OHIO CONSTITUTIONAL REVISION COMMISSION

RECOMMENDATIONS FOR AMENDMENTS TO THE OHIO CONSTITUTION

PART 9

INITIATIVE AND REFERENDUM

MARCH 15, 1975
OHIO CONSTITUTIONAL REVISION COMMISSION
41 SOUTH HIGH STREET
COLUMBUS, OHIO 43215

STATE OF OHIO

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graphics
CORPORATION

Ohio Constitutional Revision Commission

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Ann M. Eriksson, *Director*

April 1, 1975

To: The General Assembly of the State of Ohio

Submitted herewith is Part 9 of the Constitutional Revision Commission's report to the General Assembly, containing recommendations for the initiative and referendum provisions of the Ohio Constitution. A summary of this report was submitted earlier this year.

The initiative and referendum provisions are complicated because they are basically statutory detail in the Constitution. Ordinarily, the Commission is opposed to such detail, believing that only very basic matters should be included in the Constitution with the implementation of the constitutional framework left to the General Assembly. In the case of the initiative and referendum, however, the Commission felt that the desire of the original drafters of these sections to have them be as nearly self-executing as possible was sound policy and should be continued.

We studied the provisions carefully, and are recommending some changes. The basic powers reserved to the people, however, remain the same. Our effort has been to clarify language and simplify procedures wherever possible.

Very truly yours,

Richard H. Carter

Richard H. Carter
Chairman

RHC/ba

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INTRODUCTION

The initiative and referendum powers, often called "direct legislation", permit the people to propose laws and constitutional amendments for consideration by the electorate or to veto laws enacted by the legislative body. If applicable state law so permits, a proposal for a law or constitutional amendment is made by petition either directly, with the proposal appearing on the ballot without any intervening requirements, or indirectly, with presentation of the petition first to the legislature. If the legislature enacts the law, the petitioners have accomplished their objective. If the legislature fails to act or acts in a way unsatisfactory to the petitioners, they then have the right (usually by filing another petition with additional signatures) to have the proposed law placed on the ballot for approval or rejection by the voters.

In Ohio, constitutional amendments may be directly initiated by the people, and laws may be indirectly initiated; there are no provisions for doing either the other way.

South Dakota, in 1898, was the first state to include in its constitution a provision for direct legislation, permitting the use of the initiative and referendum for statutes. In the years from 1900 to 1909, six states[1] followed the example of South Dakota, and four of these states[2] extended the initiative provisions to include amendments to their state constitutions.

Between 1910 and 1915, the so-called "progressive era", twelve states, including Ohio, adopted the initiative and referendum. Since 1918, only two states, Alaska and Massachusetts, have added the initiative and referendum to their constitutions, and most recently, Illinois has added an initiative provision for constitutional amendments relating only to the Legislative Article of the new Illinois Constitution (1970).

The demand for the initiative and referendum arose from a crusade by various Populist movements prominent in the political scene in the 1890's and early 1900's. Numerous exposés of corruption in government raised a popular clamor to "turn the rascals out", instilling a widespread distrust of the usual legislative processes. The progressive movement of the 1900's, which was reflected in the 1912 Constitutional Convention of Ohio, placed great stress on the initiative, referendum and recall. Most delegates elected to the convention had taken a position on the initiative and referendum prior to their election, and substantially more than a majority had been recorded in favor of the direct legislation provisions. In spite of this, controversy about the specific provisions occupied the greatest amount of convention time of any subject, with the more radical delegates attempting to make the provision completely self-executing and as easy as possible for petitioners to reach the ballot, and the more conservative members attempting to write "safeguards" into the process to increase the difficulty of achieving success. Both sides of the controversy had some successes and some failures, and the resulting provisions in the Ohio Constitution were a compromise between two extremes.

Since adoption of the initiative and referendum provisions in 1912, issues have been placed on the ballot by initiative 43 times, 32 of which proposed constitutional amendments. Of the 11 initiated laws appearing on the ballot, five were passed and six defeated by the voters. In addition, at least three times petitions have been filed proposing laws which were placed before the General Assembly. In one case, the General Assembly passed the law; in the other two, although the General Assembly did not pass the law, the matter was not taken to the voters by the petitioners. Of the 32 initiated constitutional amendments since 1912, 23 have been defeated and nine have been adopted.

Ten laws passed by the General Assembly have been taken to the voters under the referendum provisions. Only once has the General Assembly's action been upheld by the voters. The referendum has not been used in Ohio since 1939.

The initiative, however, continues to be used. At the November, 1972, general election an initiated constitutional amendment was before the voters; it was defeated. The last election at which an initiated law appeared on the ballot was in 1965, but as recently as 1971 an initiative petition for a law was filed with the General Assembly.

The Constitutional Revision Commission, in its consideration of the initiative and referendum provisions and the problems that have occurred over the years in implementing and using them, discussed the basic question whether the Ohio Constitution should contain initiative and referendum provisions at all. The conculsion was that it should, and that they should be, as far as possible, self-executing. Initiative and referendum have not been a panacea for the solution of all societal and governmental problems, but neither have they resulted in the destruction of representative government as their opponents, more than 60 years ago, argued they would. These processes have been used with restraint by Ohioans in the past, and there seemed to be no reason why they should not continue to be available in the future.

In view of these conclusions, the Commission believes it wise to remove some of the administrative obstacles and needless "safeguards" written into the Ohio provision which frustrate use of the

1—Utah, Oregon, Montana, Oklahoma, Maine, Missouri.
2—Utah, Oregon, Oklahoma, Missouri.

initiative and referendum processes. The proposals contained in this report retain the basic features of the present provisions, make a few substantive changes, and clarify both the procedures and the language of the provisions. One such change would alter the method of determining the number of signatures required on an initiative or referendum petition. Present provisions establish the requirement as a percentage of the number who voted for governor at the preceding gubernatorial election. The proposal fixes the number of required signatures in the Constitution. The Commission debated the advantages and disadvantages of both methods and concluded to recommend a fixed number because it is easier to ascertain and apply than a percentage, moreover, it does not make the possible success of a petition depend on the number of voters who turned out at a particular election, which number varies widely depending on the issues, offices, and personalities on the ballot in a particular year. The Commission concluded that the purpose of requiring signatures on a petition is not to indicate that a given proportion of voters is concerned, since any selected percentage is arbitrary, but to indicate that a substantial number of electors wish to take a matter to the ballot for all to vote on. Another change is the removal of the requirement that signatures on petitions must come from half of the counties in the state—44 counties. This "safeguard", one of the compromises of the 1912 Constitutional Convention, is being recommended for removal because the Commission does not believe that the signature of a resident of one county should be given greater weight than the signature of a resident of another county.

The Commission gratefully acknowledges the assistance and suggestions of the office of the Secretary of State in the study and deliberations that led to these recommendations.

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MARCH 15, 1975

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RECOMMENDATIONS

ARTICLE II

Section 1

Present Constitution

Section 1. The legislative power of the state shall be vested in a General Assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the General Assembly, except as hereinafter provided; and independent of the General Assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

Commission Recommendation

Section 1. The legislative power of the state shall be vested in a General Assembly consisting of a senate and house of representatives but the people reserve to themselves the power of initiative and referendum as provided in Article XIV of this Contitution.

Commission Recommendation

The Commission recommends the amendment of Article II, Section 1 as follows:

Section 1. The legislative power of the state shall be vested in a General Assembly consisting of a senate and house of representatives but the people reserve to themselves the power OF INITIATIVE AND REFERENDUM AS PROVIDED IN ARTICLE XIV OF THIS CONSTITUTION ~~To propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the General Assembly, except as hereinafter provided, and independent of the General Assembly to propose amendments to the Constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.~~

History and Background of Section

Section 1 of Article II vests the state's legislative power in the General Assembly. It was amended in 1912 to grant the rights of initiative and referendum to the people. The amendment, proposed by the 1912 Constitutional Convention, gave the people the right to propose constitutional amendments to be adopted or rejected at the polls, to propose laws to the General Assembly which could subsequently be taken to the people if the General Assembly failed to act in a manner satisfactory to the sponsors, and to refer to the people laws passed by the General Assembly for approval or rejection by the voters. The section appears to permit constitutional amendments to be submitted to the General Assembly by the people, but related constitutional provisions do not contain the necessary provisions for use of such procedure.

The power of the people to enact laws is limited by the same constitutional limitations as those applicable to the power of the General Assembly to enact laws.

Effect of Change

The Commission recommends that the initiative and referendum provisions be removed from Article II and re-enacted with changes in a

separate article of the Constitution; Article XIV, vacant since 1953, was selected for this purpose. The proposed amendment to Section 1 of Article II will remove the description of the reserved powers and refer, instead, to Article XIV. All the provisions being deleted in Section 1, including the final sentence which places the same limitations on the people to enact laws as are imposed by the Constitution on the General Assembly, are re-enacted without substantive change in Article XIV.

Rationale for Change

The Commission, viewing the entire body of constitutional language on the initiative and referendum concluded that the provisions were confusing and in need of revision. The Commission's objective was two-fold: to delineate clearly the legislative powers of the people, and to clarify the procedures by editing and updating the language.

No substantive change is contemplated in the proposed amendment of Section 1 of Article II. The people would retain the power to initiate constitutional amendments directly; to initiate statutes indirectly (initially proposing a law to the General Assembly which can then be taken to the voters if the sponsors are not satisfied with the legislature's action), and to refer to the voters for approval or rejection most types of enactments of the General Assembly. (Laws not subject to the referendum are discussed following in Section 1d.) The present language concerning indirect initiative for constitutional amendments, not effectuated elsewhere in the Constitution, has been dropped. The Commission saw no need for such a procedure.

