

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

INITIATED AND REFERRED MEASURES STUDY COMMISSION

Thursday, November 30, 2017
Roughrider Room, State Capitol
Bismarck, North Dakota

Surrogate Judge William A. Neumann, Chairman, called the meeting to order at 9:00 a.m.

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

Member absent: Representative Jim Kasper; Citizen Member Jonathan Sickler

Others present: See [Appendix A](#)

It was moved by Mr. Archuleta, seconded by Mr. McDonald, and carried in a voice vote that the minutes of the September 26, 2017, meeting be approved as distributed.

LAWS AND PRACTICES REGARDING INITIATED AND REFERRED MEASURES IN OTHER STATES

At the request of Chairman Neumann, the Legislative Council staff provided information in response to several questions asked during the September 26, 2017, meeting. The Legislative Council staff said she researched state constitutions and laws and also spoke with multiple secretaries of state around the country to answer the questions. She said laws varied on whether state legislative bodies must give indirect initiated measures hearings. She said Mississippi, which limits the number of initiated measures that may appear on a ballot, has not experienced a situation in which more than the maximum number of measures met ballot requirements. However, she said, Mississippi's Office of the Secretary of State indicated they would hold over any extra measures for the next election. She said several states, including Nevada, Alaska, Wyoming, and Montana, prohibit initiated measures that require expenditures of public funds or make appropriations, and Mississippi requires measure committees to identify sources of funding required for measures. She said the legislative body in Massachusetts, called the General Court, can amend initiated measures for constitutional amendments. She said an analysis of state and federal caselaw, including United States Supreme Court cases, indicates a prohibition on out-of-state contributions for or against initiated measures likely would be struck down as violating the First Amendment to the United States Constitution.

COMMISSION DISCUSSION OF PROPOSALS

Chairman Neumann opened the meeting to commission members to propose ideas for bill drafts for recommendation to the Legislative Management.

In response to a question from Mr. Swanson, Mr. Jaeger said his office is unable to work with a sponsoring committee to develop measure language because doing so likely would constitute providing legal advice.

Mr. Hale said he has worked with the Legislative Council to develop measure language in the past. He said the Legislative Council staff may draft the language only upon the request of a legislator.

It was moved by Mr. McDonald and seconded by Ms. Diederich that the commission consider any proposal at two meetings before voting whether to recommend the proposal to the Legislative Management.

It was moved by Mr. Hanebutt, seconded by Representative Steiner, and carried on a roll call vote that the motion be amended to require each proposal be in writing before it may be considered for purposes of the motion. Representative Steiner; Senators Hogue, Lee, and Oban; and Citizen Members Archuleta, Bogar, Chaffee, Diederich, Hale, Hanebutt, Jaeger, McDonald, Meier, Neumann, and Pulvermacher voted "aye." Representative Louser and Citizen Member Swanson voted "nay."

After amendment, the motion to require consideration at two meetings passed on a roll call vote. Representatives Louser and Steiner; Senators Hogue, Lee, and Oban; and Citizen Members Archuleta, Bogar, Chaffee, Diederich, Hale, Hanebutt, Jaeger, McDonald, Meier, Neumann, Pulvermacher, and Swanson voted "aye." No negative votes were cast.

The commission continued discussion of proposals and requested the Legislative Council staff to draft bills of the proposals for consideration at the next meeting.

Ms. Meier requested two proposals be drafted. She said she would like the commission to consider a requirement to have a measure's fiscal impact statement included on the ballot. She said this would require the preparation of fiscal impact statements earlier in the initiated measure process. She said she would like the commission to consider a requirement to have the Legislative Council draft measures to ensure the form and content of a measure achieve what the sponsoring committee wants.

Mr. Hale distributed four written proposals ([Appendix B](#)) and requested the Legislative Council staff draft them in appropriate form for the next meeting.

