



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Constitutional Revision and Updating Committee

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

September 10, 2015

South Meeting Room B & C, 31st Floor
Riffe Center for Government and the Arts

OCMC Constitutional Revision and Updating Committee

Chair Mr. Dennis Mulvihill

Vice-chair Speaker Charles Kurfess

Ms. Janet Abaray

Mr. Roger Beckett

Rep. Bob Cupp

Dr. Larry Macon

Sen. Larry Obhof

Mr. Chad Readler

Sen. Tom Sawyer

Rep. Emilia Sykes

Mr. Mark Wagoner



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION
CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

THURSDAY, SEPTEMBER 10, 2015

11:00 AM

**SOUTH MEETING ROOMS B & C, 31ST FLOOR
RIFFE CENTER FOR GOVERNMENT AND THE ARTS**

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes

- Meeting of June 11, 2015

[Draft Minutes – attached]

- IV. Reports and Recommendations
 - None scheduled
- V. Presentations
 - “Update on Status of Anti-Monopoly Ballot Initiative”
Steven C. Hollon
Executive Director
 - “The Ohio Indirect Statutory Initiative”
Steven H. Steinglass
Senior Policy Advisor

[Memorandum by Steven H. Steinglass titled “The Ohio Indirect Statutory Initiative” dated September 1, 2015 – attached]

VI. Committee Discussion

- Article II, Section 1(b) (Statutory Initiative)

The chair will lead discussion regarding the interest of the committee in amending Article II, Section 1(b) and what research or additional information committee members may wish to have provided to assist in making this determination.

VII. Next Steps

- Committee discussion regarding the next steps it wishes to take in preparation for upcoming meetings.

[Planning Worksheet – attached]

VIII. Old Business

IX. New Business

X. Public Comment

XI. Adjourn



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

**MINUTES OF THE
CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

FOR THE MEETING HELD
THURSDAY, JUNE 11, 2015**

Call to Order:

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:10 a.m.

Members Present:

A quorum was present with Chair Mulvihill, Vice-chair Kurfess, and committee members Cupp, Macon, Obhof, Sykes, and Wagoner in attendance.

Approval of Minutes:

The committee approved the minutes of the May 14, 2015 meeting.

Committee Discussion:

Chair Mulvihill began the meeting by stating that the committee is tasked with considering long term constitutional issues, and is not interested in infringing citizens' ability to bring initiated statutes. He said the committee currently is addressing whether the initiative process should allow specific people to be benefited. This has been an ongoing discussion of the committee for the last two years and the committee will continue to consider it. He said the constitution should not be amended in a quick, or less-than thoughtful, or thorough manner. He stated for clarification that the committee is not looking at just the marijuana legalization effort. He then invited Senior Policy Advisor Steven H. Steinglass to outline the history of the issue and discuss a working proposal that the committee had requested for changing the initiative process to prohibit the use of the process for the creation of monopolies.

Mr. Steinglass first said he would like to underscore that the initiative is part of the DNA of Ohio and has been for 100 years. He said the fear of many is that the bad experiences that have occurred in California may come to Ohio. In California, the initiative process has moved budgetary considerations to the voters in an unorganized way, creating problems for the state.

Also in the background of the discussion about the initiative process is the history of the casino amendment, in which voters approved a provision that, by its length and detail, was more suggestive of a statute. Mr. Steinglass said the committee has looked at numerous ways to respect the history of the initiative yet to also bring it under control. At the April 9, 2015 committee meeting, he presented a memorandum on limitations on the constitutional initiative in other states, noting that most states do not have substantive limitations.

Mr. Steinglass said the committee's discussion about the use of limitations was robust, and it turned to the question of how that particular approach related to the pending special interest for marijuana growing facilities, a discussion that was picked up by the media. The next month, at the May 14, 2015 meeting, Auditor of State Dave Yost made a specific proposal.