Intent of the Commission

The Commission contemplates no substantive changes by the proposed amendment of Section 1. The suggested language changes and re-arrangement of sections are designed to achieve greater clarity and simplicity.

ARTICLE II

Section 1a

Present Constitution
Article II, Section 1a

Section 1a. The first aforestated power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors."

Commission Recommendation
Article XIV, Section 1

Section 1. The submission of a proposed amendment to this Constitution directly to the electors may be demanded by an initiative petition having printed across the top "Petition for an Amendment to the Constitution to be Submitted Directly to the Voters", signed by two hundred fifty thousand electors, certified as provided in Section 6 of this Article and filed with the secretary of state. The secretary shall submit the proposed amendment to the electors at the next succeeding general election, or at a special election on the date fixed by law for holding the primary election, whichever is earlier, occurring subsequent to one hundred twenty days after the filing of the petition. If the amendment is adopted by a majority of the electors voting on it, it becomes a part of the Constitution and shall be published by the secretary of state.

Commission Recommendation

The Commission recommends the repeal of Section 1a of Article II and the enactment of a new Section 1 in Article XIV with parallel provisions as follows:

Article XIV

Section 1. THE SUBMISSION OF A PROPOSED AMENDMENT TO THIS CONSTITUTION DIRECTLY TO THE ELECTORS MAY BE DEMANDED BY AN INITIATIVE PETITION HAVING PRINTED ACROSS THE TOP "PETITION FOR AN AMENDMENT TO THE CONSTITUTION TO BE SUBMITTED DIRECTLY TO THE VOTERS", SIGNED BY TWO HUNDRED FIFTY THOUSAND ELECTORS, CERTIFIED AS PROVIDED IN SECTION 6 OF THIS ARTICLE AND FILED WITH THE SECRETARY OF STATE. THE SECRETARY SHALL SUBMIT THE PROPOSED AMENDMENT TO THE ELECTORS AT THE NEXT SUCCEEDING GENERAL ELECTION, OR AT A SPECIAL ELECTION ON THE DATE FIXED BY LAW FOR HOLDING THE PRIMARY ELECTION, WHICHEVER IS EARLIER, OCCURRING SUBSEQUENT TO ONE HUNDRED TWENTY DAYS AFTER THE FILING OF THE PETITION. IF THE AMENDMENT IS ADOPTED BY A MAJORITY OF THE ELECTORS VOTING ON IT, IT BECOMES A PART OF THE CONSTITUTION AND SHALL BE PUBLISHED BY THE SECRETARY OF STATE.

History and Background of Section

Section 1a was added to the Constitution in 1912 and has not been amended. It sets forth the basic provisions regarding the constitutional amendment initiative. The procedure for submitting a petition to place an initiated amendment on the ballot is described, and the submission is direct, that is, there is no requirement for first submitting the matter to the General Assembly. The number of signatures required to qualify a petition is 10% of the electors. The proposal is submitted at the 'regular or general' election 'in any year', subsequent to 90 days after the petition is filed. Specific details concerning the petition and signatures are presently in Section 1g of Article II, including the fact that "electors" means the number voting for governor at the preceding gubernatorial election.

Proponents of the initiative and referendum at the 1912 Constitutional Convention argued that a fixed number of signatures, rather than a percentage of electors, should be required for submission of questions to the people. In 1939, a proposed constitutional amendment was submitted to the electors which would have, among other things, provided for the substitution of a fixed number of signatures—100,000 for submission of an initiated constitutional amendment for the 10% of electors requirement. The amendment contained a provision whereby proposed laws would be submitted directly to the voters without first being submitted to the Legislature, and also required the signatures of 50,000 electors for an initiative petition proposing a law. The measure was defeated.

The "90 day" provision has been the subject of several cases and Attorney General opinions. The election must be subsequent to 90 days after filing, counting the day of filing as the first day (**Thrailkill v. Smith,** 106 Ohio St. 1 (1922)). The determination of the validity of signatures and sufficiency of the petition must be made within the 90-day period. If there are not enough valid signatures, the sponsors are given an additional 10 days to obtain them, which fall within the 90-day period.

An undetermined matter in the present section is the meaning of a "regular or general" election. A general election occurs on the first Tuesday after the first Monday in November in every year, but it is not clear whether "regular" was intended merely as another term for "general" or whether it was intended to mean any election occurring regularly, such as a primary election. Section 1 of Article XIV authorizes the General Assembly to submit legislatively proposed constitutional amendments at a "general or a special" election—the term "regular" is not used.

The phrase "in any year" has been interpreted by the Attorney General to mean the year in which the petition is filed (1949 OAG 753). This ruling does not raise the problems for constitutional amendment that it does for initiated laws or the referendum, as will be discussed in greater detail in later commentary.

Effect of Change

All sections of Article XIV were repealed in 1953. The Commission recommends the enactment of the revised initiative and referendum sections as Article XIV. Section 1a of Article II will be re-enacted, as rewritten, as Section 1 of Article XIV.

The right of the people to place proposed constitutional amendments on the ballot is retained in the Commission recommendation. The signature requirement would be changed from 10% of those who voted for governor at the last gubernatorial election, to a fixed number of 250,000 signatures. Amendments could be submitted at either a general or primary election occurring subsequent to 120 days after the filing of the petition, whichever is earlier. The language has been revised to make it clearer and more understandable. The voter seeking information on how to submit an initiated constitutional amendment will be able to determine more easily what is required of him. The elimination of the "full text" requirement and the requirement of verification is discussed following Section 1g (proposed new Section 6).

Rationale for Change

Early in its discussion of the initiative and referendum, the committee concluded that if the provisions warranted substantive changes, they should be entirely rewritten in order to simplify and clarify the language. This section and the following sections have been reworded and rearranged. The Commission believes that the proposed language and organization will make it easier for persons wishing to use the initiative and referendum to find out precisely what they must do solely from the Constitution. The proposed revision of Section 1a and the sections following will also simplify the administrative process and lessen the necessity for Attorney General or court rulings on various procedural aspects. The Commission recommendation attempts to place all provisions applicable to a specific process: i.e., constitutional amendment; statutory initiative; referendum; each in a separate section, with rules of construction applicable to all of the processes in a separate section, and all procedural provisions applicable to all three procedures in a separate section.

One of the changes in this section, common to all three processes, is the expression of the number of signatures required on a petition in terms of a fixed number rather than a percentage. In this instance, the proposed section replaces the requirement that 10% of those voting for governor at the last gubernatorial election sign a petition proposing a constitutional amendment would be replaced with a requirement of 250,000 signatures. The signature requirement was one of the most controversial topics in the 1912 initiative and referendum debates. The discussion of the problem by the Elections and Suffrage Committee, and later, by the full Commission, revealed that the matter is still controversial.

Those who favored a percentage, whether of the previous vote for governor or some other base, argued that the number of signatures is thereby related to growth or decline in population (or in the number of voters—depending on the base used).

Those who favored a fixed number contended that there is no need to tie the number of signatures to the size of the electorate or population, because the only purpose of the requirement is to insure that a substantial number of voters want an issue placed before the General Assembly or

the electorate before officials go to the trouble to do so. Ultimately, it is all the voters who decide the substantive issue in question. Under the present arrangement the number of signatures varies not according to the size of the electorate, but accidentally according to the controversiality of the candidates or issues in a previous election. A fixed number avoids this arbitrary fluctuation and also has the advantage of permitting those wanting to use the process to ascertain how many signatures are needed by simply reading the provision.

The Commission, after lengthy debate, determined to recommend a fixed number of signatures. Most writers on the initiative and referendum agree that it should be more difficult to place a constitutional amendment on the ballot than to place an initiated or referred law before the voters, and this concept is reflected in the fact that nearly all states require more signatures for a constitutional amendment petition than for one proposing or referring a statute. The present Ohio requirement of 10% of the previous vote for governor, using the vote cast at the 1970 gubernatorial election, converts to 318,413 as the actual number of signatures required. The number of signatures required on an average of the last thirteen gubernatorial elections would be 297,000 signatures. The Commission selected a signature requirement of 250,000 signatures to qualify a petition proposing a constitutional amendment as a reasonable number, and the requirement for petition signatures for initiated laws and referred laws have roughly the same relationship to the constitutional amendment requirement as do the present percentage requirements.

Other changes in this section which are common to all the processes are that petitions must be certified rather than verified (explained in proposed new Section 6) and that initiated and referred measures may be placed on the ballot at a primary election as well as at a general election. Presently, such matters may be placed only on the general election ballot "in any year", interpreted to mean the year in which the petition is filed. Because legislative sessions are longer today than in 1912 and because the Commission is recommending that the length of time before the election for filing be increased, it would be impossible, under certain circumstances, ever to reach the general election ballot with a referendum or supplementary initiated statute petition. Although these time pressures are not applicable to initiated constitutional amendments, which do not have to be presented first to the General Assembly, the Commission considered that the procedures should be kept consistent; it also saw no reason why initiated constitutional issues should not go on the ballot at the primary election, especially since legislatively proposed constitutional amendments may be placed on the primary election ballot. The Commission also recommends the elimination of the language "in any year". The Commission recommends that the matter be placed on the ballot at the next general or primary election occurring subsequent to 120 days after filing, without regard to whether the election occurs in the following year.

