

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

INITIATED AND REFERRED MEASURES STUDY COMMISSION

Tuesday, May 22, 2018
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, Jonathan Sickler

Members absent: Representative Jim Kasper and Citizen Member Conner Swanson

Others present: Representative Corey Mock, Grand Forks, member of the Legislative Management
See [appendix](#) for additional persons present.

It was moved by Senator Lee, seconded by Mr. McDonald, and carried on a voice vote that the minutes of the March 20, 2018, meeting be approved as distributed.

**Resolution Draft Regarding Measures for Constitutional Amendments
Requiring a Threshold Amount of Spending**

Chairman Neumann called on Senator Hogue to present a resolution draft [[19.3023.02000](#)] for a constitutional amendment that would require biennial legislative approval of expenditures necessitated by approved initiated measures that amended the constitution, provided the expenditures exceed an amount equal to 1 percent of the general fund revenue for the previous biennium. Senator Hogue said, under the current laws for initiated measures, a nonresident can come into North Dakota and turn the state's budget and economy upside down permanently by putting large spending provisions in the state constitution. He said the system is vulnerable to this misuse, and his proposal would eliminate the vulnerability. He said large budget decisions should be addressed biennially as economic conditions and priorities change.

In response to a question from Mr. McDonald, Senator Hogue said the current process for determining fiscal impacts would be used to determine whether the 1 percent threshold is met.

Ms. Chaffee said the resolution draft would be contrary to the constitution.

Chairman Neumann said the resolution draft, if approved by voters, would become part of the constitution.

Mr. Hale said the people of North Dakota are capable of deciding what is good for them and should be able to place any provision they choose in the constitution. He said the resolution draft should include an amendment to Section I of Article III of the Constitution of North Dakota to make the impact of the resolution clear.

Ms. Pulvermacher said she opposes the resolution draft because North Dakotans can vote down measures they think are bad.

Senator Oban said she opposes the resolution draft. She said there is a legitimate concern about putting spending measures in the constitution, but the Legislative Assembly should not have veto authority over measures approved by the public.

In response to a question from Senator Oban, Senator Hogue said he would be willing to add the phrase "or identified cuts in current spending" to the draft so sponsoring committees could identify a funding cut rather than a new funding stream to pay for their measures.

Senator Lee said Senator Hogue's resolution draft would protect against some vulnerabilities for initiated measures. He said our government is not a direct democracy but rather a representative republic that gives the Legislative Assembly the authority to make budgeting decisions.

Mr. Jaeger said he had concerns about mandating spending in the constitution because the constitution can be changed only by a vote of the electorate. He said problems that arise by putting spending in the constitution may take years to correct.

In response to a question from Mr. Jaeger, Senator Hogue said the resolution draft would not change the Secretary of State's process for reviewing proposed petitions.

It was moved by Senator Lee, seconded by Senator Hogue, and failed on a roll call vote that the committee approve the resolution draft requiring legislative approval of expenditures mandated by measures and recommend to the Legislative Management. Chairman Neuman; Senators Hogue and Lee; Representative Louser; and Citizen Members Bogar, Jaeger, and Meier voted "aye." Senator Oban; Representative Steiner; and Citizen Members Archuleta, Chaffee, Diederich, Hale, Hanebutt, McDonald, Pulvermacher, and Sickler voted "nay."

Bill Draft Requiring Fiscal Impacts for Initiated Measures to be Printed on Ballots

Chairman Neumann called on Ms. Meier to describe a bill draft [[19.0055.01000](#)], which would require the fiscal impact statements to be printed on ballots to give voters additional information when they vote. Ms. Meier said fiscal impact statements must be determined for initiated measures under current law.

It was moved by Ms. Diederich, seconded by Mr. Hale, and carried on a roll call vote that the bill draft requiring fiscal impacts for initiated measures to be printed on ballots be approved and recommended to the Legislative Management. Chairman Neumann; Senators Hogue, Lee, and Oban; Representatives Louser and Steiner; and Citizen Members Jaeger, Archuleta, Bogar, Chaffee, Diederich, Hale, Hanebutt, McDonald, Meier, Pulvermacher, and Sickler voted "aye." No negative votes were cast.

