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**2012 Constitutional Amendments**

The following amendments to the State Constitution are submitted to the voters by the Legislature. The amendments will not become effective unless approved by majority vote.

**Constitutional Amendment M**

**Title:** An Amendment to the South Dakota Constitution regarding certain provisions relating to corporations.

**Attorney General Explanation:**

The Constitution currently contains certain restrictions on the Legislature's authority to enact laws regarding corporations. For example, corporate directors must be elected by cumulative voting, in which a shareholder may choose to cast all votes for a single candidate or spread the votes among two or more candidates. Corporate stock or bonds may only be issued for money, labor or property received by the corporation. Corporate stock or debt may not be increased without prior notice to and consent of current stockholders.

Constitutional Amendment M removes these restrictions, and allows the Legislature to: (1) authorize alternative methods of voting in elections for corporate directors; (2) expand the types of contributions a corporation may receive for the issuance of stock or bonds; and (3) establish procedures governing the increase of corporate stock or debt.

A vote "Yes" will remove the constitutional restrictions.

A vote "No" will leave the Constitution as it is.

**Full Text of Constitutional Amendment M:**

That Article XVII, section 1 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 1. No corporation shall be created or have its charter extended, changed or amended by special laws, except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the state; but the Legislature shall provide, by general laws, for the organization of all corporations hereafter to be created. The Legislature shall have the authority to enact laws governing the operation and dissolution of corporations.

That Article XVII, section 5 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 5. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer votes in the manner consistent with laws enacted by the Legislature.

That Article XVII, section 8 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 8. No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received, or for the reasonable value of other contribution to the corporation; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to be held after sixty days notice given in pursuance of law the manner consistent with laws enacted by the Legislature.

**Constitutional Amendment N**

**Title:** An Amendment to the South Dakota Constitution repealing certain reimbursement restrictions for travel by legislators to and from a legislative session.

**Attorney General Explanation:**

The Constitution fixes the mileage reimbursement rate for legislators at five cents per mile for their travel to and from a legislative session. Constitutional Amendment N repeals this constitutional limitation and allows legislator travel reimbursement to be set by the Legislature.

A vote "Yes" will eliminate the fixed travel reimbursement rate.

A vote "No" will leave the Constitution as it is.

**Full Text of Constitutional Amendment N:**

That Article III, section 6 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 6. The terms of office of the members of the Legislature shall be two years; they legislators shall receive for their services the salary fixed by law under the provisions of § 2 of article XXI of this Constitution, and five cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislature on the most usual route.

No person may serve more than four consecutive terms or a total of eight consecutive years in the senate and more than four consecutive terms or a total of eight consecutive years in the house of representatives. However, this restriction does not

apply to partial terms to which a legislator may be appointed.

A regular session of the Legislature shall be held each year and shall not exceed forty legislative days, excluding Sundays, holidays and legislative recess, except in cases of impeachment, and members of the Legislature shall receive no other pay or perquisites except salary and mileage.

**Constitutional Amendment O**

**Title:** An Amendment to the South Dakota Constitution changing the method for distributions from the cement plant trust fund.

**Attorney General Explanation:**

In 2001, the \$238 million in proceeds from the sale of the state cement plant were placed in a constitutionally created trust fund. Currently, the Constitution requires a yearly transfer of \$12 million from the cement plant trust fund to the state general fund. In addition, under certain circumstances the Legislature must authorize distributions of cement plant trust fund earnings for the support of education.

Amendment O replaces the existing method for cement trust fund distributions. The amendment would require a yearly transfer of 4% of the market value of the cement plant trust fund to the state general fund for the support of education.

A vote "Yes" is for changing the method for distributions from the cement plant trust fund.

A vote "No" will leave the Constitution as it is.

**Full Text of Constitutional Amendment O:**

That Article XIII, section 20 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 20. The net proceeds derived from the sale of state cement enterprises shall be deposited by the South Dakota Cement Commission in a trust fund hereby created to benefit the citizens of South Dakota. The South Dakota Investment Council or its successor shall invest the trust fund in stocks, bonds, mutual funds, and other financial instruments as provided by law. Each fiscal year beginning in fiscal year 2001, a transfer of twelve million dollars shall be made from the trust fund to the state general fund as provided by law.