Mr. Steinglass directed the committee's attention to the working proposal in the packet. He prepared this version, which is similar, but not identical, to Auditor Yost's proposal. Mr. Steinglass said the amendment proposed in his draft limits the constitutional initiative, but it does not prevent the General Assembly from proposing an amendment. It also does not preclude the General Assembly from adopting a statute. Mr. Steinglass explained that the goal was not to handcuff the state's normal processes. He said division A of the proposal broadly defines the use of the constitutional initiative and those who cannot benefit. It also requires that individuals, or entities, not be treated differently. He continued, saying division B tries to give some force to A by requiring a review of the substance and prohibits a monopoly amendment from going on the ballot, but it must be explicit, noting that in some ways this review is analogous to the single amendment rule review by the Secretary of State. Mr. Steinglass said he thinks the provision should explicitly state that the proposed amendment does not go on the ballot if the Secretary of State finds that it creates a monopoly. He noted that this portion of the proposal deviates from the auditor's version in that it does not require two votes before a monopoly can be permitted. Since drafting that version he has determined that it would strengthen the proposal to add a paragraph that incorporates the auditor's plan.

Mr. Steinglass additionally noted that the proposal is a work in progress and raised, as an example, the process for determining whether a proposed amendment creates a monopoly. He said it seems like bad policy to require a proponent to get thousands of signatures only to be told the proposed amendment violates the anti-monopoly provision. He added that the determination is similar to a single amendment issue but that it is a legal determination. His proposal would bring that inquiry forward in the process and give it to the attorney general, incorporating it in the fair and truthful review. He said that change is not reflected in the draft before the committee, but that it could be added in a new draft. Mr. Steinglass said division C of the proposal deals with conflict and timing. Typically, when two amendments are both approved and they conflict, the Ohio Constitution addresses that issue and provides that the measure receiving the most affirmative votes prevails. He said this has happened only once in 100 years. He observed that the complexity of this issue is whether there is a conflict and whether the severability option applies. He described what could happen in two scenarios. In the first scenario, if the ResponsibleOhio marijuana legalization proposal gets more votes, it becomes law, and there will be severability. In the second scenario, if the anti-monopoly proposal gets more votes, it becomes law with division C providing that the severability provision in the ResponsibleOhio

proposal is trumped. Mr. Steinglass emphasized that this is a draft. He then invited questions from the committee.

Committee member Mark Wagoner asked whether federal antitrust laws come into play as states are immune from those laws if the state provides active supervision of the activity. Mr. Steinglass said there is a recent case out of North Carolina in the U.S. Supreme Court, *North Carolina Bd. of Dental Examiners v. Federal Trade Comm.*, ___ U.S. ___, 135 S.Ct. 1101 (2015). He said he believes there would be enough state supervision that there would not be an antitrust problem. Mr. Wagoner said the North Carolina case was pretty clear on this, and that his understanding is that federal antitrust law would still trump the state constitution, adding that the FTC would still have a role in deciding whether this is anti-competitive behavior. Mr. Steinglass said his understanding is that federal law in this area defers to what the state is doing, and that requires analysis of what kind of supervision the state is providing in this particular area.

Vice-chair Charles Kurfess said his present inclination is not to limit this provision to proposed amendments submitted by initiative. He said if a contemplated amendment is inconsistent with public policy it should be prevented regardless of its origin. He said the legislature has broad authority to determine classifications to which legislation would or would not apply. He prefers the monopoly to be prohibited regardless of how it comes about. Mr. Steinglass answered that, typically, provisions immunizing the constitution from amendment by the legislature are disfavored, and adding that, at the federal level, there is a strong policy argument against it. He said in this instance the proposal to tie the hands of the General Assembly would entrench something in the constitution.

Representative Kathleen Clyde, a Commission member and present as a guest of the committee, expressed her concern that the provision is drafted more broadly than just as an anti-monopoly provision. She said the current version of the proposed provision is not just about creating or giving a monopoly, but includes economic interest, privileges, and other terms. She said she is concerned that other constitutional amendments dealing with important rights issues, worker issues, and protecting certain groups, would be prohibited or be able to be struck down by this very broad language. She asked Mr. Steinglass to talk about the broad language and what the thinking was behind that. He agreed it is broad and could interfere with other activities. He does not think this will interfere with employee union rights or other types of provisions. Rep. Clyde maintained that the proposed provision is too broad, saying it would be advisable to take more time with this because it interferes with the citizen's right. Mr. Steinglass said of the 18 states that have the constitutional initiative, none has an anti-monopoly provision. He said none of his colleagues around the country could identify a state facing a similar question, so Ohio may be the only state grappling with this issue.

