



Legislative Research Council

RECEIVED
JUL 31 2015
S.D. SEC. OF STATE

Representative Dean Wink, Chair
Senator Corey Brown, Vice Chair

Jason Hancock, Director
Sue Cichos, Deputy Director
Doug Decker, Code Counsel

July 29, 2015

Mr. John P. Fiksdal
3918 S. Western Avenue
Sioux Falls, SD 57105

Dear Mr. Fiksdal:

Pursuant to SDCL 12-13-25, this office is required to review each initiated law or initiated amendment to the South Dakota Constitution. Further, this office is required by SDCL 12-13-24 to determine if each initiative or 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.

The draft language of the initiated measure submitted to this office is not written in the same form and style used for preparing legislation for the South Dakota Legislature. It may be helpful to review the drafting manual for legislation which may be found on the LRC website or you may find examples of legislation introduced in previous sessions to provide a format for preparing your proposed initiated measure.

The title for proposed measure should begin with an active verb that expresses the subject of the proposed measure. The title for proposed measure currently begins with a short title, which is also inconsistent with the practice of codification used in this state. Short titles are occasionally used with Uniform State Laws to indicate to the South Dakota courts that courts in other states may have already construed the provisions of the proposed Act. Furthermore, findings and declaration of purpose are rarely used in legislation and it does not appear that the proposed findings list any facts, but expresses an opinion of the purpose of the measure. There are several other form and style issues which are either outlined in this letter or marked on the proposed measure.

Do not attempt to amend or propose the catchline for each section of law, the catchline is not part of the statute. The publisher and Code Counsel will amend or prepare the catchlines. Also, never attempt to assign the codification number for any new section as that will be determined by the publisher and Code Counsel.

New underscored material always follows overstricken material and it is not proper form and style to overstrike and underscore a portion of a word. In many instances within the proposed measure, the section begins with subdivision numbers. This is the federal drafting style, which is used in some other states, by assigning a subdivision number to each paragraph of a multi-paragraph section. This practice is not permitted in South Dakota. In general, avoid multi-paragraph sections by making each paragraph a separate section and use internal references, if needed. Section 31 of the measure as submitted to this office is a prime example of the improper use of subdivisions. These paragraphs should be made into separate sections which, if approved by voters, may likely be codified as a separate chapter.

We do not use numerals in the drafting of legislation, except for the drafting of special appropriations. Please avoid the use of pronouns whenever possible by using terms such as, voter or candidate, which could be substituted for several of these pronouns. We also write in the active voice and use the singular subject instead of the plural when drafting. The simplest way to accurately state a proposition is the preferred format. Please use short and concise sentences and avoid long complex sentences.

There are sentences and paragraphs within the proposed measure that reflect a discussion on the merits of the measure and the pro and cons of certain stipulations within the measure. It is recommended that language be deleted from the measure whenever possible.

The phrase "but not be limited to" is used several times and should be deleted. The use of this phrase implies that there are other items that are not listed. If it is necessary to provide a list of items to clarify the meaning of the proposed legislation, please list all items that are applicable. The courts, if asked to interpret the meaning of the lists, most likely will determine the list to be all inclusive. The lists should be all inclusive or be deleted.

When drafting bills or amendments 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. As you may note, many of sections that previously included "may not" in the existing language, you added a "shall not". We strive for consistency in the usage of terms, when drafting amendments or adding new language.

The first full paragraph on the top of page 22 requires the Secretary of State to provide information from campaign finance disclosure statements submitted to the present. Are you requiring that all historical files that exist be made available electronically? Not knowing how those statements were submitted and maintained, there is a concern as to whether this is feasible and how much it may cost the state to comply with this requirement. Please consider visiting with the Secretary of State regarding this stipulation.

The proposed measure references rules promulgated by the ethics commission, however, no specific rule making authority is granted to the ethics commission. Page 35 of the Legislative Drafting Manual outlines how to provide rule making authority. This is a delegation of the legislative authority to the ethics commission and the rule making authority should be specifically

described. The courts have ruled it an unconstitutional delegation of legislative authority when done so without limits or standards.

Sections 39 and 40 on page 35 provide an appropriation to the democracy credit fund. S.D. Const., Art. XII, § 2 states that appropriations shall be made by separate bills, each embracing one object, and requires a two-thirds vote of all the members of each branch of the Legislature. The proposed annual appropriation may be unconstitutional.

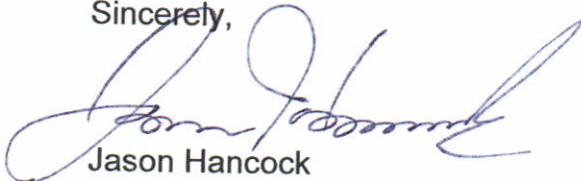
Severability clauses may be used in other states; however, severability is a long-established doctrine of the South Dakota Supreme Court. This is sometimes referred to as "the doctrine of severability." Section 42 on page 36 as the draft was submitted to this office should be deleted.

Finally, the proposed initiated measure is lengthy. Please keep in mind that the proposed measure along with the Attorney General explanation, instructions to signers, and signature blocks must all fit on a single initiative petition form.

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 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,



Jason Hancock
Director

JH:FB

Enc.

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