The time for filing petitions for constitutional amendments is presently 90 days before the election. The Commission recommends that the time be extended to 120 days, consistent with the newly adopted provisions of Section 1 of Article XVI regarding legislatively proposed constitutional amendments. The additional time will provide a greater opportunity for proper challenges, absentee voting, and preparation of ballot language and arguments.

The elimination of the requirement for the "full text" of the proposal to appear in the petition is explained in proposed new Section 6.

Intent of the Commission

The rewording and rearrangement of the initiative and referendum provisions in the Commission's opinion, clarifies the procedures for the

person wishing to use the processes. The changes recommended in this section are not intended to make substantive changes in the power to place initiated constitutional amendments directly on the ballot. The Commission believes that the change in signature requirements, deadlines and petition requirements will remove unnecessary procedural barriers. The Commission believes, however, that the constitutional initiative process should and does remain sufficiently difficult to prevent the capricious submission of matters to the voters.

ARTICLE II

Section 1b

Present Constitution
Article II, Section 1b

Section 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in 1a and 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the vote of the governor.

Commission Recommendation
Article XIV, Section 2

Section 2. (A) The submission of a proposed law to the general assembly may be demanded by an initiative petition having printed across the top "Petition for a Law to be Submitted to the General Assembly", signed by one hundred thousand electors, certified as provided in Section 6 of this Article, and filed with the secretary of state. The secretary shall transmit the full text of the proposed law forthwith to the general assembly.

A law proposed by initiative petition shall not be proposed nor enacted by the general assembly as an emergency measure. If a law proposed by initiative petition becomes law, either as proposed or in amended form, it shall be treated as in law originating in the general assembly, except that, if the proposed law is amended by the general assembly and becomes law, and if a supplementary petition is filed as provided in this section, the law enacted by the general assembly shall take effect only if the law proposed by a supplementary petition is rejected by a majority of the electors voting thereon.

If, within six months from the time the proposal is received by the general assembly, the proposed law has not become law as proposed, its submission to electors may be demanded by one or more supplementary petitions having printed across the top "Supplementary Petition for a Law First Considered by the General Assembly", signed by seventy-five thousand electors, certified as provided in Section 6 of this Article, and filed with the secretary of state within ninety days after the expiration of the six months except that if the proposed law has become law in amended form, the supplementary petition shall be filed within ninety days after the amended law has been filed with the secretary of state. A supplementary petition may demand submission of the proposed law either as first proposed or with one or more of the amendments which have been incorporated therein by either or both houses of the general assembly.

(B) Upon the filing of a supplementary petition under division (A) of this section the secretary of state shall submit the law proposed therein to the electors at the next succeeding general election, or at a special election on the date fixed by law for holding the primary election, whichever is earlier, occurring subsequent to one hundred twenty days after the filing of the petition. If such law is approved by a majority of the electors voting thereon, it takes effect thirty days after the election.

(C) No law proposed by initiative or supplementary petition shall contain more than one subject, which shall be clearly expressed in its title. No such law approved by the voters is subject to veto by the governor. The limitations expressed in this constitution on the power of the general assembly to enact laws shall be deemed limitations on the power of the people to enact laws.

Commission Recommendation

The Commission recommends the repeal of Section 1b of Article II and the enactment of new Section 2 in Article XIV as follows:

Article XIV

SECTION 2. (A) THE SUBMISSION OF A PROPOSED LAW TO THE GENERAL ASSEMBLY MAY BE DEMANDED BY AN INITIATIVE PETITION HAVING PRINTED ACROSS THE TOP "PETITION FOR A LAW TO BE SUBMITTED TO THE GENERAL ASSEMBLY", SIGNED BY ONE HUNDRED THOUSAND ELECTORS, CERTIFIED AS PROVIDED IN SECTION 6 OF THIS ARTICLE, AND FILED WITH THE SECRETARY OF STATE. THE SECRETARY SHALL TRANSMIT THE FULL TEXT OF THE PROPOSED LAW FORTHWITH TO THE GENERAL ASSEMBLY.

A LAW PROPOSED BY INITIATIVE PETITION SHALL NOT BE PROPOSED NOR ENACTED BY THE GENERAL ASSEMBLY AS AN EMERGENCY MEASURE. IF A LAW PROPOSED BY INITIATIVE PETITION BECOMES LAW, EITHER AS PROPOSED OR IN AMENDED FORM, IT SHALL BE TREATED AS A LAW ORIGINATING IN THE GENERAL ASSEMBLY, EXCEPT THAT, IF THE PROPOSED LAW IS AMENDED BY THE GENERAL ASSEMBLY AND BECOMES LAW, AND IF A SUPPLEMENTARY PETITION IS FILED AS PROVIDED IN THIS SECTION, THE LAW ENACTED BY THE GENERAL ASSEMBLY SHALL TAKE EFFECT ONLY IF THE LAW PROPOSED BY A SUPPLEMENTARY PETITION IS REJECTED BY A MAJORITY OF THE ELECTORS VOTING THEREON.

IF, WITHIN SIX MONTHS FROM THE TIME THE PROPOSAL IS RECEIVED BY THE GENERAL ASSEMBLY, THE PROPOSED LAW HAS NOT BECOME LAW AS PROPOSED, ITS SUBMISSION TO ELECTORS MAY BE DEMANDED BY ONE OR MORE SUPPLEMENTARY PETITIONS HAVING PRINTED ACROSS THE TOP "SUPPLEMENTARY PETITION FOR A LAW FIRST CONSIDERED BY THE GENERAL ASSEMBLY", SIGNED BY SEVENTY-FIVE THOUSAND ELECTORS, CERTIFIED AS PROVIDED IN SECTION 6 OF THIS ARTICLE, AND FILED WITH THE SECRETARY OF STATE WITHIN NINETY DAYS AFTER THE EXPIRATION OF THE SIX MONTHS EXCEPT THAT IF THE PROPOSED LAW HAS BECOME LAW IN AMENDED FORM, THE SUPPLEMENTARY PETITION SHALL BE FILED WITHIN 90 DAYS AFTER THE AMENDED LAW HAS BEEN FILED WITH THE SECRETARY OF STATE. A SUPPLEMENTARY PETITION MAY DEMAND SUBMISSION OF THE PROPOSED LAW EITHER AS FIRST PROPOSED OR WITH ANY ONE OR MORE OF THE AMENDMENTS WHICH HAVE BEEN INCORPORATED THEREIN BY EITHER OR BOTH HOUSES OF THE GENERAL ASSEMBLY.

(B) UPON THE FILING OF A SUPPLEMENTARY PETITION UNDER DIVISION (A) OF THIS SECTION THE SECRETARY OF STATE SHALL SUBMIT THE LAW PROPOSED THEREIN TO THE ELECTORS AT THE NEXT SUCCEEDING GENERAL ELECTION, OR AT A SPECIAL ELECTION ON THE DATE FIXED BY LAW FOR HOLDING THE PRIMARY ELECTION, WHICHEVER IS EARLIER, OCCURRING SUBSEQUENT TO ONE HUNDRED TWENTY DAYS AFTER THE FILING OF THE PETITION. IF SUCH LAW IS APPROVED BY A MAJORITY OF THE ELECTORS VOTING THEREON, IT TAKES EFFECT THIRTY DAYS AFTER THE ELECTION.

(C) NO LAW PROPOSED BY INITIATIVE OR SUPPLEMENTARY PETITION SHALL CONTAIN MORE THAN ONE SUBJECT, WHICH SHALL BE CLEARLY EXPRESSED IN ITS TITLE. NO SUCH

LAW APPROVED BY THE VOTERS IS SUBJECT TO VETO BY THE GOVERNOR. THE LIMITATIONS EXPRESSED IN THIS CONSTITUTION ON THE POWER OF THE GENERAL ASSEMBLY TO ENACT LAWS SHALL BE DEEMED LIMITATIONS ON THE POWER OF THE PEOPLE TO ENACT LAWS.

History and Background of Section

Section 1b of Article II was added to the Ohio Constitution in 1912 and has not been amended. The section contains the procedure for initiating a law. The method prescribed is indirect: a proposed law must first be submitted to the General Assembly and, failing enactment, additional signatures are required to place it on the ballot. A proposed constitutional amendment in 1939 would have, among other things, replaced the indirect statutory initiative with the direct statutory initiative, thus requiring no intermediate consideration of a proposed law by the legislature. The 1939 proposition, which also would have changed the percentage requirements, was defeated.

Section 1b sets forth in detail the procedural rules for the indirect statutory initiative. It also contains some provisions applicable to both initiated laws and initiated constitutional amendments, as well as an effective date provision for initiated constitutional amendments.