That Article XIII, section 21 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 21. Except as provided in Article XIII, section 20 of the Constitution of the State of South Dakota, the original principal of the trust fund shall forever remain inviolate. However, the Legislature shall, by appropriation, make distributions from the difference between the twelve million dollar annual general fund transfer and five percent of the market value of the trust fund for the support of education, but not for the replacement of state aid to general education or special education, if the increase in the market value of the trust fund in that fiscal year was sufficient to maintain the original principal of the trust fund after such distributions. Beginning with fiscal year 2006, the market value of the trust fund shall be determined by adding the market value of the trust fund at the end of the sixteen most recent calendar quarters and dividing that sum by sixteen, or the market value of the trust fund at the end of that calendar year for the support of education in South Dakota. The transfer shall be made prior to June thirtieth of the subsequent calendar year.

**Constitutional Amendment P**

**Title:** An Amendment to the South Dakota Constitution adding balanced budget requirements.

**Attorney General Explanation:**

While the constitution currently restricts the State from incurring debt, it does not expressly require the State to have a balanced budget. Amendment P requires the Governor to propose a balanced budget. In addition, Amendment P prohibits legislative appropriations from exceeding anticipated revenues and existing available funds. The amendment is not intended to affect other constitutional provisions.

A vote "Yes" will include balanced budget requirements in the Constitution.

A vote "No" will leave the Constitution as it is.

**Full Text of Constitutional Amendment P:**

That Article XII of the Constitution of the State of South Dakota, be amended by adding a NEW SECTION to read as follows:

§ 7. The Governor shall propose a budget in which expenditures or appropriations may not exceed anticipated revenue and existing funds available for expenditure or appropriation. Appropriations by the Legislature may not exceed anticipated revenue and existing funds available for expenditure or appropriation.

Nothing in this section is intended to limit, restrict, expand, modify, or otherwise affect any other provision of this Constitution, including Article XIII.

**2012 Initiated Measure**

The following initiated measure was proposed by petition for submission to the voters. This initiated measure will not become effective unless approved by majority vote.

**Initiated Measure 15**

**Title:** An initiated measure to increase state general sales and use taxes for additional K-12 public education and Medicaid funding

**Attorney General Explanation:**

The initiated measure increases the state general sales and use tax rate from 4% to 5%. The additional tax revenue will be split evenly between K-12 public education and Medicaid. The education funds will be provided to school districts based on enrollment, to be spent on improving education as school boards determine. The Medicaid funds will be spent only on payments to Medicaid providers and related state expenses.

The additional funds cannot replace or reduce state funding levels set for fiscal year 2012 relating to existing Medicaid and K-12 public education programs, including state aid to education. Currently, state aid is to be adjusted annually by 3% or the rate of inflation, whichever is less. Under the measure, this annual adjustment cannot exceed the growth rate in state general fund revenues. Any resulting shortfall in state aid will be made up in subsequent years.

A vote "Yes" is for the proposed law.

A vote "No" is against the proposed law.

**Full Text of Initiated Measure 15:**

1. Commencing January 1, 2013, twenty percent of the monies collected pursuant to the South Dakota sales and use taxes imposed by SDCL chapters 10-45 and 10-46 shall be placed in a special fund known as the Moving South Dakota Forward fund. The monies in the Moving South Dakota Forward fund shall be allocated into the following two subfunds within the Moving South Dakota Forward fund (1) fifty percent shall be allocated to the Moving K-12 Education Forward subfund; and (2) fifty percent shall be allocated to the Moving Healthcare Forward subfund.

2. Monies allocated in Section 1 of this initiated measure shall be disbursed as follows:

(1) Monies in the Moving K-12 Education Forward subfund are continuously appropriated to the public school districts of South Dakota, to be distributed pro rata based upon each school district's relative share of fall enrollment as defined in SDCL chapter 13-13, compared to the fall enrollment of all school districts. Funds deposited in the Moving K-12 Education Forward subfund in the preceding calendar quarter shall be distributed, provided above, to the public school districts of South Dakota by the first business day of February, May, August, and November of each year, commencing May 1, 2013. Funds received by a school district from the Moving K-12 Education Forward subfund shall be used at the sole discretion of the public school district's governing board for the purpose of improving public education;

(2) Eighty percent of the monies in the Moving Healthcare Forward subfund shall be spent only for the purpose of funding payments to providers to the South Dakota Medicaid program, which are incurred due to increases in expenses related to the reimbursement rates paid to service providers per unit of service in excess of such reimbursement rates in effect as of July 1, 2011; and

(3) Twenty percent of the monies in the Moving Health Care Forward subfund shall be spent only for the purpose of funding expenses related to payments to providers to the South Dakota Medicaid Program, which are incurred due to increases in the case load volume experienced by the South Dakota Medicaid program from the case levels as of July 1, 2011.

