



# City Council Study Session

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## AGENDA

January 10, 2012

6:30 pm – 8:00 pm

### Call to Order

### Public Comment

*This is an opportunity for the public to address the Council. Three-minutes limit per person or 5 minutes if representing the official position of a recognized community organization.*

### Topics

- Arts Commission, Parks & Recreation Commission, Planning Commission Interviews
- Referendum and Initiative Process
- SE 8<sup>th</sup> Street Park Master Plan – Hopes, Dreams and Fears

### Adjournment

City Council meetings are wheelchair accessible. American Sign Language (ASL) interpretation is available upon request. Please phone (425) 295-0500 at least 48 hours in advance. Assisted Listening Devices are also available upon request.





# Memorandum

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**Date:** January 10, 2012

**To:** Ben Yazici, City Manager

**From:** Melonie Anderson, City Clerk

**Re:** Council Commission Candidate Interviews

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The City Council has four advisory commissions and one board to assist in their decision making. They are the Arts Commission, the Parks & Recreation Commission, the Planning Commission and the Beaver Lake Management District Board.

Due to the staggered terms and, in some cases, commissioners' leaving before their term is completed, there are yearly vacancies on the commissions. Staff conducts a recruitment process to fill the vacancies.

The recruitment for applicants began in September and closed on January 6, 2012. The vacancies were advertised in the Sammamish Review, Sammamish Reporter and listed on the city's website. Outreach was also extended to past applicants and various community organizations.

Attached you will find the list of applicants for each commission as well as the vacancies to be filled. Each applicant has been instructed to start the interview by telling a little about themselves and why they would like to be on the commission. At that time Council may ask a few questions. Each interview should last no longer than five minutes.

At the January 17, 2012 meeting, Council will hold an Executive Session to discuss the qualifications of the candidates. All voting will occur during the open public meeting. All commission terms begin February 1, 2012.



## 2012 Arts Commission Applicants

The Arts Commission recently eliminated the Alternate Positions, increased the number of members to nine and staggered the terms so they would not be losing so many members at once. This has created the following vacancies:

Position 1	vacant (4-year term)
Position 2	vacant (4-year term)
Position 5	vacant (3-year term)
Position 6	(3-year term)*
Position 7	(4-year term)*
Position 8	vacant (4-year term)
Position 9	vacant (4-year term)

### Applicants

George Cone  
Ram Dutt  
Lin Garretson  
Shesh Mathur  
Max Montry  
Jayashree Narayanan  
Daphne Robinson\*  
Bharath Sankaranarayan\*  
Veena Shankar  
Claradell Shedd  
Mary Lynn Vance  
Cheryl Wagner  
Florence Wong

\*Indicated Applicant is Current Commissioner

## 2012 Parks & Recreation Commission Applicants

### Open Positions:

Position 6	(3-year term)*
Position 7	(3-year term)*
Position 8	(4-year term)
Position 9	(4-year term)*

### Applicants

Brad Conner  
Mary Doerr\* (currently position 6)  
Hank Klein\* (currently position 9)  
Krist Morrith\*(currently position 7)  
Ravi Pai

\*Indicated Applicant is Current Commissioner

# 2012 Planning Commission Applicants

## Open Positions:

Position 1 (4-year term)\*  
Position 2 (4-year term)\*

## Applicants

Trevor Bean  
Jesse Bornfreund  
Wayne DeMeester  
Mahbubul Islam\*(currently position 1)  
Jan Klier\*(currently position 2)  
Ryan Kohlmann  
Jun (Gary) Qiu  
Denis Ransmeier  
John Strandberg

\*Indicated Applicant is Current Commissioner

# 2012 Beaver Lake Management Board Applicants

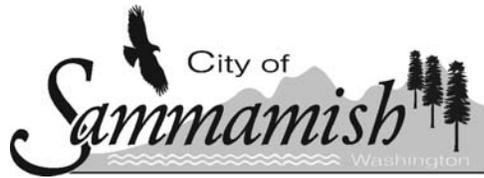
## Open Positions:

5 vacant positions      5-year terms (this is the length of time left on the current Beaver Lake Management District)

## Applicants

Bruce Morgan\*  
Collin Clark

\*Indicated Applicant is Current Commissioner



# Memorandum

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DATE: January 5, 2012  
TO: City Council  
City Manager  
FROM: Bruce Disend, City Attorney  
RE: Initiatives and Referenda

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The City Council has indicated an interest in discussing the topics of initiatives and referenda. In brief, the power of initiative is used to propose new legislation and the power of referendum is used to review previously adopted legislation. The purpose of this memorandum is to provide Council with an overview of these topics.

This memorandum consists of two sections: Section “A” sets forth Frequently Asked Questions concerning the initiative and referendum processes; and Section “B” is a report prepared by the League of Women Voters, dated October 2002, entitled “Direct Democracy: the Initiative and Referendum Process in Washington State.” The report provides a useful description of the various issues related to the exercise of these powers.

## A. FREQUENTLY ASKED QUESTIONS\*

### 1. Question:

What are the powers of initiative and referendum?

### Answer:

An initiative is the means, established by charter or statute, for the enactment of municipal legislation by the direct action of the voters of the city.

A referendum is the right of the people, established by charter or statute, to have an ordinance which has been enacted by the local legislative body submitted to the voters of the city for their approval or rejection.

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\* Source: Municipal Research and Services Center website.

## **2. Question:**

What are the methods for acquiring the powers of initiative and referendum by a code city?

### **Answer:**

The code city statutes indicate that the powers of initiative and referendum are to be acquired through use of the process used to reclassify under the optional municipal code. RCW 35A.11.080.

The first method, under RCW 35A.02.020, is by direct petition which requires a petition signed by qualified electors equal in number to not less than 50 percent of the votes cast at the last general municipal election. This petition is then filed with the city clerk who must then determine whether the petition is sufficient. If it is, the petition is filed with the legislative body, which then must pass a resolution declaring that the inhabitants of the city or town have decided to provide for the powers of initiative and referendum. The resolution must be published in a newspaper of general circulation within 10 days of its adoption. Thereafter, there is a 90-day waiting period during which a second "referendum" petition can be filed to force an election on the issue. The second petition is sufficient if it has been signed by qualified electors equal in number to not less than 10 percent of the votes cast at the last general municipal election. If a sufficient second (or referendum) petition is filed, there must be an election on the issue at the next general municipal election, if that election will be held within 180 days after the filing of the referendum, or otherwise at a special election. If there is an election on the issue, the powers would only be adopted if a majority of those voting on the issue favor adoption of the powers. If there is no referendum (or second) petition filed within 90 days of the council resolution, the council must adopt the powers of initiative and referendum by ordinance.

The second method, provided for in RCW 35A.02.030, is by resolution. Under this method, the city council may pass a resolution to provide for the powers of initiative and referendum. This resolution, like the direct petition method resolution, is subject to a referendum if, within 90 days after publication of the resolution, a timely 10 percent petition is filed, as provided for in RCW 35A.02.035.

## **3. Question:**

How are the powers of initiative and referendum exercised?

### **Answer:**

The powers of initiative and referendum are not universally available. In fact, the powers of initiative and referendum are only available in first class cities (RCW 35.22.200 and the charters), code cities (RCW 35A.11.080 - .100), and cities organized under the commission form of government (RCW 35.17.240 - .360). Code cities, such as Sammamish, do not automatically have the powers of initiative and referendum, but may adopt them, either by citizen resolution or by resolution of a majority of the city council.

Voters of a code city which has acquired the powers of initiative and referendum may initiate ordinances or have certain ordinances which have been passed by the legislative body referred to them for affirmation or rejection at an election. In either instance, the process is begun by petition. In a code city, the petition requires signatures of registered voters equal to 15 percent of the number of registered voters in the city as of the date of the last preceding city general election.

Certain ordinances are not subject to referendum. The following ordinances are excepted from the process in both commission and code cities:

- Ordinances initiated by petition;
- Ordinances necessary for the immediate preservation of public peace, health, and safety, or for the support of city government and its existing public institutions, which contain a statement of urgency and are passed by a unanimous vote of the commission or council; and
- Ordinances providing for local improvement districts.

In addition, the following types of ordinances are exempt from referendum in a code city:

- Ordinances appropriating money;
- Ordinances providing for or approving collective bargaining;
- Ordinances providing for the compensation of or working conditions of city employees; and
- Ordinances authorizing or repealing the levy of taxes.

If a valid petition is filed seeking a referendum, the ordinance does not go into effect until it has received a majority of the votes cast at the election. If a valid initiative petition is filed (accompanied by a proposed ordinance), the council shall either pass the ordinance within 20 days of the clerk 's certification of the petition, or else submit the ordinance to the voters at a general or special election called for that purpose. (RCW 35.17.260).

#### **4. Question:**

What are the limitations on the powers of initiative and referendum in a code city?