The steps prescribed by the present language are as follows: Three per cent of the electors who voted for governor in the last gubernatorial election must file a petition proposing a law with the Secretary of State. The petition must contain the full text of the proposal. The Secretary of State is required to submit the proposal to the next "session" of the General Assembly commencing at least 10 days after filing. If the General Assembly passes the law as submitted, it is subject to the referendum. Since the initiators are presumably satisfied by such legislative action, no further right is granted for them to take the matter to the voters except through the regular referendum process. If the General Assembly passes the law in amended form, it is subject to the referendum or a supplementary petition demanding its submission to the voters, either in its original form or with any or all of the amendments adopted by the legislature. If the General Assembly fails to pass the bill or takes no action within four months from the time it is received, supplementary petitions may demand the submission of the proposal to the voters. A supplementary petition requires the signatures of 3% of the electors in addition to those signing the original initiative petition. The supplementary petition must contain the version of the law to be submitted to the electors. Supplementary petitions must be filed with the secretary of state within 90 days after the date the law is filed with the secretary of state, if it has been amended and enacted, or within 90 days after the expiration of six months if it has not become law. If the initiated law has been passed by the General Assembly in amended form and it is subsequently, by supplementary petition, submitted to the people for vote, the General Assembly version does not take effect until the people have voted on the proposal, and then, if the voters adopt the initiated version, the initiated version takes effect in lieu of the General Assembly version. The Constitution requires ballots to be printed so as to permit an affirmative or negative vote on each measure submitted to the electors. The effective date of a law or constitutional amendment submitted by the initiative to the voters is 30 days after the election if approved by a majority of the electors voting thereon. In the event of conflicting proposed laws and conflicting proposed constitutional amendments being submitted at the same time and both approved by a majority of those voting thereon, the version adopted is the one which received the highest number of affirmative votes. Laws proposed by initiative and approved by the people are not subject to the gubernatorial veto.

Effect of Change

The Commission recommends the repeal of the present language for initiating a law in Section 1b of Article II, and re-enactment of a parallel provision as Section 2 in Article XIV, reworded to make it easier to determine what is required for initiating a law in Ohio. Many of the changes proposed are concerned with timing and deadlines for the various steps involved in the initiative process. Testimony and proposals made by the Secretary of State described the difficulties presented for initiators under the present constitutional language.

The changes the Commission is proposing with respect to the indirect statutory initiative include replacing the present signature requirement of 3% for the original petition to the General Assembly and 3% for the supplementary petition to fixed numbers, 100,000 and 75,000 respectively. Other changes require the Secretary of State to transmit a petition to the General Assembly whenever it is filed; preclude the enactment of an initiated law as an emergency measure; require petitioners to wait six months after a petition has been received by the General Assembly; if in that time the law has not become law as proposed, the supplementary petition procedure may begin. Several timing changes with respect to supplementary petitions have been proposed, and a restriction has been added limiting an initiated law by the "one subject" rule, which presently regulates a law enacted by the legislature.

Rationale for Change

The Elections and Suffrage Committee, in its report to the Commission on the initiative and referendum, recommended that a direct statutory initiative procedure be added to the Constitution, permitting an alternative whereby proposed laws could also be placed directly on the ballot without first being submitted to the General Assembly. Research revealed that the number of laws which have reached the ballot since 1912 is much smaller than the interest shown in initiating laws. The section, as presently written, generates several timing problems concerning supplementary petitions, both for the Secretary of State and for initiators.

The Committee rejected a recommendation to replace the indirect initiative by a direct method, similar to that employed for constitutional amendments because of belief that there are good reasons for presenting a proposed law to the General Assembly first before it may go to the electorate. Being subjected to the legislative hearing process, which may bring to light aspects of the legislation of which the sponsors themselves may have been unaware, was deemed desirable. In addition, the form of the law may be improved by exposure to the legislative procedure, and the sponsors may be able to go to the voters with a better bill than originally proposed.

The committee, however, favored adding to the section a procedure for a direct statutory initiative, as an alternative method, requiring as many signatures as the two parts of the indirect initiative added together, but fewer signatures than a constitutional amendment. It considered it pointless to require petitions to go through the lengthy indirect process where the proposal has little chance of passage by the General Assembly. It also considered that the unavailability of direct initiative for laws drives such petitioners to use the direct initiative for constitutional amendments instead. This can result in the placement of provisions in the constitution which are more appropriately statutory material. The recommendation to add the direct initiative process was not approved by the Commission, which felt that only the indirect initiative should be provided.

The change in the number of signatures required for the statutory initiative petitions, presently 3% for original and 3% for supplementary

petitions accords with the Commission's decision to express all such requirements in terms of a fixed number (see discussion in Section 1, Article XIV). An average of 13 gubernatorial elections, covering the years from 1940-1970, was used as a guide for fixing the numbers. The proposed number requirement for the original petition, 100,000, is slightly higher than the 13 election average of 89,100, and the supplementary petition requirement is slightly lower, 75,000, as compared with the average of 89,100. Although a petition proposing a law may be submitted to the General Assembly at any time (and the proposal requires the Secretary of State to transmit the petition forthwith), supplementary petitions are governed by a 90-day deadline, making the second step signature requirement a critical factor. The Commission believes the proposed numbers are high enough to discourage the submission of frivolous matters, yet low enough to enable groups who are able to gain significant public support to avail themselves of the statutory initiative process.

Other changes made in the indirect initiative provisions include the following:

1. Requiring the secretary of state to transmit a petition to the General Assembly whenever it is filed. Presently, a petition filed at least 10 days before the beginning of the session is transmitted when the session begins; if filed later, it must presumably wait until the next session. The Commission believes the term "session" is somewhat ambiguous and that the petition should be sent to the General Assembly as soon as possible. The General Assembly will nearly always be in session sometime during the six months after a petition is filed, or the legislative body can be called into special session.

2. Prohibiting an initiated law from being enacted as an emergency measure. Under the present section, an initiated law, if passed by the General Assembly, is specifically made subject to the referendum. Two questions related to the present provision yet unanswered, raised by this requirement are whether the General Assembly, by attaching an emergency clause as an amendment to an initiated law, could effectively prohibit a referendum, and whether laws which are not otherwise subject to the referendum (tax levies, appropriations for current expenses), when initiated and enacted by the General Assembly, are subject to the referendum. The Commission seeks to solve both problems by specifically prohibiting an initiated law from being initiated or enacted as an emergency measure. The proposed language states that if an initiated law is enacted by the General Assembly either as proposed or as amended, it shall be treated as any other law enacted by the General Assembly, subject to gubernatorial action and subject to the referendum if it would be subject to the referendum as a legislatively-initiated law.

3. Clarifying the time when the supplementary petition procedures may begin. The present section makes "rejection" of the proposed law by the General Assembly and "no action" grounds for subsequent action by the petitioners. The Commission believes that these concepts require interpretation, and it proposes to remedy this by requiring the petitioners to wait six months after the petition has been received by the General Assembly and then, if the law has not become law as proposed, whoever wishes to take the matter to the voters may begin the supplementary petition procedure. A bill becomes law when it has been enacted by the General Assembly, presented to the Governor, signed by him and filed with the secretary of state, or permitted to become law without his signature, or, if vetoed, passed by the General Assembly over a veto, and filed with the secretary of state. Petitioners would not be required to wait six months if an amended law is passed by the General Assembly and becomes law before the expiration of the six months.

Division (B) of the new section contains provisions about submitting

a law to the voters and the effective date of a law approved by the voters. These are the same as the present provisions, except for the addition of the primary election.

Division (C) enacts general rules concerning all initiated legislation. It restricts such laws to "one subject", a new provision added by the Commission which believed that this rule, which presently applies to laws enacted by the General Assembly, would be a desirable addition to the rules of drafting initiated laws. The remainder is not substantively changed from the present provisions.

Certain provisions in the present section 1b but not in Section 2 have been transferred elsewhere, since they are applicable to other matters. Provisions for resolving conflicts between two or more laws appearing on the ballot at the same time have been placed in a separate section. A provision postponing the effective date of an initiated constitutional amendment to 30 days after the election at which it has been approved has been eliminated. The Commission believed that since a constitutional amendment proposed by the General Assembly takes effect immediately, there is no reason why an amendment initiated by the people should not also take effect immediately.

Intent of the Commission

Most of the changes in the language providing for the indirect statutory initiative are believed to make it easier to understand. The Commission does not proposed any substantive change to increase or diminish the power of the people to propose laws. Many of the modifications proposed have to do with timing and procedural changes regarding submission of the proposed law. These changes should facilitate the operation of the indirect initiative process.

ARTICLE II

Section 1c

Present Constitution
Article II, Section 1c

Section 1c. The second aforestated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

Commission Recommendation
Article XIV, Section 3

Section 3. No law passed by the general assembly shall go into effect until ninety days after it is filed with the secretary of state, except as otherwise provided in this section, or Section 2, or Section 4 of this Article. During such ninety-day period, the submission to the electors of such law, section of such law, or item in any such law appropriating money may be demanded by a referendum petition having printed across the top "Referendum Petition for Voter Consideration of Law Enacted by the General Assembly", signed by one hundred thousand electors, certified as provided in Section 6 of this Article. The secretary shall submit such law, section, or item to the electors at the next succeeding general election or at a special election on the date fixed by law for holding the primary election, whichever is earlier, occurring subsequent to one hundred twenty days after the filing of the petition. No such law, section, or item shall go into effect unless approved by a majority of the electors voting on it. If so approved, it shall go into effect thirty days after the election. The filing of a referendum petition proposing the submission of a section or item does not thereby prevent the remainder of the law from going into effect.

