

LEGISLATIVE POWERS TO AMEND A STATE CONSTITUTION



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Background

A constitution is the written document that embodies the fundamental principles of a state. It guarantees certain rights to the people. It establishes the character and conception of the government, prescribing its organization, powers, and duties.¹

Each constitution encompasses the core values at the time when it was adopted. The framers of the constitutions recognized, however, that such tenets may change over time; and they incorporated procedures for revision.

There are four methods for initiating proposals for constitutional amendment and revision found among state constitutions.² These are:

- S Constitutional initiative
- S Constitutional commission;
- S Constitutional convention; and
- S Proposal by the state legislature.

¹ American Society of Legislative Clerks and Secretaries, *Glossary of Legislative and Computer Terms* (American Society of Legislative Clerks and Secretaries, 1989); and Henry Campbell Black, *Black's Law Dictionary, 3rd Edition*, St. Paul, Minnesota: West Publishing Company, 1933)

² Council of State Governments, *The Book of the States, 1982-83*, p. 116 (Lexington, Kentucky: Council of State Governments, 1982).

The framers of the constitutions, however, included safeguards against rapid or whimsical change. For each of the revision methods allowed, state constitutions detail the procedures that must be followed.

The remainder of this article will focus on the processes used by legislatures to put forth state constitutional amendments.

Form for Proposed Amendments

The types of legislative instruments used by state legislatures to propose constitutional amendments vary. The most common forms are joint resolution, bill, and concurrent resolution (see Table 1). In 57 chambers proposed constitutional amendments are processed via joint resolution. Twenty-four legislative assemblies use bills. Sixteen legislative bodies handle constitutional amendments by concurrent resolution. Seven chambers employ other mechanisms.

Vote Requirements

In 35 states the legislation proposing a constitutional amendment must be adopted by the legislature during only one session (see Table 2). In 12 states a proposed constitutional amendment must be enacted during two legislative sessions, and a general election must occur between the two sessions. The remaining three states may use one or two sessions.

Seventeen state legislatures may adopt a proposed constitutional amendment by a majority vote (see Table 3). A supermajority vote is needed in 26 states. Special factors determine the vote requirement for seven legislatures. For example:

- S With a supermajority vote the legislatures in Connecticut, Hawaii, and New Jersey may submit a constitutional amendment to the people after one session; otherwise it takes a majority vote in two sessions.
- S In Oregon the vote requirement depends whether the legislature is proposing a constitutional amendment or a constitutional revision.
- S In South Carolina, Tennessee, and Vermont the legislature must enact a proposed constitutional amendment during two sessions; but the vote requirements differ each session.

Some constitutions establish exceptions to the “normal” vote requirement. In New Mexico selected articles of the New Mexico Constitution have a supermajority vote requirement. The Pennsylvania Constitution contains special requirements for enacting constitutional amendments in case of an emergency.

Other Restrictions

Constitutions occasionally set other restrictions on legislative proposals for amendment. For example:

- S In Arkansas, Kentucky, and Kansas there is a limitation on the number of proposed amendments the legislature may submit at an election; the limits are three, four, and five, respectively.
- S The Colorado and Illinois constitutions limit the number of articles that may be changed. The Colorado General Assembly may not propose amendments to more than six articles of the constitution in the same legislative session. The Illinois General Assembly may submit changes to only three articles per election.

Notice Requirements

Proposed constitutional amendments are usually subject to notice or publication requirements. The requirement for advance notice helps to ensure that the public is aware of any proposed constitutional changes. Requirements for the notice often specify:

- S Who is responsible for producing the notice. The responsibility for the notice does not always fall upon the legislature. It also may be given to the governor, secretary of state, or attorney general.
- S Where the notice must be printed. Most often the notices are published in local newspapers. Voter information pamphlets and gubernatorial proclamations also are used.
- S When the notice must appear. The number of times- or for how long- the notice must be printed before the election at which it is to be voted upon are usually set out.

Some states have special requirements. For example, summaries of or pro/con arguments for the proposed amendments sometimes must be provided. In New Mexico the notice must be published in both English and Spanish.

Table 4 provides several samples of the notice or publication requirements for proposed constitutional amendments.

Type of Election

Constitutions often prescribe the type of election at which the constitutional amendments proposed by a legislature may be submitted.

Most frequently, constitutional amendments must be placed on the ballot for a “general election.” In several states- Arkansas, Colorado, Kentucky, Nebraska, and

South Carolina, for example-the “general election” must be one at which state legislators are to be elected. In Tennessee it is the general election “at which a governor is to be chosen.” In Connecticut and Georgia it is the general election “held in the even-numbered year.”

In several states special elections may also be used for constitutional amendment votes. Alabama, Arizona, California, Florida, Louisiana, Michigan, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, Texas, and West Virginia are examples of states where this is true.

