

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**INITIATED AND REFERRED MEASURES STUDY COMMISSION**

Tuesday, March 20, 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:** Citizen Member Surrogate Judge William A. Neumann, Senators David Hogue, Gary A. Lee, Erin Oban; Representatives Jim Kasper, Scott Louser, Vicky Steiner; Citizen Members Nick Archuleta, Brent Bogar, Ellen Chaffee, Robert Hale, Pete Hanebutt, Alvin A. Jaeger, Jack McDonald, Sara Meier, Kayla Pulvermacher, Jonathan Sickler, Conner Swanson

**Member absent:** Citizen Member Kirsten Diederich

**Others present:** Senators Ray Holmberg, Grand Forks, and Joan Heckaman, New Rockford, members of the Legislative Management

See [Appendix A](#) for additional persons present.

**It was moved by Mr. McDonald, seconded by Ms. Pulvermacher, and carried on a voice vote that the minutes of the November 30, 2017, meeting be approved as distributed.**

Chairman Neumann reminded commission members that Mr. Hanebutt said at the previous meeting commission members may want to consider whether to keep the current initiated measure process. He asked whether anyone wanted to move to retain the current system. No motion was made. The Legislative Council staff distributed a [Summary of Proposals to be Considered by the Initiated and Referred Measures Commission](#).

**COMMISSION DISCUSSION OF BILL DRAFTS AND RESOLUTION DRAFTS**  
**Resolution Draft Regarding Legislative Council Drafting Services**  
**and Legislative Assembly Debate and Vote**

Chairman Neumann called on Representative Louser to present a resolution draft [[19.3019.01000](#)] regarding a process whereby each sponsoring committee would have access to drafting services from the Legislative Council, and the Legislative Assembly would have an opportunity to vote on each measure that receives the requisite number of petition signatures. Representative Louser said under the resolution draft, the Legislative Assembly would be precluded from amending the measure, and the measure would be placed on the ballot if the Legislative Assembly failed to pass it. He said a sponsoring committee would work with the Legislative Council to draft a measure that reflects the committee's intention.

In response to a question from Mr. Hale, Representative Louser said he cannot imagine a situation in which no legislator would introduce a measure that was popular enough to get thousands of signatures on a petition.

Representative Kasper said he introduces every bill he is asked to introduce, although he does not support all of them.

Representative Louser said he believes the resolution draft increases the power of the people because it gives access to drafting services and ensures the Legislative Assembly will vote on measures without amending them. He said the resolution draft would improve the chances of a sponsoring committee to succeed because the committee would not face criticism for the way the measure is drafted.

In response to questions from Mr. Hale, Representative Louser said a sponsoring committee would have to obtain petition signatures after the measure is drafted but before the measure is introduced in the Legislative Assembly.

Mr. Jaeger said measures submitted to his office often do not accomplish the intentions of sponsoring committees. He said drafting by the Legislative Council could resolve this issue, and his experience is that Legislative Council employees do not weigh in on policy but rather draft what is requested.

In response to a question from Mr. Jaeger, Representative Louser said the resolution draft has the potential to delay getting a measure on the ballot compared to the status quo, but incorrect drafting also delays implementation of measures, as shown by the medical marijuana petition that had to be amended by the Legislative Assembly.

Mr. Jaeger said he agrees with Representative Louser.

In response to a question from Mr. Sickler, Representative Louser said the sponsoring committee would have the final say regarding the wording of the measure.

Representative Kasper said the proposal would give people more power. He said sponsoring committees have all the power now, and petition signers do not read what they sign. Under the proposal, he said, there would be public hearings regarding measures.

In response to a question from Senator Lee, Representative Louser said the legislator who agrees to introduce the measure would be the initial conduit between the sponsoring committee and the Legislative Council but could direct the Legislative Council to communicate directly with committee members.

Representative Steiner said the resolution draft has some good parts, but sponsoring committees should be able to bring a measure to the people even if they cannot find a legislator to introduce their measure.

### **Resolution Draft and Bill Draft Regarding Attorney General and Secretary of State Approval of Measure Drafting**

Chairman Neumann called on Mr. Swanson to present a resolution draft [[19.3020.01000](#)] and its accompanying bill draft [[19.0085.01000](#)] which would amend the state constitution and the corresponding statute to give the Secretary of State and Attorney General authority to review and approve the substance of measure drafts. Mr. Swanson said he requested the drafts to respond to the many comments regarding the need for sponsoring committees to have drafting assistance. He said his intent was to make sure measures accomplish the goals of the sponsoring committees.

