



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Constitutional Revision and Updating Committee

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

November 12, 2015
Ohio Statehouse
Room 018

OCMC Constitutional Revision and Updating Committee

Chair Mr. Dennis Mulvihill
Vice-chair Mr. Charles Kurfess
 Ms. Janet Abaray
 Mr. Roger Beckett
 Rep. Bob Cupp
 Mr. Larry Macon
 Sen. Larry Obhof
 Mr. Chad Readler
 Sen. Tom Sawyer
 Rep. Emilia Sykes
 Mr. Mark Wagoner

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION
CONSTITUTIONAL REVISION AND UPDATING COMMITTEE

THURSDAY, NOVEMBER 12, 2015
11:00 AM
OHIO STATEHOUSE ROOM 018

AGENDA

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
 - Meeting of September 10, 2015
[Draft Minutes – attached]
- IV. Reports and Recommendations
 - None scheduled
- V. Presentations
 - “Update on Issue 2 Election Results – The 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 “Discussion Questions – The Ohio Indirect Statutory Initiative,” dated November 4, 2015 – attached]

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

[Memorandum by Steven H. Steinglass titled “Strengthening Ohio’s Statutory Initiative,” dated April 9, 2014 – attached]

VI. Committee Discussion

➤ Article II, Section 1b (Statutory Initiative)

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

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, SEPTEMBER 10, 2015

Call to Order:

Chair Dennis Mulvihill called the meeting of the Constitutional Revision and Updating Committee to order at 11:08 a.m.

Members Present:

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

Approval of Minutes:

The minutes of the June 11, 2015 meeting of the committee were approved.

Presentations:

“Update on Status of Anti-Monopoly Ballot Initiative”

Steven C. Hollon
Executive Director

Executive Director Steven C. Hollon provided an update on the committee’s work and what the General Assembly has proposed regarding the anti-monopoly provision, H.J.R. 4, now Issue 2 on the November ballot.

Mr. Hollon distributed to the committee a copy of the joint resolution that was ultimately approved by the General Assembly, as well as the ballot language both for Issue 2 and Issue 3, which is the initiative amendment proposed by ResponsibleOhio. He said ResponsibleOhio has filed an action in the Supreme Court contesting the ballot language, that the issue has been briefed, and the court is expected to rule in short order. He indicated that the secretary of state

has determined that a decision would have to be made by September 19 to accommodate the absentee ballot schedule.

Chair Mulvihill invited questions by committee members. He noted that the final resolution being submitted to voters is more extensive than the language the committee was discussing; specifically mentioning that division (B)(3) seems directed at ResponsibleOhio. Chair Mulvihill asked whether staff had any sense of what prompted the changes from what the committee had been discussing. Mr. Hollon said he did not have that information. Mr. Steinglass said that the legislative process worked on the language, and that legislators had different views and concerns about the initial provision the committee had discussed. He commented that Representative Bob Cupp had one concern about the use of the word “other,” and the change that resulted from his concern got incorporated into the final version. Mr. Steinglass said that as the resolution went through the legislative process, additional language was added. He said Auditor Dave Yost had recommended a two-step process.

Representative Emilia Sykes commented that the language in the House version of the resolution was identical to what the committee had discussed, but when the resolution went to the Senate there were some changes added. She said she could not speak to the Senate deliberations, but what was passed out of the House was the exact same language as was discussed in the May meeting of this committee.

Chair Mulvihill observed that it is a two-part provision, meaning that, if the ballot board believes there is a conflict, the ballot will submit two questions to the voters. Mr. Steinglass agreed that this is what the resolution provides.

“The Ohio Indirect Statutory Initiative”

Steven H. Steinglass
Senior Policy Advisor

The committee then turned to the issue of the indirect statutory initiative. Chair Mulvihill indicated he asked Steinglass for a presentation on the topic as a way for the committee to begin discussing ways to encourage people to use the statutory initiative process instead of the constitutional initiative.

Mr. Steinglass began by stating the question is whether there is anything the committee can or should do to revise the statutory initiative process. He said that, in prior discussions, the committee was reluctant to change the constitutional initiative, but the feeling was that the committee might be able to look at the indirect initiative to see if it can be made more robust in order to encourage the statutory route.

