

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 871 (Delegate McComas, *et al.*)
Rules and Executive Nominations

The Initiative

This proposed constitutional amendment reserves to the people of the State the power of the Initiative, allowing any proposed bill to add to, repeal, or amend the public general laws or the Maryland Constitution which was not approved at a regular or special session of the General Assembly to be submitted to the voters by petition for their approval or rejection.

Fiscal Summary

State Effect: If the proposed constitutional amendment is approved by the voters, the State Board of Elections (SBE) may incur increased costs for contractual staff support if enough petitions for initiatives are submitted; and increased ballot printing costs if initiative proposals are put on the ballot. The bill may also have a significant indirect impact on State finances, depending on the fiscal impact of any initiative proposals approved by voters.

Local Effect: If the proposed constitutional amendment is approved by the voters, local government expenditures are expected to increase in at least some counties to verify petition signatures for initiative petitions. Printing and postage costs could increase if initiative proposals are put on the ballot. The bill could also have a significant indirect impact on local government finances, depending on the fiscal impact of any initiative proposals approved by the voters.

Small Business Effect: None.

Analysis

Bill Summary: The bill proposes a constitutional amendment to authorize any proposed bill to add to, repeal, or amend the public general laws or the Maryland Constitution which was not approved at a regular or a special session of the General Assembly to be submitted to the voters by petition for their approval or rejection.

Before a petition is circulated for signatures, the proposal contained in the petition must be submitted to the Secretary of State and, if a summary of the proposal is included in the petition, the summary must be approved for accuracy by the Attorney General. A petition to submit to the voters of the State a proposal concerning the public general laws must be signed by a number of registered voters equal to at least 10% of the votes cast in the last election for Governor. However, no more than one-half of the signatures may be from voters in Baltimore City or any single county.

The petition must be filed with the Secretary of State within 180 days after the date of the final action on the bill by the General Assembly. The Secretary of State must certify that the petition contains the necessary number of valid signatures. If a proposal is certified by the Secretary of State at least 90 days before a general election, the proposal is submitted to the voters at that election, otherwise the proposal is submitted to the voters at the next general election.

The General Assembly must prescribe by law the form of the petition for an initiative proposal, the manner for verifying the authenticity of petitions, and other necessary administrative procedures not in conflict with the bill's requirements.

The Governor must declare a proposal to be effective if at least 50% of the votes were cast in favor of a proposal to change public general law or, in the case of a proposal to change the Constitution, at least two-thirds of the votes were cast in favor of it. A proposal is effective 30 days after the Governor's declaration.

If two or more initiative proposals receive a favorable majority and the Governor, with the advice of the Attorney General, determines that the proposals are in irreconcilable conflict, the Governor must declare only the proposal receiving the highest number of votes to be part of the public general laws or the Maryland Constitution.

A proposal that becomes part of the public general laws or the Maryland Constitution may not be amended or repealed within two years of its effective date unless the change is approved by a two-thirds vote of both houses of the General Assembly.

Current Law:

Power of Referendum

Maryland voters have the power of referendum under the Maryland Constitution, allowing legislation approved by the Governor or passed by the General Assembly over the veto of the Governor to be submitted to registered voters by petition, for approval or rejection. A petition must be signed by 3% of registered voters who cast votes for Governor in the preceding gubernatorial election, of whom not more than half are residents of Baltimore City or a single county. A petition proposing to submit legislation amending public local laws to a referendum must be signed by 10% of registered voters in the affected county or Baltimore City based on the number of registered voters in that jurisdiction that cast votes for Governor in the last gubernatorial election.

Constitutional Amendments

Upon passage by three-fifths of all the members in each of the two houses of the General Assembly, constitutional amendments are submitted to the registered voters of Maryland to adopt or reject by a majority. A constitutional amendment that affects only one county or Baltimore City must receive a majority of votes from voters statewide as well as in the affected county or Baltimore City.

Background: Twenty-four states currently have an initiative process in their constitutions. Mississippi is the most recent state to have adopted an initiative process, having done so in 1992. The initiative processes of these states generally include the following steps:

- preliminary filing of a proposal with a state official;
- review of the proposal for conformance with statutory requirements;
- preparation of a ballot title and summary;
- circulation of a petition to obtain signatures generally from a percentage of votes cast for a statewide office in the preceding general election; and
- submission of the petition to the state election official for verification of the number of signatures.

