



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Constitutional Revision and Updating Committee

Dennis P. Mulvihill, Chair
Charles F. Kurfess, Vice-chair

Part II

March 10, 2016
Ohio Statehouse
Room 018

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131st General Assembly
Regular Session
2015-2016

. J. R. No.

A JOINT RESOLUTION

Proposing to amend Sections 1b and 1g of Article II of
the Constitution of the State of Ohio to modify the
requirements to propose a statute by initiative
petition.

Be it resolved by the General Assembly of the State of
Ohio, three-fifths of the members elected to each house
concurring herein, that there shall be submitted to the electors
of the state, in the manner prescribed by law at the general
election to be held on November 8, 2016, a proposal to amend
Sections 1b and 1g of Article II of the Constitution of the
State of Ohio to read as follows:

ARTICLE II

Section 1b. ~~When at~~ (A) At any time, not less than ten
days ~~prior to~~ before the commencement of any session of the
general assembly, ~~there shall have been filed~~ the electors may
file with the secretary of state a petition signed by ~~three-five~~
per centum of the electors ~~and verified as herein provided,~~
proposing a law, the full text of which shall have been set
forth in such petition, ~~the~~ . All such initiative petitions,
last above described, shall have printed across the top thereof,



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in case of proposed laws: "Law Proposed by Initiative Petition
First to be Submitted to the General Assembly."

(B) The secretary of state shall verify the petition as
provided in Section 1g of this article and shall transmit the
same to the general assembly as soon as it convenes. If said
proposed law shall be passed by the general assembly, either as
petitioned for or in an amended form, it shall be subject to the
referendum. If it shall not be passed, or if it shall be passed
in an amended form, or if no action shall be taken thereon
within four months from the time it is received by the general
assembly, it shall be submitted by the secretary of state to the
electors for their approval or rejection, ~~if such submission~~
~~shall be demanded by supplementary petition verified as herein~~
~~provided and signed by not less than three per centum of the~~
~~electors in addition to those signing the original petition,~~
~~which supplementary petition must be signed and filed with the~~
~~secretary of state within ninety days after the proposed law~~
~~shall have been rejected by the general assembly or after the~~
~~expiration of such term of four months, if no action has been~~
~~taken thereon, or after the law as passed by the general~~
~~assembly shall have been filed by the governor in the office of~~
~~the secretary of state.~~ The proposed law shall be submitted at
the next regular or general election occurring subsequent to one
hundred twenty-five days after the ~~supplementary petition is~~
~~filed in the form demanded by such supplementary petition, which~~
~~form shall be either as first petitioned for or with any~~
~~amendment or amendments which may have been incorporated therein~~
~~by either branch or by both branches, of proposed law shall have~~
been rejected by the general assembly or after the expiration of
such term of four months, if no action has been taken thereon,
or after the law as passed by the general assembly shall have

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been filed by the governor in the office of the secretary of 52
state. Ballots shall be so printed as to permit an affirmative 53
or negative vote upon each measure submitted to the electors. 54

(C) If a proposed law so submitted is approved by a 55
majority of the electors voting thereon, it shall be the law and 56
shall go into effect as herein provided in lieu of any amended 57
form of said law which may have been passed by the general 58
assembly, and such amended law passed by the general assembly 59
shall not go into effect until and unless the law proposed by 60
~~supplementary the~~ petition shall have been rejected by the 61
electors. ~~All such initiative petitions, last above described,~~ 62
~~shall have printed across the top thereof, in case of proposed~~ 63
~~laws: "Law Proposed by Initiative Petition First to be Submitted~~ 64
~~to the General Assembly."~~ Ballots shall be so printed as to 65
~~permit an affirmative or negative vote upon each measure~~ 66
~~submitted to the electors.~~ Any proposed law or amendment to the 67
constitution submitted to the electors as provided in 1a and 1b, 68
if approved by a majority of the electors voting thereon, shall 69
take effect thirty days after the election at which it was 70
approved and shall be published by the secretary of state. 71

(D) If conflicting proposed laws or conflicting proposed 72
amendments to the constitution shall be approved at the same 73
election by a majority of the total number of votes cast for and 74
against the same, the one receiving the highest number of 75
affirmative votes shall be the law, or in the case of amendments 76
to the constitution shall be the amendment to the constitution. 77

(E) No law proposed by initiative petition and approved by 78
the electors shall be subject to the veto of the governor. For a 79
period of three years after a law proposed by initiative 80
petition is approved by the voters, the general assembly shall 81
not amend or repeal that law except by a vote of two-thirds of 82

the members elected to each branch of the general assembly. 83

Section 1g. Any initiative, ~~supplementary,~~ or referendum 84
petition may be presented in separate parts but each part shall 85
contain a full and correct copy of the title, and text of the 86
law, section or item thereof sought to be referred, or the 87
proposed law or proposed amendment to the constitution. Each 88
signer of any initiative, ~~supplementary,~~ or referendum petition 89
must be an elector of the state and shall place on such petition 90
after ~~his~~ the signer's name the date of signing and ~~his~~ the 91
signer's place of residence. A signer residing outside of a 92
municipality shall state the county and the rural route number, 93
post office address, or township of his residence. A resident of 94
a municipality shall state the street and number, if any, of ~~his~~ 95
the signer's residence and the name of the municipality or post 96
office address. The names of all signers to such petitions shall 97
be written in ink, each signer for ~~himself~~ the signer's self. To 98
each part of such petition shall be attached the statement of 99
the circulator, as may be required by law, that ~~he~~ the 100
circulator witnessed the affixing of every signature. The 101
secretary of state shall determine the sufficiency of the 102
signatures not later than one hundred five days before the 103
election. 104

The Ohio supreme court shall have original, exclusive 105
jurisdiction over all challenges made to petitions and 106
signatures upon such petitions under this section. Any challenge 107
to a petition or signature on a petition shall be filed not 108
later than ninety-five days before the day of the election. The 109
court shall hear and rule on any challenges made to petitions 110
and signatures not later than eighty-five days before the 111
election. If no ruling determining the petition or signatures to 112
be insufficient is issued at least eighty-five days before the 113

election, the petition and signatures upon such petitions shall 114
be presumed to be in all respects sufficient. 115

If the petitions or signatures are determined to be 116
insufficient, ten additional days shall be allowed for the 117
filing of additional signatures to such petition. If additional 118
signatures are filed, the secretary of state shall determine the 119
sufficiency of those additional signatures not later than sixty- 120
five days before the election. Any challenge to the additional 121
signatures shall be filed not later than fifty-five days before 122
the day of the election. The court shall hear and rule on any 123
challenges made to the additional signatures not later than 124
forty-five days before the election. If no ruling determining 125
the additional signatures to be insufficient is issued at least 126
forty-five days before the election, the petition and signatures 127
shall be presumed to be in all respects sufficient. 128

No law or amendment to the constitution submitted to the 129
electors by initiative ~~and supplementary~~ petition and receiving 130
an affirmative majority of the votes cast thereon, shall be held 131
unconstitutional or void on account of the insufficiency of the 132
petitions by which such submission of the same was procured; nor 133
shall the rejection of any law submitted by referendum petition 134
be held invalid for such insufficiency. Upon all initiative, ~~—~~ 135
~~supplementary,~~ and referendum petitions provided for in any of 136
the sections of this article, it shall be necessary to file from 137
each of one-half of the counties of the state, petitions bearing 138
the signatures of not less than one-half of the designated 139
percentage of the electors of such county. A true copy of all 140
laws or proposed laws or proposed amendments to the 141
constitution, together with an argument or explanation, or both, 142
for, and also an argument or explanation, or both, against the 143
same, shall be prepared. The person or persons who prepare the 144

argument or explanation, or both, against any law, section, or 145
 item, submitted to the electors by referendum petition, may be 146
 named in such petition and the persons who prepare the argument 147
 or explanation, or both, for any proposed law or proposed 148
 amendment to the constitution may be named in the petition 149
 proposing the same. The person or persons who prepare the 150
 argument or explanation, or both, for the law, section, or item, 151
 submitted to the electors by referendum petition, or against any 152
 proposed law submitted by ~~supplementary~~-initiative petition, 153
 shall be named by the general assembly, if in session, and if 154
 not in session then by the governor. The law, or proposed law, 155
 or proposed amendment to the constitution, together with the 156
 arguments and explanations, not exceeding a total of three 157
 hundred words for each, and also the arguments and explanations, 158
 not exceeding a total of three hundred words against each, shall 159
 be published once a week for three consecutive weeks preceding 160
 the election, in at least one newspaper of general circulation 161
 in each county of the state, where a newspaper is published. The 162
 secretary of state shall cause to be placed upon the ballots, 163
 the ballot language for any such law, or proposed law, or 164
 proposed amendment to the constitution, to be submitted. The 165
 ballot language shall be prescribed by the Ohio ballot board in 166
 the same manner, and subject to the same terms and conditions, 167
 as apply to issues submitted by the general assembly pursuant to 168
 Section 1 of Article XVI of this constitution. The ballot 169
 language shall be so prescribed and the secretary of state shall 170
 cause the ballots so to be printed as to permit an affirmative 171
 or negative vote upon each law, section of law, or item in a law 172
 appropriating money, or proposed law, or proposed amendment to 173
 the constitution. The style of all laws submitted by initiative 174
~~and supplementary~~ petition shall be: "Be it Enacted by the 175
 People of the State of Ohio," and of all constitutional 176

amendments: "Be it Resolved by the People of the State of Ohio." 177
 The basis upon which the required number of petitioners in any 178
 case shall be determined shall be the total number of votes cast 179
 for the office of governor at the last preceding election 180
 therefor. The foregoing provisions of this section shall be 181
 self-executing, except as herein otherwise provided. Laws may be 182
 passed to facilitate their operation, but in no way limiting or 183
 restricting either such provisions or the powers herein 184
 reserved. 185

EFFECTIVE DATE AND REPEAL 186

If adopted by a majority of the electors voting on this 187
 proposal, Sections 1b and 1g of Article II as amended by this 188
 proposal take effect immediately and existing Sections 1b and 1g 189
 of Article II of the Constitution of the State of Ohio are 190
 repealed on that effective date. 191

SCHEDULE 192

The amendments to Section 1g of Article II of the Ohio 193
 Constitution in part substitute gender neutral for gender 194
 specific language. These gender neutralizing amendments are not 195
 intended to make a substantive change in the Ohio Constitution. 196
 The gender neutral language is to be construed as a restatement 197
 of, and substituted in a continuing way for, the corresponding 198
 gender specific language existing before adoption of the gender 199
 neutralizing amendments. 200

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Chair Dennis Mulvihill, Vice-chair Charles F. Kurfess and Members of the Constitutional Revision and Updating Committee

CC: Steven C. Hollon, Executive Director

FROM: Steven H. Steinglass, Senior Policy Advisor

DATE: March 4, 2016

RE: Questions Concerning the Ohio Indirect Statutory Initiative

At the January 14, 2016, meeting of the Constitutional Revision and Updating Committee, members raised a number of questions about Ohio's statutory initiative. This memorandum, which supplements the memorandum on *The Ohio Indirect Statutory Initiative* (September 1, 2015), reviews the statutory initiative in Ohio and other states and attempts to answer the committee's questions.

