



STATE OF MINNESOTA
Office of Minnesota Secretary of State
Steve Simon

The Honorable Lisa Demuth
Minnesota House of Representatives
Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

The Honorable Melissa Hortman
Minnesota House of Representatives
Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

January 10, 2025

Dear Representatives Demuth and Hortman:

Thank you for meeting with me to discuss the convening of the Minnesota House of Representatives on January 14, 2025. As I said to both of you, I am committed to an orderly start to the legislative session and being transparent about how I will preside until a speaker is elected. While presiding officers of the House do not typically explain their rationale for rulings, we are faced with unique circumstances. I will be presiding over the House during a time in which the caucuses disagree significantly as to how the House may organize itself. I will be presiding not as a member of the House, but as a representative of the executive branch. Out of respect for the institution, I think it is important that both of you know my thinking on these matters so that we can be prepared as much as possible for Tuesday.

Minnesota law requires that I preside over the House until a speaker is elected. Minn. Stat. § 5.05. On Tuesday, I will call the House to order; appoint a clerk pro tem; ask the chaplain to offer a prayer; lead the pledge of allegiance; and ask the clerk pro tem to call the roll. Once the roll call is completed, I will ask Chief Justice Natalie Hudson to administer the oath of office. I will then take the roll to determine whether there is a quorum.

A quorum is necessary for the legislature to conduct business, and I know that the caucuses dispute the number of members that must be present for a quorum. As I informed you in our respective meetings, I have reached a legal conclusion about the quorum requirement. My conclusion is based only on the Minnesota Constitution and laws, and was reached after consultation with various non-partisan experts. I conclude Minnesota law requires that 68 members of the House be present for a quorum. The Minnesota Constitution states that a quorum is a "majority" of the "house." Minn. Const. Art. IV, sec. 13. The word "majority" means a number equaling more than half the total. [Majority Definition & Meaning - Merriam-Webster](#).

The Constitution further provides that the number of members who compose the House of Representatives “shall be prescribed by law.” Minn. Const., Art. IV, sec. 2. Under Minnesota law, the House of Representatives is composed of 134 members. Minn. Stat. § 2.021. This means that 68 members compose a majority of the house, because that is the lowest number that is more than half the total of number of total representatives prescribed by law.

I understand that some have suggested that the vacancy in House District 40B means that only 67 members are necessary for a quorum. I do not agree with this conclusion for several reasons.

First, the plain language of Article IV, section 13 refers to the House as a constitutional entity. It does not refer to individual legislative members the way that other provisions of the Constitution do. *See, e.g.*, Minn. Const., Art. IV, sec 22 (referring to all the members elected of each house); Art. VIII, sec. 1 (prohibiting conviction without the concurrence of two-thirds of the senators present).¹ Because the law says the House is composed of 134 total members, that is the number that must be used in calculating whether there is a quorum.

Second, this interpretation of Article IV, Section 13 is consistent with other provisions of the Constitution that require a certain proportion of the “house” to take action. For example, Article IV, Section 19 of the Minnesota Constitution requires “two-thirds of the house” to waive the requirement that bills be reported on three different days. The Minnesota Supreme Court has held that this language requires approval from “two-thirds of the whole membership of the house.” *State v. Wagner*, 130 Minn. 424, 427, 153 N.W. 749, 750

¹ I understand that the Minnesota Supreme Court previously noted that, in the context of municipal councils, where an ordinance requires a majority of votes of the council, the ordinance was satisfied by a majority vote of the members of the council currently in existence, rather than total membership. *States ex rel. Peterson v. Hoppe*, 194 Minn. 186, 189, 260 N.W. 215, 217 (1935). The text at issue was different and had a different purpose. Further, the Court’s discussion of that issue was largely dicta and limited to a citation to secondary sources discussing caselaw from other jurisdictions on municipal councils, rather than state constitutions. *Id.* Additionally, that language was not actually before the court; instead, the Court was interpreting an ordinance that required “the affirmative vote of *all members* of the City Council.” Finally, approximately 40 years after the *Peterson* case was decided, the Court was presented with the opportunity to interpret a statute that required a “two-thirds vote of all of its members.” *Ram Development Co. v. Shaw*, 244 N.W.2d 110, 115 (Minn. 1976). The Court expressly declined to address in that case whether a vacancy should be figured into calculating the total membership of a body. *Id.*, at 115.

(1915). Likewise, the Minnesota Constitution also permits the legislature to override a Governor's veto only if approved by two-thirds of each "house." See Minn. Const. Art. IV, sec. 23. This provision requires a two-thirds vote of the total membership of each house, regardless of whether there are any vacancies. See *State ex rel. Eastland v. Gould*, 31 Minn. 189, 191, 17 N.W. 276, 277 (1883) (explaining that a constitutional provision requiring the "legislature" to provide a "two-thirds vote" meant such a vote from "all of the members thereof" and not the "vote of two-thirds of the members present."); see also [Making Laws: Review by the Governor](#) (explaining that two-thirds of the house means two-thirds of the total membership of the house).

Indeed, the drafters of the Constitution made clear they knew how to draft language that required a proportion of less than the total membership in order for official action be taken. See Minn. Const. Art. VIII, sec. 1 ("No person shall be convicted without the concurrence of two-thirds of the senators *present*.") (emphasis added). The drafters could have provided a similar qualification to the quorum requirement if they intended it to be calculated on a number less than the total membership of the House.

Similar to Sections 19 and 23, the quorum requirement of Article IV, Section 13 requires action from a certain proportion (in this case, a majority) of the "house." It is a well-established legal principle that similar words and phrases should be interpreted the same way. See *Clark v. Pawlenty*, 755 N.W.2d 293, 306 (Minn. 2008) (declining to interpret the word "successor" differently in different sections of the Minnesota Constitution). Because historical practice and case law make clear that constitutional provisions referring to a proportion of the "house" mean the total membership of the house (regardless of any vacancies), the quorum requirement of Article IV, Section 13 must be interpreted the same way.

Finally, I note that Mason's Legislative Manual, a leading treatise on legislative policy and procedure upon which the House regularly relies, states that my interpretation is consistent with the majority of jurisdictions that have considered the issue. *Mason's Legislative Manual*, § 501 (recognizing that "the number of which such assembly may consist and not the number of which it does in fact exist, at the time in question, is the number of the assembly, and the number necessary to constitute a quorum is to be reckoned accordingly"). For all of these reasons, I will find a quorum on Tuesday only if 68 or more members are present.

If there is a quorum, I will entertain nominations for the election of a speaker. If no quorum exists, then Minnesota law is clear that all the members present can do at that point is to adjourn. See *State ex rel. Palmer v. Perpich*, 289 Minn. 149, 151, 182 N.W.2d 182, 183 (1971). Accordingly, if there is no quorum, I will adjourn the House and reconvene it at 3:30 p.m. the following day, consistent with House custom, its most recent rules, and Mason's Legislative Manual (which provides that in the absence of rules, the House is governed by usage and custom, which are best shown by its most recent rules). I would

continue to convene the House at 3:30 p.m. each subsequent day until a quorum is present and a speaker elected, unless the members present move to adjourn to a date certain. In addition, because the House cannot transact business and the presiding officer's authority is limited until a quorum is present, House rules and customs prohibit all motions and incidental motions other than a motion to adjourn to a date certain.

I will update you both if there is any change to my plans before next Tuesday. I remain happy to discuss this matter further and to hear any additional feedback from you – including contrary legal analysis. As always, thanks to both of you for your service to Minnesota.

Respectfully,

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

Steve Simon

Secretary of State