

SENATOR BROCK L. GREENFIELD, CHAIR | REPRESENTATIVE G. MARK MICKELSON, 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



September 5, 2018

Mr. Cory Allen Heidelberger
912 N. 1st Street
Aberdeen, SD 57401

RECEIVED

SEP 06 2018

S.D. SEC. OF STATE

Dear Mr. Heidelberger:

Pursuant to SDCL 12-13-25, this office is required to review each initiated measure. Further, this office is required by SDCL 12-13-24 to determine if each initiated measure is written in clear and coherent manner in the style and form of other legislation and that it is worded so that the effect of the initiated 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 title of an initiated measure is drafted by the Office of the Attorney General under statute, so the title of this initiated measure should be removed. In sections 1, 2, 3, and 5 of the submitted draft, the formatting of the numbered subdivisions is altered from existing statute, using no parentheses in the numbered subdivisions. The final version of the initiated measure needs to include the language of existing statute as codified, including the proper numbering format of subdivisions with parentheses. Also, section 1 of the submitted draft inserts the word "constitutional" in subdivisions (1) and (2), but this term does not appear in current law and must be deleted. In section 7, the word "but" is not in existing statute and should be added as new language.

Section 4 of the submitted draft repeals language in § 2-1-3 regarding referred laws that prohibits them for laws designated as "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions." This prohibitive language comes from the State Constitution, Article III, § 1. The language in § 2-1-3 merely reflects the constitutional prohibition, which would remain even if the language in § 2-1-3 is repealed. By repealing this statutory language, the initiated measure would create a conflict between the constitution and statute that could cause confusion. We recommend that you reconsider repealing this statutory language.

The submitted draft repeals §§ 12-1-36 and 12-13-25.2. These two sections are referenced in two other sections of code that would need to be amended in order to keep cross-references in the code current. For the cross-reference to § 12-1-36 in § 12-1-37, the reference is such that the entirety of § 12-1-37 should be repealed since § 12-1-37 is entirely dependent on the existence of § 12-1-36. For the cross-reference to § 12-13-25.2 in § 12-13-25, a simple line amendment to eliminate the cross-reference is all that would be necessary. These affected sections have been added to the end of your submitted draft for your review.

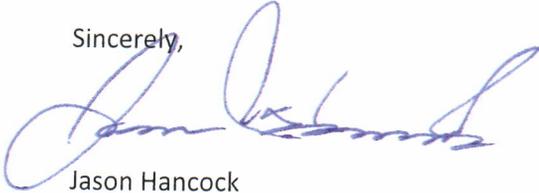
Attached is a copy of your proposed constitutional amendment with our suggested style and form changes.

If you have any questions regarding our suggested changes, please feel free to contact me.

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This letter constitutes neither an endorsement of your initiated measure nor a guarantee of its 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 measure, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Hancock", written in a cursive style.

Jason Hancock
Director

JH:WC:ct

Enclosure

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

~~AN ACT to revise certain provisions regarding elections.~~

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

Section 1: That § 2-1-1.1 be amended to read:

2-1-1.1. The petition as it is to be circulated for an initiated amendment to the Constitution shall be filed with the secretary of state prior to circulation for signatures and shall:

- (1): Contain the full text of the initiated ~~constitutional~~ amendment;
- (2): Contain the date of the general election at which the initiated ~~constitutional~~ amendment is to be submitted;
- (3): Contain the title ~~and explanation~~ as prepared by the attorney general;
- (4): Be accompanied by a notarized affidavit form signed by each person who is a petition sponsor that includes the name and address of each petition sponsor; and
- (5): Be accompanied by a statement of organization as provided in § 12-27-6.

