

MINUTES

Initiative and Referendum Task Force



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

**Third Meeting, 2017 Interim
August 23, 2017**

**Room 362 – State Capitol
Pierre, South Dakota**

The third meeting of the Initiative and Referendum Task Force for the 2017 Interim was called to order by Dr. Emily Wanless on Wednesday, August 23, 2017, at 9:00 AM in room 362 of the State Capitol. A quorum was determined with the following members answering roll call: James Abbott, 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, Secretary of State Shantel Krebs (Ex-Officio), Senator Jim Bolin, Vice Chair, and Dr. Emily Wanless, Chair. Excused: Attorney General Marty Jackley (Ex-Officio).

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>.

Approval of Minutes

A MOTION WAS MADE BY SENATOR NESIBA, SECONDED BY REPRESENTATIVE REED, TO APPROVE THE MINUTES OF THE JULY 19, 2017, INITIATIVE AND REFERENDUM TASK FORCE MEETING. Motion prevailed on a voice vote.

Consideration of Bill Drafts

[Draft #77](#) – *An Act to revise certain provisions regarding petition forms for initiated measures and initiated amendments to the Constitution.*

Ms. Linda Lea Viken said the Board of Elections does currently have this authority but this legislation clarifies the authority to promulgate rules regarding the petition size and font size.

A MOTION WAS MADE BY LINDA LEA VIKEN, SECONDED BY DUANE SUTTON, TO APPROVE AND RECOMMEND DRAFT #77. The motion prevailed on a roll call vote with 13 voting AYE. Those voting AYE: Abbott, Lynde, Mortenson, Nesiba, Otten, Peterson, Reed, Soli, Sutton, Taylor, Viken, Bolin, and Wanless.

Draft legislation #77 will be a House Bill and the prime sponsors will be Representative Tim Reed and Senator Reynold Nesiba.

[Draft #82](#) – *An Act to require fiscal notes for certain initiated measures and initiated amendments to the Constitution.*

Senator Ernie Otten said SB70 was intended to have a fiscal note attached to all initiatives and referendums that will be on the ballot in 2018, but the final legislation applied this requirement to only initiative and referendums received by the LRC starting July 1, 2017. LRC Director Jason Hancock was asked to further address this issue.

Mr. Jason Hancock, Director, Legislative Research Council (LRC), said there were a few ballot measures submitted before the July 1 date. If the sponsor of the ballot measure requests a fiscal note, the LRC will try to honor that request if time allows, however, the passage of this legislation would make it a requirement for the LRC to write the fiscal notes on all measures.

Mr. Wenzel Cummings, Legislative Attorney, further explained that these fiscal notes do not affect the petition circulators or sponsors, but rather the fiscal note information will be automatically placed on the ballot with the appropriate ballot measure as needed.

Secretary of State Shantel Krebs said there were ten ballot measures for the 2018 ballot submitted to the LRC prior to July 1.

A MOTION WAS MADE BY YVONNE TAYLOR, SECONDED BY SENATOR JIM BOLIN, TO APPROVE AND RECOMMEND DRAFT #82. The motion prevailed on a roll call vote with 12 voting AYE, 1 voting NAY. Those voting AYE: Abbott, Lynde, Mortenson, Otten, Peterson, Reed, Soli, Sutton, Taylor, Viken, Bolin, and Wanless. Voting NAY: Nesiba.

Draft legislation #82 will be a Senate Bill and the prime sponsors will be Senator Ernie Otten and Representative Kent Peterson.

[Draft #83](#) – *An Act to revise certain requirements for a recitation regarding the effect of a vote on certain ballot measures.*

Mr. Will Mortenson said this legislation will simplify the explanation of the vote that is included with the ballot measure.

Secretary of State Krebs said her office opposes this legislation because of the timing. The ballot measure wording is prepared in advance of the printing of the actual ballot and this type of legislation would require a rules hearing which takes time to complete. The logistics of this legislation would cause problems getting the ballot printed by August of 2018. Secretary Krebs said she is not opposed to the substance of the bill but would prefer it be delayed to the 2020 election to address the timing issue.

A MOTION WAS MADE BY REPRESENTATIVE KENT PETERSON, SECONDED BY WILL MORTENSON, TO AMEND LINE 9, PAGE 2, TO REPLACE "REPEAL" WITH "REJECT". Motion prevailed on a voice vote.

