

# INITIATED AND REFERRED MEASURES STUDY COMMISSION

Section 1 of Senate Bill No. 2135 (2017) created an initiated and referred measure study commission to study the initiated and referred measure laws of North Dakota, including:

1. The process and cost of placing initiated and referred measures on the ballot and campaigning in support of or opposition to ballot measures in North Dakota;
2. The processes used to place initiated and referred measures on the ballot in other states;
3. Whether any provision of the state constitution or state law relating to initiated or referred measures should be amended. If an amendment is warranted, the commission shall prepare a draft resolution to amend the constitution or a draft bill to amend the state law for consideration by the next legislative assembly; and
4. The effect of out-of-state funding on the initiated and referred measure process and whether limits on out-of-state funding are necessary.

Senate Bill No. 2135 required the commission to be composed of:

1. One individual appointed by the Chief Justice of the Supreme Court, who served as the commission chairman;
2. Three members of the House of Representatives appointed by the Majority Leader of the House of Representatives, and three members of the Senate, one of whom was a member of the minority party, appointed by the Majority Leader of the Senate;
3. One individual appointed as a nonvoting member by the Secretary of State;
4. Seven citizen members appointed by the Governor, one of whom must be a member of an association that represents employees and their interests;
5. One individual appointed by the Greater North Dakota Chamber;
6. One individual appointed by the North Dakota Newspaper Association;
7. One individual appointed by the North Dakota Farm Bureau; and
8. One individual appointed by the North Dakota Farmers Union.

The committee members were Surrogate Judge William A. Neumann (Chairman); Senators David Hogue, Gary A. Lee, and Erin Oban; Representatives Jim Kasper, Scott Louser, and Vicky Steiner; and Citizen Members Nick Archuleta, Governor's appointee; Brent Bogar, Greater North Dakota Chamber; Ellen Chaffee, Governor's appointee; Kirsten Diederich, Governor's appointee; Robert Hale, Governor's appointee; Pete Hanebutt, North Dakota Farm Bureau; Alvin A. Jaeger, Secretary of State; Jack McDonald, North Dakota Newspaper Association; Sara Meier, Governor's appointee; Kayla Pulvermacher, North Dakota Farmers Union; Jonathan Sickler, Governor's appointee; and Conner Swanson, Governor's appointee.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66<sup>th</sup> Legislative Assembly.

## BACKGROUND

The Constitution of North Dakota has preserved the right of the people to vote on constitutional amendments since it was adopted on October 1, 1889. In 1914 the constitution was amended to give the people of North Dakota the right to place a proposal for a new statute on the ballot if a petition supporting the proposal was signed by at least 10 percent of qualified electors in a majority of counties. Proposals for referenda on existing statutes (i.e., submitting statutes to voters for possible repeal) were subject to the same requirements. Over time, the requirements and processes for placing measures on the ballot have changed repeatedly. More than 500 measures to initiate constitutional amendments or initiate or refer statutes have been submitted to North Dakota voters.

Article III of the Constitution of North Dakota sets forth the right of individuals qualified to vote in North Dakota to initiate measures for constitutional amendments or statutes or refer statutes for repeal. To initiate a statute or constitutional amendment or refer a statute, a sponsoring committee of at least 25 qualified electors must obtain approval from the Secretary of State to circulate a petition to place the measure on the ballot. For each approved petition, the Secretary of State prepares a petition title summarizing the measure. The petition title also must be approved by the

Attorney General and printed on each copy of the petition. Only North Dakota residents may circulate petitions for signatures. Sponsoring committees may pay petition circulators.