In some states-Alabama, Iowa, North Carolina, Pennsylvania, West Virginia, and Wisconsin, for example-the votes are taken “at the time and in the manner prescribed by the legislature” or on a “day appointed by the legislature.”

Votes occasionally are allowed at primary or municipal elections.

Conclusion

Even though the processes used by legislatures to propose constitutional amendments vary, changes to constitutions occur most commonly through the amendments proposed by state lawmaking bodies.³

In truth, however, the power rests with the people. Constitutional changes are almost always submitted to a state’s voters who are the ultimate decision-makers. This is true for legislative proposals to amend the constitution. In 49 states these proposals must be submitted to-and ratified by-the voters in order to take effect. The Delaware General Assembly may amend the constitution without voter ratification.

Note: Based on work of the American Society of Legislative Clerks and Secretaries’ *Inside the Legislative Process Committee*, 2000- 2001

Table 1. Legislative Instruments Used to Propose Constitutional Amendments

The following chambers use bills to propose constitutional amendments.

Alabama Senate and House
Delaware Senate and House
Hawaii Senate and House
Kentucky Senate and House
Louisiana House
Maine Senate and House
Maryland Senate and House

Minnesota Senate and House
Montana Senate and House
North Carolina Senate and House
Ohio Senate
Oklahoma Senate and House
Virginia Senate and House

The following chambers use joint resolutions.

Alabama House
Alaska Senate and House
Arkansas Senate and House
Connecticut Senate and House
Florida Senate and House
Georgia Senate and House
Idaho Senate and House
Illinois Senate and House
Indiana Senate and House
Iowa Senate and House
Louisiana Senate and House
Michigan Senate and House
Missouri Senate and House
Nevada Senate and Assembly
New Mexico Senate and House
Ohio House

Oklahoma House
Oregon Senate and House
Pennsylvania Senate and House
Rhode Island Senate and House
South Carolina Senate and House
South Dakota Senate and House
Tennessee Senate and House
Texas Senate and House
Utah Senate and House
Virginia Senate and House
Washington Senate and House
West Virginia Senate and House
Wisconsin Senate and Assembly
Wyoming Senate and House

The following chambers use concurrent resolutions.

Arizona Senate and House
Colorado Senate and House
Kansas Senate and House
Mississippi Senate and House

New Hampshire Senate and House
New Jersey Senate and General Assembly
New York Senate and Assembly
North Dakota Senate and House

The following chambers use another type of legislative instrument.

California Senate and House (Senate or Assembly
proposed constitutional amendment)
Massachusetts Senate and House (proposal for a
legislative amendment to the constitution)

Nebraska Senate (legislative resolution)
Vermont Senate and House (proposal to amend
the constitution)

Table 2. Number of Sessions During Which Enactment Is Required

In the following states, the legislature enacts a proposed constitutional amendment during only one session.

Alabama	Louisiana	North Dakota
Alaska	Maine	Ohio
Arizona	Maryland	Oklahoma
Arkansas	Michigan	Oregon
California	Minnesota	Rhode Island
Colorado	Mississippi	South Dakota
Florida	Missouri	Texas
Georgia	Montana	Utah
Idaho	Nebraska	Washington
Illinois	New Hampshire	West Virginia
Kansas	New Mexico	Wyoming
Kentucky	North Carolina	

In the following states, the legislature must enact a proposed constitutional amendment during two sessions.

Delaware	Nevada	Tennessee
Indiana	New York	Vermont
Iowa	Pennsylvania	Virginia
Massachusetts	South Carolina	Wisconsin

In the following states, the vote total determines the number of sessions during which a proposed constitutional amendment must be enacted.

Connecticut	New Jersey	Hawaii
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Table 3. Legislative Vote Requirements

Majority vote

Arizona	Missouri	Pennsylvania
Arkansas	Nevada	Rhode Island
Indiana	New Mexico	South Dakota
Iowa	New York	Virginia
Massachusetts	North Dakota	Wisconsin
Minnesota	Oklahoma	

Three- fifths vote

Alabama	Kentucky	New Hampshire
Florida	Maryland	North Carolina
Illinois	Nebraska	Ohio

Two- thirds vote

Alaska	Kansas	Texas
California	Louisiana	Utah
Colorado	Maine	Washington
Delaware	Michigan	West Virginia
Georgia	Mississippi	Wyoming
Idaho	Montana	

Another vote

Connecticut (three- fourths vote in each house at one session, or majority vote in each house in two sessions between which an election has intervened)

Hawaii (two- thirds vote in each chamber at one session, or majority vote in each chamber in two sessions)

New Jersey (three- fifths vote in each chamber at one session, or majority vote in each chamber for two successive sessions)

Oregon (majority for constitutional amendment; two- thirds for constitutional revision)

South Carolina (first passage-- two- thirds vote; passage after popular ratification-- majority vote)

Tennessee (first passage-- majority vote; second passage-- two- thirds vote)

Vermont (first passage-- two- thirds vote in Senate, majority vote in House; second passage-- majority vote)