

[What I found about ballot law upon further review](#)

Below is a story I wrote Monday for the seven daily newspapers I serve regarding the history of South Dakota's threshold for the number of signatures of registered voters needed on a statewide petition for an initiative or a referendum.

The rest of the back-story on initiatives and referrals and the signatures needed

By Bob Mercer - State Capitol Bureau

PIERRE – The recent attempt by some Republican legislators to increase the number of signatures needed on petitions for referrals and initiatives would have changed South Dakota's original law from 1899.

The Legislature expressly had authority, from the 1898 state constitutional amendment creating the referendum and initiative, to define the signatures needed.

The constitutional amendment set the threshold at no more than 5 percent of qualified electors but didn't define qualified electors.

Instead, the amendment's final sentence – still found in the Article III, Section 1 of the constitution – said: "The Legislature shall make suitable provisions for carrying into effect the provisions of this article."

The Legislature in its 1899 session set the signatures requirement at 5 percent of the vote cast for governor at the last preceding general election.

This year, Sen. Corey Brown, R-Gettysburg, attempted to change the threshold, to 5 percent of registered voters. That would have nearly doubled the signatures necessary.

The 1899 law carried an interesting final section that said: "Whereas, there is no law for carrying into effect that portion of the Constitution relating to the initiative and referendum, therefore an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage and approval.

The 1899 version carried forward into the law books of 1903, 1919, 1939 and since.

Originally some thought the 5 percent of governor vote was adopted in a 1976 revision of South Dakota's election code. The legislation that year did set the standard at 5 percent of governor vote, but was merely repeating what was already in law.

The 1899 law's prime sponsor was Rep. Albert W. Wilmarth, a Republican and lawyer from Huron.

He went through a string of political struggles to get it passed. On the first try in the House of Representatives, the vote was 54-16, short of the two-thirds majority needed with the emergency clause.

Ten days later, on Tuesday, Jan. 31, 1899, the House approved the measure 77-4. Then it went to the Senate, where more difficulty rose.

Sen. Thomas Bouck, a Fusion Party member from Milbank, delayed passage by proposing massive amendments that seemed to be intended to derail the legislation.

The debate split in multiple ways. Sixteen senators, led by Bouck and W.J. Bulow, a Democrat from Beresford who would be elected governor a quarter century later, presented a protest and dissent.

Their reason, according to the Senate journal from that Monday afternoon of Feb. 27, 1899: "Because it is impracticable in its features and cannot be put into operation in its present form."

Sen. Louis Loomis, R-Alpena, said he would vote for the measure even though he "was opposed to the enormous expense which he believed the bill would necessitate but felt compelled to vote for it as the amendment to the Constitution was carried at the late election," according to the Senate journal.

Perhaps the words of Loomis made a difference. The Senate next voted 43-2 in favor. The threshold was set at 5 percent of the governor vote.

The Legislature had decided in its 1897 session to put the question to South Dakota voters whether to add the initiative and referendum to the state constitution.

The sponsor of the resolution was Rep. Lars M. Benson, a Republican from Verdon in Brown County. The House approved the resolution 49-23 on Jan. 27, 1897.

In the Senate it failed 20-23, got tangled in a series of political maneuvers, and then passed 26-17.

Final passage of the resolution came Saturday, February 27, 1897, after Louis Crill, a Democrat from Richland in Union County, and the Senate president pro tem, spoke on it.

Crill and five other senators changed from nays to ayes. They opened the door to a rich history of South Dakota voters acting as citizen legislators at the polls in even-numbered Novembers.

POSTSCRIPT: Unfortunately I committed a writing error in the story that was published this morning in some of the newspapers. In the third paragraph I stated incorrectly that the constitutional amendment set the number at "no less" than 5 percent. The amendment says "no more" than 5 percent. I apologize to those newspaper readers for the error.

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