

HOW AN ISSUE BECOMES A BALLOT PROPOSAL

Background

Historically, the phenomenon of “**direct democracy**” — voters casting ballots to amend statutes or the state constitution — has its roots in the populist movement of the turn of this century. Since 1898, when South Dakota adopted a statewide initiative and referendum mechanism, many of the states have incorporated mechanisms of direct citizen participation in lawmaking. Michigan provides more access to the ballot for its citizens than most states. According to the 2000-01 edition of *The Book of the States*, published by The Council of State Governments, 18 states provide for the initiative to propose changes to the state constitution, 22 permit citizens to use the initiative to propose legislation, and 24 have the power of citizens invoking the referendums. Only 15 states, including Michigan, provide for all three of these tools for citizens to place proposals on the ballot.

The tradition of initiative and referendum in this country dates back as far as the Massachusetts Bay Colony. The **Progressive Era** (especially between the years of 1898 and 1918) was the time when almost all of the states that have these provisions implemented the initiative and/or referendum. The mechanisms of the referendum and initiative, through which many proposals reach the ballot, have been part of the law in Michigan for many years. The right of initiative, defined in the Constitution of the State of Michigan of 1963, as amended, as “. . . the power to propose laws and to enact and reject laws . . .”, and the people’s right of referendum, defined in the Constitution of 1963 as “. . . the power to approve or reject laws enacted by the legislature. . .”, became part of the Constitution of 1908 as a result of a 1913 amendment. The referendum as used by the Michigan Legislature to submit any bill to a vote of the people was also included in the Constitution of 1908. The right of the people to propose amendments to the constitution was first included in the Constitution of 1908.

An issue can become a statewide ballot proposal as a result of any of the following actions:

- A citizen petition invoking the initiative relative to Michigan’s statutes.
- A citizen petition invoking the referendum relative to Michigan’s statutes.
- A citizen petition seeking to amend Michigan’s constitution.
- Legislation enacted by the legislature including a provision that says the legislation cannot become law unless approved by a majority of voters.
- A measure adopted by the legislature seeking to amend the constitution.
- A constitutionally mandated provision placing on the ballot automatically each sixteenth year the question of a general revision of the constitution. This question was on the ballot in 1978 and 1994.

With the exception of the constitutionally mandated provision that automatically places the question of a general revision of the constitution before the electorate every 16 years, every ballot proposal is the result of either citizen action (initiator petitions) or legislative action.

Initiative

A citizen or group of citizens may attempt to get a question on the ballot for one of three purposes: first, to enact a new law or new section or sections of law; second, to approve or reject a law already enacted; and third, to amend the constitution.

In order to exercise the right to initiate legislation (*initiative*), a citizen or group must secure, on petitions, the signatures of registered electors in an amount not less than eight percent of the total vote cast for all candidates for governor at the last gubernatorial election.

The Michigan Election Law, 1954 PA 116, as amended, establishes requirements and provisions that must be followed in order for a proposed piece of legislation to reach the ballot. These requirements include page and print size and other specifications, such as the full text of the proposed law to be printed on the petitions, and the manner in which they are to be circulated. **Petitions to initiate legislation** are filed with the Secretary of State and the Board of State Canvassers, which must then check validity and sufficiency of the petitions and have sufficient time to submit the measure to the legislature. The Elections Division of the Secretary of State recommends that petitions be filed at least 160 days prior to the general election to assure placement on the ballot if required. The legislature has 40 days from the time it receives the petition to enact or reject the proposed law or to propose a different measure on the same

question. If not enacted, the original initiative proposal and any different measure passed by the legislature must go before the voters as a ballot proposal. Any substitute passed by the legislature would be a separate proposal. Regarding situations where legislative and citizen-originated measures, or any proposals, conflict, the constitution provides:

If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

If the initiated proposal is passed by a majority of the electorate voting on the question in the election, the new law takes effect 10 days after the date of the official declaration of the vote. A new initiated law thus passed cannot be vetoed by the governor. It can only be amended or repealed by a subsequent vote of the electors or by a three-fourths vote of the members elected to and serving in each house of the legislature. (See Article 2, Section 9 of the Constitution of the State of Michigan of 1963, as amended.)

