

MINUTES

Initiative and Referendum Task Force



Dr. Emily Wanless, Chair
Senator Jim Bolin, Vice Chair

**Second Meeting, 2017 Interim
July 19, 2017**

**Room 413/414 – State Capitol
Pierre, SD**

The second meeting of the Initiative and Referendum Task Force for the 2017 Interim was called to order by Doctor Emily Wanless on Wednesday, July 19, 2017, at 10:00 AM in room 413 of the State Capitol. A quorum was determined with the following members answering roll call: James Abbott (via telephone), Senator Jim Bolin, Pam Lynde, Will Mortenson, Senator Reynold Nesiba, Senator Ernie Otten, Representative Kent Peterson, Representative Tim Reed, Representative Karen Soli, Duane Sutton, Yvonne Taylor, Linda Lea Viken, Attorney General Marty Jackley (Ex-Officio), Secretary of State Shantel Krebs (Ex-Officio), and Doctor Emily Wanless, Chair.

Staff members present include Wenzel Cummings, Legislative Attorney; Fred Baatz, Principal Research Analyst; Jason Simmons, Principal Fiscal Analyst; Jason Hancock, Director; and Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://sdlegislature.gov>.

Chair's Opening Remarks

Dr. Emily Wanless, Chair, welcomed Representative Kent Peterson as the newest member of the task force. Representative Peterson replaced Representative Don Hagggar. Dr. Wanless said the draft legislation that the task force will be discussing is intended to improve the initiative and referendum process.

Senator Bolin, Vice Chair, said the referendum process should not be changed, that the public has the right to refer a law to the vote of the people. Senator Bolin said it is the initiated measure process that needs improvement, and that should be the focus of the task force.

Approval of Minutes

A MOTION WAS MADE BY SENATOR NESIBA, SECONDED BY SENATOR OTTEN, TO APPROVE THE MINUTES OF THE JUNE 20-21, 2017, INITIATIVE AND REFERENDUM TASK FORCE MEETING. Motion prevailed on a voice vote.

Committee Discussion Based on Research Requests

Senator Reynold Nesiba said that, unlike Senator Bolin, he does have concerns with the referendum process and the legislature's ability to use the emergency clause to prevent a new law from being referred.

Representative Karen Soli said she too has concerns with the use of the emergency clause to prevent a referendum. Representative Soli added that the task force should not look at making big changes to the system, but merely look at strengthening and preserving the process.

Senator Ernie Otten said he is intrigued by the information on [Oregon's Citizens' Initiative Review Commission](#). Senator Otten said a review panel established to conduct a more thorough vetting of the initiatives would be a positive step in the process.

Representative Tim Reed said a similar review committee could allow the sponsors an opportunity to respond to the Legislative Research Council's suggested changes and give them the opportunity to explain their intent.

Mr. Will Mortenson said he would like the task force to also consider smaller changes that would add transparency and clarity to the process.

Ms. Linda Lea Viken said she is interested in finding ways to increase voter education on the ballot measures; the voters need to be informed.

Senator Bolin asked if the Secretary of State's office can use federal grant dollars to fund educational programs directed at ballot measures.

Ms. Shantel Krebs, Secretary of State, explained that federal dollars can only be used for federal elections, not for statewide ballot measures. Secretary Krebs said her office printed 25,000 informational documents last year at a cost of \$25,000 for distribution to voters; that expense was paid from the state's general fund. Several counties ran out of the informational documents and printed more with the additional cost being paid by the County Auditors' offices.

Ms. Pam Lynde, Deuel County Auditor, said the citizens are eager to get the information so they can be educated on the ballot measures when casting their votes. The increased number of measures on the 2016 ballot increased the number of requests for the informational pamphlets, so some counties did pay to have extras printed.

The task force members discussed issues with out-of-state groups circulating petitions for South Dakota ballot measures. The question was asked if it would be possible to change the residency requirements for those circulating petitions.

Mr. Marty Jackley, Attorney General, said caution needs to be taken when addressing residency requirements. Currently, the courts test residency by asking the question, "Do you intend to be a resident here?". Senator Nesiba asked if it would be possible to use the same residency requirements as are used for out-of-state hunting and fishing licenses. Attorney General Jackley said it is possible but would most likely be challenged in the courts.