A MOTION WAS MADE BY LINDA LEA VIKEN, SECONDED BY DUANE SUTTON, TO DELAY IMPLEMENTATION OF THIS BILL UNTIL JULY 1, 2019. Motion prevailed on a voice vote.

A MOTION WAS MADE BY SENATOR REYNOLD NESIBA, SECONDED BY SENATOR JIM BOLIN, TO APPROVE AND RECOMMEND DRAFT #83 AS AMENDED. The motion prevailed on a roll call vote with 13 voting AYE. Those voting AYE: Abbott, Lynde, Mortenson, Nesiba, Otten, Peterson, Reed, Soli, Sutton, Taylor, Viken, Bolin, and Wanless.

Draft legislation #83 will be a House Bill and the prime sponsors will be Representative Kent Peterson and Senator Jim Bolin.

[Draft #84](#) – *An Act to provide for the resolution of conflicts by multiple initiated measures and amendments to the Constitution adopted at the same election.*

Mr. Mortenson said this draft clarifies the procedure used when more than one ballot measure of similar intent passes. This legislation only applies to the portions of the measures that conflict.

Mr. Cummings explained that the language used in this draft is taken from statute and gives the Code Counsel the authority to address these types of conflicts.

Chair Emily Wanless said this legislation clarifies that what becomes law is based on vote totals when there are conflicting sections in ballot measures.

A MOTION WAS MADE BY SENATOR REYNOLD NESIBA, SECONDED BY SENATOR JIM BOLIN, TO APPROVE AND RECOMMEND DRAFT #84. The motion prevailed on a roll call vote with 13 voting AYE. Those voting AYE: Abbott, Lynde, Mortenson, Nesiba, Otten, Peterson, Reed, Soli, Sutton, Taylor, Viken, Bolin, Wanless.

Draft legislation #84 will be a Senate Bill and the prime sponsors will be Senator Reynold Nesiba and Representative Tim Reed.

Draft legislation #87 was withdrawn from consideration by Senator Nesiba.

[Draft # 97](#) – *An Act to revise the extent of comments required by the director of the Legislative Research Council regarding certain ballot measures and the period of time in which those comments are to be made.*

Mr. Cummings said currently the LRC is required to provide style and form comments on draft ballot measures submitted to the LRC office. This legislation provides better guidelines regarding the review done by the LRC staff. The sponsors are still not required to adopt the LRC staff comments.

Representative Karen Soli said she favors this legislation as the sponsors of these measures should receive the same assistance legislators receive when drafting bills.

A MOTION WAS MADE BY WILL MORTENSON, SECONDED BY REPRESENTATIVE KENT PETERSON, TO APPROVE AND RECOMMEND DRAFT #97. The motion prevailed on a roll call vote with 13 voting AYE. Those voting AYE: Abbott, Lynde, Mortenson, Nesiba, Otten, Peterson Reed, Soli, Sutton, Taylor, Viken, Bolin, and Wanless.

Draft legislation #97 will be a House Bill and the prime sponsors will be Representative Karen Soli and Senator Reynold Nesiba.

[Draft # 99](#) – *An Act to require petition circulators for certain ballot measures to provide the full text of the ballot measure to petition signers.*

Senator Reynold Nesiba said this legislation was drafted to address the "beach blanket" petition; petitions that are so large it is nearly impossible for the public to read them. This allows not putting the full text on the petition, but copies of the full text must be available; the petition would include the title of the measure and the Attorney General's comments.

Secretary of State Krebs explained the current process requires the petition to include the title of the measure, the Attorney General's comments, and the full text of the measure.

Ms. Yvonne Taylor said she likes that the person signing the petition knows what they are signing and the Attorney General's explanation better provides that information; it can be impossible to read the lengthier measures placed on petitions.

Mr. Mortenson said having the full text on the petition is one of the concrete mechanisms available to make sure the petition signer knows what is being signed.

A MOTION WAS MADE BY DUANE SUTTON, SECONDED BY LINDA LEA VIKEN, TO AMEND PAGE 2, LINE 23, BY REPLACING THE WORDS SHALL PROVIDE WITH SHALL MAKE AVAILABLE. The motion prevailed on a voice vote.

