

North Dakota	No	No emergency measures No appropriation measures for the support and maintenance of state departments and institutions
Ohio	No	May not be used to pass a law: -Authorizing any classification of property for the purpose of levying different rates of taxation thereon -Authorizing the levy of any single tax on land, land values or land sites at a higher rate or by a different rule than is applied to improvements thereon or to personal property
Oklahoma	Yes	Initiatives rejected by the voters cannot be proposed again for three years by less than 25 percent of the state's legal voters
Oregon	Yes	None
South Dakota	No	No private or special laws
Utah	No	None
Washington	Yes	None
Wyoming	Yes	Cannot be used to: -Dedicate revenues -Make or repeal appropriations -Create courts -Define the jurisdiction of courts -Prescribe court rules -Enact local or special legislation -Enact legislation prohibited by the Wyoming constitution The same measure cannot be initiated more often than once in five years

*In interviews conducted in May 2002, election officials in Massachusetts said that although that state does not have a single subject rule, it does have a requirement that an initiative contain only subjects that are related or mutually dependent. Courts have interpreted relatedness to mean that "... one can identify a common purpose to which each subject of [the] initiative petition can reasonably be said to be germane."

Source: National Conference of State Legislatures, January 2002.

Other Ideas for Reform

Restrictions on the Dedication of Revenue

Initiative measures that mandate the expenditures of large amounts of public revenue without including a new dedicated revenue source (such as taxes or fees) can make it difficult for the legislature to continue to fund existing state services and programs. In addition, initiatives that increase or create new taxes to fund new or existing programs negatively affect the legislature's ability to impose reasonable taxes to fund necessary programs for citizens. Although the task force agreed that initiatives limiting or dedicating revenue or otherwise imposing fiscal policies can be a significant problem-perhaps even the most serious problem-in the initiative process, members were unable to agree on a specific recommendation to address the issue.

The City Club of Portland recommended in 1996 that Oregon's initiative process be changed so that initiatives that dedicate revenue or require appropriations in excess of \$500,000 per year should be required to provide new revenues.

Eleven states currently have restrictions on the use of the initiative with regard to appropriations and funding mechanisms.

Table 5. Restrictions on Imposing Fiscal Policies Via the Initiative

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	Restriction
Alaska	No dedication of revenues or making or repealing appropriations.
Florida	Tax or fee increases require a 2/3 vote to pass.
Maine	Expenditures in an amount in excess of available and unappropriated state funds remain inoperative until 45 days after the regular legislative session, unless the measure provides for raising new revenues adequate for its operation.
Massachusetts	May not be used to make a specific appropriation from the treasury. However, if such a law, approved by the people, is not repealed, the legislature must raise by taxation or otherwise and appropriate such money as may be necessary to carry such law into effect.
Mississippi	Sponsor must identify in the text of the initiative the amount and source of revenue required to implement the initiative. Initiatives requiring a reduction in government revenue or a reallocation from currently funded programs must identify the program(s) whose funding must be reduced or eliminated to implement the initiative.
Missouri	May not appropriate money other than new revenues created and provided for by the initiative.
Montana	May not appropriate money.
Nebraska	No measure that interferes with the Legislature's ability to direct taxation of necessary revenues for the state and its governmental subdivisions.
Nevada	No appropriations or other expenditures of money, unless such statute or amendment also imposes a sufficient tax or otherwise constitutionally provides for raising the necessary revenue.
North Dakota	No appropriations for the support and maintenance of state departments and institutions.
Wyoming	No dedication of revenues or making or repealing appropriations.

Source: National Conference of State Legislatures, April 2002.