#### **Answer:**

There are certain statutory limitations placed upon the referendum power in code cities and city charter limitations upon those powers in first class cities. RCW 35A.11.090 excepts the following:

1. Ordinances necessary for the immediate preservation of public peace, health, safety or for the support of city government and its public institutions which contain a statement of urgency and are passed by unanimous vote of the council;
2. Ordinances providing for local improvement districts;
3. Ordinances providing for or approving collective bargaining;
4. Ordinances providing for the compensation of or working conditions of city employees; and
5. Ordinances authorizing or repealing the levy of taxes.

In addition to the above statutory exceptions, our courts have carved out various other actions which are not subject to initiative and referendum. The courts have maintained "that direct legislation by the people, acting through the power of initiative or referendum, may not interfere with the exercise of any power delegated, by state law, to the mayor and city council as the governing body of the city." In other words, where the grant of power by the state legislature is to the "corporate authorities" of the city, that is, to the mayor and city council, and not to the city as a "corporate entity", or the electorate, an ordinance which does no more than exercise the power granted by state law is not subject to the referendum provisions.

Another distinction made by our courts is the difference between legislative policy, which falls within the scope of the powers of initiative and referendum; and administrative action which does not. (See, e.g., *Ruano v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973).)

**5. Question:**

How does one determine whether an issue is legislative or administrative in order to determine if it is subject to initiative and referendum?

**Answer:**

Two tests have been suggested for determining whether an issue is legislative or administrative. First, actions relating to subjects of a permanent and general character are usually regarded as "legislative" and thus subject to the powers of initiative and referendum. Those actions taken on subjects of a temporary and special character are usually regarded as "administrative" and are not subject to the powers. *Citizens v. Spokane*, 99 Wn.2d 339, 662 P.2d 845 (1983). A second test suggests that a matter is legislative if it prescribes a new policy or plan, and administrative if it merely pursues a plan that has already been adopted.

**6. Question:**

Have most code cities adopted the powers of initiative and referendum?

**Answer:**

No. The majority of the 189 code cities have never adopted the powers of initiative and referendum. MRSC counted 49 as of October, 2008 that had done so.

**7. Question:**

Can the powers of initiative and referendum, once adopted, ever be abandoned by a code city?

**Answer:**

Yes, they can be. RCW 35A.11.080 provides that the exercise of the powers "may be restricted or abandoned" through use of the procedures that are followed to abandon the plan of government of a noncharter code city, RCW 35A.06.030 - .060. No code city has ever abandoned the powers once adopted.

**8. Question:**

Can the powers of initiative and referendum be used to amend a city's zoning ordinance and impose a moratorium on rezones for a limited time period?

**Answer:**

The courts in this state have indicated previously that amendments to the zoning code are not a proper subject for an initiative. See the cases of *Lince v. Bremerton*, 25 Wn. App. 309 (1980) and *Leonard v. Bothell*, 87 Wn.2d 847 (1976).

Part of the rationale for these decisions is the doctrine that the powers of initiative and referendum do not apply to actions which have been delegated by the state legislature to the governing body (city council) of a city or town as opposed to the city or town as a corporate entity. RCW 35A.63.100 appears to indicate that the power to enact land use zones has been granted to the city councils in noncharter code cities. Since this is a power which has been specifically granted to the city council by the state legislature, it is not an appropriate subject for the initiative process.

RCW 35A.63.220 (for code cities) specifically indicates that it is the legislative body which has the authority to adopt a moratorium.

**9. Question:**

Is a budget ordinance subject to a referendum?

**Answer:**

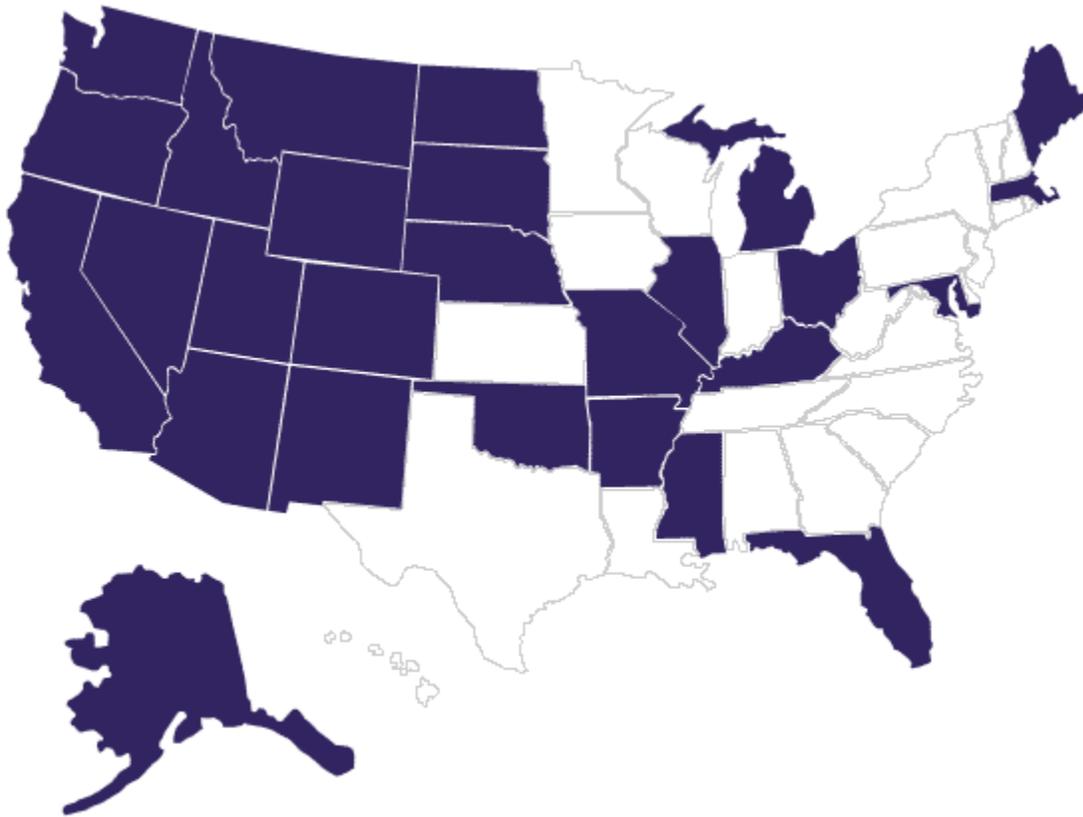
RCW 35A.11.090 outlines the exceptions to the initiative and referendum powers of a code city. Among those exceptions are ordinances appropriating money and ordinances providing for the compensation of city employees. The budget ordinance would encompass both of these exceptions and consequently is not subject to a referendum.



**B. DIRECT DEMOCRACY:**

**THE INITIATIVE AND REFERENDUM PROCESS IN WASHINGTON STATE**

# **DIRECT DEMOCRACY: THE INITIATIVE AND REFERENDUM PROCESS IN WASHINGTON STATE**



**States with Initiative and/or Referendum Process**  
Map courtesy of the Initiative and Referendum Institute

**League of Women Voters  
October 2002**

# **Direct Democracy: The Initiative and Referendum Process in Washington State**

**League of Women Voters  
October 2002**

## **Introduction**

This revised and updated study of the initiative and referendum process dates from the League research done in 1994 to a book published in 2002.

Although a clear majority of Washington citizens support keeping the initiative process, there is a growing frustration over some aspects: the increasing use of the process, its encroachment into areas some previously thought to be the prerogative of the legislature, the use of paid signature gatherers, and the growing willingness of the Washington State Supreme Court to rule voter-passed initiatives unconstitutional. Some, who have always supported the initiative process, have come to wonder if it isn't time to make changes in the process. Others believe the fewer restrictions the better, and that nothing should interfere with the right of the people to exercise this constitutionally protected form of "direct democracy."

Concerns range from the large number of initiative petitions circulated to the impact on the budget process, and for some voters, the recognition after-the-fact of the unintended consequences of undercutting services they actually want. Many legislators find it increasingly difficult to manage a budget that is impacted by the passage of ballot measures that can increase spending and reduce revenue in the same election.

What follows is a look at what has happened since 1994. Although many of the ideas for change voiced in 1994 are included, a few new ones have been added. Law Professor Kris Kobach notes some suggestions are "sincere efforts to improve the legitimacy of the process, while others have been thinly-disguised attempts to hobble it." We hope this report helps readers draw their own conclusions as to which is which. You will find references to recent court decisions, comparisons to other states that have the initiative process, and updated charts. A bibliography and other references are also provided.

## **The Initiative And Referendum in the United States**

The initiative and referendum (I/R) process is called "direct democracy" by political scientists. Direct democracy is an old concept, practiced in Ancient Greece and in the town meetings of colonial New England. Our founding fathers however, concluded that direct democracy was impractical in a country containing 13 states with 13 different sets of attitudes and interests and chose to establish a representative form of government with a system of checks and balances ("indirect democracy").

Author David Magleby sees direct democracy (the initiative process) as valuing participation, open access and political equality, while tending to de-emphasize compromise, continuity and consensus. It encourages conflict and competition and attempts to expand the base of participants. On the other hand, indirect democracy (the legislative process), he says, values stability, consensus and compromise, and seeks to insulate fundamental principles from momentary passions and fluctuations of opinion.

There is no provision for enacting laws directly by the people (our initiative process) in the Constitution of the United States. Nor is there a provision for referenda at the federal level.