Once petition signatures are gathered, the Secretary of State reviews the signatures or a sample of the signatures for validity. Petitions to initiate measures for statutes or to refer statutes must be signed by a number of qualified electors equal to or exceeding 2 percent of the resident population of the state at the last federal decennial census. Petitions to initiate constitutional amendments require double that number of signatures. If the Secretary of State determines there are a sufficient number of valid signatures, the measure is to be placed on the ballot in the next statewide election. The ballot language for the measure is drafted by the Secretary of State in consultation with the Attorney General. At least 90 days before the election, the Legislative Council coordinates with state agencies to determine the fiscal impact of the ballot measure. Decisions by the Secretary of State throughout the ballot measure process may be appealed to the Supreme Court. If the number of affirmative votes on a ballot measure exceeds the number of negative votes on the measure, the measure is deemed approved.

Several questions about the processes and requirements for ballot measures have arisen in recent years. For example, after voters approved a ballot measure for a constitutional amendment that was largely financed by one nonresident, some legislators wanted to examine the impact of out-of-state funding on ballot measure campaigns. Other legislators noted the constitutional and statutory provisions governing ballot measures had not been reviewed comprehensively in several years. The creation of the Initiated and Referred Measures Study Commission was intended to review the initiated and referred measure process, compare it to the processes used in other states, and make recommendations to the Legislative Management for any changes the commission deemed appropriate.

## **TESTIMONY AND COMMISSION DELIBERATION**

The commission received extensive testimony regarding the history, processes, and requirements for initiated and referred measures in North Dakota from representatives of the Secretary of State's office. The commission was informed the constitutional provisions regarding initiated and referred measures have changed several times, and some recent measures have been controversial. The commission also received testimony regarding the processes and requirements for initiated and referred measures in other states. The commission was informed fewer than one-half of the states allow voters to initiate measures and fewer than one-half of the states allow voters to refer measures. The commission also was informed placing an initiated or referred measure on the ballot in North Dakota is easier than in most other states that allow voters to place measures on the ballot.

The commission discussed numerous aspects of the initiated and referred measure processes and requirements.

### **Drafting Assistance for Sponsoring Committees of Initiated Measures**

The commission discussed the importance of drafting ballot measures in compliance with legislative drafting requirements. The commission also discussed recent legal and logistical problems resulting from drafting errors in approved measures. The commission said lengthy, complicated measures have become more common and are more difficult to draft correctly. The commission also discussed options for providing drafting assistance to sponsoring committees, including who should provide the assistance and whether sponsoring committees should have to accept edits provided by that person. The commission also heard testimony about drafting assistance provided in other states. The commission considered multiple bill drafts and resolution drafts regarding drafting assistance and recommends a bill draft authorizing the Legislative Management to establish a procedure to allow the Legislative Council to provide drafting assistance to sponsoring committees.

### **Public Officials' Approval of Petition Titles and Ballot Language**

Under North Dakota Century Code Section 16.1-01.09, the Secretary of State drafts petition titles, and the Attorney General approves the titles. Under Section 16.1-06-09, the Secretary of State consults with the Attorney General to draft ballot language for measures approved to be on the ballot. A commission member proposed bill drafts limiting the number of words to 100 in petition titles and ballot language, and requiring mediation of official decisions regarding petition titles and ballot language. Members opposing the drafts expressed concerns that limiting the number of words would reduce transparency and potentially mislead voters by omitting important information. The members indicated requiring mediation would create legal and logistical problems and was unnecessary because sponsoring committees may raise concerns about petition titles and ballot language directly to the North Dakota Supreme Court. The commission member supporting the bill drafts indicated 100 words is sufficient to convey anything necessary, and sponsoring committees may not want to appeal official decisions to the Supreme Court. The commission makes no recommendation regarding the bill drafts.

### **Fiscal Impacts**

The commission discussed the method of determining an initiated or referred measure's fiscal impact and voter awareness of the fiscal impact. The Legislative Council coordinates determinations of fiscal impact for initiated measures but not referred measures. Some commission members wanted private persons to have a role in fiscal impact

determinations. It was noted government agencies may have political motives for indicating a measure will have a large or small fiscal impact. Other commission members were of the opinion government agencies have the most reliable knowledge and data to calculate the fiscal impact of a measure. The commission recommends a bill draft to require the Legislative Council to coordinate determinations of the fiscal impact of referred measures. The commission also recommends a bill draft to require the fiscal impact statements be printed on ballots.