Recent Legislative Action

A total of 29 bills dealing with initiative subject matter were introduced in 14 states between 1999 and 2002. None have passed to date. Among the most common subjects were:

- Prohibiting or restricting appropriations and reductions in state revenue via an initiative (considered in **Arizona, Mississippi and Washington**); a bill is pending in **Michigan** that would prohibit using the popular referendum for acts whose primary purpose is to make appropriations or meet deficiencies in state funds.
- Strengthening and providing for interpretation of single subject rules (pending in **California**; also considered in **Oklahoma**).
- Making it more difficult to propose and pass wildlife measures (considered in **Alaska, Massachusetts, Oklahoma and Washington**).
- Banning a measure that is failed by voters from returning to the ballot for a specified period of time (considered in **Maine and Oregon**).

Other measures that address initiative subjects included a 1999 bill in **Arizona** that would have established a four-year sunset provision for initiatives that establish the functions or activities of a state agency; a 1999 **Oregon** bill that would have prohibited initiatives that result in the taking of private property; and a pending bill to enact an initiative procedure in **New Jersey** that would be limited to campaign finance, lobbying, government ethics and election procedures. A failed 1999 bill in **Oregon** would have limited initiative amendments to the constitution to the structure and powers of government and the rights of people with respect to their government, and would have prohibited initiated constitutional amendments that dedicated or appropriated revenue, repealed appropriations, or required expenditures in excess of \$500,000 per year.

4. The Drafting and Certification Phase

Recommendations

Recommendation 4.1: States should require a review of proposed initiative language by either the legislature or a state agency. The review should include non-binding suggestions for improving the initiative's technical format and content, and should be considered public information.

Recommendation 4.2: States should require the drafting and certification of a ballot title and summary for each initiative proposal. Ballot titles must identify the principal effect of the proposed initiative and must be unbiased, clear, accurate and written so that a "yes" vote changes current law.

Recommendation 4.3: States should require the drafting of a fiscal impact statement for each initiative proposal. The statement should appear on the petition, in the voter information pamphlet, and on the ballot.

Recommendation 4.4: States should establish a review process and an opportunity for public challenge of technical matters, including adherence to single subject rules, and ballot title, summary and fiscal note sufficiency, to be made prior to the signature-gathering phase.

Discussion and Resource Materials

Overview

Certifying an initiative for signature collection is an involved process with many steps and deadlines. No two states have exactly the same certification requirements. Generally, however, the process includes these steps:

- 1) Drafting the initiative proposal;
- 2) Preparation of a ballot title and summary;
- 3) In some states, preparation of a fiscal analysis; and
- 4) Technical challenges to ballot titles, summaries and fiscal analyses.

Drafting the Initiative Proposal

Often, initiatives are drafted by citizens who have little or no legal background or expertise. Making the legislature's professional bill drafting staff available to proponents may help to prevent errors in drafting and to ensure that a proposal's language is in the proper form and harmonizes with other constitutional or statutory language. Advice from the legislature's legal experts also may help initiative proponents recognize constitutional flaws and unintended consequences of their proposal. Correcting such problems early in the process can help proponents avoid costly court battles later in the process. In short, assistance and advice from legislative bill drafting staff may help improve the quality and consistency of initiative measures. Making public the comments and recommendations of such a review process is important because it can draw attention to issues that otherwise might escape public notice.

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Similar reforms have been proposed by the following:

California League of Women Voters (1999),
City Club of Portland, Oregon (1996), and
Nebraska Petition Reform Task Force (1995).

Presently, some states offer no assistance or advice to initiative proponents on the draft of their proposed law. The states that do offer assistance generally have one of two basic levels of review, which may be provided either prior to filing the initiative or upon filing. In some states, the review is purely technical; the proposal is reviewed to ensure it meets the legal requirements for format and style and adheres to drafting conventions. However, 11 states go further and offer some sort of drafting assistance in order to improve the quality and consistency of initiative proposals. In these states, sponsors may take a draft or even just an idea to a legislative office for assistance with the form and content of the initiative before submitting the proposal to the appropriate state official. Sponsors' acceptance of any recommendations made is optional. Table 6 contains a list of technical and content-oriented state agency review.

