

DO YOU WANT A FREE PONY?

An Analysis of the Initiative and Referendum
Process in Washington State

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Municipal League of King County

Initiative Study Task Force

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EXECUTIVE SUMMARY

Public concern has grown regarding the use of initiatives, a tool that can appear to circumvent or preempt legislative actions. Some members of the public have perceived recent initiatives as tools of special interest groups. Problems also arise when proposed initiatives lead to misunderstandings, legal challenges and unintended consequences.

A citizen task force convened by the Municipal League of King County has concluded that the current initiative process, while a powerful and popular tool for democracy, could be improved by requiring objective information about the potential impacts of proposed initiatives. The Municipal League supports the immediate enactment of a package of simple reforms that will better inform the electorate as they assess the merits of a given initiative. The Municipal League also invites other civic organizations in Washington to join in discussing the need and potential for longer-term improvements to the initiative process.

After careful deliberation, this task force makes the following recommendations:

- Institute a neutral statewide Citizen Initiative Review, using citizen panels (modeled on the jury process) that will study proposed initiatives and provide findings to the public.
- Require that the Washington Attorney General publish clear, bright-line ethics rules that put elected officials and their constituents on notice of what officials can and cannot discuss with regard to proposed initiatives.
- Require that all proposed initiatives be “revenue transparent” – that the initiative language itself must account for new appropriations and/or budgetary losses.
- Consider supporting a Constitutional Amendment abolishing direct initiatives (initiatives to the people) and permitting only indirect initiatives (initiatives to the legislature).

INTRODUCTION

Process

In September 2001, the Municipal League of King County convened a volunteer task force to review the Washington State initiative and referendum process¹ based on increased concerns with the process and its effect on state and local governments. This review identifies strengths and weaknesses of the current system and makes several broad recommendations for its improvement. Following this review, the Municipal League may decide to establish a statewide coalition of interested parties to refine and implement some or all of these recommendations.

The task force chair screened all members to ensure that no one had a conflict of interest or fundamental bias with respect to the current initiative process.

The task force bases its recommendations on extensive review of materials regarding direct democracy, the general initiative process, and the use of initiatives and referenda in Washington State over the past ninety years. Members of the task force also discussed this issue with people and organizations interested in the initiative process, and attended symposiums and meetings on the topic.

Based on its research, the task force considered numerous potential reforms, ranging from maintenance of the status quo to abolition of all forms of statewide initiatives in Washington. In order to be considered, a potential recommendation to the Municipal League board, a proposed reform needed to: (a) address a significant weakness in the current process as identified by the committee, and (b) address that weakness without creating unjustifiable obstacles to the process.

Although the power of the referendum and initiative at the local level was discussed, this review focuses on the statewide initiative process as provided for in the Washington State Constitution, Article II, Section 1.

Pursuant to Article II, Section 1, voters may choose between an indirect or direct initiative. In practice, initiative sponsors overwhelmingly choose the direct alternative (Initiative to the People), meaning that initiatives, which have qualified for the ballot, are put directly before the voters for approval or rejection. Indirect initiatives (Initiatives to the Legislature) must be acted upon by the Legislature during the next session. The Legislature can (a) enact the initiative

¹ The public uses the initiative process to enact new law and uses the referendum process to repeal recent legislation.

into law, (b) place the initiative before the voters, or (c) amend the initiative and place both the original and the amended versions before the voters. During the first two years after passage, initiatives can be repealed or amended by a 2/3 vote of each house of the Legislature, and after that time, by a majority vote. The number of signatures required for each type is eight percent (8%) of the votes cast for governor in the last election. Only legislative matters may be considered in the process; constitutional amendments cannot be made via initiatives.

History

The movement to add the initiative and referendum to state constitutions began in the 1880s. South Dakota adopted the initiative process first in 1898. Within twenty years, another 23 states adopted at least one form of initiative and/or referendum.

“Direct democracy” was supported by arguments that direct legislation supplemented representative institutions and would reform state legislatures by injecting a modicum of popular control. Arguments against it included predictions of radical legislation and demagogues manipulating popular sentiments. Other concerns included the fear that special interest groups would dominate measures including technical issues, and that it would compromise the interest of political or social minorities. The federal constitution guarantees every state a republican form of government, and opponents to the initiative process claimed that allowing voters to legislate directly would violate this guarantee.

The Washington Constitution did not originally provide for powers of initiative and referendum. Proposed by the Washington Legislature in 1911 and ratified by the voters in 1912, Amendment 7 revised Article II, Section 1, to provide for the “reserved” powers of initiative and referendum. In 1913, the legislature adopted implementing legislation to complete the addition of direct democracy to the lawmaking process.

