RECEIVED
NOV 19 2021
S.D. SEC. OF STATE

STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
http://atg.sd.gov

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 19, 2021

Honorable Steve Barnett
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: Attorney General's Statement (Constitutional Amendment: Requiring Three-Fifths Vote for Approval of Ballot Measures Imposing Taxes or Fees or Obligating Over $10 Million)

Dear Secretary Barnett,

Enclosed is a copy of H.J.R. 5003, in final form, through which the Legislature has proposed an amendment to the state Constitution. The proposed amendment will be decided upon by the voters at the next primary election. In accordance with state law, I prepared and filed a draft Attorney General's Statement concerning the proposed amendment for the public to comment upon. I received comments from the following individuals or organizations:

Brendan Johnson
Jim Leach
S.D. Chamber of Commerce & Industry
S.D. Education Association
Sen. Reynold Nesiba

After review of the comments received, I have prepared the enclosed and hereby file the final Attorney General's Statement concerning H.J.R 5003.

Sincerely,

Jason R. Ravnsborg
ATTORNEY GENERAL

JRR/dd

Enc.

cc/enc.: Reed Holwegner, Director of LRC

Filed this 19th day of
November, 2021
Steve Barnett
SECRETARY OF STATE

RECEIVED
NOV 19 2021
S.D. SEC. OF STATE

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: A Constitutional Amendment Requiring Three-Fifths Vote for Approval of Ballot Measures Imposing Taxes or Fees or Obligating over $10 Million.

Explanation:

Currently the constitution requires that any new tax or tax increase must be approved either by voters or by two-thirds of the members of each legislative branch. To be approved by voters, such a measure must obtain a majority of the votes cast. This constitutional amendment requires that any initiated measure, proposed constitutional amendment, or referred measure imposing or increasing taxes must obtain three-fifths of the votes cast to be approved.

This constitutional amendment also adds the requirement that any initiated measure, proposed constitutional amendment, or referred measure obligating the state to appropriate $10 million or more in any of the first five fiscal years must obtain three-fifths of the votes cast to be approved.

This constitutional amendment additionally requires any initiated measure, proposed constitutional amendment, or referred measure which imposes or increases fees to obtain three-fifths of the votes cast to be approved.

Filed this 19th day of
November, 2021
Steve Barnett
SECRETARY OF STATE

RECEIVED
NOV 19 2021
S.D. SEC. OF STATE

2021 South Dakota Legislature

House Joint Resolution 5003

ENROLLED

AN ACT

A JOINT RESOLUTION, Proposing and submitting to the voters at the next primary election a new section to Article XI of the Constitution of the State of South Dakota, relating to a three-fifths vote requirement for certain initiated or Legislature-proposed constitutional amendments and initiated or Legislature-referred measures.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

Section 1. That at the next primary election held in the state, the following amendment to Article XI of the Constitution of the State of South Dakota, as set forth in section 2 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state for approval.

Section 2. That Article XI of the Constitution of the State of South Dakota, be amended by adding a NEW SECTION to read:

§16. Constitutional amendments or measures--Taxes or fees--Certain funding obligations--Vote required.

Any initiated constitutional amendment, initiated measure, constitutional amendment proposed and submitted to the people by the Legislature, or measure referred to the people by the Legislature that imposes or increases taxes or fees, and any initiated constitutional amendment, initiated measure, constitutional amendment proposed and submitted to the people by the Legislature, or measure referred to the people by the Legislature that obligates the state to appropriate funds of ten million dollars or more in any of the first five fiscal years after enactment, to be annually adjusted for inflation as determined by the Legislature, shall become part of the Constitution or statute only if approved by three-fifths of the votes cast thereon.

Filed this 19th day of November, 2021

Steve Barnett

SECRETARY OF STATE

A JOINT RESOLUTION, Proposing and submitting to the voters at the next primary election a new section to Article XI of the Constitution of the State of South Dakota, relating to a three-fifths vote requirement for certain initiated or Legislature-proposed constitutional amendments and initiated or Legislature-referred measures.

I certify that the attached Resolution originated in the:

House as Joint Resolution No. 5003

Patricia Miller
Chief Clerk

Speaker of the House

Attest:

Patricia Miller
Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Filed March 9, 2021 at 9:15 o'clock A M.

