Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 40 (Delegate Smigiel)
Appropriations

Maryland Constitution - Laws Making an Appropriation Made Subject to Petition Referendum

This constitutional amendment allows a law making an appropriation for maintaining State government, or a law making an appropriation for maintaining or aiding any public institution not exceeding the next previous appropriation for the same purpose, to be petitioned to referendum.

Fiscal Summary

State Effect: If approved by the voters, the constitutional amendment may significantly affect the financing and services of State government, but to what extent cannot be reliably estimated.

Local Effect: If approved by the voters, the constitutional amendment may significantly affect the financing and services of local governments, but to what extent cannot be reliably estimated.

Small Business Effect: Minimal.

Analysis

Current Law: Article XVI of the Maryland Constitution reserves to the people the power of referendum, to petition to have legislation, whether approved by the Governor or passed by the General Assembly over the Governor's veto, submitted to the registered voters of the State to approve or reject at the polls.

Article XVI, §2, however, excludes from the referendum two categories of legislation: (1) "law[s] making any appropriation for maintaining the State Government," and (2) laws "for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose." The Court of Appeals of Maryland interprets the first exception to prevent referendum of any item of appropriation or revenue measure, regardless of whether an appropriation represents an increase over the prior budget. (*Kelly v. Marylanders for Sports Sanity, Inc.*, 310 Md. 437 (1987); *Bayne v. Secretary of State*, 283 Md. 560 (1978); *Dorsey v. Petrott*, 178 Md. 230 (1940).)

Under the second exception, while laws increasing the funding to "public institutions" may be subject to referendum, laws that maintain consistent funding to such institutions may not. Moreover, the phrase "public institutions" is interpreted to mean State-aided but not State-operated educational and eleemosynary institutions. (12 *Opinions of the Attorney General* 228 (1927).)

Background: The National Conference of State Legislatures indicates that just under half of the 50 states have popular referendum processes. Among those states, most specifically restrict the use of the referendum with respect to appropriations in some manner, though some do not. Arkansas, Idaho, and Nevada, for example, do not have any specified restrictions on their referendum processes. The Arkansas Constitution specifically states that "any item of an appropriation bill" is subject to referendum. Four states (Maine, Oregon, Oklahoma, and Utah) do not allow emergency legislation (which may or may not include appropriations) to be petitioned to referendum.

Spending Affordability

Since 1982, the General Assembly has employed a "spending affordability" process. The Spending Affordability Committee consists of 20 legislative members including the presiding officers, the majority and minority leaders, the chairs of the fiscal committees (or their designees), and other members appointed by the Presiding Officers. A four-member citizen advisory committee assists the committee.

The committee's primary responsibility is to recommend to the Governor and the General Assembly a level of spending for the State operating budget that is reflective of the current and prospective condition of the State's economy. Consideration is given to constraining disproportionate growth in State-funded expenditures in any fiscal year which might necessitate or "build in" unsupportable levels of spending in future years.

The Department of Legislative Services prepares a "September Forecast" for the committee that contains an estimate of projected revenues and expenditures for the upcoming fiscal year. The committee reviews these projections and the status of the State economy. By statute, the committee must report to the Legislative Policy

Committee by December 1 of each year with recommendations for fiscal goals for the budget to be considered at the next session of the General Assembly. This report includes the following types of recommendations:

- a level of State spending;
- a level of new debt authorization;
- a level of State personnel; and
- the use of anticipated surplus, if any.

The committee may make other appropriate findings and recommendations. By statute, if committee recommendations with respect to State spending exceed the annual increase in relevant economic indicators, the committee must provide an analysis as to the extent the recommendations exceed such indicators. Similarly, if the Governor submits a budget request in excess of the amounts recommended by the Spending Affordability Committee, the Governor must explain the rationale for exceeding the recommendations. The budget committees must also provide an explanation for any amounts exceeding Spending Affordability Committee recommendations that are presented to the Senate and House of Delegates for consideration.

The committee's statutory responsibility is to consider spending growth in relation to growth anticipated in the State's economy. In its review of the State's economy, the committee considers both income and wealth factors in developing a broad understanding of Maryland's economic position. In determining the spending limit, the committee considers economic performance, revenue estimates, and budget requirements.

State Fiscal Effect: If approved by the voters, the constitutional amendment may significantly affect the financing and services of State government, but to what extent cannot be reliably estimated. The potential for an appropriation or revenue measure to be petitioned to referendum and subsequently repealed may affect State finances and services due to the loss of State government control of the State's budget and finances, specific budgetary or revenue changes, and any related expenses that might be incurred to account for a change. It is unclear how this amendment could affect the annual State budget bill. Unlike other legislation under the constitution, the State budget bill goes into effect immediately upon passage by the General Assembly.

To the extent the amendment will increase the number of petitions submitted for verification, the operations of the State and local boards of elections and the Office of the Attorney General (which reviews petitions and provides legal advice) will be affected. According to the State Board of Elections (SBE), a statewide referendum petition currently requires 53,650 valid signatures of registered voters (3% of registered voters who cast votes for Governor in the preceding gubernatorial election). It is recommended that a petition sponsor collect an additional 20% of signatures. SBE therefore would expect to review 60,000 to 70,000 signatures for each petition effort. SBE estimates that 1,225 State and local board of elections office hours are devoted to each petition.

Local Fiscal Effect: If approved by the voters, the constitutional amendment may significantly affect the financing and services of local governments to the extent laws petitioned to referendum affect State aid to local governments or otherwise affect local government finances and services. Any impact cannot be reliably estimated.

As mentioned above, to the extent the amendment increases the number of petitions submitted, the operations of local boards of elections are affected. Legislative Services anticipates that the budgets of local boards of elections contain funding for notifying qualified voters about proposed constitutional amendments for the 2010 general election in newspapers or on specimen ballots.

Additional Information

Prior Introductions: None.

Cross File: SB 755 (Senator Pipkin) – Budget and Taxation

Information Source(s): Department of Budget and Management, Office of the Comptroller, State Board of Elections, Office of the Attorney General, Department of Legislative Services

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