

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

INITIATED AND REFERRED MEASURES STUDY COMMISSION

Monday, July 31, 2017
Roughrider Room, State Capitol
Bismarck, North Dakota

Surrogate Judge William A. Neumann, Chairman, called the meeting to order at 10:00 a.m.

Members present: Chairman Surrogate Judge William A. Neumann; Senators Gary A. Lee, Erin Oban; Representatives Jim Kasper, Scott Louser, Vicky Steiner; Citizen Members Nick Archuleta, Ellen Chaffee, Kirsten Diederich, Robert Hale, Pete Hanebutt, Alvin A. Jaeger, Jack McDonald, Sara Meier, Brady Pelton, Kayla Pulvermacher, Jonathan Sickler, Conner Swanson

Member absent: Senator David Hogue

Others present: See [Appendix A](#)

Chairman Neumann provided background information on the development of the commission including information about 2017 Senate Bill No. 2135, which established the commission. He said the commission must present a report to the Legislative Management before September 1, 2018, and likely will hold six meetings before that date. He said the tentative dates for future meetings are Tuesday, September 26, 2017; Thursday, November 30, 2017; Tuesday, March 20, 2018; Tuesday, May 22, 2018; and Wednesday, August 8, 2018. He said the commission should obtain public input to avoid any misperception that the commission is trying to curtail residents' right to petition. He said the commission would need permission from the Chairman of the Legislative Management to hold any meetings outside Bismarck.

**SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE
OF THE NORTH DAKOTA LEGISLATIVE MANAGEMENT**

Chairman Neumann stated the commission will follow the rules for interim committees even though the commission is not a committee of the Legislative Management. Chairman Neumann and the Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

**CONSTITUTIONAL AND LEGAL PROVISIONS REGARDING
INITIATED AND REFERRED MEASURES**

At the request of Chairman Neumann, the Legislative Council staff reviewed Article III of the Constitution of North Dakota and the provisions of the North Dakota Century Code that pertain to initiated and referred measures to provide a legal framework for the commission. She said some of the most relevant statutory provisions include Sections 16.1-01-07, 16.1-01-09, 16.1-01-10, 16.1-01-17, 16.1-06-09, and 16.1-08.1-02.3.

INITIATED AND REFERRED MEASURE PROCESSES, FORMS, AND REQUIREMENTS

Chairman Neumann called on Mr. Alvin A. Jaeger, Secretary of State, for presentations (Appendices [B](#), [C](#), [D](#), [E](#), [F](#), [G](#), and [H](#)) on initiated and referred measure processes, forms, and requirements. Mr. Jaeger said he believes there are two rights involved in the initiated and referred measure process--the right of people to initiate a measure and the right of everyone else to know the process for initiating measures is followed lawfully and correctly.

In response to a question from Representative Kasper, Mr. Jaeger said when a petition for an initiated measure is submitted to his office, he is authorized to make minor format changes only. He said there is a common misconception that he is allowed to make substantive changes or ensure the initiated measure is workable. For example, he said, he suggested format changes to the drafters of the medical marijuana initiated measure in 2016.

In response to a question from Mr. McDonald, Mr. Jaeger said the drafters of that measure accepted all the suggestions.

Mr. Jaeger said his office developed a process to verify signatures on petitions for initiated measures. He said postcards are sent to at least 2,000 signatories, with requests to confirm contact information and residency. He said the list of postcard recipients are selected at random by a computer program.

In response to a question from Mr. Archuleta, Mr. Jaeger said the return rates on the postcards varies.

In response to a question from Senator Oban, Mr. Jaeger said he looks for some sort of trend in the postcard responses, rather than requiring a strict threshold number or percentage of positive replies. He said his office recommends sponsoring committees obtain more petition signatures than needed in case there are errors or other problems that disqualify some of the signatures.

In response to a question from Mr. Swanson, Mr. Jaeger said he does not think current law would allow residents to collect signatures electronically, as is done in some other states.

Chairman Neumann requested the Legislative Council staff bring information about other states' practices to the next commission meeting.

In response to questions from Mr. Hanebutt, Mr. Jaeger said his office finds improper signatures on every petition. He said initiated measures often are drafted by attorneys, and 2013 amendments to statutes regarding the initiated measure process significantly improved the process.

In response to a question from Ms. Diederich, Mr. Jaeger said there is a central voter file, also known as the pollbook, which may be used to determine whether petition signatories are actually North Dakota voters.

Mr. Jim Silrum, Deputy Secretary of State, said the pollbook is not used for that purpose.

In response to a question from Representative Steiner, Mr. Jaeger said he thinks the initiated measure process is generally good. He said he has not reviewed processes in other states.

In response to a question from Mr. McDonald, Mr. Jaeger said the commission may want to address the issue of whether petition circulators should be residents of the municipality where they circulate a petition.

INITIATED AND REFERRED MEASURE COSTS

Chairman Neumann requested the Legislative Council staff to provide information on the costs incurred by the Legislative Council for recent initiated measures. The Legislative Council staff said the costs were not tracked, but were significant in terms of staff time for recent measures. She said many hours of staff time were devoted to fixing the format and style of recent measures to reflect the format and style of the North Dakota Century Code.

Chairman Neumann called on Mr. Silrum for a presentation ([Appendix I](#)) on the costs incurred by sponsoring committees, including the costs of collecting signatures. Mr. Silrum said the State of Colorado lends iPads and other equipment to circulators to gather electronic signatures. He said the iPads have a program connected to the state's central voter file which limits signatories to voters whose information appears in that file.

In response to questions from Representative Louser, Mr. Silrum said the iPads are owned by the jurisdiction to which the signatures will be submitted, whether a municipality, county, or the state. He said he did not know whether signatories in Colorado receive any confirmation email or email requesting confirmation that they read the petition.

Representative Louser requested the Legislative Council staff to bring additional information about Colorado's system to the next meeting.

In response to a question from Ms. Chaffee, Mr. Silrum said some measure committees receive and spend millions of dollars while others receive and spend only hundreds. He said the committees' contribution reports are available from the Secretary of State's office.

Representative Kasper said it has been a long time since the Legislative Assembly last reviewed the initiated measure process, and the Legislative Assembly needs to get answers to several questions. He questioned whether North Dakota residents should have their laws changed by out-of-state residents with sufficient money to get laws passed by petition. He said the intent of the Legislative Assembly was to have the commission not be dominated by legislators, but rather to have more citizen members with a broad representation of residents across North Dakota.

COMMENTS BY INTERESTED PERSONS

Mr. Kevin Harmon, Beulah, said he was concerned the commission was intended to find a way to make it harder for citizens to petition. He said the initiated measure process is already difficult.

FUTURE MEETING TOPICS

Chairman Neumann asked the commission members for future meeting topics they would like to address.

Senator Lee asked for information regarding any limitations on what legislators can say and do regarding measures.

Mr. McDonald asked for additional information on the distinction between sponsoring committees and measure committees. He asked to discuss whether individuals have to report expenditures on initiated measures.

Mr. Hanebutt asked for a list of states that do and do not have initiated measure provisions and information about the different processes used in different states.

Ms. Pulvermacher asked for information regarding any training available for individuals preparing measures.

No further business appearing, Chairman Neumann adjourned the meeting at 3:00 p.m.

Claire Ness
Counsel

ATTACH:9