Background

The Constitutional Convention of 1912 proposed the statutory initiative as part of a package of direct democracy proposals. The statutory initiative is contained in Article II, Section 1b. The full text of this section, as amended in 2008, is provided as Attachment A. In addition, there are generic provisions in Article II, Section 1g, which affect the operation of the both the statutory and constitutional initiatives. The full text of Section 1g is provided as Attachment B.

In 1912, the proponents of direct democracy supported not only the constitutional initiative but also the statutory initiative and the referendum. These were the most hotly contested issues at the convention, and there were eleven roll call votes on various issues concerning the initiative and referendum with most of the conflicts concerning the "details" of the proposals.¹

¹ See Lloyd L. Sponholtz, *Progressivism in Microcosm: An Analysis of the Political Forces at Work in the Ohio Constitutional Convention of 1912*, at 148 (1969) (unpublished Ph.D. dissertation, University of Pittsburgh).

As originally introduced, the statutory initiative was a direct statutory initiative that could be placed directly on the ballot a fixed number of signatures of electors without any geographic distribution requirement.² Ultimately, the delegates proposed and the voters approved a direct democracy package that included a direct constitutional initiative, an indirect statutory initiative, and a referendum. The key feature of the compromise concerning the statutory initiative was the requirement that the proposed law would be first submitted to the General Assembly. If the General Assembly did not approve the proposed law, the proponents were permitted to collect additional signatures on a supplementary petition and submit the proposed law to the voters. The fixed signature requirements were replaced with percentage requirements, and a geographic distribution requirement was added.

Questions Regarding the Ohio Statutory Initiative

The following sections of this memorandum explore the questions raised by the members of the Constitutional Revision and Updating Committee at its January 14, 2016 meeting.

The Requirement of a Supplementary Petition

The first question posed by the committee is: why did the delegates to the 1912 Constitutional Convention require a supplementary petition?

The bitterest contest relating to the initiative and referendum concerned whether to propose the direct or indirect statutory initiative. Ultimately the delegates supported an indirect statutory initiative because they wanted to temper the perceived radicalism of the most ardent supporters of direct democracy. Supporters of the direct initiative had argued that the direct initiative would have an educational effect on the electorate, while submission to the General Assembly would serve only to delay presentation to the voters. On the other hand, opponents of the direct initiative argued that the submission of a proposed law to the General Assembly would give legislators an opportunity to put the proposal in a more perfect form and that only the indirect initiative was consistent with the spirit of representative democracy.³

➤ Signature Requirements

An early version of the indirect statutory initiative (once the fixed number of signatures was eliminated) only required the signatures of four percent of the electors, further providing that the proposed law and any law that the General Assembly adopted would automatically go on the ballot with the proposal getting the most votes being adopted.⁴ Delegates saw this proposal as overly complex, ultimately rejecting it in favor of a proposal to require the signatures of three percent of the voters initially, and to further require proponents to go back to the electors to

² See Hoyt Landon Warner, *Progressivism In Ohio, 1897–1917* (1964), at 320-21. See also Robert Crosser, *The Initiative and Referendum Amendments in the Proposed Ohio Constitution*, *Annals of the American Academy of Political and Social Science*, XLIII (September 1912), at 191-94.

³ See Crosser, *supra*, at 195-97.

⁴ See 1912 Debates, at 675.



obtain the signatures of an additional three percent of the voters on a supplementary petition. There was discussion about the use of a small committee to decide whether to take a proposed initiated statute to the ballot, but Herbert S. Bigelow, the president of the convention, argued that the power to determine whether to go to the ballot should be exercised by the public.⁵ The use of the supplementary petition appears to be part of a larger compromise on the statutory initiative, and there was no discussion focused directly on it and no formal vote on it. Thus, it appears there was general acceptance of the use of a supplementary petition.

The initial proposal for the statutory initiative required obtaining the signatures of 60,000 electors. The more moderate delegates proposed a compromise that used a percentage rather than a fixed number of signatures. The number fluctuated during the debates, but the ultimate compromise was to require an initial petition signed by three percent of the number of voters at the most recent gubernatorial election, including signatures representing at least 1.5 percent of the votes in 44 of the 88 counties. The petition was to be first submitted to the General Assembly to give legislators an opportunity to address the proposed law. If the General Assembly did not approve the proposal within four months, or if it approved an amended version of it, the proponents were entitled to file a supplementary petition also containing three percent of the votes in the last gubernatorial election, subject to the same geographic distribution requirement that applied to the initial petition. The signers of the supplementary petition cannot have signed the initial petition.

➤ Timeline

In 2008, voters adopted a resolution amending Sections 1a, 1b, 1c, and 1g of Article II to revise the timelines for filing and processing petitions for the direct constitutional initiative, the indirect statutory initiative, and the referendum. In addition, the amendment gave the Ohio Supreme Court original exclusive jurisdiction over all challenges made to petitions and signatures on petitions for statewide initiatives and referenda.

The significant change made in 2008 with respect to the statutory initiative provided that a proposed law demanded by a supplementary petition be filed at least 125 days prior to the next regular or general election.⁶ As a result, the current timeline is as follows:

- **Submission of Initial Petition.** The initial petition, with the text of the proposed law, must be submitted to the secretary of state at least 10 days prior to the commencement of the General Assembly session.
- **Four-Month Period.** If the proposed statute is not passed or passed in an amended form, or if no action is taken by the General Assembly within a four-month period, a supplementary petition with an additional 3 percent of the electors may be filed with the secretary of state.

⁵ See 1912 Debates, at 1907-08.

⁶ See Ohio Const. Art. II, Section 1b.



- **Deadline for Filing Supplementary Petition.** The supplementary petition must be filed within 90 days after rejection of the proposed statute by the General Assembly, or after the expiration of four months if no action is taken by the General Assembly, or after a law that has been passed has been filed by the governor with the secretary of state.
- **Deadline for Submission of Supplementary Petition.** If a timely supplementary petition is filed with the secretary of state, the secretary of state shall submit the proposed law to the voters at the next regular or general election occurring subsequent to 125 days after the supplementary petition is filed.

The impact of the 2008 amendment on the statutory initiative is that the amount of time available to collect signatures for a supplementary petition has been reduced to a period of less than two months.

➤ Operation of the Indirect Statutory Initiative

The initial petition filed with the secretary of state must include the full text of the proposed law. After verification of the signatures, the secretary of state must forward the proposed statute to the General Assembly as soon as it convenes.

If the General Assembly adopts the proposed law and the governor does not veto it, the proposal becomes law and the process ends. On the other hand, if the proposed law “shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly,” the supporters may begin collecting signatures on a supplementary petition.⁷

Meaning of the Phrase “if no action shall be taken” in Article II, Section 1b

A second question posed by the committee is: what is the meaning of the phrase “if no action shall be taken” in Article II, Section 1b?

Members of the committee asked what is meant by the phrase “if no action shall be taken,” by the legislature, found in Section 1b. Although there is no definitive judicial interpretation of this provision, from the text and the context it seems to refer to formal action by the General Assembly, acting as the General Assembly. It does not refer to action by one house or by a legislative committee. Thus, the phrase contemplates a situation in which the General Assembly has not approved the proposed law in either its proposed or an amended form, or has not taken any formal action on it, in which case the petitioners may collect signatures to put the proposed statute on the ballot.

When the General Assembly adopts a law proposed by the indirect statutory initiative, there obviously is no need for the matter to go to the voters. Unfortunately, it is not clear how many proposed initiated statutes have been adopted by the General Assembly. Nor is information

⁷ Ohio Const. Art. II, Section 1b.

readily available on how many times the General Assembly did not approve a proposed law, after which the proponents – for whatever reason – did not take the issue to the voters. However, since the adoption of the indirect statutory initiative in 1912, there have been twelve instances in which proponents of initiated statutes have taken the issue to the ballot. Only three of these votes have resulted in the approval of initiated statutes.⁸

When Collection of Signatures for Supplementary Petition Can Begin

The committee also asked: when can the collection of signatures for a supplementary petition begin?

The delegates at the 1912 convention discussed this question, adopting an amendment designed to prohibit the collection of such signatures until after the start of the 90-day period for collecting signatures.⁹ This is reflected in the following language from Section 1b:

[S]upplementary petition *must be signed and filed* with the secretary of state within ninety days *after* the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. (Emphasis added.)

Limitations on the Statutory Initiative in Addition to Article II, Section 15(D)

The committee also wondered if there are limitations in addition to those stated in Article II, Section 15(D).

