

BACKGROUND MEMORANDUM - INITIATED AND REFERRED MEASURES STUDY COMMISSION

Under Article III of the Constitution of North Dakota, electors of the state have the right to petition to refer legislation adopted by the Legislative Assembly or initiate constitutional or statutory measures. A referendum seeks to reject legislation passed by the Legislative Assembly. A constitutional initiative proposes to amend or enact new portions of the state constitution. A statutory initiative proposes to amend or enact a law in the North Dakota Century Code.

Senate Bill No. 2135 (2017) ([Appendix A](#)) established an initiated and referred measure study commission to undertake a comprehensive study of initiated and referred measure laws. The bill set forth the commission members, authorized the commission to request staff services from the Legislative Council, and mandated the commission study, among other subjects:

- The process and cost of placing initiated and referred measures on the ballot and campaigning in support of or opposition to ballot measures in North Dakota;
- The processes used to place initiated and referred measures on the ballot in other states;
- Whether any provision of the state constitution or state law relating to initiated or referred measures should be amended. If an amendment is warranted, the commission shall prepare a draft resolution to amend the constitution or draft a bill to amend the state law for consideration by the next Legislative Assembly; and
- The effect of out-of-state funding on the initiated and referred measure process and whether limits on out-of-state funding are necessary.

The commission must report its findings and recommendations to the Legislative Management before September 1, 2018.

HISTORY OF INITIATED CONSTITUTIONAL MEASURE PROCESS IN NORTH DAKOTA

The original version of the North Dakota Constitution, which was adopted on October 1, 1889, allowed electors to vote on a constitutional amendment if the Legislative Assembly had voted to send the amendment to the people during both of the preceding two legislative sessions. In 1918 the state constitution was amended so only one Legislative Assembly vote was required before the electors could vote on a constitutional amendment.

In 1914, during the height of the Progressive Party's reform movement, the state constitution was amended to include a somewhat complicated provision letting the electors petition to vote on a constitutional amendment. The petition process was simplified in 1918 through another amendment that allowed a constitutional amendment to be placed on a ballot if a petition with 20,000 or more signatures was filed at least 120 days before an election.

Over the following decades, the number of signatures required on a petition for a constitutional amendment has increased. Currently, under Section 9 of Article III of the Constitution of North Dakota, at least 4 percent of state residents, based on the most recent federal census, must sign a petition for a constitutional amendment before the petition may be submitted to the Secretary of State. For the current decade, 26,904 signatures are needed to place a constitutional amendment on the ballot. For the November 8, 2016, election, the signatures had to be submitted to the Secretary of State no later than July 11, 2016.

Only qualified electors as defined under Section 16.1-01-04 may sign a petition to place a constitutional measure on the ballot. With some exceptions, that statute defines a qualified elector as a United States' citizen who is 18 years of age or older, is a North Dakota resident, and has resided in the precinct in which the person wishes to vote for at least 30 days before the election.

HISTORY OF INITIATED STATUTORY MEASURE AND REFERENDUM PROCESS IN NORTH DAKOTA

The original state constitution did not provide for initiated statutory measures or referenda. However, a 1914 amendment to the state constitution allowed statutes to be enacted, amended, or rejected by voters. To put a statutory initiative or referendum on the ballot under the 1914 amendment, at least 10 percent of legal voters in the majority of North Dakota counties had to sign a petition in support of doing so. Then, the Legislative Assembly could adopt the measure, reject it, submit it to the people for a vote, or offer a counterproposal. If the Legislative Assembly took no action or rejected the measure, the measure would be placed on the ballot during the next election. If the Legislative Assembly offered a counterproposal, both the people's measure and the Legislative Assembly's counterproposal would appear on the ballot at the next election.

The process for initiated statutory measures and referenda was amended in 1918. Under the 1918 amendment to the state constitution, a statutory measure or referendum could be placed on the ballot if a petition to do so was signed by at least 10,000 electors. Legislative action was no longer required. Over the following decades, the number of signatures required to put a statutory measure or referendum on the ballot changed. As of 1978, under Section 2 of Article III of the Constitution of North Dakota, a petition for an initiated statutory measure or referendum must be signed by a number of qualified electors equal to at least 2 percent of the state population based on the most recent federal census. For the current decade, 13,452 signatures are required. For the November 8, 2016, general election, petitions had to be filed with the Secretary of State no later than July 11, 2016.