3. No monies deposited in the Moving K-12 Education Forward subfund may be spent in any way, either directly or indirectly, to reduce, supplant, or replace appropriations for any state K-12 education program in existence for state fiscal year 2012, including specifically the state aid to education and special education programs established in SDCL chapters 13-13 and 13-37. The per student allocation in SDCL chapter 13-13 and the per student allocation for each specified disability in SDCL chapter 13-37 shall be adjusted by the annual application of their respective index factors, as set forth in SDCL subdivisions 13-13-10.1(3) and 13-37-35.1(6), as in effect on July 1, 2011. However, the index factor adjustment shall, in no case, exceed the actual percentage growth in state general fund revenues for the most recently completed fiscal year. If the percentage growth in state general fund revenues is less than the index factor sin any year, the

difference shall be made up in the immediately following years to the extent the percentage growth in state general fund revenues exceeds the index factors.

4. No monies deposited in the Moving Health Care Forward subfund may be spent in any way, either directly or indirectly, to reduce, supplant, or replace state appropriations for any state Medicaid program in existence for state fiscal year 2012.

5. Effective January 1, 2013, any sales or use tax imposed at a rate of four percent by the provisions of SDCL chapters 10-45 or 10-46 are hereby increased by one percent each to a total rate of five percent each.

**2012 Referred Laws**

The following laws were adopted by the Legislature and referred to the voters by petition. These laws will not become effective unless approved by majority vote.

**Referred Law 14**

**Title:** An Act to establish the Large Project Development Fund.

**Attorney General Explanation:**

The referred law establishes the "Large Project Development Fund." Beginning January 1, 2013, 22% of contractors' excise tax revenues would be transferred from the state general fund to the Large Project Development Fund.

The South Dakota Board of Economic Development would use Large Project Development Fund monies to provide grants for the construction of large economic development projects within the state. To be eligible, a project must have a cost exceeding \$5 million. Examples of eligible projects include laboratories and facilities for testing, manufacturing, power generation, power transmission, agricultural processing, and wind energy. Examples of ineligible projects include retail establishments; residential housing; and facilities for lodging, health care services and the raising or feeding of livestock.

A vote "Yes" is for the establishment of the Large Project Development Fund.

A vote "No" is against the referred law.

**Full Text of Referred Law 14:**

Section 1. That § 1-16G-1.2 be amended to read as follows:

1-16G-1.2. The Board of Economic Development may take title by foreclosure to any property given as security if the acquisition is necessary to protect any economic development grant or loan or any large project development grant made under pursuant to the provisions of this chapter, and may sell, transfer, or convey any such property to any responsible buyer. Any sale of property hereunder pursuant to the provisions of this chapter shall be performed in a commercially reasonable manner. If the sale, transfer, or conveyance cannot be effected with reasonable promptness, the board may, in order to prevent financial loss and sustain employment, lease the property to a responsible tenant or tenants.

All sale proceeds or lease payments received by the board pursuant to this section shall be deposited in the fund from which the original grant or loan was made.

Section 2. That § 1-16G-8 be amended to read as follows:

1-16G-8. The Board of Economic Development shall promulgate rules pursuant to chapter 1-26 concerning the following:

- (1) The existing barriers to economic growth and development in the state;
- (2) Developing investment in research and development in high technology industries;
- (3) The submission of business plans prior to the approval of economic development grants or loans or large project development grants. Business plans shall include the products or services to be offered by the applicant, job descriptions with attendant salary or wage information by job category, educational requirements by job category, methods of accounting, financing other than that provided by the economic development grant or loan or a large project development grant, and marketing, sales, merchandising, and other disciplines proposed to be used for business growth and expansion;
- (4) The cooperation between agencies of state government and applicant businesses for nonfinancial services including loan packaging, marketing assistance, research assistance, and assistance with finding solutions for complying with environmental, energy, health, safety, and other federal, state, and local laws and regulations;
- (5) Regular performance monitoring and reporting systems for participating businesses to assure compliance with their business plans and terms of repayment of an economic development loan and compliance with terms of an economic development grant or a large project development grant;
- (6) Establish eligibility criteria for grants and loans;
- (7) Establish application procedures for grants and loans, including a requirement

that grant and loan applications be signed under penalty of perjury;

(8) Establish criteria to determine which applicants will receive grants or loans;

(9) Govern the use of proceeds of grants and loans;

(10) Establish criteria for the terms and conditions upon which loans shall be made, including matching requirements, interest rates, repayment terms, and the terms of security given to secure such loans; and

(12) Establish criteria for the terms and conditions upon which grants shall be made, including permitted uses, performance criteria, and matching requirements; and

(12) Establish criteria for the terms and conditions upon which grants shall be made, including permitted uses, performance criteria, and matching requirements; and

Section 3. That § 1-16G-16.1 be amended to read as follows:

1-16G-16.1. The Board of Economic Development may use the revolving economic development and initiative fund for the purpose of paying taxes and liens and for the procuring of legal services and other services necessary to protect, recover, maintain, and liquidate the assets of the revolving economic development and initiative fund and the large project development fund. Such costs may be incurred and paid up to ten percent of the loan or grant balance with a majority vote of the board of economic development. Costs in excess of ten percent shall be approved by a two-thirds vote of the board. Such services are not subject to state bid laws so long as such services are procured in a commercially acceptable manner.