The 1912 Constitutional Convention proposed and voters approved a limitation on the statutory initiative in cases involving taxation in order to prevent the adoption of the single-tax policies associated with the economist Henry George.¹⁰ This express limitation, provided in Section 1e, reads as follows:

The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

➤ Single Subject Requirement

In addition, the single subject requirement that limits the ability of the General Assembly to

⁸ See September 1, 2015 Memorandum entitled “The Ohio Indirect Statutory Initiative.”

⁹ See Proceedings and Debates of the Constitutional Convention of the State of Ohio 1938 (1912) (hereinafter “1912 Debates”).

¹⁰ See Warner, *supra*, at 321-22.



combine disparate provisions is applicable to statutes proposed by initiative.¹¹

➤ Role of the Governor

Under Article II, Section 1b, initiated statutes approved by the voters are not subject to the governor's veto.

Relationship Between the Referendum and the Statutory Initiative

The committee also inquired as to the relationship between the referendum and the statutory initiative.

Section 1b expressly provides that statutes proposed by initiative petition are subject to the referendum: "If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum." It is clear that the reference to the referendum involves laws approved by the General Assembly and not laws approved by the voters through the initiative. The application of the referendum to laws passed by the General Assembly in response to a petition was debated at the 1912 Constitutional Convention. And strong support was expressed for assuring that such laws were subject to the referendum.¹²

The relationship between the statutory initiative and the referendum is suggested in another way. When the General Assembly approves a law initially proposed by petition in an amended form, the filing of a timely supplementary petition has the effect, similar to the effect of the referendum, of suspending the operation of the new law until the voters have spoken. *See* Section 1b ("[S]uch amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors.").

Finally, it does not appear that the referendum applies to initiated statutes that have been approved by the voters. There is no textual support in Article II, Section 1c for such an application, and it would be redundant to subject a law that has been approved by the voters to the referendum.

Publication Requirements

Another concern expressed by the committee centers on the publication requirements for the initiative.

When initially adopted in 1912, the constitutional provision on the initiative, at Section 1g, required that all proposed amendments and proposed laws be mailed to the electors:

¹¹ *See* Ohio Const. Art. II, Section 1 ("The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws."); Art. II, Section 15(D).

¹² *See* 1912 Debates, at 1906-07.

The secretary of state shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanation not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same to each of the electors of the state, as far as may be reasonably possible.

In 1971, voters approved an amendment to eliminate the requirement for mailed ballots in favor of requiring notice by publication for five weeks in newspapers of general circulation instead.¹³ In 1978, voters approved an amendment to Section 1g in order to reduce from five to three the number of times the relevant information need be published in each county with a general circulation newspaper. The section now reads:

The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published.

Judicial Review

The committee also asked about the process of judicial review on questions involving signatures and other issues.

The Ohio Supreme Court has long had original and exclusive jurisdiction of cases challenging the adoption or submission of proposed constitutional amendments to the electors, as indicated in Article XVI, Section 1:

The Supreme Court shall have exclusive, original jurisdiction in all cases challenging the adoption or submission of a proposed constitutional amendment to the electors. No such case challenging the ballot language, the explanation, or the actions or procedures of the General Assembly in adopting and submitting a constitutional amendment shall be filed later than sixty-four days before the election. The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.

This provision, however, does not expressly address the availability of judicial review in cases involving the adoption or submission of proposed statutes.

In 2008, voters approved an amendment to Section 1g that changed the filing deadlines for

¹³ See Ohio Const. Art. II, Section 1g (1971).



proposed initiated amendments, proposed initiated statutes, and referenda. The amendment also gave the Ohio Supreme Court original and exclusive jurisdiction over all challenges to petitions and signatures, including challenges in cases involving proposed statutes. This new provision is as follows:

The Ohio supreme court shall have original, exclusive jurisdiction over all challenges made to petitions and signatures upon such petitions under this section. Any challenge to a petition or signature on a petition shall be filed not later than ninety-five days before the day of the election. The court shall hear and rule on any challenges made to petitions and signatures not later than eighty-five days before the election. If no ruling determining the petition or signatures to be insufficient is issued at least eighty-five days before the election, the petition and signatures upon such petitions shall be presumed to be in all respects sufficient.

This amendment changed the prior practice in which challenges to signatures could be filed in any of the counties in which the alleged violations took place. The proposal, however, has provided the court with an extremely accelerated schedule for resolving such disputes.

Separate Vote/One Amendment Requirement

The committee inquired as to whether proposed changes to Article II, Section 1a (Constitutional Initiative) and Article II, Section 1b (Statutory Initiative) can be included in one joint resolution under the separate vote/one amendment requirement of Article XVI, Section 1.

Article XVI, Section 1 contains a one amendment/separate vote requirement under which the General Assembly is required to present proposed constitutional amendments to the voters in such a way as to permit a vote “on each amendment, separately.”¹⁴

The Ohio Supreme Court in *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410, at paragraph 52, described the purpose of this requirement:

The constitutional mandate that multifarious amendments shall be submitted separately has two great objectives. The first is to prevent imposition upon or deceit of the public by the presentation of a proposal which is misleading or the effect of which is concealed or not readily understandable. The second is to afford the voters freedom of choice and prevent ‘logrolling’ or the combining of unrelated proposals in order to secure approval by appealing to different groups which will support the entire proposal in order to secure some part of it although perhaps disapproving of other parts.

Following the test previously outlined in *State ex rel. Willke v. Taft*, 107 Ohio St.3d 1, 2005-Ohio-5303, 836 N.E.2d 536, at paragraph 34, the Court stated, at paragraph 42:

¹⁴ See Ohio Const. Art. XVI, Section 1 (1851) (“When more than one amendment shall be submitted at the same time, they shall be so, submitted as to enable the electors to vote on each amendment, separately.”).



[T]he applicable test for determining compliance with the separate-vote requirement of Section 1, Article XVI, is that a proposal consists of one amendment to the Constitution only so long as each of its subjects bears some reasonable relationship to a single general object or purpose * * * . Thus, where an amendment to the Constitution relates to a single purpose or object and all else contained therein is incidental and reasonably necessary to effectuate the purpose of the amendment, such amendment is not violative of the provisions of Section 1, Article XVI * * * . Courts have generally taken a liberal view in interpreting what such a single general purpose or object may be. (Emphasis and internal citations omitted.)

Under this test, proposed amendments need not relate to a *single subject* but must only relate to a “single general object or purpose.” Thus, the standard is more forgiving than the “one-subject” requirement that limits the ability of the General Assembly to put unrelated subjects in a single statute.¹⁵

It is not clear whether the combination of a proposed amendment concerning the constitutional initiative and the statutory initiative would be considered a “single general object or purpose.” In many ways, this will depend on the nature of the proposed amendments.

Attempts to Redraft Sections 1b and 1g

The committee’s final question posed concerns whether there have been efforts to redraft Sections 1b and 1g to make them easier to comprehend.

In 1975, the Ohio Constitutional Revision Commission (1970s Commission) recommended a thorough revision of the initiative provisions of Sections 1a to 1g, and the placement of these provisions in Article XVI. The proposal would have replaced the percentage approach to the signature requirement with a 100,000 initial signature requirement and a 75,000 signature requirement for the supplementary petition. It would also have eliminated the geographic distribution requirement, largely because of concerns about the implications of the United States Supreme Court’s one-man one-vote reapportionment decisions. Finally, the proposal also sought to make the provisions more readable by breaking longer sections into numbered subsections. However, the General Assembly did not act until 1978, when it rejected most of this proposal. The more modest proposal that it put before the voters in 1978 expanded the role of the ballot board to include constitutional amendments proposed by initiative, and extended the ballot preparation procedures applicable to General Assembly-proposed amendments to proposed initiated amendments.

¹⁵ See *State ex rel. Foreman v. Brown*, 226 N.E.2d 116, 120 (Ohio 1967) (“[A]t the same time that the [1850–51] Constitutional Convention proposed Section 1 of Article XVI, it proposed [the one-subject rule] * * * It is quite obvious therefore that, if those who submitted Section 1 of Article XVI had intended that each amendment to the Constitution proposed by the General Assembly be confined to one subject, object or purpose, they would have so provided as they did in Section 16 of Article II [Section 15(D), Article II]. They did not.”).

The Statutory Initiative Nationally

Signature and Supplementary Petition Requirements

On a national scale, the committee was curious as to how many states have the statutory initiative and what is the signature requirement, as well as what states require a supplementary petition.

Twenty-one states provide for a statutory initiative. Of these, 15 have a direct statutory initiative under which proponents may put proposed statutes directly on the ballot without first presenting the proposed law to the legislature. The other six states, including Ohio, have an indirect statutory initiative.

Four of the remaining states – Ohio, Michigan, Massachusetts, and Nevada – have only an indirect statutory initiative, in which the issue's proponents must first submit their proposed statute to the state legislature. In these states, the proponents can take the matter to the ballot if the legislature fails to adopt the proposed statute. In Michigan and Nevada, the issue goes directly to the ballot if the legislature fails to act without the collection of additional signatures.¹⁶ In Massachusetts, there is a modest additional signature requirement of .5 percent of the votes in the last gubernatorial election (in addition to the three percent required initially). In Ohio, the proponents of the original statute must file a supplementary petition with signatures of three percent of the vote in the last gubernatorial election.

The final two remaining states – Utah and Washington – have both a direct and indirect statutory initiative. In Utah, the initial signature requirement for direct statutory initiatives is ten percent of the votes for the office of president in the most recent presidential election. For the indirect statutory initiative, the proponents need only obtain signatures of five percent of the votes in the last presidential election, but they must get an additional five percent on a supplementary petition if the legislature does not adopt the proposed statute. In Washington, there is both a direct and indirect statutory initiative, and they both require the same number of signatures. In Washington, the proponents may put a proposed statute on the ballot without first presenting it to the legislature. Alternatively, the proponents may first present the proposed statute to the legislature and, if the legislature fails to adopt the proposed statute, the matter is automatically put on the ballot without the need to obtain additional signatures. The below chart summarizes the policies of states with the statutory initiative.