Initiatives and referenda are not meant to replace representative democracy – these processes were promoted as an additional check and balance on those in power. People such as Thomas Jefferson, Theodore Roosevelt, Woodrow Wilson, and William Jennings Bryan proposed and supported the use of this tool. The use of initiatives and referenda does not constitute total direct democracy. These tools were never designed or intended to replace the day-to-day lawmaking mechanism in this country. Instead, the electorate uses them when elected officials have been unwilling or unable to handle sensitive issues, such as term limits, tax limits and campaign finance reform.

Throughout the United States, approximately 1,900 initiatives have been placed on statewide ballots in the last 100 years. Of those, 799 have been adopted - a 42% passage rate. In short, citizens seem to be discriminating and cautious. Nationwide, voters adopt approximately 15 citizen proposed initiatives every two years.

Even though 24 states have some form of statewide initiative, almost two-thirds of all initiative activity between 1898 and 1998 took place in just six states:

State	Number of Initiatives Put to a Vote	Number of Initiatives Passed	Passage Rate
Oregon	314	105	37%
California	260	92	34%
Colorado	174	72	38%
North Dakota	165	77	45%
Arizona	144	58	40%
Washington ²	124	60	48%

All political persuasions have used the initiative process. A partial list of reforms made possible through the initiative process include:

- A woman's right to vote
- Direct primary elections
- The eight-hour workday
- Legalization of physician-assisted suicide
- Direct election of U.S. Senators by the people
- Legalized use of medical marijuana
- Environmental and land-use management
- Campaign finance reform
- Term limits on elected officials
- Increasing the minimum wage

Initiatives and referenda increase voter participation. Low voter turnout in the United States has been attributed (and factually documented) to citizen dissatisfaction with their elected officials, lack of choice at the ballot box, and the feeling that their individual vote doesn't count. Voter turnout has historically been 5-7% higher in that states that have the power of the initiative. People seem to come to the polls when they feel that their vote makes a direct impact. When voting on an initiative, the voter votes directly for or against a reform – a tangible result of their vote and not just a vote cast for a candidate to represent them. This power gives voters a reason to want to



² See Appendix B.

participate in the electoral process and a reason to believe their votes actually count.

Perceived Problems

Recently, public concern has focused on the use of initiatives to circumvent or preempt legislative actions. Some voters who approve such measures are later dismayed by what may be unintended consequences of their decisions. Arguments have been made that only elected legislators should be responsible for funding planned government activity, and that initiatives limiting funds remove legislators from accountability.

The electorate also perceives the initiative process as a tool of well-funded special interest groups that undermine the original intent of the process. Additionally, proposed initiatives are not always well thought out or well drafted, and thus lead to misunderstanding, legal challenges and unintended consequences.

Citizens often become alienated when they feel less able to influence the political process. Many share the widespread perception that special interest groups and those with money control public policy decisions. Negative campaigning, misleading sound bites, broken promises and trends in campaign finance have further eroded confidence in a representative form of government. Citizens appear to be increasingly disgusted with divisive debates, name-calling and a lack of civility displayed by politicians who have forgotten the art of compromise. Meanwhile, the media fails to deliver the hard information and in-depth analysis the public needs to make informed decisions about candidates and proposed initiatives.

In a recent poll conducted by the Municipal League as part of its "Taking the Pulse" project, over 750 self-selected King County citizens answered questions on a variety of political and governmental issues, including the initiative process. The following shows the percentage of respondents who agreed or strongly agreed with the statement:

I would welcome more public discussion about initiatives and proposed reforms to the process.	84%
Voters need reliable, less-biased information on initiatives.	83%
Initiatives are an important right of the people to shape government action.	64%
Too many initiatives appear on ballots today.	63%
If our elected officials were more responsive to citizen concerns, we wouldn't see so many initiatives.	63%
Most initiatives are too complex, and difficult to understand.	52%

This poll also asked questions regarding access to information. Again, the following percentages reflect the respondents who agreed or strongly agreed with the statements:

I favor measures that would provide voters with information about:	
Possible consequences initiatives are likely to have on taxpayers/others.	93%
How much initiatives are likely to cost the public.	92%
Whether proposed initiatives are constitutional.	87%

RECOMMENDATIONS

The Task Force puts the following recommendations before the Municipal League for its review. The Task Force has listed these recommendations in order of probable implementation. Each recommendation describes the content of the proposal, how it would alter the process, by what means it might be implemented, obstacles to implementation, and the chances of its success.

In general, the recommendations fall into two categories. The first category focuses on voter education, including such activities as public forums to discuss consequences of ballot initiatives. The second category requires legislative action to implement, such as limiting the content of initiatives.