While the Constitution leaves to the states all legislative powers not granted to Congress, it also guarantees to every state a republican (representative) form of government. It is based on this “guarantee clause” that some legal scholars have argued that the use of initiatives and referenda is unconstitutional. The United States Supreme Court, however, has held in a case challenging their use that the issue is a political question, not properly before the Court, and must be left to congress.

Conceived as an innovation in modern government, which would allow citizens to act when their elected representatives lost sight of the “public will,” Switzerland adopted the initiative/referendum system in 1874. It was 1898 before any of the U.S. states adopted the concept.

Near the turn of the century, populist, progressive and reform groups were agitating for more citizen control over their government. The populist I&R movement grew out of a general distrust of government. Many western voters believed that their legislators were only representing railroad, bank and timber interests. This led to the formation of chapters of The Direct Legislation League in many states.

Through the years both the populist and progressive movements supported the initiative process but from different perspectives. Modern commentators make this distinction, as expressed by Dr. Kenneth Miller: “[N]eo-Progressives still seek to use the initiative to enhance the responsiveness, professionalism, and expertise of government, whereas neo-Populists seek to substitute the wisdom of the people for deliberations of elected officials.” In other words, populists distrust government; progressives seek to improve government.

The move toward direct citizen legislation started at the end of the nineteenth century. South Dakota led the “revolution” in 1898, with Oregon following in 1901. In Washington, after 10 years of lobbying and campaigning, a farm/labor coalition led by the Washington State Grange finally succeeded in getting the proposed I&R constitutional amendment on the ballot in 1912 and it passed. Montana included I&R in its first constitution – the first and only state until Alaska in 1959 - to include the process in its original constitution. Most of the I&R states are in the West and Southwest.

Today, 27 states have either or both an initiative and referendum process. Twenty-three states have referendum measures, 17 states have initiatives to the people, 7 states have initiatives to the legislature, but the requirements differ from state to state. Kentucky, Maryland and New Mexico allow referenda but not initiatives. Illinois and Mississippi allow initiatives but not referenda. Twelve states, including Washington, limit initiatives to a single subject only and nine states limit them to legislative matters only as does Washington. However, some have less and some have many more subject restrictions. Idaho has none at all while Alaska permits no revenue measures, no appropriations, no acts affecting the judiciary, or any local or special legislation and no laws affecting peace, health or safety.

Eighteen states allow their constitutions to be amended by initiative. Nine states, including Washington, do not allow constitutional amendments by initiative. Florida allows initiatives only for constitutional amendments.

Women gained the right to vote by initiative in Oregon and Arizona. Interestingly, several attempts failed because liquor and saloon interests feared that women would vote for prohibition, which they did. The adoption and then the repeal of prohibition were an initiative concern in many states for years.

Massachusetts adopted I&R at a state constitutional convention in 1913. Amendments by the legislature, however, have made it the nation’s most cumbersome and complicated procedure. Nevertheless, in 2001, 16 initiatives were filed. 57,100 signatures were required by December 1 to have the state legislature consider

each one. If the legislature did not act by May, 2002 on petition proposing laws, the proponents had to gather another 9,517 signatures by July 5 for placement on the November, 2002 ballot. These issues deal with

universal health care, the MA Port Authority, recall of county sheriffs, an end to the personal income tax and sales tax and repeal of bilingual education.

Washington is one of the five states relying heavily on the initiative process. California and Oregon and Colorado are the highest users; Arizona is the fifth. Between 1990 and 2000 there were 458 initiatives nationwide – over three times the rate of the 40’s, 50’s, and 60’s. In the 2000 election cycle: 90% of the initiative petitions failed; 350 were submitted in the 24 states; 76 made it onto the ballot and, of those, 36 were adopted, some of which were then challenged in court.

Oregon holds the record for the most initiatives on the ballot. Oregon was the first state to adopt, by initiative, the popular election of U.S. Senators (1908) and to provide for a Presidential Primary (1910). In the election of 2000, it had 26 issues on the ballot. Also many cities had local initiatives. One might surmise that with so many issues on the ballot, voter turnout would be low. In this election, however, 81% of those eligible to vote were registered and 79% voted. How could this happen with so many issues on the ballot? It happened because Oregon utilized the “vote by mail”(VBM). This method was created by the initiative process, spearheaded by the League of Women Voters of Oregon, AAUW and AARP using 11,000 unpaid signature gatherers. It passed by more than a 2 – 1 margin in 1998, an “off year” election with voter turnout similar to a Primary.

In the 2002 election Washington voters will have 2 initiatives and 2 referenda on the ballot. Oregon voters will have 7 initiatives and 5 legislative referrals. The reduction in initiatives on Oregon’s ballot matches a decrease nationally, according to M. Dane Waters of the Initiative and Referendum Institute in Washington, D.C. Nationally there were 55 statewide initiatives in 1998 and more than 65 in 2000, but Waters predicts as few as 40 in 2002. “This will probably be the least number of initiatives on the ballot in about 15 years,” he said. “Oregon is probably going to see the sharpest drop-off.”

## **Creating Initiatives and Referenda**

### **Initiatives**

Any registered voter in Washington, acting individually or on behalf of an organization, may file an initiative with the Secretary of State. There is a five-dollar filing fee for each initiative filed. In practice, the Secretary of State’s office often assists the petitioner with the language and organization of the document.

Washington State’s Public Disclosure law, adopted by initiative in 1972, stipulates that any individual or organization, which expects to receive funds or make expenditures in an effort to support or oppose an initiative, must register with the Public Disclosure Commission and file certain financial reports. The sponsor of an initiative should contact the Public Disclosure Commission in conjunction with the preliminary filing of the measure.

A copy of the text of every proposed initiative is then sent to the Legislative Code Reviser who reviews the draft for technical errors and style. He advises the sponsor of any potential conflicts between the proposal and existing statutes and puts the petition into legal language. The proposal is then returned to the sponsor with a “certificate of review” and any recommended changes. All changes recommended by the Code Reviser are advisory and subject to approval by the sponsor. The sponsor has 15 working days after submission to the Code Reviser to file the final draft with the Secretary of State.

The final draft is then sent to the Attorney General. Legislation passed in 2000 requires the measure be given a ballot title of no more than ten words, a concise description of the measure, not to exceed 30 words and a summary not to exceed 75 words. The title question inquiring whether the measure should be approved or

rejected must clearly define the intent of the initiative sponsor(s). Any person may challenge the ballot title or summary in Thurston County Superior Court within five days, and the court has another five days to announce its decision. Fewer than 25 percent of the initiatives filed at the beginning of the process are ever printed or circulated by the sponsors. The sponsors pay the full cost of printing and circulating petitions.

**Initiatives to the people** must be filed not more than ten months prior to the next general election, and the signed petitions must be returned to the Secretary of State's office at least four months before the date of the election. To qualify for the ballot, the number of valid signatures must equal a minimum of eight percent of the votes cast for Governor in the last election. Approval by a simple majority of voters is required for passage unless it concerns gambling or lottery measures, which require 60 percent approval.

**An initiative to the legislature** must be filed within ten months of the next regular session of the legislature, and the signed petitions must be returned at least ten days before that session. If the signatures equal eight percent of the votes cast for Governor in the last election, the legislature must take one of the following actions.

- Adopt the initiative as proposed, in which case it becomes law without a vote of the people
- Reject or refuse to act on it, in which case the initiative must be placed on the ballot at the next general election.
- Approve an amended version, in which case both the new version and the original initiative must be placed on the next general election ballot.

Information about initiatives to be voted on is included in the state voters' pamphlet, along with arguments from the sponsoring committee and opponents. Once approved by the voters, initiatives cannot be changed by the legislature in the first two years, except by a 2/3rds majority in both houses.

## The Referendum

There are two types of referenda: the referendum bill and the referendum measure. The primary purpose of each is to give voters an opportunity to approve or reject laws either proposed or enacted by the Legislature.

**Referendum bills** are laws proposed by the legislature which it chooses to refer to the electorate for approval or rejection. Most often these bills ask voter approval for new projects which will cost more money than the state has budgeted. Sometimes the bills represent "hot" issues such as a state position on transportation funding, nuclear waste repositories, expansion of public disclosure requirements, or changes in state abortion laws. Referendum bills have had a high success rate, with 38 of the 47 submitted to voters having passed. (Appendix C)

**Referendum measures** are laws recently passed by the legislature that are placed on the ballot because of voter petition. The purpose of such a referendum is to stop a recently passed state law from going into effect. Of the 49, which have been filed, 28 have succeeded in nullifying legislation. (Appendix D)

Referendum measures are similar to initiatives except for the following differences:

- A referendum may be filed after the Governor has signed the act that the sponsor wants referred to the ballot. Signed petitions must be filed no later than 90 days after the final adjournment of the legislative session at which the act was passed. Once certified, the referendum is submitted at the next state general election.
- Petitions may be certified with a minimum of 4% of the votes cast for Governor in the last election.
- Emergency Clause

The power of referendum is given and partially taken away in the same sentence of Article II of the State Constitution:

“The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law or any part thereof passed by the legislature, *except such laws as may be necessary for the immediate preservation of the public peace, health or safety; (or) support of the state government and its existing institutions...*” (italics ours, the (or) above has been assumed by courts to have been inadvertently omitted by the framers.)