Mr. Steinglass identified the statutory initiative as one of the major accomplishments of the 1912 Constitutional Convention. He said the big debate at the convention was whether to have a direct or an indirect statutory initiative. He said that, after an initial flurry of attempts to use the statutory initiative, it is fair to say it has not had a very active history. There are only 12 instances in which a statutory initiative has gone to the voters, with only three initiatives having

resulted in approval: an initiative to color oleomargarine, an initiative regarding old-age pensions, and, more recently, an initiative prohibiting smoking in public places. Mr. Steinglass noted, however, that the actual appearance of initiatives on the ballot doesn't tell the whole story because it is not possible to get accurate information as to efforts to initiate a statute that might have not made it to the ballot.

Chair Mulvihill commented that the committee had briefly discussed eliminating the supplemental petition requirement. Mr. Steinglass said he tried to recall and summarize what had been discussed at prior meetings.

Mr. Steinglass said, when it comes to states that have both constitutional and statutory initiative, Ohio is an outlier. Looking at the percentage of time people use the initiative, in Ohio 86 percent of the initiated efforts were for constitutional amendments, whereas the mean in other states was around 50 percent.

Mr. Steinglass said one area the committee could focus on is the requirement for a supplemental petition. He said that part of the procedure is more burdensome for the average citizen than it is for groups of investors with "deep pockets."

Mr. Steinglass identified other issues that would benefit from review. He referenced a prior meeting of the committee in which two pro-initiative lawyers, Don McTigue and Maurice Thompson, discussed some of the issues related to the initiative process. Mr. Steinglass said some of their comments about the statutory initiative were worth repeating. He said one comment that struck him as important had to do with timing. He said that, in 2008, the constitution was changed to require submission of proposed initiated statutes to the secretary of state by 125 days before the election, which shortened the time period for obtaining signatures. The argument made by Mr. McTigue and Mr. Thompson in their presentations was that moving the deadline forward, albeit for good motives, effectively creates a July 1 deadline to file the petitions. The result is that petitioners only have 60 days, reduced from 90, to collect signatures for the supplemental petitions. Mr. Steinglass said Mr. McTigue and Mr. Thompson thought that requirement burdened those seeking to use the statutory initiative. He said one solution would be to do something about the time limits. Mr. Steinglass asked whether the recommendation could be to have petitioners get more signatures at the outset and do away with the supplemental petition. He said under that plan, the General Assembly would still have time to examine the proposed statute.

Chair Mulvihill asked whether other states that have both constitutional and statutory initiative, generally have a two-step process like Ohio's. Mr. Steinglass said it is rare. He said that, in an earlier memo he provided to the committee about a year ago, he identified four states that have the supplemental signature language, which is a relatively small amount.

Committee member Janet Abaray said the committee was looking at making the statutory initiative easier and constitutional initiative harder. She wondered if this is still the interest of the committee. Chair Mulvihill said anything is on the table, but the committee also was working on the anti-monopoly idea, which was then taken up by the General Assembly.

Committee member Larry Macon said this topic is difficult to understand for the layperson, wondering what problem the committee is facing right now and whether Mr. Steinglass could succinctly identify or recommend what the solution would be.

Mr. Steinglass said the larger picture is that he doesn't think Ohio is a state that, like California, has had a huge number of constitutional initiatives; rather they have been relatively rare. He said, as far as he can tell, in Ohio the constitutional initiative is an important part of our political heritage. He said tinkering with that, and changing the percentage regarding constitutional amendment, would bring opposition from groups all over the spectrum. Mr. Steinglass said he thinks the committee ought to seriously look at making the statutory initiative more viable, recognizing that is not a complete solution. He recommended that the committee look at each of the potential ways to strengthen the statutory initiative so that the supplementary petition process would be less cumbersome or eliminated.

Mr. Steinglass added he would not recommend abandoning the indirect statutory initiative. He said respect for the legislative process is an important value, and the legislature should have the opportunity to see what citizens have drafted. He said the idea of people drafting a statute, and then having it go on the ballot, and directly be enacted into law he doesn't think is good. Mr. Steinglass said there are too many complexities in the statutory process, so he would not move toward a direct statutory initiative. He said there may be ways, suggested by the National Conference of State Legislatures, to have statutory initiative proponents submit the language to the Legislative Service Commission to receive drafting assistance.

