxide shall be liable for all damages resulting from the installation, construction, operation, maintenance, repair, leaks, ruptures, and other failures of the pipeline facility. The operator shall indemnify and hold the surface owner harmless from any loss, claim, or damage resulting from the installation, construction, operation, maintenance, repair, leaks, ruptures, and other failures of the pipeline facility, other than for gross negligence or willful misconduct of the surface owner.

In the event that the surface owner is a county, city, or other governmental unit, including governmental units chartered under S.D. Const., Art. IX, § 2, the operator's liability and indemnification requirements shall include without limitation the governmental unit's road, bridge, and other infrastructure damages.

Section 11. That a NEW SECTION be added to chapter 49-41B:

An operator of a pipeline facility carrying carbon dioxide must include an agricultural impact mitigation plan in its application for a permit under this chapter.

Section 12. That a NEW SECTION be added to chapter 49-41B:

An operator of a pipeline facility carrying carbon dioxide must offer a dispersion analysis into evidence before the commission. The commission may enter an order declaring such dispersion analysis, or a portion of the

dispersion analysis, confidential. Any order declaring a dispersion analysis, or a portion of the dispersion analysis, as confidential must be justified in specific findings, in writing or on the record.

The commission must make the dispersion analysis available, in relevant part, to each applicable county, emergency manager, and law enforcement agency. The commission shall make available a dispersion analysis report to the public.

Section 13. That a NEW SECTION be added to chapter 49-41B:

A land agent acting on behalf of a pipeline facility carrying carbon dioxide must be a pipeline facility employee, a resident of the state, or a real estate agent licensed in the state.

Section 14. That a NEW SECTION be added to title 43:

Sections 14 to 15, inclusively, of this Act may be cited as the Landowner Bill of Rights.

Section 15. That a NEW SECTION be added to title 43:

Any landowner granting a carbon pipeline easement has the following rights:

- (1) Each pipeline placed in a carbon pipeline easement must meet the minimum depth requirement in section 8 of this Act;
- (2) The entity holding rights in the carbon pipeline easement must repair any damage to drain tile as set forth in section 9 of this Act;
- (3) An operator of a pipeline facility carrying carbon dioxide is liable to a landowner for any leaks or repairs as provided in section 9 of this Act;
- (4) An operator of a pipeline facility carrying carbon dioxide must indemnify the owner as provided in section 10 of this Act;
- (5) Any applicant desiring to obtain a permit to operate a pipeline facility carrying carbon dioxide must file the plan as provided in section 11 of this Act;
- (6) Any applicant desiring to obtain a permit to operate a pipeline facility carrying carbon dioxide must file a disclosure of the dispersion analysis as provided in section 12 of this Act;
- (7) Any applicant desiring to obtain a permit to operate a carbon dioxide pipeline facility must engage a landowner as required by section 13 of this Act;
- (8) Each carbon pipeline easement agreement must include a statement disclosing the information in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- (9) If the easement holder mortgages or otherwise encumbers to any party any part of the easement holder's rights and interests under the carbon pipeline easement, the mortgage or encumbrance is enforceable only as permitted in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- (10) A carbon pipeline easement is not enforceable after the period of time set forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- (11) An operator of a pipeline facility holding the right in the carbon pipeline easement must initiate business operations within the time period set forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- (12) A carbon pipeline easement expires after the passing of a period of nonuse as set forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;

- (13) A carbon pipeline easement must be in writing as required by HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;
- (14) A landowner granting a carbon pipeline easement has the examination and survey protection rights as set forth in § 21-35-31; and
- (15) To receive the one-time payment as provided in HB 1185, § 1, if enacted by the Ninety-Ninth Legislature.