

Joint Select Committee on Constitutional Reform

Summary Report

Members of the Committee

Senator Abel Tapia, Chair
Representative Al White, Vice-Chair

Representative Andy Kerr
Representative Ellen Roberts

Senator Shawn Mitchell
Senator Brandon Shaffer

Legislative Council Staff

Cathy Eslinger, Principal Analyst
Elizabeth Burger, Senior Analyst

Office of Legislative Legal Services

Ed DeCecco, Senior Staff Attorney
Jason Gelender, Senior Staff Attorney

Joint Select Committee on Constitutional Reform

Committee Charge

Pursuant to Joint Rule 41 of the Senate and House of Representatives, the President of the Senate and the Speaker of the House of Representatives jointly created the Joint Select Committee on Constitutional Reform. The committee consisted of three members of the Senate and three members of the House of Representatives. Additionally, the President and Speaker each appointed four senior advisors to provide input to the committee on its deliberations. The committee was charged with examining the means by which Coloradans initiate, and the General Assembly refers, proposals to the state ballot to change Colorado's statutes and constitution. Pursuant to its charge, the committee was asked to consider two questions:

- Should the state provide additional incentives for citizens to seek statutory changes instead of constitutional changes?
- Should the rules by which constitutional changes are initiated differ from the rules that govern statutory initiatives?

Committee Activities

The committee met 11 times between February 12, 2008, and March 6, 2008. The committee heard a variety of presentations from organizations and individuals related to its charge. The committee devoted two meetings to discussing the recommendations of the 2007 University of Denver Colorado Constitution Panel and heard a presentation on the use of the initiative and referendum process in other states by the National Conference of State Legislatures. In addition, the committee received briefings by Action 22, Colorado's Future, Mr. Dennis Polhill, and the Colorado League of Women Voters.

Specific topics addressed by the committee during the course of its meetings included:

- the current basis for the number of signatures required by petitioners, and whether this basis should be changed or differentiated for statutory and constitutional amendments;
- a geographic requirement for petition signature gathering;
- protection of initiated statutes from legislative amendment for a specified period of time without a supermajority vote;
- the process for constitutional amendments initiated by citizens, and whether it should include additional requirements such as public hearings, involvement of the legislature, or additional fiscal analysis; and
- the potential creation of a Constitutional Revision Commission to recommend changes to the state constitution directly to voters.

Signature requirements. The committee discussed the current signature requirements for statutory initiatives and constitutional amendments proposed by citizens, and whether changes to the signature requirements would create an incentive for citizens to propose statutory initiatives rather than constitutional amendments. The current signature requirement for both statutory initiatives and constitutional amendments is 5 percent of the votes cast for the Office of Secretary of State in the prior general election. The committee discussed changing the basis of the signature requirement to votes cast for the Office of the Governor in the prior general election. The committee also considered whether the required number of signatures should be increased, and

whether the signature threshold should be different for statutory initiatives and constitutional amendments.

In addition, the committee discussed a requirement that signatures be collected in all areas of the state. Specifically, the committee discussed adopting a requirement that a certain percentage of the total number of required signatures be collected from Colorado's congressional districts or state Senate districts.

Protection of initiated statutes from amendment. The committee discussed whether initiated statutes should be protected from amendment by the General Assembly for a specified period of time, and whether this period of protection would create an incentive for citizens to propose statutory, rather than constitutional, initiatives. The committee considered a specific recommendation of the 2007 University of Denver Colorado Constitution Panel that initiated statutes not be subject to amendment by the legislature for 10 years without a two-thirds vote of each chamber. The committee received information from the National Conference of State Legislatures on the use of such periods of protection in other states.

Additional requirements for constitutional amendments. The committee discussed whether citizens proposing constitutional amendments should be subject to additional requirements intended to improve public awareness and understanding of the provisions of the amendments. The committee discussed a recommendation of the 2007 University of Denver Colorado Constitution Panel to create the Colorado Legislative Engagement and Referral (CLEAR) Process. This process would allow for earlier review of proposed constitutional amendments, an earlier filing date for petitions, fiscal impact analysis of proposed amendments, public hearings on proposed amendments conducted by the legislature, and the ability of the legislature to make recommendations on the adoption of proposed measures or to refer alternative measures to the voters. The committee also discussed methods to increase public knowledge about the impact of proposed constitutional amendments. Such methods included creating incentives for nonprofit organizations to provide the public with information on proposed measures and including a statement of the fiscal impact of a proposed constitutional amendment along with the text of the measure on the ballot.

Constitutional Revision Commission. The committee devoted some time to discussing a recommendation of the 2007 University of Denver Colorado Constitution Panel concerning the creation of a Constitutional Revision Commission. As proposed by the panel, the Constitutional Revision Commission would be comprised of 33 members appointed by the Governor and legislative leadership, meet every 10 years, and recommend changes to the constitution directly to the voters for approval. The committee discussed the appointment process for members to the commission, the scope of authority of the commission, and limiting the commission to making recommendation on a specific portion of the constitution in every review cycle.

Committee Recommendations

As a result of the committee's discussions and deliberation, the committee made recommendations pertaining to petition signature requirements, a geographic distribution requirement for petition signature gathering, and the modification of initiated statutes.

Petition signature requirements. The committee recommends changing the basis for the petition signature requirement from 5 percent of votes cast for the Office of Secretary of State in the prior general election to one based on a percentage of votes cast for the Office of the

Governor. While the committee recommends applying the new basis for petition signature requirements to both constitutional and statutory measures, it also recommends differentiating the signature threshold requirements for constitutional and statutory measures as follows.

- For proposed statutory measures, the committee recommends a petition signature requirement of **4 percent of votes cast for the Office of the Governor** in the prior general election.
- For proposed constitutional amendments, the committee recommends a petition signature requirement of **6 percent of votes cast for the Office of the Governor** in the prior general election.

Geographic distribution requirement for petition signature gathering. For initiated constitutional amendments, the committee recommends adopting a geographic distribution requirement for collecting a minimum percentage of petition signatures in each of the state's seven congressional districts. The committee voted to recommend that of the total number of petition signatures required for constitutional amendments, **at least 10 percent of the total required signatures be gathered from each of the state's seven congressional districts.**

Modification of initiated statutes. The committee recommends protection for initiated statutes by specifying that, upon voter approval, such statutes may not be amended by the General Assembly without a two-thirds vote of each chamber for a period of six years.

Additional discussion of recommendations. The committee also discussed recommendations regarding the time frame and process for initiating constitutional amendments, with a goal of strengthening this process. The committee discussed a recommendation, for proposed constitutional amendments, to change the deadline for filing petition signatures with the Secretary of State. This change would lengthen the time, currently three months, that exists between the required filing date and the election date at which the measure would be considered. Such an extension could permit increased voter outreach and public education about constitutional amendments.