

State Notes

TOPICS OF LEGISLATIVE INTEREST

March/April 2006



Overview of the Initiative Process **By Bill Bowerman, Chief Analyst**

Article II, Section 9 of the Michigan Constitution reserves to the people the power to propose laws and to enact and reject laws (the "Initiative"). The initiative process originated through a 1913 amendment to the Michigan Constitution of 1908. As described below, voter-initiated proposals must be either enacted by the Legislature or submitted to the electors. Initiated laws are not subject to the veto power of the Governor.

The Process

The process requires petitions signed by registered electors equal to not less than 8.0% of the total vote cast for all candidates for Governor at the last preceding general election at which a Governor was elected. In the 2002 general election, 3,177,565 votes were cast for all candidates for Governor. Therefore, 254,206 valid signatures (8.0%) are required to place an initiative petition on the November 7, 2006, general election ballot. Pursuant to State law, initiative petitions must be filed with the Secretary of State at least 160 days before the election at which the proposed law is to be voted upon. That filing deadline is May 31, 2006, for the November 7, 2006, general election. Once a petition is filed, no supplemental filings can be accepted. Petitions filed with the Secretary of State cannot be withdrawn. Signatures collected before a November general election at which a Governor is elected cannot be filed after the date of that election, for the following November general election.

Once petitions are submitted to the Secretary of State, the Secretary of State immediately notifies the Board of State Canvassers. It is the responsibility of the Board of State Canvassers to determine if the petitions have been signed by the required number of qualified and registered electors. Since the late 1970s, the Bureau of Elections (in the Department of State) has used a process developed by the Michigan State University Statistics and Probability Department to determine whether a petition has the requisite number of valid signatures. The first review includes checking individual sheets to determine whether there are errors that would invalidate all of the signatures on that sheet. Signatures on a petition that were made more than 180 days before the petition was filed with the Secretary of State are presumed void. The sheets that pass the initial review are numbered and the signatures are counted. The signatures are randomly sampled to determine an error rate. That rate is then projected over the entire universe of signatures.

As soon as the statistical sample is available for review or purchase, the Board of State Canvassers sets reasonable deadlines (usually 10 business days) for objections to be filed. Individuals or organizations may inspect the statistical sample or purchase copies in order to challenge signatures in the sample. At least two business days before the Board of State Canvassers meets to make a final determination on challenges to a petition, the Bureau of Elections is required to make public its staff report concerning the disposition of challenges filed against the petition.

Any law proposed by initiative petition (that is certified by the Board of State Canvassers) must be either enacted or rejected by the Legislature without change or amendment within 40 session days from the time the petition is received in the office of the Secretary of the



Senate and the Clerk of the House. Session days are interpreted as beginning the day that the Legislature convenes in regular session through the day the Legislature adjourns (*sine die*), including Sundays. Proposed laws that are not enacted within 40 days are submitted to the people for approval or rejection at the next general election.

If the Legislature rejects an initiative petition, the Legislature may propose a different measure on the same subject. Both measures then are submitted to the electors for approval or rejection at the next general election. If two or more measures approved by the electors at the same election conflict, the measure receiving the highest affirmative vote prevails.

Proposals Approved by the Voters vs. the Legislature

There are significant differences between voter-initiated proposals adopted by the people and voter-initiated proposals enacted by the Legislature.

Ballot proposals adopted by the people at the polls cannot be amended or repealed except by a vote of the electors unless otherwise provided in the initiative measure, or by a three-fourths vote of the members elected to and serving in each house of the Legislature. Pursuant to Article II, Section 9 of the Michigan Constitution, these laws take effect 10 days after the date of the official declaration of the vote.

Initiated laws enacted by the Legislature do not go before the voters. Voter-initiated proposals enacted by the Legislature are subject to referendum. (Referendum is the power of the voters to approve or reject laws enacted by the Legislature.) Unless the Legislature provides for immediate effect (which requires a two-thirds vote of each house), the law does not take effect until 90 days after the Legislature adjourns *sine die*. Voter-initiated laws enacted by the Legislature can be amended by a majority vote of the members of each house. There is some question as to whether the Legislature must wait until a subsequent session to amend a voter-initiated law that is enacted by the Legislature. Attorney General Opinion No. 4303, March 6, 1964, states: "It must follow that the initiative petition enacted into law by the legislature in response to initiative petitions are subject to amendment by the legislature at a subsequent legislative session. It is equally clear that the legislature enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session without violation of the spirit and letter of Article II, Sec. 9 of the Michigan Constitution of 1963." Attorney General Opinion No. 4932, January 15, 1976, spoke to the issue of the Legislature's authority to amend voter-initiated laws that the Legislature enacts, without a reference to whether the authority of the Legislature to amend is limited to subsequent sessions.

Past and Present Voter-Initiated Proposals

Over the last 43 years, out of 14 voter-initiated proposals, nine have become law. Three of the proposals were enacted by the Legislature and six were adopted by a vote of the people. Table 1 lists the successful voter-initiated proposals:



Table 1

Voter-Initiated Laws		
Subject	Year	Method of Adoption
Repeal of law prohibiting daylight saving time	1972	Vote of the People
Bottle Deposit Law	1976	Vote of the People
Prohibition of parole until completion of minimum sentence for certain crimes	1978	Vote of the People
Restrictions on utility rate adjustments	1982	Vote of the People
Expression of desire for mutual nuclear weapons freeze with Soviet Union	1982	Vote of the People
Prohibition of public funding of abortions	1987	Enacted by Legislature
Parental consent regarding abortions	1990	Enacted by Legislature
Casino gaming in qualified cities	1996	Vote of the People
Legal Birth Definition Act ¹	2004	Enacted by Legislature

The following is the current status of pending initiative proposals for the 2006 General Election:

Educational Funding Guarantee (K-16) – 10-day period for challenges expires May 5, 2006.

Casey 50/50 Jury – Petition approved as to form in preparation for circulation.

Repeal of Single Business Tax – Petition approved as to form, collection of signatures in process.

The Department of State maintains a complete listing of the current status of ballot proposals on its website at the following location:

http://www.michigan.gov/documents/Statewide_Bal_Prop_Status_145801_7.pdf

This listing contains proposed constitutional amendments and referendum issues that are not included in this overview of the initiative process.

Sources

Michigan Constitution

Michigan Election Law

Department of State, Bureau of Elections

Carl, Christopher, How An Issue Becomes a Ballot Proposal, Legislative Service Bureau, Revised March 2006.

Attorney General Opinion No. 4303, 1964 and Attorney General Opinion No. 4932, 1976

¹ The Legal Birth Definition Act was declared unconstitutional by U.S. District Court, Eastern District of Michigan on September 14, 2005. The ruling is currently being appealed by the Attorney General in the U.S. Sixth Circuit Court (*Northland v Cox*).