I. Citizen Initiative Review (CIR)

This proposal would create a system of citizen panels to study each proposed initiative in depth. Similar to juries convened in the judicial system, twenty-four randomly selected people would hear expert testimony and deliberate the merits and impacts of proposed initiatives and referenda. Following deliberation, the jury would issue its analysis and findings to the public.

This process has been studied and refined for twenty-seven years in the United States and has been successfully implemented in several states (most notably Minnesota and Pennsylvania) and on national and international levels. Both England and Germany use this type of citizen jury.

Voters would hear what “average” citizens think about and want from initiatives rather than only hearing sound bites from paid political advertisers. The jury’s verdict need not be unanimous.

Voters would get a one-page summary of the final results, including the reasons behind the votes, via the state Voters’ Pamphlet and the Secretary of State’s office, through the media, the Internet, and other

sources.

Highlights of the plan include:

- A separate Citizen Panel would review each initiative certified for the ballot, using a neutral and balanced process.
- A report from each panel would include reasons for supporting or opposing the initiative or remaining undecided, and percentages of the panel holding each of these views. This information would be published in the Voters' Pamphlet and made widely available to the public.
- The Secretary of State's Office would administer the CIR program.
- A ten-Member citizen board would have oversight. It would be chaired by the Secretary of State and consist of six persons nominated from those who served on previous citizen panels plus two persons appointed by the Secretary of State and two appointed by the Governor.
- Funding to carry out CIR would be set at maximum of 25 cents per year per resident in Washington, with the funds coming from interest on the general fund.
- Sunset provision is included to terminate the CIR program after eight years to insure that the CIR continues only if valuable to voters.

The extensive research and use of citizen jury processes suggest that they are effective, independent, and bring unique perspectives into a political debate outside the usual political spin dominated by money and established interest groups. The jury system is a tried and trusted mechanism for coming to decisions in this country.

II. Require Clear Ethics Rules for State Legislators from the Washington Attorney General

Citizens look to their elected representatives to provide guidance on proposed initiatives, but these officials feel that the guidelines they are required to uphold limit their ability to provide constituents with guidance without stepping outside the boundaries of ethical conduct. Although government officials are bound by a variety of ethical requirements, those officials also feel an obligation to provide their constituents with opinions regarding proposed initiatives.

Current ethics guidelines related to the initiative process seem confusing and ambiguous. A bill proposing this action was introduced during the last session, but did not make it out of session.

By having the Attorney General publish a pamphlet detailing the clear and unambiguous ethics guidelines that government officials must abide by when discussing proposed initiatives, officials will feel more

comfortable knowing what they can and cannot do, and constituents (and the media) can demand that elected officials stop hiding behind “vague” ethics rules and speak their minds.

The Municipal League could place this recommendation directly before the Attorney General.

III. Require Initiatives to be “Revenue Transparent”

For initiatives that increase state spending or decrease state revenue, initiative proponents must include in the wording of the initiative question (as it appears on the ballot) either a statement of how the revenue necessary to fund the new spending would be raised, or what state services could be reduced to offset lost revenue.

In the last several years, numerous initiatives have passed that reduced taxes without specifying what state services the public wanted reduced. At the same time, numerous initiatives have passed that increased spending, but did not specify how the necessary funds would or could be raised. After enactment of this recommendation, initiatives would have to specify all of their consequences, not just those that the initiative supporters want to present.

The legislature could pass a bill to require initiatives that increase state spending specify how the necessary funding would be raised. Bills along these lines have already been introduced, usually with broad bipartisan support (SB 5705 from the 2001 legislative session). To require initiatives that decrease state revenue specify where cuts in state services would come is more difficult. It appears that this change may require a constitutional amendment (as proposed in HJR 4200 during the 2001 session).

Such new legislation could be implemented as follows: Initiative authors would submit their proposed initiative questions to the Secretary of State. For initiatives with a significant fiscal impact, the Secretary of State would require the OFM to determine the probable impact on state revenue (i.e. how much the initiative would increase spending or decrease revenue).

If the initiative would increase state spending, OFM would propose possible ways the necessary revenue could be raised (e.g., a 0.2% increase in the sales tax or raising vehicle licensing fees by \$50). The initiative authors would then choose which proposals to include in their initiative question, and amend the wording accordingly. Alternatively, the initiative authors could include a proposal for how to increase revenue in the initial question they submit, and OFM would verify that their proposal would in fact result in revenue neutrality.