Mr. Steinglass said the committee could do something with the language in these provisions that currently is impossible to follow, perhaps just dividing it up into paragraphs or subsections. He said this could make it simpler to read, providing better transparency.

Mr. Macon asked whether Mr. Steinglass had submitted this recommendation in writing to the committee, and whether he has framed it for the committee in that succinct language. Mr. Steinglass answered he had not, but due to time constraints he thought it might be useful to offer additional opinions about ways the committee could proceed. Mr. Macon asked Chair Mulvihill whether the committee could have Mr. Steinglass provide some recommendations in writing, and Chair Mulvihill agreed this would be helpful.

As follow up, Mr. Steinglass asked whether staff could participate in preparing a cleanup of the language by working with the secretary of state or attorney general. Chair Mulvihill said the committee could look at changes both in substance and in aesthetics.

Ms. Abaray asked about the "trump card" language that has been used in many constitutional initiatives, saying she is disturbed by that trend. She asked whether the committee should look at prohibiting that kind of language.

Mr. Steinglass answered that may be the goal but that he does not advise addressing the language right away. He said he would prepare a memo about the trump provisions because it has become part of the standard drafting approach. He said, it is not a new development and the committee may decide it wants to come up with language for it.

Chair Mulvihill asked whether the committee wants to hear again from someone from the office of the attorney general or secretary of state regarding the statutory initiative process. Mr. Macon suggested that the committee might benefit from hearing from someone who is a proponent of strengthening the statutory process. Chair Mulvihill noted that while the committee has heard from various people, the secretary of state and attorney general didn't seem to want to give recommendations and may have an institutional reluctance to do so.

Mr. Steinglass commented that, regarding redrafting and simplifying the provision, the best approach is to just try to do it. He noted that the committee might also consider the placement of the initiative and the referendum in Article II, the Legislative Article. He said those provisions could be moved but there is no ideal placement.

Committee member Chad Readler said he does not know if these suggestions, if implemented, would do enough to change the numbers. He wondered whether it is possible to heighten the requirements of the amendment process as additional incentive for use of the statutory initiative.

Chair Mulvihill offered that the committee can talk about them both.

Mr. Steinglass referenced a chart he had provided on a previous occasion showing the 18 initiated amendments that were approved, and the vote. He said he could provide this again, and include information about initiated amendments that failed. Mr. Steinglass additionally noted that the committee has not yet covered the referendum. He said it has been used only 11 times, passing only three times.

New Business:

Chair Mulvihill asked if there was any other business for the committee. He summarized that Mr. Hollon will reach out to the secretary of state and attorney general to get input at a future meeting. He added that staff would attempt to put together language to make Article II, Section 1b a little more readable, and would also put together some thoughts about making the statutory initiative more attractive.

Ms. Abaray commented that one issue they had previously considered was whether there was a cost savings to the state if the requirements for providing notice in printed media were updated to reflect modern modes of communication. Chair Mulvihill said that is an additional area the committee could consider.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 12:04 p.m.

Approval:

The minutes of the September 10, 2015 meeting of the Constitutional Revision and Updating Committee were approved at the November 12, 2015 meeting of the committee.

Dennis P. Mulvihill, Chair

Charles F. Kurfess, Vice-chair



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: November 4, 2015

RE: Discussion Questions – The Ohio Indirect Statutory Initiative

Introduction

This memorandum identifies questions the committee may wish to address as it continues its review of the Ohio indirect statutory initiative.

Background

On September 10, 2015, I made a presentation to the Constitutional Revision and Updating Committee and provided the committee with a lengthy memorandum (dated September 1, 2015) addressing the Ohio indirect statutory initiative. That memorandum reviewed Ohio's indirect statutory initiative and the presentations and discussions the committee has heard on the statutory initiative. A copy of this memorandum and an earlier memorandum on the indirect statutory initiative (dated April 9, 2014 and bearing a "Draft" watermark) are being re-circulated to the committee.