Mr. Mortenson read the Game, Fish and Parks residency requirements as found in SDCL 41-1-1, *"Resident," a person having a domicile within this state for at least ninety consecutive days immediately preceding the date of application for, purchasing, or attempting to purchase any license required under the provisions of this title or rules of the commission, who makes no claim of residency in any other state or foreign country for any purpose, and other than for a person described in § 41-1-1.1, claims no resident hunting, fishing, or trapping privileges in any other state or foreign country, and prior to any application for any license, transfers to this state the person's driver's license and motor vehicle registrations;"*

The task force members requested more information regarding the option of changing the residency requirements for circulating a petition.

The task force members discussed the Citizens' Initiative Review Commission that is used in Oregon to review ballot measures and if a similar review board could help address voter fatigue in South Dakota. Representative Reed asked about the Board of Election and if perhaps they could be a part of the review board.

Secretary of State Krebs explained the Board of Elections; how the appointments are made and the Board's responsibilities. This information can be found in [SDCL 12-1](#).

Ms. Wanless pointed out that the task force is actually discussing two different types of review boards. One board would review the proposed measure prior to it being placed on the ballot and the other board would be established to educate the public on the ballot measures after they are placed on the ballot. Ms. Wanless appointed Senator Otten, Representative Reed, and Ms. Viken to work with Mr. Cummings on developing legislation regarding these review boards. All task force members were encouraged to contact Mr. Cummings with their suggestions for this draft legislation.

Consideration of Bill Drafts

First drafts of the proposed bills discussed by the task force members can be found on the LRC website under [Committee Documents](#).

Bill drafts [#1](#), [#2](#) and [#3](#) all address the amount of time the Legislative Research Council (LRC) has to write comments on submitted proposed ballot measures and return those comments to the sponsor. The task force asked Mr. Cummings to draft a bill that would include bill drafts #1, #2, and #3 into one piece of legislation for consideration at the next meeting.

Public Testimony: Mr. John Fiksdal, Sioux Falls, said draft #2 allows for the LRC staff to provide more commentary on proposed measures than just style and form. Mr. Fiksdal said this additional work may not be able to be completed within LRC's 15-day deadline, especially with the lengthier proposed measures. Mr. Fiksdal said these types of comments are the responsibility of the Attorney General's office, not LRC.

[Bill draft #4](#) allows the LRC to provide more substantive comments on the proposed initiatives than just form and style. The sponsor will have the ability to abide by the additional comments if they so choose. Senator Bolin said he would like to continue with this bill, as it would help clarify things without requiring the sponsor to agree with the LRC comments or abide by them.

[Bill draft #5](#) limits the number of measures that can be placed on the ballot.

A MOTION WAS MADE BY SENATOR NESIBA, SECONDED BY LINDA LEA VIKEN, TO TABLE BILL DRAFT #5 (AKA #Z0076). The motion prevailed unanimously on a roll call vote with 13 AYES. Those voting AYE: Abbott, Lynde, Mortenson, Nesiba, Otten, Peterson, Reed, Soli, Sutton, Taylor, Viken, Bolin, and Wanless.

[Bill draft #6](#) gives the Board of Elections the authority to set guidelines for the style and form for printing of the petitions. Secretary of State Krebs said the Board does have this authority in statute but this legislation would further clarify that authority.

Ms. Yvonne Taylor asked if it is necessary to have the full text of the ballot measure on the petition or if printing the Attorney General's explanation would be adequate with the full text available upon request. Using just the Attorney General's explanation could help reduce the size of the petitions that are several pages long.

Secretary of State Krebs said the petition for Initiated Measure 22 was 47 pages without the signature pages, but although that petition was difficult to manage and expensive to print she believes the full text of the measure should be on the petition.

Senator Nesiba said this is an idea worth discussing further and requested a bill be drafted that would make this change to the petitions.

