

NORTH DAKOTA
LEGISLATIVE COUNCIL



North Dakota

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Comparative State Laws on Initiated Measures and Referenda

North Dakota Legislative Council
600 East Boulevard Avenue
Bismarck, ND 58505-0360

701.328.2916
lcouncil@nd.gov
www.legis.nd.gov

Initiated and Referred Measures Study Commission
September 26, 2017

Types of Initiatives

- Direct initiated measures are placed directly on the ballot.
- Indirect initiated measures are submitted to the legislative body, which has an opportunity to act on them. If the legislative body does not adopt the measure, the measure will go on the ballot.

Types of Referenda

- Legislative referenda are processes by which legislative bodies put measures on the ballot for voters to decide.
- Popular referenda are processes by which voters petition to demand a popular vote on a new law passed by a legislative body.

States with Initiatives and Referenda

- 21 states allow initiatives for state laws
 - Direct initiative for state laws - 14 states, including North Dakota
 - Indirect initiative for state laws - 9 states
 - Some states allow both direct and indirect
- 18 states allow initiatives for constitutional amendments
 - Direct initiative for constitutional amendments - 16 states, including North Dakota
 - Indirect initiative for constitutional amendments - 2 states
- 50 states allow legislative referenda
 - In North Dakota, only constitutional amendments are subject to legislative referenda
- 23 states, including North Dakota, allow popular referenda

Common Characteristics of Initiative Processes

1. Individual or group files proposed initiative with designated state official
2. State agency or official reviews initiative for compliance with statutory requirements before circulation
3. Preparation of ballot title and summary
4. Circulation of petition to gather required number of signatures
5. Submission of signatures to state election official for verification
6. Submission of initiative to the legislative body (for indirect initiatives) or placement on ballot for electors to approve or reject (for direct initiatives)

Filing a Proposed Initiative

- Generally, the proposed initiative is submitted to the Lieutenant Governor, Attorney General, or Secretary of State.
- At least nine states require a minimum number of signatures (from 5 to 100) on the proposed initiative before it may be filed.
- Five states require a deposit (from \$5 to \$500) with the filing. However, the deposit is refunded when the completed petition has been filed.

Subject Matter Limitations

- Limitations on certain subjects
 - Nevada: No appropriation by initiative unless the measure also includes a tax to cover the appropriation
 - Alaska, Massachusetts, Wyoming: No appropriations, no affects on judicial process
 - Many states: Single subject rule

Financial Disclosures

- Per National Conference of State Legislatures, “it is not uncommon for large contributions from a small handful of contributors to fund an initiative...”
- Disclosure requirements and deadlines vary by state
 - Sponsors disclose amount paid to circulators
 - Initiative campaign committees disclose contributions and expenditures
 - Initiative campaign committees disclose names of large contributors
 - Initiative campaign committees disclose out-of-state contributors
- Disclosures usually available online

Initiative Drafting Assistance

- 10 states require Secretary of State or Attorney General to review for form
- 12 states require review for language, content, or constitutionality
- Review is only advisory in several states

Petition, Ballot, and Title Drafting

- Petition titles are drafted or reviewed by state officials in all but one state with initiatives
 - Reviews are sometimes optional and sometimes for form only
- 6 states let proponents draft ballot title, subject to Attorney General or Secretary of State approval
 - Oklahoma also requires Superintendent of Public Instruction to certify ballot title is readable at 8th grade level
- 11 states have Attorney General, Secretary of State, or other official draft ballot title and summary
- 5 states have special committee or board to draft ballot title and summary
- 2 states allow public comment on draft ballot title and summary

Court Reviews of Titles

- 11 states allow expedited court review of petition title
- 14 states allow expedited court review of ballot title

Petition Circulation

- Often litigated
- Petition circulation is political speech protected by 1st Amendment
- Courts balance:
 - 1st Amendment rights of circulators
 - States' interest in orderly, fair elections

Paid Circulators

- *Meyer v. Grant* - United States Supreme Court held states may not prohibit payments to petition circulators under 1st Amendment
- Some states still limit payments to circulators
 - Alaska: \$1 per signature
 - At least six states prohibit per-signature payments
 - Law upheld by federal judge in North Dakota
 - Similar laws struck down in at least four states