Commission Recommendation

The Commission recommends the repeal of Section 1c of Article II and the enactment of a new Section 3 in Article XIV with parallel provisions as follows:

Article XIV

SECTION 3. NO LAW PASSED BY THE GENERAL ASSEMBLY SHALL GO INTO EFFECT UNTIL NINETY DAYS AFTER IT IS FILED WITH THE SECRETARY OF STATE EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, OR SECTION 2, OR SECTION 4 OF THIS ARTICLE. DURING SUCH NINETY-DAY PERIOD, THE SUBMISSION TO THE ELECTORS OF SUCH LAW, SECTION OF SUCH LAW, OR ITEM IN ANY SUCH LAW APPROPRIATING MONEY MAY BE DEMANDED BY A REFERENDUM PETITION HAVING PRINTED ACROSS THE TOP "REFERENDUM PETITION FOR VOTER CONSIDERATION OF LAW ENACTED BY THE GENERAL ASSEMBLY", SIGNED BY ONE HUNDRED THOUSAND ELECTORS, CERTIFIED AS PROVIDED IN SECTION 6 OF THIS ARTICLE. THE SECRETARY SHALL SUBMIT SUCH LAW, SECTION, OR ITEM TO THE ELECTORS AT THE NEXT SUCCEEDING GENERAL ELECTION OR AT A SPECIAL ELECTION ON THE DATE FIXED BY LAW FOR HOLDING THE PRIMARY ELECTION, WHICHEVER IS EARLIER, OCCURRING SUBSEQUENT TO ONE HUNDRED TWENTY DAYS AFTER THE FILING OF THE PETITION. NO SUCH LAW, SECTION, OR ITEM SHALL GO INTO EFFECT UNLESS APPROVED BY A MAJORITY OF THE ELECTORS VOTING ON IT. IF SO APPROVED, IT SHALL GO INTO EFFECT THIRTY DAYS AFTER THE ELECTION. THE FILING OF A REFERENDUM PETITION PROPOSING THE SUBMISSION OF A SECTION OR ITEM DOES NOT THEREBY PREVENT THE REMAINDER OF THE LAW FROM GOING INTO EFFECT.

History of Section

Since adopted in 1912, Section 1c has not been amended. The section sets forth the details relating to the referendum, except as they are found in section 1d, section 1g, and the statutes. An important provision in Section 1c is the fixing of the effective date for all laws passed by the General Assembly (with exceptions found in section 1d) as 90 days after filing in the office of the Secretary of State by the Governor. In counting the 90 day effective date, the day of filing is excluded; the following day is day number one and the law takes effect on the 91st day. A referendum petition, signed by 6% of the voters, may be filed at any time within the 90 day period, challenging "any law, section of any law or any item in any law appropriating money" passed by the General Assembly, Section 1d, however, limits the laws subject to referendum.

A single referendum petition may not attack two or more separate and distinct laws (**Patton v. Myers,** 127 Ohio St. 169, 1933). A referendum petition may attack part of a law, and the section provides that the portion not referred will go into effect at the time it otherwise would take effect, but the portion referred will not take effect until the people have voted on it, and a majority have approved it; thus, situations can arise in which part of a law takes effect but cannot be enforced because another portion of the law is held in abeyance waiting popular vote. No sections of laws nor items in appropriation acts have ever been referred to popular vote in Ohio; only whole laws.

Effect of Change

The Commission recommendation proposes no change in the basic provisions for the referendum. Because it did not consider desirable any extension of the 90-day period for the effective date of laws passed by

the General Assembly, it recommended a reduction in the number of signatures required for a referendum petition. The other major change in the section is the addition of a 30-day effective date for a law placed on the ballot by referendum. This was done to make the provisions parallel the initiative provisions.

Rationale for Change

It appeared from testimony before the Commission that the number of signatures presently required for a referendum is nearly impossible to obtain within the 90 days, and therefore the referendum provisions as presently written are rarely invoked. Attempts have been started, but none has succeeded in recent years. The Commission realizes that the referendum process is not viable under the present rules, and that some change is needed in order to allow people to use it. It is not desirable to change the 90 day requirement for the effective date of laws; therefore, the Commission recommends that the number of signatures required on a referendum petition be reduced. Presently, the requirement is 6% of the number who voted for Governor, which is the same as the total present requirement for the indirect initiative. The Commission's recommendation for the indirect initiative original petition is 100,000, and the Commission proposes the same for the referendum. Other procedural changes, which are dealt with in Section 6, will also simplify the process of getting a referendum petition filed and on the ballot within the allotted time.

The only other major change made in the section is the addition of a 30-day effective date to a law placed on the ballot by the referendum, making the provision parallel to the initiative provisions.

Intent of the Commission

The Commission recommendation with respect to the referendum process proposes a change (reduction in number of signatures required) which will make the referendum process available to the voters to a greater extent than it is under the present constitutional requirements which have greatly limited its use.

ARTICLE II

Section 1d

Present Constitution
Article II, Section 1d

Section 1d. Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

Commission Recommendation
Article XIV, Section 4

Section 4. Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health, or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each house of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote upon a separate roll call thereon. The laws included in this section are not subject to the referendum.

Commission Recommendation

The Commission recommends repeal of Section 1f of Article II and and the enactment of new Section 4 in Article XIV with parallel provisions as follows:

Article XIV

SECTION 4. LAWS PROVIDING FOR TAX LEVIES, APPROP-

RIATIONS FOR THE CURRENT EXPENSES OF THE STATE GOVERNMENT AND STATE INSTITUTIONS, AND EMERGENCY LAWS NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH, OR SAFETY, SHALL GO INTO IMMEDIATE EFFECT. SUCH EMERGENCY LAWS UPON A YEA AND NAY VOTE MUST RECEIVE THE VOTE OF TWO-THIRDS OF ALL THE MEMBERS ELECTED TO EACH HOUSE OF THE GENERAL ASSEMBLY, AND THE REASONS FOR SUCH NECESSITY SHALL BE SET FORTH IN ONE SECTION OF THE LAW, WHICH SECTION SHALL BE PASSED ONLY UPON A YEA AND NAY VOTE, UPON A SEPARATE ROLL CALL THEREON. THE LAWS INCLUDED IN THIS SECTION ARE NOT SUBJECT TO THE REFERENDUM.

History and Background of Section

This section was part of the initiative and referendum provisions adopted in 1912, and has not been amended. The section sets forth the types of laws which are not subject to the referendum and which go into effect as soon as they become law.

Comment

The Commission studied the history of the use of the emergency provision in Ohio to determine whether there was any need for change. Once the General Assembly has properly enacted a law as an emergency, the courts in Ohio will not inquire into the facts of the emergency. It is therefore possible for the General Assembly to place any law beyond the reach of the referendum, providing 2/3 of the members agree to do so. The Commission considered whether any change should be made in this situation and concluded that no change should be made, there being no indication of abuse of the emergency power. A law passed as an emergency can be repealed or altered through the initiative process, so the people are not without remedy if the General Assembly does abuse the emergency power.

The Commission discussed whether any laws should be permitted which are not subject to the referendum and concluded that it is appropriate that laws for tax levies and current governmental expenses should continue to be enacted by the General Assembly without being subjected to the referendum. There is no prohibition against using the initiative to propose or repeal a tax levy, or to propose or repeal an appropriation law.

Two language changes are proposed by the Commission: "included" is substituted for "mentioned" in the last sentence, and "house" replaces "branch" in the preceding sentence to refer to the Senate and House of Representatives. No other changes are proposed by the Commission.

ARTICLE II

Section 1e

Present Constitution
Article II, Section 1e

Section 1e. The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

Commission Recommendation
Article XIV, Section 5

Section 5. If conflicting amendments to the constitution are approved at the same election by a majority of the electors voting thereon, the one receiving the highest number of affirmative votes is the amendment to the constitution.

If conflicting matters of law are approved at the same election by a majority of the electors voting thereon, the one receiving the highest number of affirmative votes is the law.

Commission Recommendation

The Commission recommends the repeal of Section 1e of Article II, and the enactment of Section 5 in Article XIV as follows:

Article XIV

SECTION 5. IF CONFLICTING AMENDMENTS TO THE CONSTITUTION ARE APPROVED AT THE SAME ELECTION BY A MAJORITY OF THE ELECTORS VOTING THEREON, THE ONE RECEIVING THE HIGHEST NUMBER OF AFFIRMATIVE VOTES IS THE AMENDMENT TO THE CONSTITUTION.

IF CONFLICTING MATTERS OF LAW ARE APPROVED AT THE SAME ELECTION BY A MAJORITY OF THE ELECTORS VOTING THEREON, THE ONE RECEIVING THE HIGHEST NUMBER OF AFFIRMATIVE VOTES IS THE LAW.

Repeal of Section 1e of Article II

Proponents of the initiative and referendum at the 1912 Constitutional Convention included Section 1e as one of the compromises necessary to obtain approval of the provisions at the Convention. Fears were expressed that the initiative would be used to classify property or to enact a single tax on land based only on the land value. Proponents of the initiative and referendum noted that the section only prohibits the use of the initiative to pass laws classifying property or levying a tax on land at a higher rate or by different rule than applicable to improvements on personal property. It does not prohibit the use of the initiative to amend the Constitution to accomplish these objectives.

The Commission recommends the repeal of the section for two reasons. One, the Constitution has since been amended to permit the classification of personal property for tax purposes. Two, as long as Section 2 of Article XII requires that land and improvements be assessed and taxed by uniform rule, the Commission does not believe it would be constitutionally possible for the General Assembly or popular initiative to enact a law taxing land by a different rule than the improvements.

New Section 5

The Commission recommends that the rules about conflicting matters on the ballot be placed in one section of the initiative and referendum article. The new Section 5 combines the rules for conflicting laws and conflicting amendments in one section, and the new section retains the rule of construction presently in use, that the one which will prevail, if more than one receives a majority of the vote, is the one which receives the greatest number of votes.

By placing the rule in a separate section, the Commission hopes to make it clear that it will apply in all situations regardless of the origin of the conflicting provisions—whether the conflicting constitutional amendments are proposed by the General Assembly or by the people, and whether the conflicting laws have been initiated by the people or initiated by the legislature and referred to the people. "Matters of Law" is the expression since a referendum could apply to a section of a law or item in an appropriation act as well as to an entire law.