There are generally two types of initiative processes, a direct initiative process, in which a qualifying proposal is put directly on the ballot, and an indirect initiative process, in which a qualifying proposal is submitted to the state legislature which may take action with respect to the proposal to differing extents, depending on the state. In some states, the legislature has the opportunity to act on the proposal, or in some states the legislature may submit a competing proposal to be included on the ballot.

Arizona, California, Colorado, Oregon, and Washington, have some of the most active initiative processes.

State Fiscal Effect: If the proposed constitutional amendment is approved by the voters, SBE may incur increased costs for contractual staff support if enough petitions for initiatives were submitted and increased ballot printing costs if initiative proposals are put on the ballot, as discussed below. The initiative process would also allow changes to be made in the law that could significantly affect State and local government finances outside of the control of the General Assembly. The bill could therefore have a significant indirect impact on State finances.

The current referendum process is similar to the basic initiative process outlined in the bill. Both contain three basic phases: (1) preparation and review of the proposal; (2) gathering of signatures; and (3) verification of signatures and certification of the proposal for inclusion on a ballot.

SBE devotes numerous hours to each petition drive assisting the sponsor; numbering, sorting, packaging, and mailing the petition to local boards of election for verification of signatures; communicating with local boards of elections and Attorney General staff; and creating and posting results reports on the Internet. If more than a limited number of petitions are submitted in a given year, SBE may require additional contractual staff support. The review of proposal summaries could be handled within existing resources of the Office of the Attorney General.

The bill provides that if the Secretary of State determines that a petition contains the requisite number of valid signatures, the Secretary must certify the proposal for a vote, and that the General Assembly must prescribe the manner for verifying the authenticity of petitions. Presumably, signatures would be verified in the same manner as they currently are in the referendum process, in which the Secretary of State delivers a petition to SBE (in accordance with State law) which in turn distributes the respective portions of the petition (as directed by SBE regulations, signatures are ideally recorded separately and sorted by local jurisdiction) to local boards to verify the signatures. The initiative process would impose a significantly larger signature verification burden than the referendum process, requiring signatures of 10% of voters as opposed to 3%, yet local election boards should bear most of that burden.

State expenditures could also be affected by increases in ballot printing costs for absentee and provisional ballots, which SBE shares with the local boards of elections, in the event an initiative petition was certified and the proposal put on the ballot. Without knowing the number of initiative petitions that would be certified and whether the size of a ballot would need to be increased or whether an additional ballot card would be needed, the extent to which costs would increase cannot be reliably estimated. If the State acquires a

new, paper-based voting system (in accordance with Chapters 547 and 548 of 2007 and Chapter 428 of 2009), the magnitude of paper ballot printing cost increases would be greater.

Costs Relating to Proposed Constitutional Amendment

State costs of printing absentee and provisional ballots may increase to the extent inclusion of this proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). Any increase in costs, however, is expected to be relatively minimal, and it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Fiscal Effect: Local government expenditures are expected to increase in at least some counties to verify petition signatures for initiative petitions. Printing and postage costs could increase if initiative proposals are put on the ballot. As mentioned above with respect to the State Fiscal Effect, the bill could also have a significant indirect impact on local government finances, depending on the fiscal impact of any initiative proposals approved by the voters.

Local boards of election would be responsible for verifying the roughly 186,000 signatures per petition that would need to be gathered to meet the 10% requirement (based on number of voters in the 2010 gubernatorial election). At least some local boards of elections incur temporary staff and overtime costs to verify petitions. Montgomery County, for example, incurred temporary staff and overtime costs of \$33,000 for a recent petition verification.

Local expenditures could also be affected by increases in costs of printing and postage for absentee, provisional, and specimen ballots (mailed to each registered active voter prior to an election), in the event an initiative petition was certified and the proposal put on the ballot. Without knowing the number of initiative petitions that would be certified and whether the size of a ballot would need to be increased or whether an additional ballot card would be needed, the extent to which costs would increase cannot be reliably estimated. If the State acquires a new, paper-based voting system (in accordance with Chapters 547 and 548 of 2007 and Chapter 428 of 2009), the magnitude of paper ballot printing cost increases would be greater.

Costs Relating to Proposed Constitutional Amendment

Local boards of elections' printing and mailing costs may increase to include information on this proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on absentee and provisional ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

Additional Information

Prior Introductions: SB 487 of 2007 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. HB 1667 of 2006 was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: None.

Information Source(s): State Board of Elections; Office of the Attorney General; Secretary of State; Department of Budget and Management; Baltimore City; Frederick, Montgomery, and Prince George's counties; National Conference of State Legislatures; Department of Legislative Services

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