¹⁶ See Mich. Const. Art. II, Section 9; Nev. Const. Art. 19, Section 2(3).

SIGNATURE REQUIREMENTS FOR THE STATUTORY INITIATIVE¹⁷

State	Signatures Required	Direct/Indirect & Signature
Alaska	10% of votes in last general election	Direct initiative only
Arizona	10% of votes for governor	Direct initiative only
Arkansas	8% of votes for governor	Direct initiative only
California	5% of votes for governor	Direct initiative only
Colorado	5% of votes for secretary of state	Direct initiative only
Idaho	6% of registered voters	Direct initiative only
Maine	10% of votes for governor	Direct initiative only
Massachusetts	3% of votes for governor	Indirect; additional .5% additional signatures to get to ballot
Michigan	8% of vote for governor	Indirect; no additional signatures
Missouri	5% of vote for governor	Direct initiative only
Montana	5% of vote for governor	Direct initiative only
Nebraska	10% of vote in last general	Direct initiative only
Nevada	5% of vote for governor	Indirect; no additional signatures
North Dakota	2% of general population	Direct initiative only
Ohio	3% of votes for governor	Indirect; additional 3% to get to ballot
Oklahoma	8% of votes for governor	Direct initiative only
Oregon	8% of votes for governor	Direct initiative only
South Dakota	5% of votes for governor	Direct initiative only

¹⁷ Adapted from M. Dane Water, *Initiative and Referendum Almanac*, 28-29 (2003).

Utah	10% of votes for governor (direct); 5% (indirect)	Additional 5% of votes for governor if using indirect
Washington	8% of voters for governor (direct & indirect)	Automatically to the ballot if using indirect
Wyoming	15% of votes in last general election	Direct initiative only

Safe Harbors

The committee also wondered how many states with the statutory initiative have safe harbor requirements and what those requirements might be.

To strengthen the statutory initiative, ten of the 21 states with the statutory initiative have a safe harbor provision that limits the ability of state legislatures to amend or repeal the initiated statutes approved by the voters.

LIMITATIONS ON THE POWER OF THE LEGISLATURE TO AMEND OR REPEAL INITIATED STATUTES

State	Actions That May Be Taken by the Legislature
Alaska	No repeal within 2 years; amendment by majority vote any time
Arizona	3/4 vote to amend; amending legislation must “further the purpose” of the measure; legislature may not repeal an initiative
Arkansas	2/3 vote of the members of each house to amend or repeal
California	No amendment or repeal of an initiative statute by the Legislature unless the initiative specifically permits it
Michigan	3/4 vote to amend or repeal
Nebraska	2/3 vote required to amend or repeal
Nevada	No amendment or repeal within 3 years of enactment
North Dakota	2/3 vote required to amend or repeal within 7 years of effective date
Washington	2/3 vote required to amend or repeal within 2 years of enactment
Wyoming	No repeal within 2 years of effective date; amendment by majority vote anytime

Required Votes for Approval of Proposed Amendments and Statutes

Finally, the committee inquired as to the requirement for approval of proposed statutes and constitutional amendments.

➤ Statutory Initiative

All the states with the statutory initiative require a simple majority of votes on the proposed statute for passage.

➤ Constitutional Amendments – Generally

With respect to constitutional amendments proposed by legislators, 40 states require a simple majority vote for the approval of the amendments. The few exceptions, for the most part, involve supermajority requirements that require a percentage of the total votes in the election either instead of or in addition to the votes on the proposed amendments.

State	Vote on Proposed Amendments
Delaware	constitutional amendments need not go to the voters
Florida	three-fifths vote except a two-thirds vote on new taxes
Illinois	majority voting in the election or three-fifths voting on the amendment
Minnesota	majority of those voting in the election
Nebraska	majority vote on the amendment, which must be at least 35% of total vote in the election
Nevada	majority vote on the amendment
New Hampshire	two-thirds vote on the amendment
Oregon	majority vote on the amendment unless a supermajority is required in the proposed amendment
Tennessee	majority of those voting in the election
Wyoming	majority of those voting in the election

➤ Initiated Constitutional Amendments

With the limited exceptions of Nevada and Oregon, states having the constitutional initiative all apply the same voter-approval policies to initiated amendments that they apply to legislatively-proposed amendments. In Nevada, amendments proposed by the initiative must be submitted to

the voters in two consecutive elections.¹⁸ In Oregon, there is a special emergency provision for amendments proposed by the legislature. Thus, Nevada appears to be the only state that has a significantly different voting procedure for amendments legislatively-proposed and initiated amendments.

¹⁸ See Nev. Const. Art. 19, Section 2(4).



ATTACHMENT A**Article II, Section 1b**

When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted at the next regular or general election occurring subsequent to one hundred twenty-five days after the supplementary petition is filed in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in 1a and 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

ATTACHMENT B**Article II, Section 1g**

Any initiative, supplementary, or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary, or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the county and the rural route number, post office address, or township of his residence. A resident of a municipality shall state the street and number, if any, of his residence and the name of the municipality or post office address. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the statement of the circulator, as may be required by law, that he witnessed the affixing of every signature. The secretary of state shall determine the sufficiency of the signatures not later than one hundred five days before the election.

The Ohio supreme court shall have original, exclusive jurisdiction over all challenges made to petitions and signatures upon such petitions under this section. Any challenge to a petition or signature on a petition shall be filed not later than ninety-five days before the day of the election. The court shall hear and rule on any challenges made to petitions and signatures not later than eighty-five days before the election. If no ruling determining the petition or signatures to be insufficient is issued at least eighty-five days before the election, the petition and signatures upon such petitions shall be presumed to be in all respects sufficient.

If the petitions or signatures are determined to be insufficient, ten additional days shall be allowed for the filing of additional signatures to such petition. If additional signatures are filed, the secretary of state shall determine the sufficiency of those additional signatures not later than sixty-five days before the election. Any challenge to the additional signatures shall be filed not later than fifty-five days before the day of the election. The court shall hear and rule on any challenges made to the additional signatures not later than forty-five days before the election. If no ruling determining the additional signatures to be insufficient is issued at least forty-five days before the election, the petition and signatures shall be presumed to be in all respects sufficient. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary, and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section, or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law

or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section, or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted. The ballot language shall be prescribed by the Ohio ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution. The ballot language shall be so prescribed and the secretary of state shall cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

TO: Chair Dennis Mulvihill, Vice Chair Charles F. Kurfess and
Members of the Constitutional Revision and Updating Committee

CC: Steven C. Hollon, Executive Director

FROM: Steven H. Steinglass, Senior Policy Advisor

DATE: September 1, 2015

RE: The Ohio Indirect Statutory Initiative

This memorandum reviews Ohio's indirect statutory initiative. The committee has received research memoranda, heard presentations, and discussed the statutory initiative. This memorandum pulls this material together and supplements it with the goal of identifying topics that the committee might wish to discuss concerning the statutory initiative.

Although the memorandum focuses on the statutory and not the constitutional initiative, there are provisions of the Ohio Constitution and the Ohio Revised Code that apply to both. Moreover, the committee's review of the constitutional initiative often covered issues that involved the statutory initiative; thus, this memorandum, despite its focus, will also touch on a number of topics relating to the constitutional initiative.

More specifically, the memorandum reviews: (a) the origins of the Ohio indirect statutory initiative; (b) the post-1912 constitutional history of the Ohio initiative; (c) the operation of the Ohio indirect statutory initiative; (d) the use of the Ohio indirect statutory initiative; (e) presentations on and the committee's discussions of the Ohio statutory initiative; and (f) the availability of the statutory initiative around the country.

The Origins of the Ohio Indirect Statutory Initiative

The Ohio Constitutional Convention of 1912 proposed the adoption of the indirect statutory initiative as part of a comprehensive direct democracy proposal that also included the direct constitutional initiative and the referendum.

Focus of 1912 Constitutional Convention

The desire to introduce direct democracy was one of the principal goals of the Ohio Progressive Constitutional League and those supporting Ohio's Fourth Constitutional Convention. It contributed to the decision to hold the mandatory vote on the 20-year convention call on November 8, 1910, a year earlier than the 1851 constitution required, and it contributed to an overwhelming, more than 10:1 vote of 693,263 to 67,718 (with significant help from straight-ticket voting) in favor of holding Ohio's first convention in four decades. It also motivated the non-partisan but very competitive election in 1911 for convention delegates.¹ Not surprisingly, the initiative was the most hotly contested issue at the 1912 Convention.

Placement of the Initiative in Article II

The placement of the statutory and constitutional initiative in Article II reflected the view of the delegates that the full legislative (and constitution-amending) power rested with the people, and the people were making clear that they were not delegating the full power to the General Assembly.²

The proposal on the Ohio initiative began with an amendment to Article II, Section 1, the first section of the Legislative article:

The legislative power of the state shall be vested in a General Assembly consisting of a Senate and House of Representatives but the people reserve to themselves the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the General Assembly, except as hereinafter provided; and independent of the General Assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

Article II then contains, in Sections 1a to 1g, the detailed constitutional provisions concerning the initiative and the referendum.

¹ See generally Lloyd Sponholtz, *The 1912 Constitutional Convention in Ohio: The Call-up and Nonpartisan Selection of Delegates*, *Ohio History Journal*.

² Cf. *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 135 S.Ct. 2652, 2660-61 (2015), (relying on the placement of the Arizona initiative in its Legislative Article in the course of rejecting an Election Clause (Article I, Section 4, cl. 1) challenge to the use of the initiative to create a commission for congressional redistricting).

Voter Approval

On September 3, 1912, Ohio voters approved the initiative and referendum (proposed Amendment No. 6) by a vote of 312,592 to 231,312. At the same election, Ohio voters (despite a generally disappointing voting turnout), approved 34 of the 42 amendments proposed by the Convention.

The Post-1912 Constitutional History of the Ohio Initiative

Since 1912, there have been only a few successful attempts to revise the initiative, and none of the approved amendments have made significant changes in the operation of either the statutory or the constitutional initiative. Attachment A is a brief review of the amendments that the voters approved, followed by the proposed amendments that the voters rejected.