Bill Drafts Requiring Fiscal Impact Statements for Referred Measures

Chairman Neumann called on Mr. Hale to describe a bill draft [[19.0058.01000](#)] that would require the Legislative Council to coordinate the determination of a fiscal impact for each referred measure. He said the Legislative Council currently performs this function for initiated measures only.

It was moved by Ms. Chaffee and seconded by Mr. Hale that the bill draft to require fiscal impact statements for referred measures be approved and recommended to the Legislative Management.

Mr. Jaeger said some overstruck lines, especially lines 9 through 18 on page 1 in the bill draft affect duties of the Secretary of State's office.

Ms. Chaffee withdrew her motion.

It was moved by Mr. Hale, seconded by Ms. Chaffee, and carried on a roll call vote that the bill draft be amended to eliminate the overstrike from lines 9 through 18 on page 1. Chairman Neumann; Senators Hogue, Lee, and Oban; Representatives Louser and Steiner; and Citizen Members Archuleta, Bogar, Chaffee, Diederich, Hale, Hanebutt, Jaeger, McDonald, Meier, Pulvermacher, and Sickler voted "aye." No negative votes were cast.

It was moved by Ms. Diederich, seconded by Mr. Hale, and carried on a roll call vote that the bill draft be amended to eliminate the overstrike from line 24 on page 1 and line 1 on page 2 to retain the requirement the Legislative Council compare the original fiscal impact statement for a measure with the fiscal impact calculated for the first fiscal year after the measure was approved. Chairman Neumann; Senators Hogue, Lee, and Oban; Representatives Louser and Steiner; and Citizen Members Chaffee, Diederich, Hale, Hanebutt, Jaeger, Meier, Pulvermacher, and Sickler voted "aye." Citizen Member McDonald voted "nay."

It was moved by Mr. Hale, seconded by Ms. Chaffee, and carried on a roll call vote that the bill draft relating to fiscal impact statements, as amended, be approved and recommended to the Legislative Management. Chairman Neumann; Senator Oban; and Citizen Members Chaffee, Diederich, Hale, Jaeger, McDonald, Meier, Pulvermacher, and Sickler voted "aye." Senators Hogue and Lee; Representatives Louser and Steiner; and Citizen Member Hanebutt voted "nay."

Bill Draft Requiring Equal Reporting of Contributions from In-State and Out-of-State Contributors

Chairman Neumann called on Mr. Hale to present a bill draft [[19.0059.01000](#)] relating to eliminating the additional reporting requirements mandated for contributions to campaigns from out-of-state contributors. Mr. Hale said the commission may want to change the bill draft to make the additional requirements apply to all contributions. He said doing so would require campaign finance reports to include the additional information for contributions from in-state and out-of-state contributors.

Mr. Sickler said he was concerned about the impact that change would have on in-state contributors.

It was moved by Mr. Hale, seconded by Mr. Archuleta, and carried on a roll call vote that the bill draft be amended by replacing the phrase "an out-of-state" with "any." Chairman Neumann and Citizen Members Archuleta, Bogar, Chaffee, Diederich, Hale, Jaeger, McDonald, Meier, and Pulvermacher voted "aye." Representatives Louser and Steiner; Senators Hogue, Lee, and Oban; and Citizen Members Hanebutt and Sickler voted "nay."

It was moved by Mr. Hale, seconded by Ms. Chaffee, and carried on a roll call vote that bill draft relating to measure campaign contribution reports, as amended, be approved and recommended to the Legislative Management. Chairman Neumann; Senators Hogue, Lee, and Oban; and Citizen Members Archuleta, Chaffee, Diederich, Hale, Jaeger, and McDonald voted "aye." Representatives Louser and Steiner and Citizen Members Meier, Pulvermacher, and Sickler voted "nay."

Bill Draft Regarding Petition Title and Ballot Language Requirements

Chairman Neumann called on Ms. Chaffee to describe a bill draft [[19.0100.01000](#)] to limit the petition title to 100 words. Ms. Chaffee said 100 words is sufficient to describe a measure. She said the bill draft also would require the ballot language for a measure to be identical to the petition title. She said the goal of the bill draft is to provide clarity because ballot language is the most significant factor affecting the success or failure of a measure.