Steve Barnett
Secretary of State

By _____
Asst. Secretary of State

House Joint Resolution No. 5003
File No. ____
Chapter No. 122

Dougherty, Debbie

From: Vomacka, Shawna J. <SVomacka@RobinsKaplan.com>
Sent: Tuesday, November 9, 2021 3:50 PM
To: ATG Help
Cc: Johnson, Brendan V.; Billion, Timothy W.
Subject: [EXT] Draft Attorney General's Statement (Constitutional Amendment: Requiring Three-Fifths Vote for Approval of Ballot Measures Imposing Taxes or Fees or Obligating over $10 Million)

To Whom It May Concern:

This letter offers public comment regarding the draft Attorney General's Statement for a proposed Constitutional Amendment Requiring Three-Fifths Vote for Approval of Ballot Measures Imposing Taxes or Fees or Obligating over $10 Million. The draft statement submitted to the Secretary of State on November 2, 2021 begins: "Currently the constitution requires that any new tax or tax increase must be approved either by voters or by two-thirds of the members of each legislative branch. To be approved by voters, such a measure must obtain only a majority of votes cast."

The Attorney General should omit those two sentences from its final statement. While the comparison of the ballot measure threshold to the legislative threshold has been a talking point used in support of H.J.R. 5003, these two sentences do not describe the content of the proposed constitutional amendment itself. The proposed amendment does not alter, address, or even mention the process by which the legislative branch may increase taxes. Thus, the first two sentences of the draft statement do not relate to the proposed constitutional amendment.

In addition, the legislative supermajority requirement in Article XI, § 14 only applies to taxes, whereas the proposed constitutional amendment applies to taxes, fees, and measures obligating over $10 million. Furthermore, Article XI, § 14 imposes a 2/3 supermajority, whereas the proposed constitutional amendment imposed a 3/5 supermajority requirement. Drawing a comparison between two different processes risks confusing voters regarding the substance of the proposed amendment.

The first two sentences are not an objective, clear and simple summary of the amendment. They address material outside the amendment, and inject confusion regarding what is actually in the amendment. We request that the Attorney General's office delete the first two sentences of its draft explanation.

Very truly yours,

Brendan V. Johnson
ROBINS KAPLAN LLP
Robins Kaplan LLP | 140 North Phillips Avenue | Suite 307 | Sioux Falls, SD 57104
p 605 335 1300 | f 612 339 4181 | BJohnson@RobinsKaplan.com

ROBINS KAPLAN LLP

140 NORTH PHILLIPS AVENUE
SUITE 307
SIOUX FALLS SD 57104

605 335 1300 TEL
650 740 7199 FAX
ROBINSKAPLAN.COM

BRENDAN V. JOHNSON
605 740 7101 TEL
BJOHNSON@ROBINSKAPLAN.COM
ADMITTED IN SOUTH DAKOTA AND MINNESOTA

November 9, 2021

Via email and overnight mail

Attorney General's Office
Ballot Comments
1302 E. Hwy 14, Suite 1
Pierre, SD 57501

Re: Draft Attorney General's Statement (Constitutional Amendment: Requiring Three-Fifths Vote for Approval of Ballot Measures Imposing Taxes or Fees or Obligating over $10 Million)

To Whom It May Concern:

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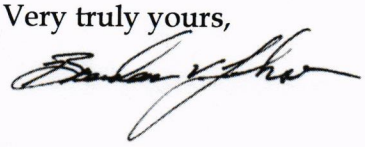
The Attorney General should omit those two sentences from its final statement. While the comparison of the ballot measure threshold to the legislative threshold has been a talking point used in support of H.J.R. 5003, these two sentences do not describe the content of the proposed constitutional amendment itself. The proposed amendment does not alter, address, or even mention the process by which the legislative branch may increase taxes. Thus, the first two sentences of the draft statement do not relate to the proposed constitutional amendment.

In addition, the legislative supermajority requirement in Article XI, § 14 only applies to taxes, whereas the proposed constitutional amendment applies to taxes, fees, and measures obligating over $10 million. Furthermore, Article XI, § 14 imposes a 2/3 supermajority, whereas the proposed constitutional amendment

imposed a 3/5 supermajority requirement. Drawing a comparison between two different processes risks confusing voters regarding the substance of the proposed amendment.