The Operation of the Ohio Indirect Statutory Initiative

The constitutional foundation of the Ohio indirect statutory initiative looks very much today as it did in 1912 when it was approved by the voters. However, there have been some constitutional revisions to the initiative (*see supra*). In addition, the General Assembly has made statutory modifications in the initiative pursuant to its power under Article II, Section 1g, to pass laws to facilitate the operation of the initiative without “limiting or restricting either such provisions or the powers herein reserved.” A detailed step-by-step summary of the indirect statutory initiative process with its constitutional and statutory foundations can be found on the website maintained by the Secretary of State. A copy of this summary is provided as Attachment B.

Attorney General/Fair and Truthful Certification

The constitution is silent on the steps to be taken before a petition for an initiated statute (or for an initiated amendment) is filed with the Secretary of State (under Section 1b), but the Ohio Revised Code requires that a petition signed by 1000 qualified voters first be submitted to the Attorney General with the text of the proposed statute and a summary of it. R.C. 3519.01(A). The Attorney General then has ten days to determine whether “the summary is a fair and truthful statement of the proposed law * * * .” *Id.*

Ballot Board/One Proposed Law

If the Attorney General certifies that the summary as being a fair and truthful statement of the proposed law, the Ballot Board (which was created by constitutional amendment in 1978) determines whether the petition contains only one proposed law (or in the case of proposed amendments only “one amendment”). Petitioners may not begin to collect signatures until after the certification by the Attorney General and the determination by the Ballot Board.

Required Signatures

The statutory initiative requires the filing of a petition signed by 3 percent of the total votes cast for the office of governor in the last gubernatorial election (as contrasted to the 10 percent requirement for the constitutional initiative). In the event the secretary determines that there is an insufficient number of signatures, the petitioners have an additional ten-day period to obtain additional signatures on a unique supplemental form. *See* R.C. 3519.16(F).

Geographic Distribution

There is a constitutionally-required geographic distribution requirement for the signatures. Petitions must include signatures with one-half of the required percentage from 44 of Ohio's 88 counties. Thus, in 44 counties there must be signatures from at least 1.5 percent of the total votes cast for the office of governor in the last gubernatorial election. To simplify this, the Secretary of State's website lists the requisite percentages by county.³

Timing – Before the Legislative Session

Because Ohio has an indirect initiative, the petition with the requisite signatures must be filed with the Secretary of State at least 10 days prior to the convening of the regular sessions of the General Assembly (which is the first Monday in January).

Action/Inaction by the General Assembly and Supplementary Petitions

If the General Assembly fails to adopt the proposed law (or amends it or takes no action) within four months from the date of its receipt of the petition, the petitioners may seek signatures on a supplementary petition demanding that the proposal be presented to the voters at the next regular or general election. As with the initial petition, the supplementary petition must contain signatures of 3 percent of the voters at the most recent gubernatorial election (subject to the same geographic distribution requirement). The petition must be filed with the Secretary of State within 90 days after the General Assembly fails to adopt the proposed law and not later than 125 days before the scheduled general election. Given these deadlines, proponents of a proposed law will have approximately 60 days to gather signatures for their supplementary petition, if they wish to present a proposed statute to the voters in the same year that they presented it to the General Assembly.

Cure Period

If the Secretary of State determines that the petition contains an insufficient number of signatures, the petitioner has ten additional days to cure and submit additional signatures. Under R.C. 3519.16(F), petitioners must stop collecting additional signatures upon filing their petition

³ *See* Governor's Race Percentage Chart (2014), Ohio Secretary of State Website: <https://www.sos.state.oh.us/SOS/elections/Research/electResultsMain/HistoricalElectionComparisons/percentage.aspx> (accessed September 1, 2015).

until they receive notice from the Secretary of State that they may renew the collection of signatures (which then must be collected on a unique form).

Access to the Ballot

Proponents of both initiated statutes and initiated constitutional amendments must file their petitions with the Secretary of State 125 days in advance of the regular or general election.

Adoption by Voters

If the voters approve a proposed initiated statute by a majority of votes on the issue, the law becomes effective 30 days after the election. Any initiated statute approved by the voters must conform to the requirements of the Ohio Constitution.

Limitations on the Use of the Statutory Initiative

The statutory initiative as proposed by the 1912 Convention and approved by the voters provided that it may not be used to adopt legislation that would impose a single tax on land or establish a non-uniform classification system of property for purposes of taxation. This limitation, which is contained in Article II, Section 1e, provides:

The powers defined herein as the “initiative” and “referendum” shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

There has not been significant litigation concerning this provision, although the Ohio Supreme Court has made clear that this provision does not extend to the initiation of constitutional amendments. *See Thrailkill v. Smith*, 106 Ohio St. 1, 138 N.E. 532 (1922) (“Section 1e, article II, of the Constitution, does not forbid the employment of the initiative in proposing an amendment to the Constitution, which authorizes legislation providing for classification of property for the purpose of levying different rates of taxation thereon.”) (syllabus). Nor does the provision prevent the initial use of the statutory initiative to propose otherwise proscribed tax measures to the General Assembly. *See State ex rel. Durell v. Celebrezze*, 63 Ohio App.2d 125, 409 N.E.2d 1044, 1049-50 (1979) (“Section 1e provides that the initiative ‘shall not be used to pass a law,’ and does not directly provide that the process may not be used to propose the law, which is the first step in the initiative process whereby the petitions propose the law to the General Assembly, which may or may not pass the law. It is only in the second step of the initiative process that initiative is used to pass a law.”).

Pre-Election Judicial Review

There is no explicit constitutional or statutory procedure for preventing proposed statutes that violate Section 1e (or that are even patently unconstitutional) from being presented to the voters.

The Ohio Supreme Court has rejected the availability of pre-election judicial review of the merits of ballot proposals. *See State ex rel. Cramer v. Brown*, 7 Ohio St.3d 5, 454 N.E.2d 1321 (1983) (“It is well-settled that this court will not consider, in an action to strike an issue from the ballot, a claim that the proposed amendment would be unconstitutional if approved, such claim being premature.”). Nonetheless, the court has provided pre-election review to remove from the ballot proposed constitutional amendments that violated the “one amendment” rule of Article XVI, Section 1, *see Roahrig v. Brown*, 30 Ohio St.2d 82, 282 N.E.2d 584 (1972), suggesting that the court would treat similarly proposed statutes that violated either the express limitations in Section 1e or the one-subject rule applicable to statutes.

Role of the Governor

The governor cannot veto a statute proposed by initiative and approved by the voters. *See* Article II, Section 1b) (“No law proposed by initiative petition and approved by the voters shall be subject to the veto of the governor.”).

Applicability of Referendum to Statutory Initiatives

Statutes enacted by the General Assembly in response to statutory initiatives are subject to the referendum, *see* Article II, Section 1b, but the Constitution is silent as to the application of the referendum to statutes adopted by the voters through the statutory initiative process.

Amendments by the General Assembly

The constitution does not contain a provision that precludes the General Assembly from amending or even repealing an initiated statute that has been approved by the voters.

The Use of the Ohio Indirect Statutory Initiative

The Ohio Experience

Since the adoption of the constitutional amendment in 1912 permitting statutes to be initiated, only 12 proposed statutes were presented to the voters, and the voters approved only three of them.

The three state statutes that became law as a result of a statutory initiative involved old age pensions (1933), colored oleomargarine (1959), and smoking (2006). The voters approved each of these by a substantial majority.⁴

⁴ November 7, 1933

PROPOSED LAW BY INITIATIVE PETITION:
Granting of aid to aged persons under certain circumstances:
Yes--1,388,860 (Passed) No--526,221

November 8, 1949

There have been twelve statutory initiatives that have gone to the voters after rejection by the General Assembly. The list of these initiatives is provided at Attachment C. This list of ballot measures, however, does not fully describe the use and attempted use of the statutory initiative because the state does not keep records of petitions that did not make it to the ballot for whatever reason. Nonetheless, in 1913, the General Assembly approved two statutes proposed by initiative: H.B. No. 1 (relative to regulating newspapers and publication of nothing but the truth), and H.B. No. 2 (providing for the removal of certain officers).

Ohio as an Outlier

As compared to other states, Ohio is an outlier in terms of the percentage of initiatives that are presented to the voters as constitutional initiatives rather than statutory initiatives. Approximately 86 percent of all Ohio initiatives that have been on the ballot are constitutional, not statutory initiatives. In whole numbers, there have been 80 initiatives presented to Ohio voters since 1912, of which 68 were constitutional initiatives and 12 were statutory initiatives. The median figures for other states that have both the statutory and constitutional initiatives reveals approximately 52 percent of the initiated proposals were constitutional initiatives.⁵

Proponents of initiatives often prefer the constitutional initiative, because of the permanence that is provided by success at the polls and because of the desire to avoid the need to collect additional signatures on a supplementary petition. Thus, the committee has been addressing ways to strengthen the statutory initiative and thus give petitioners an incentive to attempt to initiate statutes rather than constitutional amendments.⁶

Presentations on and Discussions of the Statutory Initiative

The committee has heard presentations from numerous individuals who have had experience with the initiative process. Most of these presentations involved issues common to both the constitutional and the statutory initiative. A summary of these presentations is provided at Attachment D.

PROPOSED LAW BY INITIATIVE PETITION:

To permit the manufacture and sale of colored oleomargarine:

Yes--1,282,206 (Passed) No--799,473

November 7, 2006

PROPOSED LAW BY INITIATIVE PETITION (SMOKE FREE)

To enact Chapter 3794. of the Ohio Revised Code to restrict smoking in places of employment and most places open to the public.

Yes—2,370,314 (Passed) No—1,679,833

⁵ See Bowser, *Use of the Statutory Initiative vs. the Constitutional Initiative* (2014).

⁶ See Steinglass, *Strengthening Ohio's Statutory Initiative* (April 9, 2014).