### **Limitations on the Number of Measures Permitted on a Ballot**

According to the testimony, some states limit the number of measures permitted to appear on a ballot. The commission discussed whether a similar limit would be appropriate in North Dakota. Some commission members expressed concerns that several measures on one ballot can be confusing or make it difficult for voters to become fully educated on each one. Other members opposed limiting the number of ballot measures because it would infringe on the right of voters to initiate statutory or constitutional changes. The commission did not discuss bill drafts or resolution drafts on this issue.

### **Out-of-State Funding of Committees Supporting Ballot Measures**

The commission received testimony regarding out-of-state contributions in support of recent ballot measures and relevant United States Supreme Court opinions. Section 16.1-08.1-03.1 requires sponsoring committees and other committees supporting or opposing ballot measures to report information about contributions the committees receive, and imposes additional reporting requirements for contributions from out-of-state contributors. The commission discussed a bill draft that would have eliminated the additional reporting requirements. Commission members opposing the bill draft raised concerns about nonresidents having the ability to change the state constitution or statutes by funding advertising campaigns and paying petition circulators, especially when groups of nonresidents form committees including the term "North Dakotans" in the committee name. The members also questioned whether nonresident-funded campaigns undermine the electoral power of residents and noted campaigns should be transparent about funding sources. Commission members in support of the bill draft contended sponsoring committees often need nonresident support to get measures on the ballot and approved. It was noted a ballot measure may not be approved unless residents vote for the measure. The commission recommends a bill draft to require contributions from residents to measure committees to be reported with the same level of detail as contributions from nonresidents to measure committees.

### **Nonresident Petition Circulators**

The commission received testimony regarding employment of nonresident petition circulators in other states and discussed a resolution draft that would have amended Section 3 of Article III of the Constitution of North Dakota to allow nonresidents to circulate petitions in North Dakota if the nonresidents agreed to accept the jurisdiction of North Dakota state courts. Commission members supporting the resolution draft noted using nonresidents may be necessary to collect the required number of petition signatures. It was the opinion of commission members opposing the resolution draft that if the measures have in-state support, the sponsoring committees will be able to collect the necessary signatures using resident petition circulators. The commission makes no recommendation regarding nonresident petition circulators.

### **Geographic and Numeric Thresholds for Petition Signatures and Measure Approvals**

The commission received testimony regarding the laws of other states with respect to the required number of signatures to place measures on ballots and the required number of affirmative votes to approve measures. The commission considered a resolution draft that would have amended the Constitution of North Dakota to require a petition to have a number of signatures equal to or greater than 10 percent of the number of votes cast for the Governor in the preceding gubernatorial election before the measure could be placed on a ballot. The commission also considered a resolution draft that would have amended the constitution to require at least 60 percent of votes cast on a measure be affirmative for the measure to be deemed approved. Commission members supporting the drafts indicated these changes would ensure broader public support for measures before the measures become law. Commission members opposing the drafts defended the current requirements as sufficient. The commission makes no recommendation regarding petition signature requirements.

### **Methods for Verifying Petition Signatures**

The commission received testimony regarding the methods other states use to verify petition signatures and the method the Secretary of State uses to verify signatures and discussed this issue. Commission members also discussed past instances of fraudulent signatures, but did not make any proposals regarding verification of petition signatures.

### **Role of the Legislative Assembly**

The commission received testimony and discussed the role of the Legislative Assembly in initiating measures under the current and previous versions of the constitution but did not recommend any changes on this issue. The commission discussed a resolution draft that would have given the Legislative Assembly an opportunity to enact each initiated measure without amending it. Under the resolution draft, if a measure received sufficient petition signatures, the measure would be submitted to the Legislative Assembly for at least one committee hearing followed by votes on the measure in each chamber. If the Legislative Assembly did not approve the measure, the measure would be placed on the next

general election ballot. Commission members in support of the resolution draft alleged the method would allow greater public discussion and education on measures. Commission members in opposition defended the status quo. The commission makes no recommendation regarding the role of the Legislative Assembly with respect to reviewing an initiated measure before placing the measure on the ballot.

