

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

INITIATED AND REFERRED MEASURES STUDY COMMISSION

Tuesday, September 26, 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: Senators David Hogue, Erin Oban; Representatives Jim Kasper, Scott Louser, Vicky Steiner; Citizen Members Nick Archuleta, Brent Bogar, Ellen Chaffee, Kirsten Diederich, Robert Hale, Pete Hanebutt, Alvin A. Jaeger, Sara Meier, Kayla Pulvermacher, Jonathan Sickler, Conner Swanson

Members absent: Senator Gary A. Lee and Citizen Member Jack McDonald

Others present: See [Appendix A](#)

It was moved by Nick Archuleta, seconded by Senator Oban, and carried on a roll call vote that the minutes of the July 31, 2017, meeting be approved as distributed. Senators Hogue and Oban; Representatives Kasper, Louser, and Steiner; and Citizen Members Archuleta, Bogar, Chaffee, Diederich, Hale, Hanebutt, Jaeger, Meier, Neumann, Pulvermacher, Sickler, and Swanson voted "aye." No negative votes were cast.

LAWS AND PRACTICES REGARDING INITIATED AND REFERRED MEASURES IN OTHER STATES

At the request of Chairman Neumann, the Legislative Council staff gave a presentation ([Appendix B](#)) on the laws and practices regarding initiated and referred measures in other states.

In response to a question from Representative Louser, the Legislative Council staff said in states with indirect initiated measures, the measures are sent to legislatures to approve or reject, and, if rejected, the measures generally will be placed on ballots for a popular vote. However, she said, in at least one state, the legislature may ignore a measure sent to it.

Representative Louser requested more research on the indirect initiative process and how the rules of the Legislative Assembly might address the process if it were adopted here.

Mr. Jaeger provided information regarding other states' practices and laws governing initiated and referred measures. He distributed a letter ([Appendix C](#)) from the South Dakota Legislative Research Council to a sponsor of a proposed measure providing advisory comments on the text of the proposed measure. He said his office has legal authority to review measures for format only. In North Dakota, he said, the measure title approved by the Attorney General for a petition often becomes the measure title used on the ballot, even though the titles are often different in other states. He said petition and ballot titles have not been legally challenged in this state.

Mr. Jaeger said the random sampling process his office uses to verify petition signatures has improved, but it is difficult for his office to verify thousands of names. He said voter guides are not useful and, if the guides include "pro" and "con" statements, can be divisive. He said financial disclosures are an area of concern and voters should know who is financing petitions so they know whether a measure is a "grass roots" measure.

In response to a question from Senator Oban, Mr. Jaeger said there have been many examples of problematic measure drafting. He said any assistance provided to a sponsoring committee would need to refrain from infringing on the right to initiate measures.

In response to a question from Representative Steiner, Senator Hogue said his primary concern is the preservation of self-governance. He said the process has vulnerabilities that should be addressed. He said ensuring North Dakota has a strong process is important to the prosperity of the state. For example, he said, a prior ballot measure would have spent 20 percent of oil and gas revenue on wildlife without taking into account other needs in the state. He requested the Legislative Council staff to research processes in states that limit the number of measures on each ballot, processes in states that require measures containing expenditures to also include taxes, and whether any state allows a legislature to amend a constitutional measure that passes.

Representative Louser said an indirect initiative process would have several advantages, including open public debate, better drafting, wider geographic support for measures that pass, and less need for campaign contributions.

In response to a question from Mr. Archuleta, Representative Louser said an indirect initiative process could restrict the ability of the Legislative Assembly to amend an indirect initiative before voting on it.

Ms. Diederich requested the Legislative Council staff to research the cost of legislative referenda campaigns.

Mr. Sickler requested the Legislative Council staff to research whether and to what extent the United States Supreme Court's decision in the *Citizens United v. Federal Election Commission* case allows limits on campaign contributions from out-of-state persons.

Senator Hogue requested the Legislative Council staff to research other states' processes for obtaining public comments on ballot measures before elections.

Senator Oban requested the Legislative Council staff to provide additional information on states' processes for providing measure drafting assistance and on the indirect initiative process in other states for constitutional amendments.

Ms. Chaffee requested the Legislative Council staff to research the impact of a legislature's rejection of an indirect initiative on the initiative's chance of passage in the following election.