Mr. Jaeger said the term "substance" is unclear, but, if the measure passed, he would review measures to ensure their drafting conformed to the Legislative Council's *Legislative Drafting Manual*.

Representative Kasper said he questions whether the Attorney General should be given the power to determine the language of legislation.

Mr. McDonald said the drafts do not address situations in which one of the reviewers approves the measure substance and the other does not.

Senator Hogue said this is a concern. If the Secretary of State is sued over this responsibility, he said, the Attorney General would be both a party to the litigation and counsel for the Secretary of State. He said he would like to know the Attorney General's view on this.

Mr. Hanebutt said sponsoring committees should have the option to accept drafting assistance, but not be required to have someone else draft their measures.

Representative Kasper said reviews are already mandatory.

Mr. MacDonald said current law differs from Mr. Swanson's proposal because the Secretary of State currently must review the form of a measure, not its substance.

Mr. Swanson requested the resolution draft and bill draft be withdrawn from consideration.

### **Resolution Draft Regarding Legislative Council Drafting of Measures**

Chairman Neumann called on Ms. Meier to present a resolution draft [[19.3022.01000](#)] that would amend the state constitution to require the Legislative Council to draft measures requested by sponsoring committees. Ms. Meier said she has faith in the Legislative Council's ability to draft measures and to identify and work through potential issues with sponsoring committees before measures are circulated.

Senator Heckaman said the Legislative Council already drafts for legislators and executive agencies. She said she has concerns about the time the Legislative Council would have to devote to drafting measures.

Mr. Hale said, in his experience, he has not seen any attempt by the Legislative Council to inject politics or policy into its drafting.

**It was moved by Mr. Hale, seconded by Mr. Swanson, that the resolution draft to require the Legislative Council to draft measures requested by sponsoring committees be approved and recommended to the Legislative Management.**

Ms. Chaffee said she would like sponsoring committees to have the option of using the Legislative Council's drafting services rather than being required to use them.

Mr. Bogar said he wonders what the amended resolution draft would accomplish because sponsoring committees already have this option.

Mr. Jaeger said he agrees with Mr. Bogar, but the public may not know about this option. However, he said, he is concerned about amending the constitution to address this issue.

After this discussion, the motion was withdrawn.

**It was moved by Ms. Chaffee, seconded by Mr. Archuleta, and carried on a roll call vote that the Legislative Council staff be requested to amend the resolution by removing "as drafted by the legislative council" on line 20 of page 1, changing "shall" to "may" on line 2 of page 2, and changing "drafting committee" to "sponsoring committee" on the same line.** Citizen Member Neumann; Senators Hogue, Lee, and Oban; Representatives Kasper, Louser, and Steiner; and Citizen Members Archuleta, Bogar, Chaffee, Hale, Hanebutt, Jaeger, McDonald, Meier, Pulvermacher, Sickler, and Swanson voted "aye." No negative votes were cast.

### **Bill Drafts Regarding Fiscal Impact Notes for Initiated and Referred Measures**

Chairman Neumann called on Mr. Hale to present bill drafts [19.0055.01000] and [19.0058.01000] regarding fiscal impact notes for initiated and referred measures. Mr. Hale presented an alternative bill draft (Appendix B) to [19.0058.01000] which he prepared. He said the alternative bill draft would repeal North Dakota Century Code Section 16.1-01-17, which requires the Legislative Council to coordinate the development of fiscal impact notes for initiated measures. He said fiscal impact notes only are estimates and should be developed by experts hired by proponents and opponents of initiated measures to provide information to voters.

Representative Kasper said the Appropriations Committee and the Legislative Council are the only experts when it comes to a proposal that affects spending and budgeting.

Mr. Hale said the Legislative Council and Legislative Management cannot determine a fiscal impact for most initiated measures, but, when they do, the estimate is given the imprimatur of being official. He said fiscal impact notes prepared by North Dakota universities should have the same credibility as estimates coordinated by the Legislative Management.

Chairman Neumann requested the Legislative Council staff to present information on fiscal notes for initiated measures prepared since Section 16.1-01-17 was enacted. The Legislative Council staff said actual fiscal impacts could not be determined for most initiated measures approved by voters. She said the estimated fiscal impact of a 2008 initiated measure that established a tobacco prevention and control advisory committee and fund was \$13.8 million, and the actual cost was calculated after the measure had been in effect for a year to be \$14.1 million.

