

Department of Legislative Services
2012 Session

FISCAL AND POLICY NOTE

House Bill 43
Appropriations

(Delegate Smigiel, *et al.*)

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

This proposed 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 affirm or repeal 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 (NCSL) indicates that 23 states, including Maryland, have popular referendum processes that allow voters to affirm or repeal measures passed by the state legislatures. Of those, three (Arkansas, Idaho, and Nevada) 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. According to NCSL, those three states have not had any appropriation or revenue bills petitioned to referendum since 2007. Four states (Maine, Oregon, Oklahoma, and Utah) do not allow emergency legislation (which may or may not include appropriations) to be petitioned to referendum.

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; further, measures that provide State matching funds for federal funds may result in the loss of federal funds if they are repealed at referendum. 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 that the amendment causes revenue measures to be repealed at referendum, the Comptroller’s Office may incur additional costs to print and distribute notices informing affected taxpayers of their repeal. These costs can range from approximately \$4,000 to \$110,000 per class of taxpayer affected, depending on the measure affected. Additional computer costs may also be incurred to program changes that reflect the repeal of revenue measures.

To the extent the amendment increases 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) are affected. According to the State Board of Elections (SBE), a statewide referendum petition currently requires 55,736 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 1,297 State and local board of elections office hours are devoted to each petition.

State costs of printing absentee and provisional ballots may increase to the extent inclusion of the 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 SBE's budget. Pursuant to Chapter 564 of 2001, SBE shares the costs of printing paper ballots with the local boards of elections.

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. Local boards of elections' printing and mailing costs may increase to include information on the 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: HB 10 of 2011 and HB 31 of 2010 received unfavorable reports from the House Appropriations Committee. In addition, similar bills were introduced in the 2009 session.

Cross File: None.

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

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Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510