

2100-A



REPRESENTATIVE G. MARK MICKELSON, CHAIR | SENATOR BROCK L. GREENFIELD, VICE CHAIR
JASON HANCOCK, DIRECTOR | SUE CICHOS, DEPUTY DIRECTOR | DOUG DECKER, CODE COUNSEL
500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | SDLEGISLATURE.GOV

April 21, 2017

RECEIVED
APR 25 2017
S.D. SEC. OF STATE

Ms. Roxanne Weber
821 West Capitol Avenue
Pierre, SD 57502

Dear Ms. Weber:

Pursuant to SDCL 12-13-25, this office is required to review each initiated amendment to the South Dakota Constitution. Further, this office is required by SDCL 12-13-24 to determine if each initiated amendment is written in a clear and coherent manner in the style and form of other legislation and that it is worded so that the effect of the measure is not misleading or likely to cause confusion among voters. You are under no obligation to accept any of the suggestions contained in this letter. But please keep in mind the legal standards established in SDCL 12-13-24.

Although you did not label the proposed amendments submitted to our office, for clarity we have labeled the three drafts A, B, and C and in no particular order. This letter applies to Draft A.

There are several form and style changes that should be made to the draft language of the initiated constitutional amendment. Please write in the active voice and use the singular subject instead of the plural when drafting.

When drafting legislation, we use "may not" instead of "shall not." A negative used with "may" negates the obligation and permission to act and is the stronger prohibition. A negative used with "shall" negates the obligation, but not the permission to act and therefore is avoided.

You do not need to provide a title as the Attorney General is required to prepare the title and explanation pursuant to SDCL 2-1-1.1.

Amendments to the constitution shall be carefully prepared and well thought out. If a constitutional amendment is approved by the voters and the wording is unclear, the process for addressing unintended consequences or ambiguous phrases is much more difficult and limited.

The proposed amendment to Art. III, §1 assumes that this section addresses acts or laws that require emergency clauses. Not all acts or laws that provide for the support of state government and its public institutions use an emergency clause with the primary example being the General Appropriations Act. The proposed wording in this constitutional amendment permits the General Appropriation Act to be subject to referral and since the General Appropriations Act is enacted without an emergency clause, it may be immediately suspended by referral.

The proposed constitutional amendment appears to address primarily legislative acts with an emergency clause which may be referred to a vote of the electors within ninety days of the law going into effect. It is assumed that means that the petitions have to be submitted to refer the law with ninety days. However, you could read the proposed amendment to require that a vote of the electors has to occur within ninety days of the law going into effect. The proposed wording should be revised to provide more clarity. Most referred measures would likely be

Ms. Roxanne Weber

April 21, 2017

Page 2

considered by the voters at the general election, not at a special election which may be a significant expense to the treasury of the state and its public institutions.

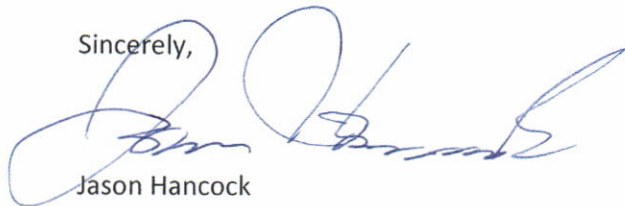
Section 2 requires any amendment to certain laws to be voted on by the people before such laws may become effective. This delays the ability of the Legislature to address any ambiguous or confusing provisions regarding this subject. This also limits the Legislature's ability to respond to any decision of the court or changes in federal regulations that may concern certain laws covered by this section.

Section 3 of the proposed amendment states that the number of petition signers shall be a number equal to ten percent of the votes cast for Governor in the last gubernatorial election. This raises the question that the petition may be invalid if the number of petition signers exceeds ten percent of the votes cast in the gubernatorial election. You will find alternative language provided in the form and style comments.

Attached is a copy of your proposed constitutional amendment with our suggested style and form changes.

This letter constitutes neither an endorsement of your initiated amendment nor a guarantee of its statutory sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated amendment, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposals.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Hancock", is written over a circular stamp or seal.

Jason Hancock
Director

JH/FB/ct

Enclosure

CC: The Honorable Shantel Krebs, Secretary of State
The Honorable Marty Jackley, Attorney General

Draft A - Initiated Constitutional Amendment

Title: Voter Initiative Protection Amendment

Section 1:

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

necessary for the general support of state government and its existing public institutions

"§1. The legislative power of the state shall be vested in a Legislature which shall consist of a senate and house of representatives. However, the people expressly reserve to themselves the right to propose measures, which shall be submitted to a vote of the electors of the state, and also the right to require that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, ~~except such laws as may be.~~ ^{remove overstrikes} A law enacted by the Legislature that is necessary for the immediate preservation of the public peace, health or safety, or support of the state government and its existing public institutions ~~may be referred to a vote of the electors of the state~~ ^{with an emergency clause} within ninety days of the law going into effect. ~~Any such emergency law~~ shall remain in effect until the law is voted upon by the people. If an emergency law is rejected by a majority vote in a general or special election ~~open to the electors of the state~~, the law is repealed. Not more than five percent of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

The enacted with an emergency clause

"This section ~~shall~~ ^{may} not be construed so as to deprive the Legislature or any member thereof the right to propose any measure. However, the Legislature ~~may~~ ^{only} repeal or amend an initiated measure ~~only~~ by a two-thirds vote of all the members of each house of the Legislature. The veto power of the Executive ~~shall~~ ^{may} not be exercised as to measures referred to a vote of the people. This section ~~shall~~ ^{also applies} apply to municipalities. The enacting clause of all laws approved by vote of the electors of the state shall be: 'Be it enacted by the people of South Dakota.' The Legislature shall make suitable provisions for carrying into effect the provisions of this section."

of the legislature

Section 2:

That Article III of the Constitution of the State of South Dakota be amended by adding a new section to read as follows:

§33 The Legislature ~~must~~ ^{shall} refer to a vote of the electors of the state any law ~~effectively~~ ^{amending} changing the number of electors required to submit ~~initiated measures,~~ ^{an} referred laws, or constitutional amendments to a public vote; the time available for electors to circulate initiative, referendum, or constitutional amendment petitions; the number of electors who ~~must~~ vote to pass an initiated measure, referred law, or constitutional amendment; or the enactment date of measures ~~submitted to a vote of the electors of the state.~~ ^{may take} No law changing the criteria enumerated in this section ~~takes~~ ^{take} effect until after that law has received a majority vote in a general or special election ~~open to the electors of the state.~~