A question left unresolved under the present constitutional provision is, what is a conflict? The Commission believes that it is not possible to establish rules to enable this question to be resolved without court action. Even though the same section of law or of the constitution might be involved in two or more amendments or laws on the ballot at the same time, it does not necessarily follow that the provisions are conflicting. It might be possible to give effect to both or all. If there is a question of conflict, a court decision is necessary, and dealing with this matter in the Constitution is not deemed practical.

ARTICLE II

Section 1f

Present Constitution
Article II, Section 1f

Section 1f. The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

Commission Recommendation
Article XIV, Section 7

Section 7. The initiative and referendum powers are reserved to the people of each municipality and each county on all matters which such municipality or county may now or hereafter be authorized to control by legislative action. Such powers shall be exercised in the manner now or hereafter provided by the charter of the municipality or county or, if not so provided, in the manner now or hereafter provided by law.

Commission Recommendation

The Commission recommends repeal of Section 1f of Article II and enactment of a new Section 7 in Article XIV with parallel provisions as follows:

Article XIV

SECTION 7. THE INITIATIVE AND REFERENDUM POWERS ARE RESERVED TO THE PEOPLE OF EACH MUNICIPALITY AND EACH COUNTY ON ALL MATTERS WHICH SUCH MUNICIPALITY OR COUNTY MAY NOW OR HEREAFTER BE AUTHORIZED TO CONTROL BY LEGISLATIVE ACTION. SUCH POWERS SHALL BE EXERCISED IN THE MANNER NOW OR HEREAFTER PROVIDED BY THE CHARTER OF THE MUNICIPALITY OR COUNTY OR, IF NOT SO PROVIDED, IN THE MANNER NOW OR HEREAFTER PROVIDED BY LAW.

History and Background of Section

Section 1f, adopted in 1912 and not amended, reserved to the people of municipalities (cities and villages) the power of the initiative and referendum with respect to matters which the municipality may control by legislative action. This constitutional provision was adopted at the same time that Article XVIII, dealing with the organization and powers of municipal corporations, was adopted. Municipalities have "home rule" powers under the Ohio Constitution, and the range of matters controlled by municipal legislative action is broad.

Initiative and referendum powers are provided for the people of municipal corporations in two ways: by statute, for cities and villages which do not have charters, or by charter. Cities and villages which do not have charters are bound by the statutes with respect to the procedures for initiative and referendum; city councils cannot, by ordinance, alter these provisions. On the other hand, charter cities and villages can write their own initiative and referendum provisions. The only restriction on charter cities and villages is that the questions on which initiative and referendum may be used by the people of a city or village must be a question which the municipality is authorized by law, including the constitutional home rule provisions, to control by legislative action.

Initiative and referendum powers are not required to be reserved for the people of counties, townships, or other political subdivisions, except for specific instances provided elesewhere by the Constitution. For example, the Constitution requires a county referendum on the adoption of an alternative form of county government or on changing county boundaries. Municipalities and townships may transfer powers to counties, but the people must be given initiative and referendum rights with respect to measures transferring powers or revoking such transfers. Initiative and referendum rights must also be reserved to the people of any county which has a charter, on all matters which the county may control by legislative action.

Effect of Change

The Commission recommendation extends the initiative and referendum power to the people of the counties as a further extension of the Commission's recommendation extending limited "home rule" powers to counties. This section, as proposed, states that the initiative and referendum power may be exercised as provided in a municipal or county charter, in order to clarify this question.

Rationale for Change

Language almost identical to that in Section If is found in Section 3 of Article X and gives the initiative and referendum rights to the people of a county which adopts a county charter. Since no county has adopted a county charter, this right has not been exercised. The General Assembly, however, in giving certain legislative powers to county commissioners (for example, the permissive tax law), has granted to the people of the counties similar referendum rights.

One of the recommendations of the Local Government Committee, already adopted by the Commission, would give counties limited "home rule" powers. It would, if adopted by the people, broaden the scope of the authority of the county commissioners to act legislatively. Therefore, it seemed appropriate to the Local Government Committee, to which this section was referred by the Elections and Suffrage Committee, that the initiative and referendum powers should also be broadened to cover legislative actions of the counties as well as those of municipalities.

Another change, one of clarification rather than substance, is to indicate that the initiative and referendum may be exercised as provided in a municipal or county charter. Most municipalities which have charters provide for the initiative and referendum in the charter; other municipalities are subject to the general law which provides for municipal initiative and referendum. If, however, the charter differs in any respect from the statute, it is always possible for a challenge to the charter procedures to be made. Although charter provisions have, thus far, been upheld, it seemed to the Commission better to clarify this point in the Constitution.

There is presently no statute providing, generally, for county initative and referendum procedures, and the Commission recognizes that such a statute will be necessary if this recommendation and the "county powers" recommendation, are adopted.

Intent of the Commission

The changes recommended in this section extend the power of initiative and referendum to the people of the counties, consistent with Commission recommendations for the extension of home rule to counties. Other changes which are not substantive in nature are made to provide greater clarity of meaning for the provision.

ARTICLE II

Section 1g

Present Constitution
Article II, Section 1g

Section 1g. Any initiative, supplementary or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer

Commission Recommendation
Article XIV, Section 6

Section 6. The style of all constitutional amendments submitted to the electors by petition shall be: "Be it Resolved by the People of the State of Ohio." The style of all laws submitted to the general assembly by initiative petition shall be "Be it Enacted by the General Assembly in Response to an Initiative Petition." The style of all laws submitted to the electors by supplementary petition shall be: "Be it Enacted by the People of the State of Ohio."

residing outside of a municipality shall state the township and county in which he resides. A resident of a municipality shall state in addition to the name of such municipality, the street and number, if any, of his residence. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of such petition and shall state that each of the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereto shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assmbly, if in session, and if not in session then by the governor. The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for five consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. Unless otherwise provided by law, the secretary of state shall cause to be placed upon the ballots, the title of any such law, or proposed law, or proposed amendment to the constitution, to be submitted. He shall also cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

Whoever seeks to file an initiative, supplementary, or referendum petition shall first file with the secretary of state and the Ohio ballot board a copy of the full text of the proposal to be submitted, together with the names, addresses, and written consents of not fewer than three nor more than five electors who have agreed to serve as members of a committee, with a designated chairman thereof, to represent the petitioners in all matters relating to the petition. The board shall, within fifteen days after it receives the text, prepare an identifying caption and a fair and truthful summary of the proposal and submit them to the secretary of state and to the chairman of the committee. The committee shall then prepare the petition which shall contain a true copy of the caption and the summary prepared by the board and shall file a copy of the petition with the secretary of state before solicitation of signatures to the petition. The petition may be circulated and filed in parts but each part shall be identical to the copy filed with the secretary of state. The petition need not contain the full text of the proposal, but if it does not, each solicitor of signatures to the petition shall carry a true copy of the full text while soliciting and the petition shall state, immediately following the summary: "The solicitor of your signature is required to have a true copy of the full text of the proposal summarized in this petition. Upon request, he must present it to you for examination."

Each signer of a petition must be an elector of the state and shall sign his own name indelibly on the part petition. The signer's address and the date of signing shall be placed on the petition after the name. Such address shall include the township and county for a resident outside a municipality and the street and number, if any for a resident of a municipality.

On each part petition shall appear the solicitor's certification, stating the number of the signers of such part petition, that each of the signatures was made on the stated date in the presence of the solicitor, and that at all times while soliciting signatures he carried and made available on request a true copy of the full text of the proposal: and stating that, to the best of his knowledge and belief, each signature is the genuine signature of the person whose name it purports to be and that such person is an elector residing at the stated address who had knowledge of the contents of the petition. No affidavit or other certification thereto shall be required. Every petition shall contain a statement to the effect that any falsification is subject to penalties as prescribed by law.

As soon as a certified petition containing a proposal to be submitted to the electors is filed with the secretary of state, the secretary shall transmit the proposal to the Ohio ballot board, which shall prescribe the ballot language and an explanation of the proposal in the same manner and subject to the same terms and conditions as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this Constitution. The ballot language shall be prescribed so as to permit an affirmative or negative vote upon each constitutional amendment, law, section, or item submitted.

The committee representing the petitioners shall prepare an argument supporting their position. The general assembly may provide by law for the preparation of opposing arguments. The explanation and the arguments shall not exceed three hundred words each. The proposal, the ballot language, the explanation, and the arguments shall be published once a week for three consecutive weeks preceding the election in at least one newspaper of general circulation in each county of the state, where a newspaper is published.

The secretary of state shall cause to be placed on the ballot the caption and the ballot language prepared by the ballot board for each proposal contained in a properly certified petition filed with not less than the required number of signatures. The petition and the signatures shall be presumed to be in all respects sufficient, unless not later than seventy-five days before the election, the petition is proved to be invalid or the signatures insufficient or an action challenging the validity of the petition or one or more signatures is pending, which action was begun not later than one hundred days before the election. No proposal voted on by the electors shall

be held unconstitutional or void after the election because of an insufficiency of valid signatures or an invalid petition.

The initiative and referendum provisions of this constitution shall be self-executing, except as otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers reserved to the people.