The method of initiative used in Michigan is sometimes called the **indirect initiative** because the measure is first submitted to the legislature rather than directly to the voters. An example of this occurred in 1987, when an initiative was successfully transmitted to the legislature seeking to halt public funding for abortions. After receiving the petition initiative (as determined to be sufficient by the Board of State Canvassers), the legislature enacted the measure as presented by the citizens.

Referendum

A referendum is also exercised through the gathering of signatures. The number of registered voters needed to invoke the referendum is 5 percent of the total vote cast for all candidates for governor at the last gubernatorial election. A referendum cannot be extended to **approve or reject a law** that appropriates money. A referendum petition must be filed with the Secretary of State within 90 days of the final adjournment of the legislative session during which the law in question was enacted. As with the initiative, these petitions are filed with the Secretary of State, and the Board of State Canvassers is responsible for ascertaining the validity and sufficiency of the petitions.

After the referendum is properly invoked and during the interim until the next general election, at which time the law will appear before voters as a ballot proposal, **the law in question cannot be in effect**. A law approved through the referendum by a majority of the voters voting on the question takes effect 10 days after the date of the official declaration of the vote. Unlike laws approved as a result of the initiative, which require a three-fourths majority to be amended, a law approved under referendum may be amended by the legislature using the normal legislative process. If the law is rejected, of course, it does not go into effect. (See Article 2, Section 9 of the Constitution of the State of Michigan of 1963, as amended.)

Constitutional Amendments

Citizen action, through the petition, can also be used to amend the constitution. In the case of proposed constitutional amendments, signatures of registered voters must equal at least 10 percent of the number of votes cast for all candidates in the last gubernatorial election in order for the matter to go before the electorate. As in the case of initiative and referendum, petitions seeking amendments to the state's constitution are filed with the Secretary of State, and the Board of State Canvassers is responsible for ascertaining the validity and sufficiency of the petitions. The petition signatures, which must be filed at least 120 days prior to the election, must conform with provisions specified in the Michigan Election Law, 1954 PA 116, as amended. After the correct number of valid signatures and the sufficiency are ascertained, the proposed amendment to the constitution is **placed on the ballot** as a proposal to be considered by Michigan voters. The measure must be placed on the ballot at least 60 days prior to the election. Any proposal that is approved by a majority of voters voting on the proposal thus becomes part of the constitution and goes into effect at the end of 45 days after the date at which it was approved. (See Article 12, Section 2 of the Constitution of the State of Michigan of 1963, as amended.)

Legislative Action

Ballot proposals placed before the electorate as the result of legislative action are of 3 types: proposed amendments to the constitution (traditionally proposed as joint resolutions), bills passed by the legislature and approved by the governor that stipulate that voter approval is necessary for the bill to become law, and questions pertaining to the state borrowing money for specific purposes.

Nothing in the constitution may be altered without the approval of the voters. Thus, any **action by the legislature to amend the constitution** must be placed on the ballot. An amendment proposed by the legislature in the form of a joint resolution can be introduced into either the Senate or the House of Representatives. In order to become a ballot proposal, such a measure must be agreed to by a two-thirds majority of the members elected to and serving in each house. After a measure is thus passed by the legislature not sooner than 60 days before the election, it is subject to the consideration of the electorate at the next general election or at a special election as the legislature shall direct. (The August 2002 ballot question pertaining to the operation of the State Officers' Compensation Commission is an example of this.) If approved by a majority of the voters voting on the ballot proposal, the measure becomes part of the constitution at the end of 45 days after the date of the election at which it was approved. (See Const. 1963, art. XII, sec. 1.)

The legislature may, in effect, ask for **voter approval of a bill**. This may be done for any bill, except one appropriating money, that has passed the legislature and has been approved by the governor. In order for this to occur and a ballot proposal to go before the voters in this manner, the bill must contain a provision that the bill cannot become law unless it receives approval from a majority of voters voting on the question. (See Article 4, Section 34 of the Constitution of the State of Michigan of 1963, as amended.)

Another manner in which a proposal goes before the people involves the state borrowing money for specific purposes. Through an act (or acts) by the legislature which is adopted by a two-thirds majority of the members elected to and serving in each house, the **question of borrowing money** may go before the electorate. The proposal must state the amount to be borrowed, the specific purpose to which the funds are to be devoted, and the method of repayment. (See Const. 1963, art. 9, sec. 15.)