Representative Bob Cupp said the draft is directed to private or nonpublic entities, calling it a "closed clause" under traditional constitutional and statutory interpretation. He asked whether, if the provision is designed to affect only private enterprise, it is advisable to insert "other" to indicate that this is a classification or a type, as opposed to a closed listing. Mr. Steinglass said the word "other" was there but that he does not know why it was or whether it created problems. He said this was an interesting question that perhaps should be re-examined.

Chair Mulvihill asked whether there are any other states in which groups are coming forward to enshrine their own interest in their states' constitutions. Mr. Steinglass said there are no states that prohibit such proposals, but whether there have been attempts to establish monopolies is a harder question. He continued, saying there are 100 casino issues proposed, but to the best of his knowledge the 18 states having the initiative do not prohibit or approve the kind of use to which Ohio's constitution is being put.

Mr. Kurfess said his initial thought was that the committee should be talking only about an economic interest. Mr. Steinglass said some of those phrases have to be looked at with care because it may be ambiguous whether or not something is an economic interest.

Bethany Sanders, deputy legal counsel and policy advisor for the Ohio Senate Democratic Caucus, appeared on behalf of Senator Joe Schiavoni. She read a letter from Sen. Schiavoni addressed to Chair Mulvihill, Mr. Kurfess, and the committee, in which he indicated that the amendment language as proposed by Mr. Steinglass is too broad, using phrases such as "may" and "directly or indirectly," and that the phrase "similarly situated" has a history that may affect how it is interpreted. Sen. Schiavoni wrote that he advocated avoiding the use of the "notwithstanding" trump card in a proposed amendment, and noted the importance of respecting citizens who undertake the initiative process. Sen. Schiavoni added that statutory language in the Revised Code could be utilized as a guide to evaluating an amendment, and that statutory provisions requiring review by the attorney general and the ballot board, could be adapted to allow review of whether a proposal would operate to create a monopoly. Finally, Sen. Schiavoni addressed his concerns about the timing of the discussion, and that hasty action to amend the constitution could have unknown consequences. He said he agrees with Chair Mulvihill that the role of the Commission is to consider what is best for the constitution over many years, rather than to respond to issues of the moment.

Chair Mulvihill then recognized Ian James, executive director of ResponsibleOhio, to speak about the organization's marijuana legalization initiative proposal. Mr. James said the initiative process was adopted due to abuse of rights by the legislature. He said until now we have avoided taking away this right, but that is what is now being proposed, and that taking such an action is ill-conceived. Mr. James said for eighteen years the statehouse has refused to address the issue of medical marijuana, and noted that criminalization has not eliminated the availability of marijuana, but made it easier for drug dealers to market to children because they do not care about the age of the buyer. He said the consequences of drug prosecution are extreme and complex. Comparing the ResponsibleOhio proposal to the repeal of alcohol prohibition, he said the proposed measure would create local control, just like alcohol laws, and would make it illegal to sell marijuana to persons under 21. He said the group's plan protects business, protects young people, creates jobs, and injects money into the state economy. He said the majority of Ohioans should decide an issue that the statehouse has refused to address.

Mr. James said it is immoral to prevent legalization because, in doing so, you defend drug dealers and support an underground economy. He said the cartel running the marijuana industry now is about cash, not conscience. He said it is immoral to prevent patients from obtaining access to medical marijuana.

Mr. James said politicians trust voters enough to elect them, but do not trust voters to deal with this issue. He said it is not a new idea to limit the initiative process, noting that voters have rejected 74 percent of all citizen initiatives. He said it is insulting to suggest that changes to the initiative process are needed because voters are gullible; they are not. Mr. James said only 25 percent of Ohio voters want to make it harder to amend the constitution. As evidenced by casinos and bond sales, leaving in place the ability of the statehouse politicians to create monopolies takes rights from voters and puts control in the hands of the rich and powerful. Mr. James said after casinos were approved, a local special interest demanded that the casino be moved from the Arena District to the West Side of Columbus. He elaborated that those special interests had statehouse access and were able to move it along without giving voters the reasons. He said voters should have full transparency about who is getting the money.