The first two sentences are not an objective, clear and simple summary of the amendment. They address material outside the amendment, and inject confusion regarding what is actually in the amendment. We request that the Attorney General's office delete the first two sentences of its draft explanation.

Very truly yours,



Brendan V. Johnson

Dougherty, Debbie

From: Jim Leach <jim@southdakotajustice.com>
Sent: Friday, November 12, 2021 11:19 AM
To: ATG Help
Subject: [EXT] Comment on Draft Attorney General's Statement re H.J.R. 5003

Dear Attorney General Ravnsborg:

I write to ask that you **delete** the word "**only**" from the end of the third line of your proposed explanation of H.J.R. 5003.

"Only" is pejorative, because it suggests that a majority of the votes cast is somehow insufficient to justify a measure that imposes or increases taxes.
To the contrary, majority vote is the traditional standard by which almost everything is decided.

If you remove the word "only," the remainder of the sentence accurate, clearly, and fairly explains current law --- without editorializing that there is some problem with majority rule.

Leaving the word "only" in the third line suggests that you have determined that there is something wrong with majority rule on this subject. I know that you have made no such determination, and that you do not intend to editorialize. Deleting the word "only" would make this clear.

Thank you for listening.

Respectfully submitted,

Jim Leach
Attorney
1617 Sheridan Lake Rd
Rapid City, SD 57702
605 341 4400

Dougherty, Debbie

From: David Owen <davido@sdchamber.biz>
Sent: Friday, November 12, 2021 1:12 PM
To: ATG Help
Subject: [EXT] comment for Amendment C

South Dakota
CHAMBER OF COMMERCE & INDUSTRY

November 12, 2021

Office of the Attorney General
Ballot Comment
1302 E. Hwy 14, Suite 1
Pierre, SD 57501 – Delivered via Email to ATGhelp@state.sd.us.

Dear Ballot Comment Staff:

As the primary organization promoting the creation of a comment period for "Ballot Explanations" which is being used for the first time for Amendment C, the South Dakota Chamber of Commerce wishes to thank Attorney General Jason Ravnsborg and the Attorney General's office staff for this inaugural comment period.

The South Dakota Chamber of Commerce has no suggestions for the text of the explanation offered as the first draft. There is additional information that should be considered for the final explanation dealing with the unusual timing of the election and the fact that placing Amendment C on the June primary ballot is in fact an aberration from the legislative rules and was only accomplished by suspending those rules using a 2/3rds vote in the Senate. ***Specific proposed language is at the bottom of page two in red ink.***

To review this point. The legislature's joint rule 6A-1 control bills that may be introduced in the Legislature. Rule 6A-1 says:

6A-1. Legislative Documents. Only bills and the following may be introduced in the Legislature:

(1) A House or Senate resolution pertains to the affairs of one house only and requires action only by the legislative chamber concerned. A House or Senate resolution may be used to express an opinion or principle of one house, to express an opinion to or make a request of the other house, to regulate procedure, or to refer a topic to the Executive Board of the Legislative Research Council for possible study by an interim study committee;

(2) A concurrent resolution does not have the force of law. A concurrent resolution shall only be used to express an opinion or principle of the Legislature, to authorize interim studies, sessions or committees, to instruct a department of state government, or to petition federal agencies;

(3) A joint resolution contains matters of legislation only. ***A joint resolution may be used to refer a matter for referendum to the people, to place a constitutional amendment on the ballot at the next general election,*** to ratify proposed amendments to the United States Constitution, to enact legislative reapportionment, or to grant a water right pursuant to § 46-5-20.1;

(4) A House or Senate resolution of disapproval as provided under Article IV, Section 8, of the South Dakota Constitution; and

(5) A legislative commemoration expresses recognition of service or achievements of national or statewide importance or expresses sorrow over death or loss.

As noted in the highlighted section Rule 6A-1(3) requires that HJR 5003/Amendment C be placed on the general election ballot. Only after a suspension of this rule was HJR 5003/Amendment C placed on the primary election ballot scheduled for June of 2022.

Remedy and Recommendation. The ballot explanation should make voters aware of this fact by stating that the June vote was accomplished with a suspension of the legislative rules. The following is offered as an example of how this might be written:

"**Amendment C was placed on the June Primary ballot after the regular legislative rules were suspended**" (16 words)
Or
"**Voting on Amendments in a primary is rare; Amendment C was placed on the June Primary ballot after the regular legislative rules were suspended**" (24 words)

The proposed explanation has 144 words. This leaves more than 50 words to put the vote in proper context.