Mr. Hale said the process for fiscal impact statements leads to biased statements with an apparent seal of approval from the government. He said proponents and opponents of measures should develop fiscal impact statements.

Mr. McDonald said he preferred having a fiscal impact statement from the state.

In response to a question from Ms. Chaffee, Senator Lee said the fiscal impact statements are prepared before the election to be helpful to the voters before making a decision on how to vote.

Mr. Hale said in-state and out-of-state contributors to measure committees should be subject to the same finance disclosure statement requirements.

Representative Steiner said she prefers to have more information on out-of-state contributors.

Mr. Hale said an alternative proposal may be to have the current requirements for out-of-state contributors apply to in-state contributors rather than reducing the requirements for out-of-state contributors.

Mr. Jaeger said when considering when fiscal impact statements are completed, the commission should keep in mind military voters begin voting 46 days before the election.

Representative Louser said a process whereby a sponsoring committee would bring an idea to a legislator would allow access to the drafting services provided by the Legislative Council. He said the sponsoring committee could file the drafted measure with the Secretary of State and begin acquiring signatures on petitions for the measure. After the requisite signatures were obtained, he said, the committee would submit the petitions to the Secretary of State, and the measure would be introduced in the next Legislative Assembly as a bill. He said the bill would be assigned to a committee for a hearing and public debate, and at least one chamber would have to vote on it. He said legislators would not be allowed to amend the bill, and if the bill passed and was signed by the Governor, it would become law. He said if the bill did not pass, the measure committee could choose to have the measure put on the ballot at the following general election without having to obtain additional signatures. He said the proposal likely would require a constitutional amendment.

Senator Hogue made two proposals--numbers 5 and 6 in [Appendix C](#)--to amend Section 9 of Article III of the Constitution of North Dakota. He said one proposal would require legislative approval for measures to amend the state constitution, which would require a certain level of spending. He said the other proposal would allow the Legislative Assembly to amend, by a two-thirds vote, any constitutional amendment spending that requires a certain level of which voters approved. He said the Legislative Assembly must project the state's budget for 30 months each biennium even though the state's economy is driven largely by agriculture and energy. He said those two industries are relatively volatile and shift the revenue cycle, thereby shifting the spending cycle. He said he cannot think of a reason to include spending provisions in the state constitution.

Senator Lee said he agreed with Senator Hogue. He said he has served on the Appropriations Committee for several legislative sessions and has had to address many funding decisions. He said Senator Hogue's proposals would give the Legislative Assembly the option of looking at the state budget as a whole.

Representative Louser said an option may be to offer petitioners tablets to gather signatures using voter files, similarly to the program in the City of Denver.

Ms. Diederich said allowing initiated measures to be placed on ballots only in general elections that immediately precede legislative sessions would allow the Legislative Assembly to appropriate necessary funds for any measures that pass.

Senator Oban questioned whether there would be any support for an independent commission that would be available to help sponsoring committees draft measure language and develop fiscal impact statements. She said it may be difficult for a member of the public to find a legislator willing to bring a measure idea to the Legislative Council for drafting. She requested feedback on a proposal to include fiscal notes on ballots, and said there is a benefit to requiring a measure to include a tax if the measure will have a cost.

Mr. Hale said if the state mandates sponsoring committees work with a legislator, the power to initiate a measure would no longer be a power reserved to the people. He said he would recommend, rather than mandate, sponsoring committees work with legislators.

Mr. Swanson said sponsoring committees that have drafted measures should be required to consult with the Secretary of State and Attorney General on the content and drafting of the measures.

COMMENTS BY INTERESTED PERSONS

Mr. Charles Tuttle, Bismarck, said he is a professional petitioner and he is troubled by any perception that petitioners bother people. He said initiated measures are about giving people access to the ballot, and the process for initiated measures is not broken.

No further business appearing, Chairman Neumann adjourned the meeting at 2:00 p.m.

Claire Ness
Counsel

ATTACH:3