The italicized part of the above sentence is commonly known as the emergency clause. This clause is included in state legislation where there is a genuine emergency, or when the legislature wants the legislation to take effect at the start of the new fiscal year, July 1. An emergency clause provides a date certain for legislation to take effect. It is the only constitutional authority to deviate from the mandate of the seventh amendment, which provides that “no act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted.” For many years no one knew when the Legislature would finally adjourn. With the passage of a constitutional amendment in 1979, special sessions, as well as regular sessions, now have a time certain for adjournment.

There is a growing belief that the emergency clause is often included in a bill to discourage a voter-initiated referendum. As early as 1945 in Kennedy v. Reeves, 22 Wn.2<sup>nd</sup> 677,683-84, the State Supreme Court chided the legislature for what it perceived was an attempt to thwart the people’s right of referendum.

“With all due respect, and with the earnest desire not to seem either censorious or facetious, we feel that we must say frankly and in all seriousness that the custom of attaching emergency clauses to all sorts of bills, many of which cannot by any stretch of the imagination be regarded as actually emergent...has become so general as to make it appear, in the light of recent experience, that a number of (formerly established presumptions indulged in favor of legislative declarations of emergencies) can no longer be deemed controlling. It of course, will never be presumed that the legislature deliberately intended to infringe upon a constitutional right.”

Although in the past courts have ruled that the presence of the emergency clause would not protect legislation from referendum, increasing weight is being given to its existence. The emergency clause has been credited for the lack of any successful citizen -initiated referenda since 1977. Some believe 90 days leaves too little time to collect signatures, even though only half as many are required as for an initiative, however the change in court attitude is thought to have made the biggest difference.

Here is how attorney Shawn Newman reacted to the Washington Supreme Court’s acceptance of the emergency clause to thwart the referendum on funding the Mariners baseball stadium.

“In memory of the citizen referendum. On December 20, 1996, the citizen’s referendum power, age 84, suffered an untimely death with the State Supreme Court’s decision in CLEAN et al v. State (the Mariners stadium case). The majority of the court, citing such learned authorities as Vincent “New York Vinnie” Richichi, a Seattle sports radio talk show host, on the ‘value of M’s’ was not only in the public interest (despite the fact the people of King County voted against it) but that it was also a constitutional ‘emergency’ (necessary for the ‘public peace, health or safety’) thereby avoiding the people’s right to Referendum. The citizen referendum process is essentially a check and balance on the legislature.....The majority opinion means the death of citizen initiated referenda. Memorial services to be announced.”

## **Fiscal Impact Statement**

Recent legislation, applying to both initiatives and referenda, requires the Office of Financial Management (OFM) to prepare a fiscal impact statement for each of the following state ballot measures:

- an initiative to the people that is certified to the ballot;
- an initiative to the legislature that will appear on the ballot because the legislature did not pass it;
- an alternative measure appearing on the ballot that the legislature proposes as an alternative initiative to the legislature;
- a referendum bill referred to voters by the legislature; and
- a referendum measure certified to the ballot by petition.

A fiscal impact statement must describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the ballot measure is approved. Where appropriate, the statement may include both estimated dollar amounts and a description placing those amounts in context. The statement must include a summary of not more than 100 words, and a more detailed statement that includes the assumptions that were made to develop the fiscal impacts. These statements must be available online and included in the state Voters' Pamphlet.

Requirements for passage are the same for both the initiative and referendum.

## **At The Local Level**

Cities and counties in Washington do not automatically have initiative or referendum powers. It takes action on the part of each jurisdiction to grant its citizens these powers. The kind of action depends on the size and class of the city as well as the city or county's form of government. The State authorizes Cities and Counties to have the initiative by legislation that allows them to adopt their own charter, sometimes referred to as home rule.

Ten of Washington's thirty-nine counties have home rule charters, as do five cities but that does not necessarily mean that they have chosen to adopt I&R or extend the process to Charter changes. For example, the city of Seattle has included the right to amend its charter by initiative but King County has not. Limited purpose governments, such as school districts, do not have the power of initiative or referendum at all.

## **The Role of Money**

One element of concern raised by many is the role money may play in an election. The arguments, proposed remedies and constitutional issues surrounding campaign finance are similar for candidates and ballot issues. Many studies have been done in other states attempting to find a statistical relationship between the money spent on a ballot issue and the percentage of votes gained in victory or defeat. Conflicting conclusions have been reached. In Washington, of the thirty-seven initiated measures enacted since 1975, seven passed even though advocates were outspent by opponents.

In his book, *Democracy Derailed: Initiative Campaigns and the Power of Money*, David S. Broder writes, "Money does not always prevail in initiative fights, but it is almost always a major – even dominant factor. Like so much else in American politics, the costs of these ballot battles have escalated enormously in the past decade. To a large extent, it is only those individuals and interest groups with access to big dollars who can play in the arena the Populists and Progressives created in order to balance the scales against the big-bucks

operators.” He goes on to say, “...millionaires have ...found the initiative handy for 'empowering' voters to endorse the initiatives' sponsors' agendas”.

Perhaps the most striking example of “empowerment” occurred in Washington State in 1997. The owner of the Seattle Seahawks football team wanted a new football stadium for his team, and he wanted the taxpayers to pay some of the estimated \$425 million cost. He spent \$6,321,832 securing the signatures and campaigning for a ballot referendum for its construction. He also provided the \$3,998,284 cost of running the special election at which voters across Washington approved the expenditure. It passed with 51% of the votes, in June of 1997.

The California Commission on Campaign Financing, a high profile, private, non-profit, bi-partisan organization produced a two-year study of the initiative process in the early nineties called, “Democracy by Initiative-Shaping California’s Fourth Branch of Government”. The study commented that a very large campaign fund for opposing an initiative seemed to be more effective than a large fund supporting a measure. In other words, there is some evidence that it may be possible to “buy” a “No” vote, but little evidence that it may be possible to “buy” a “Yes” vote. The rationale is that a very large war chest may be used either to circulate a competing initiative or to conduct a last minute negative advertising blitz, either of which could be designed to confuse the voter. The more unbalanced the campaign spending between the two sides, the easier it was to draw statistical relationships. However, the report was careful to say a multitude of other factors can intervene and create exceptions to these generalities.

Since 1990, states have increasingly regulated and restricted the use of the initiative process. According to M. Dane Waters, President, Initiative and Referendum Institute: “These regulations and restrictions have made the process only accessible to groups and individuals with access to money. This has forced citizens in the various states who seek reform to reach out to national groups for financial and organizational support, as well as seek the help of the "initiative industry."

No state restricts the flow of dollars into ballot measure campaigns. Several have tried to limit contributions or impose spending ceilings, but in each case the courts have declared such laws unconstitutional. The U.S. Supreme Court ruled that the expenditure of money was tantamount to “speech” and, therefore, restrictions on campaign expenditures violate the First Amendment to the Constitution. (*Buckley v. Valeo*, 424 U.S.1, 1976).

## **Signature Gathering**

Ten states, including Washington, place no geographical requirements on signature gathering; eleven states do. Requirements vary widely, from Nebraska’s requirement of five percent of the voters in 38 of 93 counties, to 10 percent in 20 of 29 counties in Vermont. Wyoming's strenuous petition requirement of 15 percent of the votes cast in the last governor's election, from two-thirds of the counties, effectively keeps the process from being used very often.

The number of signatures required to qualify varies from 3.5 to 15 percent of the votes cast for Governor in the last election -- Washington's is eight percent. One state requires ten percent of the registered voters and another, four percent of the population; Alaska requires at least one signature in two-thirds of the election districts.

Paying for collecting signatures has become more common in recent years. While the use of unpaid signature gatherers is still possible, qualifying for the ballot is not as likely. Extensive organization and paid staff usually are required to be successful. Often a campaign that began as a volunteer effort has had to add paid petitioners as the deadline approached. Between 1992 and 2000, thirty Washington initiatives were on the ballot. Only six

reached the ballot without paid signature gatherers. The six issues were an anti-tax measure, a ban on partial-birth abortions, a raise in the minimum wage, a roll-back of the motor vehicle tax and voter requirement for any tax or fee increase (later ruled unconstitutional because it covered more than one issue), a ban on bear or cougar hunting with dogs or bait, and a ban on certain animal traps.

In Washington in 2002, the rate for collecting signatures ranged from .60 to \$2.00 per signature depending on how much time was available before the deadline. In some states the rate has been known to go as high as \$4.00.

In 1976 qualifying a ballot measure in California cost \$69,000. That figure grew as high as 2 million in the '90's. However, spending a lot of money to "qualify" a ballot issue does not necessarily guarantee its success on Election Day. "Voters are smarter than you think," said Dr. Todd Donovan, a Western Washington University Political Science Professor, speaking at a meeting of the League of Women Voters in Bellingham. "If they see special interests supporting an issue, they will vote against it. Also, too many initiatives on a ballot turns people off, and they tend to vote against everything or not vote at all."