### **Resolution Draft and Bill Draft Regarding Out-of-State Contributions To Measure Committees and Nonresident Petition Circulators**

Chairman Neumann called on Mr. Hale to present a resolution draft [19.3008.01000] regarding nonresident petition circulators and a bill draft [19.0059.01000] regarding reporting requirements for contributions to measure committees from out-of-state contributors. Mr. Hale said the bill draft was intended to remove language requiring special reporting for out-of-state contributions which likely would be struck down by a court as unconstitutional. He said out-of-state contributions should be subject to the same rules as in-state contributions. He said North Dakota should allow nonresident petition circulators because it is hard to find residents who can take time off from work to circulate petitions. He said the nonresident petition circulators would have to agree to be subject to the jurisdiction of North Dakota courts.

Senator Oban said in-state and out-of-state contributions should be treated the same.

Mr. Jaeger said the Eighth Circuit Court of Appeals has upheld the requirement that petition circulators be residents, and he is concerned about nonresidents who make a living circulating petitions.

Representative Kasper said allowing nonresident petition circulators would empower only people outside North Dakota.

### **Resolution Draft Requiring Legislative Assembly Approval of Measures Necessitating Expenditures Over a Threshold Amount**

Chairman Neumann called on Senator Hogue to present a resolution draft [[19.3023.01000](#)] that provides if a constitutional amendment measure would require the expenditure of more than 1 percent of the equivalent of the general fund balance, the measure would be subject to approval by the Legislative Assembly in each 2-year budget cycle. Senator Hogue said the measure process works well for several issues, but putting budget requirements in the state constitution is bad policy. He requested the Legislative Council staff to remove "from the general fund" from line 23 of page 1 of the resolution draft to better represent his intent.

Senator Oban said if the people say a measure is a great idea, the Legislative Assembly should pay for it.

In response to a question from Mr. Jim Silrum, Deputy Secretary of State, Senator Hogue said a measure to reduce revenues would not be affected by the resolution draft. He said that kind of measure would not require permanent funding, and the Legislative Assembly could develop a new revenue stream to replace the one that is lost.

### **Bill Draft Limiting Petition Titles and Ballot Text**

Chairman Neumann called on Ms. Chaffee to present a bill draft [[19.0100.01000](#)] that provides petition title of a measure may be no more than 100 words, and the text on ballots describing measures be limited to petition titles for the measures. Ms. Chaffee said shorter descriptions are clearer.

Mr. Jaeger said it is very difficult to summarize a complex measure in 100 words. He said if certain issues cannot be revealed in the 100-word limit proposed in the bill draft, the petition and ballot would not be transparent. He said the short descriptions would lack full disclosure to voters. He said the current system requires him to work with the Attorney General to prepare a petition title within 5 to 7 days after a measure is submitted, and, after further review, changes are required to describe the measure on the ballot. He said the current law has been in place since the 1980s and works well.

### **Bill Draft Requiring Binding Mediation Over Petition Titles**

Chairman Neumann called on Ms. Chaffee to present a bill draft [[19.0101.01000](#)] relating to binding moderation regarding bill titles. Ms. Chaffee said, in six states, sponsoring committees are allowed to draft petition titles. She said in North Dakota the only remedy sponsoring committees have if they do not like a petition title developed by the Secretary of State and Attorney General is to appeal to the Supreme Court.

Mr. Jaeger said there have been very few disagreements over petition titles over the years.

Mr. Archuleta said he wonders if a law is needed or if the Secretary of State can resolve problems informally with the chair of the sponsoring committee.

### **Resolution Draft Changing the Deadline for Submission of Petitions to the Secretary of State**

Chairman Neumann called on Ms. Chaffee to present a resolution draft [[19.3031.01000](#)] relating to the deadline for submitting petitions to the Secretary of State. Ms. Chaffee withdrew the resolution draft.

### **Resolution Drafts Limiting the Elections in Which Measures Could Be Placed on the Ballot**

Mr. Hale said his resolution drafts [[19.3021.01000](#)], [[19.3018.01000](#)], and [[19.3024.01000](#)], which require initiated measures amending the state constitution to be voted on at general elections, are intended to have the greatest number of voters vote on the measures.

Senator Oban said it should be up to a sponsoring committee to determine when its measure goes on the ballot.

### **ADDITIONAL DISCUSSION**

Mr. Bill Ammerman, former representative from District 29, said it would be beneficial to the Secretary of State and voters to have the Legislative Council draft initiated measures.

Senator Hogue said sometimes there are several measures on the ballot, and that makes it difficult for voters. He said there needs to be a way to push some measures to another election when that happens.

Chairman Neumann said the next commission meeting will be on Tuesday, May 22, 2018.

No further business appearing, Chairman Neumann adjourned the meeting at 2:45 p.m.

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Claire Ness  
Counsel

ATTACH:2