Section 4. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this Act Mean:

- (1) "Large project," a project with a total project cost exceeding five million dollars; and
- (2) "Project cost," the amount paid in money, credits, property, or other money's worth for a project.

Section 5. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, the term, project, means a new building or structure or the expansion of an existing building or structure, the construction of which is subject to the contractor's excise tax imposed by chapters 10-46A or 10-46B. A project includes laboratory and testing facilities, manufacturing facilities, power generation facilities, power transmission facilities, agricultural processing facilities, and wind energy facilities. A project does not include any building or structure:

- (1) Used predominantly for the sale of products at retail, other than the sale of electricity at retail, to individual consumers;
- (2) Used predominantly for residential housing or transient lodging;
- (3) Used predominantly to provide health care services;
- (4) Constructed for raising or feeding of livestock; or
- (5) That is not subject to ad valorem real property taxation or equivalent taxes measured by gross receipts.

Section 6. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

There is established in the state treasury a fund to be known as the large project development fund for the purpose of making grants for large project development.

Section 7. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

The Board of Economic Development may make grants from the large project development fund for the purpose of promoting large project development in South Dakota.

Section 8. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

All money in the fund is hereby appropriated for the purpose of making grants as provided in this Act. Any repayment of grants from the large project development fund and any interest thereon shall be received into the large project development fund.

Section 9. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

The Board of Economic Development may accept and expend for the purposes of sections 6 and 7 of this Act, inclusive, any funds obtained from federal sources, gifts, contributions, or any source if such acceptance and expenditure is approved in accordance with § 4-8B-10.

Section 10. That chapter 1-16G be amended by adding thereto a NEW SECTION to read as follows:

There is hereby continuously appropriated to the large project development fund the amount of twenty-two percent of all deposits into the general fund of the contractors' excise tax imposed by chapter 10-46A and the alternate contractors' excise tax imposed by chapter 10-46B. Transfers from the general fund to the large project development fund pursuant to this provision shall be made on a monthly basis by the Bureau of Finance and

Management.

Section 11. The provisions of section 10 of this Act are effective on January 1, 2013.

**Referred Law 16**

**Title:** An education reform act to establish a teacher scholarship program; create a program for math and science teacher bonuses; create a program for teacher merit bonuses; mandate a uniform teacher and principal evaluation system; and eliminate state requirements for teacher tenure.

**Attorney General Explanation:**

Referred Law 16 is an education reform act with five key components. First, it establishes a scholarship program for eligible college students who commit to teach in South Dakota in critical need subject areas.

Second, the referred law creates a program to provide state-funded annual bonuses for eligible math and science teachers.

Third, the referred law develops a separate "Top Teachers" bonus program. This program provides annual state-funded merit bonuses for up to 20% of each school district's full-time certified teachers, as awarded by the local school boards.

Alternatively, a school board may enact its own program for teacher bonuses, using these state-provided funds. A school board may opt out of these merit bonus programs altogether, resulting in reallocation of its merit bonus funds to other participating school districts.

Fourth, the referred law mandates a uniform statewide system for evaluating teachers and principals, including a rating system.

Fifth, the referred law eliminates state requirements for continuing contracts ("tenure") for teachers who do not achieve tenure by July 1, 2016. School boards may, in their discretion, choose to offer continuing contracts to non-tenured teachers.

A vote "Yes" is to enact the education reform act.

A vote "No" is against the referred law.

**Full Text of Referred Law 16:**

Section 1. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

Beginning in the 2013-2014 academic year, there is hereby established the South Dakota critical teaching needs scholarship program. The purpose of the program is to encourage South Dakota's high school graduates to obtain their postsecondary education in South Dakota for teaching, to remain in the state upon completion of their education, and to contribute to the state and its citizens by working in a critical need teaching area.

Section 2. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

The South Dakota critical teaching needs scholarship program shall be administered by the Critical Teaching Needs Scholarship Board which is hereby established. The board shall consist of five members appointed by the Governor for a term of five years, except that the initial appointments shall be for periods of one, two, three, four, and five years. A majority of the board shall be present either personally or by teleconference to constitute a quorum.