Commission Recommendation

The Commission recommends repeal of Section 1g of Article II and enactment of a new Section 6 in Article XIV as follows:

Article XIV

SECTION 6. THE STYLE OF ALL CONSTITUTIONAL AMENDMENTS SUBMITTED TO THE ELECTORS BY PETITION SHALL BE: "BE IT RESOLVED BY THE PEOPLE OF THE STATE OF OHIO." THE STYLE OF ALL LAWS SUBMITTED TO THE GENERAL ASSEMBLY BY INITIATIVE PETITION SHALL BE "BE IT ENACTED BY THE GENERAL ASSEMBLY IN RESPONSE TO AN INITIATIVE PETITION." THE STYLE OF ALL LAWS SUBMITTED TO THE ELECTORS BY SUPPLEMENTARY PETITION SHALL BE: "BE IT ENACTED BY THE PEOPLE OF THE STATE OF OHIO."

WHOEVER SEEKS TO FILE AN INITIATIVE, SUPPLEMENTARY, OR REFERENDUM PETITION SHALL FIRST FILE WITH THE SECRETARY OF STATE AND THE OHIO BALLOT BOARD A COPY OF THE FULL TEXT OF THE PROPOSAL TO BE SUBMITTED, TOGETHER WITH THE NAMES, ADDRESSES, AND WRITTEN CONSENTS OF NOT FEWER THAN THREE NOR MORE THAN FIVE ELECTORS WHO HAVE AGREED TO SERVE AS MEMBERS OF A COMMITTEE, WITH A DESIGNATED CHAIRMAN THEREOF, TO REPRESENT THE PETITIONERS IN ALL MATTERS RELATING TO THE PETITION. THE BOARD SHALL, WITHIN FIFTEEN DAYS AFTER IT RECEIVES THE TEXT, PREPARE AN IDENTIFYING CAPTION AND A FAIR AND TRUTHFUL SUMMARY OF THE PROPOSAL AND SUBMIT THEM TO THE SECRETARY OF STATE AND TO THE CHAIRMAN OF THE COMMITTEE. THE COMMITTEE SHALL THEN PREPARE THE PETITION WHICH SHALL CONTAIN A TRUE COPY OF THE CAPTION AND THE SUMMARY PREPARED BY THE BOARD AND SHALL FILE A COPY OF THE PETITION WITH THE SECRETARY OF STATE BEFORE SOLICITATION OF SIGNATURES TO THE PETITION. THE PETITION MAY BE CIRCULATED AND FILED IN PARTS BUT EACH PART SHALL BE IDENTICAL TO THE COPY FILED WITH THE SECRETARY OF STATE. THE PETITION NEED NOT CONTAIN THE FULL TEXT OF THE PROPOSAL, BUT IF IT DOES NOT, EACH SOLICITOR OF SIGNATURES TO THE PETITION SHALL CARRY A TRUE COPY OF THE FULL TEXT WHILE SOLICITING AND THE PETITION SHALL STATE, IMMEDIATELY FOLLOWING THE SUMMARY: "THE SOLICITOR OF YOUR SIGNATURE IS REQUIRED TO HAVE A TRUE COPY OF THE FULL TEXT OF THE PROPOSAL SUMMARIZED IN THIS PETITION. UPON REQUEST, HE MUST PRESENT IT TO YOU FOR EXAMINATION."

EACH SIGNER OF A PETITION MUST BE AN ELECTOR OF THE STATE AND SHALL SIGN HIS OWN NAME INDELIBLY ON THE PART PETITION. THE SIGNER'S ADDRESS AND THE DATE OF SIGNING SHALL BE PLACED ON THE PETITION AFTER THE NAME. SUCH ADDRESS SHALL INCLUDE THE TOWNSHIP AND COUNTY FOR A RESIDENT OUTSIDE A MUNICIPALITY AND THE STREET AND NUMBER, IF ANY FOR A RESIDENT OF A MUNICIPALITY.

ON EACH PART PETITION SHALL APPEAR THE SOLICITOR'S CERTIFICATION, STATING THE NUMBER OF THE SIGNERS OF SUCH PART PETITION, THAT EACH OF THE SIGNATURES WAS MADE ON THE STATED DATE IN THE PRESENCE OF THE SOLICITOR, AND THAT AT ALL TIMES WHILE SOLICITING SIGNATURES HE CARRIED AND MADE AVAILABLE ON REQUEST A TRUE COPY OF THE FULL TEXT OF THE PROPOSAL: AND STATING THAT, TO THE BEST OF HIS KNOWLEDGE AND BELIEF, EACH SIGNATURES IS THE GENUINE SIGNATURE OF THE PERSON WHOSE NAME IT PURPORTS TO BE AND THAT SUCH PERSON IS AN ELECTOR RESIDING AT THE STATED ADDRESS WHO HAD KNOWLEDGE OF THE CONTENTS OF THE PETITION. NO AFFIDAVIT OR OTHER CERTIFICATION THERETO SHALL BE REQUIRED. EVERY PETITION SHALL CONTAIN A STATEMENT TO THE EFFECT THAT ANY FALSIFICATION IS SUBJECT TO PENALTIES AS PRESCRIBED BY LAW.

AS SOON AS A CERTIFIED PETITION CONTAINING A PROPOSAL TO BE SUBMITTED TO THE ELECTORS IS FILED WITH THE SECRETARY OF STATE, THE SECRETARY SHALL TRANSMIT THE PROPOSAL TO THE OHIO BALLOT BOARD, WHICH SHALL PRESCRIBE THE BALLOT LANGUAGE AND AN EXPLANATION OF THE PROPOSAL IN THE SAME MANNER AND SUBJECT TO THE SAME TERMS AND CONDITIONS AS APPLY TO ISSUES SUBMITTED BY THE GENERAL ASSEMBLY PURSUANT TO SECTION 1 OF ARTICLE XVI OF THIS CONSTITUTION. THE BALLOT LANGUAGE SHALL BE PRESCRIBED SO AS TO PERMIT AN AFFIRMATIVE OR NEGATIVE VOTE UPON EACH CONSTITUTIONAL AMENDMENT, LAW, SECTION, OR ITEM SUBMITTED.

THE COMMITTEE REPRESENTING THE PETITIONERS SHALL PREPARE AN ARGUMENT SUPPORTING THEIR POSITION. THE GENERAL ASSEMBLY MAY PROVIDE BY LAW FOR THE PREPARATION OF OPPOSING ARGUMENTS. THE EXPLANATION AND THE ARGUMENTS SHALL NOT EXCEED THREE HUNDRED WORDS EACH. THE PROPOSAL, THE BALLOT LANGUAGE, THE EXPLANATION, AND THE ARGUMENTS SHALL BE PUBLISHED ONCE A WEEK FOR THREE CONSECUTIVE WEEKS PRECEDING THE ELECTION IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN EACH COUNTY OF THE STATE, WHERE A NEWSPAPER IS PUBLISHED.

THE SECRETARY OF STATE SHALL CAUSE TO BE PLACED ON THE BALLOT THE CAPTION AND THE BALLOT LANGUAGE PREPARED BY THE BALLOT BOARD FOR EACH PROPOSAL CONTAINED IN A PROPERLY CERTIFIED PETITION FILED WITH NOT LESS THAN THE REQUIRED NUMBER OF SIGNATURES. THE PETITION AND THE SIGNATURES SHALL BE PRESUMED TO BE IN ALL RESPECTS SUFFICIENT, UNLESS NOT LATER THAN SEVENTY-FIVE DAYS BEFORE THE ELECTION, THE PETITION IS PROVED TO BE INVALID OR THE SIGNATURES INSUFFICIENT OR AN ACTION CHALLENGING THE VALIDITY OF THE PETITION OR ONE OR MORE SIGNATURES IS PENDING, WHICH ACTION WAS BEGUN NOT LATER THAN ONE HUNDRED DAYS BEFORE THE ELECTION. NO PROPOSAL VOTED ON BY THE ELECTORS SHALL BE HELD UNCONSTITUTIONAL OR VOID AFTER THE ELECTION BECAUSE OF AN INSUFFICIENCY OF VALID SIGNATURES OR AN INVALID PETITION.

THE INITIATIVE AND REFERENDUM PROVISIONS OF THIS CONSTITUTION SHALL BE SELF-EXECUTING, EXCEPT AS OTHERWISE PROVIDED. LAWS MAY BE PASSED TO FACILITATE THEIR

OPERATION, BUT IN NO WAY LIMITING OR RESTRICTING EITHER SUCH PROVISIONS OR THE POWERS RESERVED TO THE PEOPLE.

History and Background of Section

Section 1g was adopted in 1912 as proposed by the 1912 Constitutional Convention. The section was amended in 1971, effective January 1, 1972. The 1971 amendment deleted a requirement that the Secretary of State have the initiated or referred law, proposed law, or proposed constitutional amendment, together with the pro and con arguments, printed and mailed or otherwise distribute a copy of the printed information to each elector, as far as reasonably possible. It was replaced by the requirement that such information be published once a week for five consecutive weeks preceding the election in a newspaper of general circulation in each county. The 1971 amendment also deleted a requirement that the signer of a petition who is a resident of a municipality must place on the petition his ward and precinct.

Section 1g sets forth, in a long and involved paragraph, most of the procedural details for proceeding from idea to ballot. It was, of course, the intention of the framers of the initiative and referendum to write as many details as possible into the Constitution. The Convention was marked by sharp debate between those favoring the initiative and referendum and those opposed, but both groups agreed on one matter, and that was that the legislature was not to be left with the task of filling in the details by law. Those who favored the initiative and referendum feared that the people's rights would be eroded and the procedures would be made too difficult if left to the legislature. Those opposed to the initiative and referendum fought to get as many restrictions as possible into the Constitution; otherwise, they believed, the entire legislative process would became a shambles because of the great number of petitions filed.