The committee did not have time at its last meeting to discuss fully the issues concerning the statutory initiative. This memorandum identifies some of those issues. For the most part, the memorandum focuses on the statutory initiative, but given the common origins and many overlapping provisions of the constitutional and statutory initiative, some of these questions also relate to the constitutional initiative.

Discussion Questions

1. *Threshold Question.* Should the indirect statutory initiative be strengthened to encourage those who might otherwise seek to use the initiative to amend the Ohio Constitution to seek to initiate statutes? If the answer is yes, there are a number of subsidiary questions about how to strengthen the statutory initiative.
2. *Substantive Limitations on the Statutory Initiative.* Should the substantive limitations on the use of the statutory initiative be revisited? Currently, Article II, Section 1e prohibits the use of the statutory initiative to pass laws authorizing classifications of property for tax purposes or authorizing a single tax on land.
3. *Direct vs. Indirect Statutory Initiative.* Should Ohio continue to require those who wish to initiate statutes to first present their proposed statutes to the General Assembly?
4. *Initial Petition and the Role of the Attorney General.* Should the “fair and truthful” determination by the Attorney General, which now exists only in the Revised Code, be added to the constitution?
5. *Judicial Review.* Should decisions of the Attorney General on the “fair and truthful” issue be expressly made subject to judicial review?
6. *Supplementary Petition Requirement.* Should the statutory initiative be strengthened by changing the requirements for supplementary petitions or even by entirely eliminating the use of supplementary petitions?
7. *Signature Requirements—Numerical.* Should there be a revision of the requirement that those seeking to initiate a statute obtain the signature of three percent of the votes in the last gubernatorial election?
8. *Signature Requirements—Geographic Diversity.* Should the state continue to require geographic diversity for statutory petitions by requiring the signature of at least one and one-half percent of the votes in the last gubernatorial election in 44 counties?
9. *Time Available for Collecting Signatures on Supplementary Petitions.* Assuming that Ohio continues to require the filing of supplementary petitions, should the available time to collect signatures on supplementary petitions be expanded? The deadline on submitting a supplementary petition to the Secretary of State is 125 days before the general election (or around July 1). Those seeking to put a statutory initiative on the ballot must give the General Assembly 120 days to address the proposed statute, a period that expires around May 1, thus leaving proponents only about 60 days to obtain the required signatures.



10. *Role of the Ballot Board.* Should the composition of the five-person Ballot Board be changed or should decisions of the Ballot Board relating to ballot issues be made by a super-majority vote?
11. *Judicial Review.* Should decisions of the Ballot Board on the one amendment requirement and the new “monopoly” determination be expressly made subject to judicial review?
12. *Safe Harbor.* Should there be a “safe harbor” in which statutes enacted through the initiative may not be amended or repealed by the General Assembly without a two-thirds (or other super-majority) vote of the members of both houses?
13. *Re-Organization of Initiative Provisions of the Constitution.* Should the provisions of Article II and Article XVI relating to the initiative be reorganized? Even if not reorganized, should the provisions be made clearer through the use of shorter sentences and sub-sections?



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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;">25</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;">27</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 Secretary²⁸ 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 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.

To: Constitutional Revision Committee

From: Steven H. Steinglass, Senior Policy Advisor
Ohio Constitutional Modernization Commission

Re: Strengthening Ohio's Statutory Initiative

Date: April 9, 2014

Members of the committee have been discussing whether the adoption by Ohio of a more robust statutory initiative could contribute to the decrease in the use of the state's direct constitutional initiative. This memorandum reviews the relationship between Ohio's indirect statutory initiative and its direct constitutional initiative. In addition, the memo looks at the 14 states that have both a direct constitutional initiative and a statutory initiative as well as at the states that have only a statutory initiative.

Background and Key Features of the Indirect Statutory and Constitutional Initiatives

In 1912, the Ohio voters approved the direct constitutional and the indirect statutory initiative, both of which were proposed by Ohio's Fourth Constitutional Convention, the Convention of 1912. As adopted, both initiatives require the gathering of signatures that are a percentage of votes in the last gubernatorial election (10% for constitutional initiatives and an initial 3% plus and an additional 3% in a supplementary petition for statutory initiatives) with 5% (for constitutional initiatives) and 1.5% (for initial and supplemental petitions for statutory initiatives) of the required signatures from 44 (which is half of Ohio's 88 counties).