The commission also discussed a resolution draft that would have amended the constitution to require voter-approved constitutional amendments that necessitated a certain level of spending be approved by the Legislative Assembly each biennium. If the amendments were not approved by the Legislative Assembly, the amendment would not go into effect. Commission members in support of the resolution draft asserted the change was necessary because recent measures that would have been subject to the approval requirement have had very large impacts on the state's biennial budget. It was noted the state's revenues fluctuate over time, and constitutionally mandated spending impairs the Legislative Assembly's constitutional responsibility to address those fluctuations and appropriate state funds accordingly. Commission members opposing the resolution draft argued it would have infringed on the right of voters to enact ballot measures. The commission makes no recommendation regarding the role of the Legislative Assembly in addressing spending requirements in initiated measures and resolutions.

### Proposed Bill and Resolution Drafts

The commission considered 27 bill drafts and resolution drafts and approved four bill drafts for recommendation to the Legislative Management. The following chart summarizes the bill drafts and resolution drafts the commission considered.

Draft Number	Summary
<a href="#">House Bill No. 1035</a>	This bill requires the fiscal impact statement for a ballot measure to be printed on the ballot.
Bill Draft No. 2	This bill draft would have required the Legislative Council to coordinate the determination of a fiscal impact for each referred measure. The Legislative Council already performs this function for initiated measures. The bill draft also would have eliminated the statutory language setting forth the specific steps the Legislative Council and state agencies must follow to determine fiscal impacts and the requirement for the Legislative Council to compare the anticipated fiscal impact with the actual fiscal impact 1 year after a measure passes.
Bill Draft No. 3	This bill draft revised Bill Draft No. 2 by reinstating the statutory language setting forth the specific steps the Legislative Council and state agencies must follow to determine fiscal impacts.
<a href="#">House Bill No. 1036</a>	This bill revised Bill Draft No. 3 by reinstating the statutory language requiring the Legislative Council to compare the anticipated fiscal impact with the actual fiscal impact 1 year after a measure passes. This bill retains the requirement for the Legislative Council to coordinate the determination of a fiscal impact for each referred measure.
Bill Draft No. 5	This bill draft would have eliminated the extra campaign finance reporting requirements for contributions from out-of-state contributors.
<a href="#">House Bill No. 1037</a>	This bill revised Bill Draft No. 5 by reinstating the statutory language regarding the extra campaign finance reporting requirements but makes the requirements applicable to all contributions, not only those from out-of-state contributors.
Bill Draft No. 7	This bill draft, which accompanied Resolution Draft No. 4, would have required both the Attorney General and Secretary of State to approve a petition to initiate or refer a measure. Currently, only the Secretary of State needs to approve petitions.
Bill Draft No. 8	This bill draft would have limited petition titles to no more than 100 words.
Bill Draft No. 9	This bill draft would have permitted sponsoring committees to mediate disputes over petition titles and ballot language with the Secretary of State, who would have had authority to select the mediator.
Bill Draft No. 10	This bill draft revised Bill Draft No. 9 and would have required an administrative law judge to mediate disputes between sponsoring committees and the Secretary of State.
Bill Draft No. 11	This bill draft would have made several significant changes to the processes and timelines for initiated and referred measures.
<a href="#">Senate Bill No. 2033</a>	This bill resulted from oral amendments made to Resolution Draft No. 7. It authorizes the Legislative Council to provide drafting assistance to sponsoring committees pursuant to Legislative Management guidelines.
Resolution Draft No. 1	This resolution draft would have amended the Constitution of North Dakota to allow nonresidents to circulate petitions for initiated and referred measures if the nonresidents agreed to accept the jurisdiction of North Dakota state courts.
Resolution Draft No. 2	This resolution draft would have amended the Constitution of North Dakota to require each initiated measure for a constitutional amendment to be voted on at the general election following the measure's qualification for the ballot.
Resolution Draft No. 3	This resolution draft would have amended the Constitution of North Dakota to require a sponsoring committee to find a legislator to submit a proposed measure to the Legislative Council for drafting before the sponsoring committee circulated the petition for the measure. The resolution draft also would have