Circulator Qualifications

- *Buckley v. ACLF* - United States Supreme Court held requiring circulators to be registered voters violates 1st Amendment
- Some states still limit who may circulate petitions
 - Several states require circulators to be eligible to vote in the states
 - Michigan: Residents + Nonresidents who agree to accept Michigan jurisdiction and service of process requirements
 - Courts have allowed state laws requiring circulators to be at least 18

Circulator Disclosures

- *Buckley v. ACLF* - United States Supreme Court held states may not require petitioners to wear identification badges or to present disclosure of paid status and amount of payment
 - However, requiring disclosure of those who pay circulators is permitted
 - Some states require disclosure of paid or volunteer status on the petition or in filings to the state

Other Requirements for Circulators

- 19 states require circulators to witness petition signatures and sign an oath or affidavit that they witnessed signatures
- Circulators are subject to laws on elections violations
 - E.g., coercion, offering payments, misrepresenting petition, forging

Effects of Paying Circulators

- <https://paidpetition.com/>
- Per National Conference of State Legislatures, paying circulators results in greater success but greatly increases the cost of ballot access
 - Avg cost = \$75,000 - \$100,000
 - High cost = \$5,000,000+

Petition Circulation Periods

- Some states restrict how long a petition may be circulated
 - North Dakota: 1 year for initiated measure
 - Massachusetts: 64 days
 - Oklahoma: 90 days
 - California: 150 days
- Election officials need time to verify signatures and prepare ballots

Petition Circulation at Polls

- Most states with initiatives prohibit circulating petitions within certain distances from polling places on election day

Required Signatures

- Threshold number or percentage of signatures varies greatly
- Statutory initiatives:
 - North Dakota has one of lowest thresholds (2% of resident population)
 - Wyoming requires 15% of number of votes cast in preceding election
 - California requires over 500,000 signatures (equal to 5% of votes cast for governor in preceding election)
- Constitutional initiatives often have higher thresholds

Geographic Distribution Requirements

- 12 states require certain geographic distribution of signatures
 - Prevents one city in a rural state from controlling ballot access
 - As one court noted, “geographic distribution requirements ... are important because they force initiative proponents to demonstrate that their proposal has support statewide...”
- Some distribution requirements struck down by courts on constitutional grounds

Geographic Distribution Requirements cont.

- *Gallivan v. Walker* - Utah Supreme Court struck down multicounty signature requirement because “it invidiously discriminates against urban registered voters...in violation of the one person, one vote principle...” and violated state and federal constitution
 - Similar outcomes in Idaho and Nevada
- *Angle v. Miller* - 9th Circuit upheld Nevada law requiring signatures from number of individuals equal to 10% of votes in each congressional district because “geographic distribution requirements are permissible for signature collection, so long as they involve districts with equal populations.”

Verifying Signatures

- Most states with initiatives spell out verification processes in law
- Verification processes vary
 - Alaska: Division of Elections verifies each signature until threshold is met
 - South Dakota: Secretary of State verifies each signature until threshold is met
 - California: Generally, county election officials must sample greater of 500 or 3% of signatures; random sample formula set out in regulation
 - Colorado: Secretary of State verifies random sample of at least 5% of signatures and not less than 4,000 signatures; in some cases, all signatures must be verified
 - Oklahoma: Signatures are presumed valid unless successfully challenged

Voter Guides

- Voter guides may include any of the following:
 - Ballot title
 - Full text of measure
 - Summary of measure
 - Fiscal impact statement
 - Pros and cons of measure
 - Written by proponents, opponents, any member of the public willing to pay a set amount, legislative committees

Required Votes

- In most states, simple majority is required to pass an initiative
- Nebraska, Massachusetts, Mississippi: Simple majority but number of votes must equal threshold % of total votes cast in election
- Wyoming: Majority of total votes cast in a general election

Amending and Vetoing Initiatives

- No state allows governor to veto
- 11 states allow simple majority of legislature to amend or repeal
- Several states allow legislature to amend or repeal with limitations
 - Timing
 - Supermajorities

Conflicting Ballot Measures

- Most states with initiatives have laws addressing conflicting ballot measures
 - Utah: Governor determines existence of conflict
 - Massachusetts: Legislature determines existence of conflict
- Generally, measure with most votes “wins”
 - North Dakota uses this method to resolve conflicts
- Maine: Voting for both conflicting measures invalidates ballot
- Washington: Multi-step ballot to prevent voting for both

Questions?