Mr. Jaeger said he strongly opposes this bill draft. He said the 100-word limit will create significant challenges, and the current system is working fine. He said his office has only 5 to 7 days to draft a petition title, and sometimes changes need to be made to that language before it is printed on the ballot.

Senator Hogue said the current process works and subjects the petition title and ballot language to the judgment of two constitutional officers, the Attorney General and Secretary of State.

It was moved by Mr. Jaeger and seconded by Representative Steiner to not approve the bill draft relating to the petition title.

It was moved by Ms. Chaffee, seconded by Mr. Hale, and carried on a roll call vote to amend the motion not to approve the bill draft so that the rejection would apply only to line 14 of page 1 of the bill draft, which would remove from the bill draft only the 100-word limit for petition titles and ballot language. Representatives Louser and Steiner; Senator Oban; and Citizen Members Archuleta, Bogar, Chaffee, Diederich, Hale, Meier, and Pulvermacher voted "aye." Chairman Neumann; Senators Hogue and Lee; and Citizen Members Hanebutt, Jaeger, and McDonald voted "nay."

The amended motion to eliminate the 100-word limitation from the bill draft was carried on a roll call vote. Chairman Neumann; Representatives Louser and Steiner; Senators Hogue, Lee, and Oban; and Citizen Members Archuleta, Bogar, Chaffee, Diederich, Hale, Jaeger, McDonald, Meier, Pulvermacher, and Sickler voted "aye." Citizen Member Hanebutt voted "nay."

It was moved by Mr. Hale and seconded by Ms. Chaffee to approve the bill draft, as revised, and recommend the bill draft to the Legislative Management.

Senator Hogue said lines 19 through 20 of page 2 of the bill draft would conflict with approved bill draft [[19.0055.01000](#)] which would require fiscal impacts to be printed on ballots. He said the language on lines 19 through 20 of page 2 would prohibit any information about the measure other than the ballot language to be printed on the ballot.

It was moved by Mr. Archuleta, seconded by Ms. Meier, and carried on a roll call vote to amend Mr. Hale's motion so his motion would be to approve the bill draft, as revised, with an additional change to remove the underscored language on lines 19 through 20 of page 2. Chairman Neumann; Representatives Louser and Steiner; Senators Hogue, Lee, and Oban; and Citizen Members Archuleta, Bogar, Chaffee, Diederich, Hale, Jaeger, McDonald, Meier, Pulvermacher, and Sicker voted "aye." No negative votes were cast.

The amended motion to approve the revised bill draft, relating to petition titles, and recommend the bill draft to the Legislative Management failed on a roll call vote. Senator Oban and Citizen Members Archuleta, Chaffee, Diederich, Hale, Meier, and Pulvermacher voted "aye." Chairman Neumann; Representatives Louser and Steiner; Senators Hogue and Lee; and Citizen Members Bogar, Jaeger, McDonald, and Sickler voted "nay."

Bill Draft Providing for Mediation for Disputes Over Petition Titles

Chairman Neumann called on Ms. Chaffee to describe a bill draft [[19.0101.02000](#)] to provide for binding mediation by an administrative law judge if there are disagreements between a sponsoring committee and the Secretary of State over the petition title language for an initiated measure. Ms. Chaffee said the bill draft would require the administrative law judge to issue a decision within 7 days after the Secretary of State informs the sponsoring committee of the petition title language.

Mr. Jaeger said he is concerned about the fast timing of the mediation schedule and cannot support the bill draft.

Ms. Chaffee said a sponsoring committee should not have to appeal to the North Dakota Supreme Court if it does not like the Secretary of State's language.

Mr. McDonald said the mediation timeline is not practical. He said the administrative law judges would have to be paid, and the bill draft is not workable. He said there should be trust in the state's constitutional officers.

Senator Hogue said the bill draft likely would require a constitutional amendment creating an exception to the requirement any decision by the Secretary of State concerning an initiated measure be appealed to the Supreme Court.