A MOTION WAS MADE BY REPRESENTATIVE TIM REED, SECONDED BY REPRESENTATIVE KENT PETERSON, TO AMEND BY REMOVING THE STRIKE FROM PAGE 1, LINE 7, AND FROM PAGE 2, LINE 16. The motion failed on a roll call vote with 4 voting AYE and 9 voting NAY. Those voting AYE: Abbott, Mortenson, Peterson, and Reed. Those voting NAY: Lynde, Nesiba, Otten, Soli, Sutton, Taylor, Viken, Bolin, and Wanless.

A MOTION WAS MADE BY DUANE SUTTON, SECONDED BY SENATOR REYNOLD NESIBA, TO APPROVE AND RECOMMEND DRAFT #99 AS AMENDED. The motion prevailed on a roll call vote with 10 voting AYE, 3 voting NAY. Those voting AYE: Abbott, Lynde, Nesiba, Otten, Soli, Sutton, Taylor, Viken, Bolin, and Wanless. Those voting NAY: Mortenson, Peterson, and Reed.

Draft #99 will be a Senate Bill and the prime sponsors will be Senator Reynold Nesiba and Representative Karen Soli.

[Draft Resolution #80](#) would change the vote requirement to approve a constitutional amendment to *not less than sixty percent of the votes cast on the amendment or revision.*

Draft Resolution #80 was withdrawn from consideration by Senator Jim Bolin.

[Draft Resolution #81](#) would change the vote requirement to approve a constitutional amendment to *not less than fifty-five percent of the votes cast on the amendment or revision.*

Senator Jim Bolin said the South Dakota Constitution needs protection against a wide range of efforts to reform and alter it in ways of which the public is not fully appreciative. Senator Bolin said he does not consider the constitution sacred but that it needs a higher threshold for alteration. Senator Bolin explained that his intent for this proposed amendment is that it apply to future elections with amendment measures, and not apply to other measures that are on the same ballot as this resolution.

Ms. Linda Lea Viken requested the minutes be clear that the intent of this task force is that this resolution not affect any other constitutional amendments on the ballot at the same time as this amendment.

Senator Nesiba said he opposes this amendment as it is already difficult to put a constitutional amendment on the ballot because of the large number of signatures needed on the petitions.

Chair Wanless said the task force members all agree that the preservation of the constitution is important and this legislation would be an incentive for people to use the initiated measure option rather than proposing a constitutional amendment.

A MOTION WAS MADE BY SENATOR JIM BOLIN, SECONDED BY SENATOR ERNIE OTTEN, TO APPROVE AND RECOMMEND DRAFT RESOLUTION #81. The motion prevailed on a roll call vote with 11 voting AYE, 2 voting

NAY. Those voting AYE: Lynde, Mortenson, Otten, Peterson, Reed, Soli, Sutton, Taylor, Viken, Bolin, Wanless. Voting NAY: Abbott and Nesiba.

Draft #81 will be a Senate Bill and the prime sponsors will be Senator Jim Bolin and Representative Tim Reed.

Chair Wanless said draft resolutions #94 and #95 were withdrawn from consideration by Mr. Will Mortenson.

[Draft #73](#) – *An Act to require the director of the Legislative Research Council to complete certain written comments regarding ballot measures within a certain period.*

Mr. Wenzel Cummings explained this legislation would be in conflict with draft #97, which the task force voted to approve and recommend.

A MOTION WAS MADE BY WILL MORTENSON, SECONDED BY JIM ABBOTT, TO WITHDRAW DRAFT #73 FROM CONSIDERATION. The motion prevailed on a voice vote.

[Draft #96](#) – *An Act to revise the time period during which certain petition sponsors may submit certain ballot measures to the Legislative Research Council for review and comment.*

The legislation considered by the committee was a rewrite of Senator Nesiba's original draft request, and changes were at Senator Nesiba's request. Mr. Cummings explained this legislation amends the statute, clarifying as to when ballot measure language can be submitted to the LRC.

Representative Kent Peterson asked if the language in this draft is not currently in effect. Senator Reynold Nesiba said it is but this legislation would give clarity to what is now confusing.

A MOTION WAS MADE BY REPRESENTATIVE KAREN SOLI, SECONDED BY SENATOR ERNIE OTTEN, TO APPROVE AND RECOMMEND THE REVISED VERSION OF DRAFT LEGISLATION #96. The motion prevailed on a roll call vote with 11 voting AYE, 2 voting NAY. Those voting AYE: Abbott, Lynde, Mortenson, Nesiba, Otten, Soli, Sutton, Taylor, Viken, Bolin, and Wanless. Those voting NAY: Peterson and Reed.

