



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

MEMORANDUM

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

FROM: Steven H. Steinglass, Senior Policy Advisor

CC: Steven C. Hollon, Executive Director

DATE: November 3, 2016

RE: Supermajority Requirements Nationally

This memorandum reviews state policies throughout the nation on the percentages required for voter approval of proposed constitutional amendments. The memorandum updates information provided to the committee in earlier memoranda. *See* The Use of the Constitutional Initiative in Ohio and the Nation (June 10, 2014); Strengthening Ohio's Statutory Initiative (draft) (April 9, 2014).

Summary of Conclusions

- All 18 states that have the constitutional initiative (*i.e.*, the 16 with the direct constitutional initiative and the two with the indirect constitutional initiative) have the same percentage requirement for voter approval of initiated and legislatively-proposed amendments.
- Overwhelmingly, the states only require a simple majority vote on proposed amendments.
- Two states – Florida and New Hampshire – have true supermajority requirements.¹

The balance of this memorandum reviews the states that have exceptions to the simple majority policy.

¹ On November 8, 2016, Colorado voters will be voting on Amendment 71, an initiated amendment that would make the signature requirement more stringent and would require initiated (but not legislatively-proposed) amendments to receive a 55 percent vote.

States With the Constitutional Initiative

In 14 of the 18 states with the constitutional initiative, including Ohio, only a simple majority of votes on the proposed amendment is required. The other four states have a variety of provisions, some of which require a percentage of the total votes at the election.

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; vote must be at least 35 percent of total vote in the election
Oregon	majority vote on the amendment; vote must be at least 35 percent of total vote in the election

States Without the Constitutional Initiative

With a few minor exceptions, the 31 states that require voter approval of constitutional amendments but do not have the constitutional initiative require only a simple majority of those voting on the amendment. [Delaware is the only state that amends its constitution without a popular vote.] The exceptions to the simple majority voting requirement in states without the initiative are:

Minnesota	majority of those voting in the election
New Hampshire	2/3 vote on proposed amendments
Tennessee	majority of those voting in the election
Wyoming	majority of those voting in the election

The Florida Experience

Florida permits both legislatively-proposed and initiated amendments. In addition, Florida has created a constitutionally-based revision commission, and the Florida Constitutional Revision Commission has the power to place proposed amendments directly on the ballot without any involvement of the state legislature. *See generally* Robert F. Williams, *The Law of American State Constitutions* 364-76 (2009). Prior to 2006, Florida required a majority vote for the approval of amendments, but it amended its constitution to require a 60 percent vote for the approval of any initiated, legislatively-proposed, or commission-proposed amendment.

Since the adoption of the 60 percent supermajority voting requirement, Florida voters have approved 12 of the 28 amendments presented to them and have rejected 16. Of the 16 rejected amendments, six received more than 50 percent of the vote.

The New Hampshire Experience

For most of its history, New Hampshire only permitted its constitution to be amended through a constitutional convention, and between 1850 and 1984 New Hampshire had 13 constitutional conventions. New Hampshire also presents the question of a convention call to the voters every ten years. The primary avenue of amendment during this period involved discrete constitutional amendments proposed by constitutional conventions. The last constitutional convention in New Hampshire was in the 1980s, and New Hampshire voters rejected convention calls in 1992, 2002, and 2012.

In 1964, the voters amended the New Hampshire Constitution to permit the state legislature to also propose amendments. Both convention-proposed and legislatively-proposed amendments are only adopted if approved by two-thirds of the voters voting on the issue. Between 1966 and 1986, both convention-proposed and legislatively-proposed amendments were on the ballot, but since then only legislatively-proposed amendments have been on the ballot.

Since 1966, New Hampshire voters approved 45 of 85 proposed amendments from all sources. This includes approval of 33 of the 57 convention-proposed amendments and 12 of the 28 legislatively-proposed amendments. Of the 40 rejected amendments, 30 received more than a majority vote but less than the requisite 66 2/3 percent vote.

The pattern of presentation of proposed amendments to the voters has changed since the 1964 amendment permitting the legislature to propose amendments. From 1966 to 1986, 57 of the proposed amendments on the ballot were proposed by constitutional conventions and only 13 were proposed by the legislature. Since 1988, constitutional conventions in New Hampshire did not propose any constitutional amendments, but the legislature proposed 15. The voters approved five of these amendments but rejected ten of them. Of the ten rejected legislatively-proposed amendments, six received a majority vote.

The emergence of the legislature as the primary source of proposed amendments and the eclipse of the constitutional convention has been accompanied by an overall reduction in the frequency of amendment. From 1966 to 1986, there were 40 amendments to the New Hampshire Constitution. Since 1988, there were only five amendments.

The Ohio Supermajority Requirement

For a discussion of the Ohio supermajority requirement, see Steinglass, *Approved Initiated Amendments – Ohio Voting Percentages*, at p. 3 (November 3, 2016) (memorandum to Constitutional Revision and Updating Committee). *See also* Steinglass, *Constitutional Revision: Ohio Style*, 77 Ohio St. L. J. 281, 301-02, 309-11 (2016).