~~The petition circulator shall provide to each person who signs the petition a form containing the title and explanation of the initiated amendment to the Constitution as prepared by the attorney general; any fiscal note prepared pursuant to § 2-9-30; the name, phone number, and email address of each petition sponsor; the name, phone number, and email address of the petition circulator; and a statement whether the petition circulator is a volunteer or paid petition circulator and, if a paid circulator, the amount the circulator is being paid. The form shall be approved by the secretary of state prior to circulation.~~

For any initiated amendment petition, no signature may be obtained more than twenty-four months preceding the general election that was designated at the time of filing of the full text. The initiated amendment petition shall be filed with the secretary of state at least ~~one year~~ four months before the next general election. A sworn affidavit, signed by at least two-thirds of the petition sponsors, ~~containing information required for each petition circulator as required under § 2-1-1.4~~ and stating that the

documents filed constitute the entire petition and to the best of the knowledge of the sponsors contains a sufficient number of signatures shall also be filed with the secretary of state. The form of the petition, ~~including petition size and petition font size,~~ and the affidavit shall be prescribed by the State Board of Elections.

Section 2: That § 2-1-1.2 be amended to read:

2-1-1.2. The petition as it is to be circulated for an initiated measure shall be filed with the secretary of state prior to circulation for signatures and shall:

- (1): Contain the full text of the initiated measure;
- (2): Contain the date of the general election at which the initiated measure is to be submitted;
- (3): Contain the title ~~and explanation~~ as prepared by the attorney general;
- (4): Be accompanied by a notarized affidavit form signed by each person who is a petition sponsor that includes the name and address of each petition sponsor; and
- (5): Be accompanied by a statement of organization as provided in § 12-27-6.

~~The petition circulator shall provide to each person who signs the petition a form containing the title and explanation of the initiated measure as prepared by the attorney general; any fiscal note prepared pursuant to § 2-9-30; the name, phone number, and email address of each petition sponsor; the name, phone number, and email address of the petition circulator; and a statement whether the petition circulator is a volunteer or paid petition circulator and, if a paid circulator, the amount the circulator is being paid. The form shall be approved by the secretary of state prior to circulation.~~

For any initiated measure petition, no signature may be obtained more than twenty-four months preceding the general election that was designated at the time of filing of the full text. The initiated measure petition shall be filed with the secretary of state at least ~~one year~~ four months before the next general election. A sworn affidavit, signed by at least two-thirds of the petition sponsors, ~~containing information required for each petition~~

~~circulator as required under § 2-1-1.4 and stating that the documents filed constitute the entire petition and to the best of the knowledge of the sponsors contains a sufficient number of signatures shall also be filed with the secretary of state. The form of the petition, including petition size and petition font size, and the affidavit shall be prescribed by the State Board of Elections.~~

Section 3: That § 2-1-3.1 be amended to read:

2-1-3.1. The petition as it is to be circulated for a referred law shall be filed with the secretary of state prior to circulation for signatures and shall:

- (1): Contain the title of the referred law;
- (2): Contain the effective date of the referred law;
- (3): Contain the date of the general election at which the referred law is to be submitted;
- (4): Be accompanied by a notarized form that includes the names and addresses of the petition sponsors; and
- (5): Be accompanied by a statement of organization as provided in § 12-27-6.

The petition shall be filed with the secretary of state within ninety days after the adjournment of the Legislature which passed the referred law. A sworn affidavit, signed by at least two-thirds of the petition sponsors, ~~containing information required for each petition circulator as required under § 2-1-1.4 and~~ stating that the documents filed constitute the entire petition and to the best of the knowledge of the sponsors contains a sufficient number of signatures shall also be filed with the secretary of state. The form of the petition and affidavit shall be prescribed by the State Board of Elections.

~~The petition circulator shall provide to each person who signs the petition a form containing the title of the referred law; any fiscal note or summary of a fiscal note obtained pursuant to § 2-9-32; the name, phone number, and email address of each petition sponsor; the name, phone number, and email address of the petition circulator; and a statement whether the petition circulator is a volunteer or paid petition circulator and, if a paid~~

~~circulator, the amount the circulator is being paid. The form shall be approved by the secretary of state prior to circulation.~~

Section 4: That § 2-1-3 be amended to read:

~~2-1-3. Any law which the Legislature may have enacted, except one that may be necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, shall, upon the filing of a petition as provided in this chapter, be submitted to a vote of the electors of the state at the next general election. The petition shall be signed by not less than five percent of the qualified electors of the state. The form of the petition, including petition size and petition font size, shall be prescribed by the State Board of Elections.~~

Section 5: That § 12-1-9 be amended to read:

12-1-9. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, concerning:

- (1): Forms for voter registration and voter file maintenance;
- (2): Forms and color of ballots;
- (3): Forms for notices;
- (4): The uniformity of election procedures;
- (5): The operation of the State Board of Elections;
- (6): The procedure to accept a petition and verify petition signatures;
- (7): ~~Petition forms, including petition size and petition font size;~~
- (8): Envelopes for absentee voting;
- (9): Instructions to voters and absentee voters; and
- (10): Recounts.

Section 6: That § 2-1-12 be amended to read:

2-1-12. Each constitutional amendment, initiated measure, or referred law that is approved by a majority of all votes cast is effective on the first day of ~~July~~ after the completion of the official canvass by the State Canvassing Board, unless the approved constitutional amendment, initiated measure, or referred law specifies a later enactment date.

Section 7: That § 2-1-17.1 be amended to read:

2-1-17.1. Not more than thirty days after a statewide petition for an initiated amendment to the Constitution, initiated measure, or referred law has been validated and filed, any interested person who has researched the signatures contained on the petition may submit a sworn affidavit to the Office of Secretary of State to challenge the petition. The sworn affidavit shall include an itemized listing of each specific deficiency in question. ~~other than the following:~~

- ~~(1) — Signer does not live at address listed on the petition;~~
- ~~(2) — Circulator does not live at address listed on the petition;~~
- ~~(3) — Circulator listed a residence address in South Dakota but is not a South Dakota resident;~~
- ~~(4) — Circulator did not witness the signers;~~
- ~~(5) — Signatures not included in the random sample; and~~
- ~~(6) — Petition that was originally rejected.~~

Any challenge by the same person or party in interest shall be included in one sworn affidavit.

~~The original sworn affidavit shall be received by the Office of Secretary of State by 5:00 p.m. central time on the date. If the sworn affidavit challenges any deficiency prohibited under this section, that deficiency shall be rejected. A challenge to a deficiency is not a challenge to the petition as a whole.~~

~~No deficiency~~ The secretary of state's decision regarding a challenge under this section may not be challenged a second time with the secretary of state. ~~The secretary of state's decision regarding a challenge under this section,~~ but may be appealed to the circuit court of Hughes County. Any person who does not challenge a petition pursuant to this section, may bring a challenge pursuant to § 2-1-18.

Section 8: That § 2-1-18 be amended to read:

2-1-18. Nothing in §§ 2-1-15 to 2-1-18, inclusive, prohibits any interested person who has researched the signatures contained on a validated petition from challenging in circuit court the validity of any signature, the veracity

of the petition circulator's attestation, or any other information required on a petition by statute or administrative rule, ~~including any deficiency that is prohibited from challenge under § 2-1-17.1. The results of the process of signature verification by the Office of the Secretary of State under chapter 2-1 shall be presumed valid as applied to all signatures for purposes of considering any additional ground for disqualifying petition signatures, including any ground listed in subdivisions 2-1-17.1(1) to 2-1-17.1(4), inclusive, and cumulating total valid signatures to determine the results of an appeal under § 2-1-17.1. The summons and complaint for a challenge under this section shall be served on each petition sponsor as a party defending the validated petition being challenged. Any appearance by the attorney general at a challenge under this section shall be limited to the process of signature verification by the Office of the Secretary of State under chapter 2-1.~~

Section 9: That § 2-1-1.4 ~~[2018 HB 1196 Section 6]~~ be repealed:

~~2-1-1.4. A sworn affidavit filed with the secretary of state pursuant to § 2-1-1.1, 2-1-1.2, or 2-1-3.1 shall include information attesting to residency as defined in § 12-1-4 of each petition circulator. The following information shall be included in the affidavit:~~