The Department of Education shall provide necessary support services to the board.

Section 3. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

From the total pool of applicants, the Critical Teaching Needs Scholarship Board shall award no more than one hundred critical teaching needs scholarships for each academic year. The board shall award scholarships based on the requirements of sections 5 and 6 of this Act, the filling of critical teaching needs areas, and other academic and personal characteristics of each applicant as determined by the board. Notwithstanding the provisions of this section, if the board rescinds a scholarship that has been awarded, the board may award the amount of the rescinded scholarship to an alternate.

Section 4. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

All accredited South Dakota public and nonpublic postsecondary institutions which offer a baccalaureate degree in elementary or secondary education are eligible to participate in the scholarship program. Each institution may choose whether to participate in the program and may limit the number of scholarship recipients the institution will accept in each academic year.

Section 5. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

In order to be eligible for a critical teaching needs scholarship, a student shall:

- (1) Agree, in writing, to stay in South Dakota and work in a critical teaching needs area for five years after graduation from a participating postsecondary institution;
- (2) Agree, through a promissory note, that failure to abide by the provisions of subdivision (1) will result in the scholarship being converted into an interest bearing loan;
- (3) Attend a participating South Dakota postsecondary

institution as an undergraduate junior or senior and be accepted in an elementary or secondary education program at the institution that will prepare the student to work in a critical need teaching area; and

(4) Be a United States citizen or lawful permanent resident.

For purposes of subdivision (3), a junior is a student who has earned sixty credit hours prior to the beginning of the third year of instruction, and a senior is a student who has earned ninety credit hours prior to the fourth year of instruction.

A student is eligible to participate in the South Dakota critical teaching needs scholarship program for the equivalent of two academic years (four consecutive spring and fall terms) or until the attainment of a baccalaureate degree in elementary or secondary education in a critical teaching needs area, whichever comes first. However, the Critical Teaching Needs Scholarship Board may grant exceptions to the continuous enrollment requirements for good cause.

Scholarships are not provided for summer session students enrolled in traditional four year programs.

Section 6. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

In addition to the eligibility criteria identified in section 5 of this Act, the Critical Teaching Needs Scholarship Board may require applicants to submit a written essay or other information by which to judge the academic and personal qualifications of the applicant.

Section 7. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

The amount of the annual scholarship shall equal the tuition and generally applicable fees for thirty credit hours at a South Dakota public postsecondary institution as of July 1, 2013. The scholarship amount paid to a recipient attending a participating nonpublic postsecondary institution shall equal the amount paid to a recipient attending a public postsecondary institution.

One-half of the annual scholarship shall be paid to public postsecondary institutions on behalf of eligible students there enrolled or directly to eligible students enrolled at nonpublic postsecondary institutions at the beginning of the fall semester, and the other half shall be paid at the beginning of the spring semester.

If, in any year, the total funds available to fund the critical teaching needs scholarships are insufficient to permit each eligible recipient to receive the full amount provided in this section, the available moneys shall be prorated and distributed to each recipient in proportion to the entitlement contemplated by this section. The total amount of the scholarship may not exceed the amount stipulated in this section.

Section 8. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

In order to maintain eligibility for the critical teaching needs scholarship program, a student shall:

- (1) Maintain a cumulative 2.8 grade point average on a 4.0 scale. The student shall complete consecutive spring and fall terms in order to remain eligible for continuation of the scholarship program from term to term;
- (2) Make satisfactory academic progress towards a degree by earning thirty credit hours per year;
- (3) Attend and graduate from a participating South Dakota postsecondary institution with an elementary or secondary education degree which qualifies the student to teach in a critical teaching needs area in South Dakota; and
- (4) Upon graduation, stay in South Dakota and teach in a critical teaching needs area for five years.

If factors beyond the control of a student who has been awarded a critical teaching needs scholarship prevent the student from meeting any of the requirements in subdivisions (1) to (3), the Critical Teaching Needs Scholarship Board may temporarily waive the requirements of those subdivisions. The board may rescind a scholarship award if the student does not maintain eligibility as prescribed in those subdivisions.

Failure to fulfill the requirements of subdivision (4) shall result in the critical teaching needs scholarship being converted into an interest bearing loan. The board shall set the rate of interest, as allowed by law. The five years of employment referenced in subdivision (4) shall be fulfilled consecutively unless the board waives this requirement for good cause, and the five years of employment may be fulfilled at more than one school district in South Dakota.

Section 9. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as follows:

The Department of Education may receive gifts, donations, grants, or endowments for the purposes of sections 1 to 8, inclusive, of this Act.

Section 10. The Board of Education may promulgate rules pursuant to chapter 1-26 to

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