PETITION PROCESS IN NORTH DAKOTA

A petition for a referendum or initiated measure must comply with the requirements in Chapter 16.1-01. As provided in Section 2 of Article III of the Constitution of North Dakota, any petition for a referendum or initiated constitutional or statutory measure must have a sponsoring committee of 25 or more qualified North Dakota electors. Section 16.1-01-09 sets forth the form of a petition and provides the names and addresses of the sponsoring committee members must appear on the front page of the petition, and each committee member must fill out and sign an affidavit stating the member is a qualified voter and agrees to be on the sponsoring committee. The committee members also must submit financial and other types of disclosure statements.

Below the names and addresses of the sponsoring committee members, the petition must include its title, a full text of the measure, and instructions to petition signers. Section 3 of Article III of the Constitution of North Dakota and Section 16.1-01-09 provide petition signers must include the dates of their signatures, their signatures, their printed names, and their addresses on the petition. Additionally, each copy of a petition must have an attached, notarized affidavit executed by the person who circulated the petition stating each signature was executed in the circulator's presence and is a genuine signature of a qualified elector to the best of the person's knowledge. A petition may not be circulated by a person under 18 years of age.

Chapter 16.1-08.1 requires various persons, including persons engaged in activities regarding ballot measures, to file reports disclosing campaign contributions and expenditures. Section 16.1-08.1-02.4 requires political committees, including initiative and referenda sponsoring committees and any other group of persons which solicits or receives contributions or makes expenditures to aid or oppose a measure sought to be voted on, to submit:

- At least 31 days prior to an election, statements of contributions received and expenditures made from January 1 through the 40th day before the election;
- Beginning on the 39th day before the election through the day before the election, supplemental statements for contributions in excess of \$5,000, within 48 hours of receiving them; and
- Between January 1 and February 1, a statement of all contributions received and expenditures made during the prior year.

Section 16.1-08.1-02.4 contains detailed requirements for information to be included in each of the statements. Additionally, Section 16.1-08.1-03.1 sets forth special requirements for persons engaged in activities regarding ballot measures. For example, sponsoring committees must file additional statements, including statements regarding the intent to compensate petition circulators before paying the circulators. The threshold value for a reportable contribution or expenditure is \$100 for persons engaged in activities regarding ballot measures, whereas the threshold value is \$200 for other political committees. A person engaged in activities regarding ballot measures also must report additional identifying information for contributions received from out-of-state contributors and subcontributors.

If the requisite number of signatures is obtained, the sponsoring committee must submit the petition to the Secretary of State at least 120 days before a statewide election (for an initiated constitutional or statutory measure) or within 90 days after the legislation being referred was signed by the Governor and filed with the Secretary of State (for a referendum), according to Section 5 of Article III of the Constitution of North Dakota. The Secretary of State is required to determine whether the requisite signature requirement was met, and the Secretary of State's determination is subject to review by the Supreme Court. If the Secretary of State determines the petition meets the signature requirements, the Secretary of State is required to place the measure on the ballot. Section 16.1-01-17 requires the Legislative Council to determine the estimated fiscal impact of a measure approved for placement on the ballot.

Section 16.1-01-07 requires the Secretary of State to certify ballot measures to county auditors at least 55 days before the election and requires an analysis written by the Secretary of State in consultation with the Attorney General, to be published in official county newspapers for 2 consecutive weeks before the sample ballot is published. Under Section 16.1-06-09, the measure must be printed in full on the ballot unless the Secretary of State determines the measure is too long to practicably do so. If the measure is deemed too long, the Secretary of State, in consultation with the Attorney General, will prepare a concise summary of the measure and a concise statement of the effect of an affirmative or negative vote on the measure to be printed on the ballot. Section 16.1-06-09 also dictates the order in which measures will be placed on the ballot.

Section 8 of Article III of the Constitution of North Dakota states if a majority of votes cast on an initiated constitutional or statutory measure are affirmative, the measure is deemed enacted and becomes law 30 days after the election. However, if the majority of votes cast on a referendum are affirmative, the referred law is immediately void. If two measures that conflict with each other are approved, the one with the highest number of affirmative votes becomes law. If the voters approve an initiated statutory measure, the Legislative Assembly cannot repeal or amend the measure for 7 years unless two-thirds of the members of each house vote to do so.

OTHER STATES' LAWS

According to the National Conference of State Legislatures ([Appendix B](#)), 24 states have some kind of initiative process allowing residents to place statutory or constitutional measures on ballots. However, there are many differences among the laws governing initiatives in these states. Several of the states, like North Dakota, have a direct initiative process whereby residents can place an initiative on the ballot if they obtain the requisite signatures and comply with the necessary procedures. Other states use an indirect initiative process under which residents can gather signatures to submit an initiative to the state legislative body, which then has a certain length of time to act on the initiative. Depending on the state, the initiative may be placed on the ballot if the legislature does not approve it. States also differ on the votes required to pass an initiative that was placed on the ballot.

ATTACH: 2