### **Legal Efforts to Restrict Usage**

Efforts have been made in this state and others to place restrictions on signature gatherers. Many have been found to violate the United States Constitution. When a state gives its citizens the right to the initiative process, the United States Supreme Court regards this right as falling under the protections of the first amendment. That is, it is "core political speech," and any restrictions are subject to strict scrutiny by the Court. Meyer v. Grant, 486 U.S. 414 (1988). In Meyer, the Court held Colorado's prohibition against payment to signature gatherers to be unconstitutional. The Court did observe that a state's interest in preventing fraud could be accomplished in other less restrictive ways.

1993, the Washington Legislature passed a law making it a gross misdemeanor to pay signature gatherers by the signature, but did permit payment by the hour. Relying on the Meyer case, this statute was challenged in Federal District Court. Limit v. Maleng, 874 F. Supp. 1138 (W.D. Wash.). The Court concluded on the evidence presented that the law was not necessary to prevent fraud – there was no significant difference between the validity of signature campaigns which used paid gatherers and those that relied on volunteers.

A more recent attempt by the Colorado Legislature to place restrictions on signature gatherers also ran afoul of first amendment protections. Buckley v. American Constitutional Law Foundation, Inc., 525 U.S. 182 (1998). The Supreme Court held that a state cannot require (1) that a signature gatherer be a registered voter, (2) that a signature gatherer wear an identification badge while soliciting signatures, and (3) that proponents of an initiative report the names and addresses of the signature gatherers and the money paid to each. Despite the state's argument that these restrictions were necessary to prevent fraud, the Court held that they were "undue hindrances to political conversations and the exchange of ideas."

A recent case out of North Dakota upheld state restrictions, but this case was not reviewed by the U.S. Supreme Court. Initiative & Referendum Institute v. Jaeger, 241 F.3d 614 (8<sup>th</sup> Cir., 2001). The Court of Appeals held that the requirement that (1) signature gatherers be residents of the state and (2) that they not be paid by the signature did not violate the constitution. The court based its decision on clear evidence that fraud had occurred, and the requirements were necessary to prevent future fraud and to give the state subpoena powers over signature gathers. Further, the requirements were narrowly drawn to accomplish the state's goals. The Eighth Circuit distinguished the North Dakota case from the Washington case based on the latter's lack of evidence of fraud.

It is always chancy to try to predict how a future court would respond to specific limitations on the initiative process. Past opinions have emphasized the significance of unfettered political speech to the democratic process. Any interference with the free exchange of ideas between signature gatherers and potential signers would be viewed with suspicion. However, based on the cases to date, some believe it might be possible to place some restrictions.

The Supreme Court has not ruled on the specific issue of payment per signature, or on a residency requirement. Some people believe that a provision for a geographical distribution might survive a constitutional challenge. The geographical distribution, of course, would have to comply with the one-person-one-vote mandate of earlier decisions. *Moore v. Ogilve*, 394 U.S. 814 (1969). The use of counties for example, would not comply because Washington's counties vary dramatically in size and population.

### **Where Signatures Can Be Gathered**

A major factor in initiative and referendum campaigns is where signatures can be collected legally. In a series of cases, the Washington Supreme Court has affirmed the right to collect signatures on private commercial property which has the earmarks of a town center, community business block or other public forum, subject to reasonable time, place and manner restrictions.\* The court uses a balancing test to determine the right of a property owner to exclude signature gatherers against the right to collect signatures as provided in the state constitution. This test relies on such factors as the nature and use of the property, the scope of the invitation that the owner has made to the public, and the impact that denial will have on the initiative process. Under this test, shopping malls are generally accessible for signature gatherers, but grocery stores are not.

\*See e.g. *Walmart v. Progressive Campaigns, Inc.*, 139 Wash.2d 623 (1999) and cases cited therein. Previously, the U.S. Supreme Court recognized that a state's constitutional provision for free speech and the initiative as extended to a shopping center did not violate the U. S. constitution's protection of private property. *Pruneyard Shopping Center v. Robbins*, 447 U. S. 74 (1980).

Some petition gatherers complain that requirements of long lead time to sign up for space and million dollar bonds are not reasonable restrictions. One example cited was a rule used by the Bellevue Square Mall: Petitioners are assigned a "box" outlined by red tape. They must stay within these boundaries and are not allowed to attract potential signers with a greeting such as inquiring if passer-bys were registered voters. That would be deemed "hawking" which is not allowed.

One of the reasons given for the substantial drop in the number of initiatives on the 2002 ballots has been the increasing number of prohibitions at popular spots for circulators to meet potential signers. In recent years tighter restrictions have also been placed on "public spaces". A recent regulation by the U.S. Postal Service which prohibits signature gathering on Postal Service property has been challenged by the Initiative & Referendum Institute and is scheduled to be tried before the U.S. District Court in October 2002.

## **Constitutional Issues After Passage**

Laws passed by initiative or referendum must comply with the federal and state constitutions, as must laws passed by the legislature. The recent application of the single subject rule has generated considerable criticism.

### **The Single Subject Rule**

The Washington Constitution provides in Art.II, sec.19. that "no bill shall embrace more than one subject and that shall be expressed in the title." Up until recently, the single subject rule challenge to initiatives has been

rare in Washington and other states, but its use has been growing. In 1995, the Washington Supreme Court concluded that the single subject rule would apply to initiatives as well as laws passed by the legislature, but held in the case of I-134 (campaign reform) that it complied with the rule.

Washington Federation of State Employees v. State of Washington, 901 P.2d 1028 (Wa. 1995).

The first time the court applied the single subject rule to strike down an initiative was in 2000 when I-695 was invalidated. The court concluded that the two parts of the initiative - (1) reduction of motor vehicle taxes and (2) requirement of a public vote on most tax and fee increases – were not rationally related and thus covered two distinct subjects. The court also held that the initiative violated the title requirement in sec.19 as well as two other provisions of the state constitution. Amalgamated Transit v. State, 11P.3d 762 (Wa.2000).

One local scholar James Bond, former Dean of the University of Puget Sound and Seattle University School of Law, criticizes the Washington Supreme Court for its decisions on the constitutionality of I-695 . He contends that in these decisions the court has applied a more stringent test of constitutionality than to bills passed by the legislature. He takes the court to task for what he sees as a failure to develop a coherent rationale for the different standards it applies. He notes the likely political fallout from the court’s invalidation:

“Progressives will doubtless applaud the court’s decision as preserving the government’s authority to tax so that it can generate revenues, which they believe are desperately needed to fund government programs. Populists will simply wonder who they need to throw out—the justices or the legislators [speaking of the second decision on I-695]—if they are ever going to get control of what they (quaintly?) think of as “their” government.”

Another legal scholar, Richard J. Ellis, expresses a contrary point of view in arguing that there is justification for applying a stricter rule to initiatives than bills passed by the legislature:

Without a strict single-subject rule, it is generally impossible to know which if any parts of a successful initiative express the majority view. The rationale behind a law produced by the legislature is more complex than simple majority rule. Legislatures are designed to produce compromises among competing interests. The final law may well be nobody’s first choice yet be preferable because it represents a consensual second choice with which most everybody can live.

### **Appropriation Clause**

It has been suggested that initiatives with a fiscal impact could be challenged under the Appropriation Clause – Article 8, Section 4 of the Washington State Constitution . It provides as follows: “ No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law . . . .” The Washington Supreme Court has affirmed that the object of the appropriation article is to preclude expenditures without legislative direction. State ex rel Peel v. Clausen, 94 Wa. 166, 173 P. 1 (1917).

### **Limitations Governing Public Officials**

Public Officials enjoy free speech when it comes to ballot issues as long as they are not using public resources. As a general rule, the Washington State Ethics Law of 1994 prohibits the use of public resources by state officers or state employees to support or oppose a ballot measure. However, since ballot measures are matters

of public policy, legislators are provided several exceptions which permit them to comment on ballot measures using public resources in certain circumstances.

Legislators may:

- make a statement in support of or in opposition to any ballot proposition at an open press conference provided the press conference was not called to launch or actively and directly assist or oppose the initiative;
- respond to a specific inquiry regarding a ballot proposition;
- make incidental remarks concerning a ballot proposition in an official communication or may otherwise comment on a ballot proposition if done without the actual, measurable expenditure of public funds;
- make very minimal use of public facilities to initiate “permissible” communications, written or verbal, concerning ballot propositions that fall within their statutory or constitutional responsibilities;
- respond to questions about their view of an initiative and provide their positions to staff who can, with the legislator’s permission, pass them on to people who inquire;
- choose how to address an initiative in a newsletter by either encouraging people to vote and including a balanced and objective description of the initiative, **or** including direct comment on the merits making no reference to voting provided there was a bill on the same subject matter in the preceding session. If legislators choose to comment on the merits of the initiative in a newsletter, those comments must be within the context of a larger message. Therefore, it would not be proper to devote all or most of the newsletter to advocacy;
- prepare a guest editorial on the initiative using factual, non-partisan information, which does not take the form of an argument for or against the measure;

These restrictions and allowances apply to state officers and employees of both the executive and legislative branches of government. The governor, however, has a unique role under the Constitution, which allows him/her to communicate with the Legislature and to recommend measures as shall be deemed expedient for their action. This mandate allows the governor to communicate with the people, so long as the expense is for a reasonable communication and not an extensive lobbying campaign.

