

SENATOR BROCK L. GREENFIELD, CHAIR | REPRESENTATIVE STEVEN G. HAUGAARD, VICE CHAIR
REED HOLWEGNER, DIRECTOR | SUE CICHOS, DEPUTY DIRECTOR

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DEC 15 2020

S.D. SEC. OF STATE

Filed this 15th day of

December 2020

Steve Barnett

SECRETARY OF STATE

December 15, 2020

Drawn Together SD
P.O. Box 1572
Sioux Falls, SD 57101

Dear Ms. Knudson, Mr. Heidepriem, and Mr. Brown:

The Legislative Research Council (LRC) is required by SDCL 12-13-25 to review each initiated constitutional amendment for the purpose of determining whether the amendment is written in a clear and coherent manner that reflects the style and form of other legislation and for the purpose of ensuring that the amendment is not misleading or likely to cause confusion among the voters. In accordance with SDCL 12-13-25, the LRC is required to provide written comments for the purpose of assisting the amendment's sponsor in meeting the requirements of SDCL 12-13-24. This includes providing assistance regarding the substantive content of the amendment in order to minimize any conflict with existing law and to ensure the amendment's effective administration. While there is no obligation to accept any of the suggestions contained in this letter, you are asked to keep in mind the legal standards established in SDCL 12-13-24 and 12-13-25.

There are several legal considerations we suggest you address before proceeding further:

- Rarely do we find any definitions in the constitution and under that limited circumstance it usually defines one term within that section. The term, commission, does not need to be defined and the terms, political party and political party office are already defined in statute at SDCL 12-1-3 and don't need to be in the Constitution. The term, state public office, is a unique definition for the purposes of this proposed amendment and the attachment shows how that definition may be included in your draft. This change would also solve the drafting problem of having two sets of subdivisions within one section.
- The draft does not address the possibility that South Dakota may be awarded multiple congressional seats in future apportionments. Would it be your desire to have the commission also address congressional reapportionment in the future? If so, providing a process or mechanism for apportioning congressional districts in South Dakota should be included in some manner.
- The current constitutional section addressing this issue provides for a method for redistricting to occur should the Legislature fail to do so by December first. It may be prudent to continue that practice in some form to ensure timely compliance if the commission fails to do so by December first.

Against this backdrop, we have prepared and attached a copy of the proposed amendment with our suggested style and form changes in red, which are based upon the Guide to Legislative Drafting (<https://mylrc.sdlegislature.gov/api/Documents/127102.pdf>). We have overstricken material that we suggest be removed. Additions are underscored. Should you have any questions about these changes, or about the suggestions made in this letter, please feel free to contact this office.

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In addition, it has been determined during this review that this amendment may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the LRC a copy of the amendment as submitted in final form to the Attorney General, so we can develop any fiscal note required by SDCL 2-9-30.

This letter constitutes neither an endorsement of the proposed amendment nor a guarantee of its sufficiency. It is a recognition that your responsibility to submit your draft to the LRC for review and comment, as required by SDCL section 12-13-25, has been fulfilled. If you proceed with your initiated amendment, please ensure neither your statements nor any advertising imply that this office has endorsed or approved the measure.

Sincerely,

A handwritten signature in blue ink that reads "Reed Holwegner". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Reed Holwegner
Director

RH/DO/ct

Enclosure

CC: The Honorable Steve Barnett, Secretary of State
The Honorable Jason Ravnsborg, Attorney General

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~~An Amendment to the Constitution to provide for legislative redistricting by a nonpartisan commission.~~

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

Section 1. That Article III, section 5 of the Constitution of the State of South Dakota, be ~~amended to read as follows~~AMENDED:

§ 5. ~~The Legislature shall apportion its membership by dividing the state into as many single-member, legislative districts as there are state senators. House districts shall be established wholly within senatorial districts and shall be either single-member or dual-member districts as the Legislature shall determine. Legislative districts shall consist of compact, contiguous territory and shall have population as nearly equal as is practicable, based on the last preceding federal census. An apportionment shall be made by the Legislature in 1983 and in 1991, and every ten years after 1991. Such apportionment shall be accomplished by December first of the year in which the apportionment is required. If any Legislature whose duty it is to make an apportionment shall fail to make the same as herein provided, it shall be the duty of the Supreme Court within ninety days to make such apportionment.~~