The proponents of the initiative and referendum recognized that, in spite of their desires to make the provision self-executing, some details would, of necessity, have to be provided by law. Tacked on at the end of Section 1g are two significant sentences: "The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved."

The General Assembly has enacted statutes, most of which are presently found in Chapter 3519. of the Revised Code, to facilitate the operation of the initiative and referendum. The first such enactment was in 1913, forbidding the payment of money or anything of value to the signer of an initiative or referendum petition. Opinions differ as to whether any of the requirements imposed by statute but not mentioned in the Constitution are unconstitutional limitations on the use of the initiative and referendum.

Effect of Change

The Commission proposes extensive rewording and rearrangement for Section 1g in new Section 6 setting forth in one section the initiative and referendum procedures that are common to all three processes—constitutional amendment initiative, statutory initiative, and referendum. Included in the several substantive changes that are proposed are several changes which remove some of the barriers to filing and circulating petitions, viewed as unnecessary by the Commission. The Commission proposal empowers the newly-created Ballot Board to prepare the summary which appears on each part petition. The recommendation proposes change in the time for filing and related deadlines, and removes the requirement that signatures must come from 44 counties. These and other changes discussed in greater detail below are aimed at giving potential initiators an opportunity to take their proposal to the ballot by meeting stringent, but not impossible, requirements.

1. Presently, provisions for the style clause of the laws and constitutional amendments submitted pursuant to initiative or supplementary petitions are found near the end of Section 1g, and the Commission recommends placing that material at the beginning of the new section since the style clause appears before the amendment or the statute being proposed. The present section does not provide a style clause for a law being presented to the General Assembly by initiative petition; the Commission is filing that gap.

2. The present constitutional provisions do not provide any steps preliminary to filing the petitions with the necessary signatures with the Secretary of State, but the statutes insert an important preliminary step. A petition with 100 signatures must be filed with the Attorney General and his approval given to a summary of the proposal before the petitioners may proceed. Although some have questioned whether or not this requirement is unconstitutional as a limitation or restriction on the people's powers contrary to the last sentence of present Section 1g, the Supreme Court of Ohio has not, so far, so held. The Commission felt that there is value in having an official or an official body approve or prepare the summary of the proposal, since the summary should be as accurate as possible. The summary is all that many people will read when their signatures to a petition are solicited. Rather than having the Attorney General perform this duty, with the potential for delay which presently exists, it seemed better to use the newly-authorized Ballot Board, which will be required to write the summary and an identifying caption within 15 days after the full text of the proposal is submitted to it.

3. Persons wishing to instigate an initiative or referendum petition would file the full text of the proposal with the Secretary of State and the Ballot Board, and the full text would no longer be required to appear on every part petition. The solicitor, however, would be required to carry the full text with him when he solicits signatures and any person wishing to do so could ask for it and read it. In the case of an involved and complicated statute, with many sections, requiring the full text to appear on each part petition greatly increases the costs of printing. The Commission felt that few people would take the time to read a long petition and that an accurate summary and caption would be sufficient as long as the full text is available for anyone wishing to read it.

4. The initial filing would consist of the full text of the proposal and the names and addresses of a committee of three to five persons, with their written consents, who will represent the petitioners in all matters relating to that petition. Presently, the Constitution authorizes the petition to name persons to prepare the arguments and explanations on behalf of the proposal, and the statutes have converted this group of persons into a committee to represent the petitioners in all matters. The Commission believed that the concept of the statutes was a good one and should be written into the Constitution so that any person wishing to start an initiative or referendum procedure can ascertain immediately what he must do to get started. Under the language proposed by the committee, no one could be named to an initiative or referendum committee without giving his written consent.

5. Once the summary and the identifying caption have been prepared, the committee would proceed to have the petitions printed, a copy of which must be filed with the Secretary of State before signatures are solicited. If the petition does not contain the full text of the proposal, a statement must be printed on it advising any person whose signature is solicited that the solicitor is required to have a true copy of the full text with him and present it to anyone wishing to read it.

6. Signatures must be affixed "indelibly" to petitions; the present provisions require that signatures be written in ink, but this has been

interpreted by the courts to include indelible pencil. A signature must be affixed by the person signing, but his address and the date of signing may be filled in by someone else. As is presently required, a signer must be an elector.

7. Presently, the solicitor is required to sign an affidavit to each part petition, and he must secure a notary public's seal and signature on each petition. Although the Commission believed that the requirement of the solicitor's statement on each petition with respect to the persons who signed the petition was a good one and should be continued, the Commission felt that requiring each petition to be notarized was not necessary. Therefore, the solicitor would be required, under the proposal, to certify to certain facts, as far as he is able to ascertain them, rather than sign an affidavit. The Commission has added to the material required to be in the solicitor's statement an affirmation that he carried a true copy of the full text of the proposal and made it available on request.

8. Under the present provisions, petitions, for the most part, must be filed 90 days before the election, and signatures can be proved invalid up to 40 days before the election. The petitioners are given 10 additional days for filing signatures if they do not have enough. The statutes provide procedures for the Secretary of State to transmit petitions to county boards of elections, and the Commission has not altered those provisions by any constitutional language. However, the Commission's proposal, which, as noted previously, would require filing 120 days before the election, requires that any proof of invalid signatures be submitted 75 days before the election and eliminates the 10 extra days for filing signatures. Approximately the same amount of time (45 instead of 50 days) is thus allowed for proof of invalid signatures. Elimination of the 10 extra days was done on the recommendation of the Secretary of State, and because the Commission felt that certain other provisions being changed will make it easier for persons to obtain signatures and that there is no need to give petitioners additional time which will bring the deadline too close to the election. If signatures are not proved invalid in the time given, that question and defects in the petition itself cannot be raised after the election to invalidate the issue if adopted. The Commission has altered the language of this rule by elimination of a sentence which seemed surplus, but intends that the rule remain the same.

9. Section 1g contains the rule for ascertaining the base upon which the percentage of required signatures is figured for all processes—the number of persons who voted for governor in the preceding gubernatorial election. As noted in the discussion in connection with the previous sections, the Commission recommendation is for a fixed number, but with the realization that there are valid reasons to keep the percentage concept. The Commission recommends that, if percentages are used, the base be the average of the "total number of votes cast for the office of governor at the last three preceding elections therefor," rather than simply the last election.

One other important change is recommended in computing whether the correct number of signatures has been affixed to a petition. Presently, the required number must include from "each of one-half of the counties of the state the signatures of not less than one-half of the designated percentage of the electors of such county." This means that, if a constitutional amendment is being sought requiring 10%, there must be filed petitions with at least 5% of the number voting for governor in the preceding gubernatorial election from at least 44 counties.

The Commission, and the Secretary of State, agreed that such a provision, which was inserted in 1912 as a part of the compromises made between those for and those against the initiative and referendum, is a protection to the residents of less populated counties which amounts to

giving signatures of electors from those counties greater value than signatures of electors from heavily-populated counties. Although no exact parallel has been found, the closest being holding invalid similar requirements for signatures to candidates' petitions, the Commission felt that the provision would very likely violate the one-man one-vote decision of the United States Supreme Court and should be eliminated.

10. The Commission has provided that the Ohio Ballot Board will prepare the ballot language and an explanation for issues to be placed on the ballot pursuant to initiative and referendum petitions. The time within which this would be done, and the possibility for court challenges, would be the same as under the new proposal for legislatively-adopted constitutional amendments, by reference to Section 1 of Article XVI. The Committee would prepare the arguments for the constitutional amendment or statute being submitted by initiative petition and against the law passed by the General Assembly being submitted by referendum petition, as the case may be, and the General Assembly could provide for the preparation of opposing arguments. Publication would also be parallel to the new provisions for legislatively-adopted constitutional amendments. In the case of initiative and referendum, however, there is no authority for such dissemination of information as is provided in the case of legislatively-adopted constitutional amendments.

Intent of the Commission

The Commission recommends the rearrangement and rewording of Section 1g of Article II as new Section 6 of Article XIV in order to make it easier for the potential petitioner to understand what is required. The substantive changes are designed to permit the initiator to go about the business of circulating petitions without undue complexities and delay. The Commission believes that the present section is confusing, because of its length, style, and excessive detail. Although the Commission has adopted a policy of removing as much statutory material as possible from the Constitution, Section 6 represents a departure from that policy. The Commission recognizes that provision for initiative and referendum procedures should not be left to legislative discretion, since the processes are basically a "safety valve" to circumvent the legislative process where a sufficient number of people believe this process has not responded to the wishes of a majority of the people.

APPENDIX A

Initiative Provisions by State

State	Constitutional Initiative	Statutory Initiative Direct	Indirect
Alaska		X	
Arizona	X	X	
Arkansas	X	X	
California	X	X	X
Colorado	X	X	
Florida	X		
Idaho		X (as provided by G.A.)	
Illinois	X		
Maine			X
Massachusetts	X		X
Michigan	X		X
Missouri	X	X	
Montana		X	
Nebraska	X	X	
Nevada	X		X
New Mexico		(*)	
North Dakota	X	X	
Ohio	X		X
Oklahoma	X	X	
Oregon	X	X	
South Dakota		(**)	X
Utah		X	
Washington		X	
Wyoming		X	X

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(*) New Mexico constitution provides that in the event the direct initiative is allowed the people may enact only what the General Assembly may enact.

(**) Presently, the South Dakota constitution permits only indirect statutory initiative. A 1974 proposal will, if approved, permit the direct statutory initiative.


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