Draft Number	Summary
Resolution Draft No. 4	required the Legislative Assembly to vote on the measure if it received a sufficient number of signatures. If the Legislative Assembly did not approve the measure, the measure would have been placed on the ballot at the following general election.
Resolution Draft No. 5	This resolution draft, which accompanied Bill Draft No. 7, would have amended the Constitution of North Dakota to require sponsoring committees to obtain the approval of the Secretary of State and Attorney General for measures. The Secretary of State and Attorney General would have been able to ensure measures were drafted in accordance with legislative drafting requirements but could not withhold approval for policy reasons.
Resolution Draft No. 6	This resolution draft would have amended the Constitution of North Dakota to require each initiated measure to be voted on at a general election.
Resolution Draft No. 7	This resolution draft would have amended the Constitution of North Dakota to require the Legislative Council to draft initiated measures for sponsoring committees and to require the Legislative Management to provide a procedure for the Legislative Council to do so.
Resolution Draft No. 8	This resolution draft revised Resolution Draft No. 6 by eliminating the requirement that measures be drafted by the Legislative Council, and would have allowed sponsoring committees to decide whether to seek drafting assistance from the Legislative Council.
Resolution Draft No. 9	This resolution draft would have required biennial legislative approval of expenditures necessitated by approved initiated constitutional amendments if the expenditures exceeded an amount equal to 1 percent of the general fund revenue for the previous biennium.
Resolution Draft No. 10	This resolution draft revised Resolution Draft No. 8 to provide the sponsoring committee for a measure that would have been subject to biennial approval would be required to identify a new source of funds or an increase in existing funds to cover the expenditure required by the measure.
Resolution Draft No. 11	This resolution draft would have amended the Constitution of North Dakota to require the Secretary of State to place initiated measures for constitutional amendments on the ballot only in general elections.
Resolution Draft No. 12	This resolution draft would have amended the Constitution of North Dakota to change the deadline for submitting petitions for initiated measures from 120 days before the election to 90 days before the election.
Resolution Draft No. 13	This resolution draft would have amended the Constitution of North Dakota to require the Legislative Assembly to enact legislation regarding drafting and form requirements and review criteria for petitions for initiated and referred measures.
Resolution Draft No. 14	This resolution draft would have amended the Constitution of North Dakota to require a petition for an initiated measure for a constitutional amendment to be signed by at least 10 percent of the number of votes cast for the Governor in the preceding gubernatorial election before the initiated measure could be placed on the ballot.
Resolution Draft. No. 15	This resolution draft would have amended the Constitution of North Dakota to require at least 60 percent of the votes cast on a measure for a constitutional amendment to be affirmative for the measure to be approved.
Resolution Draft No. 15	This resolution draft would have amended the Constitution of North Dakota to limit any measure for a constitutional amendment to one subject and to require the subject to be expressed clearly in the title of the petition for the measure.

### **COMMISSION RECOMMENDATIONS**

The commission recommends [House Bill No. 1035](#), [House Bill No. 1036](#), [House Bill No. 1037](#), and [Senate Bill No. 2033](#). [House Bill No. 1035](#) requires each measure on the ballot to be accompanied by its fiscal impact. [House Bill No. 1036](#) requires the Legislative Council to coordinate the preparation of fiscal impact statements for referred measures. [House Bill No. 1037](#) requires contributions to committees supporting or opposing ballot measures from residents to be reported with the same level of detail as contributions from nonresidents. [Senate Bill No. 2033](#) allows the Legislative Council to provide drafting assistance to sponsoring committees pursuant to Legislative Management guidelines.