The committee has also spent considerable time discussing various issues relating to the constitutional and statutory initiative. The following items summarize the portions of the meetings in which the minutes reflect committee discussions on the statutory initiative.

March 13, 2014

On March 13, 2014, the Committee tabled further discussion about requiring ballot initiatives to receive a percentage of affirmative votes out of the total number of votes cast at the election.

A discussion was held about increasing the vote requirements for successful passage of ballot amendments, and about creating a legislative mechanism for creating competing ballot language for constitutional amendments.

The committee, by motion, decided to focus future meetings on a discussion of a mechanism by which the General Assembly could present competing ballot language for initiated amendments and on adjusting the supplementary petition requirement for initiated statutes.

April 10, 2014

On April 10, 2014, the committee voted unanimously (6-0) to request the Legislative Service Commission (“LSC”) to draft amendments to the initiated statute language to reduce the geographic signature distribution requirement from 44 counties to 22 counties, and to require a two-thirds vote from the legislature for a period of five years to change or repeal an initiated statute.

July 10, 2014

On July 10, 2014, the committee discussed the LSC resolution to reduce the geographic requirement for initiated statutes from 44 to 22 counties and to create a five-year time period in which initiated statutes would require a two-thirds vote for legislative modifications. The committee also discussed the addition of a requirement that legislative changes must further the purpose of the initiated statute.

The committee agreed to submit a comprehensive package of recommendations to the full Commission rather than to send individual recommendations. The committee also discussed whether to require initiated amendments to be approved by the voters in two elections, to require a supermajority vote at the polls, to require an increase in the signature requirement for constitutional amendments from 44 to 66 counties; and to require the creation of a mechanism for putting competing amendments on the ballot.

April 9, 2015

At the April 9, 2015, meeting, the committee did not directly discuss the Ohio statutory initiative directly. Rather, it discussed the presentation by Senior Policy Advisor Steven H. Steinglass on subject-matter limitations on initiatives. Part of this discussion focused on the use of

constitutional limitations on the creation of special privileges and whether such limitations should apply only to initiated amendments or also to initiated statutes and statutes enacted by the General Assembly.

Availability of the Initiative Throughout the Country

There are 24 states that currently have a statutory or constitutional initiative or, in some cases, both. These states can be grouped into several categories as set out in Attachment E.

Conclusion

This memorandum has been provided to assist the committee in determining what, if any, recommendations to make concerning the statutory initiative process. If further research is required, staff is prepared to provide additional assistance.

ATTACHMENT A*Adopted Amendments to the Ohio Initiative*1918 – Section 1

On November 5, 1918, the voters approved an initiated amendment to Article II, Section 1, to subject the ratification of federal constitutional amendments to the referendum. This provision was then used to reject the state's ratification of the Eighteenth Amendment (prohibition), but the United States Supreme Court in *Hawke v. Smith*, 253 U.S. 221 (1920), rejected this use of the referendum.

1953 – Section 1

On November 3, 1953, the voters approved a General Assembly-proposed amendment to repeal the unconstitutional referendum language in Section 1 that had been found unconstitutional by the United States Supreme Court in *Hawke v Smith, supra*.

1971 – Section 1g

On November 2, 1971, the voters approved a General Assembly-proposed amendment to Section 1g to require newspaper notice in lieu of mail notice of proposed laws and proposed amendments and to eliminate the requirement that signers of initiative, supplementary, or referendum petitions place on such petitions the ward and precinct in which their voting residence is located.

1978 – Section 1g

On June 6, 1978, the voters approved another General Assembly-proposed amendment to Section 1g to create the Ballot Board and require it to prepare the ballot language for state issues, including statutory initiatives. The amendment also reduced the number of times proposed initiatives must be advertised preceding the election, and made the requirements for circulating and signing initiative and petitions similar to those for petitions for candidates. [This proposal was based, in part, on a recommendation from the Ohio Constitutional Revision Commission. However, the Commission had recommended that the constitutional provisions in Article II on the initiative and referendum be moved to a new Article XIV.]

2008 – Sections 1a, 1b, 1c, and 1g

On November 4, 2008, the voters approved General Assembly-proposed amendment to revise sections 1a, 1b, 1c, and 1g. The amendment required that a citizen-initiated statewide ballot issue be considered at the next general election if petitions are filed 125 days before the election (as contrasted to the prior 90 day deadline). It also established deadlines for boards of elections to determine the validity of petitions, and standardized the process for legal challenges to

petitions by giving the Ohio Supreme Court original and exclusive jurisdiction over challenges made to petitions and signatures and establishing expedited deadlines for court decisions.

Rejected Proposals to Amend the Initiative

In 1939 and 1976, the voters rejected initiated amendments that sought to revise the constitutional and statutory initiative.

1939

On November 7, 1939, the voters rejected an initiated proposal that had been advanced by Bigelow, the president of the 1912 Convention and, by that time, a one-term United States Congressman (1937-1939). The proposed amendment sought to substitute a fixed number of signatures for the percentage approach for statutory (50,000 signatures) and constitutional initiatives (100,000) and to dispense with the geographic distribution requirement. In addition, the proposal sought to eliminate the substantive limitations on the statutory initiative in Section 1e and to convert the indirect statutory initiative to a direct statutory initiative by not requiring proponents of initiated statutes to first present their proposed statute to the General Assembly. The voters rejected this proposal by a vote of 1,485,919 to 406,612, more than a 2:1 margin.

1976

On November 2, 1976, the voters rejected an initiated proposal to simplify the procedures for the initiative and referendum, to substitute a fixed number of signatures for the percentage approach for statutory (150,000 signatures) and constitutional initiatives (250,000), and to dispense with the geographic distribution requirement. In addition, the proposal sought to eliminate the substantive limitations on the statutory initiative in Section 1e and to replace the indirect statutory initiative with a direct statutory initiative under which the General Assembly has six months to adopt a proposed statute but the petitioners are not required to collect supplemental signatures. The voters rejected this proposal by a vote of 2,407,960 to 1,175,410.

What Is an Initiated Statute?

If a citizen feels that an issue is not addressed properly (or at all) in the Ohio Revised Code, he or she can follow the procedures outlined in the Ohio Constitution and Revised Code (below) to submit a proposed law (statute) to the people of Ohio for a statewide vote.

Please note: This procedural outline is not legal advice and should not be relied upon as the sole source of information. Petitioners must comply with all applicable sections of the Ohio Constitution and the Ohio Revised Code.

Petitioners are encouraged to consult legal counsel.

Requirement	Action	Authority
Create Petitioners' Committee	Petitioners must designate a committee of three to five individuals to represent them in all matters relating to the petition.	Ohio Revised Code Section: <u>3519.02</u>
File Initial Petition With Ohio Attorney General and Secretary of State	<ol style="list-style-type: none"> 1. An initial written petition, <u>signed by 1,000 Ohio registered voters</u>, must be submitted to the Attorney General with the full text and summary of the proposed law. 2. Once the petition is received, the Attorney General will certify if he or she believes the summary to be a <i>fair and truthful statement</i> of the proposed law. 3. Once the statement on the petition is certified, the Attorney General will forward the petition to the Ohio Ballot Board which will evaluate the petition to ensure that it contains <u>only one proposed law</u>. The Ballot Board has <u>10 days</u> from the date it receives the petition from the Attorney General to complete this task. 4. After the Ballot Board has certified the petition, a verified copy of the proposed law, together with its summary and the Attorney General's certification must then be filed with the Secretary of State by the Attorney General. The petitioners may then begin to collect signatures for their initiated statute. 	Ohio Constitution: <u>Article II, Section 1c</u> Ohio Revised Code Sections: <u>3501.05</u> ; <u>3505.062</u> ; <u>3519.01</u> ; <u>3519.05</u>
Create Petitions and Gather Signatures	<ol style="list-style-type: none"> 1. In order to begin gathering signatures, the petitioners must create a petition. Each petition must have a copy of the title and full text of the proposed law and must have the following statement printed at the top: <i>"INITIATED PETITION Law proposed by initiative petition first to be submitted to the General Assembly."</i> 2. All signatures must be submitted as one document and at one time. 3. Any person receiving compensation for supervising, 	Ohio Constitution: <u>Article II, Section 1g</u> Ohio Revised Code Sections:

	<p style="text-align: center;">³⁹</p> <p>managing, or otherwise organizing any effort to obtain signatures for a statewide petition must file a <u>Form 15</u> with the office of the Secretary of State before circulating petitions. Any person compensating a person for supervising, managing, or otherwise organizing any effort to obtain signatures for a statewide petition must also file a <u>Form 15</u> with the office of the Secretary of State before any signatures are obtained.</p>	<p><u>3501.38;</u> <u>3501.381;</u> <u>3501.382;</u> <u>3503.06;</u> <u>3519.05;</u> <u>3519.01</u></p>
<p>Signature Requirements</p>	<ol style="list-style-type: none"> 1. The total number of signatures on the petition must equal at least 3 percent of the <u>total vote cast for the office of governor at the last gubernatorial election</u>. The Secretary of State may not accept any petition for filing which does not purport to contain the minimum number of required signatures. 2. The signatures must have been obtained from at least 44 of the 88 counties in Ohio. From each of these 44 counties, there must be signatures equal to at least 1.5 percent of the <u>total vote cast for the office of governor in that county at the last gubernatorial election</u>. 3. Each petition-signer must be a qualified elector of the state of Ohio and each petition must contain signatures of electors from only one county. If a petition contains signatures from electors in more than one county, the Secretary of State will determine which county has the majority of signatures and only the signatures from that county will be counted. 4. Each part-petition circulated in a county must be marked with the name of the county in which it was circulated, numbered sequentially, and sorted according to county. 5. When filing the petition with the Secretary of State, the committee must file an electronic copy of the petition and verification that the electronic copy is a true representation of the original, a summary of the number of part-petitions per county and the number of signatures on each part-petition, and an index of the electronic copy of the petition. 	<p>Ohio Constitution: <u>Article II, Section 1b;</u> <u>Article II, Section 1g</u></p> <p>Ohio Revised Code Section: <u>3519.10;</u> <u>3519.14;</u> <u>3519.16;</u> <u>3501.38</u></p>
<p>Additional Signatures</p>	<ol style="list-style-type: none"> 1. If any petitions or signatures are determined to be insufficient, the petitioners are permitted 10 additional days to collect and file additional signatures. 2. No additional signatures may be collected until the Secretary of State notifies the chairperson of the committee that the petition contains insufficient valid signatures and provides the committee with the unique, supplemental form. All additional signatures must be collected on the supplemental form. 	<p>Ohio Constitution: <u>Article II, Section 1b;</u> <u>Article II, Section 1g</u></p> <p>Ohio Revised Code Section:</p>