Representative Louser requested the Legislative Council to research whether the sponsoring committee of an indirect initiative that is rejected by the legislature has the authority to decide whether the initiative appears on the ballot in the following election.

In response to a question from Representative Louser, the Legislative Council staff provided a summary of information ([Appendix D](#)) provided by the Denver Elections Commission on the use of publicly owned electronic tablets to collect petition signatures in Denver, Colorado.

Mr. Archuleta questioned whether a similar program could work in a state without voter registration.

Mr. Jaeger said he would not recommend instituting a voter registration system in North Dakota.

LEGISLATIVE COUNCIL LEGAL OPINIONS

Chairman Neumann said he had been asked whether the commission may obtain legal opinions from the Legislative Council. He said the commission may request the opinions but cautioned the opinions are not legally binding and do not have the same effect as Attorney General opinions.

RESTRICTIONS ON LEGISLATORS' MEASURE CAMPAIGN ACTIVITIES

The Legislative Council staff provided a summary of legal restrictions on legislators' activities supporting or opposing ballot measures. She said it is not unlawful for legislators to advocate for or against a ballot measure. However, she said, the use of public property or services for political purposes is prohibited under North Dakota Century Code Section 16.1-10-02.

Representative Kasper requested the Legislative Council staff document the information presented in a memorandum.

SPONSORING COMMITTEES AND MEASURE COMMITTEES

Mr. Jaeger presented information regarding the distinction between sponsoring committees and measure committees. He said sponsoring committees generally are responsible for activities to get measures on the ballot, including drafting measures, filing the measures with the Secretary of State's office, and ensuring the petitions are circulated for signatures. He said after a measure is approved for placement on the ballot, the entities that advocate for the measure are considered measure committees.

OUT-OF-STATE FUNDING

Mr. Jaeger gave a presentation ([Appendix E](#)) on financial disclosure statements for four initiated measures which documented the amount of funding from out-of-state contributors and in-state contributors. He said almost all measures have both in-state and out-of-state contributors.

In response to questions from Chairman Neumann and Senator Oban, Mr. Jaeger said his office can charge late fees to committees that fail to file financial disclosure statements. He said he can refer the matter to the Attorney General or a collection agency to recoup the fees, although his office has not done so.

Mr. Hale said there are criminal penalties for committees that willfully violate the financial disclosure statement filing requirements.

In response to a question from Mr. Sickler, Mr. Jaeger said committees generally comply with the filing requirements.

In response to a question from Representative Steiner, Mr. Jaeger said his office does not determine whether an organization that contributes to a measure committee also receives state funding.

Senator Oban said there are laws restricting which funds nonprofit organizations can contribute to measure committees.

In response to a question from Senator Oban, Mr. Jim Silrum, Deputy Secretary of State, said an organization that expends money on a measure must report the expenditure as an independent expenditure. He said if the organization contributes to a measure committee, the measure committee also would report the expenditure as a contribution.

In response to a question from Senator Hogue, Mr. Silrum said reporting in-kind contributions is difficult, but the law requires a contribution of "anything of value" to be reported.

In response to a question from Mr. Archuleta, Mr. Silrum said there is no restriction on how a sponsoring committee or measure committee uses excess funds, although the committees would be required to file a year-end report to show how much money is left after an election.

In response to a question from Mr. Sickler, Mr. Jaeger said in the two situations in which his office discovered fraud, the fraud was driven by out-of-state entities. He said out-of-state entities should be able to place the measures on the ballot if they follow all legal requirements.

Mr. Archuleta said it is important not to paint all out-of-state actors as bad.

Ms. Chaffee said legislators are every bit as reliant on out-of-state interests as citizens whose measures are funded by out-of-state actors.

Senator Hogue said out-of-state funding is not inherently bad, but raises concerns when out-of-state individuals or organizations fund measures that will not affect them but will affect North Dakota residents.

Ms. Diederich said the commission may want to discuss whether to eliminate initiated measures altogether.

Chairman Neumann said to the commission members should begin working on draft proposals at the next meeting.

No further business appearing, Chairman Neumann adjourned the meeting at 3:05 p.m.

Claire Ness
Counsel

ATTACH: 5