

Draft B



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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 B.

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

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April 21, 2017

Page 2

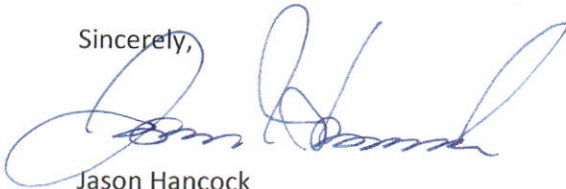
considered by the voters at the general election, not at a special election which may be a significant expense to the treasury of the state and its public institutions.

The second paragraph in section 1 declares that initiated or referred measures become effective with thirty days after the election, which mean the proposed laws become effective on the first or second Thursday of December following a general election. If the referred law had an emergency clause, the law is repealed thirty days of the election. There are some laws that may be difficult to implement or administer within a month, especially if the laws require any state expenditures. Also, if the laws impose a tax or fee, i.e. the cigarette tax increase enacted by initiated measure in 2008, it may be better to impose or repeal the tax or fee on first day of the month. You may want to make it clear that the provisions of an initiated measure may be implemented on a later date with a delayed effective date clause.

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", written over a large, stylized flourish.

Jason Hancock  
Director

JH/FB/ct

Enclosure

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