### **Ideas for Change**

Many proposals have been made that would change the initiative process in response to the concerns of its critics and supporters. These include changes to signature gathering procedures, providing more information to voters, restrictions as to the subjects that can be addressed by initiative and a proposal which would wed the advantages of a direct initiative process (initiatives to the people) with an indirect initiative process (initiatives to the legislature) which would include the advantages of a representative form of government.

- **Require review of Constitutionality**

To avoid later invalidation of an initiative passed by the voters, suggestions have been made for constitutional review prior to collecting signatures. Such consideration could be performed by a court, the attorney general, or a special agency or commission. Several states require such reviews. The Florida Supreme Court, for example, reviews initiatives for constitutionality

(including compliance with the single subject rule) after petitioners gather 10% of the signature requirements.

Courts in Washington are generally averse to making any decision until an issue is ripe. That is, until the issues are fully developed and argued by plaintiff and defendant, which can occur only after an initiative is adopted by the voters. A further argument against any court review prior to submission is that the courts are the ultimate decision maker on the legality of law. This could put them in conflict with an earlier advisory opinion. In Washington, the attorney general is responsible for defending an initiative once passed. Thus it could present a conflict were she or her office designated to review an initiative prior to submission.

- **Require that an initiative be reviewed** by a court as to its constitutionality before it is placed on the ballot. A negative opinion would not block an initiative but the opinion would appear in the Voters' Pamphlet.
- **Create a commission for non-binding review.** Hugh Spitzer, attorney in private practice and an affiliate professor at the University of Washington School of Law, argues against any advisory opinion by the courts—either early or late in the initiative process. Rather, he proposes creation of a small, non-partisan, unpaid commission, with a paid staff. Commissioners would be appointed by the governor and confirmed by the senate—possibly utilizing former judges. The commissioners would be available to review draft initiatives and offer non-binding advice on potential legal problems. [S]uch a commission might give both proponents and voters an earlier perspective on constitutional issues that could later cause an initiative's demise." The findings would be advisory only and could be published in the voters pamphlet.
- **Provide for Citizen Initiative Review**

After certification submit initiatives to a representative citizen review panel whose views would appear in the Voters' Pamphlet .A citizen review concept, called Citizens Jury, developed by political scientist Ned Crosby and the Minneapolis based Jefferson Center for New Democratic Processes has been used to provide an informed citizen process on public policy matters, including ballot measures. As proposed for Washington State in a program called Citizens Initiative Review this technique could be used with a panel made up of Washington "jurors" selected from around the state to reflect the state population in terms of gender, race, age, education, geographic location and political identification. The panel of citizens would be convened for a five-day period to review a proposed initiative. Panelists would be paid for their time (average Washington wage, currently \$130 per day), transportation, and housing. They would take testimony from expert witnesses and initiative advocates pro and con, ask questions, seek additional information if needed and deliberate carefully. At the end of the review, the panelists would indicate how they would vote on the initiative if the election were held that day and the reasons for their decisions. Panelists would also oversee publication of a report outlining their reasons for supporting or opposing the initiative or remaining undecided. The report would then be published in the state voters pamphlet.

The estimated cost of this program is between \$700,000 and \$1,450,000 per year, depending on the number of initiatives to be reviewed, and is estimated to cost a maximum of 25 cents a year per Washington resident. Proposers recommend that the funds come from interest earned by the state's general fund.

Those in favor of the project see it as a source of sound information for voters about the possible effects of initiatives, and a way to insert an informed citizen voice into a highly politicized discussion.

Although some media do attempt to analyze these measures objectively, others do not but inundate voters with campaign sound bites that deliver contradictory messages. The state voter's pamphlet offers pro and con statements written by the campaigns with no comment on the veracity of the information.

Some people are opposed to publicizing any “special group’s” judgment or opinion at State expense, (this jury process as well as the Voters’ Pamphlet). Others challenge the concept that a representational panel could be assembled. The group could be influenced by any bias of the paid staff as they arranged the pro and con presentations and chose the participants. Their report would not reflect new information developed during the campaign. Other people oppose the idea because of the high cost. The interest from the general fund is already being used.

- **Allow for public hearings by the legislature and/or forums held by the Secretary of State.** Initiatives often reflect the narrow self-interest of their sponsors that is not always apparent to the public. Public hearings would provide an opportunity for comment from various sectors of society and from various regions of the state on the broader effects of an initiative. Some people worry that this would infringe on the peoples’ independence to propose legislation as provided in Article II Section I of the Washington State Constitution which states that the people reserve to themselves the power to propose laws independent of the legislature. The Supreme Court has never considered this issue.
- **Allow perfection of the text at some point in the campaign.** The California Commission recommended that a public hearing be conducted on the merits of an initiative once 25% of the necessary signatures have been obtained and that the proponents be allowed to amend their proposal within seven days after the hearing as long as the changes are consistent with the initiative’s original purposes and intent.
- **Encourage Public Officials to comment on ballot issues.** All legislators do not take a uniform view of the allowances and restrictions on their speech which can be subjective in terms of what is objective, balanced, de minimis, measurable, etc. Therefore, legislators have different levels of comfort about communicating on ballot measures. Real or perceived infractions can be the subject of complaints to the Legislative Ethics Board, in which case the Board will make a determination as to whether the legislator has overstepped the boundaries of the law. Legislators would wish to avoid such complaints, and some would use the law to avoid making comments on the measure.
- **Relax restrictions on public officials.** Allow state and local elected officials to use public facilities to prepare and deliver self-initiated communications of information on the impact that any ballot proposition foresee ably may have on matters that fall within their responsibilities. The exception could apply to all ballot measures, not just those that go through the Legislature.
- **Require the full text** of laws or parts of laws to be repealed to be displayed in the initiative. It is very confusing not to know just what change in an existing law is being proposed. Such a requirement should make it clear. It might, however make the initiative excessively long and considerably more expensive to print and circulate.
- **Require personal financial disclosure** by initiative and referendum sponsors. This would be similar to the disclosure required by candidates and public officials. It could clarify the intent and interest behind the proposed law, but some feel it would be an unacceptable deterrence.

## Restrict Subject Matter

Prohibit initiatives that require the use of public funds.

Require that a source of revenue be identified in the initiative, either an increase in an existing state revenue source or a new tax or fee if a proposed initiative needs public funds for its implementation.

Require that specific language be included specifying how reductions are to be reflected in state budgets, either direct reductions for a specific function or agency or amend a current budget if an initiative repeals or restricts taxes or fees.

Washington's Legislature has the responsibility of approving a balanced budget to run the state government and provide the services required and desired by the state's citizens. According to Marty Brown, Director of the Office of Financial Management, "89% of the current budget goes to educate, medicate, and incarcerate. Initiatives that remove or limit sources of revenue or expand demands undermine the ability of the legislature to carry out this primary duty.

Those opposed to such restrictions believe that restricting revenue by initiative has become the only way to force the legislature to reign in state spending. One of the Legislature's most important functions is to formulate a balanced budget. They expect legislative compromise in making hard choices between the many competing interests. Many people believe the legislature's hands are already tied too much with "ear marked" taxes. Some of these suggestions would further remove legislative flexibility.

- **Increase the cost of filing an initiative.** The filing fee has been \$5 ever since 1912. Since there are costs borne by the state to process initiatives from the moment they are filed, some believe the fee should be increased. Suggestions run from \$100 to \$500. The Secretary of State has urged that the fee be \$100 in order to discourage frivolous filings. Some people, however, believe that processing initiatives is a normal function of state government and citizen participation shouldn't be discouraged by raising the fee.
- **Provide that the filing fee be refunded** if enough signatures are collected to certify the initiative for the ballot.
- **Require that signatures be collected** on a proportional geographical basis in order to qualify for the ballot. This could be done in several ways: 1) an equal number from each Congressional or Legislative district, or 2) a minimum number from each district. This could also increase the difficulty (and expense) of gathering enough signatures depending upon the requirements. It might also give a disproportionate number of voters veto power over a ballot issue depending on the specific requirements.
- **Amend the Constitution** to provide for only initiatives to the legislature. In order to take advantage of the opportunity to deliberate, debate and compromise when tackling a governmental issue, direct initiatives would be abolished and all initiatives would be initiatives to the legislature. Some people believe this change would combine the advantages of both types of initiative. It would protect an individual's right to propose legislation and provide a way of adjusting for unintended consequences if necessary. Thus a certified initiative would be either passed into law by the legislature without the need for an election or it would be put on the ballot either alone or along with a legislative alternative. Voters' choices would not be diminished and the sponsors of an initiative would still be assured that their initiative would be on the ballot unless passed by the legislature without change.