For initiatives that would decrease state revenue, OFM would provide a

list of state programs that could be eliminated or reduced to make up for the lost revenue (e.g., eliminate the Promise Scholarship or reduce TANF benefits by 5%). Again, the initiative authors would choose which proposals to include in their initiative question and amend the wording accordingly. Alternatively, the initiative authors could propose the elimination or reduction of certain programs in their original question and OFM would verify that the proposed reduction in spending would match the resulting reduction in state revenue.

Initiatives that significantly increase state spending or reduce state revenue have become increasingly popular in recent years, and they have received overwhelming public approval. The constitutional amendment requirement for this proposal (initiatives that decrease state revenue) makes it difficult to implement, especially because this goal has less bipartisan support, and so it is less likely to be able to receive a two-thirds majority in either house.

It will be difficult to come up with unbiased and effective rules for how OFM (or a comparable body) will propose options to initiative authors. If this is not done carefully, loopholes could make the initiative process problematic (e.g., if initiative authors proposed cutting important programs that few citizens were aware of, or used confusing wording to hide huge tax increases).

There is a good chance that a bill requiring initiatives that increase state spending to also specify where the revenue to support the new spending would be generated has a good chance of passage. A far smaller chance exists that a constitutional amendment could pass to require initiatives that decrease state revenue to state where reductions in public spending would occur. This might prompt vigorously pursue the first goal, and look into less difficult variations on the second goal, e.g. requiring initiatives that reduce a certain tax to state what that tax funds currently (so I-695 would have to have said, "Do you want the MVET reduced to \$30? The MVET currently funds road construction, local governments, etc."). Several bills for this action were introduced during the last session, but none made it out of session.

IV. Only Permit Initiatives to the Legislature

This reform would abolish the direct initiative and would permit only indirect initiatives. Currently, Washington and Utah are the only two states that allow both direct and indirect initiatives.

If the direct initiative were abolished, initiatives could not be brought to the people without first going through the legislature. This would subject initiatives to a deliberative process before they are submitted to a vote and would presumably result in more input into the initiative

and more focus on its implications from a variety of parties than is the case with a direct initiative.

The current indirect initiative process works as follows:

- To be considered in a legislative session, initiatives must be qualified for the ballot (certified to have the minimum number of valid signatures) not less than ten days before a regular legislative session.
- Initiatives must be enacted or rejected without change or amendment before the end of the regular legislative session.
- If enacted, the initiative may be subject to a referendum petition or referred to the voters for approval or rejection.
- If rejected or not acted upon, the initiative must be submitted to the people at the next regular general election.
- If the legislature proposes an alternative to the initiative, both the original initiative and the alternative must be submitted to voters at the next regular general election and voters must be given the option to approve the original initiative, approve the alternative, or reject both.
- Pursuant to Article II, Section 41, if the electors approve the initiative, the legislature cannot amend or repeal it for two years after enactment, unless approved by a vote of two-thirds of the members of each house.

Changes that might be made to the current indirect initiative process include:

- Requiring public hearings on the initiative in the legislature.
- Decreasing the number of signatures needed to propose an initiative to the legislature.

The obstacle to implementing this proposal is the requirement of a Constitutional amendment – approval by two-thirds of each house and approval by a majority of the electorate. Because the change would eliminate an existing right, it is unlikely that the electorate would support such an amendment.

CONCLUSION

The people strongly support the initiative process as a powerful tool of democracy. However, as with all aspects of governing, we must constantly monitor the process to make certain that it operates fairly, effectively and accurately. We must take care, though, not to regulate the process to such a degree that it ends up less of a useful tool of the people and more of a tool for only a small segment of the population.

We should not fear the people, both when they use the initiative process and when they vote on it. We may not always like the initiatives proposed and passed, but those choices are the constitutional right of the citizens of Washington State. As William Jennings Bryan said in 1920:

We have the initiative and referendum; do not disturb them. If defects are discovered, correct them and perfect the machinery . . . make it possible for the people to have what they want . . . we are the world's teacher in democracy; the world looks to us for an example. We cannot ask others to trust the people unless we are ourselves willing to trust them.

APPENDIX A

Proposals Considered but Not Recommended

Financial Impact Analysis Published in the Voters' Pamphlet

A fiscal analysis or financial impact statement should be prepared by the Office of Financial Management for all direct or indirect initiatives or referenda that require an appropriation of funds or that impact state or local government budgets. The analysis should describe any projected change in revenue, cost, expenditure or indebtedness that will result if the initiative becomes law.

The initial draft of this report contained this proposal, but the Washington State Legislature passes Senate Bill 6571, Financial Impact Statements for Ballot Measures, and signed into law by Governor Locke on March 26, 2002.

