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MAR 28 2023

March 27, 2023

Senator B.R. Hoffman
South Dakotans for Term Limits
2608 N. Career Avenue, #213
Sioux Falls, SD 57107

Dear Senator Hoffman:

SDCL 12-13-25 requires the South Dakota Legislative Research Council (LRC) to review each proposed initiated constitutional amendment submitted to it by a sponsor, for the purpose of assisting the sponsor in writing the amendment "in a clear and coherent manner in the style and form of other legislation" that "is not misleading or likely to cause confusion among voters."

The initiated constitutional amendment proposes to amend S.D. Const. Art. III, § 6, the constitutional provision providing for legislative terms of office. Specifically, the amendment changes the term limits for both the House of Representatives and Senate from "four consecutive terms or a total of eight consecutive years" to "eight years in the senate" and "eight years in the house."

The proposed constitutional amendment is drafted as follows:

That at the next general election held in the state, the following amendment to Section 2, Article III (6b) of the Constitution of the State of South Dakota, shall be submitted to the electors of the state for approval:

"No person may serve more than eight years in the senate and more than eight years in the house of representatives."

The amended text of the proposed amendment to Article III (6b) is as follows:

"No person may serve more than ~~four consecutive terms or a total of eight consecutive~~ years in the senate and more than ~~four consecutive terms or a total of eight consecutive~~ years in the house of representatives. However, this restriction does not apply to partial terms to which a legislator may be appointed."

SDCL 12-13-24 requires an initiated amendment to the Constitution to be written in the "form of other legislation." The LRC suggests several form changes to conform to this requirement.

1. The typical lead-in clause for proposed constitutional amendments is as follows: "That Article III, § 6 of the Constitution of the State of South Dakota, be AMENDED:". The LRC recommends that this lead-in clause be used to be consistent with the form of other legislation. Further, S.D. Const. Art. III, § 6 does not letter its paragraphs; so, the reference to "(b)" in the proposal should not be included.
2. S.D. Const. Art. III, § 1 provides that the enacting clause of all laws approved by vote of the electors is as follows: "Be it enacted by the people of South Dakota." The LRC recommends that this enacting clause be used for the proposal.

3. When amending an existing law, the entire text of the section is pulled into the document. Thus, the LRC recommends that the proposed constitutional amendment language include the entirety of S.D. Const. Art. III, § 6, not just part of the section.
4. Finally, it is not necessary to show how the constitutional section will read if the voters approve the proposed constitutional amendment language. It is enough to simply show the language as amended.

Based on these suggestions, the LRC recommends that the proposed constitutional amendment language be redrafted as follows:

Be it enacted by the people of South Dakota:

That Article III, § 6 of the Constitution of the State of South Dakota, be AMENDED:

§ 6. Legislative terms of office--Compensation--Regular sessions. The terms of office of the members of the Legislature shall be two years; they shall receive for their services the salary fixed by law under the provisions of § 2 of article XXI of this Constitution, and five cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislature on the most usual route.

No person may serve more than ~~four consecutive terms or a total of eight consecutive~~ years in the senate and more than ~~four consecutive terms or a total of eight consecutive~~ years in the house of representatives. However, this restriction does not apply to partial terms to which a legislator may be appointed.

A regular session of the Legislature shall be held each year and shall not exceed forty legislative days, excluding Sundays, holidays and legislative recess, except in cases of impeachment, and members of the Legislature shall receive no other pay or perquisites except salary and mileage.

LRC encourages you to consider the edits and suggestions to the proposed text. The edits are suggested for sake of clarity and to bring the proposed measure into conformance with the style and form of South Dakota legislation. LRC comments are based upon the Guide to Legislative Drafting, which may be found on the South Dakota legislative [website](#).

Although a sponsor is not statutorily required to make changes based upon the suggestions and comments provided above, you are encouraged to be cognizant of the standards established in SDCL 12-13-24 and 12-13-25 and ensure that your language is in conformity.

SDCL 12-13-25 also requires the issuance of a written opinion "as to whether the initiated amendment embraces only one subject under S.D. Const., Art. XXIII, § 1" and whether it is in fact an "amendment under S.D. Const., Art. XXIII, § 1," or a "revision under S.D. Const., Art. XXIII, § 2." The proposed constitutional change appears to embrace only one subject—legislative terms limits. Given the limited nature of the proposed language, it appears to be an amendment and not a revision of the constitution.

The sponsor may want to consider providing a delayed effective date for the amendment language so that it coincides with legislative terms beginning in 2027, or otherwise clarify how the term limits apply to years of legislative service for legislative members beginning new terms in 2025. As drafted, the constitutional amendment language would be effective the first day of July after completion of the official canvas by the State Canvassing Board. See SDCL 2-1-12.


Fiscal Impact

To determine whether the proposed initiated amendment to the Constitution in its final form has an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions, please provide the LRC, as required by SDCL 12-13-25.1, with a copy of the initiated amendment to the Constitution as submitted in final form to the Attorney General.

Compliance

This letter is issued in compliance with statutory requirements placed upon this office. It is neither an endorsement of the proposed initiated amendment to the Constitution nor of any of the edits suggested by the LRC. This letter is not a guarantee of the proposal's sufficiency. If you proceed with the initiated constitutional amendment, please ensure that neither your statements nor any advertising contain any suggestion of endorsement or approval by the Legislative Research Council.

Sincerely,

A handwritten signature in black ink that reads "Reed Holwegner". The signature is written in a cursive, flowing style.

Reed Holwegner
Director

Enclosure

CC: The Honorable Monae L. Johnson, Secretary of State
The Honorable Marty Jackley, Attorney General

Re: [illegible]

To determine whether the proposed amendment to the Constitution is valid, it is necessary to consider the following: (1) whether the amendment is within the power of the people to amend the Constitution; (2) whether the amendment is in conformity with the principles of the Constitution; and (3) whether the amendment is in conformity with the principles of the Bill of Rights. The proposed amendment is valid if it meets these three requirements.

Conclusion

The proposed amendment is valid. It is within the power of the people to amend the Constitution, it is in conformity with the principles of the Constitution, and it is in conformity with the principles of the Bill of Rights. Therefore, the proposed amendment is valid.

[Signature]
[illegible]
[illegible]

cc: The Honorable [illegible]
The Honorable [illegible]