Several suggestions have been made that might build support for this proposal. One is to reduce the number of signatures required to qualify an initiative to the legislature, perhaps to 4% of those voting in the last gubernatorial election, or perhaps 6%, somewhere between the requirement for referenda and the current initiative requirement. Another is to limit this restriction only to those initiatives dealing with expenditures and revenue. In other words, those initiatives that bump up against the legislature's constitutional directive to appropriate funds. A third suggestion is to incorporate a dollar limit. An initiative increasing or reducing revenue by a specified amount could only be an initiative to the legislature. A fourth is to lengthen the time allowed for collecting signatures when an initiative is one to the legislature. Each of these suggestions could be adopted as an incentive to persuade initiative sponsors to use the indirect initiative procedure.

Law making by the people provides an opportunity for the public to address issues which the legislature cannot or will not address. While some people feel that it encourages the legislature to tackle problems it otherwise would not address, others contend that it permits legislators to dodge dealing with hard divisive issues. Law making by the legislature involves a deliberative process that includes committee work, often times public hearings, often compromises and checks and balances. Initiatives that undergo both processes would benefit from both, but it would require lengthening the time needed for an initiative to become a law.

Opponents point out that it would remove the most popular type of initiative. Up until now 774 Initiatives to the People have been filed as opposed to 258 Initiatives to the Legislature. At a recent symposium on I&R, attorney Shawn Newman explained why most initiative filers have chosen not to use the indirect method: "It provides for de facto use of state resources to fight the initiative as it makes its way through the legislative sausage machine. Historically, the reason behind direct initiatives in this state was because the people distrusted the legislature and the special interests that controlled it. Those reasons remain true today as they did nearly 100 years ago. Anything that dilutes, reduces or burdens the I&R power should be opposed."

- **Require a higher percentage** of voter approval for Initiatives to the People to compensate for the lack of involvement by any elected body.
- **Change the number of signatures** required to qualify any initiative. Those interested in making the process easier to get on the ballot suggest a lower signature requirement. Those interested in making the process more difficult would support increasing the signature requirement.
- **Lengthen the time allowed** for collecting signatures. Most states allow more time than does Washington. An owner of a signature gathering firm suggests that reducing the number of necessary signatures to 4-5% and allowing a year to collect signatures could almost eliminate the need for professional signature gathers.()
- **Allow constitutional amendment by initiative.** Most, 2/3's of the 27 I&R states allow constitutional changes. Supporters argue that since the legislature has this power, the people should also. Right now the people can only institute such changes by calling a constitutional convention. Those opposed, consider the constitution too basic to our freedoms to be changed by a simple majority of the voters. As it stands now, the legislature requires a super-majority to pass and then must submit to a vote of the people.

- **Extend the I&R process** to single purpose governments. The people should have the same ability to exert change in the legislation of bodies such as port and school districts. Opponents say that initiatives are not needed for single purpose districts since they are so close to the people already.

## Conclusion

Washington State voters have used the initiative system for many issues since its advent in 1912. It's been used for issues such as creation of the Public Disclosure Commission and redistricting. It's been used to bring about social change with the passage of the state Equal Rights Amendment and attempts both to expand and take away abortion rights. It's also been used to influence tax policy and restrict government spending.

Following research done by Stuart Elway in 2000, he made the following comments in his monthly publication The Elway Poll: "The public debate about the initiative process – reinvigorated by the passage of I-695 – is largely about trust. Critics of the process don't trust the voters to know what they are doing, and defenders of the process don't trust elected representatives to always act in the best interests of 'the people'."

Large majorities of those who were polled favored more disclosure, not barriers. For instance, they wanted the state attorney general to review initiatives for constitutionality, the budget office to review financial impacts and initiative campaigns to disclose if they are using paid signature gatherers. At the same time, they opposed raising the number of signatures required to qualify a measure for the ballot. Elway concluded: "Successful reform strategies would therefore look first to making more information available to voters before trying to make it more difficult to qualify initiatives for the ballot. Washington voters are not in any mood to give up political power."

Several initiatives have been on the ballot and passed since 2000, resulting in increasingly difficult budget decisions for lawmakers. At the same time the economy has weakened and government surpluses have disappeared. Are voters ready to take another look at reforming the initiative process? Is it possible, or even desirable to try to bridge the gap between the initiative process and the legislative process?

League members, through this study, have an opportunity to decide if the system is working as it should, or if change might make it work better.

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**States with Direct (DA)<sup>i</sup> and In-direct (IDA)<sup>ii</sup>, Initiative Amendments; Direct (DS)<sup>iii</sup> and In-direct (IDS)<sup>iv</sup>  
Initiative Statutes and Popular (PR)<sup>v</sup> Referendum<sup>vi</sup>**

**Table: 1.1**

States where some form of Initiative or Popular Referendum is available	Date process was adopted	Type of process available		Type of Initiative process available		Type of Initiative process used to propose Constitutional Amendments		Type of Initiative process used to propose States (Laws)	
		Initiative	Popular Referendum	Constitutional Amendment	Statute	Direct(DA)	In-direct(IDA)	Direct(DS)	In-direct(IDS)
<a href="#">Alaska</a>	1956	X	X	O	X	O	O	X	O
<a href="#">Arizona</a>	1911	X	X	X	X	X	O	X	O
<a href="#">Arkansas</a>	1910	X	X	X	X	X	O	X	O
<a href="#">California</a> <sup>vii</sup>	1911/66	X	X	X	X	X	O	X	O
<a href="#">Colorado</a>	1912	X	X	X	X	X	O	X	O
<a href="#">Florida</a>	1972	X	O	X	O	X	O	O	O
<a href="#">Idaho</a>	1912	X	X	O	X	O	O	X	O
<a href="#">Illinois</a> <sup>viii</sup>	1970	X	O	X	O	X	O	O	O
<a href="#">Kentucky</a>	1910	O	X	O	O	O	O	O	O
<a href="#">Maine</a>	1908	X	X	O	X	O	O	O	X
<a href="#">Maryland</a>	1915	O	X	O	O	O	O	O	O
<a href="#">Massachusetts</a>	1918	X	X	X	X	O	X	O	X
<a href="#">Michigan</a>	1908	X	X	X	X	X	O	O	X
<a href="#">Mississippi</a>	1914/92	X	O	X	O	O	X	O	O
<a href="#">Missouri</a>	1908	X	X	X	X	X	O	X	O
<a href="#">Montana</a> <sup>ix</sup>	1904/72	X	X	X	X	X	O	X	O
<a href="#">Nebraska</a>	1912	X	X	X	X	X	O	X	O
<a href="#">Nevada</a>	1905	X	X	X	X	X	O	O	X
<a href="#">New Mexico</a>	1911	O	X	O	O	O	O	O	O
<a href="#">North Dakota</a> <sup>x</sup>	1914	X	X	X	X	X	O	X	O
<a href="#">Ohio</a>	1912	X	X	X	X	X	O	O	X
<a href="#">Oklahoma</a>	1907	X	X	X	X	X	O	X	O
<a href="#">Oregon</a>	1902	X	X	X	X	X	O	X	O
<a href="#">South Dakota</a> <sup>xi</sup>	1898/72/88	X	X	X	X	X	O	X	O
<a href="#">Utah</a>	1900/17	X	X	O	X	O	O	X	X
<a href="#">Washington</a>	1912	X	X	O	X	O	O	X	X
<a href="#">Wyoming</a>	1968	X	X	O	X	O	O	X	O
Totals	27 states	24 states	24 states	18 states	21 states	16 states	2 states	16 states	7 states

**Legend**

**o** = process not currently allowed by the state constitution.

**x** = process currently allowed by the state constitution.

**Signature, Geographic Distribution and Single-Subject Requirements for Direct (DA)<sup>i</sup> and In-direct (IDA)<sup>ii</sup> Initiative Amendments; Direct (DS)<sup>iii</sup> and In-direct (IDS)<sup>iv</sup> Initiative Statutes**