Mr. James said this action is being taken because the statehouse has refused to address the need for marijuana legalization. In 1997, HB 33 attempted to provide medical marijuana to children with epilepsy. He said that bill languished in committee, but the General Assembly easily enacted a bill that created a state rock song. He continued saying there is more compassion in the General Assembly for a rock song than for children with epilepsy. He said the system of amending the constitution has worked well; it is counterproductive to suggest voters need to be protected.

Mr. James then addressed questions from the committee. Representative Emilia Sykes asked whether there is any situation in which Mr. James could support some type of limitation on the initiative. He replied saying the slippery slope is opening this door, and asked where that would end. He reiterated that he believes in the voters, and that, right or wrong, they should make the decision.

Rep. Cupp said the proposed amendment does not do anything to change the statutory initiative law, and that ResponsibleOhio could still put this issue before the voters seeking their approval of the law as a statute. Mr. James countered that, if only a statute is involved, the General Assembly could change it.

Rep. Cupp said one right conveyed would be an economic monopoly. He noted that Mr. James has proposed specific growing zones which are tied to real estate, and there is a lot of money in marijuana. He asked if it is moral to enshrine something in the state constitution to make a few individuals fabulously wealthy. Mr. James replied he believes the group Rep. Cupp is referring to is "Better for Ohio." Mr. James said ResponsibleOhio has proposed 10 facilities. Should the General Assembly legalize marijuana, then licenses will be auctioned off, and the people will have no say about it as those decisions are made behind closed doors. Mr. James said the question is who pays for that campaign to be sure voters get a chance to vote on it. He said under the ResponsibleOhio plan, the proposed grow facilities have to abide by the law, and the group's proposal requires the state to regulate, test, and tax marijuana. Rep. Cupp asked whether, under the proposal, the state can regulate the price. Mr. James replied affirmatively.

Mr. Kurfess said he does not have full understanding about the various proposals but asked whether the ResponsibleOhio proposal would be precluded if Ohio had the anti-monopoly

provision that is being discussed. Mr. James said yes, it would. Mr. Kurfess then asked whether the proposal grants an economic interest, and Mr. James agreed that it does, but that the measure proposes licenses, taxes, and regulation, just as the state does with commercial egg farms. Mr. Kurfess followed by asking whether the language of the proposal presumes to grant an interest by name, to which James said yes. Mr. Kurfess asked how the interests are identified, and Mr. James said they are identified by land.

Chair Mulvihill asked if the group could still legalize marijuana without creating an economic benefit for specific growers. Mr. James said that in order to get legalization passed, going back to 1997, there has been little to no interest in moving it forward. He said the reason is now escalated because other states have legalized it. Chair Mulvihill clarified his question by asking whether the group could still amend the constitution of the state of Ohio to legalize it without giving an economic interest to a few people. Mr. James answered that the reality is who pays for that campaign. He said his group has seen other efforts, and they are very expensive, time consuming, detailed, and difficult. He said there is economic interest here, and legalization will generate billions for the state. Chair Mulvihill asked if Mr. James was saying that the people who promote the measure have to be incentivized. Mr. James said limiting voters' right to make the decision is not the approach. He said without creating an economic incentive, it would still be possible to place the issue before the voters, but in reality you would not have that happen nor would it pass.

Chair Mulvihill posed a hypothetical question about a constitutional provision that would create a pharmaceutical network, making one distributor of prescription drugs the only retailer in the state, and asking whether Mr. James would agree that such a plan would be a good idea. Mr. James said presumably yes, if the voters want that and that he believes in the voters.

Representative Michael Curtin, a Commission member and present as a guest of the committee, said before the ResponsibleOhio plan, some members of the General Assembly were aware two years ago of an initiative by green energy entrepreneurs. He said many people are in favor of green energy, but this group began circulating petitions proposing a constitutional initiative that would require the state to issue \$1.3 billion in green energy bonds, with the proceeds to be distributed by this group whose names were unknown. He said the group wanted a constitutional right to get their hands on \$1.3 billion dollars of state-issued bond proceeds that they would distribute themselves. He said that idea followed the casino initiative and now ResponsibleOhio is trying to obtain a similar benefit. He said the discussion began 15 months ago in light of proposals seeking to establish special monopolies. His question to Mr. James was whether it is a legitimate exercise of state authority to have a provision that would prevent the green energy scenario.