		3519.16
Filing Deadline and Filing Fee	<ol style="list-style-type: none"> 1. The petition must be filed with the Secretary of State not less than 10 days prior to the commencement of any session of the Ohio General Assembly. Legislative sessions begin on the first Monday in January. 2. A \$25 filing fee must be paid at the time of filing. 3. Petitions may be withdrawn if written notice is given to the Secretary of State by a majority of the committee members named to represent the petitioners. Notice must be given more than 70 business days before the initiative is to appear on the ballot, and once withdrawn, it may not be resubmitted. 4. Upon receipt of the petition, the Secretary of State will send the proposal for a new law to the General Assembly as soon as it convenes. 	<p>Ohio Constitution: <u>Article II, Section 1b</u></p> <p>Ohio Revised Code Sections: <u>3501.05;</u> <u>3513.10;</u> <u>3519.08</u></p>
Ohio General Assembly	<ol style="list-style-type: none"> 1. The Ohio General Assembly has <i>four months</i> to act on the proposed law. 2. If the General Assembly fails to pass the proposed law, passes it in amended form, or takes no action at all within four months from the date it was received by the General Assembly, supplemental petitions may be circulated by the petitioners demanding that the proposed law be submitted to Ohio voters at the next general election. 	<p>Ohio Constitution: <u>Article II, Section 1b</u></p>
Supplemental Petition and Supplemental Signatures	<ol style="list-style-type: none"> 1. The supplemental petition must contain signatures of Ohio voters that is equal to 3 percent of the <u>most recent vote for governor</u> and must be obtained from at least 44 of the 88 Ohio counties. From each of these 44 counties there must be signatures equal to at least 1.5 percent of the <u>total vote cast for the office of governor in that county at the last gubernatorial election.</u> 2. The petition must be signed and filed with the Secretary of State within 90 days after the General Assembly fails to enact the proposed law in original form, passes it in amended form, or fails to take any action within four months from the time it was received by the General Assembly. The petition must also be filed not later than 125 days before the election at which the initiative is to be placed on the ballot. 3. The supplemental petition may be worded in its original form or may contain amended language included by the Ohio General Assembly. If any petitions or signatures are determined to be insufficient, the petitioners are permitted 10 additional days to collect and file additional signatures. 4. No additional signatures may be collected until the Secretary of State notifies the chairperson of the 	<p>Ohio Constitution: <u>Article II, Section 1b</u></p> <p>Ohio Revised Code Section: <u>3519.16</u></p>

	<p style="text-align: center;">41</p> <p>committee that the petition contains insufficient valid signatures and provides the committee with a unique, supplemental form. All additional signatures must be collected on the supplemental form.</p> <p>5. The Secretary of State will determine the validity of these additional signatures not later than 65 days before the election.</p>	
Signature or Petition Challenges	<ol style="list-style-type: none"> 1. The Ohio Supreme Court has original, exclusive jurisdiction over any and all challenges made to petitions or individual signatures. 2. Any challenge to <i>original</i> signatures on petitions must be filed not later than 95 days before the election. The Supreme Court will rule on these challenges not later than 85 days before the election. If the Court does not rule prior to the 85th day before the election, the original signatures will be deemed sufficient. 3. Any challenge to <i>additional or supplemental</i> signatures must be filed not later than 55 days before the election. The Supreme Court will rule on any challenges not later than 45 days before the election. If the Court does not rule prior to the 45th day before the election, those additional signatures will be deemed sufficient. 	<p>Ohio Constitution: <u>Article II, Section 1g</u></p> <p>Ohio Revised Code Section: <u>3519.16</u></p>
Ballot Language	<ol style="list-style-type: none"> 1. Once the Secretary of State determines the sufficiency of the supplemental petition, the Secretary of State must pass the initiative on to the Ballot Board. 2. The Ohio Ballot Board must prescribe the ballot language for the proposed law and certify it to the Secretary of State not later than 75 days before the election. 	<p>Ohio Constitution: <u>Article II, Section 1g</u></p> <p>Ohio Revised Code Section: <u>3505.062</u></p>
Ballot Arguments	<ol style="list-style-type: none"> 1. Members of the petitioners' committee may prepare and file an argument and/or explanation in favor of the proposed law. The General Assembly, or the Governor if the General Assembly is not in session, must name persons to prepare the argument and/or explanation against the proposed law. All arguments and/or explanations must be 300 words or less and must be filed with the Secretary of State not later than 80 days before the election. 2. If the petitioners' committee or persons named by the General Assembly or Governor fail to prepare or timely file the argument and/or explanation, the Secretary of State must notify the Ohio Ballot Board, which must prepare the argument and/or explanation or designate a group to do so. The argument and/or explanation must 	<p>Ohio Constitution: <u>Article II, Section 1g; Article XVI, Section 1</u></p> <p>Ohio Revised Code Section: <u>3519.03</u></p>

	<p>be filed with the Secretary of State not later than 75 days before the election.</p> <p>3. The proposed law together with the arguments and/or explanations must be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published.</p>	
<p>Effective Date</p>	<p>Any law approved by the majority of voters will become effective 30 days after the election.</p>	<p>Ohio Constitution: <u>Article II</u>, <u>Section 1b</u></p>

ATTACHMENT C

Ohio Initiated Statutes--1913-2012 (May 2013).doc

**VOTES ON SUPPLEMENTARY PETITIONS ON LAWS PROPOSED BY INITIATIVE
BUT NOT ENACTED BY THE GENERAL ASSEMBLY
1913-2012 ***

Under the statutory initiative (as contrasted to the constitutional initiative), a petition signed by qualified voters numbering 3% of the votes in the last gubernatorial election) may be submitted to the Secretary of State. If the Secretary of State finds it sufficient, he submits the proposed law to the General Assembly. If after four months the General Assembly has not passed the proposed law, a supplementary petition bearing the signatures of another 3% of the electors may be filed and in that case the proposed law will be submitted to the people at the next general election. If at that election a majority of the people vote for the proposal, it becomes a law without being enacted by the General Assembly

Under Art. II, sec. 1c, the initiative may not be used to enact certain tax proposals.

The powers defined herein as the “initiative” and “referendum” shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

Since the adoption of the constitutional amendment permitting the initiative of statutes in 1912, 12 supplementary petitions were filed (after securing additional signatures of 3% of the votes in the last gubernatorial election) after the General Assembly failed to enact statutes proposed by the statutory initiative (after securing the signatures of 3% of the votes in the last gubernatorial election) and in nine of the cases the proposed legislation failed.

The information below does not include statues proposed by initiative and approved by the General Assembly. For example, in 1913, the General Assembly approved statutes proposed by initiative: H.B. No. 1 (relative to regulating newspapers and publication of nothing but the truth) and H.B. No. 2 (providing for the removal of certain officers). The frequency of votes on supplementary proposals has been fairly evenly spaced during the 100 year period since 1912.

NOVEMBER 4, 1913

PROPOSED LAW BY INITIATIVE PETITION

Prohibiting the shipment, conveyance, or receiving of intoxicating liquors into territory in which the sale of intoxicating liquors as a beverage is prohibited.

Yes—360,534 NO--455,099 (Failed)

*This information is adapted from the website of the Ohio Secretary of State.



NOVEMBER 7, 1922

PROPOSED LAW BY INITIATIVE PETITION:

Providing for a system of old age pensions:

Yes--390,599 No--777,351 (Failed)

NOVEMBER 8, 1927

PROPOSED LAW BY INITIATIVE PETITION:

Providing for a State Board of Chiropractic Examiners:

Yes--522,612 No--765,093 (Failed)

NOVEMBER 7, 1933

PROPOSED LAW BY INITIATIVE PETITION:

Granting of aid to aged persons under certain circumstances:

Yes--1,388,860 (Passed) No--526,221

November 8, 1949

PROPOSED LAW BY INITIATIVE PETITION:

To permit the manufacture and sale of colored oleomargarine:

Yes--1,282,206 (Passed) No--799,473

NOVEMBER 8, 1955

PROPOSED LAW BY INITIATIVE PETITION:

To increase unemployment compensation:

Yes--865,326 No--1,481,339 (Failed)

NOVEMBER 2, 1965

PROPOSED LAW BY INITIATIVE PETITION:

To amend the school foundation program and to increase taxes to support it:

Yes--805,762 No--1,717,724 (Failed)

NOVEMBER 6, 1979

PROPOSED LAW BY INITIATIVE PETITION:

To provide mandatory deposits on all bottles and prohibits sale of beverages in metal cans that have detachable pull-tabs.

Yes--768,898 No--2,019,834 (Failed)

NOVEMBER 4, 1980

PROPOSED LAW BY INITIATIVE PETITION:

To restructure state taxes on personal income, real estate, corporations, and personal property:

Yes--880,671 No--3,000,028 (Failed)

NOVEMBER 3, 1992

PROPOSED LAW BY INITIATIVE PETITION:

To require businesses to provide labels and/or warnings in the use or release of toxic chemical substances.

Yes--1,007,882 No--3,587,734 (Failed)



ATTACHMENT D

This attachment reviews the presentations to the committee, focusing on the portions of the presentations that related to the statutory initiative. The presentations are reviewed in chronological order.

