



May 8, 2023

Travis Ismay
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SD Secretary of State

Dear Travis Ismay:

SDCL 12-13-25 requires the South Dakota Legislative Research Council (LRC) to review each proposed initiated measure submitted to it by a sponsor, for the purpose of assisting the sponsor in writing the proposal "in a clear and coherent manner in the style and form of other legislation" that "is not misleading or likely to cause confusion among voters." Based on this review, the LRC provides written comments to the proposal's sponsor for the purpose of assisting the sponsor in meeting these requirements. This includes providing "assistance . . . to minimize any conflict with existing law and to ensure the [proposal]'s . . . effective administration."

The proposed initiated measure is drafted as follows:

"We will not allow the legalization of federally band (*sic*) substances on our ballot."

S.D. Const. Art. III, § 1 provides the people of South Dakota with the authority to propose measures to be voted on by the electors of the state. The constitution also provides the Legislature with the authority "to make suitable provisions for carrying into effect" the initiative process. See S.D. Const. Art. III, § 1. As referenced above, one of these provisions is the requirement that each measure "be written in a clear and coherent manner in the style and form of other legislation." To conform with the requirement to write the proposal in the form of other legislation, the sponsor may want to consider rewriting the proposal keeping the following in mind:

- The use of pronouns in draft legislation is discouraged. It's unclear to who the "we" in the proposal is referring.
- Generally, legislation is drafted in the present tense. The law has a continuing effect and applies to the present. The proposal uses the future verb phrase "will not allow." The sponsor should consider redrafting the verb phrase in the present tense.
- There are three types of items that may be on the ballot: (1) a constitutional amendment, (2) a proposed law, or (3) a referred law. The sponsor may want to clarify how the proposal applies to each potential ballot item.
- The sponsor may want to consider defining certain terms used in the proposal to assure clarity and precision of meaning. It may add clarity to provide a definition for "federally banned substance."
- Since the proposal appears to address ballot measures, the authority for which is provided under S.D. Const. Art. III, § 1, the sponsor may want to consider drafting the proposal as an amendment to the constitution, rather than a proposed measure. Any restriction to the general state constitutional "right to propose measures" likely needs to be accomplished by constitutional amendment.

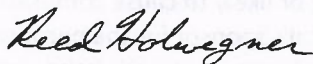
Fiscal Impact

It has been determined during this review that this proposed initiated measure will not have an impact on the revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions.

Compliance

This letter is issued in compliance with statutory requirements placed upon the LRC. It is neither an endorsement of the proposed initiated measure nor a guarantee of its sufficiency. If you proceed with the proposed initiated measure, please ensure that neither your statements nor any advertising contain any suggestion of endorsement or approval by the LRC.

Sincerely,



Reed Holwegner
Director

- CC: The Honorable Monae L. Johnson, Secretary of State
- The Honorable Marty Jackley, Attorney General
- Charles McGuigan, Office of the Attorney General
- Steven Blair, Office of the Attorney General