Respectfully Submitted,

David Owen, President
South Dakota Chamber of Commerce and Industry
davido@sdchamber.biz
(605) 224-6161

David Owen, President
South Dakota Chamber of Commerce and Industry
davido@sdchamber.biz
(605) 224-6161

South Dakota
CHAMBER OF COMMERCE & INDUSTRY

Dougherty, Debbie

From: Ryan Rolfs <ryan.rolfs@sdea.org>
Sent: Friday, November 12, 2021 2:04 PM
To: ATG Help
Subject: [EXT] SDEA Public Comment on Draft Attorney General's Statement (Constitutional Amendment: Requiring Three-Fifths Vote for Approval of Ballot Measures Imposing Taxes or Fees or Obligating over $10 Million)

To: Attorney General's Office
Ballot Comments
1302 E. Hwy 14, Suite 1
Pierre, SD 57501

Re: Draft Attorney General's Statement (Constitutional Amendment: Requiring Three-Fifths Vote for Approval of Ballot Measures Imposing Taxes or Fees or Obligating over $10 Million)

To Whom It May Concern:

On behalf of the South Dakota Education Association, I am offering public comment regarding the draft Attorney General's Statement for a proposed Constitutional Amendment Requiring Three-Fifths Vote for Approval of Ballot Measures Imposing Taxes or Fees or Obligating over $10 Million. The draft statement submitted to the Secretary of State on November 2, 2021 begins: "Currently the constitution requires that any new tax or tax increase must be approved either by voters or by two-thirds of the members of each legislative branch. To be approved by voters, such a measure must obtain only a majority of votes cast."

We believe the Attorney General should remove these first two sentences from its statement. The proposed amendment does not address or change the legislative process and may be confusing to voters. While these sentences have been a talking point for those who support the measure, they are not germane to the proposed amendment.

We request that the Attorney General's office delete the first two sentences of its draft explanation.

Ryan Rolfs
South Dakota Education Association
Executive Director
411 E Capitol Ave
Pierre, SD 57501
Office: 605-224-9263 Ext 1114
Cell: 605-222-4291

Dougherty, Debbie

From: Ravnsborg, Jason
Sent: Friday, November 12, 2021 4:59 PM
To: Blair, Steven
Cc: Dougherty, Debbie
Subject: FW: [EXT] comments on amendment C language

FYI

From: Reynold Nesiba <Reynold.Nesiba@sdlegislature.gov>
Sent: Friday, November 12, 2021 4:57 PM
To: ATG Help <ATGHelp@state.sd.us>
Cc: Ravnsborg, Jason <Jason.Ravnsborg@state.sd.us>
Subject: [EXT] comments on amendment C language

Attorney General Ravnsborg:

Your brief description of Amendment C is deceptive, misleading, and therefore unfairly biased in support of Amendment C and against the power of the people. This requires correction before it is published or made a part of any SD election ballot.

The vast majority of SD state spending—93%—occurs through passage of the general appropriations bill and the supplementary bill. Read that again, almost all spending in SD is done through a mere majority vote of the legislature. This should be reflected in the second and third paragraph of your explanation.

Passage of the supplementary bill and the appropriations bills require only a majority vote.

LRC staff provided the following breakdown from last session:

FY21 Supplemental Appropriation: $229,581,010—50% vote

FY22 General Appropriations Act: $5,087,976,571—50% vote

Session 21 Special Appropriations: $394,357,836—only this tiny fraction of total state spending, about 7.4% last year—required a two-thirds vote.

To be clear, the FY21 Supplemental and the FY 22 General bill require **only** a majority vote. Together these two bills appropriated $5.3 billion dollars. An additional $394 million was spent as special appropriations. **They made up a mere 7.4% of total spending.** The second paragraph of your statement does not point out that we would also be raising the people's standard higher than that used by the vast majority of spending by the legislature.

This proposal suggests holding the people to a far higher voting threshold for spending than the legislature holds itself. Failure to point this is out is deceptive, misleading, and biased. Please correct this.