Ballot Proposal Language

A great deal of attention, and occasional controversy, seems to be focused on the actual ballot language of the proposals. The language that is printed on the ballots as "Proposal 00-1, Proposal 00-2," etc. is rarely the same as the wording of the amendment or law that is being considered. Obviously, the length of some measures and the technical language used to gain legal clarity prevent an entire measure from being reproduced on the ballot. The important task of **summarizing each proposal into a yes or no question of less than 100 words** in length (excluding the title) is the responsibility of the Board of State Canvassers. The wording that is finalized as the ballot proposal is often the result of many hours of discussion.

Recent Ballot Proposals

Since the ratification by Michigan voters of the current constitution, the Constitution of 1963, there have been many significant changes in our state that have come about because of ballot proposals. Such elements of our everyday lives as daylight savings time, the legal drinking age, the removal of sales tax on food and prescription drugs, the prohibiting of nonreturnable beverage containers, the Vietnam era veterans bonus, tax limitations, crime measures, public funding of abortion, the environment, school financing, and setting term limits for state elected officials have all resulted from this method of direct citizen impact. In all, there have been put forth **64 proposed amendments to the Constitution** of 1963. Twenty-two of these have resulted from initiatory petitions, while 40 have been placed on the ballot by the legislature. The remaining 2 ballot issues of those pertaining to the constitution came in 1978 and 1994 as a result of the constitutional provision that automatically placed the question of calling a constitutional convention up for a vote at that time and each sixteenth year in the future. Technically, these ballot proposals on a constitutional convention are not an amendment. Of the 64 total proposed amendments to the constitution (including the question of a constitutional convention), 25 have been approved by the voters of Michigan.

There have been 11 occasions on which the initiative has brought a proposed law before the people for a vote under our present constitution. Six of these proposals have been passed by the voters. Successful initiatives that have passed and become law have included one regarding daylight savings time in 1972, one prohibiting nonreturnable beverage containers in 1976, one eliminating early parole (good time) for certain crimes in 1978, and one providing for casinos in 1996.

Nineteen instances of the referendum bringing legislation to the electorate for approval or rejection have occurred since the Constitution of 1963 became effective on January 1, 1964. Ten of these 19 referenda were approved by the voters. A recent referendum question on the November

2002 ballot involved legislation to authorize bonds for sewage treatment works projects, storm water projects and water pollution projects. The proposal went before the voters after the legislature passed by a two-thirds majority in each house and the governor signed legislation that required the approval of a majority of the registered electors voting at the next general election. The act was approved by the voters.

The referendum on the question of public funding for abortions in 1988 is another example of a referendum placed before the voters. It provides an interesting look at both the initiative and the referendum processes. In 1987, a successful initiative was certified to prohibit the public funding of abortions. After certification by the Secretary of State, the initiative was submitted to the legislature, which enacted the measure, unchanged, into law as 1987 PA 59. Before this law took effect, citizens successfully invoked the referendum with enough valid signatures. This resulted in the November 1988 ballot proposal, which was approved by the electorate.

Additional Readings

Elofson, Stan, *Initiative and Referenda — An Update of Their Use*, Colorado Legislative Council, revised February 18, 2002.

Hornbeck, Mark, "Voucher Campaign is Costliest," *Detroit News*, November 1, 2000.

McHargue, Daniel S., *Direct Government in Michigan: Initiative, Referendum, Recall, Amendment and Revision in the Michigan Constitution*, Constitutional Convention Preparatory Commission, Lansing, Michigan, 1961.

Neale, Thomas H., *Initiative, Referendum, and Recall: Direct Democracy in the United States*, Congressional Research Service, Washington, D.C., 1998.

Ritche, Daniel F., *Let the People Decide: Initiative and Referendum in Wisconsin and Other States*, Wisconsin Legislative Reference Bureau, Madison, Wisconsin, 1995.

VerHovek, Sam Howe, "A Ballot Full of Voter Initiative Becomes an Issue Itself in Oregon," *New York Times*, October 25, 2000.

Internet Sites:

Citizens Research Council of Michigan: <http://www.crcmich.org>

Initiative and Referendum Institute: <http://www.iandrinstitute.org>

National Voter Outreach: <http://www.directdemocracy.com>