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June 16, 2017

RECEIVED

JUN 19 2017

S.D. SEC. OF STATE

Mr. Drey Samuelson  
1711 S. Phillips Ave.  
Sioux Falls, SD 57105

Dear Mr. Samuelson:

Pursuant to SDCL 12-13-25, this office is required to review each initiated measure, this office is required by SDCL 12-13-24 to determine if each initiated measure 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.

The proposed initiated measure has provisions that concern two subjects that address the conduct of elections by mail and provides for automatic voter registration. Each subject could easily be separated from the other and the combination of the subjects may not comply with the single subject requirement in S.D. Const. Art. III, § 21. Our suggestion is that the measure should be separated into two measures and our form and style comments reflect that separation. If you move forward with both subjects in one measure, you need to take care in the drafting of any cross references that may only refer to certain sections of the Act.

It appears that proposed laws were borrowed from another state and minimal effort was made to revise the document to the form and style used by the State of South Dakota. If you are borrowing language from other states, it is requested that you follow the form and style for draft legislation used in this state. The drafting manual may be found on the website for the Legislative Research Council. If you need assistance in locating the manual, please contact our office. You could also review bills introduced in previous sessions to provide examples for form and style.

Short titles are discouraged in the drafting of legislation. A short title is only used in drafting of uniform state laws to indicate that courts in other states may have already construed the provisions. Findings should provide the foundation of facts to support the legislation and the statement of purpose, if any, should be short and concise. The proposed findings and declaration of purpose appear to provide a list of reasons on why the sponsors support the proposed measure and the outcome that is hoped to be achieved with its passage. We recommend that you delete both sections.

It is inappropriate for you to prepare catchlines or assign chapter or section numbers for codification. The catchlines are prepared by the publisher in cooperation with the Code Counsel and the Code Counsel is responsible for the codification of laws enacted by the Legislature and passed by the people. The body of the bill should be divided into sections of convenient length and facilitate reference to a provision. Each distinctive proposition should be in a separate section.

The terms, "county auditor" and "person in charge of the election", at times appear to be used interchangeably. Occasionally, the term "county clerk" is used. The terms, "ballot" and "official ballot", are also used interchangeably, please use the term "ballot". The consistent use of terms is imperative in the construction of legislation. Inconsistent use of terms may lead to confusion and unintended consequences.

There are several proposed sections that mirror the current laws pertaining to elections. Section 13 corresponds to the provisions found in SDCL 12-18-25. Also, SDCL chapter 12-19 provides for an authorized messenger and establishes certain procedures and qualifications for the messenger. SDCL chapter 12-19 also provides the current procedure for absentee voting. The proposed measure does not revise or repeal those laws. If this measure is approved by the people, the Legislature would have to enact legislation to address the provisions that may duplicate or conflict.

Please review the definitions and procedures provided in Title 12. SDCL 12-1-3 defines an elector to be a person who is qualified to register as a voter whether or not the person is registered and a voter is a person who is duly registered to vote or one who is performing the act of voting. The draft often used the term "elector", and correct term is "voter". Any deviation from the usage of those terms as currently defined requires a substantial rewrite of Title 12.

The second part of the initiated measure concerns automatic voter registration which establishes procedures for registering voters when a person is obtaining or renewing a driver license. The sections for this subject refer to this program being administered by the Department of Motor Vehicles. There is no Department of Motor Vehicles in state government. There is a Division of Motor Vehicles that is in the Department of Revenue, however, that division does not manage the driver license program for the state. The Department of Public Safety (DPS) administers the driver license program and pursuant to SDCL 12-4-6 the department already assists South Dakota residents with voter registration.

There are several offices and agencies authorized to assist with voter registration pursuant to SDCL 12-4-2. The second paragraph of that section reads: "*Voter registration shall be conducted by each county auditor and municipal finance officer. Voter registration shall be available at the secretary of state's office and at those locations which provide driver licenses; food stamps; temporary assistance for needy families; women, infants, and children nutrition program; medicaid; military recruitment; and assistance to the disabled as provided by the Department of Human Services.*"

The State of South Dakota has complied with the provisions of the REAL ID Act which means the Department of Public Safety has an established system for collecting information and maintaining the data that parallels some of the proposed provisions in the initiated measure. You may want to avoid any provisions that may duplicate or conflict with the current data systems established under the department.

The initiated measure requires the Secretary of State to implement certain provisions in conjunction with the State Board of Elections. You need to delegate to one or the other the duty to implement the specified provisions and promulgate rules, if any. Also, some of the adjectives used in various provisions do not add clarity and may raise several questions. This includes phrases such as: "*enhanced standards and procedures to safeguard*" and "*the highest level of physical security.*"

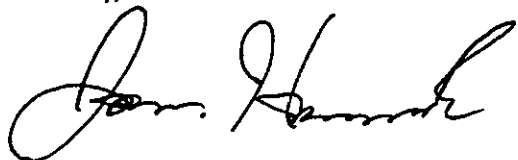
It has been determined during this review that this initiated measure requires a prison or jail population cost estimate. As the sponsor of the initiated measure you should submit a request for a cost estimate to the Legislative Research Council at the time your initiated measure is filed with the Attorney General.

Attached is a copy of your proposed initiated measure with all our suggested style and form changes. This letter constitutes neither an endorsement of your initiated measure nor a guarantee of its statutory sufficiency. It

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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 measure, 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 black ink, appearing to read "Jason Hancock". The signature is fluid and cursive, with a large initial "J" and "H".

Jason Hancock  
Director

JH:FB

Enclosure

cc/enc: The Honorable Shantel Krebs, Secretary of State  
The Honorable Marty Jackley, Attorney General

Petition: South Dakota Voter Accessibility, Integrity, and Efficiency, and Automatic Voter Registration Act

**BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA**

~~Text:~~

*Short titles are inconsistent with the practice of codification in South Dakota. Short titles are discouraged.*

~~Section 1. This Act may be referred to as the "South Dakota Voter Accessibility, Integrity, and Efficiency, and Automatic Voter Registration Act."~~

*A declaration of purpose is strongly discouraged.*

~~Section 2. The people find and declare that the accessibility, integrity, and efficiency of the voting system are of the utmost importance in South Dakota's political system. Statewide vote at home models and automatic voter registration models have been established in other states with no evidence of fraud and abuse and have been deemed highly popular by the general public in those states. Vote at home and automatic voter registration models decrease the cost of elections, which are currently borne largely by local taxpayers, allowing scarce tax dollars to be reallocated for other pressing needs of county budgets. Increasing voter participation and making voting more accessible among all age and ethnic groups, including seniors and South Dakota's proud Native American citizens, could inspire South Dakotans to feel greater attachment to their home state. Finally, voter participation is too often reduced due to factors of weather, modern work schedules, family obligations, health issues, mobility challenges, and vast geographic distances. Therefore, the purpose of this Act is to increase accessibility for the people of South Dakota in electoral politics, increase the completeness and accuracy of the voter registration list, and to ensure the integrity and efficiency of the system.~~

~~Section 3. SDCL Title 12 is amended by adding the following as Chapter 29, entitled "Conducting Elections by Mail."~~

~~12-29-1. Authorization and procedure for conducting elections by mail.~~

- *Codification of legislation is the responsibility of the Code Counsel.*
- *Catchlines are prepared by the publisher and code counsel and should not be included in any bill draft or initiated measure.*