**Table: 3.1**

State	Type	SS <sup>v</sup>	Net Signature Requirement for Constitutional Amendments	Net Signature Requirement for Statutes	Geographic Distribution	Deadline for Signature Submission	Circulation Period
AK	DS	Yes	Not allowed by state constitution	10% of votes cast in last general election.	At least 1 signature in 2/3 of Election Districts	Prior to the convening of the legislature <sup>vi</sup>	1 year
AZ	DA/DS	Yes	15% of votes cast for Governor	10% of votes cast for Governor	No geographical distribution	Four months prior to election	20 months
AR	DA/DS	No	10% of votes cast for Governor	8% of votes cast for Governor	5% in 15 of 75 counties	Four months prior to election	Unlimited
CA	DA/DS	Yes	8% of votes cast for Governor	5% of votes cast for Governor	No geographical distribution	To be determined by state each year <sup>vii</sup>	150 days
CO	DA/DS	Yes	5% of votes cast for SOS	5% of votes cast for SOS	No geographical distribution	Three months prior to election	6 months
FL	DA	Yes	8% of ballots cast in the last Presidential election	Not allowed by state constitution	8% in 12 of 23 Congressional Districts	90 days prior to election <sup>viii</sup>	4 years
ID	DS	No	Not allowed by state constitution	6% of registered voters	6% in each of the 22 counties	Four months prior to election	18 months
ME	IDS	No	Not allowed by state constitution	10% of votes cast for Governor	No geographical distribution	To be determined by state each year <sup>ix</sup>	1 year
MA	IDA/IDS	No	3% of votes cast for Governor	3½% of votes cast for Governor <sup>x</sup>	No more than 25% from a single county	To be determined each year by state <sup>xi</sup>	64 days
MI	DA/IDS	No	10% of votes cast for Governor	8% of votes cast for Governor	No geographical distribution	Constitutional amendment <sup>xii</sup> Statute <sup>xiii</sup>	180 days
MS	IDA	No	12% of votes cast for Governor	Not allowed by state constitution	20% from each Congressional District	90 days prior to the convening of the legislature	1 year
MO	DA/DS	Yes	8% of votes cast for Governor	5% of votes cast for Governor	5% in 6 of 9 Congressional Districts	Eight months prior to election	18 months
MT	DA/DS	Yes	10% of votes cast for Governor	5% of votes cast for Governor	Statute: 5% in 34 of 50 Legislative Districts Amendment: 10% in 40 of 50 Legislative Districts	Second Friday of the fourth month prior to election	1 year
NE	DA/DS	Yes	10% of registered voters	7% of registered voters	5% in 38 of 93 counties	Four months prior to election	1 year
NV	DA/IDS	No	10% of registered voters	10% of votes cast in last general election.	10% in 13 of 17 counties	Constitutional amendment <sup>xiv</sup> Statute <sup>xv</sup>	CA: 11 months <sup>xvi</sup> Statute: 10 months <sup>xvii</sup>
ND	DA/DS	No	4% of population	2% of population	No geographical distribution	90 days prior to election	1 year
OH	DA/IDS	Yes	10% of votes cast for Governor	6% of votes cast for Governor <sup>xviii</sup>	Statute: 1½% in 44 of 88 counties Amendment: 5% in 44 of 88 counties	Constitutional amendment <sup>xix</sup> Statute <sup>xx</sup>	Unlimited
OK	DA/DS	Yes	15% of votes cast for Governor	8% of votes cast for Governor	No geographical distribution	Eight months prior to election <sup>xxi</sup>	90 days
OR	DA/DS	Yes	8% of votes cast for Governor	6% of votes cast for Governor	No geographical distribution	Four months prior to election	Unlimited
SD	DA/DS	No	10% of votes cast for Governor	5% of votes cast for Governor	No geographical distribution	Constitutional amendment <sup>xxii</sup> Statute <sup>xxiii</sup>	1 year
UT	DS/IDS	No	Not allowed by state constitution	Direct statute: 10% of votes cast for Governor In-direct statute: 10% of votes cast for Governor <sup>xxiv</sup>	10% in 20 of 29 counties	Direct statute <sup>xxv</sup> In-direct statute <sup>xxvi</sup>	Direct: Unlimited In-direct: Unlimited
WA	DS/IDS	No	Not allowed by state constitution	8% of votes cast for Governor	No geographical distribution	Direct: statute <sup>xxvii</sup> In-direct statute <sup>xxviii</sup>	Direct: 6 months In-direct: 10 months
WY	DS	No	Not allowed by state constitution	15% of votes cast in the last general election.s	15% of total votes cast in the last election from at least 2/3 of the counties	One day prior to the convening of the legislature <sup>xxix</sup>	18 months

**(Footnotes are located on reverse)**

**(Footnotes for Table: 3.1)**

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- i Direct Initiative amendment (DA) is when constitutional amendments proposed by the people are directly placed on the ballot and then submitted to the people for their approval or rejection.
- ii In-direct Initiative amendment (IDA) is when constitutional amendments proposed by the people must first be submitted to the state legislature during a regular session.
- iii Direct Initiative statute (DS) is when statutes (laws) proposed by the people are directly placed on the ballot and then submitted to the people for their approval or rejection.
- iv In-direct Initiative statute (IDS) is when statutes (laws) proposed by the people must first be submitted to the state legislature during a regular session.
- v This column denotes whether or not a state has a requirement that every Initiative or Referendum be limited to one subject.
- vi In Alaska, signatures must be submitted prior to the convening of the legislative session in the year in which the initiative is to appear on the ballot. The lieutenant governor shall place the initiative on the election ballot of the first statewide general, special, or primary election that is held after (1) the petition and any supplementary petition have been submitted, (2) a legislative session has convened and adjourned, and (3) a period of 120 days has expired since the adjournment of the legislative session.
- vii In California, each year the Secretary of State will set a complete schedule showing the maximum filing deadline and the certification deadline by the counties to the Secretary of State. There is a recommended submission date for “full check” and “random check”. These dates are only recommended. Notwithstanding any other provision of law, no initiative shall be placed on a statewide election ballot which qualifies less than 131 days before the date of the election.
- viii In Florida, certification must be received by the Secretary of State from the county supervisors stating the number of valid signatures submitted by the initiative proponent no later than 90 days prior to the general election ballot for the initiative to be considered for that ballot. However, there are several additional criteria that must be met prior to the certification of an initiative for the ballot. This includes the requirement that the proposed initiative has been approved for the ballot by the state supreme court. An initiative can only be submitted to the court for review after 10% of the required number of signatures have been collected and certified to the Secretary of State by the county supervisors. The court is under no statutory time frame to render a decision. Therefore, there is no precise date in which the signatures must be submitted in order to insure that you qualify for any specific general election ballot.
- ix In Maine, signatures must be submitted on or before the 50<sup>th</sup> day after the convening of the Legislature in the first regular session or on or before the 25<sup>th</sup> day after the convening of the Legislature in the second regular session.
- x In Massachusetts, the initial petition must include three percent of the total votes cast for Governor. If the legislature has not passed an initiated statute by the first Wednesday in May, petitioners must file a supplementary petition with petitions equal in number to one-half of one percent of the total votes cast in the previous gubernatorial election to place the issue on the ballot.
- xi In Massachusetts, the initial petition signatures shall be submitted no later than the first Wednesday in December in the year in which the Initiative was submitted. If the legislature has not passed the initiated statute by the first Wednesday in May, petitioners must file a supplementary petition with petitions equal in number to one-half of one percent of the total votes cast in the previous gubernatorial election no sooner than the first Wednesday in June and no later than the first Wednesday in July in order for the initiative statute to be placed on the ballot.
- xii In Michigan, signatures for constitutional amendments must be submitted not less than 120 days prior to the general election.
- xiii In Michigan, signatures for statutes must be submitted ten days prior to the start of the legislative session.
- xiv In Nevada, signatures for constitutional amendments must be submitted 90 days prior to the election.
- xv In Nevada, signatures for statutes must be submitted 30 days prior to the convening of the legislature.
- xvi In Nevada, petition language for constitutional amendments can be filed no sooner than September 1 of the year preceding the election and all signatures are due 90 days prior to the election.
- xvii In Nevada, petition language for statutes can be filed no sooner than January 1<sup>st</sup> of an even number year and signatures must be submitted no later than November 1<sup>st</sup> of that same even numbered year.
- xviii In Ohio, the initial petition must include three percent of the total votes cast for Governor. A supplementary petition containing an additional three percent is required in the event the proposed statute is defeated, amended or left idle by the legislature.
- xix In Ohio, signatures for amendments must be submitted 90 days prior to the election.
- xx In Ohio, signatures for statutes must be submitted 10 days prior to the convening of legislature.
- xxi In Oklahoma, an initiative must be submitted to the state Supreme Court for review before it can be certified for the ballot by the Secretary of State. Due to the fact that there is no statutory deadline for the court to make this determination, the state recommends that you submit your signatures eight months prior to the election that you desire the measure to be considered for.
- xxii In South Dakota, signatures for amendments must be submitted at least one year prior to the election.
- xxiii In South Dakota, signatures for statutes must be submitted by the first Tuesday in May in the general election year.
- xxiv In Utah, direct statutes require signatures equal in number to 10 percent of the votes cast for all candidates for Governor in the next preceding gubernatorial election for the statute to be placed on the ballot. In-direct statutes must contain signatures from five percent of the votes cast for all candidates for Governor in the next preceding gubernatorial election. If the legislature rejects or does not enact the proposed statute, a supplemental petition contacting additional signatures equal in number to 5 percent of the votes cast for all candidates for Governor in the next preceding gubernatorial election for the statute to be placed on the ballot.

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<sup>xxv</sup> In Utah, signatures for direct statutes must be submitted at least four months prior to the election.

<sup>xxvi</sup> In Utah, signatures for in-direct statutes must be submitted at least 10 days before the commencement of the annual general legislative session.

<sup>xxvii</sup> In Washington, signatures for direct statutes must be submitted four months prior to the election.

<sup>xxviii</sup> In Washington, signatures for in-direct statutes must be submitted ten days prior to the convening of the regular session of the legislature.

<sup>xxix</sup> In Wyoming, signatures must be submitted prior to the convening of the legislature. The state constitution states that the legislature shall convene at noon on the second Tuesday in January.

Both tables courtesy of the Initiative and Referendum Institute