- ~~(1) Current state in which the petition circulator is licensed to drive, driver license number, and expiration date;~~
- ~~(2) Current state of voter registration;~~
- ~~(3) Length of time at current physical street address and previous two addresses, and whether the prior addresses were located in South Dakota;~~
- ~~(4) A sworn statement by the petition circulator indicating the circulator's intention to stay in the state after the petition circulation deadline;~~
- ~~(5) Any other information relevant to indicate residency, including a library card or utility bill;~~
- ~~(6) Whether the petition circulator pays in-state tuition at any public postsecondary educational institution, if applicable; and~~
- ~~(7) Whether the petition circulator obtains any resident hunting or resident fishing license of any kind, if applicable.~~

~~The information included in the affidavit are factors in determining residency but are not determinative. The contents under this section of any affidavit filed with the secretary of state shall be held confidential by the secretary of state, and the secretary of state may release the contents only to an interested person for purposes of § 2-1-18 and to the attorney general. Failure to substantially comply with the provisions of this section shall disqualify the petitions from a petition circulator not in substantial compliance with this section from being considered.~~

Section 10: That § 2-1-21 ~~[2018 HB 1196 Section 7]~~ be repealed:

~~2-1-21. If any petition sponsor, or any person or entity compensated by the petition sponsor or a ballot question committee for purposes of petition circulation, knowingly or with reckless disregard commits multiple violations of the law regarding petition circulation, residency of a petition circulator, or campaign finance regulation, the petition sponsor, person, or entity, including any person serving as a member of the board or as an officer of the entity, is prohibited from being a petition sponsor or petition circulator, and from performing any work for any ballot question committee for a period of four years in addition to any other penalty imposed under state or federal law. Any violation of the provisions of this section shall also result in a civil penalty of up to five thousand dollars to be deposited into the state general fund.~~

Section 11: That § 2-9-30 be amended to read:

2-9-30. If the director of the Legislative Research Council determines in the review and comment under § 12-13-25 that an initiated measure or initiated amendment to the Constitution may have an impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions, the director shall notify the petition sponsor. If the director of the Legislative Research Council determines that an initiated measure or initiated amendment to the Constitution in final form under § 12-13-25.1 may have an impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions, the director shall prepare a fiscal note. The fiscal note shall include an estimate of the impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions, by the provisions of the proposed initiated measure or initiated amendment to the Constitution. The fiscal note expenditure estimate shall also include

any impact to the prison or county jail population. ~~The fiscal note may not exceed fifty words.~~ The director shall file the fiscal note with the secretary of state and shall provide a copy to the sponsors not more than sixty days following receipt of the initiated measure or initiated amendment in final form pursuant to § 12-13-25.1.

Section 12: That § 12-13-25.1 be amended to read:

12-13-25.1. Following receipt of the written comments of the director of the Legislative Research Council, the sponsors shall submit a copy of the proposed initiated measure or initiated amendment to the Constitution in final form to the attorney general and the director of the Legislative Research Council. The attorney general shall prepare an attorney general's statement that consists of a title ~~and explanation.~~ The title shall be a concise statement of the subject of the proposed initiated measure or initiated amendment to the Constitution. ~~The explanation shall be an objective, clear, and simple summary to educate the voters of the purpose and effect of the proposed initiated measure or initiated amendment to the Constitution. The attorney general shall include a description of the legal consequences of the proposed initiated measure or initiated amendment to the Constitution, including the likely exposure of the state to liability if the proposed initiated measure or initiated amendment to the Constitution is adopted. The explanation may not exceed two hundred words in~~

~~length.~~ The attorney general shall file the title ~~and explanation~~ with the secretary of state and shall provide a copy to the sponsors within ~~sixty~~ five days of receipt of the proposed initiated measure or initiated amendment to the Constitution.