Mr. James answered that citizens have a right to petition the government. He said Rep. Curtin is correct about "if approved by the voters" but, the petition about green energy never saw the ballot box.

Mr. Wagoner commented that the committee is grappling with whether to extend antitrust immunity to private entities. He said in the private sector this would not be permitted, and said

there may be a way to limit this in a much more focused way. He said there could potentially be a middle ground, and that maybe the committee could work on some of the language.

Mr. Steinglass said, in response to Rep. Curtin's question, that limitations on the initiative have been seen by some as a first amendment issue, but courts have consistently rejected such claims.

The discussion having come to a conclusion, Chair Mulvihill noted that the committee will reconvene in September.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:40 p.m.

Approval:

The minutes of the June 11, 2015 meeting of the Constitutional Revision and Updating Committee were approved at the September 10, 2015 meeting of the committee.

Dennis P. Mulvihill, Chair

Charles F. Kurfess, Vice-chair

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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. Celebreeze*, 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.



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ATTACHMENT B

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 <u>fair and truthful statement</u> 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>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>	<u>3501.38</u> ; <u>3501.381</u> ; <u>3501.382</u> ; <u>3503.06</u> ; <u>3519.05</u> ; <u>3519.01</u>
Signature Requirements	<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. 	Ohio Constitution: <u>Article II</u> , <u>Section 1b</u> ; <u>Article II</u> , <u>Section 1g</u> Ohio Revised Code Section: <u>3519.10</u> ; <u>3519.14</u> ; <u>3519.16</u> ; <u>3501.38</u>
Additional Signatures	<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. 	Ohio Constitution: <u>Article II</u> , <u>Section 1b</u> ; <u>Article II</u> , <u>Section 1g</u> Ohio Revised Code Section:

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. 	Ohio Constitution: <u>Article II</u> , <u>Section 1b</u> Ohio Revised Code Sections: <u>3501.05</u> ; <u>3513.10</u> ; <u>3519.08</u>
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. 	Ohio Constitution: <u>Article II</u> , <u>Section 1b</u>
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 	Ohio Constitution: <u>Article II</u> , <u>Section 1b</u> Ohio Revised Code Section: <u>3519.16</u>

	<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. 	Ohio Constitution: <u>Article II, Section 1g</u>
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. 	Ohio Constitution: <u>Article II, Section 1g</u> Ohio Revised Code Section: <u>3505.062</u>
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 	Ohio Constitution: <u>Article II, Section 1g; Article XVI, Section 1</u> Ohio Revised Code Section: <u>3519.03</u>

	<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>	
Effective Date	Any law approved by the majority of voters will become effective 30 days after the election.	Ohio Constitution: <u>Article II,</u> <u>Section 1b</u>

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 statutes 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.



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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)



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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



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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 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.



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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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Constitutional Revision and Updating Committee

Planning Worksheet (September 2015)

Article II – Legislative (Select Provisions)

Sec. 1	In whom power vested (1851, am. 1912, 1918, 1953)
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Notes:

Sec. 1a	Initiative and referendum to amend constitution (1912, am. 2008)
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Notes:

Sec. 1b	Initiative and referendum to enact laws (1912, am. 2008)
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Notes:

Sec. 1c	Referendum to challenge laws enacted by General Assembly (1912, am. 2008)
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Notes:

Sec. 1d	Emergency laws; not subject to referendum (1912)
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Notes:

Sec. 1e	Powers; limitation of use (1912)
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Notes:

Sec. 1f	Power of municipalities (1912)
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Notes:

Sec. 1g	Petition requirements and preparation; submission; ballot language; by Ohio ballot board (1912, am. 1971, 1978, 2008)
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Notes:

Article XVI - Amendments

Sec. 1	Constitutional amendment proposed by joint resolution of General Assembly; procedure (1851, am. 1912, 1974)
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Notes:

Sec. 2	Constitutional amendment proposed by convention; procedure (1851, am. 1912)
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Notes:

Sec. 3	Question of constitutional convention to be submitted periodically (1851, am. 1912)
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Notes:

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Remaining 2015 Meeting Dates

October 8

November 12

December 10

2016 Meeting Dates (Tentative)

January 14

February 11

March 10

April 14

May 12

June 9

July 14

August 11

September 8

October 13

November 10

December 8