Public Testimony: Mr. John Fiksdal said he is against limiting the length of a ballot measure. Mr. Fiksdal added that he would support changing the process to print the synopsis of the measure on the petition rather than the full text of the measure. The petition circulator would then have handouts with the full text of the measure that could be distributed to the signers.

Ms. Melissa Mentele, New Approach SD, Emery, said the task force should look at setting a standard paper size to which the petition must conform; by doing so everyone would know exactly what the limits are for a petition and this would provide consistency. Ms. Mentele said their group gives a card to each person who signs the petition that includes the Attorney General's synopsis and her organization's website address. Ms. Mentele said they use a very small font for the text on the petition and offer a copy of the text in a larger font upon request. Thus far, the group has given out 580 of the larger text documents.

In response to a question from Senator Nesiba, Ms. Mentele said just having the Attorney General's synopsis on the petition defeats the purpose of the petition which is to make sure the signer has access to all the information. The Attorney General's statement is limited to 200 words and that is not enough for most of the ballot measures.

Mr. Bill Van Camp, SD Retailers Association, Pierre, said using the Attorney General's synopsis in place of the ballot measure's text on a petition would be woefully short and inadequate, and the Retailers Association does not support that change.

[Bill draft #7](#) would move the deadline for filing petitions for initiated measures to the last day of June prior to the election. The current deadline is one year prior to the election.

Senator Nesiba said there are a number of states that do not require petitions be filed a full year prior to the election, and that this would lessen the need to bring in out-of-state money to assist with getting petitions completed by the deadline.

Secretary of State Krebs said four months would not give her office enough time to validate the petition signatures, allow time for any court challenges, and would make it very difficult to have the ballots printed by the August 1 deadline. Secretary of State Krebs added that the South Dakota Secretary of State's office has the least number of staff members of any of the states, meaning other states can more easily accommodate the shorter time frame. Secretary of State Krebs said if more time is required to complete the petitions for ballot measures, the task force could consider allowing the petitioners to begin collecting signatures earlier than is currently allowed.

Public Testimony: Mr. David Owen, SD Chamber of Commerce and Industry, said his organization is often involved in the vote no campaigns on ballot measures. Moving the deadline back to June would not allow the time needed to prepare a vote no campaign.

Mr. John Fiksdal said the current November deadline makes collecting petition signatures so difficult that citizens are often not able to take part in the process of putting an issue on the ballot. Mr. Fiksdal added that having the additional time through this draft legislation would be a Godsend.

Mr. Mark Lee, Sioux Falls Area Chamber of Commerce, said his organization is opposed to the idea of moving the deadline to June. Mr. Lee said currently the organizers have up to a full year to gather signatures. Mr. Lee added that one of the issues with ballot measures is making sure the voters have the time and opportunity to become educated before casting their votes; changing the deadline to June would not leave much time for that educational process.

Ms. Dorothy Rowdy Brewick, Democracy in Action, Rapid City, testified that she is in favor of extending the deadline for submitting petitions. Ms. Brewick said allowing more time for collecting signatures could help address the need to have paid circulators in that the time extension would allow volunteers to be able to collect the required number of signatures. Ms. Brewick said the deadline should be extended and education should be made more available to the voters. Ms. Brewick added that the ability to use the emergency clause on legislation to prevent the measure from being referred needs to be looked at more closely.

Ms. Melissa Mentele suggested adding extra time for petition circulation to the beginning date, so that the sponsors can begin circulating in June rather than waiting until November. In response to a question from Mr. Mortenson, Ms. Mentele said the circulators need to make sure the signers understand what they are signing and that would reduce voter confusion. In response to a question from Senator Bolin, Ms. Mentele said she believes the petition circulators should be volunteers and if the sponsors feel passionate about the issue they should not need to pay to have petitions circulated.

Ms. Marcia Dunsmore, Democracy in Action, Rapid City, said she is a proponent of extending the deadline to June and, according to Ms. Dunsmore, if that causes problems for the staff in the Secretary of State's Office, the state's surplus can be used to fund hiring more staff.