Draft legislation #96 will be a Senate Bill and the prime sponsors will be Senator Reynold Nesiba and Representative Karen Soli.

[Draft Resolution #110](#) would limit the number of constitutional amendments: *No more than two amendments may be submitted by the Legislature to the voters at an election. No more than two amendments by initiative may be submitted to the voters at an election.*

After hearing comments regarding this draft, Senator Jim Bolin thanked the task force members for voicing their opinions and withdrew draft resolution #110 from consideration.

[Draft Resolution #113](#) would require: *An amendment proposed by initiative shall be submitted to the voters at two consecutive general elections.*

Chair Wanless explained this legislation would require that a constitutional amendment be approved in two consecutive elections before taking affect.

Representative Tim Reed said there are times when the process should not be slowed down and the amendment is needed for the functioning of the state.

Senator Nesiba said this process already begins two and a half years ahead of the vote and this legislation would stretch the process out over five years.

A MOTION WAS MADE BY WILL MORTENSON, SECONDED BY SENATOR JIM BOLIN, TO APPROVE AND RECOMMEND DRAFT RESOLUTION #113. The motion failed on a roll call vote with 0 voting AYE, 13 voting NAY. Those voting NAY: Abbott, Lynde, Mortenson, Nesiba, Otten, Peterson, Reed, Soli, Sutton, Taylor, Viken, Bolin, and Wanless.

[Draft Resolution #114](#) states that: *No law adopted by a vote of the people by initiative may be amended or repealed except by a vote of the people unless otherwise provided in the initiated measure or by three-fourths of all the members of each house of the Legislature.*

Chair Wanless said this legislation would incentivize the use of the initiated measure over amending the constitution, as this would require a three-fourths vote of the legislature to amend or repeal an initiated measure.

A MOTION TO AMEND #114 WAS MADE BY SENATOR REYNOLD NESIBA, SECONDED BY LINDA LEA VIKEN, TO CHANGE LINE 7 ON PAGE 2 AFTER THE WORD "REPEALED" ADDING "OR TWO YEARS FOLLOWING PASSAGE UNLESS OTHERWISE PROVIDED IN THE INITIATED MEASURE." The motion was withdrawn by Senator Nesiba with the consent of the second, Ms. Viken.

A MOTION TO AMEND #114 WAS MADE BY SENATOR REYNOLD NESIBA, SECONDED BY LINDA LEA VIKEN, TO AMEND THE DRAFT TO INCLUDE "NOT LESS THAN ONE YEAR FOLLOWING THE EFFECTIVE DATE EXCEPT BY A VOTE OF THE PEOPLE." The motion to amend prevailed on a voice vote.

A MOTION TO AMEND #114 WAS MADE BY SENATOR REYNOLD NESIBA, SECONDED BY SENATOR JIM BOLIN, TO CHANGE LINE 8 OF PAGE 2 BY REPLACING "THREE-FOURTHS" WITH "TWO-THIRDS". The motion to amend prevailed on a roll call vote with 9 voting AYE, 4 voting NAY. Those voting AYE: Lynde, Mortenson, Otten, Peterson, Reed, Soli, Sutton, Taylor, and Bolin. Those voting NAY: Abbott, Nesiba, Viken, and Wanless.

A MOTION WAS MADE BY LINDA LEA VIKEN, SECONDED BY JIM ABBOTT, TO APPROVE AND RECOMMEND DRAFT RESOLUTION #114 AS AMENDED. The motion failed on a roll call vote with 6 voting AYE, 7 voting NAY. Those voting AYE: Abbott, Lynde, Nesiba, Soli, Viken, and Wanless. Those voting NAY: Mortenson, Otten, Peterson, Reed, Sutton, Taylor and Bolin.

[Draft #100](#) – *An Act to revise certain provisions regarding the director of the Legislative Research Council issuing fiscal notes for certain ballot measures.*

LRC Director Hancock said the LRC does not lobby for or against legislation. He explained that this legislation is intended to clean up areas where there is some overlap and inefficiencies regarding fiscal notes as they apply to ballot measures, eliminating the need for the sponsor to request the fiscal note. This draft also aligns the 60-day time period for the fiscal note with the same time period the Attorney General has for review, with the two deadlines ending on the same day.