Direct Constitutional Initiative

Ohio is one of 16 states with a direct constitutional initiative in which signatures are gathered and a proposed amendment is placed directly on the ballot. In Ohio and in 10 other states, a majority of votes on the proposed amendment is required. The other states have a variety of provisions some of which require a percentage of the total votes at the election.¹ Since 1912, 80 amendments to the Ohio Constitution have been proposed by initiative, and Ohio voters

¹ The other five states with direct constitutional initiatives have the following super-majority requirements:

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; subject-matter limitations to the use of the initiative
Nebraska	majority vote on the amendment, which must be at least 35% of total vote in the election
Nevada	majority vote on the amendment in two consecutive general elections
Oregon	majority vote on the amendment unless a supermajority is required in the proposed amendment

approved 18 of them. During this same period, Ohio voters approved 102 of 150 amendments proposed by the General Assembly.

Indirect Statutory Initiative

Twenty-one (21) states including Ohio, have a statutory initiative, but six of those states do not permit the initiation of constitutional amendments.

States with Statutory and Constitutional Initiatives

Of the 15 states that have both a constitutional and a statutory initiative, 11 have a direct statutory initiative under which proponents may put proposed statutes directly on the ballot without first presenting the proposed statute to the legislature. The remaining four states--Ohio, Michigan, Massachusetts, and Nevada--have 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 may go to the ballot after the legislature has failed to act without the collection of supplemental signatures. *See Mich. Const. Art. II, sec. 9; Nev. Const. Art. 19, sec. 3.* In Massachusetts, there is a modest additional signature requirement of .5% of the votes in the last gubernatorial (in addition to the 3% required initially). In Ohio, the proponents of the original statute must file a supplementary petition with 3% of the vote of the last gubernatorial election. Since Massachusetts has only an indirect constitutional initiative, Ohio is the **only** state with both a statutory initiative and a *direct* constitutional initiative) in which the proponents are required to collect additional signatures.

States with Statutory Initiatives but without Constitutional Initiatives

There are six states that have a statutory initiative but do not have either a direct or an indirect constitutional initiative.

In four of these states—Alaska, Idaho, Maine, and Wyoming—there is a ***direct*** statutory initiative, thus proponents may put proposed statutes directly on the ballot **without first presenting the proposed statute to the legislature**.

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 obtaining additional signature.

Likewise, Utah has both a direct and an indirect statutory initiative. The initial signature requirement for direct statutory initiatives in Utah is 10% 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 5% of the votes in the last presidential election, but they must get an additional 5% on a supplemental petition if the legislature does not adopt the proposed statute.

The Indirect Statutory Initiative in Ohio

In Ohio, 12 proposed statutes have gone to the voters after the General Assembly failed to adopt proposed initiated statutes; and the voters approved only three of these statutes.²

When the General Assembly adopts the legislation 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, thus obviating the need to take the issue to the voters. Nor is information readily available on how many times the General Assembly did not approve the proposed statute but the proponents—for whatever reason—did not take the issue to the voters.

Can the Ohio General Assembly Amend or Repeal Initiated Statutes? Can Legislatures in Other States?

In Ohio and six other states with both a direct constitutional initiative and a statutory initiative--Colorado, Missouri, Montana, Oklahoma, Oregon, and South Dakota--the state legislature has complete discretion to amend or repeal statutes that have been adopted by initiative.

In the seven other states with both a direct constitutional initiative and a statutory initiative, there are “anti-tampering” constitutional limitations on the power of the legislature to amend or repeal initiated statutes. These are limitations in time, limitations of a super-majority voting requirement, or combinations of the two. These limitations are summarized in the chart below (along with the limitations in those states with the statutory initiative but no constitutional initiative—Alaska, Washington, and Wyoming.)

In a 2002 report, the National Council of State Legislatures noted that providing an indirect initiative process that impedes legislative interference in some way would make the indirect initiative process more attractive to citizens seeking to get an initiative on the ballot.