Chairman Neumann said administrative law judges likely are not trained to serve as mediators.

It was moved by Mr. Sickler, seconded by Ms. Pulvermacher, and failed on a roll call vote that the bill draft relating to mediation of petition titles be approved and recommended to the Legislative Management. Citizen Members Chaffee, Diederich, Hale, Pulvermacher, and Sickler voted "aye." Chairman Neumann; Representatives Louser and Steiner; Senators Hogue, Lee, and Oban; and Citizen Members Bogar, Jaeger, McDonald, and Meier voted "nay."

Resolution Draft Permitting Sponsoring Committees to Obtain Drafting Assistance from the Legislative Council

Chairman Neumann said this resolution draft [[19.3022.02000](#)] would amend the constitution to give sponsoring committees the option to obtain drafting assistance from the Legislative Council staff.

Mr. Jaeger said the language of the resolution draft should be placed in North Dakota Century Code, not the state constitution.

It was moved by Mr. Hale, seconded by Senator Oban, and carried on a roll call vote to request the Legislative Council staff to develop statutory language to accomplish the goal of the resolution draft. Chairman Neumann; Representative Louser; Senators Hogue, Lee, and Oban; and Citizen Members Chaffee, Diederich, Hale, Jaeger, McDonald, Meier, Pulvermacher, and Sickler voted "aye." Representative Steiner and Citizen Member Hanebutt voted "nay."

The Legislative Council staff said the statutory language could be "Pursuant to guidelines provided by the legislative management, the legislative council may provide drafting services for an initiated measure sponsoring committee to ensure the initiated measure conforms to legislative council form and style drafting guidelines. The legislative council may not alter the intent of the sponsoring committee of a proposed initiated measure." The Legislative Council staff said the language could be placed at the end of Chapter 16.1-01.

It was moved by Senator Oban, seconded by Mr. Archuleta, and carried on a roll call vote that a bill draft allowing the Legislative Council to provide drafting assistance to an initiated measure sponsoring committee be approved and recommend to the Legislative Management. Chairman Neumann; Representatives Louser and Steiner; Senators Hogue, Lee, and Oban; and Citizen Members Archuleta, Chaffee, Diederich, Hale, Jaeger, McDonald, Meier, Pulvermacher, and Sickler voted "aye." No negative votes were cast.

Resolution Draft Revising the Process for Initiated Measures

Representative Louser said he would withdraw his resolution draft [[19.3019.01000](#)], which the commission had discussed in its March 20, 2018, meeting, from consideration.

Bill Draft and Resolution Draft to Revise Initiated Measure Process

Chairman Neumann called on Ms. Meier to present a bill draft [[19.0150.01000](#)] and its companion resolution draft [[19.3036.01000](#)] to amend Century Code and the state constitution to make several changes to the initiated measure process. The Legislative Council staff distributed a memorandum entitled [Timeline for Process in Bill Draft 19.0150.01000](#) setting out the steps in the new process that the drafts would create.

Ms. Meier said her goal in requesting the drafts was to have the Legislative Council staff involved earlier and more often in the drafting of measures and preparation of fiscal impact statements. She said she also wanted to allow public comments on the content and fiscal impact of measures early in the process.

Mr. McDonald said public comments would not sway the sponsoring committees, and the public would not know the fiscal impact on governmental entities. He also said he did not think constitutional changes were necessary to effectuate the statutory changes in the bill draft.

Resolution Draft Allowing Nonresident Petition Circulators

Chairman Neumann called on Mr. Hale to present a resolution draft [19.3008.01000] to allow nonresidents to circulate petitions for initiated measures if the circulators agreed to be subject to jurisdiction in North Dakota courts.

Mr. Jaeger said the Eighth Circuit Court of Appeals upheld the current state law prohibiting nonresident circulators, and there have been problems with nonresident circulators in the past.

Representative Steiner said she agrees with Mr. Jaeger, and North Dakotans need to protect the state constitution from interference by nonresidents.