~~Terms used in this section mean:~~

- ~~(1) "Commission," the independent redistricting commission established pursuant to this section;~~
- ~~(2) "Political party," a party whose candidate for Governor at the last preceding general election at which a Governor was elected received at least two and one-half percent of the total votes cast for Governor;~~
- ~~(3) "Political party office," an office of a political party organization as distinct from a state public office;~~
- ~~(4) "State public office," an elective office in the executive or legislative branch of the government of this state; or an office in the executive or legislative branch of the government of this state which is filled by gubernatorial appointment; or an office of a county, municipality or other political subdivision of this state which is filled by an election process involving nomination and election of candidates on a partisan basis.~~

The independent redistricting commission is hereby created and shall be composed of nine registered voters in South Dakota, none of whom may hold a state public office or a political party office. The term, state public office, means an elective office in the executive or legislative branch of the government of this state; an office in the executive or legislative branch of the government of this state that is filled by gubernatorial appointment; or an office of a county, municipality, or other political subdivision of this state that is filled by an election process involving nomination and election of candidates on a partisan basis.

The commission shall prepare the plan for redistricting the state into legislative districts. This redistricting plan shall be completed by the commission in 2023 and 2031 and every ten years after 2031. Redistricting shall be accomplished by December first of the year in which the redistricting is required.

By the last day of February of each year in which the redistricting is required, the board overseeing state elections and procedures shall ~~establish a~~ appoint the commission ~~to provide for the redistricting of state legislative districts~~. No more than three members of the commission may be members of the same political party. The commission shall select by majority vote one member to serve as chair and one member to serve as vice chair.

Each commission member ~~must~~shall have been continuously registered with the same political party or registered as unaffiliated with a political party for three or more years immediately preceding appointment. Within the three years immediately preceding appointment, no commission member may have been appointed to or elected to any state public office or political party office. Within the three years immediately after appointment, no commission member may be appointed to or elected to any state public office or political party office. If a vacancy occurs on the commission, the board shall select a successor who has the same qualifications as the commissioner whose position is being vacated.

The Legislature shall provide the technical staff and clerical services that the commission needs to prepare its redistricting plan. Each commission member shall receive per diem and expenses in the same manner and amount as paid to members of the Legislature. Five commissioners, including the chair or vice chair, constitute a quorum. Five or more affirmative votes are required for any official action.

The commission shall establish legislative districts by dividing the state into as many single-member legislative districts as there are state senators. House districts shall be established wholly within senatorial districts and shall be either single-member or dual-member districts as the commission determines in compliance with federal and state law. The commission shall commence the mapping process for the legislative districts by creating districts of equal population in a grid-like pattern across the state. Adjustments to the legislative districts shall be made to:

- (1) Comply with the United States Constitution, the South Dakota Constitution, and federal laws, as interpreted by the United States Supreme Court and other courts of competent jurisdiction;
- (2) Have equal population to the extent practicable;
- (3) Be geographically compact and contiguous to the extent practicable;
- (4) Respect communities of interest to the extent practicable; and
- (5) Use visible geographic features, municipal and county boundaries, and undivided census tracts to the extent practicable.

Party registration, voting history, or any other data showing likely voting patterns shall be excluded from the redistricting process. The place of residence of any legislative incumbent or candidate may not be identified or considered.

Any tools used by the commission as well as any adjustments from the grid-like pattern ~~will~~shall be documented in a report made available to the public with a draft map.

The commission shall notify the public that a draft map of legislative districts is available for inspection and written comments. The commission shall accept written comments for thirty calendar days following notification to the public. The Legislature may act within this period to submit written comments to the commission. After the comment period has ended, the commission ~~will~~shall hold no less than three public meetings throughout the state that ~~will~~shall also be available to the public through virtual means. After all meetings have concluded, the commission shall establish final district boundaries. The commission shall certify to the Office of the Secretary of State the establishment of each legislative district.

The commission shall have standing in legal actions regarding the redistricting plan and the adequacy of resources provided for the operation of the commission. The commission may determine whether the Attorney General or other legal counsel shall be used or selected by the commission to represent the commission in any matter relating to a redistricting plan.

The duties of each commission member expire upon the appointment of the next commission.

The commission may not meet or incur expense after the redistricting plan is completed, except if litigation or any government approval of the plan is pending or to revise districts if required by court decision.

The Legislature shall ~~make suitable~~provide by law any provisions ~~for carrying into effect the requirements of~~necessary to implement this section.

Any person purposefully violating any portion of this section ~~shall be found~~is guilty of ~~election~~ fraud ~~punishable~~and shall be punished as provided by law.