Richard N. Coglianese

On June 13, 2013, Richard N. Coglianese, Principal Assistant Attorney General, provided a broad overview of the role of the Attorney General concerning the initiative and the referendum. During his presentation, Coglianese identified possible technical changes to the Revised Code and the constitution, including dividing of Article II into paragraphs, defining appropriations in Section 1d relating to the referendum, and including an expiration date for the Attorney General's "fair and truthful" certification of summaries of proposed initiatives.

Betsy Luper Schuster

On July 7, 2013, Betsy Luper Schuster, Chief Elections Counsel for the Secretary of State (and now a Judge on the Tenth District Court of Appeals), provided an overview of the initiative and referendum and the Ballot Board. She provided information from the Secretary of State's website as well as an historical document listing ballot issues since 1912.

Steven H. Steinglass

On August 6, 2013, Steven H. Steinglass, a Consultant to the Commission, provided the committee with an overview of the initiative and the referendum, followed by a discussion among committee members. Topics included the role of the initiative in the political process, the ability of the General Assembly to repeal initiated statutes, the existence of ways to prevent "non-constitutional" issues from being initiated as constitutional provisions, ways to protect the rights of the people from wealthy special interests, the possibility of providing limitations on the constitutional initiative (as is done in Section 1e for the statutory initiative), the signature requirements (including the geographic distribution requirement), the use of supermajority requirements for voter approval, and the absence of a time limit on the petition circulation period,

Maurice A. Thompson

On September 12, 2013, Maurice A. Thompson, Executive Director of the 1851 Center for Constitutional Law, appeared before the committee to advance the case for preserving and/or strengthening the initiative and referendum in Ohio. Although his focus was primarily on the constitutional initiative, his comments also addressed the statutory initiative. In expressing support for the initiative and referendum, Thompson argued that it gave Ohioans the capacity to act independently of the executive and legislative branches. He also argued that the initiative and referendum advanced public education and served as a check on government. As far as proposals to reduce access to the initiative and referendum, he argued that driving up costs will

foreclose participation by average grass-roots volunteers, thus reducing access to the legislative branch. Finally, Thompson made suggestions for improving the initiative, including: removing initiatives from special and primary elections, reducing the 125-day period for proposed constitutional amendments, and making the statutory initiative a “better investment.” With respect to the latter, he urged a reduction in the number of signatures required for initiated statutes; forbidding the legislature from amending or eliminating an initiated statute for a period of time or requiring a supermajority vote to do so, forbidding the referendum of an initiated statute, and removing the requirement of submitting a supplementary petition for the statutory initiative.

Donald J. McTigue

On October 13, 2013, Donald J. McTigue, of McTigue & McGinnis LLS, an attorney with an extensive practice in this area, expressed the view that the current initiative and referendum should not be curtailed or made more difficult to exercise. More specifically, he identified burdens placed on the initiative and referendum by the General Assembly, including what he characterized as unintended consequences of the 2008 amendments to Article II. He also identified a number of areas in which there is a need for a clarification of existing provisions.

Scott Tillman

On October 10, 2013, Scott Tillman, National Field Director from Citizens in Charge, presented to the Committee. He focused on the importance of keeping the initiative and referendum process open and available to citizens, noting their popularity among voters. He stated that if Ohio wanted to encourage people to initiate laws as opposed to constitutional amendments, the state should consider some of the protections enacted in other states that defend against legislative tampering with initiated laws. He pointed to Michigan, which requires a 75 percent vote to repeal an initiated law, and Montana, which prevents legislative changes for three years. Finally, he was critical of recent efforts to make it more difficult for citizens to participate in the initiative and referendum, calling specific attention to S.B. 47.

Professor John Dinan

On February 13, 2014, Professor John Dinan of Wake Forest University, who had earlier provided the full Commission with an overview of state constitutions and recent state constitutional developments, attended the committee meeting and answered questions about the use of the initiative around the country.

Steven H. Steinglass

On June 12, 2014, Senior Policy Advisor Steven H. Steinglass presented to the committee on the use of the constitutional initiative throughout the country.¹ Although focused on the

¹ See Steinglass, *The Use of the Constitutional Initiative in Ohio and the States* (June 10, 2014).

constitutional initiative, the presentation and accompanying memorandum also addressed some issues concerning the statutory initiative.

Peg Rosenfield

On July 10, 2014, Peg Rosenfield presented based on her own experience about the need to find ways to encourage the use of the statutory initiative, focusing on the difficulties facing citizen-based campaigns that have limited funding and rely on volunteers. She described the difficulty in meeting the 44-county geographic distribution and the difficulty of having to undertake two signature drives – one initially, and one for a the supplementary petition after the legislature fails to act. She also recommended the indirect statutory initiative be amended by reducing the county geographic distribution requirement to 22 or 33 counties, and by introducing a direct statutory initiative with a 4 percent or 5 percent signature requirement, a 22-county geographic distribution requirement, and a protection from amendments only during any immediate lame duck session.

Subsequent Presentations by McTigue and Thompson

On October 9, 2014, both Maurice Thompson and Donald McTigue appeared and addressed questions posed by the committee. The following two questions related directly to the statutory initiative:

2. Should the constitution be amended to strengthen the direct [sic] initiative by prohibiting the General Assembly from repealing or amending a statute adopted by initiative during the five year period after its adoption other than by a two-thirds vote?

4. Should the constitution be amended to undo some of the impediments the General Assembly has placed on the initiative and referendum over the years?

McTigue

On question two, McTigue took the position that the statutory initiative should be strengthened. He noted in some cases only a constitutional amendment will satisfy the goal of the petitioners. In addition, he pointed to the “unintended consequences” of the 2008 constitutional amendments. Specifically, he expressed concern about the four-month period for legislative consideration and the 90-day period for collecting supplementary signatures. When combined, he argued it is not possible to meet the 125-day requirement before the election. Thus, a proposed statute presented to the General Assembly prior to its January 2015 session could not get on the ballot until the November 2016 election. On question 4, McTigue reiterated the points he made in his October 13, 2013, presentation, arguing that the General Assembly had placed burdens on the initiative and referendum process that are not authorized under the constitution.

Thompson

On question two, Thompson expressed support for a six-year, not a five-year, period in which the General Assembly could not repeal or amend an initiated statute (even with a two-thirds vote). He also pointed out ways the General Assembly could maneuver to defeat an initiative by delaying consideration, by making changes that “puncture, fracture, and hobble the advocates’ political movement.” On question four, Thompson expressed the view that the constitution should be amended to undo some of the impediments the General Assembly has placed on the initiative and referendum in recent years. He called specific attention to the 2008 constitutional change that moved the turn-in date from 90 to 125 days. [Mr. Thompson also took the position that no proposed statute or constitutional amendment should appear on the ballot other than at the general election.] Finally, Thompson provided the committee with proposed re-drafts of Article II, Section 1b, which incorporated the suggestions he made in his presentations.

Carrie Kuruc

On December 14, 2014, Carrie Kuruc, Counsel to the Secretary of State, presented on the role of the Ohio Ballot Board in getting issues on the statewide ballot. She reviewed the referendum, the constitutional initiative, the statutory initiative, and General Assembly-proposed amendments. The committee discussion that followed raised the following questions: can the questions on the referendum be switched so that a “yes” vote is a rejection of the statute and a “no” vote is approval of the statute; why is the process for certifying signatures different for the referendum and the initiative, whether the requirement of publicizing ballot issues in newspapers can be replaced by modern technologies, and whether the ballot language and explanations could be mailed with absentee ballot applications. The committee also invited the Secretary of State to share any suggestions about the operation of the Ballot Board since its creation in 1978.

Steven C. Hollon and Shari L. O’Neill

On April 9, 2015, Steven C. Hollon, Executive Director of the Commission, and Shari L. O’Neill, Counsel to the Commission, called the committee’s attention to a report by the National Conference of State Legislatures on “Initiative and Referendum in the 21st Century.” They then provided the committee with the highlights of the report, and O’Neill reviewed them. She called particular attention to recommendations involving a process for reviewing the language in proposed initiatives.

Steven H. Steinglass

On April 9, 2015, Steven H. Steinglass, Senior Policy Advisor, presented a memorandum on subject matter limitations on the constitutional initiative.²

² See Steinglass, *Subject-Matter Limitations on the Constitutional Initiative* (April 1, 2015).

ATTACHMENT E

- Of the 24 states with some form of initiative, 21 have the statutory initiative and 18 have the constitutional initiative.
- Of the 18 states with the constitutional initiative, 15 also have the statutory initiative (with only Florida, Illinois, and Mississippi having only the constitutional initiative).
- Of the 21 states with the statutory initiative, 15 also have the constitutional initiative; 6 states (Alaska, Idaho, Maine, Utah, Washington, and Wyoming) have only the statutory initiative.
- Of the 21 states with the statutory initiative, 7 states, including Ohio, have the indirect statutory initiative, and 16 have the direct statutory initiative. [Two states—Utah and Washington—have both the direct and indirect statutory initiative]. [California had both the direct and indirect statutory initiative from 1912 to 1966, when the voters repealed the seldom-used indirect statutory initiative.]
- The two states with both the direct and indirect statutory initiative—Utah and Washington—do not have the constitutional initiative).
- Of the 24 states with some form of initiative, 21 states (including Ohio) also have a referendum under which voters can reject statutes adopted by the state legislature.
- Two states—Maryland and New Mexico—have the referendum but do not have either the constitutional or statutory initiative.
- Ohio is one of 4 states (along with Illinois, Michigan, and Nevada) that have both an indirect statutory initiative and a constitutional initiative.
- There is a geographic pattern as to the availability of the initiative. Almost all states west of the Mississippi River have some form of initiative, but the initiative is rare in the northeast, the south, and the southeast. In the five states of the “Old Northwest,” Ohio, Michigan, and Illinois have the initiative.



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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

2016 Meeting Dates

April 14

May 12

June 9

July 14

August 11

September 8

October 13

November 10

December 8