

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1667 (Delegate McComas, *et al.*)
Rules and Executive Nominations

The Initiative

This bill proposes a constitutional amendment to authorize the submission to the voters at the polls by petition (also known as an initiative) any proposed bill to add to, repeal, or amend the public general laws or the Maryland Constitution that was not approved at a regular or a special session of the General Assembly.

Fiscal Summary

State Effect: If a limited number of initiatives are pursued, the bill's requirements could be handled with existing State Board of Elections (SBE) resources, and it is assumed review of any proposal summaries could be handled within the existing resources of the Office of the Attorney General. In the event a significant number of initiatives are pursued, SBE may require additional contractual staff.

Local Effect: Local government expenditures may increase prior to statewide general elections to provide for signature verification for each petition. Absentee, provisional, and specimen ballot printing and postage costs may also increase.

Small Business Effect: None.

Analysis

Bill Summary: 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, approved for accuracy by the Attorney General. A petition must contain signatures in a number equal to at least 10% of the votes cast for Governor in the last gubernatorial election. 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.

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. 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 City of Baltimore 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 the City of Baltimore must receive a majority of votes from voters statewide as well as in the affected county or the City of Baltimore.

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 a sufficient number of initiatives are pursued, State expenditures could increase prior to statewide general elections.

The current referendum process, which has not been used extensively in Maryland, with roughly eight referendum proposals having been initiated in the past 10 years (none of which made it through the process to be certified and put on the ballot), 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 advises that assisting petition sponsors with the preparation of a proposal and guiding them through the referendum process can take approximately 40 hours of SBE staff time and additional time for the Office of the Attorney General to review any summary of each proposal. If a limited number of petitions are pursued in each election year, SBE could handle the additional work with existing resources; however, if a large number of initiatives are pursued, SBE may require additional contractual staff support. Legislative Services assumes the review of proposal summaries could be handled within existing resources of the Office of the Attorney General. Any updates to documentation

and SBE's web site needed in relation to the initiative process could be handled with existing resources.

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, requiring signatures of 10% of voters as opposed to 3%, yet local election boards should bear most of that burden.

Local Fiscal Effect: Some counties have indicated the bill's changes could be handled with existing resources, while others have indicated an increase in expenditures prior to statewide general elections. The extent to which local expenditures could increase would primarily depend on the number of initiatives pursued each year and how far each initiative makes it through the process.

Local boards of election would be responsible for verifying the roughly 171,000 signatures per petition that would need to be gathered to meet the 10% requirement (based on number of voters in the 2002 gubernatorial election). The signatures on a petition are required under State law to be verified and counted within 20 days of the filing of the petition. If a large number of petitions are filed in a short time period, local boards may experience increased expenditures due to increased staff time needed to meet the 20-day time limit for each petition. *For illustrative purposes only*, the Montgomery County Board of Elections estimates, based on past experience verifying petition signatures and the bill's 10% signature requirement, that verifying signatures for an initiative petition would take a staff of eight administrative aides, an office services coordinator, and an office manager roughly 10 days. In the board's experience, petitions have come in during peak voter registration processing times prior to elections and are generally given priority, in part due to the 20-day time limit. If more than a limited number of petitions were submitted, the board could incur increased costs due to the need to pay overtime to existing staff or hire additional temporary staff to complete voter registration processing and other documentation verification that was set aside for petition signature verification.

Under State law, with the approval of SBE, where a local board must verify more than 500 signatures, the board may verify a random sample of 500 signatures or 5% of the total number of signatures required to be verified by the local board, whichever is greater.

The ability to verify signatures by random sampling could lessen the amount of work for local boards. SBE advises random sampling would be possible for noncontroversial initiatives, yet controversial issues may require full signature verification in anticipation of legal challenges.

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 how many extra pages might be added to a ballot, the extent to which costs would increase cannot be accurately estimated.

It is anticipated that the fiscal 2007 budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2006 general election in newspapers or on specimen ballots.

Additional Information

Prior Introductions: HB 951 of 1998, an almost identical bill, received an unfavorable report from the House Commerce and Government Matters Committee.

Cross File: None.

Information Source(s): Secretary of State; Wicomico County; Allegany County; Montgomery County; Prince George's County; Talbot County; Maryland State Board of Elections; Baltimore City; Office of the Attorney General; National Conference of State Legislatures; Bowser, Jennifer Drage, National Conference of State Legislatures, *Legis Brief: Reforming the Initiative Process*, Vol. 10, No. 16 (March 2002); Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2006
ncs/jr

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