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SD Secretary of State

November 6, 2023

Dear Senator Frye-Mueller:

[SDCL 12-13-25](#) requires the 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. XI, § 2, to provide limits on annual property valuation increases and property taxes due.

The proposed constitutional amendment is drafted as follows:

Additional language for Section 2 of Article XI of our SD Constitution:

After the words "reasonable exemptions may be provided."

New paragraph:

The assessed value of a property may not increase more than two percent annually. The base amount for the valuation of each property is the assessed value of the property in 2020 multiplied by a percentage not to exceed two percent for each subsequent year. For a property where a change in ownership has occurred in 2020 or later, the base amount for valuation under this section is the reassessed value of the property on the date of the transfer or purchase multiplied by a percentage not to exceed two percent for each subsequent assessment year. The assessed value of property may be further adjusted if there is a change in property use or classification or to account for any addition to or improvement or expansion of the property.

The annual tax due on a property may not exceed one percent of the assessed value of the property. The limitation on taxes due on a property does not apply to a tax imposed on the property to pay for a special assessment.

Section 3. Section 2 of this Act is effective July 1, 2026.

[SDCL 12-13-24](#) requires an initiated constitutional amendment to be written in the "form of other legislation." The LRC suggests several style, form, and clarity changes to conform to this requirement.

1. 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.
2. The typical lead-in clause for a proposed constitutional amendment is as follows: "That Article XI, § 2 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.

Filed this 8<sup>th</sup> day of

November 2023

*Monae L. Johnson*

SECRETARY OF STATE

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. XI, § 2, not just the proposed amendatory language.
4. When proposing amendatory text in legislation, the amendatory text is underscored to show clearly the language being proposed to be added. The LRC recommends underscoring the amendatory language in the proposal.
5. The proposed language includes a "section 3" but not sections 1 and 2. The LRC recommends drafting the proposal into two sections.
6. To clarify that the "assessed value" pertains to valuation for purposes of property taxation, the LRC recommends adding, "For purposes of property taxation," at the beginning of the first proposed sentence.

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

Be it enacted by the people of the State of South Dakota:

**Section 1. That Article XI, § 2 of the Constitution of the State of South Dakota, be AMENDED:**

**§ 2.** To the end that the burden of taxation may be equitable upon all property, and in order that no property which is made subject to taxation shall escape, the Legislature is empowered to divide all property including moneys and credits as well as physical property into classes and to determine what class or classes of property shall be subject to taxation and what property, if any, shall not be subject to taxation. Taxes shall be uniform on all property of the same class, and shall be levied and collected for public purposes only. Taxes may be imposed upon any and all property including privileges, franchises and licenses to do business in the state. Gross earnings and net incomes may be considered in taxing any and all property, and the valuation of property for taxation purposes shall never exceed the actual value thereof. The Legislature is empowered to impose taxes upon incomes and occupations, and taxes upon incomes may be graduated and progressive and reasonable exemptions may be provided.

For purposes of property taxation, the assessed value of a property may not increase more than two percent annually. The base amount for the valuation of each property is the assessed value of the property in 2020 multiplied by a percentage not to exceed two percent for each subsequent year. For a property where a change in ownership has occurred in 2020 or later, the base amount for valuation under this section is the reassessed value of the property on the date of the transfer or purchase multiplied by a percentage not to exceed two percent for each subsequent assessment year. The assessed value of property may be further adjusted if there is a change in property use or classification or to account for any addition to or improvement or expansion of the property.

The annual tax due on a property may not exceed one percent of the assessed value of the property. The limitation on taxes due on a property does not apply to a tax imposed on the property to pay for a special assessment.

**Section 2. Section 1 of this Act is effective July 1, 2026.**

LRC encourages you to consider these style, form, and clarity suggestions. The suggestions are intended to bring the proposed initiated constitutional amendment into conformance with South Dakota legislative

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drafting conventions. 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—property taxation. Given the limited nature of the proposed language, it appears to be an amendment and not a revision of the constitution.

#### **Fiscal Impact**

The proposed initiated constitutional amendment may have an impact on the revenues, expenditures, or fiscal liability of the state and its political subdivisions. To make a final determination on the fiscal implications of the proposal, please provide the LRC, as required by [SDCL 12-13-25.1](#), with a copy of the proposed initiated constitutional amendment 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 constitutional amendment 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 LRC.

Sincerely,



John McCullough

Interim Director, Legislative Research Council

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