It was moved by Senator Oban, seconded by Representative Steiner, and carried on a roll call vote that the resolution draft relating to nonresident petition circulators not be approved. Chairman Neumann; Representatives Louser and Steiner; Senators Hogue, Lee, and Oban; and Citizen Members Diederich, Jaeger, McDonald, Meier, Pulvermacher, and Sickler voted "aye." Citizen Members Chaffee and Hale voted "nay."

Resolution Drafts Requiring Constitutional Amendments to be Voted on at General Elections

Chairman Neumann called on Mr. Hale to present two resolution drafts [19.3018.01000] and [19.3024.01000]. Mr. Hale said both drafts would require measures to amend the state constitution to appear on the ballot at general elections. He withdrew resolution draft [19.3024.01000].

Ms. Diederich withdrew a resolution draft [19.3021.01000] because the draft would accomplish the same thing as a resolution draft presented by Mr. Hale [19.3018.01000].

It was moved by Senator Oban, seconded by Ms. Pulvermacher, and carried on a roll call vote that resolution draft [19.3018.01000] not be approved. Chairman Neumann; Representatives Louser and Steiner; Senators Hogue, Lee, and Oban; and Citizen Members Chaffee, Diederich, Jaeger, McDonald, Meier, Pulvermacher, and Sickler voted "aye." Citizen Members Hale and Hanebutt voted "nay."

Resolution Drafts Changing Requirements for Constitutional Amendments

Chairman Neumann called on Mr. Sickler to present three resolution drafts [19.3037.01000], [19.3038.01000], and [19.3039.01000]. Mr. Sickler said the first resolution draft [19.3037.01000] would increase the number of petition signatures required to place a constitutional amendment on the ballot. He said the goal of the resolution draft was to provide more permanence and stability to the state constitution.

Ms. Chaffee said the proposal would violate the provision in Article III of the Constitution of North Dakota that says the right to initiate measures will not be impaired or restricted.

Chairman Neumann said Mr. Sickler's proposal is for a constitutional amendment and would not violate that provision.

Mr. Hale said legislators can put a constitutional measure on the ballot with about 100 votes.

Mr. Jaeger said the threshold number of petition signatures has been changed in the past.

Mr. Sickler said another resolution draft [19.3038.01000] would require at least 60 percent of the votes on a constitutional amendment to be affirmative for the amendment to become effective. He said current law requires only a majority of affirmative votes. He said it is not uncommon for other states to require a supermajority to pass a constitutional amendment. He said doing so helps discern voters' intentions, requires more voter consensus, supports the stability of the state constitution, and makes it less likely the amendment will be reversed in a later election.

Mr. Sickler said the third resolution draft [19.3039.01000] would impose a "single subject" rule on measures for constitutional amendments. He said the resolution draft is based on language from a provision in Colorado, but is similar to provisions in several states that require measures for constitutional amendments to address only one subject.

In response to a question from Mr. Jaeger, Mr. Sickler said the resolution draft would likely require litigation to define the terms "subject" and "clearly expressed." He said constitutional amendments that cover several subjects are confusing to voters and make it difficult to gauge voters' intentions.

SUMMARY OF VOTES

In response to a request from members of the commission, the Legislative Council staff identified which drafts had been approved, withdrawn, or defeated during the meeting. She said the following drafts had been approved--19.0055.01000, 19.0058.02000 as amended, 19.0059.02000 as amended, and 19.3022.02000 as amended. She said the following drafts had been withdrawn--19.3019.01000, 19.3021.01000, and 19.3024.01000. She said the following drafts had failed or been not approved on roll call votes--19.0100.01000, 19.0101.02000, 19.3008.01000, 19.3018.01000, and 19.3023.02000. She said no motions were made to approve the remaining drafts discussed at the meeting were made.

It was moved by Mr. Archuleta, seconded by Ms. Steiner, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill drafts and resolution drafts recommended by the commission and to present the report and recommended drafts to the Legislative Management.

It was moved by Mr. Archuleta, seconded by Senator Oban, and carried on a voice vote that the commission be adjourned sine die.

No further business appearing, Chairman Neumann adjourned the commission sine die at 3:30 p.m.

Claire Ness
Counsel

ATTACH:1