



December 2024

SENT VIA EMAIL

Mr. Rick Weiland
rick@rickweiland.com

Dear Mr. Weiland:

SDCL 12-13-25 requires the Legislative Research Council (LRC) to "review and comment" on each proposal submitted to it by a sponsor, for the purpose of assisting the sponsor in writing language "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." (See SDCL 12-13-24.) The LRC suggests several style, form, and clarity changes to the proposed language (enclosed) to conform to this requirement.

This review and comment provided herein is not an endorsement of the proposed language or any of the suggested edits. *If you proceed with the proposed language, please ensure that neither your statements nor any advertising contain any suggestion of endorsement or approval by the LRC.* With any proposed law, whether introduced in the Legislature or proposed by initiative, the contents of the proposal are solely within the discretion of the sponsor. The proposed language and any edits made to it should be reviewed by the sponsor and adequately vetted to ensure the language accomplishes the sponsor's objective.

Although there is no statutory requirement to make changes based upon the LRC's comments, 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.

This proposal will not likely have an impact on the revenues, expenditures, or fiscal liability of the state and its political subdivisions. Please provide the LRC, as required by SDCL 12-13-25.1, with a copy of the proposed language, as submitted in final form to the Attorney General, so that a final fiscal impact determination can be made.

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 measures affecting the initiative and referendum process. Given the limited nature of the proposed language, it appears to be an amendment and not a revision of the constitution.

Sincerely,

/s/ John R. McCullough, LRC Director

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

1 The proposed language and comments are as follows:
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3 **BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:**
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5 *That Article III Section 1 of the Constitution of the State of South Dakota be amended by adding the*
6 *following:*
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8 The legislative power of the state shall be vested in a Legislature which shall consist of a senate
9 and house of representatives. However, the people expressly reserve to themselves the right to propose
10 measures, which shall be submitted to a vote of the electors of the state, and also the right to require
11 that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the
12 state before going into effect, except such laws as may be necessary for the immediate preservation of
13 the public peace, health or safety, support of the state government and its existing public institutions.
14 Not more than five percent of the qualified electors of the state shall be required to invoke either the
15 initiative or the referendum.

16 This section shall not be construed so as to deprive the Legislature or any member
17 thereof of the right to propose any measure. The veto power of the Executive shall not be exercised as
18 to measures referred to a vote of the people. This section shall apply to municipalities. The enacting
19 clause of all laws approved by vote of the electors of the state shall be: "Be it enacted by the people of
20 South Dakota." The Legislature shall make suitable provisions for carrying into effect the provisions of
21 this section. Any measure passed by the Legislature affecting the people's exercise of their right to
22 initiative and referendum shall take effect only if approved by the electors of the state at the general
23 election immediately following Legislative passage.
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- 26 • See the Guide to Legislative Drafting (GLD), p. 18, for the form of lead lines. The correct lead line
27 for a constitutional amendment is as follows:
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 - 29 ○ "That Article III, § 1 of the Constitution of the State of South Dakota, be AMENDED:"
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 - 31 • The proposed language submitted to the LRC only includes the new text being proposed to Art.
32 III, § 1, and that proposed language is not underscored. New language added to a section should
33 be underscored. Existing language in the section should be included in the text of the proposal.
34 See GLD, p. 16. These form requirements are reflected above.
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 - 36 • Even though the term "measure" is used in the existing language of Art. III, § 1, "[a]ny law enacted
37 by the Legislature" may be more exacting than the phrase "[a]ny measure passed by the
38 Legislature" on line 21.
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 - 40 • The first paragraph of Art. III, § 1, provides the people the "*right to propose* measures" and the
41 "*right to require* that any laws...be submitted to a vote..." The phrase "affecting the people's
42 exercise of their right to initiative and referendum" is used in the proposed language on lines 21
43 and 22. Would using the phrase, "propose a measure or refer a law enacted by the Legislature,"
44 be more consistent with the current constitutional language in Art. III, § 1?
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- Although the phrase, "shall take effect" is used elsewhere in the constitution, the current drafting convention is to use "is" when making a statement that is true by operation of law, See GLD, p. 20. Therefore, on line 22, consider replacing "shall take effect" with "is effective."
 - Art. IV, § 4 of the South Dakota Constitution provides that "any bill presented to the Governor" becomes law if the Governor signs the bill or fails to veto the bill within five days of presentment. The proposed language provides that certain "measures" are effective "*only if approved* by the electors" without reference made to the Governor's constitutional role. Is the intent to exclude these types of measures from the presentment process? Does this need clarification?
 - Art. III, § 1, provides that the Legislature "shall make suitable provisions for carrying into effect the provisions of this section." The sponsor should consider the interaction between this provision and the language being added.
 - After "Legislative passage" on line 23, consider adding the phrase "of the measure" or consider changing the entire phrase to "following Legislative enactment of the law" if other similar changes are made to the text.

November 26, 2024

By email and Federal Express
john.mccullough@sdlegislature.gov

John McCullough, Director
Legislative Research Council
500 E. Capitol Ave.
Pierre, SD 57501

Dear Director McCullough:

As prescribed by SDCL 12-13-25, please review and comment on the following proposed text for an initiated amendment to the South Dakota Constitution within fifteen workdays:

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

That Article III Section 1 of the Constitution of the State of South Dakota be amended by adding the following:

Any measure passed by the Legislature affecting the people's exercise of their right to initiative and referendum shall take effect only if approved by the electors of the state at the general election immediately following Legislative passage.

Thank you.

Sincerely,

/s/ Rick Weiland

Rick Weiland
Dakotans for Health
P.O. Box 2063
Sioux Falls, SD 57101
rick@rickweiland.com