A MOTION WAS MADE BY SENATOR REYNOLD NESIBA, SECONDED BY DUANE SUTTON, TO APPROVE AND RECOMMEND DRAFT LEGISLATION #100. The motion prevailed on a roll call vote with 13 voting AYE. Those voting AYE: Abbott, Lynde, Mortenson, Nesiba, Otten, Peterson, Reed, Soli, Sutton, Taylor, Viken, Bolin, and Wanless.

Draft legislation #100 will be a Senate Bill and the prime sponsors will be Senator Ernie Otten and Representative Karen Soli.

Citizen Review Panel/Commission Discussion and Public Testimony

Three pieces of legislation were drafted establishing some type of review board for ballot measures and were presented to the task force for their consideration.

[Draft legislation #101](#) – *An Act to require the State Board of Elections to convene citizen review panels for certain ballot measures and to provide comments.*

Mr. Cummings said he drafted this legislation based on discussion at the two previous task force meetings and it is not intended to compete with the other review panel draft legislation.

[Draft legislation #107](#) – *An Act to create a commission to review initiated measures and initiated amendments to the Constitution and to prescribe the commission's powers and duties.*

Representative Reed said he worked with Senator Otten in drafting this legislation. The draft details the review panel's purpose, membership, and process for distributing the information gathered.

Secretary of State Krebs said this legislation would take significant funding for staffing, printing, and postage. Just printing the informational piece and the postage for sending it to all registered voters would cost almost \$500,000.

Representative Soli asked if this review process couldn't take place later in the election process, even waiting until after the petitions have been filed.

Representative Reed said starting early in the process could help address any potential problems with the measure that could lead to the courts getting involved.

[Draft legislation #108](#) – *An Act to create a citizen commission to review initiated measures and initiated amendments to the Constitution and to prescribe the commission's powers and duties.*

Ms. Viken said draft #108 has the same principle as #107 but the results are accomplished in a much simpler manner.

Chair Wanless explained the process this draft legislation suggests for a review panel. The panel would appoint a committee to write the pro and con statements and all information would be available on the Secretary of State's website and at all County Auditor offices.

Chair Wanless opened the meeting to public testimony regarding the proposals to develop some type of ballot measure review panel.

Mr. Rob Timm, Chiesman Center for Democracy, Rapid City, said drafts #107 and #108 are very relevant and need to be fleshed out. #107 provides more information and public education and #108 engages the citizens. Mr. Timm would like these panels to only address constitutional measures, and would like them to have four meetings rather than two. Mr. Timm said having political officials as members of the panel is acceptable as long as they are not voting members.

Ms. Tonchi Weaver, South Dakota Citizens for Liberty, Rapid City, testified that she is not in favor of citizen panels and that both #107 and #108 need to have fiscal notes. Ms. Weaver said she discourages mailing anything, as that is a lot of waste for a great deal of cost. Ms. Weaver said hand-picked panels always look agenda driven.

Ms. Barbara Landers, South Dakota Citizens for Liberty, Rapid City, said this information could be distributed electronically making it more realistic and cost effective. Ms. Landers added that the purpose is to reach the voters who want to be informed, not those who do not care.

Task Force Discussion and Staff Direction

Representatives Soli and Reed both commented that a small workgroup should be appointed to work on the review panel legislation further. Chair Wanless appointed Senator Otten, Representative Reed, Linda Lea Viken, Yvonne Taylor and herself to the review panel legislation workgroup.

Mr. Cummings said the workgroup could meet and prepare draft legislation on this topic and then present it to the full task force via conference call, with the meeting being livestreamed through SDPBS.

A MOTION WAS MADE BY SENATOR REYNOLD NESIBA, SECONDED BY REPRESENTATIVE TIM REED, THAT THE INITIATIVE AND REFERENDUM TASK FORCE HAVE A FOURTH MEETING TO TAKE ACTION ON THE REMAINING BILL DRAFTS. The motion prevailed on a roll call vote with 11 voting AYE, 2 voting NAY. Those voting AYE: Abbott, Lynde, Mortenson, Nesiba, Otten, Peterson, Reed, Soli, Taylor, Viken, and Wanless. Those voting NAY: Sutton and Bolin.

The Initiative and Referendum Task Force will hold its fourth meeting on October 6, starting at 3 PM (CDT) in room 412 of the State Capitol in Pierre, with the majority of the members participating via conference call.

Representative Reed commented that he would like to find a way to get the sponsors of the ballot measures to see the LRC in a more positive light, rather than looking at LRC as an adversary.

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 3:15 PM.