R-

Reynold F. Nesiba

State Senator District 15
802 S. Willow Ave.
Sioux Falls, SD 57104
reynold.nesiba@sdlegislature.gov
(605) 371-6311

STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
1302 East Highway 14, Suite 1
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http://atg.sd.gov

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 2, 2021

Honorable Steve Barnett
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: Attorney General's Statement (Constitutional Amendment: Requiring Three-Fifths Vote for Approval of Ballot Measures Imposing Taxes or Fees or Obligating Over $10 Million)

Dear Secretary Barnett,

Enclosed is a copy of H.J.R. 5003, in final form, through which the Legislature has proposed an amendment to the state constitution. The proposed amendment will be decided upon by the voters at the next primary election. In accordance with state law, I hereby file the enclosed *draft* Attorney General's Statement for the purposes of receiving public comment on the same.

Very truly yours,

Jason R. Ravnsborg
ATTORNEY GENERAL

JRR/dd
Enc.

Filed this 2nd day of
November, 2021
Steve Barnett
SECRETARY OF STATE

RECEIVED
NOV 02 2021
S.D. SEC. OF STATE

CONSTITUTIONAL AMENDMENT

DRAFT ATTORNEY GENERAL'S STATEMENT

Title: A Constitutional Amendment Requiring Three-Fifths Vote for Approval of Ballot Measures Imposing Taxes or Fees or Obligating over $10 Million.

Explanation:

Currently the constitution requires that any new tax or tax increase must be approved either by voters or by two-thirds of the members of each legislative branch. To be approved by voters, such a measure must obtain only a majority of the votes cast. This constitutional amendment requires that any initiated measure, proposed constitutional amendment, or referred measure imposing or increasing taxes must obtain three-fifths of the votes cast to be approved.

This constitutional amendment also adds the requirement that any initiated measure, proposed constitutional amendment, or referred measure obligating the state to appropriate $10 million or more in any of the first five fiscal years must obtain three-fifths of the votes cast to be approved.

This constitutional amendment additionally requires any initiated measure, proposed constitutional amendment, or referred measure which imposes or increases fees to obtain three-fifths of the votes cast to be approved.

Filed this 2nd day of
November, 2021
Steve Barnett
SECRETARY OF STATE

2021 South Dakota Legislature

House Joint Resolution 5003

ENROLLED

AN ACT

A JOINT RESOLUTION, Proposing and submitting to the voters at the next primary election a new section to Article XI of the Constitution of the State of South Dakota, relating to a three-fifths vote requirement for certain initiated or Legislature-proposed constitutional amendments and initiated or Legislature-referred measures.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

Section 1. That at the next primary election held in the state, the following amendment to Article XI of the Constitution of the State of South Dakota, as set forth in section 2 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state for approval.

Section 2. That Article XI of the Constitution of the State of South Dakota, be amended by adding a NEW SECTION to read:

§16. Constitutional amendments or measures--Taxes or fees--Certain funding obligations--Vote required.

Any initiated constitutional amendment, initiated measure, constitutional amendment proposed and submitted to the people by the Legislature, or measure referred to the people by the Legislature that imposes or increases taxes or fees, and any initiated constitutional amendment, initiated measure, constitutional amendment proposed and submitted to the people by the Legislature, or measure referred to the people by the Legislature that obligates the state to appropriate funds of ten million dollars or more in any of the first five fiscal years after enactment, to be annually adjusted for inflation as determined by the Legislature, shall become part of the Constitution or statute only if approved by three-fifths of the votes cast thereon.

A JOINT RESOLUTION, Proposing and submitting to the voters at the next primary election a new section to Article XI of the Constitution of the State of South Dakota, relating to a three-fifths vote requirement for certain initiated or Legislature-proposed constitutional amendments and initiated or Legislature-referred measures.

I certify that the attached Resolution originated in the:

House as Joint Resolution No. 5003

Patricia Miller
Chief Clerk

Jamon Jack
Speaker of the House

Attest:

Patricia Miller
Chief Clerk

Tom Brown
President of the Senate

Attest:

Kay Johnson
Secretary of the Senate

House Joint Resolution No. 5003
File No. ____
Chapter No. 122

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed March 9, 2021
at 9:15 o'clock A M.

Steve Barnett
Secretary of State

By _____
Asst. Secretary of State