The table below describes the “anti-tampering” provisions in states that have limited the power of the legislature to repeal or amend initiated statutes. This table includes both states that have a direct constitutional initiative and those that do not.

² The three statutes approved by Ohio voters after the General Assembly failed to adopt proposed initiated statute were provided aid to aged persons (1933), permitted the manufacture and sale of colored oleomargarine (1949), and restricted smoking in places of employment and most places open to the public (2006).

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

State	Measures Taken
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

* no constitutional initiative

In three of the six states—Alaska, Washington, and Wyoming—with a statutory initiative but no direct constitutional initiative, there are also limitations on the power of the General Assembly to amend or repeal initiated statutes. In the other three states with a statutory initiative but no direct constitutional initiative—Idaho, Maine, and Utah—there are no limitations on the state legislature.

Comparison of Ohio to Other States

Ohio is unique in the country among the 14 states with both a direct constitutional and statutory initiative in terms of the preferred route of those taking issues to the voters. In Ohio, 85% of the initiated issues are for constitutional amendments. This means that of 80 attempts to initiate positive law (*i.e.*, either a statute or a constitutional amendment) proponents have elected to go the constitutional route in 68 instances. The next closest states hover around the high 60% level.

Why is Ohio an Outlier?

Some commentators have hypothesized that Ohio is an outlier in the “over-utilization” of the constitutional initiative as compared to its statutory initiative because: (a) Ohio does not limit the

power of the General Assembly to amend initiated statutes, and (b) the burden of collecting additional signatures in a supplemental petition.

Initial Conclusion, Correlation and Future Research

There is a strong correlation between Ohio's heavy use of the constitutional initiative and the unfettered ability of the General Assembly to amend or repeal initiated statutes and the requirement of a supplemental petition. But it is premature to conclude that these features of Ohio's statutory initiative explain the relatively infrequent use of the statutory initiative. What is necessary is a content-based review of all 68 proposed constitutional initiatives as well as the motivations of the proponents in order to determine which issues might have been pursued through the vehicle of a more robust statutory initiative. In addition, it would be useful to have a better grasp as to how the statutory initiative has actually worked in other states.

REVIEW OF PROPOSED INITIATED AMENDMENTS

[This memo should be expanded to include a content-based review of Ohio's 68 proposed constitutional amendments to determine, to the extent possible, whether a more robust statutory initiative might have provided a plausible alternative route for the proponents of the issue. In addition, there should be a review of the 12 statutory initiatives that the proponents took to the voters to determine why they selected the statutory as contrasted to the constitutional route. Finally, a full review of this issue should include a review of the use of the statutory initiative in other states.]

Conclusion

A conclusion about the likely impact of the creation of a more robust statutory initiative should wait the above-described content-based review of proposed constitutional amendments and statutory initiatives in Ohio as well as a review of the use of the statutory initiative in other states.

Constitutional Revision and Updating Committee

Planning Worksheet (Through October 2015 Meetings)

Article II – Legislative (Select Provisions)

Sec. 1 – In whom power vested (1851, am. 1912, 1918, 1953)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 1a – Initiative and referendum to amend constitution (1912, am. 2008)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 1b – Initiative and referendum to enact laws (1912, am. 2008)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 1c – Referendum to challenge laws enacted by General Assembly (1912, am 2008)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 1d – Emergency laws; not subject to referendum (1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 1e – Powers; limitation of use (1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 1f – Powers of municipalities (1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 1g – Petition requirements and preparation; submission; ballot language; Ohio ballot board (1912, am. 1971, 1978, 2008)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Article XVI - Amendments

Sec. 1 – Constitutional amendment proposed by joint resolution of General Assembly; procedure (1851, am. 1912, 1974)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 2 – Constitutional amendment proposed by convention; procedure (1851, am. 1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

Sec. 3 – Question of constitutional convention to be submitted periodically (1851, am. 1912)							
Draft Status	Committee 1 st Pres.	Committee 2 nd Pres.	Committee Approval	CC Approval	OCMC 1 st Pres.	OCMC 2 nd Pres.	OCMC Approved

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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

Remaining 2015 Meeting Dates

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