If the petition is filed as set forth in §§ 2-1-1.1 or 2-1-1.2, the attorney general shall deliver to the secretary of state before the third Tuesday in May a recitation as provided in this section. The recitation for an initiated amendment to the Constitution shall state "Vote 'Yes' to adopt the amendment" and "Vote 'No' to leave the Constitution as it is". The recitation for an initiated measure shall state "Vote 'Yes' to adopt the initiated measure" and "Vote 'No' to leave South Dakota law as it is". On the printed ballots, the title shall be followed by ~~the explanation and the explanation shall be followed, if applicable, by any fiscal note prepared pursuant to § 2-9-30, and then followed by the recitation.~~

Section 13: That § 12-13-25.2 ~~[2018 HB 1006 Section 2]~~ be repealed:

~~12-13-25.2. If the director of the Legislative Research Council receives any initiated measure or initiated amendment to the Constitution from the first day of December to the day of adjournment sine die of the following legislative session, inclusive, the director shall provide written comments as required pursuant to § 12-13-25 not more than fifteen work days following adjournment sine die of the legislative session.~~

Section 14: That § 2-1-11.1 ~~[2018 HB 1007]~~ be repealed:

~~2-1-11.1. No initiated measure may embrace more than one subject, which shall be expressed in the title.~~

Section 15: That chapter 12-1 be amended by adding a NEW SECTION to read:

The secretary of state shall make available to the public ~~online, free of charge, on the website maintained by the Office of Secretary of State~~ electronic copies of ~~all the~~ certified nominating petitions for ~~all~~ legislative candidates, special district candidates, and statewide candidates; ~~the~~ certified petitions for statewide ballot measures, and certified petitions for new party formation. ~~The secretary of state shall post a publicly accessible electronic copy of a petition to the secretary of state's website no later than~~ Each petition under this section shall be made available on the date the petition is certified. The secretary of state shall keep an electronic copy of ~~a~~ any certified petition publicly available on the secretary of state's website until the first day ~~of early voting any vote may be cast in the~~ primary, general, or special election ~~—primary, general, or special—~~ in which the ~~petition's~~ candidate, ballot question, or party appears on the ballot.

Section 16: That § 2-1-16 be amended to read:

2-1-16. The secretary of state shall verify the signatures pursuant to § 2-1-15 by random sampling. The random sample of signatures to be verified shall be drawn so that each signature received by the secretary of state is given an equal opportunity to be included in the sample. The secretary of state shall calculate the number of valid signatures by multiplying the total

number of signatures received by the percentage of successfully verified signatures from the random sample. The secretary of state shall promulgate rules, pursuant to chapter 1-26, establishing the methodology for conducting the random sample. The random sampling shall be an examination of the signatures received consisting of ~~a number of signatures that is statistically correlative to not less than ninety five percent level of confidence with a margin of error equal to not more than three and sixty-two one hundredths percent~~ not less than five percent of the signatures, but in no event fewer than two thousand signatures.

Section 17: That § 2-1-17 be amended to read:

2-1-17. If the random sample indicates that ~~a sufficient number~~ the number of valid signatures is one hundred ten percent or more of the minimum number of qualified electors required to have signed the petition, the secretary of state shall certify that the petition has been signed by the required number of qualified electors and shall place the proposed measure or amendment on the next general election ballot. If the random sample indicates that ~~an insufficient number~~ the number of valid signatures is ninety percent or less of the minimum number of qualified electors required to have signed the petition, the secretary of state shall certify that the petition has not been signed by the required number of qualified electors and may not place the proposed measure or amendment on the next general election ballot. ~~If the random sample shows indicates the number of valid signatures to be is more than ninety percent but less than one hundred ten percent of the required number of signatures of qualified electors needed to declare the petition sufficient,~~ the secretary of state shall examine and validate each signature filed and certify to determine the petition's sufficiency or insufficiency based on the number of valid signatures determined by that complete examination. The secretary of state shall, within twenty-four hours of certifying a petition under this section, notify the petition sponsors by telephone or e-mail, and, within five days of certifying, notify the petition sponsors by certified mail of the secretary of state's action pursuant to this section.