[Bill draft #8](#) and [bill draft #9](#) both require that a constitutional amendment must have more than a majority of the vote to pass. Draft #8 requires 60% and draft #9 requires 55% of the voters must vote yes to amend the constitution. Senator Bolin requested these bill drafts and said his main purpose for serving on this task force is to find ways to protect the constitution.

(There was question as to voting results on proposed constitutional amendments since 1970, when the public was first allowed to initiate amending the constitution. Chair Wanless researched this question and her results can be found on the LRC website: [Constitutional Amendments Passed by Varying Vote Thresholds.](#))

Public Testimony: Mr. Lee said the Sioux Falls Chamber membership agrees with raising the bar regarding placing constitutional amendments on the ballot. Mr. Lee said either the 55% or 60% would be a good change.

Mr. Fiksdal said it is right to make it more difficult to change the constitution, but that it should not be impossible.

[Bill draft #10](#) is in response to Senate Bill 77 that required a fiscal impact statement on all initiated measures submitted after July 1, 2017. This bill would require fiscal impact statements on all initiated measures that are placed on the 2018 ballot, including those submitted to LRC prior to July 1. Senator Otten requested this bill draft and said if the task force does not wish to sponsor this legislation, he is prepared to be the prime sponsor.

Mr. Jason Hancock, LRC Director, commented on this proposed legislation at the request of Senator Nesiba. Mr. Hancock said the LRC would not produce fiscal notes on measures submitted to LRC prior to July 1 because that step is not required in statute. This legislation would change that requiring all ballot measures on the 2018 ballot have a fiscal note prepared by the LRC.

[Bill Draft #11](#) provides for the passage of similar ballot measures in an election, and clarifies which measure takes precedent. Mr. Mortenson said he requested this draft based on a comment made by a public testifier at the previous task force meeting. Mr. Cummings said this draft applies only to initiated measures. The task force asked that a few changes be made to the language for further consideration at the next meeting.

[Bill Draft #12](#) simplifies the recitation regarding the effect of a vote on ballot measures. Mr. Mortenson said changing the language from "clear and simple" to "clear and thorough" would allow the recitation to merely state that a vote yes changes the constitution and a vote no leaves the constitution as is, and the same with the initiated measures. Senator Bolin said this is a good proposal and the language in the bill is positive and removes any subtle advocacy for or against a ballot measure.

Additional Public Testimony

Ms. Susan Nolan, Democracy in Action, Rapid City, talked about initiatives that are not placed on the ballot but occur throughout the country. Ms. Nolan also asked why there is no diversity on the task force, adding that the voices of those who are not included in the meetings are not heard.

Mr. Robb Timm, Chiesman Center for Democracy, talked about the importance of the initiative and referendum system. Mr. Timm said there is no statewide unbiased process for educating voters on the ballot initiatives and that issue needs to be addressed. Mr. Timm told the task force members to be sure and ask themselves several questions before taking final action. Mr. Timm said he thinks the full text of the measure should be on the petition, as the Attorney General's synopsis is too limiting.

Mr. Fiksdal said people like the current process; there are enough regulations and the proposed changes all have unintended consequences. In response to questions from task force members, Mr. Fiksdal said out-of-state groups are invited by South Dakota groups to come into the state and assist with different issues that need to be addressed, including funding the campaign and helping with the collection of petition signatures.

Ms. Dorothy Rowdy Brewick said many people are disenfranchised because of the gerrymandering; voters feel they do not have proper representation and use ballot measures to address certain issues.

Task Force Discussion and Staff Direction

The task force members agreed that further action on draft legislation can be taken at the next task force meeting. Mr. Hancock explained the task force will prepare a final report to be presented to the Executive Board along with any task force approved legislation. The Executive Board reviews any proposals to make sure they fall within the scope given to the task force.

The Initiative and Referendum Task Force will hold its third meeting on August 23, 2017, starting at 9 AM (CDT) in room 362 of the State Capitol in Pierre.

Adjourn

A MOTION WAS MADE BY SENATOR BOLIN, SECONDED BY SENATOR NESIBA, THAT THE INITIATIVE AND REFERENDUM TASK FORCE MEETING BE ADJOURNED. The motion prevailed on a voice vote.

The task force adjourned at 3:30 PM.