Alternate Election Cycles

Allow initiatives to be on the ballot only in off-year elections to avoid politicization. Concern was that this skews initiatives to matters of local rather than statewide interest since people who vote in off-year elections tend to focus on local issues.

Super-Majority Vote

Require a super-majority for financial initiatives with a financial impact, similar to the vote requirement of school bond levies. Concern was that this is a bad idea for school levies so why extend it.

Identify Signature Gatherers

Require initiative petition signature gatherers to indicate if they are paid or not. Concerns regarding the constitutional problems kept this from being adopted.

Geographic Distribution of Vote or of Petition Signatures Gathered

Require initiatives to be passed by a certain percentage of voters in each county, slightly wider geographic area or classes of counties. Alternatively, require that a certain percentage of signatures on initiative petitions be gathered in each county. Both of these proposals had potential constitutional problems.

Review Proposed Initiative for Constitutionality

Require proposed initiatives to be reviewed by the Washington Supreme

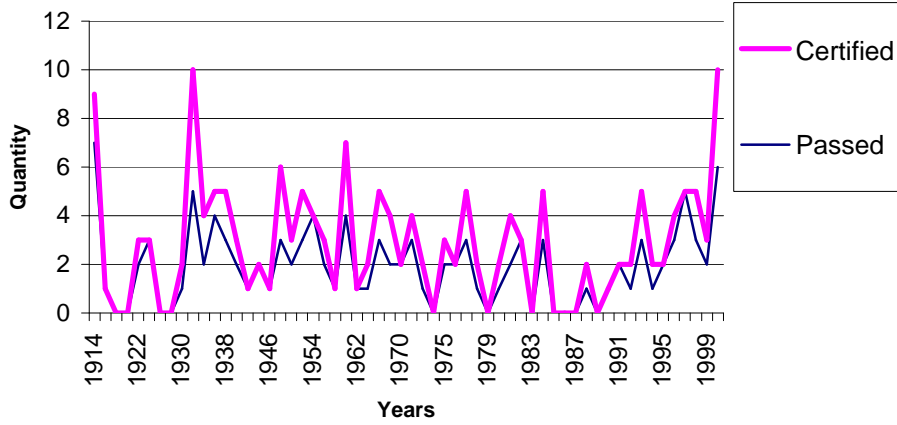
Court for constitutional issues. The Court has repeatedly stated that it does not want to review any initiatives until they are ripe issues.

Public Hearings

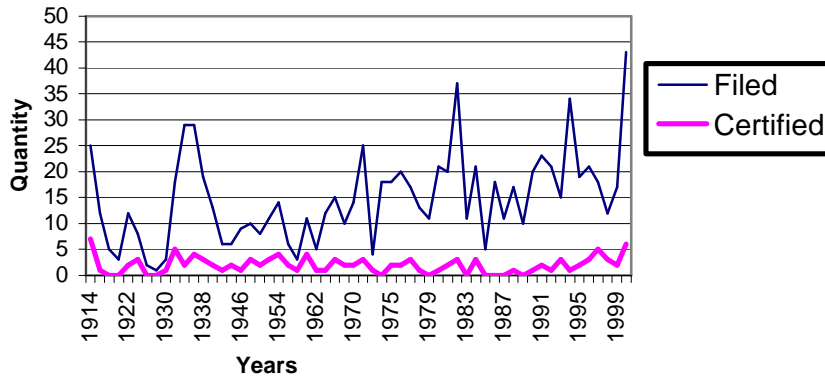
Require initiative proponents to hold public hearings around the state on their proposal. Allow these hearing to be viewed on public access television.

APPENDIX B

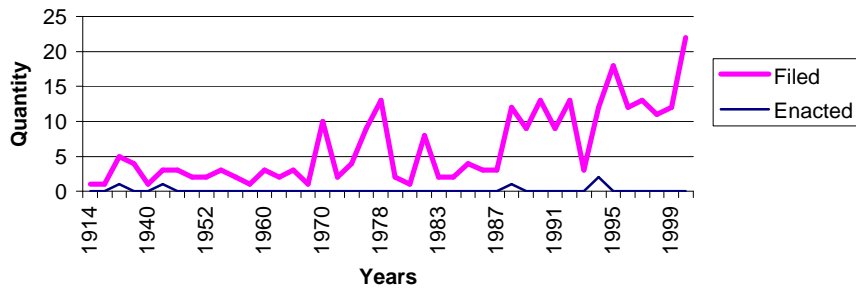
Initiatives to the People Certified vs Passed



Initiatives to the People Filed vs Certified



Initiatives to Legislature Filed vs Enacted



APPENDIX C

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