Section 18: That § 12-6-4 be amended to read:

12-6-4. Except as provided by § 12-5-4 and as may be otherwise provided in chapter 12-9, no candidate for any office to be filled, or nomination to be made, at either or both the primary or general election, other than a

presidential election, may have that person's name printed upon the official primary election ballot of that person's party, unless a petition has been filed on that person's behalf after December thirty-first and by the last Tuesday of March at five p.m. local time before the date of the primary election. If the petition is mailed by registered mail by the last Tuesday of March at five p.m. local time before the primary election, the petition shall be considered timely submitted. A nominating petition for national convention delegates and alternates as provided in § 12-5-3.11 shall be filed in accordance with the provisions of this section. Nominating petitions for all party and public offices except legislative and judicial offices shall be filed in the office of the county auditor of the county in which the person is a candidate. Nominating petitions for legislative and judicial office whether elected in one or more counties, and all other party and public offices to be voted on in more than one county shall be filed in the Office of the Secretary of State or in the office of the county auditor in ~~one of the~~ ~~counties~~ a county where the office ~~sought will be~~ ~~is~~ on the ballot.

Section 19: That § 12-1-36 be repealed:

~~12-1-36. The secretary of state shall verify the signatures received pursuant to § 12-1-35 by random sampling. The random sample of signatures to be verified shall be drawn so that each signature received by the secretary of state is given an equal opportunity to be included in the sample. The secretary of state shall calculate the number of valid signatures by multiplying the total number of signatures received by the percentage of successfully verified signatures from the random sample. The secretary of state shall promulgate rules, pursuant to chapter 1-26, establishing the methodology for conducting the random sample. The random sampling shall be an examination of the signatures received consisting of a number of signatures that is statistically correlative to not less than ninety five percent level of confidence with a margin of error equal to not more than three and sixty two one hundredths percent.~~

Section 20: That Chapter 12-1 be amended by adding a NEW SECTION to read:

An election officer receiving a nominating petition for legislative or county office shall examine the petition upon receipt. No signature on the petition

may be counted by the election officer unless the signer is a registered voter in the county indicated on the signature line and has complied with the laws and rules concerning petitions. No signature on a petition may be counted if the information required to accompany the signature is incomplete.

Section 21: That § 12-1-37 be repealed:

~~If the random sample required by § 12-1-36 indicates that a sufficient number of qualified electors have signed the nominating petition for statewide office, the secretary of state shall certify that the nominating petition for statewide office has been signed by the required number of qualified electors and shall place the candidate's name on the next primary or general election ballot, as the case may be.~~

~~If the random sample indicates that an insufficient number of qualified electors have signed the nominating petition for statewide office, the secretary of state shall certify that the nominating petition for statewide office has not been signed by the required number of qualified electors and may not place the candidate's name on the next primary or general election ballot, as the case may be.~~

~~The secretary of state shall, within five days of certifying, notify the candidate of the secretary of state's action pursuant to this section.~~

Section 22: That § 12-13-25 be amended to read:

The sponsors of each initiated measure or initiated amendment to the Constitution shall submit a copy of the initiated measure or initiated amendment to the Constitution to the director of the Legislative Research Council for review and comment not more than six months before it may be circulated for signatures under § 2-1-1.1 or 2-1-1.2. The director shall review each submitted initiated measure or initiated amendment to the Constitution to determine if the requirements of § 12-13-24 are satisfied and if the initiated measure or initiated amendment to the Constitution may have any impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions. ~~Unless as otherwise provided under § 12-13-25.2, not~~ **Not** more than fifteen work days following receipt of an initiated measure or initiated amendment to the Constitution, the director shall provide written comments on the initiated measure or initiated amendment to the Constitution to the sponsors of the initiated measure or initiated amendment, the attorney general, and the secretary of state for the

purpose of assisting the sponsors in complying with § 12-13-24. The director's written comments under this section shall include assistance regarding the substantive content of the initiated measure or initiated amendment in order to minimize any conflict with existing law and to ensure the measure's or amendment's effective administration. The sponsors may, but are not required to, amend the initiated measure or initiated amendment to the Constitution to comply with the director's comments.